

IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

Greenville County Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Presiding Circuit Court Judge

Trial Court Case Number: 2009-CP-23-5079

RECEIVED  
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SC Court of Appeals

Martha Lynne Angradi and Donald Scott McLorie,  
individually and on behalf of their minor child, Jessie M.....Respondents,

v.

Edgar Jack Lail and Leola Lail,  
Sylvester Golden, Golden Property, LLC,  
Nationwide Homes, and Fayssoux Real Estate.....Defendants,

of whom  
Sylvester Golden and  
Golden Property, LLC are the.....Appellants.

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**STATEMENT OF ISSUES ON APPEAL**

**I. THE TRIAL COURT DID NOT ERR IN DENYING THE APPELLANTS' MOTION FOR DIRECTED VERDICT AS TO THE FRAUD CAUSE OF ACTION**

**II. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV) AS TO THE RESPONDENTS' FRAUD CAUSE OF ACTION**

**III. THE TRIAL COURT DID NOT ERR IN PRECLUDING APPELLANT SYLVESTER GOLDEN FROM TESTIFYING THAT THE HOUSE AT ISSUE IN THIS ACTION PASSED INSPECTION PRIOR TO THE RESPONDENTS MOVING IN TO THE HOME**

## FACTS AND STATEMENT OF THE CASE

This matter centers around the misrepresentations and problems that arose with their dream home--their "forever" home--that the Plaintiffs/Respondents purchased in August, 2006.

### THE PARTIES

The Plaintiffs /Respondents are Mr. McLorie and his wife, Ms. Angradi, and their daughter, Jessie M\_\_\_\_. Mr. McLorie is a veteran<sup>1</sup> and a long distance truck driver. His driving takes him "all around the country and Canada"<sup>2</sup> and he would be gone from the home "anywhere from a month to three months at a time."<sup>3</sup> Ms. Angradi worked for the Greenville County School District in food nutrition services<sup>4</sup>. Their daughter was three years old at the time<sup>5</sup>.

For years the McLorie family "scrimped and saved and got everything in line to do this the right way and buy our dream home, our forever home, big piece of property to do the things we wanted to do."<sup>6</sup>

The Defendant Mr. Golden is a licensed contractor--in fact, either the youngest or one of the youngest to ever pass the test necessary to obtain a license<sup>7</sup>. He and his company (Defendants/Appellants) were responsible for the home at the center of the case.

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<sup>1</sup> Trial Transcript page 112 (hereinafter "transcript"). Record on Appeal, page xxx, line 21.  
<sup>2</sup> Transcript page 114. Record on Appeal, page xxx, lines 7-8.  
<sup>3</sup> Transcript page 114. Record on Appeal, page xxx, lines 4-5.  
<sup>4</sup> Transcript page 33. Record on Appeal, page xxx, lines 8-9; and lines 13-14.  
<sup>5</sup> Transcript page 59. Record on Appeal, page xxx, lines 10-12.  
<sup>6</sup> Transcript, page 35-36. Record on Appeal, page xxx, lines 24-25, page xxx, line 1.  
<sup>7</sup> Transcript page 190. Record on Appeal, page xxx, lines 1-6.

### THE HOME

The home in question was at 19 Glenn Martin Lane<sup>8</sup> in Greenville County, South Carolina. Per his own testimony, Mr. Golden was “the builder who pulled the permit” for the home; and was the builder who performed all work done in South Carolina; and was the builder who was “responsible for building it”.<sup>9</sup>

However, Mr. Golden was not the ‘builder’ in the traditional sense since the home, itself, was not primarily built in South Carolina but was a “modular” home which was “built in the plant at Nationwide Homes in Martinville (sic) Virginia.”<sup>10</sup> Mr. Golden estimated that when a modular home is shipped, “they are about 80 percent complete. Once they are here there are some things that has to be done.”<sup>11</sup>

### THE ISSUE OVER WHO REALLY OWNS THE HOME

One of the issues at trial was who really owns the home. The parties disagree about what was said; and who actually had an ownership stake in the home.

#### (a) Mr. Golden says the home is available

Ms. Angradi had first seen the home months before when she “saw a home with Mr. Golden’s sign in it”<sup>12</sup> but “was told that house was under contract<sup>13</sup>.” In August, 2006 she again went back “and there was that house still vacant. So I tracked

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<sup>8</sup> Transcript page 34. Record on Appeal, page xxx, lines 13-14.

<sup>9</sup> Transcript pages 220-221. Record on Appeal, page xxx, line 25, page xxx, lines 1-17.

<sup>10</sup> Transcript page 220. Record on Appeal, page xxx, lines 13-16.

<sup>11</sup> Transcript page 222. Record on Appeal, page xxx, lines 1-3.

<sup>12</sup> Transcript page 37. Record on Appeal, page xxx, lines 2-3.

<sup>13</sup> Transcript page 37. Record on Appeal, page xxx, lines 3-4.

him [Mr. Golden]<sup>14</sup> down and I called again and was told the contract had fallen through and, yes, it was available.”

(b) Mr. Golden says he is the owner and builder

Ms. Angradi set up a meeting for around the second week of August, 2006<sup>15</sup> at the home. Present at the meeting was Ms. Angradi, her realtor Mr. Weatherford, and Defendant/Appellant Mr. Golden<sup>16</sup>. The three “walked through the house, pointed out some things that weren’t right or that we would want fixed.<sup>17</sup>” Without objection, Ms. Angradi testified that Mr. Golden told her he owned the house; and he acted as though he were in control of the sales price of the house, as follows:

I don’t want to put words in anyone’s mouth but we were standing in the kitchen of this house, the three of us, and Mr. Weatherford asked Mr. Golden who owns this house and he said I do. Who built this house? And he said, I did, I did. Mr. Golden specifically said to me, to my face that he owned it, that he would not pay commission, he would not pay closing, this is the price of the house and I will not pay anything else.<sup>18</sup>

Ms. Angradi reiterated this in subsequent testimony:

Q. As far as you understood, you were purchasing the property from Sylvester Golden?

A. Yes.<sup>19</sup>

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<sup>14</sup> A reading of the transcript at page 37 (Record on Appeal, page xxx, lines 1-17) shows the “him” in this sentence refers to Mr. Golden.

<sup>15</sup> Transcript page 37. Record on Appeal, page xxx, lines 13-17.

<sup>16</sup> Transcript page 38. Record on Appeal, page xxx, line 5.

<sup>17</sup> Transcript page 38. Record on Appeal, page xxx, lines 5-7.

<sup>18</sup> Transcript page 38. Record on Appeal, page xxx, lines 8-15.

<sup>19</sup> Transcript page 42. Record on Appeal, page xxx, lines 13-15.

(c) Mr. Golden says he has a "partner" in the home

Ms. Angradi's realtor testified that Mr. Golden referred to having a "partner" in the home, as follows:

Q. What was your understanding of what that house was?

A. Just what it was said, a custom built home and along with that response he had said that he had a very difficult time encouraging his partner to go with him on building a two-story home.

Q. All right.

So he said he had a partner? During this conversation?

A. He did. He did, in that conversation.<sup>20</sup>

The realtor also testified that it was his understanding that Mr. Golden "had a partner"<sup>21</sup> in the home but didn't know the exact terms of the partnership split: "Now, how that was divided up, and everything did not know. Matter of fact, still don't know."<sup>22</sup>

Ms. Angradi agreed that at some point Mr. Golden referred to his "partner." It wasn't until the closing that she learned the partner's name--Mr. Lail. Ms. Angradi testified that Mr. Golden told her that he had to leave the closing but that "My partner is gonna handle the closing. Or represent me at closing, I believe is what he said."<sup>23</sup>

(d) the parties agree Mr. Golden was the only person Respondents dealt with about the home prior to closing

Mr. Golden testified he was the only person (other than the realtor) with whom Ms. Angradi dealt regarding the home prior to the closing<sup>24</sup>.

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<sup>20</sup> Transcript page 127. Record on Appeal, page xxx, lines 3-11.

<sup>21</sup> Transcript page 128. Record on Appeal, page xxx, line 17.

<sup>22</sup> Transcript page 128. Record on Appeal, page xxx, lines 20-22.

<sup>23</sup> Transcript page 42. Record on Appeal, page xxx, lines 22-24.

<sup>24</sup> Transcript page 229. Record on Appeal, page xxx, lines 4-8.

(e) documents evince an ownership interest by Appellants

Documents appear to show Appellants did have an ownership interest. After the purchase of the home, Mr. Golden sent a letter to Ms. Angradi regarding the home and some work to be done on the home. Mr. Golden signed the letter “Owner”<sup>25</sup>.

As well, Ms. Angradi testified there was a sign at the entrance to the one-street subdivision that read the developer was Golden Property; and custom built three bedroom, two full baths; and another custom home by Golden Property.<sup>26</sup>

Finally, a document entitled “contract for sale” on the letterhead of Appellants is signed by Mr. Golden and Mr. Lail and states Golden Property, LLC is to receive \$11,900 from the closing attorney<sup>27</sup>; and Ms. Angradi testified that the HUD closing statements identify Appellants as receiving \$11,900 from the sale of the home and that Mr. Golden was the only person she dealt with<sup>28</sup>.

(f) Appellants argue they do not own the house but concede they had a financial interest in the sale of the house

Defendants contend Mr. Golden was not an owner--that in fact Mr. and Mrs. Lail were the true owners.

However, Mr. Golden testified to a complex relationship--that he had an “investor” in the home and that whenever the home sold, Mr. Golden would receive the balance of the funds owed to him, even if this meant waiting several years:

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<sup>25</sup> Plaintiff’s Exhibit 5. Record on Appeal, page xxx.

<sup>26</sup> Transcript page 45-46. Record on Appeal, page xxx, lines 16-25; page xxx, lines 1-19.

<sup>27</sup> Plaintiff’s Exhibit 2. Record on Appeal, page xxx.

<sup>28</sup> Transcript page 110. Record on Appeal, page xxx, lines 3-25.

It was agreed upon that he [Mr. Lail, the investor] would owe me [Mr. Golden] some remaining funds whenever the house sold. I entered in to the agreement with him. I knew Mr. Lail. He was a great guy, great investor.

