THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon
Circuit Court Judge

Appellate Case No. 2014-001505
Circuit Court Case No. 2011-CP-29-00873

Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and Camine Pappas,.... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and Camine Pappas,.... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A., and Craft Development, LLC, A North Carolina Limited Liability Company, ... Cross-Defendants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

1. Summary Judgment on Defective Claims: In opposing a foreclosure action, the Pappases filed counterclaims against Wells Fargo for a violation of the South Carolina Unfair Trade Practices Act, for fraud, and for negligent misrepresentation. The Pappases' counterclaims all arise from two appraisals of an undeveloped lot: one from 2006, when the Pappases purchased the lot, and the second from 2009, when they refinanced their loan. After the Pappases failed to produce any evidence suggesting that the bank's alleged conduct could adversely impact the public, and after they conceded that they never relied on or even saw any appraisals of their property until after the foreclosure action was instituted, the circuit court granted summary judgment in Wells Fargo's favor on these claims. Did the circuit court err in holding that the case's undisputed facts caused the Pappases' counterclaims to fail as a matter of law?

2. Additional Discovery: The Pappases' lone defense to summary judgment was a Rule 56(f) affidavit suggesting that they needed to conduct additional discovery on the appraisal associated with their refinancing in 2009. The circuit court rejected this defense, as the undisputed facts already discovered rendered the Pappases' claims legally defective. Should the parties be required to undertake this additional discovery, even if it will not affect the viability of the Pappases' claims?

STATEMENT OF THE CASE

This appeal asks whether the circuit court rightly put an end to a sophisticated realtor's efforts to avoid paying back a loan used to purchase an investment property in a still-developing subdivision in Lancaster County. As explained below, the circuit court's ruling is correct as a matter of law, and Appellants should not be permitted to resuscitate their defective claims by generically asking this Court for more discovery.

I. Mr. Pappas purchased an undeveloped lot from Craft Development and financed that purchase with a loan through Wachovia Bank, but neither of these agreements made any representations about appraisals of the property.

Ronald Pappas is in the "real estate development business." (Dep. Pappas 14:2; R. p. ___.) As Mr. Pappas explained during his deposition, he has spent "most of [his] life" building and developing residential properties: he previously worked for two national homebuilding companies, including serving as the Atlantic Region President of one; he currently operates his own residential development business; and he currently serves as a member of the Lancaster County Planning Commission. (*Id.* 13:13–14:21, 16:23–17:23; R. pp. ___–___, ___–___.)

On March 29, 2006, he entered into a contract with Craft Development, LLC, to purchase an undeveloped lot in a fledgling subdivision in Lancaster County. The sales price was $229,000, of which Mr. Pappas planned to finance $206,100. (Agreement to Buy and Sell Real Estate; R. p. ___.) The sales agreement was not contingent upon the lot appraising for any certain value. (*Id. passim*; R. pp. ___–___.) Mr. Pappas and Craft Development are the only two parties to this purchase agreement; Wachovia Bank is not a party to the sales contract, nor did it assist in locating the property or negotiating its purchase price. (Dep. Pappas 23:5–:10, 27:23–28:6; R. pp. ___, ___–___.)

After Mr. Pappas and Craft Development agreed upon the price and entered into their sales agreement, Mr. Pappas sought financing for his investment property. (Dep. Pappas 25:1–:7; R. p. ___.) On May 30, 2006—two months after entering into the sales contract with Craft Development—Mr. Pappas and his wife entered into a three-year loan agreement with Wachovia Bank for $206,100 that was secured by a mortgage on Mr. Pappas's new property. (Settlement Statement (May 30, 2006); R. p. ___.) Nothing in the loan agreement contained any representations about any appraisals done on the property.

II. The Pappases refinanced their loan, again without any representations concerning any appraisals.

Rather than paying off their 2006 note when it came due, the Pappases approached Wachovia Bank about refinancing it. (Dep. Pappas 57:8–:10; R. p. __.) Wachovia Bank agreed, and the parties entered a new three-year note on July 22, 2009, in the principal sum of $210,954.69. (Note (July 22, 2009); R. p. ___.) The Pappases agreed to and understood the terms of this loan. (Dep. Pappas 63:7–:18; R. p. ___.)

