IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Hon. Marvin H. Dukes, III, Master-in-Equity

Beaufort County Case No. 2008-CP-07-00517

Appellate Case no. 2013-000375

Gregory M. Gottschlich & Donald L. McNeil.....Petitioners,

v.

Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying, Co.,Inc.; Thomas N. Dye; Janet H. Dye; Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group; Laurich & Deeb, PA; Robert M. Deeb, Jr; and Charles H. Wiseman.....Defendants,

Of whom Ken Oliver; The Byrne Corporation d/b/a Dunes Marketing Group; Laurich & Deeb, PA; Robert M. Deeb, Jr; and Charles H. Wiseman are the.....Respondents.

AMENDED BRIEF OF RESPONDENTS KEN OLIVER AND THE BYRNE CORPORATION D/B/A DUNES MARKETING GROUP

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III. SHOULD THIS COURT "EXERCISE ITS DISCRETION AND FULLY RESOLVE THE MOTIONS FOR SUMMARY JUDGMENT," AS REQUESTED BY PETITIONERS?

STATEMENT OF THE CASE

The Plaintiffs/Petitioners filed this lawsuit on February 18, 2008, alleging some nine (9) causes of action, against Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group (Collectively referred to simply as the "Dunes Respondents"). In their Amended Complaint of March 20, 2009, the Petitioners also added as Defendants Laurich & Deeb, PA; Robert M. Deeb, Jr; and Charles H. Wiseman, the Petitioners' closing attorneys (collectively referred to simply as "Closing Attorney Respondents"). The Dunes Respondents timely answered the Complaint, and timely answered the Amended Complaint, each time asserting, among other defenses, the defense of the statute of limitations.

After lengthy discovery, the Dunes Respondents filed a Motion for Summary Judgment on December 4, 2009 on grounds which included, but were not limited to, the statute of

limitations. (R. pp. 160-163, 424-488; Motion for Summary Judgment and Memorandum of Dunes Respondents) The trial court heard the motions but only on the statute of limitations grounds, deferring to a later time for the other grounds, and granted summary judgment in his January 11, 2010 Order. (R. p. 1, fn 1; Order, p. 1, fn. 1) Petitioners on March 16, 2010 timely filed a Motion to Reconsider, which the trial court denied by its Order dated May 3, 2010. Plaintiffs/Petitioners timely filed a Notice of Appeal on May 28, 2010. This appeal followed, with the S.C. Court of Appeals affirming the trial court, Gottschlich v. Strimpfel Custom Homes, Inc., Op. No. 2012-UP-676 (S.C. Ct. App. filed Dec. 19, 2012), pursuant to Rule 220, SCACR and the authorities cited in that opinion. The Court of Appeals denied Petitioners' Petition for Rehearing on January 25, 2013. The Petitioners on February 25, 2013 filed their Petition for Writ of Certiorari, which was granted on May 8, 2014.

FACTS

The Plaintiffs/Petitioners, medical doctors from Ohio, on November 6, 2003 signed a Contract of Sale in the amount of $1,395,000 for the lot and house at 48 Sea Lane, Hilton Head Island, SC ("the house"). (R. pp. 80-84; Contract of Sale-Offer and Acceptance, which was Exhibit H to the Amended Complaint) On December 2, 2003, the Plaintiffs/Petitioners

closed on the house utilizing the "Closing Attorney Respondents." (R. pp. 328-334; HUD-1 Settlement Statement)