And that I would receive those funds once the house sold and it was no time limit on that. We would've definitely loved that the house were to sold earlier. I'm sure he would've definitely loved that but the house sit for -- I think the house sit for two or three years. It didn't sell.<sup>29</sup>

Mr. Golden also explained: "I tried to help a investor out with a house and facilitate, introduce them, the client."<sup>30</sup> Nevertheless, Mr. Golden testified he never represented himself as the owner of the house<sup>31</sup> but he conceded one cross-examination that he had a financial interest in the home and the sale of the home.<sup>32</sup>

Also in support of their arguments, Appellants note that the deed is only signed by the Lails; that the HUD statement listed Jack Lail as the seller; that the appraisal identified the owner as "Edward Jack Lail"; and note that the owner of record is a public document.<sup>33</sup>

Despite this, Ms. Angradi believed Appellants were in a partnership with the Lails: "Again, I'm at closing. Mr. Golden had referred to his partner. All along I though, okay, that's his partner, they're co-owners."<sup>34</sup>

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<sup>29</sup> Transcript page 193. Record on Appeal, page xxx, lines 7-15.

<sup>30</sup> Transcript page 190. Record on Appeal, page xxx, lines 19-21.

<sup>31</sup> Transcript page 196. Record on Appeal, page xxx, lines 15-22.

<sup>32</sup> Transcript pages 227-228. Record on Appeal, page xxx, lines 15-18; page xxx, lines 7-10.

<sup>33</sup> Brief of Appellant at pages 10-11.

<sup>34</sup> Transcript page 77. Record on Appeal, page xxx, lines 13-15.

**MR. GOLDEN AGREES TO MAKE REPAIRS TO THE HOME**

After she looked at the house, Ms. Angradi required several things be fixed on the home (either at her initial meeting with Mr. Golden or at a later walkthrough) testifying: “at that time we went through and noted everything that we wanted fixed.<sup>35</sup>” This is especially important since Respondents were the first persons to live in the home.

*(a) Appellants verbally agree to repairs*

Per Ms. Angradi, Mr. Golden gave his verbal agreement to repairs.<sup>36</sup> Ms. Angradi’s realtor corroborated this by testifying Mr. Golden agreed to fix the issues: “He said he would take care of it. Sounded to me like he’s a man gone do it”<sup>37</sup> and further testified he had no reason not to rely on this representation.<sup>38</sup>

Despite not being an owner, Mr. Golden himself testified that he nevertheless made an agreement to make repairs to the home. The agreement was “...could I come back and finish those [repairs] because I told them up front I was no way possible I could finish all of those items but I did do all of them except for two or three.”<sup>39</sup> It is important to note that Mr. Golden hereby also admitted he did not honor the agreement.

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<sup>35</sup> Transcript page 38-39. Record on Appeal, page xxx, line 25, page xxx, line 1.

<sup>36</sup> Transcript page 40. Record on Appeal, page xxx, line 4.

<sup>37</sup> Transcript page 129. Record on Appeal, page xxx, lines 15-16.

<sup>38</sup> Transcript page 129. Record on Appeal, page xxx, lines 17-19.

<sup>39</sup> Transcript page 202. Record on Appeal, page xxx, lines 7-10.

(b) Appellants sign an addendum regarding repairs

Moreover, Ms. Angradi required some (but not all) of the necessary repairs be agreed to in a writing signed by Mr. Golden. Therefore, a written addendum or list was drawn up of some of the things Plaintiffs/Respondents wished to have fixed<sup>40</sup>. This was attached as an addendum to the contract for sale of the home.<sup>41</sup>

The addendum itself notes that this is some but not all of the repairs<sup>42</sup>. When asked by her attorney to “explain exactly what that addendum means<sup>43</sup>” Ms. Angradi testified without objection that Mr. Golden agreed to fix various matters, as follows:

Mr. Golden verbally agreed to do everything we asked him to do verbally. I insisted that my realtor put it all down on paper and that we had it on paper that it would be done before closing. That’s who [sic: how?] this<sup>44</sup> came about. We put it in writing, to have it agreed upon and have it in writing.<sup>45</sup>

The next to last page of Plaintiff’s Exhibit 1 is signed by all the parties. It appears that “listing agent” is crossed out below the signature line for Appellants.<sup>46</sup> Mr. Golden testified to the opposite: that he was signing not as a party bound to the contract but merely as a witness<sup>47</sup>.

The addendum is not exhaustive. Referenced in Plaintiff’s Exhibit 5 (which was created by Appellants) is *additional* work that does not appear on the addendum--

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<sup>40</sup> Transcript page 39; Exhibit 1. Record on Appeal, transcript page xxx, lines 2-9; Exhibit page xxx.

<sup>41</sup> Plaintiff’s Exhibit 1. Record on Appeal, page xxx.

<sup>42</sup> Id.

<sup>43</sup> Transcript page 40. Record on Appeal, page 40, lines 2-3.

<sup>44</sup> “This” refers to Plaintiff’s Exhibit 1, the contract for sale and addendum.

<sup>45</sup> Transcript page 40. Record on Appeal, page xxx, lines 4-8.

<sup>46</sup> Plaintiff’s Exhibit 1. Record on Appeal, page xxx.

<sup>47</sup> Transcript pages 230-231. Record on Appeal, page xxx, lines 6-10., 14-25, page xxx, lines 1-9.

installation of new sheetrock and painting the wall.<sup>48</sup> This work also was not completed.

Ms. Angradi explained:

Mr. Golden is the only person I dealt with. Mr. Golden told me to my face that he was the owner, he was the builder, he was gonna do the repairs. That is the only person I was ever given any contract with. So if you're gonna hold yourself to be all that, then you're gonna be responsible for what you just promised me and put in writing you were gonna do.<sup>49</sup>

(c) Mr. Golden does not make the repairs

Of the thirteen<sup>50</sup> written items on the list, Appellants/Defendants complied and performed two: "He [Mr. Golden]<sup>51</sup> cut down -- He cut the grass. Put up a railing on the stairs.<sup>52</sup>" Appellants/Defendants also made one other attempted repair "but it wasn't sufficient."<sup>53</sup>

And Mr. Golden's testimony at trial was that he did not complete the repairs he agreed to. The agreement was "...could I come back and finish those [repairs] because I told them up front I was no way possible I could finish all of those items but I did do all of them except for two or three."<sup>54</sup>

Mr. Golden continued to promise that he would fix the home but nothing was done. In fact, the night before closing, Mr. Golden promised that his crew would be at the home in the morning. Unfortunately, Mr. Golden did not keep his promise.<sup>55</sup>

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<sup>48</sup> Plaintiff's Exhibit 5. Record on Appeal, page xxx, paragraph 2.

<sup>49</sup> Transcript page 89. Record on Appeal, page xx, lines 10-16.

<sup>50</sup> Transcript page 41. Record on Appeal, page xxx, line 6.

<sup>51</sup> "He" refers to Mr. Golden. See Transcript page 41. Record on Appeal, page xxx, lines 1-4.

<sup>52</sup> Transcript page 41. Record on Appeal, page xxx, lines 3-4.

<sup>53</sup> Transcript page 41. Record on Appeal, page xxx, lines 9-10.

<sup>54</sup> Transcript page 202. Record on Appeal, page xxx, lines 7-10.

<sup>55</sup> Transcript page 52. Record on Appeal, page xxx, lines 11-14.

After the home was purchased, Mr. Golden continued to make excuses. Ms. Angradi testified Mr. Golden said he was “a very busy man” who “can’t just drop everything to come to your house and fix your problems...”<sup>56</sup>

Mr. Golden’s position is that he was in part prevented from the repair work because Ms. Angradi wanted her husband to be present for repairs.<sup>57</sup> Ms. Angradi testified in response that Appellant’s letter blaming her was sent after Appellants had declined opportunity after opportunity to honor their representations.<sup>58</sup>

#### **PROBLEMS WITH THE HOME**

After she moved in, Ms. Angradi discovered problems with the home. The night of the purchase, she turned on the lights and testified: “The minute those lights started to come on, there were water stains, shadows of them on the walls downstairs and I freaked.”<sup>59</sup> Tellingly, Ms. Angradi called Mr. Golden, who admitted there was a leak upstairs.<sup>60</sup>

In the bathroom there was improperly performed work and what Ms. Angradi described as a “nightmare”:

So I then went upstairs to the bathroom and discovered a nightmare.

Q. And what did you discover in the bathroom?

A. Water stains.

There had been a repair there that we had wanted him to fix that was not done. At all the way we had asked for it to be done.

There had been stuff in the bathroom cabinet when I looked at the house. I don’t remember what it was. Like, there was, like, a bucket with caulk or, I don’t know.

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<sup>56</sup> Transcript pages 52-53. Record on Appeal, page xx, line 23-25, page xxx, lines 1-2.

<sup>57</sup> See, e.g., Plaintiff’s Exhibit 5. Record on Appeal, page xxx.

<sup>58</sup> See generally transcript pages 53-55. Record on Appeal, pages xxx to xxx. And see Appellant’s brief, page 3.

<sup>59</sup> Transcript, page 47. Record on Appeal, page xxx, lines 12-14.

<sup>60</sup> Transcript, page 47. Record on Appeal, page

That bucket was gone and when I opened the cupboard to look in there the entire wall was mold.

The toilet was not hooked up. It didn't work. That was in the master bedroom.

And when I looked at the lid there was, I don't know, yuk in there. Construction debris. I don't know. I just closed the lid, closed the door and walked out.<sup>61</sup>

The next day Ms. Angradi "discovered that there were lights that didn't work, the doorbell didn't work, the dishwasher didn't work. Nothing happened. You'd flip a switch and nothing would happen. It got to be really, kind of scary."<sup>62</sup> In addition, the garage door was wired backwards, vinyl siding fell off the house, water was rushing in under the outside door, and there was green slimy mold under the carpeting.<sup>63</sup>

Ms. Angradi hired an inspector after the closing—Mr. Parker—to look over the house. Mr. Parker took photographs and gave extensive and detailed testimony at trial regarding the numerous problems he found in home by testifying from the photographs. Counsel counts approximately eighty-three deficiencies the inspection noted in his testimony, summarized as follows:

(1) the problem with the soil under the driveway being washed out<sup>64</sup>; (2) improper repair of same<sup>65</sup>; (3) unlabeled "hot" wire in the electrical panel<sup>66</sup>; (4) bends in the electrical panel that are "okay" but not up to better building practices<sup>67</sup>; (5) failure to use a paste to protect against corrosion in the electrical panel<sup>68</sup>; (6) loose light fixture improperly attached and poor

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<sup>61</sup> Transcript pages 47-48. Record on Appeal, page xxx, lines 23-25, page xxx, lines 1-14.

