

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master-In-Equity

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S.C. Supreme Court

Appellate Case No. 2013-000375

Opinion No. 4995 (S.C. Ct. App. Filed June 27, 2012)

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

versus

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

Of whom

Thomas N. Dye, Jan H. Dye, Ken Oliver,
The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman
are the.....Respondents.

**RESPONDENTS LAURICH & DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN'S AMENDED BRIEF ON CERTIORARI**

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STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Court of Appeals properly concluded that Petitioners violated the two issue rule by failing to address in their opening brief to that court (and still fail to address in their Brief on Certiorari to this Court) the trial court's ruling that Petitioners' claims against the Closing Attorneys are barred by the statute of limitations because Petitioners' insurance brokers had knowledge, imputed to Petitioners by the agency relationship, more than three years before the claims were filed, which holding is independently sufficient to affirm the trial court's ruling.¹
2. Whether the trial court properly ruled that Petitioners' claims are barred by the statute of limitations, based on either the knowledge of Petitioners' insurance brokers, which knowledge is imputed to Petitioners by basic principles of agency law, or on the multiple red flags that Petitioners personally received revealing issues with the elevation of the property in question.
3. Whether the trial court's order should be affirmed on the alternate sustaining grounds that the Closing Attorneys had no duty to provide services outside the scope of their written engagement letter with Petitioners or that real estate closing

¹ This is the only issue properly before this Court under the order granting *certiorari* and the South Carolina Appellate Court Rules, because it is the only issue addressed by the Court of Appeals in its decision in this case. Pursuant to Rule 242(i), SCACR, when a petition for *certiorari* is granted, "the Clerk [of the Supreme Court] shall notify each party or his attorney, specifying the question or questions to be considered." Here, the Clerk transmitted this Court's order in which the Court granted *certiorari* "to review the Court of Appeals' decision." (A. p. 55.) Accordingly, the only issue before the Court is whether the Court of Appeals was correct in dismissing the appeal pursuant to the two-issue rule. The other issues presented by Petitioners are not properly before the Court, but are addressed in this Brief merely to provide a complete response to Petitioners' Brief.

attorneys have no general comprehensive duty to ensure that any building conveyed with real estate complies with all potentially applicable rule and regulations.

STATEMENT OF THE CASE

This action arises out of Petitioners', Gregory M. Gottschlich and Donald L. McNeil, purchase of an investment house on Hilton Head Island that allegedly was built below the fourteen foot elevation required by the local building code and FEMA flood insurance guidelines. Respondents Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (collectively, the "Closing Attorneys") served as closing attorneys on Petitioners' purchase of the subject property in 2003.

Petitioners filed their initial Complaint on February 18, 2008. The Complaint did not name the Closing Attorneys as defendants. (R. p. 12, Compl. p. 1.)

Petitioners filed an Amended Complaint on March 20, 2009, naming the Closing Attorneys, among many others, as defendants. (R. p. 45, Am. Compl. p. 1.) In the Amended Complaint, Petitioners alleged professional negligence, breach of fiduciary duty, breach of contract, and equitable indemnification claims against the Closing Attorneys. (R. pp. 63-67, Am. Compl. pp. 19-23.) Petitioners pleaded eleven other causes of action against a variety of additional defendants, including Strimpfel Custom Homes, Inc.; Joseph A. Reeve; Jerry L. Richardson; Coastal Surveying Co., Inc.; Thomas H. Dye; Jan N. Dye; Ken Oliver; and the Byrne Corporation d/b/a Dunes Marketing Group. (R. pp. 45-62, Am. Compl. pp. 1-18.) The claims against the Closing Attorneys center on allegations that the Closing Attorneys had a duty to recognize and apprise Petitioners that a structure on the property they were purchasing did not comply with local building codes or qualify for subsidized flood insurance. (R. pp. 63-67, Am. Compl. pp. 19-23.)

The Closing Attorneys answered the Amended Complaint on April 30, 2009. (R. pp. 141-55, Answer of Closing Attorneys.) The Closing Attorneys asserted numerous defenses, including the statute of limitations. (*Id.*) The Closing Attorneys also denied that they breached any duty to Petitioners, or that Petitioners had any damages. (*Id.*)

Following extensive discovery, the Closing Attorneys moved for summary judgment on December 1, 2009 on three grounds: (1) statute of limitations, (2) lack of evidence that the Closing Attorneys breached any duty to Petitioners, and (3) lack of evidence that Petitioners had suffered any damages. (R. pp. 158-59, Closing Attorney's Motion for Summary Judgment.) The Closing Attorneys filed a Memorandum in Support of their Motion for Summary Judgment on December 16, 2009. (R. pp. 222-37, Closing Attorney's Memorandum in Support of Motion for Summary Judgment.) The trial court heard various motions, including the Closing Attorneys' Motion for Summary Judgment, on December 16, 2009, and granted the Motion by Order dated January 11, 2010. (R. p. 882, 12/16/09 Hearing Tr.; R. pp. 1-7, Order of January 11, 2010.) Petitioners moved to reconsider the Order on January 26, 2010, and the court held a hearing on this motion on March 16, 2010. (R. p. 862, Motion to Reconsider; R. p. 966, 3/16/10 Hearing Tr.) The court denied the Motion to Reconsider by Order dated May 3, 2010. (R. pp. 8-9, Order of May 3, 2010.) Petitioners appealed.

On December 19, 2012, the Court of Appeals filed an opinion affirming the decision below because Petitioners failed to appeal all grounds for the lower court's decision. (A. pp. 1-2, Court of Appeals Opinion No. 2012-UP-676.) On January 3, 2013, Petitioners petitioned the Court of Appeals for rehearing. (A. pp. 3-15, Petition for

Rehearing.) On January 25, 2013, the Court of Appeals denied the petition. (A. pp. 24, Order Denying Petition for Rehearing.)

On February 25, 2013, Petitioners petitioned this Court for a writ of certiorari. (A. pp. 26-41, Petition for Writ of Certiorari.) On May 8, 2014, this Court granted a writ of certiorari to review the Court of Appeals' decision. (A. p. 55, Order Granting Petition for Writ of Certiorari.)

STATEMENT OF FACTS

Petitioners' case against the Closing Attorneys concerns a real estate transaction that closed on December 3, 2003, by which Petitioners – two doctors from Ohio – purchased investment / vacation property on Hilton Head Island. (R. pp. 44-51, Am. Compl. pp. 1-7.) According to Petitioners, a structure on that property does not comply with the local building codes and does not qualify for subsidized federal flood insurance, and Petitioners contend that the Closing Attorneys are somehow responsible. (R. pp. 44-51, 63-68, Am. Compl. pp. 1-7, 19-24.) Although Petitioners' involvement with the property began in 2003, the facts relevant to Petitioners' claims and the applicable defenses go back to the construction of the structure in 1987.

