

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

Appellate Case No.: 2013-002397

Fireman's Fund Insurance Company, a/s/o Stig Wennerstrom.....Appellant,

v.

Searcy Custom Homes, LLC and B&B Plumbing, Inc.....Respondents.

FINAL BRIEF OF RESPONDENTS SEARCY CUSTOM HOMES, LLC AND B&B
PLUMBING, INC.

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN DETERMINING THAT A SALE IS REQUIRED FOR A CLAIM OF WARRANTY OF HABITABILITY?**
- II. WAS TRIAL COURT CORRECT IN FINDING THE EVIDENCE DID NOT JUSTIFY A JURY CHARGE ON THE ISSUE OF PLAINTIFF'S WARRANTY OF HABITABILITY CLAIM**

STATEMENT OF THE CASE

The Appellant, Fireman's Fund Insurance Company, filed this case as subrogee of its insured, Stig Wennerstrom ("Wennerstrom"), alleging that Respondents should have installed additional plumbing safety measures to prevent against flooding as a result of a loose water line in the residential home of its insured (hereinafter "home"). Fireman's Fund alleged that on January 24th, 2009 a supply line to a bidet came loose and began to flood the unoccupied home. Appellant specifically alleged that Respondents should have installed a plumbing mechanism "for shunting water away from the home in the event of the inevitable failure of the water pressure regulator." Plaintiff's Complaint was filed on February 8, 2011. The original complaint did not allege a cause of action for Breach of the Warranty of Habitability, which is the cause of action at issue in this appeal.

Respondents made motions for summary judgment prior to trial on all causes of action. Prior to trial, The Honorable Judge Derham Cole granted Respondents' motions as to the causes of action for breach of contract and breach of the implied warranty of workmanlike service. Judge Cole ruled that Appellant could not maintain a cause of action for breach of contract because there was no evidence that Searcy and B&B breached the contract. (R. p. 1-2) Judge Cole further ruled that Appellant could not maintain a cause of action for breach of the warranty of workmanlike service because:

Defendants' motion for summary judgment as to the **breach of implied warranty** is **GRANTED**. There is no evidence that Searcy failed to construct the home in accordance with applicable national, state, and/or local building code, law, regulation, ordinance, or industry standard, as alleged by Plaintiff. Plaintiff's expert confirmed that the water system was installed and configured according to industry standards and applicable building codes, and there is no evidence that any installed product used was defective in any way.

Appellant has not appealed either of those rulings and they are not at issue in this appeal.

Approximately two weeks prior to trial, on September 18th, 2013, Plaintiff moved to amend its Complaint to add a cause of action for breach of warranty of habitability. (See Plaintiff's Motion to Amend). Circuit Court Judge J. Mark Hayes Jr. allowed the amendment pursuant to South Carolina Rules of Civil Procedure Rules 15(a) and 15(b) due to a lack of prejudice to the Respondents over objection.

A jury trial in the case was held in the Spartanburg County Court of Common Pleas before Circuit Court Judge J. Mark Hayes Jr. on September 30, October 1 and October 2, 2013. At the time of trial only causes of action for negligence and breach of the warranty of habitability were tried. Appellant only called two witnesses, a forensic engineer retained by Fireman's Fund and a Fireman's Fund adjuster, Scott Klaben. Mr. Wennerstrom did not appear at trial.

Respondents made motions for summary judgment prior to the beginning of the trial and motions for directed verdict at the close of Appellant's case and also at the close of Respondent's case. (R.p. 103 and R.p. 578). Each of those motions were made to dismiss the warranty of habitability cause of action. Appellant made motions for directed verdict on the warranty of habitability at the close of Appellant's case and at the close of Respondents' case. Both motions were denied. (R.p. 603)

Judge Hayes granted Respondent's motion for directed verdict as to the warranty of habitability cause of action after all evidence was submitted. He stated, "As far as this trial this, I'm not seeing that the warranty of habitability will go to the jury, uh, based up on the evidence that I've heard" (R.p. 585 and R.p. 603).

