

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Case No. 2013-CP-30-3513

SC Court of Appeals

Kathleen Lollis and Linda CampbellAppellants/Respondents,

vs.

Lisa Dutton, Dennis Dutton, and Kelsey Dutton.....Respondents/Appellants,

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN CONCLUDING THAT APPELLANT KATHLEEN LOLLIS ENTERED INTO BINDING CONTRACTS WITH RESPONDENTS TO SELL RESPONDENTS THE PROPERTY AND MOBILE HOMES LOCATED AT 1032 CEMETERY ROAD, WARE SHOALS, SOUTH CAROLINA AND 1046 CEMETERY ROAD, WARE SHOALS, SOUTH CAROLINA?

- II. DID THE TRIAL COURT ERR IN CONCLUDING THAT RESPONDENTS OVERPAID APPELLANTS IN THE AMOUNT OF \$850.96 AND IN ORDERING APPELLANTS TO REIMBURSE RESPONDENTS THE SUM OF \$850.96?

STATEMENT OF THE CASE

On September 11, 2013, Kathleen Lollis and Linda Campbell (“Appellants”) filed this action in the Court of Common Pleas in Laurens County, South Carolina seeking a restraining order preventing the Respondents from occupying or using Appellants’ property located at 1032 Cemetery Road, Ware Shoals, South Carolina and 1046 Cemetery Road, Ware Shoals, South Carolina, for an Order of the Court requiring the Respondents to immediately vacate the aforementioned property, for an Order declaring Appellant Lollis to be the sole owner of the real estate located at 1032 Cemetery Road, Ware Shoals, South Carolina and 1046 Cemetery Road, Ware Shoals, South Carolina, for an Order declaring Appellant Campbell to be the sole owner of the mobile home situated at 1032 Cemetery Road, Ware Shoals, South Carolina, and for an Order granting Appellants damages under the theories of trespass, fraud/constructive fraud, civil conspiracy, conversion and intentional infliction of emotional distress. (Amended Complaint) On October 1, 2013, Respondents filed an Answer and Counterclaim denying the relief being sought by Appellants and seeking an Order declaring that Appellants breached their alleged contracts with the Respondents, for an Order declaring the Respondents to be the owners of the real estate and mobile homes located at 1032 Cemetery Road, Ware Shoals, South Carolina and 1046 Cemetery Road, Ware Shoals, South Carolina, for specific performance of the alleged contracts with Appellants or return of their consideration with prejudgment interest and for damages under the theories of fraud/ negligent misrepresentation, civil conspiracy, and slander of title. (Answer and Counterclaim filed October 1, 2013)

In March of 2014, a hearing was held in front of the Honorable Frank Addy regarding several discovery issues. Pursuant to the Order dated March 14, 2014, the parties were to keep the other side apprised of their legal fees. In addition, Respondents were required to account for the source of the funds which they maintain were used to purchase the property. The Order further provided that “the Defendants (Respondents) shall provide documentation regarding this income or funds – be it via gift, inheritance, wages, disability, government benefits, etc.” (Order dated March 14, 2014)

A bench trial was held on March 16, 17, 18, and 19, 2015 in front of the Honorable Eugene C. Griffith, Jr. Pursuant to the Final Order filed on July 6, 2015, the Trial Court found that Frank Lollis, son of Appellant Lollis, was acting as the authorized agent for Appellant Lollis in dealing with the Respondents. The Court further found that, Appellants and Respondents had a valid, binding contract as result of Frank Lollis entering into a contract on behalf of Appellant Lollis as her agent, and that Appellant Lollis breached her contract of sale with the Respondents. The Court further found that Respondents had valid and enforceable right under the contracts of sale. In addition, the Court found that Respondents established that they overpaid Appellants the amount of \$850.96 and that Appellants should refund this amount to Respondents. (Final Order filed July 6, 2015)

On July 13, 2015, counsel for Appellants filed a Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e) the Court’s Final Order dated July 6, 2015. On July 13, 2015, counsel for Respondents filed a Motion to Alter and/or Amend and a Motion for Attorney’s Fees. Pursuant to an Order filed on August 10, 2015, both Motions for Reconsideration were denied. Appellants filed this Notice of Appeal with the South Carolina Court of Appeals on September 3, 2015. Respondents also filed a Notice of Appeal dated September 4, 2015.

STATEMENT OF FACTS

Appellant Kathleen Lollis (hereinafter referred to as “Appellant Lollis”) is the legal owner and title holder of real estate located at 1032 Cemetery Road, Ware Shoals, South Carolina 29692 (TMN 028-00-00-061) (hereinafter referred to as “1032 Cemetery Road”) and 1046 Cemetery Road, Ware Shoals, South Carolina 29692 (TMN 028-00-00-073) (hereinafter referred to as “1046 Cemetery Road”). This property was purchased by Appellant Lollis in 1999. (Tr. p. 13, ln 24 - p. 17, ln 21) The Deed transferring the property to Appellant Lollis was

recorded in the Laurens County Clerk of Court's office on June 15, 1999 in Deed Book 468, page 28. (Deed filed 06-15-99) Appellant Lollis has retained ownership of this property since that time. (Tr. p. 17, lns 16-17) There is a Giles mobile home located on the real estate located at 1032 Cemetery Road that is titled in the name of Appellant Linda Campbell (hereinafter referred to as "Appellant Campbell"). There is also an Oxford mobile home situated on the property located at 1046 Cemetery Road.