The history on the house and on its construction is necessary in this case, in that on November 14, 1987 a building permit application was submitted by Strimpfel Custom Homes, a former Defendant in this lawsuit, in "Flood Zone A7" which requires a base flood elevation ("BFE") of 14 feet, per the Town of Hilton Head and per FEMA. The original survey of the house and lot took place on November 24, 1987 and stated that the elevation of the house was at 14.16 feet. (R. p. 70; Exhibit B to Amended Complaint) It was on May 23, 1988 that a Certificate of Occupancy was obtained and issued for the house by the Town of Hilton Head. (R. p. 72; Exhibit D to Amended Complaint) In early 2001, Thomas N. Dye and Jan H. Dye, both of whom previously were Defendants in this case, purchased the house. A surveyor, Jack Stuart Jones, issued a 13.3 foot elevation certificate to Thomas N. Dye and Jan H. Dye on March 28, 2001. (R. p. 73; Exhibit E to Amended Complaint) It is this elevation certificate that the Petitioners physically received or had knowledge about which that they received. At a minimum, their insurance agency, Seacoast Insurance, received this certificate and information about it and its contents on Petitioners' behalf, when making a flood insurance application on Petitioners' behalf as of December 2, 2003.

(Appellants' Initial Brief to S.C. Ct. App. at 19.)

Petitioners contend that the number 13.3 in the provided survey meant nothing to them and thus did not give rise to any duty to investigate; however, when the elevation survey showing 13.3 feet also was accompanied by a higher insurance premium than their *pro forma*, the Petitioners at a minimum had inquiry or constructive notice of the "injury" and the source of that injury was readily discoverable. Further, Petitioners contend that the "13.3 in a survey is not something a person of common knowledge and experience could recognize and understand." (Appellants' Brief to the Court Of Appeals at 22.) These Petitioners are more than people of common knowledge and experience. It is just that they did not act, even though they were, at least on inquiry notice if not on actual notice.

The Plaintiffs/Petitioners, as well as Thomas N. Dye and Jan H. Dye, were represented under a dual agency agreement by agents associated with The Byrne Corporation d/b/a Dunes Marketing Group, one of the Respondents in this case. (R. p. 481; Exhibit 5 to depo of Dr. Gottschlich) Despite the earlier indications from Petitioners that Respondent Oliver assisted in filling out the disclosure statement, it was the Seller Tom Dye who, along with his wife, filled out the Seller's Disclosure Form. (R. pp. 510-511; Depo of Tom Dye, pp. 52-53)

Plaintiffs/Petitioners closed on the house on December 3, 2003. (R. pp. 328-334; HUD-1 Settlement Statement) Petitioners allege that they were not properly represented by the agents with Dunes Marketing by not being informed by the Dunes Respondents of the lower elevation certificate on the house at 48 Sea Lane, but Petitioners do not present any evidence that the Dunes Respondents knew of the elevation being below base flood elevation, as there is no such evidence. One of the multiple defenses of the Dunes Respondents to this lawsuit in each of their Answers is the statute of limitations in that the Petitioners had actual or constructive knowledge of the alleged failure of the house to meet the 14 foot BFE.

The claim against all Respondents by the Petitioners, as noted above, was that they were not told or informed that the elevation certificates and/or surveys were below the BFE and should have been told by one or more of the Respondents (or one or more of the former Defendants). Seacoast Insurance, the flood insurance agency for the Petitioners and for the house's prior owners Thomas and Jan Dye, knew of the house not meeting BFE. (R. pp. 393-396; Depo of Tommy Faye Lyons for Seacoast Insurance, pp. 60-63) This also was provided as actual notice to the Petitioners and/or constructive notice was given to the Petitioners, more than three (3) years prior to the filing of the original Complaint in this litigation.

I. THE COURT OF APPEALS DID NOT MISAPPLY THE TWO ISSUE RULE BECAUSE THERE WAS MORE THAN ONE ISSUE IN THAT APPEAL AND ALL ISSUES WERE NOT PROPERLY PRESERVED.

Although Petitioners refer to the plural "Issues On Appeal," and at first blush seem to split one issue into "Procedural Issue," "Substantive Issue" and "Discretionary Issues" they truly are just one issue in their appeal, that being whether the Petitioners failed to appeal all issues which were decided by the lower court. That central question, as presented by Petitioners in their words, is whether or not the S.C. Court of Appeals "misapplied the two issue rule and wrongly dismissed the appeal." (Petitioners' Brief at 1, 18). Even though there is only one central question and thus only one issue on this appeal, despite the triad characterization by Petitioners, the Dunes Respondents will need to respond more fully than on just the one true issue.