After the close of evidence but prior to closing arguments, the Court took up arguments on jury charges. After the arguments on jury charges, the Court ruled that it would not charge the jury on the warranty of habitability issue. (R.p. 603). Closing arguments were then made by both

parties. The Court charged the jury on negligence only. (R.p. 660-673). The jury returned a verdict for Defendant after less than an hour of deliberation. (R.p. 677). The Notice of Appeal was served on October 31, 2013. In that appeal, Appellant has alleged that the trial court erred in failing to charge the jury on the implied warranty of habitability and failed to grant directed verdict to Appellant. Appellant has not appealed the grant of summary judgment or directed verdict to Respondents.

STATEMENT OF THE FACTS

On February 9, 2011, Fireman's Fund Insurance Company (hereinafter "Fireman's Fund") filed a subrogation Complaint against Searcy and B&B Plumbing alleging that a general contractor, Searcy, and a plumber, B&B Plumbing, should have installed additional plumbing safety measures to prevent against flooding as a result of a loose water line in the residential home of its insured. Fireman's Fund alleged that on January 24th, 2009 a supply line to a bidet came loose and began to flood the unoccupied home. Appellant alleged that the supply line came loose as a result of increased water pressure in the home due to the failure of a water pressure regulator installed during original construction of the home. Appellant specifically alleged that Respondents should have installed a plumbing mechanism "for shunting water away from the home in the event of the inevitable failure of the water pressure regulator."

The homeowner and insured, Wennerstrom, began construction of his home with a general contractor other than Searcy, engineers, and a set of architects prior to Respondent's involvement. That original general contractor pulled the original permits and began the process of grading the land, laying out the home, and digging footings pursuant to the plans drafted by Wennerstrom's architects and engineers. (R.p. 240, lines 6-11; R.p. 244, lines 6-12; R.p. 245, lines 13-17; R.p. 290-291). Those engineers and architects were involved throughout the project. Id. Mr. Searcy's

involvement with the home began when someone from the Cliffs at Glassy contacted Mr. Searcy to potentially replace the original builder. (R.p. 239). Eventually, Mr. Wennerstrom hired Mr. Searcy to complete the home. (R.p. 243-244). Mr. Searcy denied that he sold the home to Mr. Wennerstrom. (R.p. 575). The contract allowed Mr. Searcy to manage the subcontractors but in no way could it ever be construed that Mr. Searcy sold the home to Mr. Wennerstrom. (R.p. 575). Searcy was paid on a cost plus basis to execute the plans prepared by Wennerstrom's architects. (R.p. 44-45) Searcy did not design, market, or sell the house.

Searcy subcontracted with B&B to perform the plumbing related services at the home. Searcy and B&B completed the construction of the plumbing system with no complaints from the owner, his professional engineers and architects, or county officials, despite their ability to oversee the project. (R.p. 44-45)

Mr. Wennerstrom did complain about low water pressure in the home after completion and demanded that the pressure regulator be turned up. (R.p. 518-519) Both B&B and Searcy refused to turn up the pressure regulator due to concern with it allowing excess water pressure in the home. (R.p. 518-519; R.p. 683). When the pressure regulator failed it was found that it had been turned up all the way at some time during the six years after construction. (R.p. 519-520) Mr. Wennerstrom was not at trial to explain that issue.

On January 24, 2009, approximately six years after original construction, a water supply line to a bidet located in a bathroom in the upstairs of the home failed while the home was unoccupied. Fireman's Fund insured the home of Wennerstrom and hired and paid Searcy and B&B to repair the home. During repairs, Fireman's Fund paid Searcy and B&B to install the plumbing system in the exact same manner it had been designed and installed in 2002. (R.p. 201-205)

The crux of the issue at trial was the absence of a secondary pressure reduction valve or a pressure relief valve.¹ Because the water pressure in mountain communities fluctuates as water is forced uphill, Searcy and B&B installed a device to reduce and control the amount of water pressure coming into the house from the main community water line. That device, a Wilkins pressure reducing valve, is a metal baseball sized valve that prevents excess water pressure from entering the home and exerting excess pressure on the pipes and lines in the home which are not designed or intended to handle high water pressure. Unfortunately, six years after it was installed, the pressure reduction valve failed in such a way that it likely allowed high water pressure into the home and caused the supply line to the bidet to come loose and flood the home. No evidence or testimony was offered as a reason for the device's failure and Appellant did not bring suit against that manufacturer. Appellant did not allege that the selection or installation of the valve was faulty, but rather that Searcy and B&B should have foreseen the "inevitable failure" of the valve and designed a secondary safety system by installing another pressure reduction valve or a pressure relief valve.

