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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Case No. 2010-CP-40-8155  
Appellate Case No. 2014-000272

Howard Nankin and Nancy Nankin, Plaintiffs,  
v.  
Donald M. Danford d/b/a Don Danford Interiors, Defendant.  
Donald M. Danford d/b/a Don Danford Interiors, Third Party Plaintiff,  
v.  
Jeff Stahl, Third Party Defendant,  
Of Whom Howard Nankin and Nancy Nankin are the Appellants,  
and  
Donald M. Danford d/b/a Don Danford Interiors is the Respondent.

FINAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in determining that Respondent's actions did not rise to the level of affecting the public interest to justify an award of treble damages and attorneys' fees?
2. Did the trial court err in determining that Appellants failed to prove the necessary elements to support their causes of action for negligent misrepresentation and fraud?

## STATEMENT OF THE CASE

This action arises out of dispute between Appellants and Respondent, an interior designer and decorator by trade, over the performance and roles played by Respondent in the remodel of the master bathroom in Appellants' home. Appellants filed this action against Respondent on November 19, 2010. (R. pp. 13-27). Appellants alleged causes of action for breach of contract, negligence, negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act ("SCUPTA"). Appellant's alleged that Respondent did not hire a general contractor as he agreed to do, but instead Respondent performed the work of a general contractor himself without Appellant's knowledge and without proper licensure. On December 23, 2010, Respondent served a Motion to Dismiss, or in the Alternative, to Stay the action arguing that Appellants failed to comply with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. §§40-59-810 *et seq.* Additionally on December 23, 2010, Respondent served a Motion to Dismiss pursuant to Rule 12(b)(7), SCRCF arguing that Appellants failed to join other owners of record of the home in dispute. At the time of the filing of this Motion, Appellant Howard Nankin did not own an interest in the home at issue, and Appellant Nancy Nankin's two daughters owned an interest.

On December 29, 2010, Respondent filed his Answer, Counterclaim, and Third-Party Complaint. (R. pp. 28-33). Respondent generally denied the allegations of

Appellants' Complaint and asserted that Appellants chose not to hire a general contractor because the price was too high. Additionally, Respondent asserted that he assisted Appellant Nancy Nankin in coordinating craftsmen and material deliveries at her request. Respondent's Counterclaim asserted that he was still owed money from Appellants for design services, assistance on the Project, and expenses he advanced. Respondent also filed a Third-Party Complaint against Jeff Stahl ("Stahl"), who initially performed tile work on the Project. Respondent sought damages against Stahl for any damages awarded against Respondent for defective tile work on the Project. On January 12, 2011, Appellants filed their Reply to Respondent's Counterclaim. (R. pp. 34-37). Appellants generally denied the allegations of the Counterclaim and asserted nine additional affirmative defenses, including the defense that Respondent was not properly licensed thus rendering his contract with Appellants unenforceable by Respondent.

Appellants and Respondent resolved Respondent's Motion to Dismiss pursuant to Rule 12(b)(7) after Appellant Nancy Nankin's daughters deeded their interest in the subject home to Appellant Nancy Nankin. Respondent's Motion to Dismiss, or in the Alternative, to Stay the action regarding Appellants' alleged failure to comply with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act was heard before G. Thomas Cooper, Jr., Circuit Court Judge on April 20, 2011. By Order dated May 19, 2011 and filed May 20, 2011, Judge Cooper denied Respondent's Motion, finding that Respondent was "not a licensed professional and therefore [] not entitled to protection under this statute." On June 16, 2011, Stahl served his Answer to the Third-Party Complaint denying any liability for defective tile work.

The parties tried this action without a jury before Edgar W. Dickson, Circuit Court Judge on October 4, 2012. On April 18, 2013, Judge Dickson signed an Order awarding Appellants Twelve Thousand Nine Hundred Twenty-Seven Dollars (\$12,927.00) on their breach of contract cause of action and awarding Respondent Six Thousand Four Hundred Dollars (\$6,400.00) on his Third-Party Complaint against Stahl. (R. pp. 1-9). The Order denied Appellants any relief under their SCUPTA cause of action and made no findings or rulings on Appellants' negligence, negligent misrepresentation, and fraud causes of action. Additionally, the Order found Respondent's Counterclaim barred by S.C. Code Ann. §40-59-30(B). Judge Dickson's April 18<sup>th</sup> Order was filed on May 9, 2013.