First, the S.C. Court of Appeals affirmed the lower court's Order granting summary judgment as to the statute of limitations to those who are now the active Respondents in this appeal. It was not a dismissal of the Petitioners' appeal, as they state. (Petitioners' Brief at p. 3.)

Next, the "two issue rule" is the law which is binding in this state, and thus in this case.

> Under the two issue rule, where a decision is based on more than one ground, the

> appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. See Anderson v. Short, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996); see also First Union Nat'l Bank of S.C. v. Soden, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding an "unchallenged ruling, right or wrong, is the law of the case and requires affirmance"). This Court has explained that the two issue rule is applicable in situations not involving a jury:
>
> It should be noted that although cases generally have discussed the "two issue" rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts. Anderson v. S.C. Dep't of Highways & Pub. Transp., 322 S.C. 417, 420 n. 1, 472 S.E.2d 253, 255 n. 1 (1996).
>
> A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court."

Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903-904 (S.C. 2010) (cited by S.C. Court of Appeals in their opinion in this case).

In the Order Granting Summary Judgment On All Legal Claims, the lower court separately dealt with Actual Knowledge, Inquiry Knowledge and Imputed Knowledge. (R., pp 1-7.)

Petitioners did not address, in their Final Brief, each of the issues, as required by Rules 207(b)(1)(B)and -(D), SCACR as the statement of issues on appeal are to "be concise and direct as to each issue." Rule 207(b)(1)(B)(emphasis supplied). Not addressed by the Petitioners directly or even tangentially was whether or not the insurance agent's knowledge was indeed imputed to Petitioners here and that they had constructive knowledge. Were they to contend that such knowledge was not imputed to Petitioners, "not only does this contention lack merit, but it is not argued in appellant's brief and, therefore, it is deemed abandoned. Blakeley v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976)." Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). Many times the courts of this state have ruled that way on the two issue rule, although the words "two issues" may not have been directly presented. "Failure to argue is an abandonment of the issue and precludes consideration on appeal. S.C.A.C.R. Rules 207(b)(1)(B), (D) and 210(b). See also Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987) (under former rules)." Biales v. Young, 315 S.C. 166, 432 S.E.2d 482

(1993). The words "two issues" needing to be covered on appeal are not required to be used in this as if they are terms of art, but rather all grounds are to be addressed, or as noted above need to be argued to the court or in either instance, the result is the same as the Court of Appeals found in this case. "Because he has not appealed on all grounds, the trial court's decision is affirmed. Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993) (where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case)."

Failure to argue is not the only parameters of the two issue rule as a point on appeal can be "abandoned for being conclusory and failing to cite any supporting authority" as is set forth in the following case involved an insurer's duty to defend:

> In the order appealed from, the trial court found Johnson and the Waldes entered two separate contracts: the Permitting Contract and a contract to build a paddock and two-story barn–apartment. Thus, the trial court held Johnson's representation of the Waldes before the BZA was "separate and apart" from its construction of the barn itself. At the summary judgment hearing, AIC argued the parties entered only one contract that included permitting and construction. However, AIC's initial appellant's brief does not include an issue on appeal addressing this contention, does not argue the specific

> issue, and only briefly refers to this concern in its exclusion arguments without providing any supporting authority. Therefore, we do not address whether the trial court properly found the parties entered separate contracts. See Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); Fassett v. Evans, 364 S.C. 42, 50 n. 5, 610 S.E.2d 841, 846 n. 5 (Ct. App.2005) (holding that even if an argument could be construed as raising a separate issue on appeal, it was abandoned for being conclusory and failing to cite any supporting authority)."