<sup>62</sup> Transcript page 49. Record on Appeal, page xxx, lines 4-7.

<sup>63</sup> Transcript pages 50-51. Record on Appeal, page xxx, lines 12-25, page xxx, lines 1-2.

<sup>64</sup> Transcript, page 141. Record on Appeal, page xxx, lines 21-23.

<sup>65</sup> Transcript page 141-142. Record on Appeal, page xxx, lines 24-25; page xxx, line 1-9.

<sup>66</sup> Transcript page 142. Record on Appeal, page xxx, lines 10-15.

<sup>67</sup> Id. at lines 10-12, 16-7.

<sup>68</sup> Id. at lines 18-22.

workmanship<sup>69</sup>; (7) loose siding trim at the fascia, the eave<sup>70</sup>; (8) failure to install a screen to keep out vermin<sup>71</sup>; (9) face nail piece of siding that does not meet industry standards<sup>72</sup>; (10) improperly secured electrical service into the package heating unit<sup>73</sup>; (11) failure to properly place the electrical disconnect for the HVAC<sup>74</sup>; (12) lots of gaps in the utility entrance into the crawl space<sup>75</sup>; (13) improper split system which will cause moisture in the crawl space and serve as a wood infestation attractor<sup>76</sup>; (14) improper stagger point on the siding<sup>77</sup>; (15) hole in the siding<sup>78</sup>; (16) improper and loose trim<sup>79</sup>; (17) gaps in the siding exposing the wall cavity<sup>80</sup>; (18) loose part presumably of the siding which could allow moisture intrusion<sup>81</sup>; (19) siding not even completed at one point<sup>82</sup>; (20) no gutter system on the home to direct roof water run-off away from the home<sup>83</sup>; (21) improper siding cut near a window<sup>84</sup>; (22) improper miter cut on the J-channel<sup>85</sup>; (23) improper foundation vent that will allow water to improperly collect<sup>86</sup>; (24) incomplete section and lack of house wrap<sup>87</sup>; (25) improper angle which funnels water improperly<sup>88</sup> (26) another example of poor workmanship on the siding and gap<sup>89</sup>; (27) no proper drip cap and improperly lapped J channel<sup>90</sup>; (28) no starter strip on the roof application covering (shingles)<sup>91</sup>; (29) improper J channel such that water is not properly channeled off the roof<sup>92</sup>; (30) no drip edge beneath the shingles<sup>93</sup>; (31) improper grounding and trying to “get two wires into a hole that’s built for one

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69 Id. at lines 23-25.

70 Transcript page 143. Record on Appeal page xxx, lines 1-2.

71 Id. at lines 3-5.

72 Id. at lines 6-8.

73 Id. at lines 9-10.

74 Id. at lines 11-22.

75 Id. at lines 23-24.

76 Transcript page 143-144. Record on Appeal, page xxx, line 25, page xxx, lines 1-5.

77 Transcript page 144. Record on Appeal, page xxx, lines 6-10, 18-20.

78 Id. at lines 11-12.

79 Id. at lines 13-15.

80 Id. at lines 16-18.

81 Id. at lines 21-22.

82 Id. at lines 23-24.

83 Transcript page 144-145. Record on Appeal, page xxx, line 25, page xxx, lines 1-3.

84 Transcript page 145. Record on Appeal, page xxx, lines 4-7.

85 Id. at lines 8-11.

86 Id. at lines 12-15.

87 Id. at lines 16-20.

88 Transcript pages 145-146. Record on Appeal, page xxx, lines 21-15, page xxx, line 1.

89 Transcript page 146. Record on Appeal, page xxx, lines 2-3.

90 Id. at lines 4-8.

91 Id. at lines 9-13.

92 Id. at lines 14-17.

93 Id. at lines 18-19.

wire.”<sup>94</sup>; (32) nails pulling loose and failure to support the deck with a curb (which indicates it is possibly near failure)<sup>95</sup>; (33) improper partially blocked foundation vent<sup>96</sup>; (34) wood improperly touching a grate<sup>97</sup>; (35) improperly using above-ground lumber for in ground use (leading to rotting)<sup>98</sup>; (36) failure of the deck to be on a permanent, poured footing, instead it is on a block not below the frost line<sup>99</sup>; (37) failure to bury a line<sup>100</sup>; (38) failure to have vacuum breaker on a bib hose<sup>101</sup>; (39) poor siding application<sup>102</sup>; (40) failure to flash the deck band<sup>103</sup>; (41) loose piece of siding that is also roughly cut<sup>104</sup>; (42) missing siding<sup>105</sup>; (43) the entrance is too small for the crawl space<sup>106</sup>; (44) improper caulking at the rear entry of the home<sup>107</sup>; (45) nailing fastener for the siding (should be loose)<sup>108</sup>; (46) not enough nails in the siding<sup>109</sup>; (47) damaged or missing section of a light fixture<sup>110</sup>; (48) water intrusion and staining<sup>111</sup>; (49) vinyl sheet not glued down<sup>112</sup>; (50) incorrect number of nails<sup>113</sup>; (51) failure to have HVAC registers be mastic sealed<sup>114</sup>; (52) re-nailing floors warped by water<sup>115</sup>; (53) gaps in the baseboard<sup>116</sup>; (54) failure to have a continuous railing for the staircase<sup>117</sup>; (55) mold growing on the ceiling<sup>118</sup>; (56) splash back pulling loose and improperly re-caulked<sup>119</sup>; (57) leakage, mold growth, warping<sup>120</sup>; (58) walls not set in plumb in the tub and

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94 Transcript pages 146-147. Record on Appeal, page xxx, lines 23-25, page xxx, lines 1-7.  
95 Transcript page 147. Record on Appeal, page xxx, lines 8-12.  
96 Id. at lines 14-15.  
97 Id. at lines 16-17.  
98 Id. at lines 18-24.  
99 Transcript pages 147-148. Record on Appeal, page xxx, line 25, page xxx, lines 1-8.  
100 Transcript page 148. Record on Appeal page xxx, lines 9-16,  
101 Id. at lines 17-24.  
102 Transcript pages 148-149. Record on Appeal page xxx, line 25, page xxx, lines 1-2.  
103 Transcript page 149. Record on Appeal, page xxx, lines 3-9.  
104 Id. at lines 10-12.  
105 Id. at line 13.  
106 Id. at lines 14-18.  
107 Id. at lines 21-23.  
108 Transcript pages 149-150. Record on Appeal page xxx, lines 24-25; page xxx, lines 1-3.  
109 Transcript page 150. Record on Appeal, page xxx, line 4.  
110 Id. at lines 5-6.  
111 Id. at lines 17-21.  
112 Transcript pages 150-151. Record on Appeal, page xxx, lines 24-25, page xxx, line 1.  
113 Transcript page 151. Record on Appeal, page xxx, lines 2-4.  
114 Id. at lines 5-7.  
115 Id. at lines 17-21  
116 Transcript pages 151-152. Record on Appeal, page xxx, lines 22-25, page xxx line 1.  
117 Transcript page 152. Record on Appeal, page xxx, lines 2-6.  
118 Id. at lines 7-8.  
119 Id. at lines 9-14.  
120 Transcript page 152-153. Record on Appeal, page xxx, lines 18-25, page xxx, lines 1-2.

shower area<sup>121</sup>; (59) a wall was not finished near the garage area<sup>122</sup>; (60) improper variance in riser height near the garage which is a trip hazard<sup>123</sup>; (61) undersized ledger strip in the ceiling<sup>124</sup>; (62) a ridge beam that is smaller than required<sup>125</sup>; (63) improper spacing and failure to use H clips in the roof sheathing<sup>126</sup>; (64) improperly installed light fixture<sup>127</sup>; (65) improper cuts in the ridge beam<sup>128</sup>; (66) a light fixture which is too close to a combustible surface<sup>129</sup>; (67) failure to continue to use a collar brace throughout the roof<sup>130</sup>; (68) failure to seal off or draft stop the joined area of the modular<sup>131</sup>; (69) failure to strap duct work to the framing<sup>132</sup>; (70) improper installation of the attic insulation<sup>133</sup>; (71) upside down insulation<sup>134</sup>; (72) failure to use hurricane clips to attach the rafter system<sup>135</sup>; (73) un-insulated area<sup>136</sup>; (74) improperly crimping duct work and thereby reducing airflow<sup>137</sup>; (75) improperly nailed area where two portions of the modular home are pulling apart<sup>138</sup>; (76) no ledger or vertical support under the ridge beam<sup>139</sup>; (77) un-insulated water drip line<sup>140</sup>; (78) un-insulated refrigerant line<sup>141</sup>; (79) inefficient installation of duct work<sup>142</sup>; (80) improper attic access<sup>143</sup>; (81) improperly restricted gable<sup>144</sup>; (82) wood that was not pressure treated lumber<sup>145</sup>; and (83) wiring improperly laying on the ground<sup>146</sup>.

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121 Transcript page 153. Record on Appeal, page xxx, lines 3-7.  
122 Id. at lines 11-12.  
123 Id. at lines 13-25.  
124 Transcript page 154. Record on Appeal, page xxx, lines 6-9.  
125 Id. at lines 12-17  
126 Transcript pages 154-155. Record on Appeal, page xxx lines 21-25, page xxx, lines 1-3.  
127 Transcript page 155. Record on Appeal, page xxx, lines 4-9.  
128 Id. at lines 10-13.  
129 Id. at lines 17-21.  
130 Transcript page 156. Record on Appeal, page xxx, lines 1-7.  
131 Id. at lines 8-16.  
132 Id. at lines 17-21.  
133 Id.  
134 Transcript pages 156-157. Record on Appeal, page xxx, lines 22-25, page xxx, line 1.  
135 Transcript page 157. Record on Appeal, page xxx, lines 6-11.  
136 Id. at lines 12.  
137 Id. at lines 14-18.  
138 Id. at lines 19-22.  
139 Transcript page 158. Record on Appeal, page xxx, lines 7-10.  
140 Transcript pages 158-159. Record on Appeal, page xxx, lines 20-25, page xxx, lines 1-5.  
141 Transcript page 159. Record on Appeal, page xxx, lines 6-7.  
142 Id. at lines 10-18.  
143 Transcript pages 159-160. Record on Appeal, page xxx, line 25, page xxx, lines 1-5.  
144 Transcript page 160. Record on Appeal, page xxx, lines 6-7.  
145 Transcript pages 160-161. Record on Appeal, page xxx, lines 22-25, page xxx, line 1.  
146 Transcript page 161. Record on Appeal, page xxx, lines 3-6.