A. 1987 to 2002: Construction of the Subject Property and First Recognition of the Negative Elevation Issue.

The structure at issue was built in 1987 by a local developer. (R. p. 265, lines 9-12, Strimpfel Dep. p. 11.) During construction, the builder obtained an elevation certificate from Jerry Richardson of Coastal Surveying Co. ("Coastal"), certifying that the elevation of the lowest finished floor was 14.16 feet. (R. p. 267, 1987 Elevation Certificate.) According to the FEMA Flood Insurance Rate Map, the base flood elevation ("BFE") for the subject property should be 14 feet. Flood insurance rates are substantially higher when

a property's lowest finished floor is below the property's BFE. (R. p. 562, lines 7-14, Farrell Dep. p. 34.) Moreover, local building codes require that the lowest finished floor be built at an elevation at or above the property's BFE. (R. p. 547, lines 11-12, 21-24, Johnson Dep. p. 30.) Thus, the 14.16-foot elevation set forth on the 1987 elevation certificate was compliant, and, in 1988, the Town of Hilton Head Island issued a Certificate of Occupancy for the structure. (R. p. 31, Certificate of Occupancy.)

From 1988 until 2001, the property was occupied, bought, and sold. Nothing in the record suggests that anyone questioned the 1987 elevation certificate during this time period.

In 2001, Thomas and Jan Dye purchased the property from the then-owner, Myra Muldong. (R. p. 508, lines 7-9, Thomas Dye Dep. p. 45.) In connection with this purchase, the Dyes obtained an updated elevation certificate from Sea Island Land Survey, which listed the lowest finished floor elevation as 13.3 feet. (R. pp. 277-78, 2001 Elevation Certificate.) The 2001 elevation certificate conflicted with the 1987 elevation certificate in that it reflected a "negative elevation," meaning that the property's lowest finished floor was built below BFE. (*Id.*) Nevertheless, nothing resulted from the potential building code violation revealed by this elevation certificate because the only elevation certificate in the Town of Hilton Head Island's file was – and remains to this day – the 1987 elevation certificate that does not reflect negative elevation. (R. p. 271, lines 15-23; p. 273, lines 22-25 to p. 274, lines 1-8, Johnson Dep. pp. 23, 48-50.)

B. 2003: Petitioners' Purchase of the Subject Property, Engagement of the Closing Attorneys for the Limited Purpose of Closing the Purchase Transaction, and Petitioners' Pre-Closing Discovery of the Negative Elevation Issue.

On November 6, 2003, Petitioners entered into a contract to purchase the property from the Dyes. (R. pp. 258-62, Purchase Contract.) There is no evidence that Petitioners made any attempt to determine the property's compliance with any applicable building codes or flood regulations before signing the purchase contract. The Closing Attorneys were not involved in the purchase contract.

On November 13, 2003, Petitioners hired the Closing Attorneys to oversee the closing of the purchase transaction. (R. pp. 284-89, Engagement Letter.) The Closing Attorneys provided Petitioners with a written engagement letter outlining in detail the services they were engaged to perform. (*Id.*) Specifically, the engagement letter listed the following eight services that the Closing Attorneys would provide:

1. Review of the Contract of Sale to determine Petitioners' rights and obligations thereunder;
2. Determination with Petitioners as to how title would be taken (e.g., tenancy in common, joint tenancy, etc.);
3. Review of the proposed Deed to ensure that good, marketable title passed to Petitioners;
4. Examination of the title abstract to determine any title defects;
5. Recordation of appropriate transaction documents with the Beaufort County RMC's Office;
6. Coordination of disbursement and distribution of settlement proceeds;
7. Insure compliance by Petitioners with any obligations necessary to close in accordance with the lender's loan commitment;

8. Preparation of necessary closing documents, including, if necessary, a legal opinion as to title.

(*Id.*) Petitioners have not claimed any defect in these services, and there is no evidence that Petitioners asked the Closing Attorneys to perform any other or additional services.

Petitioners were required by their lender to obtain flood insurance on the property before closing. (R. p. 315, Closing Instructions p. 2.) In November 2003, the Closing Attorneys forwarded a copy of the 2001 elevation certificate to Petitioners with a note that they might need the certificate to obtain flood insurance. (R. p. 282, Fax dated 11/26/03.) Petitioners engaged Seacoast Insurance, Inc. (“Seacoast”) to procure flood insurance on their behalf. (R. p. 330, Settlement Statement.) In December 2003, Seacoast used the 2001 elevation certificate to fill out a flood insurance application on behalf of their principals, the Petitioners, that reflected the structure’s elevation at 13.3 feet and the BFE at 14 feet. (R. p. 404, Flood Insurance Application.)

On a pre-closing pro forma, Petitioners estimated that flood insurance would cost them approximately \$592 per year – a good estimate for property with positive elevation (*i.e.*, lowest finished floor elevation at or above BFE). (R. p. 207, Pro Forma p. 1.) However, because the structure had negative elevation, Petitioners’ insurance brokers, Seacoast, found flood insurance for Petitioners at a cost of \$2,800, which was substantially more than the \$592 figure that Petitioners had estimated in their own pro forma. (R. pp. 207, 330, 407, Flood Insurance Application, Settlement Statement, Pro Forma). Petitioners were aware of the \$2,800 flood insurance cost before closing and did not question the difference between the quoted premium and their pro forma estimate. (R. p. 209, lines 18-25, Gottschlich Dep. p. 214.) Petitioners accepted the \$2,800 cost and the property was insured through Seacoast. (R. p. 330, Settlement Statement.) In addition, in connection

with their purchase of flood insurance, Petitioners received an insurance policy declarations page that clearly noted the property's negative elevation.² (R. pp. 336-43, Declaration Pgs.; R. p. 394, lines 3-25, Lyons Dep. p. 61; R. p. 416, lines 10-25, Farrell Dep. p. 115.)

Petitioners' purchase of the property closed on December 2, 2003. (R. p. 329-31, Settlement Statement.) Before the closing, the Closing Attorneys sent all of the closing documents to Petitioners for their review. (R. p. 302, lines 12-25, p. 303, lines 21-25 to p. 304, lines 1-5, Deeb Dep. pp. 192, 197-98.) Petitioners asked no questions about the documents or the closing. (*Id.*) The Closing Attorneys oversaw the closing in accordance with Petitioners' and the lender's instructions, and the Closing Attorneys performed the services listed in the engagement letter. (R. p. 301, lines 19-22, Deeb Dep. p. 185.) Again, Petitioners have not claimed that these services were defective in any way.

C. 2004 to 2005: Petitioners, Through Their Agent and Personally, Continue to Receive Notice of the Property's Negative Elevation.

Following the closing, Petitioners took possession of the property. From that time forward, Petitioners personally received annual flood policy declarations pages from their insurance agent, Seacoast, all of which expressly stated that the structure had negative elevation. (R. pp. 336-43, Declaration Pgs.; R. p. 394, lines 13-25, p. 395, line 1, Lyons

² In their brief, Petitioners misrepresent the Record by stating that Teena Farrell, a Seacoast employee, first recognized the negative elevation in 2006. (Appellant's Br. p. 6.) Petitioners cite to Dr. Gottschlich's deposition, in which he was asked whether Ms. Farrell knew of the elevation issue before 2006, and he replied, "You'd have to ask her that. I don't know." (R. p. 735, lns. 2-8, Gottslich Dep. p. 15.) This citation obviously does not support Petitioners' incorrect statement that Ms. Farrell first recognized the negative elevation issue in 2006. In truth, it cannot be disputed that Seacoast recognized the elevation issue in 2003 when the application for insurance was filled out by Ms. Farrell's office, specifically noting a negative elevation on the property.

