

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Tanya A. Gee, Circuit Court Judge

Case No. 2016-000464

Elizabeth Box.....Appellant,

v.

The Sparrow Group, LLC and Bryan C. Jones.....Respondent.

RECORD ON APPEAL

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CERTIFICATE OF COUNSEL

In accordance with Rule 210 (g) S.C.A.C.R., the undersigned counsel for the Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 20, 2016



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FEB 19 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

v.

Sparrow Group, LLC and

Bryan S. Jones

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-40-4129

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

FILED
FEB - 5 PM 3:05
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY, SC

THIS MATTER came before the Court by way of Defendants Sparrow Group, LLC and Bryan S. Jones' motion to dismiss. A hearing was held before me on November 3, 2015. Jennifer Cooper, Esquire, appeared on behalf of Plaintiff and Eric Hale, Esquire, appeared on behalf of Defendants. Although this motion was made pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, counsel for both parties introduced evidence outside the pleadings. No party objected to the entry of the evidence into the record, and therefore, the matter was converted to a motion for summary judgment in accordance with Rule 12(b), SCRPC. *See Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009); *Gilbert v. Miller*, 356 S.C. 25, 586 S.E.2d 861 (Ct. App. 2003).

I. FACTS

In July of 2010, Plaintiff and Defendant Sparrow Group, LLC by and through its agent Defendant Bryan S. Jones entered into an agreement for the purchase of property in Irmo, South Carolina. Pursuant to the South Carolina Residential Disclosure Act, Plaintiff was furnished with a "Residential Property Condition Disclosure Statement" provided by Sparrow Group. On the Disclosure Statement, the Defendant/Seller checked "yes" to the question: "Do you have knowledge of any problem (malfunction or defect) with any of the following: 1. Foundation . . .". The Disclosure Statement further states: "If you answered 'yes' to any of the above questions,

1 of 3 *JNS*

SCANNED

please use the following space for your explanation and attach any relevant professional reports,” to which the Defendant/Seller wrote: “Foundation/Slab stabilization by Ram Jack in November 2009.” Plaintiff alleged that on July 11, 2012, she discovered issues with the foundation. On July 8, 2015, Plaintiff filed this action against Defendants for breach of contract accompanied by fraud, fraud, negligent misrepresentation, violations of the South Carolina Unfair Trade Practices Act, and violations of the South Carolina Residential Property Condition Disclosure Act. Defendants filed a motion to dismiss alleging, *inter alia*, that the statute of limitations had run on Plaintiff’s causes of action. Defendants argued that the statute of limitations began when Plaintiff was given the Disclosure Statement. They argued that Plaintiff actually discovered or through reasonable diligence should have known that a claim existed when Sparrow Group disclosed to Plaintiff that there were problems with the foundation.

II. LAW/ANALYSIS

“Rule 56 of the SCRCP provides that a trial judge may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 458 S.E.2d 431, 436 (Ct. App. 1995). “In deciding a Rule 56 motion, the Court must view the facts and inferences therefrom in the light most favorable to the nonmoving party.” *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994).

A cause of action for damage to real property must be brought within three years of when the damage occurred. S.C. Code Ann. § 15-3-530(3) (2005). An exception lies in the discovery rule, which tolls the starting of the statute of limitations until a person discovers or should have known through reasonable diligence that a potential claim might exist. S.C. Code. Ann. § 15-3-535 (2005); *Barr v. City of Rock Hill*, 330 S.C. 640, 644-45, 500 S.E.2d 157, 160 (Ct. App. 1998). Likewise, the South Carolina Unfair Trade Practices Act has a three-year statute of limitations. S.C. Code Ann. § 39-5-150 (“No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.”).