Walde v. Association Insurance Company, 401 S.C. 431, 737 S.E.2d 631, 633, n.1 (Ct. App. 2012)

No matter whether it is denominated "two issues", "all grounds", or "abandoned" for failing to argue or in failing to cite authority, the results here for the Petitioners are the same. The Order of the lower court ruled just on the statute of limitations but articulated the three differing issues of Actual Knowledge, Inquiry Knowledge and Imputed Knowledge (R., pp 1-7.) and thus the unpublished opinion of the S.C. Court of Appeals should be affirmed by this Honorable Court as argued above and in the remainder of this brief by the Dunes Respondents.

II. IT WAS NOT ERROR FOR THE TRIAL COURT TO GRANT SUMMARY JUDGMENT TO THE DEFENDANTS ON THE STATUTE OF LIMITATIONS AS NO ISSUE SHOULD HAVE BEEN SUBMITTED TO A JURY.

The Dunes Respondents argue separately to what might be

seen as a separate "merits" argument of Petitioners, which they refer to as a "Substantive Issue." Rule 242(i), SCACR seems to require some response to this alleged merits argument; however, the merits of any case are not to be reached when the statute of limitations bars the Plaintiffs in a case. Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 188 (Ct. App. 2004). Thus, the "Merits Issue Presented" claim by the Petitioners is unnecessary and contrary to the appellate law in this state.

It was not the merits that were reached by the Court of Appeals, as that Court in its unpublished opinion decided this case on the two issues rule, and solely involving the statute of limitations-not whether any of the causes of action alleged by Petitioners had any merit. Further, the lower court decided this case only upon the statute of limitations, ruling that it was not deciding at that time any other grounds for the granting of summary judgment. (R. p. 1, fn 1; Order, p. 1, fn. 1)

In Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282,(S.C. 2012) the majority opinion supported the upholding of the two issue rule by citing the case which the Court of Appeals used in deciding this current case: "Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless

the appellant appeals all grounds because the unappealed ground will become law of the case. Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)." Atlantic Coast Builders and Contractors, LLC v. Lewis, 730 S.E.2d 282, 398 S.C. 323 (S.C. 2012) The facts in Lewis are different from this case this is a departure from the plain words of the lower court which examined actual notice, inquiry notice and imputed knowledge in three separate sections of its order granting the relevant Defendants summary judgment, solely on the statute of limitations. (R. pp. 3-6; Order, pp. 3-6.) Thus, the three separate approaches to the statute of limitations were examined and ruled upon by the lower court. Id. The Petitioners did not counter all of the issues on which there was a ruling.

"ACTUAL KNOWLEDGE" The lower court ruled regarding "Actual Knowledge" that the Plaintiffs/Petitioners "should have known they might have a claim when they were faxed a copy of the 2001 elevation certificate, when Plaintiffs contacted their insurance agency for flood insurance, and an application based upon the elevation certificate was completed stating the house had a negative elevation in November and December 2003." Id. at 4. Whether you look at the date of closing or later, either of those dates were certainly much more than three (3) years prior to the filing of the original Complaint in this

case on February 18, 2008.

In addition, Petitioners' attorney in the "Motion To Reconsider Hearing" on March 6, 2010 left no doubt left but that the Petitioners knew-that they had actual knowledge of any negative elevation:

> They had absolutely no reason not to look into these things. If they had ever realized the significance -and that's the key thing, Your Honor is, did they realize the significance of the terms negative elevation on the survey and on any declaration pages that they would have received from the insurance company.

(R. p. 974). Pursuant to Rule 43(k), SCRCP the Petitioners are bound and thus can not deny on appeal that they did not know that there was a negative elevation.