Just as before, this loan agreement was secured by a mortgage on Mr. Pappas's undeveloped lot. (Mortgage (July 22, 2009); R. p. ___.) And just as before, these loan documents did not make any representations regarding any appraisal of the property, nor was the refinance contingent upon any appraised value of the subject lot.

III. Wells Fargo filed this foreclosure action once the Pappases stopped making payments on their loan, a point about which there is no dispute.

In January 2011, the Pappases stopped making payments on their 2009 loan agreement. (Dep. Pappas 60:16–61:7; R. pp. ___–___.) On June 20, 2011, Wells Fargo Bank, which is Wachovia Bank's successor by merger, commenced suit to foreclose on this loan. (Compl.; R. p. ___.) The Pappases answered the Complaint with a series of

counterclaims against Wells Fargo and with a third-party complaint against Craft Development. (Am. Ans., Countercls. and Cross-Claim; R. p. ___.) The counterclaims included alleged violations of the South Carolina Unfair Trade Practices Act, the Real Estate Settlement Procedures Act, and the Interstate Land Sales Full Disclosure Act, as well as fraud and negligent misrepresentation. (*Id.* ¶¶ 9–65; R. pp. ___–___.)

The Pappases asserted these counterclaims on September 26, 2011. (*Id.*; R. p. ___.) On December 16, 2013—over two years after the pleadings were joined, and after undertaking a full battery of discovery—Wells Fargo moved for summary judgment on its foreclosure claim and on the Pappases' counterclaims. (Mot. for Summ. J.; R. p. ___.)

In opposing summary judgment, the Pappases did not present any substantive arguments, but instead submitted a Rule 56(f) affidavit requesting that even more discovery take place with respect to an appraisal done in connection with the 2009 refinancing agreement. (Aff. in Resp. to Mot. for Summ. J.; R. p. ___.) Nowhere in that affidavit, though, did the Pappases ever explain what relevance that appraisal could possibly have to any of the claims in this case.

On February 18, 2014, the Honorable R. Knox McMahon heard arguments regarding Wells Fargo's motion for summary judgment. During that hearing, the Pappases withdrew their counterclaims arising under the federal statutes. (*See* Hr'g Tr. 26:8–:10 ("We are not going to dispute any of the arguments that are advanced on behalf of RESPA or on behalf of the Interstate Land Sales Act."); R. p. ___.) At the close of the hearing, Judge McMahon orally granted judgment in Wells Fargo's favor on the remaining claims. (*Id.* 37:12–38:18; R. pp. ___–___.)

Judge McMahon memorialized his ruling by order filed on April 11, 2014. (Order; R. p. ___.) The Pappases sought reconsideration of that ruling on May 25, 2014. (Mot. to Alter or Amend J.; R. p. ___.) Judge McMahon denied that motion by order filed on June 12, 2014. (Order Denying Defs.' Mot. to Alter or Amend J.; R. p. ___.) This appeal followed.

STANDARD OF REVIEW

This Court reviews grants of summary judgment under the same standard that is applied at the trial level. *Foster v. Foster*, 384 S.C. 380, 383, 682 S.E.2d 312, 313 (Ct. App. 2009). Summary judgment should be issued when the evidence collectively shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. Courts agree that "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

ARGUMENTS AND AUTHORITIES

At the outset, it is important to note that the Pappases have not challenged several aspects of the circuit court's ruling in their opening brief. First, they do not dispute that the circuit court rightly entered judgment in Wells Fargo's favor on its foreclosure claim. Likewise, they do not dispute that the circuit court rightly entered judgment in Wells Fargo's favor on their two federal claims. Accordingly, they have abandoned any objection to these rulings. *See Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal.").

Nor have they presented any legitimate arguments for reversing the circuit court's rulings that they have challenged. Instead, the Pappases seek to resuscitate legally invalid claims by arguing that Wells Fargo should be forced to participate in even more discovery that, at bottom, is irrelevant to their remaining claims. For the reasons discussed below, the circuit court's ruling should be affirmed.

I. The Pappases' remaining claims are defective as a matter of law.

According to the Pappases' opening brief, the entirety of their appeal depends on the contents of an appraisal of their property from 2009—three years after they purchased the undeveloped lot, and three years after their first loan on the property—that has not been produced in discovery. (*See, e.g.*, Br. of Appellants at 8–9 (arguing that the contents of an appraisal from 2009 might constitute "sufficient bases" to support their claims).)