Dep. pp. 61-62; R. p. 416, lines 12-25, Farrell Dep. p. 115.) These declarations pages were part of Petitioners' yearly insurance policy. (*Id.*)

In 2004, Seacoast, acting on Petitioners' behalf, explored re-underwriting the flood insurance to obtain a lower premium. (R. p. 412, Activity Log.) As part of this process, Seacoast contacted the surveyor "regarding the fact that the home was built below the base flood elevation." (*Id.*) Because of the property's negative elevation, Seacoast was unable to obtain a lower premium for Petitioners. (*Id.*)

D. 2006 to 2009: Petitioners Belatedly Investigate the Negative Elevation and File Suit Against Numerous Parties.

In early 2006, Petitioners contacted Seacoast to attempt to buy excess flood insurance. (R. p. 533, lines 19-25, Gottschlich Dep. p. 14.) They were advised that excess flood insurance was not available through Seacoast's carriers because of the negative elevation issue. (R. pp. 534, lines 21-25, Gottschlich Dep. p. 15.) Petitioners claim that this was the first time they were apprised of the negative elevation issue, despite the information that they and their insurance agent admit to receiving in 2003, 2004, and 2005. (*Id.*)

On February 18, 2008, Petitioners filed this lawsuit against four groups of people: (1) the original developer and owner, (2) the original surveyors, (3) the Sellers, (4) and their real estate agents. (R. pp. 12-27, Complaint.) Petitioners added the Closing Attorneys to the suit by Amended Complaint filed on March 20, 2009. (R. pp. 45-68, Amended Complaint.) Petitioners did not, however, sue their insurance broker, Seacoast.

To date, the Town of Hilton Head Island, despite being deposed in connection with this case and informed of the elevation issue, has never taken any action against Petitioners with regard to the structure at issue. (R. p. 273, lines 19-25 to p. 274, lines 1-8, Johnson

Dep. p. 49-50.) Indeed, the Town has confirmed that the only elevation information in its file is the 1987 elevation certificate, which reflects positive elevation. (*Id.*) Nonetheless, Petitioners claim as their damages the costs associated with raising the lowest finished floor elevation of the structure to 14 feet, which they speculate is needed to avoid a possible future town enforcement action, an action that has never occurred despite the passage of almost 15 years since the Dyes received the Sea Island Land Survey.

STANDARD OF REVIEW

In reviewing the grant of summary judgment, this Court applies the same standard as the court below. *Boyd v. Bellsouth Tel. Tel. Co., Inc.*, 369 S.C. 410, 415, 633 S.E.2d 136, 138 (2006). “Under Rule 56, SCRPC, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact.” *Id.* Summary judgment is appropriate when the evidence is such that a reasonable jury could not resolve the case in favor of the non-moving party. *Bloom v. Ravoir*, 339 S.C. 417, 421, 529 S.E.2d 710, 712 (2000).

ARGUMENT

The only question properly before the Court is whether the Court of Appeals correctly dismissed Petitioners’ appeal pursuant to the two issue rule. This Court granted *certiorari* to review the Court of Appeals’ decision; *certiorari* was not granted on any other question.

On the one question before this Court, the Court of Appeals correctly held that Petitioners’ opening brief did not address the lower court’s ruling that Seacoast’s undisputed knowledge of the negative elevation in 2003-2004 is imputed to Petitioners through principles of agency law. Thus, any argument Petitioners might have on that issue

was abandoned as a matter of law, and the trial court's holding is the law of the case. The trial court's ruling on Seacoast's imputed knowledge, which Petitioners now cannot challenge, is wholly sufficient on its own to support the grant of summary judgment. Accordingly, pursuant to the two issue rule, the grant of summary judgment must be affirmed for that reason alone, and the other issues purportedly on appeal need not be addressed.

Even if Petitioners' appeal is considered on the merits, Petitioners did not file their claims against the Closing Attorneys within the three-year statute of limitations. As the trial court held, Petitioners received notice, both constructively through Seacoast and personally, of the negative elevation issue on several occasions in 2003, 2004, and 2005, yet Petitioners did not file this action against the Closing Attorneys until March 2009, more than three years later. There is no dispute that Petitioners' insurance broker knew about the negative elevation issue in 2003 and in 2004, and insurance brokers are agents of their insureds as a matter of law. Thus, following basic principles of agency law, the brokers' knowledge is imputed to Petitioners, and this lawsuit was filed out of time. In addition, Petitioners had personal knowledge of the negative elevation issue in 2003, 2004, and 2005 through their receipt of numerous documents reflecting the issue. Because Petitioners knew or should have known that they might have claims against the Closing Attorneys more than three years before filing suit against the Closing Attorneys, their claims against the Closing Attorneys are barred by the statute of limitations as a matter of law.

As an alternate sustaining ground, Petitioners are also barred from bringing claims against the Closing Attorneys because the engagement letter that the Closing Attorneys sent to Petitioners properly limits the scope of the representation, and that letter does not

list as one of the services to be provided that the Closing Attorneys will certify that the structure at issue complies with applicable building codes. Thus, the Closing Attorneys had no duty to determine whether the lowest finished floor elevation complied with applicable codes or to advise Petitioners on that issue, and Petitioners' claims against the Closing Attorneys fail as a matter of law.

Similarly, unless the parties expressly agree otherwise (which is not alleged here), real estate closing attorneys have duties to provide only a discrete set of services that center on ensuring that the transaction documents are properly executed and recorded, and that clear title is conveyed from seller to purchaser. Closing attorneys do not have a comprehensive duty to determine whether the property being transferred or any structures thereon comply with all applicable codes, rules, or regulations. Since the negative elevation issue was not related to the proper execution and recording of the transaction documents or the conveyance of clear title, it fell outside the scope of the Closing Attorneys' duties, and it cannot serve as the basis for Petitioners' claims as a matter of law. For all of these reasons, the trial court's grant of summary judgment in favor of the Closing Attorneys was proper, and his Order should be affirmed.

I. THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONERS ABANDONED THEIR APPEAL BY FAILING TO ADDRESS THE LOWER COURT'S RULING THAT THEIR INSURANCE AGENT'S KNOWLEDGE WAS IMPUTED TO THEM.

As an initial matter, the question of whether the Court of Appeals properly dismissed the appeal under the two issue rule is the only question properly before this Court. Pursuant to Rule 242(i), SCACR, when a petition for *certiorari* is granted, "the Clerk [of the Supreme Court] shall notify each party or his attorney, specifying the question or questions to be considered." Here, the Clerk transmitted this Court's order in which the

Court granted *certiorari* “to review the Court of Appeals’ decision.” (A. p. 55.) Accordingly, the only issue before the Court is whether the Court of Appeals was correct in dismissing the appeal pursuant to the two-issue rule. The other issues presented by Petitioners are not properly before the Court.

