

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-10-978

Jacob de la Cruz,

v. James Otterberg a/k/a James Michael Otterberg &
Laura Otterberg a/k/a Laura Bagwell Otterberg,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
- Statement of Judgment by the Court:

Plaintiff's Negligent Misrepresentation and Fraud causes of action came before the Court for a trial by jury on December 15-18, 2014.

At the close of Defendants' case, the Court granted a directed verdict in favor of Defendants as to Plaintiff's Fraud cause of action only. To maintain a claim for fraud, a plaintiff must show by clear and convincing evidence:

- (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (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.

McLaughlin v. Williams, 379 S.C. 451, 456, 665 S.E.2d 667, 670 (Ct. App. 2008) (citing Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007)). "The key difference between fraud and negligent misrepresentation is that fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated upon transmission of a negligently made false statement." Id. (citing Armstrong v. Collins, 366 S.C. 204, 219-20, 621 S.E.2d 368, 375-76 (Ct. App. 2005)). This Court finds the record is devoid of clear and convincing proof of the elements of Fraud. This Court made specific findings of fact and conclusions of law on the record as to the granting of the directed verdict on Plaintiff's Fraud cause of action. Plaintiff's Fraud cause of action is hereby dismissed with prejudice.

Thereafter, the jury found for Plaintiff on the Statute of Limitations. As to Plaintiff's Negligent Misrepresentation cause of action, all issues have been tried and a verdict rendered in favor of Defendants. The jury apportioned ninety-nine percent (99%) fault to the Plaintiff and one percent (1%) fault to Defendants. Pursuant to Berberich v. Jack, 392 S.C. 278, 286, 709 S.E.2d 607, 211 (2011), the Court enters judgment for Defendant. Post-trial motions were heard and respectfully denied.

2014 DEC 19 AM 10:18
JULIE ARMSTRONG
CLERK OF COURT
FILED

Defendants entered an Offer of Judgment, pursuant to Rule 68(b), SCRCP, which was filed with the Charleston County Clerk of Court on October 10, 2014. Rule 68(b), SCRCP provides: "If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment . . . or (3) if the offeror is a defendant, reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of the judgment." At the close of the case, Defendants waived recovery under 68(b), SCRCP.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

T.R. Jepperson
Circuit Court Judge

2128
Judge Code

Dec. 18, 2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

T.O. Sanders, Esq.

ATTORNEY FOR PLAINTIFFS

Neil Thomson, Esq.

ATTORNEY FOR DEFENDANT

CLERK OF COURT

Court Reporter: Denise Lauder