Nowhere, though, do they ever explain what relevance that appraisal could have to their claims under the Unfair Trade Practices Act, for fraud, and for negligent misrepresentation. Their silence on this point is not surprising, as the contents of an appraisal that the Pappases concede they have never seen cannot salvage their claims, which are defective as a matter of law.

A. A private dispute between two contracting parties is insufficient to support a claim under the South Carolina Unfair Trade Practices Act.

To maintain a claim under the Unfair Trade Practices Act, a party must show that another has engaged in "unfair or deceptive acts or practices" in connection with a commercial transaction. S.C. Code Ann. § 39-5-20(a). A claimant must also show that the unfair business practice adversely affects the public interest, and that it suffered damages as a result of the unfair conduct. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013).

South Carolina's courts are clear that this statute is designed to redress harms that impact the public generally, and challenged conduct that affects only the parties to a private transaction is insufficient to support a claim. *See, e.g.*, *Woodson v. DLI Props., LLC*, 406 S.C. 517, 530, 753 S.E.2d 428, 435 (2014) ("[T]he SCUTPA is not available to redress a private wrong because an unfair or deceptive act that affects only the parties to the transaction is beyond the scope of the SCUTPA."); *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994) ("[C]onduct which only affects the parties to the transaction provides no basis for a UTPA claim.").

In order to satisfy the public-impact element, a claimant may attempt to show that the challenged conduct has the potential for repetition, which can be proven two ways: by demonstrating that the same behavior has occurred in the past, or by proving that the "company's procedures create a potential for repetition of the unfair and deceptive acts." *Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998).

Because of the gravity of such a claim, a party must come forward with "specific facts" in support of the public-impact element. *See, e.g.*, *O'Callaghan Cable Servs. v. Coastal Constr., Inc.*, Case No. 2:11-cv-375-DCN, 2012 U.S. Dist. LEXIS 146124, at *5 (D.S.C. Oct. 11, 2012) ("A plaintiff must prove 'specific facts' of an adverse impact or likely adverse impact on the public."); *Bessinger v. Food Lion, Inc.*, 305 F. Supp. 2d 574, 584 (D.S.C. 2003) ("To sustain a cause of action under the SCUTPA, the plaintiffs must establish, by specific facts, that members of the public were adversely affected by the defendants' retaliation against Mr. Bessinger's speech."), *aff'd*, 115 F. App'x 636 (4th Cir. 2004); *Jefferies*, 316 S.C. at 527, 451 S.E.2d at 23 ("This adverse effect on the public must be proved by specific facts.").

Here, the circuit court held that summary judgment was proper in Wells Fargo's favor on the Pappases' Unfair Trade Practices Act claim because it amounts to "nothing more than a dispute between the two parties to a private contract—the Refinance Note and Mortgage—regarding appraisals of the Property." (Order at 6; R. p. ___.) This ruling is unassailable, as the Pappases never presented any evidence to suggest that their claim was based on anything other than a perceived private dispute.

On appeal, the Pappases argue that they need a copy of an appraisal done in 2009 to support the public-impact element of their claim. But they never explain how that appraisal could possibly change the circuit court's analysis. While they superficially state that the appraisal's relevance is "apparent," this is not so. (Br. of Appellant at 7.)

As discussed above, that appraisal was done as part of a refinancing, not as part of Mr. Pappas's actual purchase of the lot. There is no evidence to suggest that this appraisal influenced any action by the Pappases. Indeed, they already owned the property and owed the debt, so they cannot legitimately claim that this appraisal induced them to make any commitments to which they were not already obligated.

There is also no evidence to suggest that the Pappases ever provided a written request for the appraisal or that they were even entitled to review it. To the contrary, they did not have any legal entitlement to receive it. *See* 12 C.F.R. § 202.14(a) (obligating creditors to provide a copy of an appraisal only "upon an applicant's written request" and if the loan is secured by a "lien on a dwelling," which is limited to properties that actually contain a "residential structure," not undeveloped lots like the one at issue in this case).[1]

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[1] In their opening brief, the Pappases state, without citing any authority, that Wells Fargo "had a duty to disclose the 2009 Appraisal." (Br. of Appellant at 8.) As the federal regulation cited above in the text makes clear, though, this position is legally incorrect.