"INQUIRY NOTICE" As to "Inquiry Notice," the lower court ruled that "Plaintiffs were on inquiry notice of the negative elevation on or before closing on December 2, 2003. Plaintiffs were faxed a copy of the elevation certificate on November 26, 2003. The elevation certificate stated that the elevation was less than the required fourteen feet." (R. pp. 3-6; Order, pp. 3-6.) The court went further and ruled that "Plaintiffs received on an annual basis renewal declaration pages providing the same negative elevation information," Id., each of which is a repetition of the inquiry notice. There thus

were multiple times that inquiry notice was triggered time after time from November 26, 2003 up to (three years prior to Petitioners filing their lawsuit on February 18, 2008. That is plain in the record as shown by the deposition testimony of Tommy Faye Lions, as the designated representative of Seacoast Insurance that the Petitioners receive a document once a year that showed the elevation of the house as "minus one." (R. P. 394)

"IMPUTED KNOWLEDGE," Finally, as to "Imputed Knowledge," the lower court went into depth on this, noting and distinguishing in its Order from the case that Petitioners had cited. Id. at p. 6. This imputed knowledge comes from the Plaintiffs'/Petitioners' "insurance agent, who obtained the elevation certificate and noted the negative elevation in filling out the flood application before [the] closing on December 2, 2003, and in December 2004, attempted on their behalf to obtain a better premium, citing to the negative elevation as the basis for their inability to do so." Id. at 5. Thus, the Order noted well the law in this state that "a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306, 309, 257 S.E. ed 496, 497 (1979)." (R. pp. 5-6; Order, pp. 5-6.) It is

this imputed, or constructive, notice that Petitioners did not argue on appeal and thus did abandon on appeal, instead framing their issues whether or not the Petitioners "...did not know, and under the objective standard, should not have known that a right had been invaded or a claim might exist..." (Final Appellants' Brief: Court Of Appeals at p. 1 "Statement Of Issues On Appeal") However, the knowledge was imputed to the Petitioners as is clearly seen by a review of the Order Granting Summary Judgment to the Dunes Respondents, among other Defendants, as well as the statement of the Petitioners' attorney on the record during the "Motion To Reconsider Hearing" on March 6, 2010. The Petitioners submitted case law to the lower court, but abandoned such on appeal by failing to argue or present law on that imputed knowledge.

The Petitioners contended in their Petition for Writ of Certiorari that the "device of putting adjectives in front of the word 'notice' does not change the statutory standard." Petition for Writ of Certiorari at p. 5. It is the interpretation of the applicable law by this state's courts that controls and thus, as seen above, the "Imputed Knowledge" section of the Order was <u>not</u> challenged or examined by the Petitioners on their appeal, which should bar any reversal of the opinion of the Court of Appeals as it denies Petitioners any basis to support their Petition in this Court.

Petitioners wrongly contend that the Dunes Respondents "did not assert the same three arguments as the law firm, but got the same result," Petition for Writ [of] Certiorari at p. 8, but do not expound upon it. In addition, Petitioners ignored, among other submittals, the Memorandum of Law by the Dunes Respondents which states in pertinent part as follows:

> In addition to the above, the factual setting and the documents submitted by Defendants Laurich & Deeb, P.A.; Deeb; and Wiseman ("Defendant attorneys") clearly show that the Plaintiffs knew, had constructive knowledge of, or at the very least should have known that the elevation on the house at 48 Sea Lane on Hilton Head was a negative elevation much before the filing of the original Complaint in this case.

Memorandum In Support Of Motion For Summary Judgment Of Defendants The Byrne Corporation And Oliver at p. 2 of 17; R. at 425 (emphasis supplied).

In their brief, the Dunes Respondents also argued the Petitioners "abandoned on appeal that they had constructive notice of their claims over three years prior to filing this lawsuit..." Petitioners' Writ at p. 8; Dunes Respondents Final Brief at p. 15. In their brief, these Dunes Respondents, pursuant to Rule 208(b)(6), SCACR adopted by reference the argument of the Attorney Respondents. Dunes Respondents Final Brief at p. 15.

