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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

**RECEIVED**

JUN 23 2016

The Honorable R. Knox McMahon

**SC Court of Appeals**

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

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.,  
Successor by merger to Wachovia Bank, N.A., and  
Cargo Development, LLC,  
A North Carolina limited liability Company, ..... Cross-Defendants.

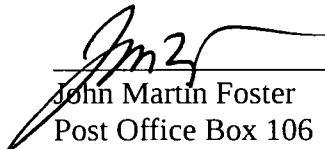
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PETITION FOR REHEARING

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This Petition is based upon those certain points, factual and legal, which the Appellant believe the Courts to have overlooked or misapprehended, as set out in the accompanying Memorandum, a copy of which is attached hereto and incorporated herein.

June 22, 2016

  
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MEMORANDUM ON PETITION FOR REHEARING

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The Petitioner petitions for a rehearing of the matter above under Rule 221(a), S.C.A.C.R.

This Petition is based upon those certain points, factual and legal, which the Petitioner believes the Court to have overlooked or misapprehended, as set out herein.

## THE DECISION ON APPEAL

This decision of this Court was filed June 8<sup>th</sup>, 2016. To the extent allowed, the Petitioners restate and by this reference reargue all matter set out in their Brief and referenced in the Record on Appeal.

### BACKGROUND

In May, 2006, the Appellants RONALD P. PAPPAS and CAMINE PAPPAS purchased, as an investment, a residential lot in what was to be Edgewater, a new subdivision in Lancaster County, developed by Craft Development, LLC. The price was \$229,000.00. This subdivision did not perform as expected.

This lot was financed by the predecessor in interest to the Respondent WELLS FARGO BANK, N.A. with a note having a balloon payment in June, 2009. At closing, they were charged with the cost for an appraisal of the lot. They requested a copy of that appraisal. It was not supplied until this action was filed. No reason for that failure has been stated.

By January, 2008, complaints had been made to HUD alleging failures to comply with the Interstate Land Sales Full Disclosure Act by Craft Development.

In July, 2009, at the urging of the bank and upon expiration of the original Note, the Appellants refinanced with the Bank at a figure of \$210,954.69. At the second closing, they were again charged with the cost for an appraisal of the lot. They again requested a copy of that appraisal. Discovery covering that document was served. This request was repeated, and acknowledged, during the Deposition of the Appellant RONALD P. PAPPAS. To date, they have not been supplied with that appraisal. This foreclosure action is premised upon the documents of the second closing.

In December, 2013, the Respondent Bank filed its Motion for Summary Judgment. By their Affidavit and argument at the motion hearing, counsel for Appellants set out their theory that the undisclosed appraisal must either show a true and lesser figure, which did not support the 2009 refinance, or the former, original figure, which misled the Appellants and caused them to forego their right to timely plead causes of action under the Interstate Land Sales Full Disclosure Act and otherwise.

The Respondent's Motion for Summary Judgment was granted by Order entered April 11, 2014, written notice of which was received on May 16, 2014. The Appellants' Motion under Rule 59(a) and (e), S.C.R.C.P. was denied by Order filed June 12, 2014, written notice of which was received on June 13, 2014. This appeal followed.

## GROUND OF APPELLATE DECISION

The Petitioners' appeal for production of the missing appraisal underlies their claims for fraud and unfair trade practices. The Court recites the requirement that "further discovery will uncover additional relevant evidence . . .", quoting from *Baughman v. Am. Tel & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (1991).

To reiterate: the Petitioners have plead their payment for the second appraisal, their reliance on its (presumed) backing for the value of the property so refinanced, and that such value was either false or withheld due to its accuracy. [*Id.*, Para. 19 and 52 of the Amended Answer, Counterclaims and Crossclaim, RECORD ON APPEAL, p.34-35, 39, and the Second, Fifth, and Sixth Counterclaims generally.]

The burden of the decision of the Court is that these facts will not require the production of the document, or affect the lower Court's grant of summary judgment, because, in fraud the plaintiff must prove a justifiable reliance on the representation [here, such representation would be the substance of the appraisal]. The decision is apparently based upon the legal conclusion that the Petitioners could not have justifiably relied upon that appraisal. To state this more specifically, they had no right to assume the appraisal was correct or, in the event it accurately showed a lesser value, they had no right to information that would have provoked legal remedies at that time.

To state the conclusion as the decision ends its discussion, "whatever doesn't make any difference, doesn't matter.", quoting *McCall v. Finley*, 294 S.C. 1, 362 S.E.2d 26, 28 (Ct.App. 1987).

The commentators of AMERICAN JURISPRUDENCE 2D state:

There is considerable authority to the effect that a mistake of one party known to the other affects the validity of their agreement. This is held to be true where the mistake is obvious on the face of the contract. Accordingly, where there is a mistake that on its face is so palpable as to put a person of reasonable intelligence on his guard, there is not a meeting of the minds, and consequently there can be no contract. If, however, a mistake in an agreement is not in its expression, but in some fact materially inducing it, the mere knowledge in the one party of a mistake in the other apparently does not, *in the absence of a duty to disclose* or other special circumstance, constitute a sufficient ground in equity for avoiding the agreement. Of course, a mistake of one party caused by the fraud of the other warrants relief; and the same is held to be true where the mistake is induced by an innocent misrepresentation of the other party.

[17A AM.JUR.2D *Contracts* § 220 (2002); footnotes omitted and emphasis added.]

The Petitioners contend the second Appraisal was either false or deliberately hidden from them. The Respondent Bank either engaged in improper behavior or failed to act when it had a

duty to do so. The Petitioners had a right to rely on the Bank's actions and duty, and the fact of their reliance is a matter of fact not to be decided by a summary judgment.

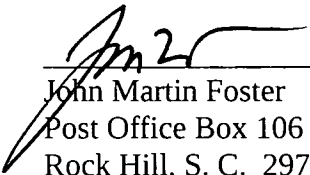
The same commentators cite the language of the RESTATEMENT OF CONTRACTS 2D, § 153(b) and 154 to the effect that where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear the risk of the mistake under the rule stated in the Restatement, and the other party had reason to know of the mistake or his fault caused the mistake.

As to the Petitioners' Counterclaim for unfair and deceptive trade practices, the decision disposes of this by a citation of the rule on the adverse effect upon public interest. [Citation omitted.] The Petitioners have cited *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996) to the effect that such impact may be evidenced by showing the Defendant's procedures create a potential for repetition of the unfair and deceptive acts. They argue that such potential has been shown. They have also invoked the language of that decision by which such proof is not limited to the two methods cited therein. The use of misleading information to effect a refinance, or the failure to disclose information that would affect the same, has a prima facie effect upon the public interest.

#### CONCLUSION

For all the reasons set out and referenced above, the Petitioners request that this matter be reheard by the Court of Appeals, and for any other relief to which they may be entitled in law or equity.

Respectfully submitted,

  
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June 22, 2016

Rock Hill, South Carolina