Respondents Lisa Dutton and Dennis Dutton are husband and wife. Respondent Kelsey Dutton is their daughter. Sometime after April 28, 2013, Respondent Lisa Dutton approached Appellants claiming that she and Respondent Dennis Dutton had purchased the properties located at 1032 Cemetery Road and 1046 Cemetery Road. (Tr. p. 19, lns 13-20 and p. 363, ln 24 - p. 364, ln 2) Respondent Lisa Dutton contends that she had a valid contract to purchase the real property located at 1032 Cemetery Road for \$58,650.00. (Contract dated November 21, 2011) Respondent Dennis Dutton contends that he had a valid contract to purchase the property located at 1046 Cemetery Road for \$27,700.00 (Contract dated December 20, 2012). Respondents allege that they entered into the contracts with Frank Lollis, the deceased son of Appellant Lollis, whom Respondents allege was acting as an agent on behalf of Appellant Lollis. (Answer and Counterclaim filed October 1, 2013 and Final Order dated July 6, 2015). Respondents further allege they paid all sums owed under the contracts prior to the death of Frank Lollis on April 28, 2013. (Answer and Counterclaim filed October 1, 2013) Appellant Lollis denies entering into a contract with Respondents and further denies that Frank Lollis had the authority to enter into a contract on her behalf.

ARGUMENTS

Standard of Review

"When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." Consignment Sales, LLC vs. Tucker Oil Company, 391 S.C. 266, 705 S.E. 2d 73 (Ct. App. 2010) "This Court reviews all questions of laws de novo. Review of the trial Court's factual findings, however, depends on whether the underlying action is an action at law or an action in equity." Fesmire vs. Digh, 683 S.E. 2d 803, 385 S.C. 296 (Ct. App. 2009) "An action for breach of contract is an action at law." Consignment Sales, LLC, 391 S.C. at 270. "An action for specific performance is one in equity." Clardy vs. Bodolosky, 679 S.E. 2d 527, 383 S.C. 418 (Ct. App.

2009). “An action to quiet title to property is an action in equity.” Hollywood’s Association of Residence Owners vs. Hiller, 392 S.C. 172, 708 S.E. 2d 787 (Ct. App. 2011). “In an action at law, the trial Court’s factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial Court’s findings. In an action in equity, the Appellate Court may resolve questions of fact in accordance with its own view of the preponderance of the evidence.” Fesmire, 683 S.E. 2d at 807.

I. THE TRIAL COURT ERRED IN FINDING THAT A BINDING CONTRACT EXISTED BETWEEN RESPONDENTS AND APPELLANT LOLLIS.

a. There was no meeting of the minds between Appellant Lollis and Respondents.

In order for a contract to exist, two (2) or more parties must intend to enter into a contract and it must be a mutual understanding of the terms of the contract, or a “meeting of the minds.” “It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be mutual manifestation of assent to the terms.” Edens vs. Laurel Hills, Inc., 271 S.C. 360, 247 S.E.2d 434 (1978) South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” Player vs. Chandler, 299 S.C. 101, 382 S.E.2d 891(1989)

The property at issue was purchased by Appellant Lollis in 1999. (Tr. p. 13, ln 24 - p. 17, ln 21) Therefore, Appellant Lollis is the sole owner and legal title holder to the property. Respondent Lisa Dutton contends that she has a contract to purchase the property located at 1032 Cemetery Road for \$58,650.00. (Contract dated November 21, 2011) Respondent Dennis Dutton contends that he has a contract to purchase the property located at 1046 Cemetery Road for \$27,700.00 (Contract dated December 20, 2012). Appellant Lollis testified that she did not sign either contract even though they bear her purported signature. (Tr. p. 20, lns 8-14 and p.24, lns 9-21) Appellant Lollis did not agree for Respondents to live on her property and she was unaware that they were residing on the property until after her son had passed. (Tr. p.19, lns 3-15) Appellant Lollis further testified that it was never her intent to sell the Cemetery Road property to Respondents. (Tr. p. 25, lns 1-3; p. 26, lns 22-24) Appellant Lollis did not receive any money as payment for the Cemetery Road properties (Tr. p. 22, lns 18-20; p. 25, lns 24 - p. 26, ln 1; and

p. 26. lns 19-21) Respondents presented the testimony of Barry Adams, a friend of Frank Lollis. Mr. Adams testified that Frank Lollis wanted to give Respondent Lisa Dutton a mobile home, but wanted it moved off of his mother's property. Mr. Adams further testified that Respondent Lisa Dutton was trying to talk Frank Lollis into letting her have the real estate too, but he could not because it belonged to his mother. (Tr. p.457, ln 7 - p.4 58, ln 5)

Attorney John Scurry prepared the Contract of Sale recorded on November 21, 2011. The contract was prepared at the request of Frank Lollis. (Tr. p. 217, lns 11-17) Attorney Scurry testified that Appellant Lollis was not present at the meeting to execute the document, that Appellant Lollis did not sign the document, and that her deceased son, Frank Lollis, signed her name to the document. (Tr. p.187, ln 25 - p.188, ln 16) Attorney Scurry testified that he witnessed the signature of Appellant Lollis even though Appellant Lollis did not sign the contract and even though he did not a Power of Attorney giving Frank Lollis power of attorney over Appellant Lollis nor does he know if there is one filed. (Tr. p.190, lns 20-22; p.192, lns 15-19) Attorney Scurry testified that he never discussed selling the Cemetery Road property with Appellant Lollis. (Tr. p.196, lns 16-19)