On May 9, 2013, Appellants filed a Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRCF. (R. pp. 38-40). In their Motion, Appellants requested a ruling on their negligence, negligent misrepresentation, and fraud causes of action. Appellants also requested Judge Dickson to alter or amend the portion of his April 18<sup>th</sup> Order wherein he found that Appellants failed to establish that Respondent's unfair or deceptive acts or practices affected the public interest. By Order dated January 17, 2014 and filed January 24, 2014, Judge Dickson denied Appellants' Motion to Alter or Amend. (R. pp. 10-12). Judge Dickson reaffirmed his ruling that Respondent's actions and the crux of Appellants' Complaint were "simply a private contractual matter between [Appellants] and [Respondent] which did not rise to the stature of affecting the public interest." The January 17<sup>th</sup> Order also found that Appellants' causes of action for negligent misrepresentation and fraud "failed in several respects." The January 17<sup>th</sup> Order still did

not address Appellants' negligence cause of action, although Appellants are not seeking a ruling on that cause of action on appeal.

Appellants filed and served their Notice of Appeal in the Court of Appeals on February 18, 2014 and in the Court of Common Pleas, Richland County on February 24, 2014. Appellants appeal both Judge Dickson's April 18<sup>th</sup> Order denying relief under their SCUPTA cause of action as well as Judge Dickson's January 17<sup>th</sup> Order affirming the denial of relief under their SCUPTA cause of action and denying relief under their negligent misrepresentation and fraud causes of action.

#### FACTS

The facts of this case as outlined below are the factual findings of the trial court following a one day bench trial. Additional citations to the Record are also provided to assist the Court on review. Appellants do not dispute or take issue with these findings, but instead contend that the trial court incorrectly applied the facts it found to the law. Because there is no cross-appeal and because Appellants do not dispute the factual findings of the trial court, those findings are undisputed and the law of the case.

Appellants own and live in the residence at 247 Southlake Drive in Columbia, South Carolina and decided to renovate the master bathroom of their home (the "Project"). Specifically, Appellants wanted to upgrade all existing features of their master bathroom as well as install a handicap accessible shower to ensure that the renovated bathroom remained usable and practical as Appellants grew older. (R. p. 129, lines 19-21). Appellants were referred to Respondent as an interior designer, and Appellants enlisted Respondent as a decorator to design the Project. (R. p. 61, lines 15-17; R. p. 129, line 22-p. 130, line 2). Respondent agreed to perform the decorating work

and also told the Appellants that he would locate a contractor to perform the renovation. (R. p. 130, line 15-p. 131, line 4). Respondent contacted David Noss, a licensed residential builder, to provide an estimate for the Appellants' bathroom. (R. p. 59, lines 19-24). Mr. Noss visited the home and prepared an estimate, which he gave directly to Respondent. (R. p. 126, line 24-p. 127, line 6; R. p. 128, lines 4-6). Respondent told the Appellants that the estimate was too high. (R. p. 131, line 22-p. 132, line 2).

Respondent then presented the Appellants with a second estimate written on Respondent's letterhead showing that the project would cost \$25,974.25, which was within Appellants' budget. (R. p. 17, ¶ 9; R. p. 27; R. p. 29, ¶ 8). The estimate on Respondent's letterhead contained a line item for "Contractor's Fees" in the amount of \$3,800.00, which supported the notion that Respondent would obtain a contractor. (R. p. 27). In subsequent invoices, the amount of \$3,800 was shown as fees to Respondent for labor. (R. p. 63, line 15- p. 64, line 5). Respondent explained to the Appellants that Mr. Noss had reworked his estimate for them to meet budget. (R. p. 60, line 22-p. 62, line 14). Respondent represented to the Appellants that his only charges were for decorating services at \$125.00 per hour. (R. p. 131, line 22-p. 132, line 15). The Appellants agreed to the price and the work began. (*Id.*)