At trial, Plaintiff's expert, Dean Harris, testified that Searcy and B&B did not breach a building code, ordinance, regulation or industry standard in the construction and design of the plumbing system and installation of the pressure reducing valve at issue in this lawsuit. (R.p. 409-410; R.p. 430). Although Harris testified that the location of the valve was improper and an additional backup pressure reduction valve should have been installed; Harris testified that there is no code requiring a contractor to install even the first pressure reduction valve. (R.p. 342, emphasis added) He further admitted that the code does not indicate where the valve, if any, should be located. (R.p. 410-411). Harris further admitted that his firm was the only firm who

¹ A pressure relief valve relieves excess water by spraying water out of the system whereas a pressure regulator valve prevents excess water pressure from entering the home.

expressed the opinion that Defendants should have put a second pressure relief valve on this house. (R.p. 415). Mr. Harris could not support his opinions with a building code or regulation, an industry standard, the design drawings for the home, or identification of any other expert or firm that expressed the same opinion.

Thus, the only evidence in the record of any fault attributable to Defendants in this case is from Harris' opinion that Defendants did not breach a code or violate an industry standard, but that in his opinion they should have installed an additional device not required under the code, the plans and specifications, or by industry standard.

Fireman's Fund adjuster, Scott Klaben, testified that he had no information to attribute fault for the damage to Defendants. (R.p. 221). According to Klaben's testimony there is still only one pressure regulator valve and no pressure relief valve in the home and Plaintiff would still insure Wennerstrom's home. (R.p. 205; R.p. 226-227). Klaben testified that he trusted Defendants to perform the repairs and trusted that the repairs were adequate to address any issues arising from the leak. (R.p. 204).

At the close of all evidence both Appellant and Respondents renewed their Motions for Directed Verdict. Defendants argued that the basis for the implied warranty of habitability springs from the sale of the home. (R.p. 579). Defendants were clear to distinguish the implied warranty of workmanlike service from the implied warranty of habitability; the distinction being that the cornerstone for the implied warranty of habitability is a sale of the home. (R.p. 581). The Court recognized this distinction and granted Respondents' Motion for Directed Verdict on implied warranty of workmanlike Services. "As far as this trial this, I'm not seeing that the warranty of habitability will go to the jury, uh, based up on the evidence that I've heard" (Judge Hayes, R.p. 585; R.p. 603) The Court's ruling was based upon the Court's review (with a magnifying glass)

of the case law regarding the implied warranty of habitability and the lack of evidence that Defendant participated in the sale of the home. (R.p. 603).

The Court denied Plaintiff's motion for directed verdict as to the implied warranty of habitability claim at the close of Plaintiff's evidence and at Plaintiff's renewed motion at the close of all evidence. (R.p. 496 and R.p. 603)

LAW/ARGUMENTS

I. THE TRIAL COURT WAS CORRECT IN GRANTING DIRECTED VERDICT FOR RESPONDENTS AND DECLINING TO CHARGE THE JURY ON WARRANTY OF HABITABILITY

A. THE TRIAL COURT WAS CORRECT IN GRANTING DIRECTED VERDICT FOR RESPONDENTS

STANDARD OF REVIEW FOR GRANT OF DIRECTED VERDICT

In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion where either the evidence yields more than one inference or its inference is in doubt. *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994). When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). "In essence, we must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor." *Bultman v. Barber*, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). "If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury."

Quesinberry v. Rouppasong, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998). Harvey v. Strickland, 350 S.C. 303, 308-09, 566 S.E.2d 529, 532 (2002)

ARGUMENT

Although Appellant couches his appeal in terms of improperly refusing to charge the jury, the court had already granted directed verdict on the issue of the implied warranty of habitability to Respondents. It is clear that the trial court, after much review and research, granted directed verdict to Respondents as all of the evidence at the trial of the case was that Searcy and B&B did not sell the house to Searcy but rather signed a cost plus contract to build a home designed and engineered by Wennerstrom's architects and engineers. No sale occurred from Searcy or B&B to Wennerstrom and therefore no implied warranty of habitability arose from those facts.