Respondent Lisa Dutton testified that her dealings were mostly with Frank Lollis. (Tr. p.389, lns 8-11) She further testified that Appellant Lollis never appeared at the meetings when the contracts were signed. (Tr. p.389, lns 19-24) Respondent Lisa Dutton never saw Appellant Lollis sign the contract recorded on November 21, 2011. (Tr. p.369, lns 3-7) Respondent Lisa Dutton was aware that Appellant Lollis never signed the contract. (Tr. p.371, lns 10-13)

Respondent Dennis Dutton contends that he entered into a contract of sale with Appellant Lollis and Frank Lollis whereby Appellant Lollis agreed to sell a track of land and mobile home as referenced in a Deed recorded in the Laurens County Clerk of Court's office on December 20, 2012. Although Attorney Scurry handled all of the business dealings for Frank Lollis and prepared the November 2011 contract, he did not prepare the December 2012 contract. (Tr. p. 198 ln 9 - p. 199, ln 4) Respondent Lisa Dutton acknowledged that she and Frank Lollis drafted this contract. (Tr. p.397, lns 3-13) The contract was signed at the home of Respondent Dennis Dutton by Respondent Dennis Dutton and Frank Lollis, and was witnessed by Respondents Lisa and Kelsey Dutton. (Tr. p.472, ln 25 - p.473, ln 5) Respondent Dennis Dutton did not see Appellant Lollis sign the contract, nor did he have any conversation with Appellant Lollis about the fact that he wanted to buy her property. (Tr. p.494, lns 2-8) Respondent Dennis Dutton

acknowledged that, on the occasion(s) that he allegedly made a payment toward the purchase price of the property, he never spoke to Appellant Lollis, nor would she have known what he was making a payment for. He also acknowledged that Appellant Lollis never gave him a receipt for any payments he supposedly made toward the purchase price of the property. (Tr. p. 495, lns 9-19) Respondent Kelsey Dutton, the daughter of Respondents Lisa and Dennis Dutton, signed as a witness to the signatures of Appellant Lollis, Frank Lollis, and Respondent Dutton on the contract recorded on December 20, 2012. Respondent Kelsey Dutton acknowledged that she did not see Appellant Lollis sign the contract. (Tr. p.468, lns 9-10) Heather Fields, who notarized the signatures of Appellant Lollis, Frank Lollis and Respondent Dennis Dutton on the contract recorded December 20, 2012, acknowledged that she did not see Appellant Lollis sign the document even though she notarized her signature. (Tr. p. 236, lns 4-7)

Appellants presented the testimony of Marvin H. Dawson, Jr., a forensic document examiner (“handwriting expert”). Mr. Dawson was qualified by the Court as an expert forensic document examiner. Mr. Dawson testified that the alleged signature of Appellant Lollis on the contract recorded on November 21, 2011 is not a genuine signature. He further testified that the alleged signature of Appellant Lollis on the contract recorded on December 20, 2012 is not a genuine signature (Tr. p. 251, ln 22 – p. 252, ln 24) (Final Report of Marvin H. Dawson, Jr., page 5)

There was no meeting of the minds between Appellant Lollis and Respondents regarding the sale of her property on Cemetery Road. Appellant Lollis had no intention of selling her property. Respondents acknowledge that they did not have any discussion with Appellant Lollis about their desire to purchase the property or about entering into any agreement for them to live on or purchase the property. Respondents acknowledge that they dealt with Frank Lollis and attorney Scurry when discussing the purchase of the property. Attorney Scurry, who prepared the contract recorded on November 21, 2011, did not have any discussion with Appellant Lollis about the contract. Respondents acknowledge that Appellant Lollis is the owner of the Cemetery Road property (Answer and Counterclaim filed October 1, 2013) Appellant Lollis did not sign the contract and no one claims to have seen Appellant Lollis sign the same. The forensic document examiner verified that the purported signatures of Appellant Lollis on the alleged contracts were not genuine signatures. Appellant Lollis testified that she did not receive any money as payment under the alleged contracts and the Respondents acknowledge that they did

not make any payments directly to Appellant Lollis. Based upon the above, Respondents do not have a legal, binding contract with Appellant Lollis, the actual owner of the property referenced in the contracts and the Court erred in requiring Appellant Lollis to transfer ownership of the Cemetery Road properties to Respondents Lisa and Dennis Dutton.