Rather than hire a general contractor on Appellants' behalf as promised, Respondent directly ordered and paid for materials for the Project and directly hired, paid, and coordinated subcontractors to perform the various tasks required to complete the Project. (R. p. 63, line 5-p. 83, line 9). Respondent also self-performed some of the construction. (R. p. 63, lines 11-14). Respondent is neither a licensed general contractor nor a licensed residential builder. (R. p. 17, ¶ 10; R. p. 28, ¶ 2; R. p. 59, lines 12-18).

Appellants made all payments directly to Respondent. (R. p. 133, line 24-p. 134, line 1). Appellants were not informed that Respondent was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a contractor. (R. p. 132, line 16-p. 133, line 5).

Appellants experienced problems throughout the Project as a result of poor planning and coordination by Respondent. (R. p. 135, lines 16-22.) As the Project progressed, Appellants began to notice evidence of poor workmanship and quality throughout the various aspects of the Project. (R. p. 135, line 23-p. 159, line 16). Appellants eventually discovered that Respondent had not hired a general contractor and was performing that task himself. (R. p. 133, lines 6-18). As a result of the poor and unacceptable work and Respondent's concealing of the fact that he was acting as the general contractor for the Project, Appellants terminated Respondent, fixed the bathroom so that it was in a usable condition, and lived with various problems and deficiencies during the pendency of this action. (R. p. 135, line 23-p. 136, line 8; R. p. 136, line 24- p. 137, line 3; R. p. 148, line 4-p. 154, line 24; R. p. 161, line 4-p. 162, line 12). Later, Appellants also discovered that Respondent had entered into similar agreements with at least two other clients whereby he performed the duties of a contractor without a license. (R. p. 83, line 14-p. 91, line 13).

Appellants paid Respondent \$24,895.75 for an incomplete and poorly constructed master bathroom. (R. p. 103, lines 13-23). Appellants corrected some of the deficiencies themselves and solicited a bid from Arthur Suggs, a licensed general contractor and residential builder, to correct the defective work and complete the Project. (R. p. 160, lines 9-12.) At trial, Mr. Suggs was duly qualified as an expert in residential

construction, and his testimony was unopposed. (R. p. 163, line 21-p. 164, line 11). Significant amounts of the poor work performed by Respondent must be torn up and re-done to properly remedy the defective condition of the Project at a significant cost. (R. p. 165, line 22-p. 166, line 19). Appellants paid Respondent \$24,895.75 on a project that was supposed to cost \$25,974.25. (R. p. 68, lines 1-13; R. p. 103, lines 13-23). Additionally, the Appellants received an estimate of \$22,951.00 from Mr. Suggs to correct the defective workmanship in their master bathroom and to complete the Project. (R. p. 167, lines 16-20).

#### STANDARD OF REVIEW

“In an action at law, on appeal of a case tried without a jury, the appellate court’s standard of review extends only to the correction of errors of law.” *Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271, 705 S.E.2d 73, 76 (Ct. App. 2010) (quoting *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004)). “The trial judge’s findings of fact will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or controlled by an erroneous conception of the application of the law.” *Pope v. Gordon*, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006) (quoting *Gordon v. Colonial Ins. Co.*, 342 S.C. 152, 536 S.E.2d 376 (Ct. App. 2000)).

## ARGUMENTS

1. THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS FAILED TO SATISFY THE “PUBLIC INTEREST” ELEMENT OF THEIR CAUSE OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT, BECAUSE APPELLANTS PRESENTED EVIDENCE THAT RESPONDENT’S ACTIONS HAD OCCURRED IN THE PAST THUS MAKING THEM LIKELY TO OCCUR IN THE FUTURE.

S.C. Code Ann. §39-5-20(a), provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are...unlawful.”

To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant’s unfair or deceptive act(s).

*Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). “An impact on the public interest may be shown if the acts or practices have the potential for repetition.” *Hollman v. Woolfson*, 384 S.C. 571, 580, 683 S.E.2d 495, 499 (2009) (internal citations omitted).

In its Order of April 18, 2013, the trial court found that Respondent engaged in unfair or deceptive acts or practice, i.e., engaging in construction without a license, when he personally performed a contractor’s duties while working on Appellants’ home and when he offered to returned to Appellants’ home to correct deficiencies in his work (R. pp. 5-7);<sup>1</sup> however, the trial court did not find that Respondent’s actions were capable of

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<sup>1</sup> The Court made no express ruling on whether Appellants suffered monetary or property loss as a result of Respondent’s actions as it specifically related to Appellants’ SCUPTA cause of action. In their Motion to Alter or Amend, Appellants requested a ruling on this issue if the trial court did not believe that element was met. The trial court made no such

repetition or that they affected the public interest to the extent required for a recovery under the SCUPTA (R. p. 7). Conversely, the trial court found that by choosing to undertake a contractor's duties without obtaining a license Respondent violated a statute enacted for the protection of the public. (R. pp. 6-7); *see also W&N Constr. Co., Inc. v. Williams*, 322 S.C. 448, 450, 472 S.E.2d 622, 623 (1996) (discussing rulings from other jurisdictions not allowing unlicensed contractors to enforce a contract for construction despite absence a clear statutory mandate, "The rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent."); *Summers v. Harrison Constr.*, 298 S.C. 451, 456, 381 S.E.2d 493, 496 (Ct. App. 1989) ("The chapter on residential home builders is designed to benefit the public in general by insuring that only licensed builders perform residential building."). The trial court further found that Respondent had performed work without a license on at least two prior occasions. (R. p. 7) (Order, Apr. 18, 2013, p. 7 ("Plaintiffs presented uncontested evidence that Danford has entered into similar arrangements with at least two other clients in the past, where he was performing the duties of a contractor without a license.")). Invoices from Respondent to Rich and Mary Edelson dated July 12, 2010 and invoices from Respondent to Jackie Warrington dated November 23, 2010 were presented and not disputed; both of which were for similar residential construction projects Respondent was not licensed to perform. (R. p. 7). Had Respondent properly obtained a license for the work he performed, Appellants and other members of the

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ruling. (R. pp. 10-12) (Order, Jan. 17, 2014). For purposes of this Brief, Appellants assume this element is met based on the trial court's rulings on Appellants' other causes of action. To the extent the appellate court does not find the trial court adequately addressed this element of Appellants' SCUPTA cause of action, Appellants request a remand to the trial court for a determination of this issue.

public for whom Respondent performed work would have received the additional protection of a bond in the event Respondent did not properly perform his work, as he did in this case. *See* S.C. Code Ann. § 40-59-220(C) & (D). Still, the trial court found that Respondent's actions did not arise to the "potential for repetition" threshold required to recover under the SCUPTA. (R. p. 7).

The "potential for repetition" element of a SCUPTA claim is the method by which a plaintiff **shows** that the unfair or deceptive act or practice has an impact on the public interest. *Wright*, 372 S.C. at 29, 640 S.E.2d at 501 (quoting *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004)) ("An impact on the public interest may be shown if the acts or practices have the potential for repetition."). A plaintiff can satisfy the "potential for repetition" element of a SCUPTA cause of action in one of two ways and is not required to show both:

The potential for repetition may be demonstrated **in either of two ways**: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts.

*Id.* at 30, 640 S.E.2d at 502 (citing *Singleton*, 358 S.C. at 379, 595 S.E.2d at 466) (emphasis added). Appellants elected to show Respondent's actions affected the public interest and were capable of repetition by showing that these same actions occurred in the past. Because the Respondent's actions occurred repeatedly in the past, they have—as a matter of law—risen to the "potential for repetition" threshold requirement to show an effect on public interest. As a result, Respondent's unfair or deceptive acts or practices are actionable under the SCUPTA.