Nor is there even a logical connection between the appraisal and the Pappases' claim. In *Robertson v. First Union National Bank*, 350 S.C. 339, 350–51, 565 S.E.2d 309, 315 (Ct. App. 2002), this Court explained that appraisals are done for the benefit of the lender, not the borrower, to ensure that a loan is sufficiently secured by the collateral. The Court also noted that the lender, not the borrower, would be harmed by loaning money based on insufficient collateral. *Id.* at 351 n.2, 565 S.E.2d at 315 n.2. As then-Chief Judge Hearn concluded for a unanimous panel:

> [W]e can think of no logical reason why Bank would make it a practice to intentionally make loans for an amount in excess of the collateral's value and risk substantial losses in the event of default. Therefore, summary judgment on this issue [*i.e.* whether a borrower could base an Unfair Trade Practices Act claim on the contents of an appraisal performed in connection with a mortgage loan] was proper.

Id. at 351, 565 S.E.2d at 315.

At bottom, the Pappases have not set forth any evidence that Wells Fargo has done anything "unfair" or "deceptive." They have never explained how an appraisal done during the refinancing process could in any way support the public-impact element of a claim under the Unfair Trade Practices Act, nor have they provided evidence of any other "specific facts" in support of this element. And they have never identified any damages that are attributable to Wachovia Bank's agreement to refinance their loan in 2009.[2]

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[2] The circuit court based its ruling on the absence of any evidence supporting the public-impact element, but the record is also void of any evidence regarding the "unfair conduct" element or the damages element. Simply put, there is nothing in the record to support either of these elements; the Pappases never identified any such evidence during the proceedings below, nor have they identified any in their appellate brief. Accordingly, the judgment can be affirmed on these additional sustaining grounds. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Fields v. Yarborough Ford, Inc.*, 307 S.C. 207, 210–12, 414 S.E.2d 164, 166–67 (1992) (holding that judgment should

Accordingly, the Court should affirm the circuit court's grant of summary judgment on the Pappases' Unfair Trade Practices Act claim.

B. The Pappases' claims for fraud and negligent misrepresentation fail as a matter of law because they did not rely on any appraisals at the time they contracted with Wells Fargo, and because they could have conducted their own appraisals of the property but chose not to.

The Pappases' claims for fraud and negligent misrepresentation are likewise defective as a matter of law, as the circuit court correctly held. Each of these causes of action requires a claimant to have justifiably relied on the representation of another. *See, e.g.*, *Schnellmann v. Roettger*, 368 S.C. 17, 21–23, 627 S.E.2d 742, 744–45 (Ct. App. 2006) (affirming summary judgment on claims for both fraud and negligent misrepresentation because the buyers' reliance on the seller's representations was "unreasonable as a matter of law"), *aff'd in relevant part*, 373 S.C. 379, 645 S.E.2d 239 (2007). Similarly, a party is not liable under these causes of action if the alleged misrepresentations concern "matters which plaintiff could ascertain on his own in the exercise of due diligence." *Id.* at 21, 627 S.E.2d at 745 (quoting *Robertson*, 350 S.C. at 348, 565 S.E.2d at 314). These twin principles support the circuit court's ruling here.

The undisputed facts are that Mr. Pappas entered into an agreement with Craft Development to purchase the property ***before*** he approached Wachovia Bank about financing. (Dep. Pappas 25:1–:7; R. p. ___.) The Pappases also entered into a note and mortgage with Wachovia Bank in 2006 ***before*** seeing any appraisal on the property. (*Id.* 34:4–:9; R. p. ___.) In fact, they did not see the appraisal supporting the 2006 loan

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have been entered in the defendant's favor because the plaintiffs "failed to prove that they suffered any actual damages as a result of the violation of the Unfair Trade Practices Act"); *Bessinger v. BI-LO, Inc.*, 366 S.C. 426, 432, 622 S.E.2d 564, 567–68 (Ct. App. 2005) (affirming dismissal because "the allegations in the complaint do not suggest Defendants committed acts that would be unfair under the SCUTPA").

agreement until 2013, seven years after they took out their initial loan with Wachovia Bank. (*Id.*) Nor have they seen any appraisal associated with their refinancing in 2009. (*Id.* 157:22–:23; R. p. ___.)