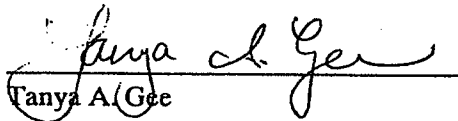
After careful consideration of all the applicable memoranda and arguments of counsel, I grant Defendants’ motion for summary judgment because this action was filed after the statute of limitations had already run. Specifically, I find that Plaintiff knew or should have known that

2 of 3  SCANNED

there was a prior defect to the house's foundation when she reviewed the Property Disclosure Statement in July 2010. That Statement disclosed a problem with the foundation and did not affirmatively state that the foundation defects had been corrected. At that point, Plaintiff had reason to inquire further of the status of the foundation or whether a report from Ram Jack should have been attached.

Viewing the facts in the light most favorable to the Plaintiff, I find as a matter of law that the statute of limitations began to run as of the date of the disclosure, which was signed by Plaintiff on July 8, 2010. The Disclosure Statement revealed foundational issues on the property on that date, not in 2012 as Plaintiff alleges. While Defendant's failure to attach the Ram Jack report may have been actionable within three years' after Plaintiff's receipt of the Disclosure Statement, the inquiry before me today is a different one. This case was commenced by Plaintiff on July 8, 2015, well outside the statute of limitations for Plaintiff's causes of action. Because I find that Plaintiff's action was brought outside the statute of limitations, I need not address any other grounds for dismissal raised by counsel for Defendants.

AND IT IS SO ORDERED.


Tanya A. Gee

Columbia, South Carolina

February 5, 2016

3. The Sparrow Group, LLC is a Limited Liability Company organized and existing under the laws of the State of South Carolina. Upon information and belief, Sparrow is in the business of purchasing and selling residential real estate for profit.

4. The Defendant, Bryan S. Jones, is the sole member of the LLC, the Sparrow group, and is a citizen and resident of Lexington, County.

5. This action arises out of injury to real property, and venue is proper in Richland County where the subject residence is located, pursuant to S.C. Code § 15-7-10 (1976, as amended).

III. For a First Cause of Action
Breach of Contract, Accompanied by Fraud As to the Sparrow Group, LLC

6. Each and every allegation set forth above is incorporated herein as if repeated verbatim.

7. On or about July 3, 2010, the plaintiff entered into a contract to purchase the home, which is the subject of this action located at 119 Milway Road in Richland County, South Carolina. A copy of the contract is attached hereto as Ex. A. The seller of the property was the Sparrow Group, LLC.

8. Prior to the purchase of the home, the plaintiff had a home inspection done, which did not indicate that there were any problems with the foundation of the home. The inspection did recommend certain repairs to other areas of the home. Nevertheless, the plaintiff was in addition provided with a South Carolina Property Condition Disclosure Statement, (hereinafter, Disclosure Statement), attached hereto as Ex. B, which led plaintiff to believe the foundation had been properly repaired and stabilized, when in fact it had not.

9. That the defendant, Sparrow, was required to provide, according to the purchase agreement, a Disclosure Statement which properly disclosed prior defects, conditions and problems with the property that had not been remedied and to provide complete information and not to mislead any purchaser. That notwithstanding this contractual obligation, as required by paragraph 12 of the purchase agreement, the defendant Sparrow and the defendant Jones withheld material information about the alleged repair to the foundation, including but not limited to, the fact that more extensive repairs had been recommended by Ram Jack. Sparrow breached the contract to provide a proper Disclosure Statement according to the requirements of the South Carolina Residential Property Condition Disclosure Act since the Disclosure Statement which was provided was misleading and did not fully disclose the true condition of the property. That Sparrow breached the contract, with fraudulent intent, by committing fraudulent acts accompanying the breach by withholding a prior Ram Jack report which recommended numerous additional foundation repairs, which were not done. That such acts were characterized by dishonesty in fact and by a dishonest design or plan to withhold the prior Ram Jack report even though the Act required the report to be furnished to the buyer.

10. As a direct and proximate result, the plaintiff has incurred substantial actual damages, including the cost that it will take to repair the home and seeks an award of actual and punitive damages against Sparrow.

IV. For a Second Cause of Action
Fraud As to Bryan R. Jones and The Sparrow Group, LLC

11. Each and every allegation set forth above is incorporated herein as if repeated verbatim

12. That Bryan R. Jones, individually, and as an agent of the Sparrow Group, represented that the property which is the subject of this action had had its foundation repaired and stabilized by the defendant Ram Jack when in fact the repairs which had been recommended on November 9, 2009 had not been completed and only part of the recommended work was done.