III. THIS COURT SHOULD NOT "EXERCISE ITS DISCRETION AND FULLY RESOLVE THE MOTIONS FOR SUMMARY JUDGMENT," AS REQUESTED BY PETITIONERS

This case is before the S.C. Supreme Court on a Petition for Certiorari by the Petitioners, which was granted by this Court, pursuant to Rule 242, SCACR. That rule states in part that "If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s)." Rule 242(i), SCACR ("Consideration by the Supreme Court"). The Clerk sent the Order of this court that the petition for a writ of certiorari was granted "to review the Court of Appeals' decision..." (Appendix, p. 55-56) Thus, the Petitioners' request is not properly before this court. Further, trial court in its Order stated that he was ruling only on the statute of limitations question, stating that he "reserves argument and ruling on the additional grounds [for summary judgment] should that be necessary." (R. p. 1, n.1; Order, p. 1, n.1)

ADOPTION BY REFERENCE OF THE BRIEF OF RESPONDENTS LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. & CHARLES H. WISEMAN

Pursuant to Rule 208(b)(6), SCACR, the Dunes Respondents did adopt by reference before the S.C. Court Of Appeals the entire brief of Respondents Laurich & Deeb, P.A.; Robert M. Deeb, Jr. & Charles H. Wiseman which was applicable to the Dunes Respondents. Again, these Respondents so adopt again by

reference pursuant to Rule 208(b)(6), SCACR, to the extent that portions of their brief are applicable to the Dunes Respondents.

ADDITIONAL SUSTAINING GROUNDS

The record below containing the transcript of the "Motion To Reconsider" hearing shows that in the hearings in the lower court, regarding its granting summary judgment solely on the statute of limitations, the Petitioners admitted that they knew but just did not sufficiently comprehend the information as being notice of the house being below the 14 foot height which was required in the flood plane. (R., p. 974)This is binding pursuant to Rule 43(k), SCRCP as to their knowledge on such.

In addition, the Petitioners had actual notice of the house being less than base flood elevation from them receiving documents stating or indicating such or, at a minimum, by specific conversations and consultations with Seacoast Insurance, the Petitioners' insurance agency. (R. pp. 200-202; Depo of Tommy Faye Lyons, p. 68) In the record, Dr. Gottschlich was sent a fax on November 26, 2003 in which it was shown that Dr. McNeil also had received the elevation certificate before closing. (R. pp. 455-457; Plaintiff's Exhibit 25). That November 26, 2003 fax shows that the Defendant Closing Attorneys sent to Dr. McNeil and apparently to Dr. Gottschlich the fax which states in part as follows:

"Copy of Elevation Cert [sic] which your Ins. Co [sic] will need to give you a quote on the Flood Ins. [sic]" Id.

The Petitioners drew up a pro forma, upon which they relied, but which turned out not to be accurate. They expected that the flood insurance would be $592.00 a year, but it turned out to be $2,620.00 a year, which the Petitioners did not question. (R. pp. 910-911; Depo of Dr. Gottschlich, p. 214, lines 9-25, quoted in December 16, 2009 hearing at pp. 29-30) Of course, had they questioned it or questioned Seacoast Insurance, then the negative elevation as shown on the Flood Insurance Application would have been brought brutally home to the Petitioners' attention. (R. pp. 411-412; Exhibit 26 to Laurich & Deeb's Motion.) Instead, they went ahead with the closing on 48 Sea Lane despite all of their notice and knowledge, including this inquiry notice, which is equivalent to actual notice. Strother v. Lexington County Recreation Com'n, 332 S.C. 54, 64 at n. 6, 504 S.E.2d 117, 122 at n. 6 (1998).

Notice to Seacoast Insurance, an agency that represented many different insurance companies, but which was hired by the Petitioners to procure insurance, means that notice to Seacoast Insurance in turn was notice to Petitioners. Allstate Ins. Co. v. Smoak, 256 S.C. 382, 392-93, 182 S.E.2d 749, 754 (1971); Dorman v. Campbell, 331 S.C. 179, 185-186, 500 S.E.2d 786, 789 (1998).