Mr. Parker testified that all of the above were failures or deficiencies in his expert opinion:

Q. That's it? All right.

Mr. Parker, all the deviations of a code and industry standards you just testified to going through those photographs, are those all to a professional degree of certainty?

A. Yes.<sup>147</sup>

(a) toxic mold is present

Mr. Parker also conducted a mold test. He found extremely high levels of mold and testified in his expert opinion that the home in this case “would be very high in comparison to other homes I’ve done, this would be very high in comparison to other homes that had half this amount of mold that required remediation.”<sup>148</sup> And Mr. Parker also found several “toxic” molds in the course of his investigation: aspergillus; geranium; and stachybotrys (which causes neurological damage to the brain)<sup>149</sup>.

Mr. Parker testified that the presence of the mold was caused by water intrusion; and that this in turn was caused by some of the defects outlined in his testimony.<sup>150</sup>

Ms. Angradi described the symptoms the family was suffering: “We couldn’t breathe. We had green stuff coming out of our noses. It was disgusting. I itched. My eyes itched so bad all the time that I had no eyelashes for four years...”<sup>151</sup>

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<sup>147</sup> Transcript page 161. Record on Appeal, page xxx, lines 8-13.

<sup>148</sup> Transcript page 167. Record on Appeal, page xxx, lines 5-7.

<sup>149</sup> Transcript page 167. Record on Appeal, page xxx, lines 8-15.

<sup>150</sup> Transcript page 170. Record on Appeal, page xxx, lines 8-24.

<sup>151</sup> Transcript, page 61. Record on Appeal, page xxx, lines 5-8.

(b) Mr. Golden should have known of the problems

Mr. Parker also testified in his expert opinion that Mr. Golden should have recognized the deficiencies in the home:

Well, generally, a builder would have, you know, the type of experience similar to what I have for identifying defects in construction and most builders will do a walkthrough if he's the superintendent or supervisor of, I guess for a better word, the assembly of this modular home on this lot, should be able to identify situations that would lead to moisture intrusion, pretty much, the same as I have, should be able to do that.<sup>152</sup>

(c) it appears repairs were made to conceal the home's condition

It is apparent from Mr. Parker's testimony that Mr. Golden should have been aware of the problems with the home prior to its sale. This is further bolstered by the fact that some of the repairs appear to have been designed to cover up conditions in the home. For example, Mr. Parker testified that the flooring was warped by water and that all that was done was to add nails:

As you see, the nailing here, it appears that someone, because the flooring was warped, tried to—tried to renail this to take care of some warpage from water. We see the stains right here. And this would've been done prior to finish, of reapplication of the floor covering.<sup>153</sup>

And that a problem area was re-caulked, and even that was done improperly:

This shows in the bathroom where the splash back here has pulled loose and has been recaulked here to try to seal the gaps. This is where the moisture had actually running down behind this wall.

There's still, even after caulking, there're gaps here between this cabinet and this wall.<sup>154</sup>

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<sup>152</sup> Transcript page 169. Record on Appeal, page xxx, lines 12-19.

<sup>153</sup> Transcript page 151. Record on Appeal page xxx, lines 17-21.

<sup>154</sup> Transcript page 152. Record on Appeal, page xxx, lines 9-14.

This suggests that Mr. Golden knew of the problems prior to sale and attempted to conceal the evidence rather than fix the problem.

**APPELLANTS CONCEAL THE FACT THE HOME IS A MODULAR HOME**

One of the issues at trial was whether Appellants concealed the fact this was a modular home.

*(a) a layperson cannot tell if a home is a modular home*

By the admission of the opposing party, a layperson (such as the Plaintiff) cannot tell they are in a modular home just by walking in and looking around. The testimony was as follows:

Q. Do you admit there's no way that a layperson like Miss Angradi would know that it was a modular home just by walking in and looking around, correct?

A. I've stated that, yes.

Because it's the same as a stick built house. There is no difference so you can't tell a difference.<sup>155</sup>

*(b) Appellants misrepresent the fact it is a modular home*

Although this was a "modular" home, this fact was concealed from the Plaintiffs who were misled into thinking they were buying a "custom built home" or "stick built home."

This is a critical point because Ms. Angradi testified she would not have bought the home if the true nature of the home had not been concealed by Appellants:

Q. Okay.

I want to go back to the issue, briefly, about this being a modular home. Would you have purchased this home if you had been told it was a modular home?

A. No.<sup>156</sup>

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<sup>155</sup> Transcript page 232. Record on Appeal, page xxx, lines 19-24.

All parties agreed at trial that the home was, in fact, a modular home purchased from Nationwide and shipped to South Carolina. And Ms. Angradi's home inspector (Mr. Parker) unequivocally testified that the home was *not* a custom built home.<sup>157</sup>

Defendants were questioned as to the construction of the house and misled and hid the fact it was actually a modular home. Evidence in support of the Plaintiffs position is from (i) Mr. Golden incorrectly stating it was a stick framed home *by his own admission*; (ii) by Mr. Golden stating he "built" the home; (iii) by a sign referring to 'custom built homes' at the start of the subdivision; and (iv) by Mr. Golden's testimony it was a custom built home.

Mr. Golden strenuously denied at trial misleading the Plaintiffs and testified he told Ms. Angradi it was a modular home. Ms. Angradi denied being told it was a modular home.<sup>158</sup>

(i) stick framed house

Critically, Mr. Golden confessed at trial that he told Ms. Angradi that this was a stick framed home:

Q. Did you ever tell Miss Angradi that this was a stick framed home?

THE COURT: Yes or no. Then --

A. Yes.

THE COURT: -- you can explain.

Q. Yes, you did?

A. Yes.<sup>159</sup>

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<sup>156</sup> Transcript page 68. Record on Appeal, page xxx, lines 9-16.

<sup>157</sup> Transcript page 171. Record on Appeal, page xxx, lines 5-9.

<sup>158</sup> Transcript page 68. Record on Appeal, page xxx, lines 9-16.

<sup>159</sup> Transcript page 220. Record on Appeal, page xxx, lines 5-11.

Mr. Golden's defense for his deception is apparently because "a modular is the same as a stick built house"<sup>160</sup>? Or as he later stated: "Because it's the same as a stick built house. There is no difference so you can't tell a difference."<sup>161</sup>

(ii) Mr. Golden "built" the home

Ms. Angradi testified Mr. Golden repeatedly said he "built" the house<sup>162</sup> or referred to himself as the "builder".

(iii) sign stating the houses were custom built

As well, Ms. Angradi testified there was a sign at the entrance to the one-street subdivision that read the developer was Golden Property; and custom built three bedroom, two full baths; and another custom home by Golden Property.<sup>163</sup>

When asked specifically on cross examination how she could rely on the sign, Ms. Angradi testified "Because it states that the custom built the homes right on the site. They were custom built by Golden Properties."<sup>164</sup>

Mr. Golden testified on direct that the sign was made at his direction and erected by him.<sup>165</sup> Tellingly, he testified that a person driving through the neighborhood could not tell from the sign that some of the homes were "modular":

Q: All right.

How would somebody know, driving up to that neighborhood, though that interest, **past that sign**, that five, four, six, you didn't remember but a number like that, six or five of these homes are not conventionally made, they're not site built, they're modular. How would they know that?

A. You wouldn't know it because they're identical to the site built house.<sup>166</sup>

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<sup>160</sup> Transcript page 207. Record on Appeal, page xxx, lines 13-14.

<sup>161</sup> Transcript page 232. Record on Appeal, page xxx, lines 23-24.

<sup>162</sup> See, e.g., transcript page 38. Record on Appeal, page xxx, lines 5-19.

<sup>163</sup> Trial Transcript page 45-46. Record on Appeal, page xxx, lines 16-25; page xxx, lines 1-19.

<sup>164</sup> Transcript page 70. Record on Appeal, page xxx, lines 17-21, quote from lines 19-21.

<sup>165</sup> Transcript pages 213-214. Record on Appeal, page 213, lines 17-25, page xxx, lines 1-5.

(iv) Mr. Golden referred to it as a “custom built home”

Per the realtor’s testimony, it was this sign which “brought the question up to begin with.”<sup>167</sup> Ms. Angradi’s realtor testified Mr. Golden represented that this was a custom built home, as follows:

Q. What was your understanding of what that house was?

A. Just what it was said, a custom built home and along with that response he [Mr. Golden] had said that he had a very difficult time encouraging his partner to go with him on building a two-story house.<sup>168</sup>

And Ms. Angradi testified that Mr. Golden also told her it was a “custom home.”<sup>169</sup>

(c) Respondents learn of the modular home deception

In December, 2006, Plaintiffs /Respondents learned for the first time that they lived in a “modular home.”<sup>170</sup>

The home inspector hired by Ms. Angradi was told by Ms. Angradi that this was a custom constructed home. However, in the course of his inspection he learned it was a modular home delivered to Golden Properties:

Looking under the kitchen cabinet in the structure, when I was told to come to the property and did my interview I was informed that this was a custom constructed home. Once during the course of the inspection I found that this was a manufactured home and this [a photograph] is the sticker. It’s on the kitchen cabinet underneath the sink and this shows the manufacturer, the specifications, point of origin here, point of distribution here and over here is shows who it was delivered to and here you will notice it was delivered to Golden Properties, Greenville, South Carolina.<sup>171</sup>

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<sup>166</sup> Transcript page 215. Record on Appeal, page xxx, lines 1-8. Bold emphasis added.

<sup>167</sup> Transcript page 127. Record on Appeal, page xxx, lines 24-25.

<sup>168</sup> Transcript page 127. Record on Appeal, page xxx, lines 3-7.