The trial court also found that the underlying dispute is between two private parties and, therefore, does not significantly affect the public at large. (R. p. 7).

However, once Appellants showed the potential for repetition, they satisfied the “public interest” requirement of a SCUPTA cause of action: “After alleging and proving facts demonstrating the potential for repetition of the defendant’s actions, the plaintiff has proven an adverse effect on the public interest. The plaintiff need not allege or prove anything further in relation to the public interest requirement.” *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) (internal citations omitted). Because Appellants introduced evidence proving Respondent’s potential for repetition, they proved an adverse effect on the public interest and were entitled to recover under the SCUPTA. Therefore, the trial court erred as a matter of law in refusing to award Appellants relief under their SCUPTA cause of action. This action should be remanded to the trial court for a ruling on the award of treble damages and attorneys’ fees pursuant to S.C. Code Ann. § 39-5-140(a). *See* S.C. Code Ann. § 39-5-140(a) (“If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney’s fees and costs.”).

2. THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS COULD NOT RECOVER UNDER THEIR CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION, BECAUSE APPELLANTS PRESENTED EVIDENCE TO SATISFY ALL ELEMENTS OF THIS CAUSE OF ACTION.

In order to prevail on their negligent misrepresentation claim, Appellants were required to prove six elements:

- (1) the defendant made a false representation to the plaintiff;
- (2) the defendant had a pecuniary interest in making the statement;
- (3) the defendant owed a duty of care to see that he communicated truthful

information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

*Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) (quoting *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000)). At trial, Appellants presented evidence to satisfy all six elements.

In its April 18<sup>th</sup> Order, the trial court found that Respondent falsely represented he would hire a general contractor when, in fact, he intended to do the work himself. (R. pp. 2-3) (Order, Apr. 18, 2013, pp. 2-3). Respondent had a pecuniary interest in making this statement, as he could retain the “contractor’s fee” itemized in the estimate provided to Appellants. (R. p. 2 (“The estimate on Danford’s letterhead contained a line item for ‘Contractor’s Fees’ in the amount of \$3,800.00, which supported the notion that Danford would obtain a contractor. In subsequent invoices, the amount of \$3,800 was shown as fees to Danford for labor. . . . Danford represented to the Plaintiffs that his only charges were for decorating services at \$125.00 per hour.”)). Respondent, as Appellants’ agent, owed a duty of care to convey truthful information to Appellants. *See Armstrong v. Collins*, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005) (quoting *Redwend Ltd. P’ship v. Edwards*, 354 S.C. 459, 474, 581 S.E.2d 496, 504 (Ct. App. 2003)) (“A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction.”). Respondent breached this duty by failing to be forthright with Appellants, and the Appellants relied on Respondent’s representations. The trial court’s April 18<sup>th</sup> Order contains findings to support both of these elements of Appellants’ negligent misrepresentation claim.

Plaintiffs were not informed that Danford was performing the duties of a general contractor on the Project and, in fact, believed that he had hired a

contractor. . . . As a result of the poor and unacceptable work and **Danford's concealing of the fact that he was acting as the general contractor for the Project . . . .**

(R. p. 3 (emphasis added)). Finally, Appellants presented evidence of the monetary loss they suffered as a result of Respondent's negligent misrepresentations. (R. p. 4 ("The Plaintiffs have paid \$2,127.00 to bring the bathroom to a usable condition. Additionally, the Plaintiffs received an estimate of \$22,951.00 from Mr. Suggs to correct the defective workmanship in their master bathroom and to complete the Project.")).

The trial court erred in failing to find in Appellants' favor on their negligent misrepresentation cause of action, because Appellants presented ample evidence which was accepted by the trial court in its factual findings to support an award under this cause of action.

3. THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS COULD NOT RECOVER UNDER THEIR CAUSE OF ACTION FOR FRAUD, BECAUSE APPELLANTS PRESENTED EVIDENCE TO SATISFY ALL ELEMENTS OF THIS CAUSE OF ACTION.