It is clear under South Carolina law that the warranty of habitability arises or springs from the sale of the home. *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989). See *Lane v. Trenholm Bldg. Co.*, 267 S.C. 497, 229 S.E.2d 728 (1976); and *Arvai v. Shaw*, 289 S.C. 161, 34 S.E.2d 715 (1986). The implied warranty of habitability has its roots in the execution of a contract for initial sale. Holding the custom builder liable under an implied warranty, where he is not also involved in the sale of the house, would be incompatible with the law of warranty. *Arvai v. Shaw*, 289 S.C. 161, 164, 34 S.E.2d 715, 717 (1986).

The critical distinction is the source of the implied warranty of habitability. Respondent completely ignores the distinction between the warranty of habitability and the warranty of workmanlike service articulated at length in the *Kennedy Lumber* case and recognized by Judge J. Mark Hayes at trial. (R.p. 585) (See *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989). The implied warranty of habitability and warranty of workmanlike service act together to ensure that a subsequent innocent purchaser is protected from harms caused

by latent defects by allowing the subsequent purchaser to bring claims against the builder under the implied warranty of workmanlike service and the immediate seller under the implied warranty of habitability. Plaintiff's public policy argument, which appears to be the main thrust of Plaintiff's argument, fails to take into account the protection afforded against both the seller and the builder for the exact same latent defects. A builder who contracts to construct a dwelling impliedly warrants that the work undertaken will be performed in a careful, diligent and workmanlike manner; this is an implied warranty of workmanlike service, and is distinct from the implied warranty of habitability. *Id.* This warranty of service was dismissed by Judge Cole prior to trial due to lack of evidence of breach of any cognizable standard and has not been appealed by Appellant. Therefore, it is not at issue in this appeal and should not be the basis for Appellant's arguments.

Further, the concerns expressed by Appellant and analyzed by the *Kennedy* and *Arvai* court are not present in this case. In *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343-44, 384 S.E.2d 730, 736 (1989), the Court took judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller. *Id.* at 343, 384 S.E.2d 730, 735-36 (1989) (citing *Terlinde v. Neely*, 275 S.C. 395, 398, 271 S.E.2d 768, 769 (1980)). The Court concluded it would be intolerable to allow builders to sell defective and inferior construction when the buyer had no ability to inspect or identify hidden defects. These concerns were not present in this case as the homeowner retained and paid architects and engineers to draft the plans for the home and inspect the construction. This was not speculative construction which would be completely designed and constructed by the contractor; rather this was expensive custom construction which was overseen by the owner as well as his architects and engineers throughout the project. In fact, none of those architects, engineers, or the building inspector

required the installation of the first pressure reduction valve, let alone a second or additional valve. Finally, even Appellant's expert could not cite to any other standard which was breached by Searcy and B&B in the installation of the plumbing system, thereby questioning whether a hidden defect even existed upon which to sue.

Based upon the discussion of *caveat venditor* found in *Kennedy Lumber*, the Court's ruling echoed the sentiment articulated in previous decisions regarding warranty liability to protect an innocent home purchaser. The Court framed warranty liability in South Carolina so that the innocent home purchaser could seek damages for latent defects against both the seller of the home and the builder that proximately caused these latent defects. *Id.* The innocent purchaser is not left without a remedy; contrarily; the innocent purchaser has claims available against the seller under the implied warranty of habitability and the builder under the warranty of workmanlike service for the same damages. In this case, Appellant failed to prove either breach as it was unable to produce evidence that Respondent's breached a cognizable standard in the construction industry or, as applicable in this appeal, sold the home.

Finally, it is clear that both the grant of Respondent's motion for directed verdict and denial of Appellant's directed verdict as to B&B was correct. Even assuming all of Appellant's arguments as to Searcy are correct, the same cannot be said of the plumbing subcontractor, B&B. It is beyond question that B&B did not sell the home or place it in the stream of commerce. Therefore, the grant of directed verdict to B&B on the Warranty of Habitability claim and denial of the same to Appellant was correct and should be upheld.

The Trial court was correct to find that the implied warranty of habitability required a sale as a matter of law. The Trial court was also correct that the evidence failed to establish facts that Defendants had any involvement in the sale of the home. Accordingly, the Trial court properly

granted directed verdict to Respondents on the cause of action for breach of the implied warranty of habitability.