<sup>169</sup> Transcript page 44. Record on Appeal, page xxx, lines 20-24.

<sup>170</sup> Transcript, page 59. Record on Appeal, page xxx, lines 3-4, 17-18.

<sup>171</sup> Transcript page 150. Record on Appeal, page xxx, lines 7-16.

**RESPONDENTS RELIED ON APPELLANTS**

When asked about whether and why she relied on Mr. Golden, Ms. Angradi testified she believed he was in a better position to know the quality of the home:

Q [by counsel for Ms. Angradi]: Miss Angradi, did you rely on Mr. Golden's representations to you?

A. Yes.

Q. Okay.

Did you feel that he was in a better position as the builder and as the owner of the home to tell you about the home?

A. Yes.

Q. Did you feel he was in a better position as the builder and the owner of the home to know about the quality and history of the home?

A. Yes.<sup>172</sup>

**DAMAGES**

As a direct and proximate result of the actions of Defendants/Appellants, the Plaintiff/Respondents were harmed. Ms. Angradi emotionally testified:

We scrimped and saved and lived frugally in a very tiny house. We paid off every debt we had. We saved every penny we could. We brought out [sic: our?] credit to perfect. Our daughter was three. We wanted to get the home we were gonna live in, the home we were gonna raise her in.

We took her to pick out a swing set. We took her to pick out a pool. We had it all ready to go.

I had a fence ready to go up. We have rescued dogs.

It was gonna be our dream. We weren't wealthy, but within our price range this was a pretty nice home, this was a pretty good piece of property. That's what we wanted.

It robbed us of every penny we put down. We put 20 percent cash down. We paid cash closing. We paid cash commission. We paid cash to put up a fence.

We were not able to give our daughter anything we hand promised, anything she had picked out. \*\*\*

[\*\*\*]

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<sup>172</sup> Transcript page 109. Record on Appeal, page xxx, lines 1-15.

We --When we had to move out of the house we had to cash in our retirement account because we now had to pay a mortgage and rent. We had to pay to move yet again.

We realized we couldn't continue to pay both we had to let the house foreclose. After speaking with our attorney and realizing that this was not gonna be solved quickly, that if we were gonna hold on to this house we were gonna be paying both this things for years, we knew we couldn't do it. It wasn't fair to us. It just wasn't fair that this was happening.

It took everything. It took every penny. It ruined our credit ...<sup>173</sup>

Ms. Angradi also submitted into evidence an itemized list of expenses and damages incurred as a result of moving and the actions of Appellants. That itemized list sets forth \$51,802.29 of expenses.<sup>174</sup> The Court did not allow testimony regarding lost wages.<sup>175</sup>

#### **STATEMENT OF THE CASE**

On December 26, 2006, the Plaintiffs/Respondents moved out of the house.<sup>176</sup> Less than two months later, on February 14, 2007, Plaintiffs filed suit. Plaintiffs filed suit in their name and in the name of their minor daughter.

Initially named in the litigation were the following defendants: Edgar Jack Lail; Leola B. Lail; Sylvester Golden III; Golden Property LLC; Nationwide Homes; and Fayssoux Real Estate.

The complaint sought a jury trial. It centered around the issues with the home and set forth five legal theories of recovery against Appellants: 1) negligence; 2) fraud; 3) gross negligence; 4) negligent misrepresentation; and 5) violation of the

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<sup>173</sup> Transcript pages 62-64. Record on Appeal, page xxx, lines 7-22; page xxx, lines 9-20. Portions to which an object was sustained (and the objections) are omitted.

<sup>174</sup> Plaintiff's Exhibit 6. Record on Appeal, pages xxx to xxx.

<sup>175</sup> See Transcript pages 115-118. Record on Appeal, pages xxx – xxx.

<sup>176</sup> Transcript page 96. Record on Appeal, page xxx, lines 4-6.

unfair trade practices act (a sixth cause of action was only directed to defendant Nationwide)<sup>177</sup>.

On March 14, 2007 a one page Answer was filed on behalf of Appellants which denied the allegations<sup>178</sup>. About four and a half hours later, an Amended Answer was filed on behalf of Appellants which was also one page long and was similar to the first Answer. It also denied the allegations<sup>179</sup>.

The case was suspended under Rule 40(j) of the South Carolina Rules of Civil Procedure on March 30, 2009. Thereafter, it was restored on June 16, 2009 with the caption and civil action number set forth above (the prior case number had been 2007-CP-23-1008).

By July, 2009, Plaintiffs/Respondents had settled with or dismissed all Defendants, save Appellants/ Sylvester Golden III and Golden Property, LLC.

All other parties having been dismissed, the case between Respondents and Appellants proceeded to trial on Wednesday, June 8, 2011. At the start of the trial, counsel for Respondents stated “we’re not going forward with damages for the minor child. That’s not a part of our case.”<sup>180</sup> Accordingly, the verdict form lists only Ms. Angradi and Mr. McLorie as Plaintiffs<sup>181</sup>.

A jury was selected, impaneled, and sworn<sup>182</sup> and the case was presided over by the Honorable C. Victor Pyle, Jr. The case was tried on June 8, 9, and 10.

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<sup>177</sup> Complaint. Record on Appeal, pages xxx – xxx.

<sup>178</sup> Answer. Record on Appeal, page xxx.

<sup>179</sup> Amended Answer. Record on Appeal, page xxx.

<sup>180</sup> Transcript page 6. Record on Appeal, page xxx, lines 2-3.

<sup>181</sup> Jury verdict form Record on Appeal, page xxx.

<sup>182</sup> Transcript, page 24. Record on Appeal, page xxx, lines 15-16.

After the Plaintiff rested, the Defendants/Appellants moved to dismiss all the causes of action. The Court partially agreed and dismissed Plaintiff's UTPA cause of action, ruling: "No, sir, I disagree with you. Under the statute in order to recover unfair trade you've got to prove that there was an impact on the public interest and that there was -- have a potential repetition. And you certainly have not shown that."<sup>183</sup> And at the close of the Defendants' case, the Defendants/Appellants again moved to dismiss the remaining allegations of the complaint. This was denied by the Court.

Jury charges were first made on Friday, June 10. The Court submitted three causes of action to the Jury for its deliberation: a) breach of warranty; b) negligence; and c) fraud. No objection was made by any party to the Court's charges regarding fraud<sup>184</sup>. The Court did not submit an item entitled "gross negligence" to the jury for its consideration.

About half an hour after deliberations began, the Jury sent a note to the Court asking: "Does a sound home/sound price constitute breach of warranty or negligence"<sup>185</sup> and half an hour after that, the Jury sent a second note to the Court and requested an additional charge on what constitutes negligence and then fraud<sup>186</sup>, stating: "We need to have what constitutes negligence & fraud ~~again~~ read to us again or can we have a copy of what the law states?"<sup>187</sup> The Court re-charged the jury.

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<sup>183</sup> Transcript page 185. Record on Appeal, page xxx, lines 14-18.

<sup>184</sup> Transcript page 310. Record on Appeal, page xxx, lines 5-9.

<sup>185</sup> Court Exhibit 4. Record on Appeal, page xxx.

<sup>186</sup> Transcript page 311. Record on Appeal, page xxx, lines 20-21.

<sup>187</sup> Court Exhibit 5. Record on Appeal, page xxx.

Appellant objected to the charge, stating: “Your Honor, take exception, their right to rely, whether they had the right to rely.”<sup>188</sup>

Shortly thereafter the Jury returned a verdict in favor of Defendants/Appellants for the negligence cause of action; and in favor of the Plaintiffs/Respondents on the fraud and breach of warranty cause of action.<sup>189</sup> The verdict for Respondents was in the amount of \$30,000 for actual damages and \$20,000 for punitive damages.<sup>190</sup>

After the jury was dismissed, the Defendants/Appellants made a motion for judgment notwithstanding the verdict, as follows:

THE COURT: Okay. Any motions?

MR. JONES: Yes, sir, I would have one, Your Honor. We would like a judgment notwithstanding the verdict on behalf of the defendant.

THE COURT: And I’ll have to deny your motion.<sup>191</sup>

No other post trial motions were made or filed by Appellants/Defendants.

Finally, the Court required Plaintiffs/Respondents to elect between fraud and breach of warranty. They elected to recover under the fraud cause of action since the fraud cause of action supported punitive damages.<sup>192</sup> Accordingly, Judgment was entered in the amount of \$50,000 in favor of the Plaintiffs/Respondents and against Appellants on June 10, 2011.<sup>193</sup>

The Appellants timely appealed from the Order requiring them to pay Respondents \$50,000.00. This matter is now before this Court on Appellants’ appeal.

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<sup>188</sup> Transcript page 313. Record on Appeal, page xxx, lines 20-21.

<sup>189</sup> Verdict. Record on Appeal, pages xxx-xxx.

<sup>190</sup> Verdict. Record on Appeal, page xxx.

<sup>191</sup> Transcript page 315. Record on Appeal, page xxx, lines 15-21.

<sup>192</sup> Transcript, pages 315-316. Record on Appeal, page xxx, lines 23-25, page xxx, lines 1-6.

<sup>193</sup> Judgment. Record on Appeal, pages xxx-xxx.

**I. THE TRIAL COURT DID NOT ERR IN DENYING THE APPELLANTS' MOTION FOR DIRECTED VERDICT AS TO THE FRAUD CAUSE OF ACTION**

Appellants raise as their first grounds for appeal that the trial Court should have granted Appellants' motion for directed verdict. For the reasons set forth below, a directed verdict was inappropriate and this Court should not be persuaded by Appellants' argument.

At the conclusion of the Plaintiffs/Respondents' case, Appellants moved for directed verdict, as follows:

THE COURT: Thank you.  
All right, go ahead now, Mr. Jones.

MR. JONES [counsel for Appellants]: Your Honor, the evidence that we've presented, we would like a -- Well, we'd like a directed verdict regarding the issue of negligence as far as -- and fraud on the part of my client. My client did not sell. He's not listed as the seller, seller of the home in question. He's not on the deed. He's not the contract as the seller. He's not on the appraiser as the owner. Your Honor, and Miss Angradi and Mr. McLorie, they waived their right to an inspection beforehand.

THE COURT: What does that have to do with breach of an implied warranty or with fraud?