13. That the representation that the foundation had been repaired was false and known to be false at the time it was made, or in the alternative, was made with reckless disregard of its truth or falsity.

14. That the representations concerning the foundation's repair were material.

15. That the defendant Jones and Sparrow intended that the representations made concerning the foundation be acted upon.

16. That the plaintiff was ignorant of the falsity of the representations and had a right to rely upon the same because the defendant Jones and Sparrow had superior knowledge as an agent and owner of the property and had been provided special information which defendants did not disclose to the plaintiff.

17. That the plaintiff relied on the truthfulness of the representations and as direct and proximate result has suffered actual damages and injury and in addition seeks punitive damages for this fraud.

V. For A Third Cause of Action
Negligent Misrepresentation As to Sparrow and Jones

18. Each and every allegation set forth above is incorporated herein as if repeated verbatim.

19. That the defendant Sparrow and the Defendant Jones represented that the foundation of the home had been adequately repaired when in fact it had not been.

20. That the defendants, Sparrow and Jones, had a pecuniary interest in making these representations and in the transaction at hand.

21. The plaintiff had a right to rely on the representation that the foundation had been repaired and did in fact rely on this representation in purchasing this home.

22. That the representation that the home's foundation had been repaired was false and the defendants should have known it was false at the time it was made and was willfully, wantonly and recklessly made.

23. As a direct and proximate result, the plaintiff has been damaged and by the sums it will cost to repair the home. She seeks actual and punitive damages.

V. For a Fourth Cause of Action
Unfair Trade Practices as to Jones and Sparrow

24. Each and every allegation set forth above is incorporated herein as if repeated verbatim.

25. That the defendant Jones is a controlling person of Sparrow who was actively involved in the purchase and sale of the subject property located at 119 Milway Rd. in Richland County, South Carolina and, therefore, is subject to direct liability for the unfair and deceptive acts of Sparrow and his own acts, which involved failing to disclose that the foundation had not been fully repaired when sold to the plaintiff and the purposeful withholding of complete information which Jones had as to the recommended repairs made by Ram Jack.

26. That Jones and Sparrow were at the time actively involved in the trade or commerce of buying and selling real estate for profit and as such are subject to the provisions of the South Carolina Unfair Trade Practices Act (SCUPTA)

27. That the acts enumerated herein of providing a knowingly false or incomplete Residential Disclosure Statement and withholding material information about repairs which had been recommended by Ram Jack are capable of repetition and have the capacity to deceive and, are therefore, acts which are prohibited by the SCUPTA.

28. That Jones and Sparrow knew or should have known that these acts were in violation of SCUPTA, and therefore, are willful violations of the Act, for which the Court should award actual and treble damages, costs and attorney fees.

For a Fifth Cause of Action
Violation of the S.C. Residential Property Condition Disclosure Act
As to Sparrow

29. Each and every allegation set forth above is incorporated herein as if repeated verbatim.

30. That the Defendant Sparrow violated the South Carolina Residential Property Condition Disclosure Act by making false and misleading statements about the condition of the property, specifically that the foundation had been stabilized when in fact it had not.

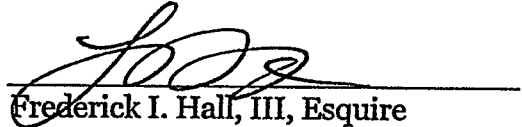
31. That Sparrow also failed to furnish a copy of the actual report which it had been given and which specifically shows that more substantial repairs had been recommended to the home, which was withheld from the plaintiff. That as a direct and proximate result the plaintiff had been damaged. Plaintiff seeks actual damages, attorney fees and cost under the Disclosure Act.

Wherefore, having set forth her complaint herein, the plaintiff prays that she be granted judgment on her complaint for actual, punitive, and treble damages, as well costs and attorney fees, all according to law.