Thus, Petitioners knew of the house being below BFE even before closing and most assuredly well before three years prior to the Petitioners filing their Complaint on February 18, 2008. Petitioners talk of the real estate agents and what they should have done. The difficulty with that argument is that the Dunes Respondents did not know. There is and was no showing or testimony that the Dunes Respondents (Ken Oliver and Dunes Marketing Group, as the other agent is deceased) knew of any purported lack of proper elevation on the house. Indeed, William Baldwin in his Rule 30(b)(6), SCRCP deposition for the Byrne Corporation d/b/a Dunes Marketing Group, unequivocally stated "[m]y testimony is we did not receive" the below BFE elevation certificate before the start of this lawsuit. (R. p. 478, lines 11-19; Depo of William Baldwin for Dunes Marketing, p. 181, lines 11-19).

Based upon the above and the Record on Appeal, the opinion of the S.C. Court of Appeals affirming the lower court's granting Summary Judgment to the Dunes Respondents on the statute of limitations should be affirmed.

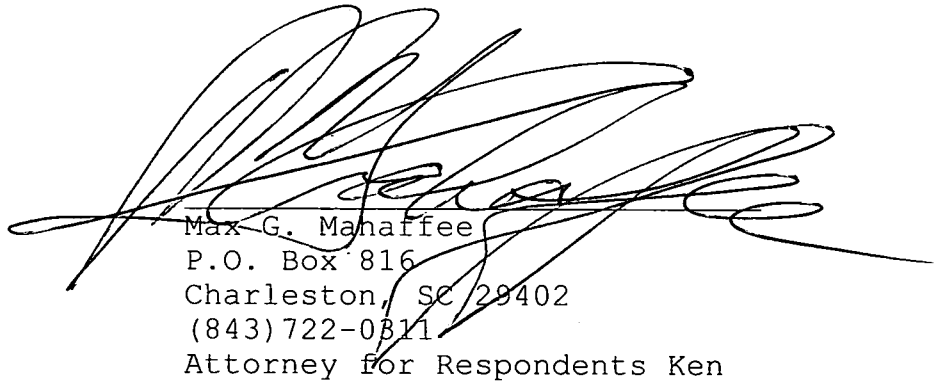
CONCLUSION

For the reasons stated above and those referred to, these Respondents Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group ask this Court to affirm the decision of the S.C. Court of Appeals in which it affirmed the trial court's

Order Granting Summary Judgment dated January 11, 2010. That Order ruled that the "Plaintiffs' claims against these Defendants fail as a matter of law because the claims are barred by the statute of limitations," holding in abeyance any other bases for summary judgment. (R. pp. 3-6; Order, pp. 3-6.)

Respectfully submitted,

October 16, 2014



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AMENDED PROOF OF SERVICE

I certify that I have served the Petitioners Gregory M. Gottschlich & Donald L. McNeil, and the Respondents Laurich & Deeb, PA; Robert M. Deeb, Jr. & Charles H. Wiseman with the Amended Brief Of Respondents Ken Oliver & The Byrne Corporation d/b/a Dunes Marketing Group by depositing a copy of it in the United States Mail, postage prepaid on October 16, 2014 to all counsel of record, whose names and addresses

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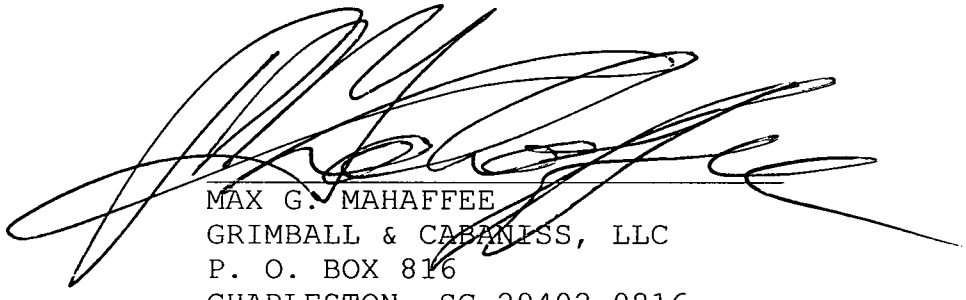

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