MR. JONES: Your Honor, basically, on the fraud is that what did she-- what did she -- what did she rely on? She had no right to rely on my client because he was not the owner. He did not --

THE COURT: He said he was the owner. I mean why wouldn't that be an element of proving a fraud action?

MR. JONES: Your Honor, Your Honor --

THE COURT: I deny your motion as to the fraud, Mr. Jones.<sup>194</sup>

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<sup>194</sup> Transcript page 184-185. Record on Appeal, page xxx, lines 4-25, page xxx, line 1.

Appellants also moved for a directed verdict at the close of their case, as follows:

MR. JONES: Your Honor, as far as misrepresentation and fraud, I'd like a directed verdict regarding those.

THE COURT: I understand but I have to deny that motion.<sup>195</sup>

**DIRECTED VERDICT PURPOSE AND STANDARD OF REVIEW**

The Court has explained that directed verdict motions must be denied where there is evidence susceptible of more than one reasonable inference. In reviewing such decisions, an appellate court applies the same standard as the trial court<sup>196</sup> and should reverse only where there is “no evidence” to reasonably support the trial court’s ruling, or where there is a clear error of law:

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should have been denied. In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence. This Court will reverse only where there is no evidence to support the trial court's ruling, or where the ruling was controlled by an error of law. Essentially, this Court must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party's favor.

Pye v. Fox, 369 S.C. 555; 633 S.E.2d 505 (S.C. 2006) (numerous citations omitted).

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<sup>195</sup> Transcript pages 259-260. Record on Appeal, page xxx, lines 22-25, page xxx, line 1.

<sup>196</sup> See Pope v. Heritage Communities, Inc., 717 S.E.2d 765, 781; 395 S.C. 404 (S.C.App. 2011).

**FRAUD**

Appellants argue that a directed verdict should have been granted in their favor. Appellant correctly cites the nine elements of fraud as follows:

In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown 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; (9) the hearer's consequent and proximate injury. Failure to prove any one of the foregoing elements is fatal to recovery.

Kahn Construction v. South Carolina National Bank of Charleston, 275 S.C. 381, 384; 271 S.E.2d 414 (S.C. 1980) (citation omitted). However, for the reasons set forth below, the jury's finding of fraud should be affirmed and the Appellant's arguments discounted.

**THERE IS EVIDENCE TO SUPPORT THE VERDICT**

The jury was charged on the law of fraud. There was no objection to the first charge regarding fraud. As to the second charge, the Appellant objected to the charge, stating: "Your Honor, take exception, their right to rely, whether they had the right to rely."<sup>197</sup> The requirement that Plaintiffs must prove they had a right to rely is clearly established. Therefore, presumably this was more akin to a motion that there was insufficient evidence to support this element of Plaintiff's case. It was properly denied by the Court for the reasons shown below.

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<sup>197</sup> Transcript page 313. Record on Appeal, page xxx, lines 20-21.

(a) the jury resolved the facts for Plaintiffs

As noted above, the law regarding fraud was properly charged to the jury. Although there were disputed facts, the jury resolved them in favor of Plaintiffs. Since there was a good charge on the law and there are sufficient facts to support a fraud cause of action, then the jury's verdict should not be overturned. Accordingly, the first grounds for appeal should not persuade this Court.

(b) one example that the jury may have used--modular home

The jury had before it sufficient evidence to support its verdict on the fraud cause of action. In order to discuss all nine elements, Respondents presume one example that the jury may have used to support its fraud verdict may have been the modular home issue.

Ms. Angradi testified she would not have purchased the home if she knew it was a modular home. Ms. Angradi and her realtor both testified Appellants represented it to be a custom home or a stick framed home--*not* a modular home. In fact, Mr. Golden himself testified on direct that he told Plaintiffs this was a "stick framed home" when in fact he knew it was not. And Mr. Golden testified that a lay person could not tell it was a modular home.

In the rubric of a fraud cause of action, Appellants

(1) represented the home was custom and stick framed (not modular);

(2) this was false;

(3) this was material--Ms. Angradi would not have purchased a modular home.

Where a representation is sufficiently important and significant that it might have put a different light on the situation or would have played a role in the decision to enter

into a contractual relationship, then this criteria is satisfied. Culbreath v. Investors Syndicate, 203 S.C. 213, 221; 26 S.E.2d 809 (S.C. 1943). And a representation need not be the sole cause of a transaction, it need only play a part in inducing Ms. Angradi and Plaintiffs into the transaction. Lebby v. Ahrens, 26 S.C. 275; 2 S.E. 387 (1887).

(4) By his own testimony, Mr. Golden knew the home was modular and not a “custom home” or “stick framed home.” Mr. Golden’s subjective belief per his testimony that a modular home *is* a custom home or a stick framed home is not a defense. First, this was refuted by the parties and witnesses, including refutation by expert testimony. Second, where a party makes a statement with a reckless disregard for its truth or falsity, this element of fraud will be satisfied. Dunsil v. E.M. Jones Chevrolet Co., 268 S.C. 291; 233 S.E.2d 101 (S.C. 1977).

(5) Mr. Golden intended Plaintiffs act on his representations--he testified that he wanted the home to be sold and that he had a financial interest in the sale of the home. And it is no defense that Mr. Golden did not own the house or was acting for Mr. and Mrs. Lail for two reasons: one, they jury could have found this was not the case (as there was testimony Mr. Golden made the representations directly); and two, the ‘intent’ requirement may be extended to parties who are not in privity with Mr. Golden. Pruitt v. Morrow, 288 S.C. 298; 342 S.E.2d 400 (S.C. 1986).

(6) Ms. Angradi testified she was ignorant of the falsity--that she did not learn it was a modular home until four months later;

(7) Ms. Angradi testified she relied on Mr. Golden as the builder and seller to provide truthful information and testified she would not have purchased the home had she known it was modular;

(8) Ms. Angradi had a right to rely on the representations of Appellants. Whether reliance is justified requires an evaluation of the circumstances involved, including the positions and relations of the parties. Elders v. Parker, 286 S.C. 228; 332 S.E.2d 563 (S.C.App. 1985). In Byrn v. Walker, 275 S.C. 83; 267 S.E.2d 601 (S.C. 1980) the Court explained:

As to the reliance element of fraud:

It is generally held that one has no right to rely on representations as to the condition, quality or character of property . . . where the parties stand on an equal footing and have equal means of knowing the truth. The contrary is true; however, where the parties do not have equal knowledge and he to whom the representations are made has no opportunity to examine the property, or by fraud is prevented from making an examination, or where an ordinary inspection would not have disclosed the condition with respect to which the representation was made. 37 Am.Jur.2d, 363, Fraud and Deceit, Section 273.

Applying the aforementioned, we hold that where, as here, the agent asserts special knowledge of the property and makes representations of facts, the truth of which are not reasonably ascertainable by the purchaser due to their latent nature, the purchaser can justifiably rely on those representations.

The Byrn case involved a home with numerous issues. The parties brought suit for fraud and the Court found there was evidence to support the right to rely prong of a fraud cause of action.

Here the opposing party represented it was *not* a modular home. The Byrn court made clear that where there is a person asserting special knowledge of the property who makes representations, the purchaser can justifiably rely on those representations. In the present case, Mr. Golden referred to himself as the builder and asserted a special knowledge of the home.

While the true nature of the home could have been discovered by an inspection (as was performed by Mr. Parker), Mr. Golden testified a lay person could not tell it was a modular home. And the Byrn court didn't require exhaustive investigation--one of the issues that court noted was that the defects in the pool were obscured by the dirty water and dirty nature of the pool. Certainly where an expert investigation is required to determine whether a home is modular, that is a "latent" condition. And see Gilbert v. Mid-South Machinery Co., 267 S.C. 211; 227 S.E.2d 189 (S.C. 1976) ("While there was no evidence that the defendants did anything to prevent the Gilberts from asking the past owners about business records, we think that it was still a jury question whether they exercised reasonable prudence for their own protection under the circumstances."). The trial Court spent a fair portion of the fraud charge explaining this point.<sup>198</sup>

Finally, a wrongdoer cannot shield himself from liability by asking the law to condemn the credulity of the ignorant and unwary. Elders v. Parker, 286 S.C. 228; 332 S.E.2d 563 (S.C.App. 1985).

(9) *first:* Ms. Angradi testified Plaintiffs left the home because of the mold issues and construction issues. And she testified she would not have purchased the home if she knew it were modular. This is sufficient evidence to support the damages.

*second:* Ms. Angradi *also* testified Plaintiffs were financially harmed by the purchase of the home--Plaintiffs moved into a home they otherwise would not have purchased had the truth been known. This is also sufficient to support damages.

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<sup>198</sup> Transcript, pages 303-304. Record on Appeal, page xxx, line 25, page xxx, lines 1-17.

In bringing suit for fraud related to a contract, a party may “elect to rescind the contract and recover the consideration paid plus incidental damages which were foreseeable and were incurred in reliance on the fraudulent misrepresentation.” Fields v. Yarborough Ford, Inc., 307 S.C. 207; 414 S.E.2d 164 (S.C. 1992) (citation omitted). In the complaint, the Plaintiff makes repeated references to the modular home issue and specifically alleges in the fraud cause of action: “Thereafter Plaintiffs were consequentially and proximately damaged in their reliance and there unwillingness to purchase a modular home.”<sup>199</sup>

The majority of the harm Plaintiffs suffered was from their leaving the home and thereby losing their down payment, the out of pocket expenses they incurred, and other matters. And the jury’s verdict of \$30,000 is about \$21,800 less than sought by Plaintiffs but only about \$2,300 less than the down payment, closing costs, and realtor fees incurred. Therefore, the costs of rescission are greater than that awarded by the jury.

*third:* The Court charged damages as follows:

Now, if you find that they are entitled to recover a monetary verdict on the theory of fraud, then they would be entitled to recovery such damages as to compensate them from any loss or injury actually sustained by them and would place them in the same position that they would have been in but for the fraud.

Actual damages, if awarded, should be restricted to such damages as were the natural and proximate result of the fraud and deceit alleged.<sup>200</sup>

This is similar to the charge in Gilbert v. Mid-South Machinery Co., 267 S.C. 211; 227 S.E.2d 189 (S.C. 1976) where the Court stated: “...the trial judge charged

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<sup>199</sup> Complaint. Record on Appeal, page xxx, paragraph 27.