b. Frank Lollis was not an agent for Appellant Kathleen Lollis

Prior to the filing of the underlying action, Appellants filed a Notice to Quit against Respondents in the Laurens County Magistrate's Court. At the hearing, Respondent Lisa Dutton informed the Magistrate that Frank Lollis was the owner of the Cemetery Road property. (Tr. p. 367, lns 9-12) Then, at an injunction hearing in the underlying action in July of 2013, Respondent Lisa Dutton informed the Court that Frank Lollis had Power of Attorney to sign Appellant Lollis' signature to the contract. (Tr. p. 367, ln 21 - p.368, ln 4) Both Respondent Lisa and Dennis Dutton testified in the trial of this matter that Appellant Lollis was the owner of the property and acknowledged the same in the Answer and Counterclaim. Respondent Dennis Dutton also testified that he believed Frank Lollis owned the property when he first entered into the agreement to purchase the property. (Tr. p. 504, lns 6-10) Despite the fact that Respondents testified that they believed Frank Lollis either owned the property or had Power of Attorney to sign Appellant Lollis' name to the contract, the Court concluded that Frank Lollis was acting as an agent for Appellant Lollis when signing the contracts for the Cemetery Road property. (Final Order filed July 6, 2015) The Final Order does not set forth specific findings as to how the Court came to the conclusion that Frank Lollis was acting as the agent for Appellant Lollis. Furthermore, the Final Order does not specifically state whether the Court concluded that Frank Lollis was the actual agent for Appellant Lollis or if the Court concluded that Frank Lollis was an agent under the theory of apparent agency. Although the Court did not make a specific finding as to which type of agency existed in this case, it appears that the Trial Court believed Frank Lollis was acting as an agent under the theory of apparent agency.

"A party asserting agency as a basis of liability must prove the existence of an agency. Agency must be clearly established by the facts." Paramount Fund, Inc. vs. Qusasc, 282 S.C. 497, 499-500, 319 S.E.2d 354 (Ct. App. 1984) "The basis of apparent authority is representations made by the principal **to the third party** and reliance by the third party on those representations. (Emphasis added) Young vs. S.C. Dept. of Disabilities and Special Needs, 374

S.C. 360, 367, 649 S.E.2d 488 (2007) “A Court must focus on the relationship between...the principal and the third party.” Charleston, S.C. Registry for Golf and Tourism, Inc. vs. Young Clement Rivers and Tisdale, LLP, 359 S.C. 635, 642-43, 598 S.E.2d 717(Ct. App. 2004) Appellant Lollis never intended to sell her property. (Tr. p. 26, lns 22-24) Attorney Scurry never discussed with Appellant Lollis the idea of Respondents purchasing her property. (Tr. p.199, lns 16-23) Attorney Scurry did not recall any conversation with Respondent Lisa Dutton about Frank Lollis having the authority to sign the contract on behalf of Appellant Lollis, nor did he represent to her that Frank Lollis had Power of Attorney to sign for her. (Tr. p.191, lns 7-20) Respondent Lisa Dutton testified that her dealings were with Frank Lollis and attorney Scurry. (Tr. p.389, lns 8-11) She further testified that Appellant Lollis was never present during the signing of the contracts. (Tr. p. 389, lns 12-24) Respondent Dennis Dutton testified that he never spoke to Appellant Lollis about purchasing her property. (Tr. p.495, lns 4-8) He further testified that when he first entered into the agreement he thought Frank Lollis owned the property. (Tr. p.504, lns 2-10) Respondents and Appellant Lollis never had any discussions regarding Respondents’ desire to purchase her property. Accordingly, Appellant Lollis could not have made any representation to Respondents about Frank Lollis’ authority to enter into any contract on her behalf. Respondents’ claim that they believed Frank Lollis had Power of Attorney for his mother is meritless. Respondent Lisa Dutton acknowledged that she never saw a Power of Attorney giving Frank Lollis the authority to sign for his mother. (Tr. p. 388, lns 19-23) Furthermore, the signatures on the contract are for “Kathleen Lollis,” not “Frank Lollis as Attorney-in-Fact for Kathleen Lollis.” (Contract dated November 21, 2011; Contract Dated December 20, 2012)

Even if the Trial Court concluded that Frank Lollis was an agent of Appellant Lollis based upon the theory of actual agency, no evidence exists to establish actual agency. “Actual authority is based on the relationship between the purported principal and agent.” Richardson vs. P.V., Inc., 383 S.C. 610, 615, 682 S.E.2d 263 (2009) “Agency is the fiduciary relationship that arises when one person (the principal) manifests assent to another person (an agent) that the agent shall act on the principal’s behalf and subject to the principal’s control.” Froneberger vs. Kirkland Dale Smith, et al., 406 S.C. 37, 49, 748 S.E.2d 65 (Ct. App. 2013) “Because the relationship is based on consent, a principal can limit an agent’s authority. Under South Carolina law, the test to determine agency is whether or not the purported principal has the right to control

the conduct of his alleged agent.” Patino vs. Capital Bonding Corporation, 465 F. Supp.2d 518, 521 (D.S.C., 2006)