Just as with the Pappases' Unfair Trade Practices claim, *Robertson* is indistinguishable from these facts and dispositive of these claims. There, borrowers sued their lender for fraud and negligent misrepresentation on the belief that a lender used fraudulent tactics in appraising property that secured the parties' loan. That loan closed in 1993, but, "[s]ignificantly, Appellants did not receive a copy of the 1993 appraisal until 1998." 350 S.C. at 348, 565 S.E.2d at 314. The *Robertson* Court readily affirmed judgment in the lender's favor on the fraud claim because "Appellants could not have relied upon the appraisal in purchasing the property." *Id.* It was similarly decisive with respect to the borrowers' claim for negligent misrepresentation: "Appellants' negligent misrepresentation claim fails because they have failed to prove reliance on the 1993 appraisal. It is undisputed that the parties agreed to a contract price without seeing an appraisal." *Id.* at 350, 565 S.E.2d at 315.

The same facts in this case should render an identical result. There is no evidence to suggest that Wachovia Bank made any representations about the value of the property before, during, or even after Mr. Pappas decided to purchase it. Nor is there any evidence to suggest that Wachovia Bank made any representations about the value of the property when the Pappases decided to refinance their loan, or that the bank ever performed any appraisals. Indeed, there is no evidence to suggest that the dealings between the Pappases and Wachovia Bank were anything other than two routine loan transactions: the Pappases needed money to purchase and then retain property, and Wachovia Bank twice agreed to

lend them that money after verifying for itself that the property would be sufficient collateral to secure the loans.

Over the course of those transactions, the Pappases concede that Wachovia Bank did not prevent them from procuring their own appraisal of the property. (Ans. to Pl.'s Requests for Admissions at Admission 13; R. p. ___.) They also concede they were aware of the actual physical condition of the property and the development it lay within when they executed the sales agreement, and when they later executed loan documents with Wachovia Bank. (Dep. Pappas 51:11–:21, 52:13–53:21; R. pp. ___–___.) They simply chose not to order an appraisal despite the fact that Mr. Pappas is in "the real estate development business." (*Id.* 14:2; R. p. ___.)

When buyers have neglected to undertake simple measures to educate themselves about property they are looking to purchase, South Carolina's courts have uniformly held that others are not liable for any alleged misinformation. *See, e.g.*, *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 241, 692 S.E.2d 499, 509 (2010) (granting judgment against a purchaser on a claim for negligent misrepresentation arising out of a zoning discrepancy because "Quail Hill could have reviewed the Official Zoning Map to ascertain the correct zoning classification"); *Alpha Contracting Servs., Inc. v. Household Fin. Corp. II*, Op. No. 2011-UP-289, 2011 S.C. App. Unpub. LEXIS 348, at *8 (Ct. App. June 13, 2011) ("Like the purchasers in *Schnellmann*, Alpha failed to take its own measurements of the home's square footage. Therefore, Alpha's reliance on the square footage indicated in the MLS listing was unreasonable as a matter of law. Alpha cannot obtain compensation from Respondents if it has not exercised its own due diligence."); *Schnellmann*, 368 S.C. at 21, 627 S.E.2d at 745 ("The Schnellmanns viewed the house,

and proceeded with the purchase without finally determining the exact square footage. In light of the evidence presented, we agree with the trial court's conclusion that if the Schnellmanns relied on the approximation of the square footage contained in the listing, such reliance was unreasonable as a matter of law."); *Robertson*, 350 S.C. at 348, 565 S.E.2d at 314 (affirming summary judgment against buyers' fraud claim because "the price for the property was not negotiated and Appellants made no effort to independently ascertain its value before purchase"). The Pappases have not identified a single reason for the Court to stray from this unbroken line of authority.

Because the Pappases concede that they agreed to purchase the property from Craft Development and entered into loan transactions with Wachovia Bank without reviewing appraisals of the property or procuring their own appraisals, their claims for fraud and negligent misrepresentation fail as a matter of law. Clearly, they could not justifiably rely on an appraisal that they have never seen. Accordingly, the circuit court properly granted summary judgment in Wells Fargo's favor on these claims, and that ruling should be affirmed.