On the question of whether the Court of Appeals properly applied the two issue rule, in its Order, the lower court reached two discrete and independent holdings:

First, the lower court held that, more than three years before this lawsuit was filed, *Petitioners personally* had information sufficient to inform them, through the exercise of reasonable diligence, that they might have claims against the Closing Attorneys. (R. p. 5, Summary Judgment Order at 5.) This holding was based on information that was actually in Petitioners’ possession, such as the 2001 elevation certificate and Petitioners’ annual flood policy declarations pages. (R. p. 4, Summary Judgment Order at 4.) The Court announced this holding in a section headed “**Inquiry Notice**,” because the Court deemed the information in Petitioners’ personal possession sufficient to cause a reasonable person to investigate the matter further, which investigation would have revealed that a cause of action might exist. (*Id.*)

Second, the Court held that, more than three years before this lawsuit was filed, *Petitioners’ insurance broker, Seacoast*, had information sufficient to inform Petitioners, through the exercise of reasonable diligence, that they might have claims against the Closing Attorneys. (R. pp. 3-6, Summary Judgment Order pp. 3-6.) The Court further held that, because Seacoast was Petitioners’ agent, Seacoast’s knowledge was imputed to Petitioners by basic principles of agency law. (*Id.*) The Court announced this holding in a section headed “**Imputed Knowledge**,” because notice arose by the operation of agency

law imputing an agent's knowledge to its principal, and not through Petitioners' personal knowledge. (*Id.*)

Each one of these holdings is independently sufficient to support the Court's decision that the Closing Attorneys are entitled to summary judgment on statute of limitations grounds because "[t]he statute of limitations begins to run at the time the [plaintiff] has inquiry or constructive notice [that a claim might exist]." *Berry v. McLeod*, 328 S.C. 435, 445, 492 S.E.2d 794, 800 (Ct. App. 1997) (emphasis added). Either form of notice, by itself, will run the statute. *Id.* Thus, to overturn the trial court's Order on appeal to the Court of Appeals, Petitioners needed to demonstrate that both holdings are wrong and that they had neither personal nor constructive knowledge of information sufficient to run the statute of limitations. Prevailing on one of the two grounds would do Petitioners no good, as the remaining ground would independently support the trial court's grant of summary judgment.

In their opening brief to the Court of Appeals – and, indeed, in their opening brief to this Court as well – Petitioners addressed only their personal knowledge and completely ignored their agent's knowledge imputed by law to them. Petitioners' briefs argued at length that the information available to Petitioners personally was insufficient to put them on notice of their potential claims. The briefs did not even mention Seacoast's knowledge or the lower court's ruling that such knowledge was imputed to Petitioners. Therefore, any argument on the issue of Seacoast's knowledge and its imputation to Petitioners is abandoned on appeal as a matter of law. *Nienow v. Nienow*, 268 S.C. 161, 173, 232 S.E.2d 504, 510 (1977) ("[A]ppellant has failed to specifically argue this contention in her brief and is deemed to have abandoned this exception.");

Cannon v. Cannon, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding that failure to raise issue in brief constitutes abandonment of the issue on appeal). Since Petitioners have abandoned any argument against constructive notice through their agent, Seacoast, which independently supports the grant of summary judgment in the Closing Attorneys' favor, the Court of Appeals' opinion must be affirmed for this reason alone, and there is no need to address any further issues in this appeal. *Id.*

In opposition to this straightforward analysis, Petitioners argue that the lower court granted summary judgment on a single issue – Petitioners' failure to bring their claims within the statute of limitations – and that Petitioners perfected their appeal merely by mentioning the statute of limitations. (Petitioner's Br. p. 19-20.) Petitioners claim that the Court of Appeals erred in ruling that the lower court had two separate statute-of-limitations holdings and that Petitioners were required to appeal them both. (*Id.*)

In so arguing, Petitioners fundamentally misapprehend the two issue rule and the logic behind it. In the appellate context, the two issue rule derives from the basic notion that when two or more independent grounds support a trial court's decision, the appellate court will affirm the decision if *any one* of those grounds supports affirmance. *Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 421, 472 S.E.2d 253, 255 (1996). As a result, it is incumbent on an appellant to appeal all of the grounds supporting the lower court's decision; otherwise, the unappealed ground stands as the law of the case, and the appeal is meaningless. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). (“[W]here 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.”). Here, because the trial court clearly based its decision on two

independent grounds – Plaintiff’s personal knowledge and Plaintiff’s imputed knowledge – Plaintiff’s failure to appeal them both is fatal to the appeal.

Petitioners claim, however, that because both grounds supporting the trial court’s ruling involve the statute of limitations, they are really “one legal issue,” and Petitioners accuse the Closing Attorneys of “rewrit[ing]” the statute of limitations to divide it into multiple issues. (Petitioner’s Br. p. 20.) Petitioners’ argument misses the point because the number of grounds supporting a trial court’s decision does not necessarily equate to the number of abstract “legal issues” involved. Trial courts make decisions by applying the particular facts of the case to general principles of law. That combination of case-specific facts as applied to general principles of law forms the basis – or the “ground,” or the “holding,” or the “*ratio decidendi*” – of the trial court’s decision. A trial court may – and often will – support its result (e.g., summary judgment is granted) through multiple, independent applications of fact to law. In so doing, the trial court may rely on one set of facts and multiple principles of law – for example, the same facts may support a ruling that a claim is barred by the doctrines of *in pari delicto* and equitable estoppel. Or, the court may rely on multiple sets of facts applied to the same principle of law – for example, a claim may be barred because the plaintiff was given sufficient information to run the statute of limitations more than three years before the claim was filed on two or more separate and independent occasions. In either case, the trial court’s ruling rests on multiple, independent grounds – that is, multiple, independent applications of case-specific facts to general principals of law – all of which must be appealed in order to overturn the ruling.

The Closing Attorneys’ contention that the two issue rule applies here is not, as Petitioners contend, an exercise in “spin” or creative wordplay by the defense. (Petitioner’s

Br. p. 20.) Rather, the number of independent grounds supporting a trial court's ruling is determined by the trial court, not by either party. Here, the trial court – not the defendants – expressly supported its ruling with two independent holdings, and the court drafted its order in such a way that there could be no confusion on this point. Specifically, the trial court analyzed in separate sections: (A) whether the Petitioners had actual knowledge of the elevation issue sufficient to run the statute of limitations, (B) whether the Petitioners had personal knowledge sufficient to put them on inquiry notice of the issue to run the statute of limitations, or (C) whether the knowledge of Petitioners' agent, Seacoast, was imputed to Petitioners to run the statute of limitations. (R. at pp. 3-6, Summary Judgment Order at pp. 3-6.) In Section A, the court concluded that Petitioners did not have actual notice. (R. p. 4, Summary Judgment Order at p. 4.) In Section B, the court concluded that Petitioners did have sufficient personal knowledge to put them inquiry notice and, therefore, "Plaintiffs' claims are barred by the statute of limitations and must be dismissed as a matter of law." (R. p. 5, Summary Judgment Order at p. 5.) In Section C, the court concluded that Seacoast had actual knowledge of the elevation issue, and that such knowledge was imputed to Petitioners such that Petitioners "did not file their claims . . . within the three-year statute of limitations, and, thus, their claims are barred." (R. p. 6, Summary Judgment Order at p. 6.) The Court could not have been clearer that it analyzed three (3) separate potential grounds for granting the motion for summary judgment and concluded that two (2) of those grounds supported the decision to grant the motion. Petitioners should not be permitted to effectively rewrite the trial court's straightforward order to cover up their failure to appeal all grounds of the court's decision.