Respondents presented the testimony of Barry Adams, who worked for Frank Lollis for years and had dealings with him. (Tr. p. 455, ln 15- p. 456, ln 1) Mr. Adams testified that he never saw Frank Lollis sign any relative’s names to legal documents. (Tr. p. 456, lns 20-25) She had no knowledge of any contract between herself and Respondents prior to her son’s passing. (Tr. p.20, lns 14-17) Appellant Lollis did not give anyone authorization to sign her name to the contracts. (Tr. p.31, lns 11-15) She testified that nobody else had the authority to try to sell her property to Respondents Dutton. (Tr. p.22, lns 9-11) Attorney Scurry, who prepared the contract of sale to Respondent Dutton, never discussed any proposed contract with Appellant Lollis. (Tr.p.199, lns 16-23) Attorney Scurry did not have a copy of a Power of Attorney giving Frank Lollis Power of Attorney for Appellant Lollis in his possession, nor was he aware of one being filed in the Clerk of Court’s office. (Tr. p.192, lns 11-19) There was no testimony that Appellant Lollis gave consent for her son, Frank Lollis, to enter into contracts to sell her property. There was no documentation or other evidence that Appellant Lollis gave Frank Lollis permission to sell her Cemetery Road property. Appellant Lollis had no knowledge of the contracts to purchase her Cemetery Road property until after the death of Frank Lollis. Accordingly, she had no right to control the actions of Frank Lollis, nor was she able to limit his authority since she was unaware of his actions. As such, there can be no agency relationship between Appellant Lollis and her son, Frank Lollis.

The Court relied on the “business practices” of Frank Lollis and on prior transactions involving real estate belonging to Appellant Lollis in support of its finding that Frank Lollis was an agent for his mother. (Final Order filed July 6, 2015, p. 2, para 5 and 7; p. 3, para 12; p. 6, para 24) The Trial Judge abused his discretion in allowing testimony and the admission of records over the objection of Appellants’ counsel. Respondent presented this testimony and documents to establish that Appellant Lollis previously allowed her son, Frank Lollis, to sign deeds and other documents on her behalf. Counsel for Appellants objected to this evidence on the basis that it is not relevant to this matter as it does not pertain to the Cemetery Road property and many of the transactions do not involve Respondents. This evidence has no bearing on whether or not Appellant Lollis entered into a contract with Respondents. The evidence also does not help Respondents prove that they paid the amounts alleged. Respondents did not

present a forensic document examiner or any other testimony to prove that Frank Lollis signed his mother's name to these documents. Without any expert testimony or testimony from a witness who saw Frank Lollis sign his mother's name to those documents, the Court could only speculate as to who signed Appellant Lollis' name to those documents. Counsel for Appellants also objected to the introduction of this evidence on that basis (Tr. p.79, ln 20 - p.83, ln 19) (Defendant's Exhibit 12- Deeds: B882, P89; B893, P9; B894, P52; B897, P272; B898 P208; B901, P139; B923, P273; B942, P145; B943, P183; B947, P219; B984, P205; B992, P287; B1054, P269; B1057, P1; B1059, P93; B1081, P87; B1096, P183) Counsel for Appellants filed a Motion *in limine* asking the Court to prohibit the introduction of any testimony or documents relating to any transactions which do not pertain to the Cemetery Road property. Although the Motion was not argued at the beginning of the trial, it was mentioned during discussion of the introduction of the aforementioned documents. The Trial Judge abused his discretion in repeatedly allowing the introduction of documents not pertaining to the real estate at issue in this case or the parties involved in this litigation over the objection of Appellants' counsel. (Tr. p.79, ln 20 - p.83, ln 19; p.143, ln 17- p. 144, ln 12; p.164, lns 1-6; p.530, ln 11 - p. 531, ln 6) (Defendant's Exhibit 12- Deeds: B882, P89; B893, P9; B894, P52; B897, P272; B898 P208; B901, P139; B923, P273; B942, P145; B943, P183; B947, P219; B984, P205; B992, P287; B1054, P269; B1057, P1; B1059, P93; B1081, P87; B1096, P183) (Defendant's Exhibit 74- Signatures of Kathleen Lollis from the public record) (Defendant's Exhibit 3- Deed B587, P90) (Defendant's Exhibit 4- Deed B992, P287) (Defendant's Exhibit 14- Deed B302, P 694)

The Court erred in relying on the testimony of attorney John Scurry that he **believed** Frank Lollis had a power of attorney to sign documents on behalf of his mother. (emphasis added) (Final Order dated July 13, 2015, p. 2, para 6) Attorney Scurry acknowledged that he not have a copy of a Power of Attorney giving Frank Lollis Power of Attorney for Appellant Lollis, nor was he aware of one being filed in the Clerk of Court's office. (Tr. p.192, lns 11-19)

The Court also erred in relying on the testimony of attorney John Scurry that it was his opinion that the Cemetery Road property had been bought by Frank Lollis. (Final Order dated July 13, 2015, p. 3, para 11) Attorney Scurry admitted that he did not know Frank Lollis until 2006, that he was not present for the closing when those parcels were purchased in 1999, and further admitted that he had no knowledge as to where the money came from to purchase those

parcels. (Tr. p. 215 ln 17 – p. 216, ln 16) Accordingly, his testimony that it was his “opinion” that the land was purchased by Frank Lollis was merely speculation.

The Trial Judge abused his discretion in allowing the introduction of a document created by Respondent Lisa Dutton which purports to prove the assets owned by Frank Lollis at the time of his death. (Tr. p. 340, ln 20 – p. 341, ln7) (Defendant’s Exhibit 42- List of Frank Harvey Lollis property at the time of his death) The Court further abused it’s discretion in allowing into evidence a bill of sale for a lawnmower purchased by Respondent Dennis Dutton. (Tr. p. 483, ln 24- p. 484, ln 18) (Defendant’s Exhibit 72- Bill of Sale dated February 1, 2012) These exhibits do not help prove or disprove that the Respondents had a valid contract with Appellant Lollis, nor do they help the Court in determining any other issues involved in the case. As such, they should not have been introduced over the objection of Appellant’s counsel.