Respectfully Submitted,

The Rick Hall Law Firm, LLC

By:



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ATTORNEY FOR PLAINTIFF

July 8 2015
Lexington, SC

Final
Contract

ERA WILDER REALTY, INC.

CONTRACT OF SALE
RESIDENTIAL

Revised 09/08



I, PROPERTY, SELLER, AS A LICENSED UNDER THE LAWS OF SOUTH CAROLINA, A REAL ESTATE LICENSEE.

1. PARTIES: This Contract of Sale is entered into on July 3, 2010 between
 Buyer(s) Elizabeth R. Box (hereinafter called "Buyer"), and
 Seller(s) Sparrow Group LLC (hereinafter called "Seller").

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures located:

Lot Block Phase Subdivision New Friarsgate
 Address Unit # City Zip
 TRAC 03215-02-11 County of Richland State of South Carolina

3. PRICE: The purchase price is \$ 112,000.00

4. EARNEST MONEY:

A. \$ 500.00 Earnest money is paid by Check (X) Cash ()

B. \$ Additional earnest money to be delivered on or before

C. Earnest money to be held in trust by ERA Wilder Realty (Broker/Agent)

D. Broker/Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he/she has the right to preclude or any interest-bearing. However, through this contract, the parties have agreed that the earnest money deposited in the escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning the release and disposition of an earnest money deposit, this dispute will be referred to the Broker/Agent's current account until Broker/Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until the court is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Broker/Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Broker/Agent's attorney's fees and court costs.

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (fixed charges); all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes provided to the day of closing and the real estate brokerage fee. Buyer's and Seller's Transaction Costs will be paid as follows: (Select initial and add only two of the options below)

A. (Buyer/Deed Split / Date) (Seller/Deed Split / Date) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(A) is either VA or FHA.

OR

B. (Buyer/Deed Split / Date) (Seller/Deed Split / Date) Seller will pay Buyer's Transaction Costs not to exceed \$ 3,150.00 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

W-100
 04
 JK

BUYER

Elizabeth R. Box
 Initials

7/7/10
 Date

SELLER

Sparrow Group LLC
 Initials

7/7/10
 Date

Exhibit A

Record on Appeal 11

6. **FINANCING:** Buyer's obligation under this Contract is ☒ not ☐ contingent on Buyer obtaining financing. All financing contingencies herein shall immediately expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract. See Paragraph 21.

A. **FINANCING TYPE:** Financing type will be: Lender-provided Conventional ☐; FHA ☒ VA ☐; Seller-provided ☐; Cash (no financing required) ☐; Other _____.

Note: If Buyer utilizes FHA or VA financing, an FHA/VA addendum signed by Buyer and Seller must accompany this Contract. Utilizing FHA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA-required termite (CS-100) inspection.

B. **APPLICATION FOR FINANCING:** If Lender financing is chosen, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advertisement of any funds required by Lender and providing Lender's authority to Seller or Seller's Broker. Buyer will also furnish Lender with documents required for the processing of this loan in a timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

3. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Broker.

C. **SELLER FINANCING:** If Seller financing is selected in the financing of this Property, Buyer's and Seller's Broker make no representations to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The date of Seller financing should be noted in Paragraph 13 of this Contract or in a separate addendum to this Contract.

D. **CASH TRANSACTION:** In a cash transaction, Buyer agrees to provide Seller or Seller's Broker within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of these funds. If Buyer fails to comply with this requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. **APPRAISAL CONTINGENCY:** This Contract is ☒ not ☐ contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financial transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have 24 hours after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If the Parties are unable to reach agreement within the prescribed time frame then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. **SELLER'S MORTGAGE PAY OFF:** (Seller/Date 7/8/19 / Date 7/9/19) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. **CONVEYANCE DATE OF CLOSING/POSSESSION:** (Buyer and Seller to initial and date Paragraph 7A) Conveyance will be made subject to all encumbrances and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Elizabeth R. Box or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before August 20 2019, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. (Buyer/Date 7/8/19 / Date 7/9/19) (Seller/Date 7/8/19 / Date 7/9/19) Seller will be obligated to vacate and give possession of the Property (free of debt and in a clear condition) to Buyer: at closing ☒ 24 hours after closing ☐ 48 hours after closing ☐ as in accordance with attached agreement ☐.