Reduced to its most basic level, the two-issue rule requires that an appellant's opening brief contain sufficient material that, if the appellate court agreed with the brief in its entirety, the decision below would be overturned. This is easily accomplished, as all it requires is reading the trial court's order and addressing the grounds for the decision in appellant's opening brief. In this case, even if the Court of Appeals had agreed with Petitioners' opening brief, it could not have overturned the trial court's ruling that Seacoast had sufficient knowledge to run the statute of limitations more than three years before the claims were filed against the Closing Attorneys, which knowledge is imputed to Petitioners through agency law, because that ruling was not addressed by Petitioners on appeal. The same is true for Petitioners' opening brief to this Court, as that brief also contains nary an argument against the trial court's imputation ruling. Therefore, the "Imputed Knowledge" ruling stands as the law of the case, and the Court of Appeals' decision applying the two-issue rule should be affirmed.

II. PETITIONERS WERE ON NOTICE OF POTENTIAL CLAIMS AGAINST THE CLOSING ATTORNEYS MORE THAN THREE YEARS BEFORE THIS ACTION WAS FILED.

On the merits of Petitioners' appeal, the parties agree that the three-year statute of limitations in S.C. Code Ann. § 15-3-530 applies to the claims against the Closing Attorneys. (Appellants' Br. p. 21.) The statute of limitations began to run when the plaintiffs "could or should have known, through the exercise of reasonable diligence that a cause of action might exist." *Moore v. Benson*, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010) (emphasis added). "The statute of limitations begins to run at the time the [plaintiff] has inquiry or constructive notice [that a claim might exist]." *Berry*, 328 S.C. at 445, 492 S.E.2d at 800. The statute is not delayed until "advice of counsel is sought or a full-blown theory of recovery developed." *Epstein v. Brown*, 363 S.C. 372, 376, 610

S.E.2d 816, 818 (2005) (emphasis omitted). “The standard as to when the limitations period begins to run is objective rather than subjective.” *Kelly v. Logan, Jolley & Smith, L.L.P.*, 383 S.C. 626, 682 S.E.2d 1, 4 (Ct. App. 2009).

In assessing when a complaining party (in this case, Petitioners) knew or should have known the operative facts for purposes of the statute of limitations, the focus is upon “whether the **complaining party** acquired knowledge of any existing facts ‘sufficient to put said party on inquiry....’” *Berry*, 328 S.C. at 445, 492 S.E.2d at 799 (quoting *Burgess v. Am. Cancer Soc’y*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989)) (emphasis added). The injured or complaining party must act with promptness and exercise reasonable diligence when the “facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.” *Id.* (quoting *Mitchell v. Holler*, 311 S.C. 406, 409, 429 S.E.2d 793, 795 (1993)). Accordingly, in determining whether Petitioners had actual or constructive notice of the negative evaluation, the Court must evaluate **Petitioners’** knowledge and diligence in seeking to appreciate the import of the documents and information before them, **not** the knowledge or duties of the Closing Attorneys.

The Closing Attorneys were first named as defendants in the underlying lawsuit on March 20, 2009. Thus, for Petitioners’ claims against them to survive, those claims must have accrued no earlier than March 20, 2006. As the trial court held, however, through facts that were known by Petitioners’ agent, Seacoast, and through facts that Petitioners knew personally, Petitioners were on notice that their claims might exist well before that date, specifically in 2003, again in 2004, and again in 2005. Thus, the trial court properly

granted the Closing Attorney's Motion for Summary Judgment on statute of limitations grounds.

A. Petitioners Had Constructive Notice of the Negative Elevation Issue Through Their Agent, Seacoast.

Petitioners received constructive notice of the negative elevation issue through their insurance broker, Seacoast. As an initial matter, Seacoast was inarguably aware of the negative elevation issue before March 20, 2006. In connection with the December 3, 2003 closing, Seacoast received a copy of the 2001 elevation certificate and submitted a flood insurance application on Petitioners' behalf expressly setting out the property's negative elevation. Indeed, the second page of that application stated:

ELEVATION INFORMATION

Lowest Floor:	13.3	Source of Certificate:	Elevation Certificate
Base Flood:	14.0	Prior Policy Number:	6004611874
Lowest Adjacent Grade:	9.2	Certificate Date:	03/28/2001
Diagram Number:	8	Certificate Type	Elevation/Survey

(R. p. 404, Application p. 2 (emphasis added).)

Then, in December 2004, according to Seacoast's own activity log, the agency explored re-underwriting the property to obtain a lower rate, which included contacting the surveyor "**regarding the fact that the home was built below the base flood elevation.**"

(R. p. 412, Activity Log p. 7 (emphasis added).) Seacoast determined that, because of the negative elevation issue, there was "nothing [they could] do to re-underwrite the policy and improve the premium for the insured." (*Id.*) Thus, there is no question that Seacoast was aware of the negative elevation issue well before March 20, 2006.

Seacoast's knowledge of the negative elevation issue is imputed to Petitioners because Seacoast, as Petitioners' insurance broker, was Petitioners' agent. Absent circumstances not alleged to be present here,³ the relationship between insurance broker and insured is an agency relationship in which the insured is the principal and the broker is the agent. *Allstate Ins. Co. v. Smoak*, 256 S.C. 382, 393, 182 S.E.2d 749, 754 (1971) ("[W]here [an insurance broker] is employed to procure insurance, he is the agent of the insured."); *Holmes v. McKay*, 334 S.C. 433, 440, 513 S.E.2d 851, 855 (Ct. App. 1999) (same); *Hiott v. Guar. Nat'l Ins. Co.*, 329 S.C. 522, 530, 496 S.E.2d 417, 422 (Ct. App. 1997) (same). Since there is no dispute that Petitioners engaged Seacoast to procure flood insurance for them on the property at issue, there can be no dispute that Seacoast was Petitioners' agent as a matter of law. See *Allstate Ins. Co.*, 256 S.C. at 393, 182 S.E.2d at 754.

As Petitioners' agent for purposes of procuring flood insurance on the property, Seacoast's knowledge of the negative elevation issue is imputed to Petitioners. "It is well established 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.2d 496, 497 (1979). Seacoast was plainly acting within the scope of its authority when in 2003 it received the 2001 elevation certificate, filled out a flood insurance application noting the

³ In limited circumstances, such as when a broker works for a single insurance company, it may be an agent of that insurer for some purposes. *Hiott v. Guar. Nat'l Ins. Co.*, 329 S.C. 522, 530, 496 S.E.2d 417, 422 (Ct. App. 1997). Here, however, there is no dispute that Seacoast was an independent insurance agency not affiliated with any single insurance company, and there has been no claim that Seacoast was an agent of any insurance carrier.

negative elevation, and thereafter reviewed policy declarations pages, and explored the negative elevation issue for purposes of attempting to negotiate a lower premium, and Petitioners have never claimed otherwise. In addition, there is no dispute that negative elevation is material to the purchase of flood insurance. Thus, Seacoast's knowledge is imputed to Petitioners as a matter of law and, as a result, the statute of limitations ran before Petitioners filed suit against the Closing Attorneys in March 2009.