II. THE COURT ERRED IN CONCLUDING THAT RESPONDENTS OVERPAID APPELLANTS THE SUM OF \$850.96 AND FURTHER ERRED IN ORDERING APPELLANTS TO REFUND RESPONDENTS THE SUM OF \$850.96.

a. Respondents did not prove that they fulfilled their obligations under the Contracts of Sale.

Even if there were valid contracts between the parties, Respondents failed to establish that they paid the amounts owed under the contracts. Pursuant to the November 2011 contract, Respondent Lisa Dutton was required to pay Appellant Lollis the sum of \$58,650, along with interest at a rate of 5% per annum, by making payments of \$400 per month beginning November 1, 2011. Respondent Lisa Dutton testified that she paid the full amount due plus an additional \$850.96. (Tr. p. 336, lns 1-3) Frank Lollis passed away on April 29, 2013. (Tr. p. 107, lns 20-22) Respondent Lisa Dutton claims to have paid over \$59,000 between November 21, 2011 and April 29, 2013.

Respondents failed to provide credible evidence or documentation that they paid the amounts claimed. At trial, Respondent Lisa Dutton presented numerous checks, totaling \$3,525.00, which she claims were payments to Frank Lollis pursuant to the terms of the November 2011 contract. (Defendant’s Exhibit 31- Checks from Lisa Dutton) Several of these checks were for payments related to other properties. Eight hundred fifty (\$850.00) dollars of the \$3,525.00 was paid prior to Respondent Lisa Dutton entering into the alleged contract with

Appellant Lollis. (Tr. p. 372, ln 16 - p.378, ln 10) (Defendant's Exhibit 31- Checks from Lisa Dutton) Respondent Lisa Dutton claims to have paid the remainder of the balance in cash payments. She claims to have made numerous cash payments, including a cash payment of \$35,000 on February 27, 2012, a cash payment of \$1400 on October 1, 2012, and a cash payment of \$10,000 on August 20, 2012. (Tr. p. 406, ln 7 - p.408, ln 11) (Defendants' Exhibits 29- Receipt for \$35,000; Defendant's Exhibit 30- Receipt for \$1400; and Plaintiff's Exhibit 11- Affidavit of Lisa Dutton, Exhibit C, page 4)

Appellant's presented the testimony of Marvin H. Dawson, Jr., who was qualified by the Court as an expert forensic document examiner. Mr. Dawson testified that the purported signatures of Frank Lollis on the receipts for cash payments were non-genuine signatures, with the exception of one (1) receipt. (Tr. p. 251, ln 4 - p. 255, ln13) (Plaintiff's Exhibit 15 – Final Report of Marvin H. Dawson, Jr., pgs.1-2 and p. 5) The signatures that Mr. Dawson testified were non-genuine include the \$35,000 cash payment, the \$10,000 cash payment, and many other large cash payments. These non-genuine signatures appear on receipts for cash payments totaling over Fifty-Nine Thousand Dollars (\$59,000). The only cash payment allegedly made by Respondent Lisa Dutton that could not be ruled out as a genuine signature was a cash payment of Seven Hundred Dollars (\$700). (Plaintiff's Exhibit 15 – Final Report of Marvin H. Dawson, Jr., pgs.1-2 and p. 5) Respondents did not produce any expert testimony to contradict the findings of Mr. Dawson.

Pursuant to the December 2012 contract, Respondent Dennis Dutton was required to pay \$27,700 by making payments of \$300 per month beginning December 17, 2013. Respondent Dennis Dutton claims to have paid \$28,000 between December 2012 and February 2013, despite the fact that the contract December 2012 only required him to pay the sum of \$300 per month. (Tr. p. 498, lns 20-23) As "proof" of payment in full, Respondent Dennis Dutton presented several receipts for cash payments purportedly signed by Frank Lollis, including a receipt dated February 3, 2013 for \$24,700 marked "paid in full." This receipt was purportedly signed by Frank Lollis. (Tr. p. 498, ln 24 - p. 500, ln20) Marvin Dawson, the forensic document examiner, found that there is reason to believe the purported signature of Frank Lollis on the receipt for \$24,700 is a non-genuine signature. (Plaintiff's Exhibit 15 – Final Report of Marvin H. Dawson, Jr., Supplemental Report, p.1)

Respondent Dennis Dutton testified that his wife always filled out the receipts and Frank Lollis signed them. (Tr. p. 500, lns 6-14) Respondents did not present their own forensic document examiner or any other expert to contradict the expert testimony of Marvin H. Dawson, Jr., who testified that the majority of the purported signatures of Frank Lollis on the receipts for cash payments were not genuine signatures of Frank Lollis. The Court obviously found Appellant's expert to be reliable. The Court relied on the conclusion of Appellants' expert that the purported signature of Frank Lollis releasing the lien on the trailer to Respondent Dennis Dutton was a genuine signature (Final Order filed on July 6, 2015, p. 4, para 19) Accordingly, the Court erred in disregarding the remaining testimony and findings of the expert, which were uncontradicted expert testimony.