<sup>200</sup> Transcript pages 304-305. Record on Appeal, page xxx, lines 18-25, page xxx, line 1.

the jury that actual damages would include any money or pecuniary loss suffered by the plaintiffs which was the proximate result of the alleged wrongful conduct of the defendants. Defendants did not request a more specific charge as to the measure of damages.”

In the present case, there was no charge regarding rescission or affirmance of the contract; accordingly, the jury was free to determine that Plaintiffs intended to rescind the contract and recover their damages as a result of the modular home fraud.

*fourth:* the example above is only for the modular home issue. To the extent the condition (not the construction) of the home necessitated Plaintiffs leaving, then the damages would be proximately related to the leaving because of the condition of the home. And where the condition of the home is concealed, a fraud case of action will lie. Pruitt v. Morrow, 288 S.C. 298; 342 S.E.2d 400 (S.C. 1986) where the Court stated: “Where material facts are accessible to the vendor only, and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser, the vendor is bound to disclose such facts and make them known to the purchaser [of a home].”

(c) other examples that the jury may have used

Because there was only a general verdict form, the reasoning for the jury’s fraud verdict cannot be known. Without listing all nine iterations of all potential theories of recovery for fraud, Respondents would draw the Court’s attention to some potential reasons the jury could have used from the evidence presented: (a) Appellants improperly concealed the true condition of the home by subsequent repairs designed to conceal problems (nailing warped wood, caulking areas); (b) Appellants made

future promises regarding repairs but never intended to honor them (Woods v. State, 314 S.C. 501; 431 S.E.2d 260 (S.C.App. 1993)); (c) Appellants made representations in the course of a scheme to sell a house that had been empty for three years (Bishop Logging Co. v. John Deere Indus. Equipment Co., 317 S.C. 520; 455 S.E.2d 183 (S.C.App. 1995)); (d) the relationship between the parties was such that Appellants had a duty to speak regarding the mold; (e) the relationship between the parties was such that Appellants had a duty to speak regarding the numerous code violations and industry standard; (f) the Appellants had a duty to report on the extensive construction problems with the home (Pruitt v. Morrow, 288 S.C. 298; 342 S.E.2d 400 (S.C. 1986) where the Court stated: “Where material facts are accessible to the vendor only, and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser, the vendor is bound to disclose such facts and make them known to the purchaser [of a home].”); (g) the Appellants had a duty to report on the extensive mold problems with the home (Id.); (h) that Respondents were sufficiently prudent in investigating the construction defects (Gilbert v. Mid-South Machinery Co., 267 S.C. 211; 227 S.E.2d 189 (S.C. 1976) (“While there was no evidence that the defendants did anything to prevent the Gilberts from asking the past owners about business records, we think that it was still a jury question whether they exercised reasonable prudence for their own protection under the circumstances.”); (i) that Respondents were sufficiently prudent in investigating the mold defects (Id.); (j) that Plaintiffs were proximately harmed by the actions of Defendants; or (k) some other reason from the Record.

(d) summary

It is important to recall that the jury issued a general verdict for Plaintiffs. Therefore, we cannot know what specific evidence the jury relied upon. And in the body of evidence presented to the jury, there were multiple types of fraud presented and there was sufficient evidence to support multiple theories of fraud. Respondents must only demonstrate one; however, numerous ones were presented to the jury.

Because there is evidence from which a jury could have found fraud to be present, the Court should not be persuaded by the Appellant's first grounds for appeal.

**REFUTING THE ARGUMENTS RAISED BY APPELLANT**

Appellant's brief focuses on several legal and factual elements. First, Appellant argues the representations of Mr. Golden relate to future promises and therefore are insufficient to sustain a fraud cause of action.<sup>201</sup> Second, Appellants argue that issues related to whether the home was stick built, custom built, or a modular home are insufficient to support a fraud cause of action because this representation did not affect the purchase price of the home or that there were no damages to Respondents.<sup>202</sup> Third, and in a similar vein, Appellants argue that issues related to who owns the home were insufficient to support a fraud cause of action because there was no harm to the Respondents or the home or that there were no damages; and that the truth of the matter was easily ascertainable or actually known to

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<sup>201</sup> Brief of Respondent, pages 5-7, 11.

<sup>202</sup> Brief of Respondent, pages 8-9

Respondents prior to closing on the house.<sup>203</sup> Fourth, Appellant briefly states there was no evidence that showed Appellant intended their representations be acted upon.<sup>204</sup> Fifth, Appellant argues there was no right to rely; that Respondents did not take proper precautions; there existed no confidential or fiduciary relationship; and that no party was incompetent or disabled<sup>205</sup>.

*first:* In light of the fact there was a general jury verdict, we cannot know the precise grounds from which the jury made its conclusion. To the extent the jury relied solely on the unperformed actions of Mr. Golden (which is conceded only for the purposes of discussion), then the jury could still have sufficient evidence to the extent Mr. Golden never intended to act on his promises. Woods v. State, 314 S.C. 501; 431 S.E.2d 260 (S.C.App. 1993).

*second:* This issue is covered in the discussion of modular homes, above. Respondent would crave reference to it and incorporate it here.

*third:* The issue of the actual homeowner turns on questions of fact. There were sufficient facts from which a jury may have concluded that Appellants were “owners” of the home, even though not identified on the deed. As for whether Respondents should have learned who was on the deed, that is an issue for the jury. Gilbert v. Mid-South Machinery Co., 267 S.C. 211; 227 S.E.2d 189 (S.C. 1976) (“While there was no evidence that the defendants did anything to prevent the Gilberts from asking the past owners about business records, we think that it was still a jury question whether they exercised reasonable prudence for their own protection

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<sup>203</sup> Brief of Respondent, pages 9-11

<sup>204</sup> Brief of Respondent, pages 11-12.

<sup>205</sup> Brief of Respondent, pages 12-13.

under the circumstances.”). As for the purported lack of damages caused by this misrepresentation, the degree and effect of the representations is for a jury to weigh. And for a discussion of damages, the arguments made at **(9)** above are incorporated herein. Finally, punitive damages are appropriate given the facts submitted to the jury. And Respondent would note, in the alternative, they are entitled to at least nominal and punitive damages. See Stevens v. Allen, 342 S.C. 47, 53 n.5; 536 S.E.2d 663, 665, n.5 (S.C. 2000) (allowing for nominal damages, if nothing else, “We have previously recognized that every violation of a legal right imports damage and authorized the maintenance of an action and the recovery of at least nominal damages, regardless of whether any actual damage has been sustained.”)

*fourth:* a discussion of the intention their representations be acted upon is addressed at points **(5)** and **(8)** above. In this case, Mr. Golden certainly had a reason to expect that his representations would be acted up.

*fifth:* a detailed discussion of the right to rely (in the context of the modular home example) is provided above in **(8)** and counsel would crave reference to the legal analysis there.

FOR the reasons set forth above, the Appellants’ first grounds for appeal should not persuade this Court.

**II. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS' MOTION FOR A JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV) AS TO THE RESPONDENTS' FRAUD CAUSE OF ACTION**

Similar to the first issue, the second reason raised by Appellants is that the Trial Court should have granted Appellants' motion for Judgment Notwithstanding the Verdict. For the following reasons, this Court should uphold the jury verdict and should not be persuaded by this grounds for appeal.

Following the verdict and after dismissal of the jury, the Appellant made the following motion:

THE COURT: Okay. Any motions?

MR. JONES [counsel for Appellant]: Yes, sir, I would have one, Your Honor. We would like a judgment notwithstanding the verdict on behalf of the defendant.

THE COURT: And I'll have to deny your motion.

MR. JONES: Thank you, Your Honor.

THE COURT: All right.<sup>206</sup>

There was no additional filing or argument regarding the JNOV and the Record contains no additional arguments.

**JNOV PURPOSE AND STANDARD OF REVIEW**

As an initial matter, a motion for a judgment notwithstanding the verdict can only succeed where there is "no evidence" to reasonably support a jury's findings. The Court has explained the purpose of a JNOV as follows:

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<sup>206</sup> Transcript, page 315. Record on Appeal, page xxx, lines 16-23.

In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight. When considering a JNOV, neither an appellate court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence...The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings.

Curcio v. Caterpillar, Inc., 585 S.E.2d 272, 274; 355 S.C. 316 (S.C. 2003) (citation, quotation, and brackets omitted). The appellate court applies the same standard of review to a JNOV as the trial court:

When reviewing the denial of a motion for directed verdict or JNOV, the appellate court applies the same standard as the trial court. The court is required to view the evidence and inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. An appellate court will only reverse the trial court's ruling when no evidence supports the ruling or when the ruling is controlled by an error of law.

Pope v. Heritage Communities, Inc., 717 S.E.2d 765, 781; 395 S.C. 404 (S.C.App. 2011) (citations omitted).

Therefore, in the present case, the Court should view the evidence and the reasonable inferences drawn from the evidence in the light most favorable to the Plaintiffs/Respondents; and should only reverse where there is “no evidence” that reasonably supports the jury’s findings. Appellants cannot meet this burden and therefore the jury’s verdict should be affirmed.

#### **DISCUSSION**

Given the similarities in the Appellants’ first and second arguments, Respondents would incorporate by reference their arguments above. It is important to recall that there were extensive and numerous misrepresentations and theories of

recovery: the modular home issue; the mold issue; the construction issue; the issue that Appellants never intended to honor the agreement; and the like. It is only necessary that the Respondent succeed on one.

Respondents would specifically draw the Court's attention to the discussion regarding damages at item **(9)** above. Respondents would note that broken promises which the adverse party never intended to honor can support a fraud cause of action. Woods v. State, 314 S.C. 501; 431 S.E.2d 260 (S.C.App. 1993). And Respondents would note that severe defects can give rise to a fraud cause of action. Pruitt v. Morrow, 288 S.C. 298; 342 S.E.2d 400 (S.C. 1986) where the Court stated: "Where material facts are accessible to the vendor only, and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser, the vendor is bound to disclose such facts and make them known to the purchaser [of a home]."

For the foregoing reasons, this Court should not be persuaded by the second grounds for appeal raised by Appellants.