Finally, it is clear why Petitioners' opening briefs fail to address the constructive knowledge issue that serves as a definitive basis for the running of the statute of limitations, mandating this Court affirm the Order below. Petitioners' argument on appeal – that the statute of limitations did not begin running until Petitioners finally “appreciated” the import of the negative elevation issue – is satisfied by the fact that Petitioners' agent Seacoast “appreciated” the import of the negative elevation issue in 2003-2004. Seacoast understood the ramifications associated with negative elevation, and, indeed, Seacoast's policy and procedure was to explain those ramifications to its customers. (R. pp. 396-98, 401, Lyons Dep. pp. 63, 65, 68, 74.) As Petitioners' agent, Seacoast's knowledge and understanding are imputed to Petitioners. *See Crystal Ice*, 273 S.C. at 309, 257 S.E.2d at 497. Thus, even if “appreciating” the import of negative elevation were somehow required for the statute of limitations to begin to run, (and it is not), then the statute began to run in 2003-2004 when Seacoast, Petitioners' agent, became aware of and “appreciated” the negative elevation problem, not in 2006 when Petitioners claim to have “appreciated” the import of the issue. Accordingly, as the trial court held, the three-year statute of limitations expired long before this action against the Closing Attorneys was filed, and Petitioners' claims against the Closing Attorneys are barred as a matter of law.

B. Petitioners Personally Received Information Disclosing the Negative Elevation Issue in 2003, 2004, and 2005.

Petitioners personally received sufficient information to put them on inquiry notice of their claims against the Closing Attorneys well before March 20, 2006. Specifically, Petitioners received:

- In **November 2003**: the 2001 elevation certificate, which reflected a lowest finished floor elevation of 13.3 feet (R. p. 282, Fax dated 11/26/03);
- In or around **November 2003**: according to Seacoast's regular policies and procedures, notice from Seacoast that the property had negative elevation and an explanation of the ramifications associated therewith (R. pp. 398, 401, Lyons Dep. pp. 68, 74);
- In or around **November / December 2003**: a flood insurance quote that was more than five times higher than the amount Petitioners expected to pay (R. pp. 207, Pro Forma, Settlement Statement);
- In or around **December 2004**: according to Seacoast's regular practices and procedures, notification that Seacoast could not improve their flood insurance premium because of the negative elevation issue (R. pp. 398, 401, Lyons Dep. pp. 68, 74; R. p. 412, Activity Log p. 7); and
- In **2003, 2004, and 2005**: annual declarations pages for their flood insurance policy, which expressly stated that the property had negative elevation (R. pp. 335-43, Declarations Pages).

In their brief, Petitioners do not dispute receiving information regarding the property's negative elevation. Rather, they claim that, from such information, a person of common knowledge and experience could not have been expected to recognize a potential problem with the property's elevation. This is incorrect because Petitioners received multiple red flags warning them of the need to inquire further about the property's elevation.

First, Petitioners prepared a pro forma before closing in which they predicted that flood insurance would cost \$592 per year. (R. p. 207, Pro Forma.) According to Petitioners, this figure was based on what they understood the Dyes were paying for flood

insurance. (R. p. 210, lines 12-21, Gottschlich Dep. 215.) Using this figure made sense because Petitioners decided to purchase the same minimum required coverage that the Dyes had purchased. (*Id.*) Yet, at or before the closing on December 3, 2003, Petitioners received and accepted a flood insurance quote from Seacoast that was \$2,800, more than five times the amount they had expected to pay. (R. p. 330, Settlement Statement.) **Petitioners admit that they did not question this five-fold increase.** (R. p. 209, lines 18-25, Gottschlich Dep. p. 214.) A year later, however, Petitioners sought to decrease their premium, evidencing their knowledge of the dramatic increase in the cost of flood insurance on the property. (R. p. 412, Activity Log p. 7).

In their brief, Petitioners seek to minimize the effects of this obvious red flag by claiming that they “w[ere]n’t focused on insurance” and that the dramatic increase did not stand out because it was aggregated with other costs and divided into twenty-four separate payments. (Petitioner’s Br. pp. 24-25.) As an initial matter, Petitioners cite to nothing in the record for these purported facts, in plain violation of Rule 208(b)(4), SCACR, which requires parties to cite the record to support the “salient facts.” For this reason alone, Petitioners’ argument should be ignored. Moreover, Petitioners do not deny receiving evidence of the dramatic increase, and their own attempt to reduce the premium a year later demonstrates – contrary to the bald and uncited assertions in their brief – that they recognized that they were paying far more than anticipated for flood insurance. (R. p. 412, Activity Log p. 7.)

Second, Petitioners received annual flood policy declarations pages clearly stating that the property had negative elevation. (R. pp. 336-43, Declaration Pgs.; R. p. 394, lines 3-25, Lyons Dep. p. 61; R. p. 416, lines 12-25, Farrell Dep. p. 115.) As a matter of law,

Petitioners had a duty to read and understand these documents, which were all part of their flood insurance contracts. *See Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); *Doub v. Weathersby-Breeland Ins. Agency*, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977); *Regions Bank v. Schmauch*, 354 S.C. 648, 663-64, 582 S.E.2d 432, 440 (Ct. App. 2003). A party to a contract cannot avoid the effect of the document's contents by claiming he did not read it. *Burwell*, 288 S.C. at 39, 340 S.E.2d at 789; *Doub*, 268 S.C. at 326, 233 S.E.2d at 114; *Regions Bank*, 354 S.C. at 663, 582 S.E.2d at 440. There is no evidence that Petitioners questioned the negative elevation plainly reflected on these declarations pages.

Third, Seacoast's regular policy and procedure was to discuss negative elevation issues with flood insurance customers. (R. p. 398, lines 5-11, Lyons Dep. p. 68.) There is no evidence from Seacoast indicating that such a conversation did not take place here. (*Id.*) Without evidence to the contrary, for purposes of summary judgment, the Court must assume that Seacoast followed its regular policies and informed Petitioners of the negative elevation and its ramifications. *Cf. Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 129, 399 S.E.2d 163, 164 (Ct. App. 1990) (noting that party opposing summary judgment must marshal evidence, not mere pleadings or arguments of counsel, to dispute material facts put forward by the moving party).

Each of these red flags taken separately would be enough to put a reasonable person on notice that there might be a problem with the elevation of the property and that they should inquire further. Taken together, the notice is overwhelming. The concept of inquiry notice centers on unusual circumstances and unexpected occurrences – things that would alert a reasonably cautious person that a situation warrants further inquiry. *See Spence v.*

Spence, 368 S.C. 106, 120, 628 S.E.2d 869, 876 (2006) (holding that inquiry notice arises when facts known provide “a clue” that a “reasonably cautious and prudent” person would investigate (internal citations omitted)); *see also Smith v. Grub*, 84 N.E.2d 421, 428 (Ill. 1949) (holding that parties have a duty to investigate “unusual circumstance[s]”). Here, Petitioners’ own pro forma demonstrates that their flood insurance premiums were unusually high and unexpected, and their own flood policy declarations pages revealed a negative elevation, which a reasonable person would not expect, yet Petitioners did not inquire further. These are exactly the kinds of circumstances that trigger the duty of reasonable inquiry. Thus, as the trial court correctly held, Petitioners’ decision to bury their heads in the sand is fatal to their claims.