B. THE TRIAL COURT WAS CORRECT IN AND DECLINING TO CHARGE THE JURY ON WARRANTY OF HABITABILITY

STANDARD OF REVIEW FOR FAILURE TO CHARGE JURY

An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion. *Dalon v. Golden Lanes, Inc.*, 320 S.C. 534, 541, 466 S.E.2d 368, 372 (Ct.App.1996); *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 307, 395 S.E.2d 742, 744 (Ct.App.1990). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. *Fontaine v. Peitz*, 291 S.C. 536, 354 S.E.2d 565 (1987). When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues. *Tucker v. Reynolds*, 268 S.C. 330, 335, 233 S.E.2d 402, 404 (1977). Moreover, even if the trial court erred in failing to give a requested instruction, the requesting party also must show that the error was prejudicial to warrant reversal on appeal. *Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E.2d 683 (1996).

ARGUMENT

The Court correctly refused to charge the jury on the implied warranty of habitability as the evidence did not support the cause of action and the Court had granted directed verdict to the Respondents on the issue. Appellant's arguments on this issue are unclear, but as the case was only submitted to the jury on a cause of action for negligence there could be no reason to charge the law of implied warranty. Therefore, the Court's refusal to charge warranty law was correct.

II. PLAINTIFF'S MOTION FOR DIRECTED VERDICT ON THE ISSUE OF WARRANTY OF HABITABILITY WAS PROPERLY DENIED BY THE TRIAL COURT

On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001). When reviewing denial of motions for directed verdict or judgment notwithstanding the verdict, Court of Appeals must consider evidence in light most favorable to nonmoving party. *Carolina Chemical Equipment Co., Inc. v. Muckenfuss*, 471 S.E.2d 721, 39 U.S.P.Q.2d 1642 (S.C.App. 1996). In reviewing denial of motion for directed verdict, Court of Appeals is not at liberty to pass upon veracity of witnesses and determine case according to court's view of weight of evidence. *Hainer v. American Medical Intern. Inc.*, 320 S.C. 316, 465 S.E.2d 112 (S.C.App. 1995). Appellate court will reverse the trial court's ruling on a motion for judgment notwithstanding the verdict (JNOV) only when there is no evidence to support the ruling or where the ruling is controlled by an error of law. *Law v. South Carolina Dept. of Corrections*, 629 S.E.2d 642 (S.C. 2006).

In reviewing the denial of a motion for directed verdict or judgment notwithstanding the verdict (JNOV), the appellate court applies the same standard as the circuit court. *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 621 S.E.2d 363 (Ct. App. 2005), reh'g denied, (Nov. 17, 2005). When ruling on a motion for a directed verdict, trial court is concerned with the existence or non-existence of evidence, not its weight. *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240 (2001). In considering motions for a directed verdict, the trial judge must determine whether there is any evidence supporting the nonmoving party and must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Unlimited Servs., Inc. v. Macklen Enters., Inc.*, 303 S. C. 384, 401 S. E. 2d 153 (1991).

The evidence at trial was clear that Respondents did not sell the home to Mr. Wennerstrom. Mr. Searcy testified he was hired to oversee and manage the subcontractors with regard to

construction work on the home. (R.p. 575). Mr. Searcy testified he did not know the cost to build the home. (R.p. 575-576). Plaintiff did not cross examine Mr. Searcy at trial regarding any role he had in selling the home. (R.p. 576-577). The undisputed facts were established at trial that Defendants did not sell the home and Plaintiff admits that Defendants did not sell the home.

The law on implied warranty of habitability has been stated ad nauseum throughout this Initial Brief: The implied warranty of habitability arises or springs from the sale of the home. *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989). The Trial court correctly applied this law in finding that one of the linchpins for a successful implied warranty of habitability claim is a sale. (R.p. 590). The trial court correctly interpreted and applied the law that where the builders are not the sellers of the home they will be liable under the implied warranty of workmanship but not under the implied warranty of habitability. (R.p. 585). Therefore, the Trial court was correct and did not commit reversible error with regard to its ruling on the law.