Respondent Lisa Dutton did not contact either of the Appellants claiming that she fulfilled her obligation under the contract of sale until Frank Lollis passed away. (Tr. p. 363, ln 24 - p. 364, ln 4) Furthermore, she allegedly made a payment of Seven Hundred Dollars (\$700) on April 3, 2013, just a few weeks before Frank Lollis passed away. The payment does not indicate that balance was "paid in full." (Defendant's Exhibit 31- List of Checks) Respondent Lisa Dutton testified that she called attorney Scurry on several occasions asking him to calculate how much she owed or if she owed any money after making the lump sum cash payments. (Tr. p. 336, ln 22 - p.337, ln 2) Attorney Scurry testified that he had no personal knowledge of Respondent Lisa Dutton ever paying any money to Frank Lollis for the Cemetery Road property. He further testified that he was never aware that she claimed to have paid off the property until after the death of Frank Lollis. (Tr. p. 193, ln 14 - p. 194, ln 20)

The Court erred in finding the Respondents to be more credible than Appellants and in relying on their testimony that they paid the full amounts owed under the contracts. (Final Order filed on July 6, 2015, p. 6, para 25 and 27) Respondents presented receipts for cash payments which were purportedly signed by Frank Lollis. Appellant's expert testified that the majority of these receipts were non-genuine signatures of Frank Lollis. Respondent's Lisa and Kelsey Dutton signed as witnesses to the signature of Appellant Lollis on the December 2012 contract even though neither of them saw her sign the same. (Tr. p. 402, ln 22- p. 403, ln 9; p.468, lns 9-10) Respondent Lisa Dutton also signed as a witness to the purported signature of Frank Lollis on the receipt for a cash payment of thirty-five thousand dollars (\$35,000). (Defendants' Exhibit 29- Receipt for \$35,000) Appellants' expert witness testified that the purported signature of

Frank Lollis was not a genuine signature. (Tr. p. 251, ln 4 - p. 255, ln13) (Plaintiff's Exhibit 15 – Final Report of Marvin H. Dawson, Jr., pgs.1-2 and p. 5) Respondents presented documents with non-genuine signatures in an attempt to convince the Trial Judge that they fulfilled their obligations under the contract. They also signed as witnesses to the signature of Frank Lollis on documents that Appellant's expert testified were not genuine signatures of Frank Lollis. Accordingly, it was error for the Judge to rely on their testimony and to find Respondents testimony to be more credible than Appellants.

Based upon the above, Respondents failed to establish by credible evidence that they did in fact pay all sums due under the alleged contracts between the Respondents and Appellant Lollis.

b. Respondents do not have the ability to pay the amounts claimed and have failed to establish proof of the same.

Respondents could not have paid over \$86,000 to Frank Lollis in a span of eighteen (18) months. Respondent Lisa Dutton testified that she has been on Social Security Disability since 2006. (Tr. p. 416, ln 7 - ln 16; p. 418, lns 20-22) She testified that Respondent Dennis Dutton receives SSI in the amount of \$700 per month. Respondent Lisa Dutton further testified that she receives \$1,037 per month as her disability payment and that their combined household income was approximately \$2,000 per month. (Tr. p. 419, ln 2 - p. 420, ln 13) Respondent Dennis Dutton testified that he has been receiving SSI for three to five (3-5) years and that the last time he worked was in 1980s or 1990s. (Tr. p. 485, ln 17 - p. 486, ln 5; p. 488, lns8-14) Respondent Dennis Dutton acknowledged that for the past three (3) or four (4) years the average balance in his banking account was \$28 to \$65 dollars per month. (Tr. p. 506, lns 8-18) Respondent Lisa Dutton acknowledged making several posts on social media claiming that the Respondents were "struggling financially," "can't go far due to hard times," and that she could not afford jeans for her daughter. (Tr. p. 408, ln 12 - p. 415, ln 6) (Plaintiff's Exhibit 17- Facebook post February 3, 2012; Plaintiff's Exhibit 18- Facebook post August 21, 2012; and Plaintiff's Exhibit 19- Facebook post October 12, 2012) One of these posts was made on February 3, 2012, just twenty-four (24) days before Respondent Lisa Dutton alleged to have made a \$35,000 cash payment to Frank Lollis. (Tr. p. 409, ln 5 - p. 411, ln 1) (Plaintiff's Exhibit 17- Facebook post February 3, 2012) Another post was made on August 21, 2012, just one day after Respondent

Lisa Dutton alleged to have made a \$10,000 cash payment to Frank Lollis. (Tr. p. 411, ln 13 - p. 414, ln2) (Plaintiff's Exhibit 18- Facebook post August 21, 2012)

Respondent Lisa Dutton testified that she received a lump sum disability settlement of \$19,000 when she was approved for disability. (Tr. p. 415, lns 7-12) However, she failed to present any documentation verifying that she received a \$19,000 lump sum payment from Social Security. (Tr. p. 418, ln 6-22) Appellants submitted a statement from the Social Security Administration dated April 16, 2006 (the year she was approved) which established that Respondent Lisa Dutton was to receive a check for \$5,718.38 for money withheld from her benefits. (Plaintiff's Exhibit 20- Letter from Social Security Administration dated April 16, 2006) No proof was submitted to establish that she received a lump sum of \$19,000. In any event, this money would have been received by Respondent Lisa Dutton over five (5) years prior to entering into the alleged contract with Appellant Lollis.