Petitioners’ entire contrary argument in their brief appears to be based on a single inapposite case: *Benton v. Roger C. Peace Hosp.*, 313 S.C. 520, 443 S.E.2d 537 (1994). There, the Supreme Court held that statute of limitations on a medical malpractice claim did not begin to run until the plaintiff’s parents could reasonably discover that the plaintiff suffered neurological damage from a fall from a wheelchair. *Id.* at 524, 443 S.E.2d at 538. *Benton* has no application here because, as noted above, these Petitioners *could* reasonably have discovered their claims in this case based on the information they possessed long before March 20, 2006. Unlike the neurological damages at issue in *Benton*, the negative elevation issue was not hidden from view; to the contrary, it was readily apparent from the exponential increase in Petitioners’ flood insurance, the flood policy declarations pages, and the notice received from (and, as noted above, through) Seacoast, none of which required any kind of expertise to appreciate. Indeed, one hardly needs to be a real estate

expert to note a five-fold increase in one's flood insurance bill. Thus, Petitioners' claims are barred as a matter of law for failure to bring suit within the statute of limitations.

III. THE CLOSING ATTORNEYS HAD NO COMPREHENSIVE DUTY TO DETERMINE WHETHER THE PURCHASED PROPERTY COMPLIED WITH APPLICABLE BUILDING CODES, RULES, OR REGULATIONS.

As an alternate sustaining ground, Petitioners' claims against the Closing Attorneys fail as a matter of law because determining compliance with applicable building codes, rules, and regulations was outside the scope of their representation. Petitioners claim that the trial court erred in imposing a higher standard for notice as to the Petitioners than the professionals they hired. (Appellants' Initial Br. p. 32.) Notably, Petitioners attempt to bolster this meritless argument by adulterating a portion of the record and passing it off as genuine. Between pages 26 and 27 of their brief, Petitioners include page 695 of the Record, which is a copy of a survey of the subject property sent from the sellers' attorney to the Closing Attorneys. Petitioners have circled the elevation number, making it look like the sender was attempting to bring the negative elevation to the Closing Attorneys' attention. The copy in the Record – and the copy actually sent to the Closing Attorneys – contains no circle. It is highly improper for Petitioners to adulterate the document and misrepresent this version as genuine.

Regardless, the issue of whether or not the Closing Attorneys had a duty to review the survey for elevation purposes was a separate ground for summary judgment that was not ruled upon by the trial court in its Order. (R. p. 1, Summary Judgment Order at n. 1.) In fact, the lower court reserved argument and ruling on the Closing Attorneys' additional grounds for summary judgment. (*Id.*) As discussed in Part II above, the focus in a statute of limitations defense is only on the Petitioners and their knowledge and duty to inquire; thus, the question of whether or not the Closing Attorneys had a duty to review the survey

for elevation purposes is irrelevant to this appeal of the underlying court's Order. Moreover, as set forth at length in Part II, Petitioners' claim that the Closing Attorneys seek to impose a higher duty on Petitioners than themselves is disingenuous because the Closing Attorneys' statute of limitations argument relies on numerous red flags received by Petitioners, not a bare survey. Nevertheless, even if the duties of the Closing Attorneys were relevant, Petitioners' argument still fails as a matter of law because the Closing Attorneys had no duty to review the survey for elevation purposes. Pursuant to Rule 220(c), SCACR, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."

A legal malpractice claim has four essential elements: (1) an attorney-client relationship, (2) breach of a duty of care, and (3) damages to the client, and (4) proximate cause. *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010). Attorneys have no duty to provide services outside the scope of their representation. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 159-60 (Tex. 2004) (holding that attorney was not liable for failing to provide services outside scope of his representation of client); Restatement (Third) of the Law Governing Lawyers § 16 cmt c. (2000) ("[A] lawyer's duties are ordinarily limited to matters covered by the representation."). While a lawyer must exercise care within the scope of the representation, **"[t]he lawyer is not liable for failing to act beyond that scope."** Restatement (Third) of the Law Governing Lawyers § 50 cmt d. (2000) (emphasis added).

Here, the Closing Attorneys' representation was limited by the engagement letter that they sent to Petitioners, which did not include examination of building code compliance as one of the services to be provided. The scope was also limited by the nature

of the engagement – overseeing the closing of a real estate transaction – which does not include ensuring that the property or any of its structures comply with applicable building codes, rules, or regulations. Thus, the Closing Attorneys had no duty to advise Petitioners on building code compliance, and Petitioners’ case fails as a matter of law for lack of that essential element.

A. The Closing Attorneys Had No Duty to Advise Petitioners on Building Code Compliance Because No Such Service Was Listed in the Engagement Letter.

The Closing Attorneys did not have a duty to advise Petitioners on any potential building code or elevation issues because no such service was listed in the parties’ engagement letter. Under South Carolina law, attorneys may reasonably limit their representation of a client to particular issues or transactions. Rule 1.2(c), RPC, Rule 407, SCACR. The preferred method of defining the scope of a lawyer’s representation is through a written engagement letter. *See, e.g.*, 1 Ronald E. Mallen & Jeffrey M. Smith, Legal Malpractice § 2:11 (2011) (noting that written engagement letters are “a critical tool to defining the contours of a representation”).

Thus, in accordance with recommended practice, the Closing Attorneys sent Petitioners a detailed engagement letter that set forth the services they had agreed to provide. (R. pp. 284-89, Engagement Letter.) Those services centered on reviewing the purchase contract, performing the necessary title work, preparing the necessary property transfer documents, complying with the lender’s closing instructions, overseeing the closing, and ensuring that the necessary property documents were properly recorded. (*Id.*) The engagement letter does not include any services related to ensuring building code compliance, determining flood insurance guideline compliance, examining the elevation

of the property, or any other activity that would reasonably require determining whether the elevation of the property complied with any applicable building codes. (*Id.*)

It is well-settled that engagement letters reasonably limiting the scope of representation must be enforced. *See, e.g., Kansas Pub. Employees Ret. Sys. v. Kutak Rock*, 44 P.3d 407, 418-19 (Kan. 2002) (holding that attorney's duties are limited to services set forth in engagement letter and that attorney has no duty as a matter of law to provide other services); *AmBase Corp. v. Davis Polk & Wardwell*, 866 N.E.2d 1033, 1036-37 (N.Y. 2007) (dismissing legal malpractice action because alleged breach of duty concerned services outside the scope of the attorney's engagement letter); *Turner v. Irving Finkelstein & Meirowitz, LLP*, 879 N.Y.S.2d 145, 147 (N.Y. App. Div. 2009) (dismissing legal malpractice action because attorney's duties were limited by terms of the engagement letter). Here, there is no evidence that the Closing Attorneys' engagement letter was unreasonable. To the contrary, Petitioners' expert has not opined on the engagement letter (R. p. 730, Affidavit and Opinion of C. Joseph Roof p. 16), and, thus, it is undisputed that the engagement letter sufficiently defined and limited the Closing Attorneys' services. Consequently, the engagement letter must be enforced, and the lower court's Order should be affirmed on the grounds that the Closing Attorneys had no duty to make determinations or advise Petitioners regarding any building code or flood insurance regulation issues.