**III. THE TRIAL COURT DID NOT ERR IN PRECLUDING APPELLANT SYLVESTER GOLDEN FROM TESTIFYING THAT THE HOUSE AT ISSUE IN THIS ACTION PASSED INSPECTION PRIOR TO THE RESPONDENTS MOVING IN TO THE HOME.**

The final issue raised by Appellants is that the trial court erred in denying Mr. Golden the opportunity to testify regarding the fact the home had passed inspection. For the reasons set forth below, the Court should not reverse on this ground.

At the beginning of the case, counsel for the Defendants/Appellants indicated they wished to place into evidence testimony that the home passed an inspection conducted by government authorities. The Court granted this request. It was only when counsel indicated the testimony would come from Mr. Golden (and not from either the inspector or some government official) that the Court denied the request *in limine*, as follows:

THE COURT:       \*\*\*     With respect to number 7, are you gonna have testimony from state or state authorities that they inspected and found no defects? Or variations?

MR. JONES:        Your Honor, I plan to only call four witnesses and, to my knowledge, none of them are --

THE COURT:        Well, if you have a witness to testify - a Greenville or state authority - that they inspected and found no defects, then I'll allow that but I'm not gone [sic] allow any reference or suggestion that that was done. I mean if you've got testimony, then you can do it.

MR. JONES:        Your Honor, the only testimony would be Mr. Golden's testimony that, that the building passed inspection and that, that any complaint was dismissed.

THE COURT:        No. I think the best evidence would be from those people. So I'll grant that.<sup>207</sup>

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<sup>207</sup> Transcript page 14. Record on Appeal page xxx, lines 10-25.

THE COURT: Number 7, I'm granting to exclude any reference or suggestion that because the home passed inspection by Greenville or state authorities would be conclusive to the fact there were no defects or variations to the property. I grant that.<sup>208</sup>

This discussion was held on June 8. This was the day before the Defendant/Appellants presented their case and was not immediately close in time to any testimony.

In the course of cross-examination, Mr. Golden tried to testify regarding such information, as follows:

Q [by Mr. Stewart, counsel for Repondents]: Were you present for Mike Parker's testimony when we were looking at the photographs?

A. Yes.  
I reviewed his information , as well.

Q. And do you agree with his opinions about the various violations?

A. Opinion is exactly what he said it is, his opinion.  
When I left the house my opinion, the truth, there was not these many violations with this home.  
This house was inspected by Greenville County. It passed--

MR. STEWART: Your Honor, objection. I didn't ask a question for that response and that's completely against the motion in limine. He just violated an order of The Court.

A. I didn't know that.

THE COURT: I instruct the jury to disregard the last answer by Mr. Golden.  
Go ahead, now.<sup>209</sup>

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<sup>208</sup> Transcript page 16. Record on Appeal, page xxx, lines 4-8.

<sup>209</sup> Transcript, page 237-238. Record on Appeal page xxx, lines 11-25, page xxx, lines 1-4.

Later, Mr. Golden also attempted to testify about the home passing inspection in response to a question regarding whether the crawlspace door complied with the building industry standards. Counsel for Respondents objected. Counsel for Appellants argued such evidence was permissible since opposing counsel had asked Mr. Golden about the Code. The Court heard brief arguments and then ruled: “Make no further references about any inspection, okay?”<sup>210</sup>

And Mr. Golden testified that when he finished building the home, there were no violations of any standards.<sup>211</sup>

Appellants did not argue that such evidence should be admitted under the Best Evidence Rule. In response to the second ruling, Appellants did raise a sort of “they opened the door.” Even though the Court ruled for Respondents, Mr. Golden’s testimony was not stricken.

Moreover, the record does not contain any proffer of the evidence. No exhibits or records were offered or marked which showed the results of the inspections. The record does not appear to contain any subsequent arguments regarding the inspection.<sup>212</sup>

For the following reasons, the Court should not be persuaded by the third ground raised by Appellants and should instead affirm the verdict of the jury and trial court.

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<sup>210</sup> Transcript pages 249-250. Record on Appeal, pages xxx –xxx. Quote from page xxx, lines 22-23.

<sup>211</sup> Transcript page 257. Record on Appeal, page xxx lines 16-18.

<sup>212</sup> There were malfunctions of the Court Reporter’s equipment. However, it does not appear that such evidence was ever solicited by Appellants; and Appellants do not appear to rely on this in making their appeal; and Appellants do not cite anything along these lines.

**THE COURT'S RULING WAS PROPER**

The Court's ruling that "the best evidence would be from those people" does not appear to be a citation to the Best Evidence Rule (1002, SCRE), which relates to original documents. In light of the Court ruling that such testimony, itself, was admissible (but merely that Mr. Golden could not offer testimony about it), the Court appears to have been relying more on hearsay rules.

It would have been unfair to allow Mr. Golden to testify regarding the fundamental results of the inspection when the person making that inspection was not available for cross-examination. See, e.g., Rule 801, SCRE. There would have been no independent witness who could explain the inspection, how it works, what inspectors are looking for (and not looking for), what it means to "pass", and to generally be available for cross-examination. This would have been impermissible hearsay, which is generally inadmissible. See, e.g., Hamilton v. Bob Bennett Ford, 336 S.C. 72, 89; 518 S.E.2d 599, 607 (S.C.App. 1999).

Although Rule 803(8), SCRE, relates to public records, no such records were offered or proffered or otherwise identified--instead, it appears Mr. Golden was simply going to offer oral testimony that the house passed inspection.

In reviewing a ruling regarding evidence, "The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law...The trial judge's decision will not be reversed on appeal unless it appears he clearly abused his discretion and the objecting party was prejudiced by the decision." Floyd v. Floyd, 365 S.C. 56; 615 S.E.2d 465 (S.C.App. 2005) (citations omitted). First, there is no clear abuse of discretion here--the Court

presumably made a determination that without an underlying fact witness who actually made the determination (as opposed to Appellant) and was subject to cross-examination, then such testimony was not the best source. Second, this case centered around the contemporaneous actions of Appellants, not the condition of the home years before the events took place; or whether the home met the minimum requirements necessary to pass an inspection. Therefore, there was no prejudice to Appellants.

#### **REFUTING THE ARGUMENTS RAISED BY APPELLANT**

For the following reasons, this Court should not be persuaded by the reasons set forth in the third grounds for appeal raised by Appellant.

First: The apparent failure to proffer evidence and failure to argue the best evidence rule or make subsequent arguments (although an argument was made that Respondents opened the door), and the failure to offer any written documents is a sufficient ground to deny Appellant's third grounds for appeal. No evidence has been cited in the Record where this was formally offered to the Court. It is the obligation of Appellants in the instant case to proffer the evidence and include that in the Record. Parsons v. Georgetown Steel & Korf Industries, 318 S.C. 63; 456 S.E.2d 366 (S.C. 1996).

Even where there has been a motion in limine, this does not relieve Appellant from making a contemporaneous argument (or subsequent proffer) where the motion is denied and the evidence is presented during trial. See Parr v. Gaines, 309 S.C. 477; 424 S.E.2d 515 (S.C.App. 1992); Samples v. Mitchell, 329 S.C. 105; 495 S.E.2d 213 (S.C.App. 1997).

Second: Appellants' reliance on Ms. Angradi offering testimony regarding the inspectors she hired<sup>213</sup> is misplaced for two reasons.

*First,* Ms. Angradi's testimony that she contacted an inspector was initially offered without objection. However, when Ms. Angradi tried to testify regarding the results of the inspection, and then later regarding the information learned from the inspection, the Court sustained an objection by counsel for Appellants.<sup>214</sup>

*Second,* the referenced inspection was conducted by Mr. Parker. Mr. Parker was available in person and testified about his inspection at the trial of the matter. Unlike Appellants (who did not have the inspector available to testify), Respondent offered Mr. Parker on the stand and he could be cross-examined. *Also,* Mr. Parker's presence would have essentially "cured" any problem. Even to the extent there was any improper testimony by Ms. Angradi, it would have been merely cumulative of that offered by Mr. Parker.

Third: The third and final reason for denying the third grounds for appeal is that preventing this evidence from coming before the Jury was not prejudicial to Appellants.

The case centered around the fraudulent behavior of Mr. Golden, especially his improper representations regarding the home. Whether or not the home passed inspection three years before would have had no effect on the verdict--it did not address the core fraudulent issues raised in the case. Accordingly, Mr. Golden cannot

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<sup>213</sup> Brief of Appellant, pages 18-19.

<sup>214</sup> Transcript pages 58-61. Record on Appeal, pages xxx to xxx. Objections were made and sustained at pages xxx and xxx.

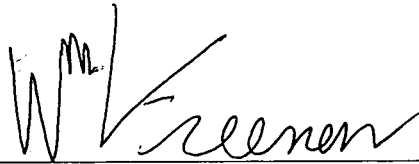
show that preventing this evidence from coming before the jury prejudiced his case. See McKissick v. J.F. Cleckley, 325 S.C. 327; 479 S.E.2d 67 (S.C.App. 1996).

Accordingly, the Appellants' third item is not a sufficient grounds to support an appeal. Therefore, the Court should uphold the verdict of the jury and trial court.

### CONCLUSION

For the reasons stated above, the Respondents / Plaintiffs respectfully request that this Court uphold the jury's verdict; affirm the Order of the Court awarding Respondents actual damages of \$30,000 and punitive damages of \$20,000 against Appellants; dismiss Appellant's appeal with prejudice; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,



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June 4, 2012  
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ATTORNEYS FOR RESPONDENTS

IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY

Greenville County Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Presiding Circuit Court Judge

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Trial Court Case Number: 2009-CP-23-5079

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Martha Lynne Angradi and Donald Scott McLorie,  
individually and on behalf of their minor child, Jessie M ..... Respondents,

v.

Edgar Jack Lail and Leola Lail,  
Sylvester Golden, Golden Property, LLC,  
Nationwide Homes, and Fayssoux Real Estate ..... Defendants,

of whom  
Sylvester Golden and  
Golden Property, LLC are the..... Appellants

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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules; and that this Final Brief is identical to the previously filed Initial Brief, save for the correction to minor typographical errors and misspellings and the addition of notations to the Record on Appeal.

I so certify,

XXXXX  
Greenville, South Carolina

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