Respondent Lisa Dutton testified that she was given large sums of money from various individuals, including her father, her brother, and as an inheritance from her grandmother. She also claimed to have received money from selling various properties. Respondent Lisa Dutton testified that she used this money toward the cash payments made to Frank Lollis. (Tr. p. 415, lns 7 - p. 416, ln 6) In March of 2014, a hearing was held in front of the Honorable Frank Addy regarding several discovery issues. The order from the hearing provides that Respondents "will need to account for the source of the funds which they maintain were used to purchase the property." The order further provided that "the Defendants (Respondents) shall provide documentation regarding this income or funds – be it via gift, inheritance, wages, disability, government benefits, etc." (Order dated March 14, 2014) Respondents did not provide any canceled checks, bank statements, deposit slips, receipts, settlement statements, proposals for distribution, or any other document to verify that they received any money from these individuals or from the sale of any property, nor were any documents presented at trial. Furthermore, Respondents did not present any witnesses to corroborate their testimony that they received any gifts of cash from third parties. Respondent Lisa Dutton acknowledged that no documentation of these sources of income were presented. (Tr. p. 447, ln 17 - p.448, ln17)

c. **Appellant Lollis did not receive any money from Respondents.**

The trial Court concluded that Respondent Lisa and Dennis Dutton overpaid Appellants and ordered that Appellants refund the Respondents the sum of \$850.96. Respondents admitted in their Answer and through testimony that Appellant Lollis is the owner of the Cemetery Road property. (Answer and Counterclaim filed October 1, 2013) Despite the fact that Respondents acknowledge that Appellant Lollis was the owner of the property, Respondent Lisa Dutton testified that she always made payments to Frank Lollis or Appellant Campbell. (Tr. p. 342, ln 24 - p. 343, ln 2) She further testified that she never made any payments directly to Appellant Lollis. (Tr. p. 440, lns 16-24) All checks introduced as proof of payment toward the contract sales price were made payable to Frank Lollis. (Defendants' Exhibit 31- Copies of Checks) All receipts for alleged cash payments toward the purchase price under the contract were purportedly signed by Frank Lollis.

Appellant Campbell did not receive any rent from Respondents or any form of payment that could have been considered a mortgage payment. (Tr. p. 109, ln 19 - p.110, ln 4) She never witnessed Respondents paying any money to Appellant Lollis for the property at issue even though she is very close to her mother and testified that she takes care of her and sees her every day (Tr. p. 111, lns 14-22)

Although Respondents acknowledge that Appellant Lollis was the owner of the Cemetery Road property, Respondents claim to have paid the purchase price for the Cemetery Road property to Frank Lollis, whether it be via cash or check. Appellant Lollis did not receive any money from the Respondents as payment for the properties in her name. (Tr. p. 22, lns 18-20; p. 25, ln 24 - p. 26, ln1; and p. 26, lns 19-21) Despite the fact that all parties involved acknowledged that Appellant Lollis did not receive any money for payment toward her property, the Court ordered her to transfer her real estate to the Respondents and to refund them over eight hundred dollars (\$800). This was clearly an error by the Court.

CONCLUSION

It is, therefore, respectfully submitted that the Court erred in concluding that a valid contract existed between the parties and further erred in requiring Appellants to reimburse Respondents the sum of \$850.96. Therefore, the decision of the Trial Court should be reversed.

Respectfully submitted,

TURNER & BURNEY, P.C.

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Laurens, South Carolina
November 5, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-30-3513

Kathleen Lollis and Linda CampbellAppellants/Respondents,

vs.

Lisa Dutton, Dennis Dutton, and Kelsey Dutton.....Respondents/Appellants,

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I hereby certify that I have served one (1) copies of the Appellants/Respondents Initial Brief and Designation of Matter on the below named, by depositing a copy of the same in the United States Mail, on the 6 day of November, 2015, with sufficient postage annexed thereto, addressed thereto and mailed to the same at the address below:

John R. Ferguson, Esquire
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Laurens, South Carolina 29360

November 6, 2015

TURNER & BURNEY, P.C.

A handwritten signature in black ink, appearing to read "Matthew P. Turner", is written over a horizontal line.

Matthew P. Turner
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Reply to:

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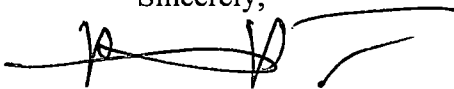
Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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RE: Kathleen Lollis and Linda Campbell vs. Lisa Dutton, Dennis Dutton, and Kelsey Dutton
Appellate Case No. 2015-001861

Dear Madam Clerk:

I enclose herewith the original and one (1) copy of Appellants/Respondents' Initial Brief and Designation of Matter to be included in the Record on Appeal along with Proof of Delivery for the same. Please file the Brief and Designation of Matter and return the clocked copies of both in the enclosed self-addressed stamped envelope. I have also enclosed the original and two (2) copies of the Proof of Delivery. Please record the same and return the copies in the enclosed self-addressed stamped envelope.

Sincerely,



Matthew P. Turner
MPT/ljf

CC: John R. Ferguson, Esquire
Kathleen Lollis and Linda Campbell

Enclosures

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