B. Attorneys Engaged to Oversee the Closing of a Real Estate Transaction Have No Duty to Ensure that the Purchased Property Complies with Applicable Building Codes and Regulations.

Petitioners' claims against the Closing Attorneys also fail because real estate closing attorneys have no duty to ensure compliance with applicable building codes or flood insurance guidelines. Closing attorneys are not insurers of the purchased property or the sales transaction. *Cf. Holy Loch Distribs., Inc. v. Hitchcock*, 340 S.C. 20, 27, 531

S.E.2d 282, 286 (2000) (holding that attorneys are required to exercise reasonable care and skill, not to ensure a particular result). Closing attorneys are professionals hired to perform a discrete set of tasks that focus on successfully transferring clear title to property that the purchaser has already agreed to buy. Thus, unless there is express agreement to the contrary (which is not alleged here), duties of closing attorneys are limited to those normally attendant to overseeing the closing of a real estate transaction.

In South Carolina, this Court has defined the tasks associated with overseeing the closing of a real estate transaction. Specifically, the Court has held that closing attorneys are required to oversee four steps of the closing process:

1) Title Search

The title search and preparation of title documents for the lender and subsequent preparation of related documents is the practice of law which must be performed or supervised by an attorney.

2) Loan Documents

A lender may prepare legal documents for use in financing or refinancing a real property loan so long as an independent attorney reviews them and makes any corrections necessary “to ensure their compliance with law.”

3) Closing

Real estate closings and mortgage loan closings should be conducted only under an attorney’s supervision. The supervising attorney may represent both the lender and the borrower after full disclosure and with each party’s consent.

4) Recordation of Documents

The recording of documents is the “final phase” of the real estate loan process and must be done under the supervision of an attorney.

Doe Law Firm v. Richardson, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006); *see also Doe v. McMaster*, 355 S.C. 306, 312-16, 585 S.E.2d 773, 776-78 (2003); *State v. Buyer's Serv.*

Co., Inc., 292 S.C. 426, 430-34, 357 S.E.2d 15, 19-20 (1987). By their terms, none of these tasks include examining the elevation of any structures on the purchased property, ensuring compliance with any building codes, determining compliance with any flood insurance regulations, or any similar tasks. *Id.*

There is no legal basis to suggest that the Closing Attorneys had any duty to examine elevation and advise Petitioners of the issue. Petitioners' only argument to the contrary is that their purported expert, C. Joseph Roof, baldly asserts that such a duty exists. However, Mr. Roof admitted that he could cite nothing – no treatise, case law, CLE materials, rules, regulations, or articles – for that opinion. (R. pp. 365, 369-70, Roof Dep. pp. 65, 101-02.) Thus, his opinion on the legal question of a closing attorney's duties should be disregarded. *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (disregarding expert testimony on issues of law). Indeed, expert testimony on this point is irrelevant because “[t]he existence and scope of [a] duty are questions of law” that the Court must determine. *Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994), *aff'd as modified by*, 329 S.C. 310, 494 S.E.2d 813 (1997). Based on the applicable case law, the Closing Attorneys had no duty with regard to the negative elevation issue, and Petitioners' claims fail as a matter of law.

Holding otherwise would endanger the practice of every residential real estate closing attorney in South Carolina. Petitioners' claim is that “[l]aws and codes and zoning are well known as important in South Carolina coastal areas,” so closing attorneys should ensure compliance with this undefined and nearly unlimited group of requirements. (Petitioner's Br. p. 25.) Indeed, Petitioners argue that, along the coast, “legally required elevations” are as common as “set back lines and density zoning,” and Petitioners claim

that real estate closing attorneys should ensure the seller's compliance with all such requirements.⁴ (Petitioner's Br. 32-33.) The assertion cannot withstand scrutiny: regulations concerning flood plain management alone consist of numerous technical documents, zoning ordinances, building and construction codes, and many other local, state, and/or federal rules, and compliance often depends on facts – such as when each portion of a structure was built – that a closing attorney would not ordinarily know.

Under Petitioners' argument, there would be no limitation on which facts a closing attorney must investigate or what regulations a closing attorney must examine to determine and ensure compliance as part of transferring ownership from one party to another. In reality, Petitioners contend that residential real estate closing attorneys are responsible for ensuring that the purchased property complies with the entire mountain of potentially applicable flood, building, and zoning requirements, and this contention is absurd, as it would transform closing attorneys from professionals with a discrete set of tasks centered on the transfer of clear title into insurers of the purchased property, tasked with expertise in numerous fields such as architecture, engineering, surveying, contracting, and insurance. Petitioners' argument should be rejected out of hand, and the trial court's Order should be affirmed on the additional sustaining grounds that the Closing Attorneys had no duty, as a matter of law, to determine whether the purchased property complied with applicable building codes or flood insurance regulations.

⁴ Petitioners suggest that all of Hilton Head has the same elevation requirement, but they cite nothing for this bald assertion, again violating Rule 208(b)(4), SCACR. Accordingly, this claim should be ignored.

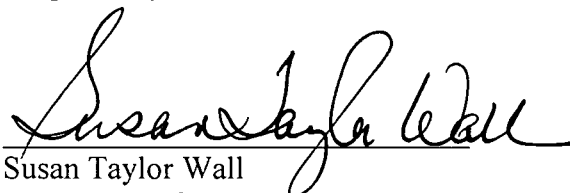
CONCLUSION

Petitioners had actual and constructive knowledge, placing them on inquiry notice, more than three years before filing suit against the Closing Attorneys. Petitioners have waived any dispute as to their constructive knowledge, through their agent, Seacoast, by failing to discuss this issue in their brief on appeal and Petitioners have, therefore, abandoned any challenge to the lower court's order granting summary judgment to the Closing Attorneys. The Court of Appeals' application of the two-issue rule should, therefore, be affirmed.

For this and all of the foregoing reasons discussed herein, and any other reason supported by the Record, the Court of Appeals' opinion affirming Summary Judgment in favor of the Closing Attorneys on all of Petitioners' claims should be AFFIRMED.

October 16, 2014

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Master-In-Equity

Appellate Case No. 2013-000375

Opinion No. 4995 (S.C. Ct. App. Filed June 27, 2012)

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

versus

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

Of whom

Thomas N. Dye, Jan H. Dye, Ken Oliver,
The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman
are the.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on October 16, 2014, the foregoing
RESPONDENTS LAURICH & DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN'S AMENDED BRIEF ON CERTIORARI was served on
all counsel of record via U.S. Mail, addressed as follows:

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A handwritten signature in black ink, appearing to read "Susan J. Wall", is written over a horizontal line.

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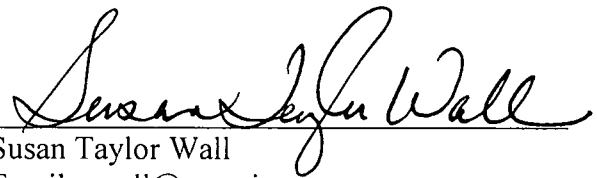
Of whom

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Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman
are the.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that Respondents Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman's Amended Brief on Certiorari complies with Rule 211(b), SCACR.

October 16, 2014



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