To recover under their fraud cause of action, Appellants were required to prove the following nine elements by clear and convincing evidence:

- (1) a representation;
- (2) its falsity;
- (3) its materiality;
- (4) either knowledge of its falsity or reckless disregard of its truth or falsity;
- (5) intent that the representation be acted upon;
- (6) the hearer's ignorance of its falsity;
- (7) the hearer's reliance on its truth;
- (8) the hearer's right to rely thereon; and
- (9) the hearer's consequent and proximate injury.

*Armstrong*, 366 S.C. at 218, 621 S.E.2d at 375. As explained above, Respondent made a false representation to Appellants that he would hire a contractor to oversee the construction of the Project. Respondent's representations were material to Appellants' decision to move forward with the Project as evidenced by the fact that Respondent was fired when his misrepresentations were discovered. (R. p. 3) (Order, Apr. 18, 2013, p.3

“As a result of the poor and unacceptable work and Danford’s concealing of the fact that he was acting as the general contractor for the Project, Plaintiffs terminated Danford . . . .”)). Respondent was obviously aware that his representations were false. Further, Respondent intended for Appellants to act on his representations by hiring him, and, as the trial court found, he actively concealed the fact that he was acting as the general contractor for the Project. (R. p. 3; R. p. 5 (“ . . . **Danford’s concealing of the fact** that he was acting as the general contractor for the Project . . . .”; “Danford breached his contract with Plaintiffs by failing to hire a general contractor and **concealing this fact from Plaintiffs . . . .**” (emphasis added)). The trial court found that Appellants were unaware that Respondent was acting as the contractor. (R. p. 3 (“At this point Plaintiffs discovered that Danford had not hired a general contractor and was performing that task himself.”)). Appellants had the right to rely, and did rely, on Respondent’s representations. As a result of the fraud committed by Respondent, Appellants suffered damages in the form of an unsuitable and barely useable master bathroom that will require extensive repairs, as noted above.

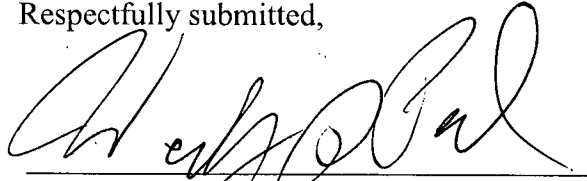
The trial court erred in failing to decide in Appellants’ favor on their fraud cause of action, because the evidence presented by Appellants and the findings of the trial court satisfy all nine elements of fraud. Appellants are entitled to an award of actual damages under this cause of action as well as hearing on punitive damages.

#### CONCLUSION

For the reasons stated above, this Court should reverse the trial court’s holding that Appellants cannot recover under their SCUPTA cause of action, reverse the trial court’s holding that Appellants did not satisfy the necessary elements to prevail on their

negligent misrepresentation claim, and reverse the trial court's holding that Appellants should not recover under their fraud cause of action. This action should be remanded to the trial court for further proceedings to determine that amount of attorneys' fees and costs to which Appellants are entitled and to determine whether treble damages are warranted under Appellants' SCUPTA cause of action. This action should also be remanded to the trial court for further proceedings to determine whether Appellants are entitled to punitive damages under their fraud cause of action.

Respectfully submitted,



December 22, 2014

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

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Case No. 2010-CP-40-8155  
Appellate Case No. 2014-000272

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Howard Nankin and Nancy Nankin.....Appellants,

v.

Donald M. Danford d/b/a Don Danford Interiors.....Respondent.

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APPELLANTS' BRIEF CERTIFICATION

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I certify that the Final Brief of Appellants and Final Reply Brief of Appellant conforms to the requirements of Rule 211(b) of the Appellate Court Rules.

December 22, 2014



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THE STATE OF SOUTH CAROLINA  
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PROOF OF SERVICE

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I do hereby certify that on this 23<sup>rd</sup> day of December 2014, I served the **Record on Appeal, Final Brief of Appellant and Final Reply Brief of Appellant**, upon the Respondent by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed to his attorney of record as follows:

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