Plaintiff cites to *Rutledge v. Dodenhoff* 254 S.C. 407, 175 S.E.2d 792, 793 (1970) for the contention that “Searcy impliedly warranted that the home was safe for use for its intended purpose-that it was habitable.” (See Plaintiff’s Initial Brief p. 10). The defendants in *Rutledge v. Dodenhoff* played a dual role as both builder and seller, and, accordingly, both warranties applied. *Id.* at 410, 175 S.E.2d 792, 793 (1970). It is also noteworthy that *Rutledge v. Dodenhoff* predates *Kennedy Lumber* and the distinction made between the implied warranty of habitability and the implied warranty of workmanlike service. *Kennedy v. Columbia Lumber and Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989). For these reasons, the *Rutledge v. Dodenhoff* ruling is distinguishable from this case and should not be applied.²

² Plaintiff curiously states that liability under the warranty of habitability does not require proof of fault; Plaintiff, in the next paragraph, argues that evidence was presented at trial by Plaintiff that established Defendants were liable.

Mr. Wennerstrom was very involved in the building of the home and provided the building plans to Mr. Searcy. (R.p. 242; R.p. 245; R.p. 246). In *Arvai v. Shaw*, the Supreme Court addressed the situation where the home was built pursuant to plans and specifications provided by the owner: “The Supreme Court in *Rutledge* distinguished “between the usual, normal sale of lands and old buildings and a transaction where the vendor is also the builder of the new structure.” 254 S.C. at 413, 175 S.E.2d at 794. We likewise make a distinction between a case involving a speculative-built house and one involving a house built pursuant to plans and specifications provided by the owner. In the latter case, which is the case here, we hold there exists no implied warranty for latent defects.” See *Rutledge v. Dodenhoff*, supra; *Frasher v. Cofer*, supra. *Arvai v. Shaw*, 286 S.C. 357, 360, 334 S.E.2d 287, 288 (Ct. App. 1985) aff’d as modified, 289 S.C. 161, 345 S.E.2d 715 (1986). In *Arvai*, like in this case, the builder did not sell the house to the plaintiff. *Id.* Applying the *Arvai* ruling to this case, the implied warranty of habitability is not available against Defendants since they did not sell the home.

Additionally, a grant of directed verdict requires that both the Circuit and Appellate court view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The Appellate court may only reverse the trial court if there is no evidence to support the trial court’s ruling. In this case, there was an abundance of evidence submitted that neither B&B, nor Searcy sold the home to Wennerstrom. Instead the unrefuted evidence was that Searcy was hired by Wennerstrom to implement designs and plans on a cost plus basis. Further, there was an abundance of evidence that neither Searcy, nor B&B breached or violated a code, industry standard, or design drawing. Therefore, as there was evidence submitted upon which a jury could,

(See Plaintiff’s Initial Brief p. 10-11). The inconsistencies in the argument indicative of Plaintiff’s over reaching theories regarding the implied warranty of habitability

and did, find for Respondent the Trial court was correct in denying Appellant's motion for directed verdict.

For the reasons set forth above, the Trial court ruled correctly in evaluating the facts and interpreting the law. The Trial court's denial of Plaintiff's Motion for Directed Verdict for implied warranty of habitability claim was proper.

CONCLUSION

Based on the foregoing, the Trial court rulings should be upheld.

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January ____, 2015

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

Appellate Case No.: 2013-002397

Fireman's Fund Insurance Company, a/s/o Stig Wennerstrom.....Appellant,

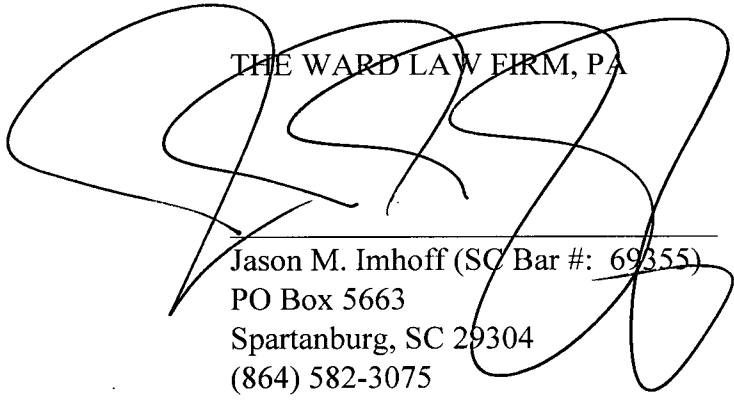
v.

Searcy Custom Homes, LLC and B&B Plumbing, Inc.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Respondents' Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the Respondents' Searcy Custom Homes, LLC and B&B Plumbing, Inc.'s Final Brief on Svend H. Deal, attorney for Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on January 6, 2015, addressed as follows:

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January 6, 2015

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