BUYER Elizabeth R. Box 7/8/19
Initials Date

SELLER [Signature] 7/9/19
Initials Date

B. If Buyer has provided written loan commitment with no additional conditions, or a cash transaction Buyer has met the terms and conditions of Paragraph 4(C), the loan will close within the stipulated time limit of this Contract; both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT AND INSPECT PROPERTY: Buyer, or inspection selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "inspector" will mean a person or company, licensed or certified, where required by law, with specific, professional expertise or knowledge of property inspections, or in such case, building product or condition contained therein for which the inspector is inspecting, measuring or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspection, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer or inspector selected by Buyer the right to re-inspect the Property to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 41, if applicable, and that any potential Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will pay any charges resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD: If Property being sold "As-Is" provided in Paragraph 10 - PROPERTY SOLD "AS-IS"

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have ten (10) Business Day Due Diligence Period beginning at date of final Contract acceptance as defined in Paragraph 2(B)(3). To conduct at Buyer's sole expense, whether non-invasive inspection, examination and testing of the Property that Buyer deems appropriate and necessary. This will include, but not limited to, conducting a risk assessment for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for radon. (Note: If Buyer utilizes a home inspection, other non-invasive inspection, or any other inspection, the cost of conducting the inspection shall be the responsibility of Buyer.) Any re-inspections that may be required, whether at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property, then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that this contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary in the event an inspector, or a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or examination of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or provided prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 4(C) based on available inspection reports or void this Contract and cannot recover any money paid to Seller. See Paragraph 4(C).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.

2. If Buyer, in the sole discretion, deems the results of any inspection, examination or tests conducted to be unsatisfactory, Buyer may terminate this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be refunded to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.

3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If repairs and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will have five (5) Business Days from Seller's receipt of the Addendum to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

BUYER

[Signature]

7/8/2018

SELLER

[Signature]

7/7/18

2018
3:02

- c. Buyer and Seller may mutually agree to extend the negotiation period through written Addendum to this Contract, or:
- d. Buyer will have 24 hours after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current condition with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or:
- e. If the negotiation period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party terminates this Contract by providing written notice of termination to the other and termination will be effective as of the date of the written notice. Seller's failure to respond to the inspection Report Addendum within the time (5) Business Days shall be deemed to be a refusal to do repairs or replacements.

D. FINAL APPRAISAL/INSPECTIONS: If Buyer does not, or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to the Due Diligence Period or requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for such completing the repairs prior to closing or voiding this Contract, with earnest money being returned to Buyer. See Paragraph 4(f).

10. PROPERTY SOLD "AS-IS": (Terms of Paragraph 9 do not apply). (Select initial and date of change of the following items)
 At Buyer's Date Initial / Date / (Seller's Date Initial / Date /) PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD.
 All Parties agree that Property is being sold "As-Is" with all defects including but not limited to lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from parasites, other wood destroying organisms or fungi and/or any damage problem(s). Buyer will have the right to (1) Business Day Due Diligence Period as stipulated in Paragraph 9(f) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspection. Based on inspection results, Buyer may proceed under the terms of this Contract or void this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(f). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

At Buyer's Date Initial / Date / (Seller's Date Initial / Date /) PROPERTY SOLD "AS-IS" NO DUE DILIGENCE PERIOD.
 All Parties agree that Property is being sold "As-Is"; Seller will make no repairs or replacements and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives the right to best request repairs and replacements and to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: After any inspections by Buyer and after any repairs or replacements made as a result of any such inspections, Seller agrees to maintain the Property (including lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in excellent condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect its value when conditions are disclosed by structure, fixtures or window treatments currently in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select initial and date of only one of the options below)

At Buyer's Date Initial / Date / (Seller's Date Initial / Date /) Buyer and Seller agree that a Residential Property Condition Disclosure Statement as required by S.C. Code, as amended, Section 27-50-30, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discloses, after the delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement, or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

At Buyer's Date Initial / Date / (Seller's Date Initial / Date /) Buyer and Seller agree that Seller will not complete and provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1)-(13).

13. LEAD-BASED PAINT: Buyer is advised that if the Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgment of Lead-Based and/or Lead-Based Paint Hazards" form is hereby made as an Addendum to this Contract and will be signed by both Buyer and Seller and the Agent(s).

BUYER

[Signature] 7/8/2010
Date

SELLER

[Signature] 7/9/10
Date

not a
4 d/c

14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty will ☒ will not ☐ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☒ in an amount not to exceed \$ 485.00, provided by AHS (home warranty company) and written by the Buyer's Broker ☐ Seller's Broker ☒. If the price of the warranty at closing exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing. Broker not responsible for signing of a home warranty.

15. PROPERTY DOCUMENTATION: (Official and other recording information in Paragraphs 15(A)-(D))
(Buyer/Date 7/2/18 / Seller/Date 7/2/18) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the deed, plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract Buyer have a survey of the subject Property made to verify land area/boundary dimensions, existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and that Buyer obtain appropriate flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:
Connected to a public/community sewer system ☒ septic tank ☐
Connected to a public/community water system ☒ well system ☐ Other _____

B. Seller represents that to the best of Seller's knowledge, the Property is ☐ is not ☒ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer acknowledges that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to closing, it is determined that the property is in a flood zone, Buyer will be responsible to purchase flood insurance at a condition of loan approval. Buyer can terminate this Contract. Buyer will have 3 Business Days after receipt of notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be returned to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within this time 3 Business Day period will be deemed Buyer's agreement to purchase flood insurance as close to the transaction.

C. Seller represents that the Property is ☐ is not ☒ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association or other entity. The special assessment fee is \$ _____.

D. Seller represents that the Property is ☐ is not ☒ subject to a mandatory association fee (i.e., homeowner's association fee) to be collected. If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____ and is payable to _____.

16. ADDITIONAL CONTINGENCIES: Official and other recording information in Paragraphs 16(A)-(D) shall be subject to Paragraph 16(C) and Paragraph 16(D) shall be subject to Paragraph 16(E)

A. SALE AND CLOSING CONTINGENCY
(Buyer/Date 7/2/18 / Seller/Date 7/2/18) This Contract is contingent on the sale and closing of the Buyer's Property, not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____ Buyer's failure to close on the address of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is ☐ is not ☒ currently listed with real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept another offer to purchase as a Primary Contract, with this contingency Contract becoming a Backup Contract upon agreement of both Parties to the Backup contract. If agreement cannot be reached, this Contract will become null and void and earnest money will be released to Buyer. See Paragraph 4(D).

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will automatically become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Seller's Property with all contingencies removed or waived (other than this one), with any due diligence Period and/or repair negotiations completed, and with a closing occurring prior to the date and time specified for the Seller's closing, Buyer will provide written notice of this acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) above.

BUYER

[Signature]7/2/18

SELLER

[Signature]7/2/186/16/18
JFK

B. CLOSING CONTINGENCY

(Buyer/Date Initials/Date) (Seller/Date Initials/Date): This Contract is contingent on completion of the closing of the sale of Buyer's Property, the Contract for which has all contingencies removed or waived (other than financing), with any Due Diligence Period and/or repair negotiations completed, and releasing documents at a date/time prior to the date/time specified for closing the Seller's property. Buyer's Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property, upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated to a Back-Up Contract.

C. OTHER CONTINGENCIES

(Buyer/Date Initials/Date) (Seller/Date Initials/Date): This Contract is contingent on _____

17. FIXTURES AND PERSONAL PROPERTY This includes but not limited to all fixtures, equipment and improvements of any kind which now exist and are attached to or planted in the premises such as, but not limited to: furniture, trees, lawns, shrubs, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment, pool and spa equipment, window and door screens, storm windows and doors, garage door opener and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system, landscape lighting, electric/delivery tools, ceiling fans and remotes, attached carports, light bulbs, window pleats, heating and air system registers and furniture, such as equipment, appliances, vehicles, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

19. ADJUSTMENTS: Real estate taxes, homeowner association/condo fees, and rents when applicable, will be adjusted as of the date of closing. Tax proration payment to the Contract is to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be provided on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to changes in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied through date of closing and Buyer will pay for future assessments levied after the date of closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right within (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely notice of termination, the Parties will proceed according to its terms.

BUYER

(Signature) 7/8/10
Date

SELLER

(Signature) 7/9/10
Date

0001
010

21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and costs incurred by the non-defaulting party. Actual costs incurred will include all costs and expenses incurred by the non-defaulting party. In an effort to compensate the non-defaulting party, such costs will include, but are not limited to, costs of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fees. This contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold the other Agent harmless. If either Buyer or Seller refuses to execute a release, the other Agent will hold the earnest money in trust until such release is executed or a court of competent jurisdiction directs legal disposition. If a court action is brought by either Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and the other Agent's attorney's fees and court costs.
22. **WARRANTY:** Buyer and Seller agree to make any dispute between them arising out of or relating to this Contract, its terms, or the Contract services provided in relation to this Contract, or any resulting transaction, by arbitration or court action. Disputes will be referred to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS. Disputes will include representations made by Buyer, Seller or any real estate broker or other person or entity in connection with this sale purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Article 15-38-10 et seq. shall not apply to this Contract.
23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns and its entire contents.
24. **NON-RESIDENT TAX:** Seller understands and agrees to comply with the provisions of S.C. Code, Section 12-5-560 (as amended) regarding tax withholding requirements of Seller who are not residents of South Carolina as defined in said statute.
25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at _____ o'clock, _____ M. (Eastern Time) on _____ unless accepted or countered by Seller in writing then prior to such time.
26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.
27. **NOTICE AND DELIVERY:** Notice means a written communication, including letters, correspondence and electronic communication from one Party to this Contract to the other. Notice to a broker or affiliated Agent representing a Party to this Contract will be deemed to be notice to that Party. All notices required under this Contract will be in writing and will be effective as of delivery. Delivery means any method of delivery, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse delivery in order to delay or extend any deadline established in the Contract.
28. **SURVIVAL:** If any provision hereof contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.
29. **DEFINITIONS:**
- A. In this Contract, a single Business Day is defined as a twenty-four (24) hour period, beginning at the time of final acceptance of this Contract, excluding Saturdays, Sundays and Federal legal holidays.
- B. Final contract acceptance will occur at the time and date when the Party making the last offer receives written Notice that the offer has been accepted. The Agent representing this Party will fill in the final contract acceptance date and time on the last page of this Contract. If the Party is misrepresented, they will assume responsibility for filling in the required information. All deadlines and times set forth in this Contract will begin at time of final Contract acceptance unless otherwise agreed to by Buyer and Seller.
- C. In this Contract, closing is defined as the time and date that the Closing Attorney delivers funds.
- D. The term Broker is also defined to include affiliated Agent(s) of the Buyer's and Seller's Broker.

BUYER (Signature) 7/8/10
Date

SELLER (Signature) 7/9/10
Date

30. HUD-1 SETTLEMENT STATEMENT RELEASE: Seller and Buyer authorize the Closing attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. MEGAN'S LAW: Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Brokers and all affiliated agents for failing to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

32. NON-RELIANCE CERTIFICATE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any promises, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as real estate agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, service or systems including but not limited to private drainage, roof, heating, appliances, heating and air conditioning systems, plumbing, sewerage, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage based or unbased; (3) title to the Property including the existence or absence of easements, encroachments, preclusions, encumbrances, restrictions, easements, and other matters; (4) Access for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

<u><i>Elizabeth R. Box</i></u> Buyer's Signature	0.1	<u>Elizabeth R. Box</u> Buyer's Printed or Typed Name	<u>7/8/18 12:30pm</u> Date/Time
<u>_____</u> Buyer's Signature	0.2	<u>_____</u> Buyer's Printed or Typed Name	<u>_____</u> Date/Time
<u><i>Kathryn Sander</i></u> Seller's Signature	0.3	<u>Kathryn S. Jones</u> Seller's Printed or Typed Name	<u>7/8/18</u> Date/Time
<u>_____</u> Seller's Signature	0.4	<u>_____</u> Seller's Printed or Typed Name	<u>_____</u> Date/Time

<u>Charles Caughman / ERA Wilder Realty</u> Buyer's Agent/Company as: ☒ Buyer's Client ☐ Customer	<u>622-6171</u> Agent's Telephone Number
<u>Kathryn Sander / ARI</u> Seller's Agent/Company as: ☐ Buyer's Client ☒ Seller's Client ☐ Customer	<u>318-7691</u> Agent's Telephone Number

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT 5 O'CLOCK PM ON <u>7/8/18</u> DATE
ACCEPTANCE ENTERED BY <u>[Signature]</u> AGENT

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**STATE OF SOUTH CAROLINA
RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT**

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: JS Seller 4/10 Date 4/10 Buyer JS Date 4/10
Rev. 1/03

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AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

- | | Yes* | No | No Representation |
|--|-------------------------------------|-------------------------------------|--------------------------|
| 1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications?
a. Siding: masonry ___ wood <u>X</u> composition/hardwood ___ vinyl ___ synthetic stucco ___
b. Approximate age of structure <u>1976</u> (<u>34</u> yrs.) | ☒ | ☐ | ☐ |
| 2. Roof (leakage or other problem)?
a. Approximate age of roof covering <u>5 months</u> | ☐ | ☒ | ☐ |
| 3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure? | ☐ | ☒ | ☐ |
| 4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)? | ☐ | ☒ | ☐ |
| 5. Plumbing system (pipes, fixtures, water heater, etc)? | ☐ | ☒ | ☐ |
| 6. Heating and/or air conditioning?
a. Heat source: furnace ___ heat pump <u>X</u> baseboard ___
b. Cooling source: central <u>X</u> wall/window unit(s) ___
c. Fuel source: electricity <u>X</u> natural gas ___ propane ___ oil ___
d. Approximate age of heating unit ___ /cooling unit ___
<u>A/C Handler - Nov 2/10</u> <u>Condenser -</u> | ☐ | ☒ | ☐ |
| 7. Water supply (including water quality, quantity and water pressure)?
a. water supply is: city/county <u>X</u> community system private well ___
b. water pipes are: copper <u>X</u> galvanized ___ PVC/CPVC <u>X</u> polybutylene ___ | ☐ | ☒ | ☐ |
| 8. Septic system?
a. Type system: septic tank ___ community system ___
connected to city/county system <u>X</u> city/county system available ___
b. Does the system require a pump? Yes ___ No <u>X</u>
c. Has the septic system been serviced/pumped during your ownership? | ☐ | ☒ | ☐ |
| 9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)? | ☐ | ☒ | ☐ |
| 10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms?
a. Is there a transferable termite bond? Yes ___ No <u>X</u> | ☐ | ☒ | ☐ |
| 11. Drainage, grading or stability of soil or retaining structure? | ☐ | ☒ | ☐ |
| 12. Other built-in systems and fixtures?
central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___
exhaust fan ___ ceiling fan <u>X</u> sump pump ___ irrigation system ___
cable tv wiring or satellite dish <u>X</u> security system ___ or other systems ___ | ☐ | ☒ | ☐ |

Initials: SS Seller 4/5/10 Date 4/5/10 Buyer 4/5/10 Date
Rev. 1/03

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REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

- | | Yes* | No | No
Representation |
|--|--------------------------|-------------------------------------|--------------------------|
| 13. Room additions or other structural changes? | ☐ | ☒ | ☐ |
| 14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | ☐ | ☒ | ☐ |
| 15. Nuisances (noise, odor, smoke, etc.) affecting the property? | ☐ | ