

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM SPARTANBURG COUNTY CIRCUIT COURT
THE HONORABLE J. DERHAM COLE

C. A. NO. 2009-CP-42-00781
APPELLATE CASE NO. 2013-002439

Tuck and Howell, Inc.....Respondant

vs.

Ray and Mary Long.....Appellant

INITIAL BRIEF OF APPELLANT

Mr. O. W. Bannister, original attorney for the Appellant, now dismissed
P. O. Box 10007
Greenville, SC 29603

Mr. James P. Walsh, Esquire, attorney for the Respondant
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STATEMENT OF ISSUES ON APPEAL

- 1) We were not fairly represented by our attorney. There were pieces of important evidence that were not presented by him.
- 2) Our attorney did not subpoena several important witnesses that he said he was going to subpoena to testify on our behalf.
- 3) There were false statements made by the witnesses for the opposing party with no objections by our attorney.
- 4) Mr. Bannister misrepresented us by dropping the first "cause of action" (which related to the negligence against Tuck & Howell Inc) and went only on the warranty.

STATEMENT OF THE CASE

From September 16, 2013 through September 18, 2013, the Defendant, Tuck and Howell Inc., being accused of negligence and breach of warranty was tried by a jury trial. On September 18, 2013, The Honorable J. Derham Cole officiant in the Judgement Civil Case Number 2009CP4200781 in the State of South Carolina, County of Spartanburg handed down the jury's verdict of guilty of breach of the implied warranty in the sum of \$6,500. Mr. Bill Bannister, attorney for the Plaintiffs, unknowingly to the Appellants, dropped the cause of action relating to negligence at the end of the trial and went only on the warranty. Therefore, we were not awarded anything for our health being severely damaged, losing our home, the vast expenses that we have accumulated due to additional doctor's visits, having to rent a place to live, etc. It is from that final verdict and order that the Appellant appeals to this Court for a new jury trial for the cause of negligence

ARGUMENT

1) EVIDENCE

- a) Two air quality tests showing very high particle counts in the air in our home were not introduced as evidence. This was a very important part of our case.
- b) We had pictures showing the aluminum oxide powder that was blown all over the inside of our home that were not introduced as evidence.
- c) Mr. Bannister did not present our medical records showing the health problems that we have developed since our exposure to the different toxins. This included tests that showed high metal toxicity in both of our bodies.
- d) Information regarding the fact that the Respondant, Tuck & Howell Inc., did not acquire an installation permit and therefore, did not request that a final inspection be performed by Greenville County Codes Department was not presented.
- e) We had filed a complaint with the South Carolina Licensing Board. The licensing board agreed with our evidence/information regarding the problems we were having. In turn, they concluded that Tuck and Howell Inc was in fact guilty of negligence. Papers were sent to Tuck and Howell Inc. regarding this decision. Tuck and Howell Inc signed the papers admitting their negligence. Their negligence included the following: (1) installing uncoated coils that they knew to have had problems in the past; (2) wiring the condensate pump incorrectly. Due to them wiring the condensate pump incorrectly, the pump did not pump condensation off of the unit and to the outside of the crawl space area. They wired the pump to the light switch under the house. Therefore, unless the light was turned on for the purpose of seeing in the crawl space, the pump did not operate. This water backing up into the unit caused aluminum oxide to be created. It also caused mold in and around the system; (3) faulty work that caused refrigerant leaks three separate times and (4) Tuck and Howell had Steamatic of Greenville to come out to try to vacuum the aluminum oxide out of the ductwork. Mr. Tuck obviously knew about the water, mold, aluminum oxide and bacteria in the heat pump system because unknowingly to us at the time, he also had Steamatic of Greenville to perform a mold treatment while they were under our home. They were aware of the problems that they had caused with the water, mold, aluminum oxide and bacteria under the house and did not disclose these things to us. They also had the mold treatment/a chemical sprayed under our home without disclosing this. All of the toxins from the water, mold, aluminum oxide, bacteria and the chemical treatment were all being

blown into our home for us to breathe for a long period of time. We did not know at this time about all of the toxins existing. Later when we found out and discussed this with our doctor, he told us to get out of the house and to never go back.

information regarding the fact that the Respondant, Tuck & Howell, Inc., had signed papers that were sent to them by the South Carolina State Licensing Board admitting their negligence/guilt was not included in the trial. Had a final inspection been completed after the installation of the heat pump and ductwork, the faulty work would have been discovered.

2) WITNESSES

- a) Only three of our ten witnesses were subpoenaed to appear in court. One of these three was unable to appear in court due to injuries sustained in a recent auto accident. Please refer to our letter with attachments dated 11/01/2013 that lists the witnesses that were not subpoenaed. These witnesses would have been able to supply testimonies crucial to the outcome of our trial.

3) FALSE STATEMENTS

- a) There were false statements made by several witnesses for the opposing party in their favor. Mr. Bannister made no objections to these false statements, nor did he attempt to present our evidence that would show these statements to not be the truth.

4) ATTORNEY DROPPING THE MAIN PART OF OUR CASE

- a) After reading the trial transcript, we realized that our attorney, Mr. Bannister, dropped the main part of our case which was related to the negligence by Tuck & Howell Inc. and went only on the warranty. This happened at the very end of the trial after a timely discussion in the judge's chambers between the judge and the attorneys. We have no idea what transpired back there. We were not consulted by our attorney before he made this ridiculous move in the Respondant's favor. He was hired to represent us but he did not do all that he could to represent us. Due to all of our evidence and witnesses not being presented and the negligence being dropped, Tuck and Howell Inc. has not had to pay any repercussions for any of the damages and expenses that they have caused us. Obviously, negligence was the main part of our case against Tuck and Howell Inc. Basically, we didn't have a trial, as such, due to him dropping the negligence case behind our backs. We feel that as senior citizens, we were taken advantage of and that we were not given the chance that we should have had for a fair trial. Everyone is supposed to have the right to a fair trial.

CONCLUSION

Our attorney misrepresented us and did not go into this trial looking out for our best interest. This is obvious to us because (1) much of our most important evidence was not presented; (2) several very important witnesses were not subpoenaed to testify on our behalf; (3) Mr. Bannister did not even attempt to make right the false statements that were made and (4) Mr. Bannister dropped the most important part of the lawsuit which was the "cause of negligence".

We feel that we deserve a second chance through an appeal for all of our evidence and witnesses to be presented on our behalf. We respectfully request the court to find merit in our argument and grant us an appeal allowing all of our evidence and witnesses to be provided to a jury since we were not given the right originally.

Mary Long

Mary Long, Appellant

Ray Long

Ray Long, Appellant

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