II. The Pappases' request for additional discovery cannot cure the legal deficiencies in their claims.

As discussed above, the thrust of the Pappases' appeal is a request for additional discovery with respect to the appraisal supporting Wachovia Bank's agreement to refinance the Pappases' loan in 2009. (*See, e.g.*, Br. of Appellants at 9 ("The Appellants Pappas have demonstrated their need for further discovery in order to respond adequately to the Plaintiff's Motion for Summary Judgment.").) They devote almost half of their appellate argument to Rule 56(f)'s standards regarding when more discovery may be appropriate. (*Id.* at 2–5.) But, also as discussed above, they never explain how this

additional discovery can save their claims beyond an empty statement that the relevance of their requested additional discovery is "apparent." (*Id.* at 7.)

The omission of how the 2009 appraisal can somehow resuscitate their claims voids the Pappases' requested relief on appeal. Rule 56(f), SCRCP, is designed to prevent summary judgment from being entered prematurely and before the parties have an opportunity to fully conduct discovery. It is not, however, a cure-all when a nonmovant's claims are defective as a matter of law.

Accordingly, summary judgment can be forestalled only when the additional requested discovery bears on dispositive issues. *See, e.g.*, *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional ***relevant*** evidence and that the party is 'not merely engaged in a "fishing expedition."'" (quoting *Baughman v. AT&T Co.*, 306. S.C. 101, 112, 410 S.E.2d 537, 544 (1991))) (emphasis added); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009) (affirming summary judgment despite the appellant's claim for more discovery because "on appeal, Guinan fails to demonstrate further discovery would uncover additional ***relevant*** evidence or create a genuine issue of material fact") (emphasis added); *see also Wieters v. Roper Hosp., Inc.*, 58 F. App'x 40, 44 (4th Cir. 2003) (affirming summary judgment despite the submission of a Rule 56(f) affidavit because the nonmovant had failed to explain how the additional requested discovery "will be useful in resisting summary judgment").

In this regard, "[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Gauld v.*

O'Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008) (quoting *Baughman*, 306 S.C. at 116, 410 S.E.2d at 546).

This legal reality is the fundamental defect in the Pappases' requested relief on appeal. Any appraisal done in conjunction with their 2009 refinancing loan is irrelevant to this case because the Pappases concede they never relied on that appraisal, and they already entered into their sales contract to purchase the property before even interacting with Wachovia Bank. They concede that they agreed to their refinancing and understood the terms of the loan documents without ever seeing the 2009 appraisal. Under these undisputed facts, the Pappases' claims fail as a matter of law, and the Court should reject their attempt to unnecessarily prolong this matter with additional discovery that cannot alter this unavoidable conclusion.

CONCLUSION

The circuit court properly granted judgment in Wells Fargo's favor, as the Pappases' claims against the bank are defective as a matter of law, and nothing in their request for additional discovery can overcome those defects.

This Court has reiterated time and again the "overarching rule of civil procedure" that "whatever doesn't make any difference, doesn't matter." *Powell v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008) (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)). Affirming the circuit court's ruling would be faithful to this "overarching rule" and would prevent the parties from wastefully expending resources to engage in irrelevant discovery, only to resubmit the same summary judgment arguments to the trial court after the additional discovery period closed. Accordingly, the Court should affirm judgment in Wells Fargo's favor.

Respectfully submitted,

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Attorneys for Respondent

Columbia, South Carolina
January 29, 2015

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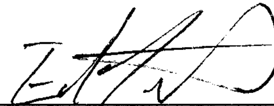
PROOF OF SERVICE

I, the undersigned Legal Secretary of the law offices of Womble Carlyle Sandridge & Rice LLP, Attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) specified below by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Brief of Respondent

Parties Served: John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731-6106
Attorney for Appellants



Edwin T. Mathis

January 29, 2015

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January 29, 2015

The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

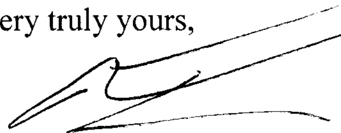
Re: Wells Fargo Bank, N.A. v. Ronald P. Pappas
Appellate Case No. 2014-001505

Dear Ms. Kitchings:

Enclosed please find Respondent's Initial Brief and Designation of Matter for filing in the case cited above. If we can provide the Court with any additional materials or information, please do not hesitate to call on us.

With kind regards, I remain

Very truly yours,



M. Todd Carroll

Enclosure
cc: John Martin Foster

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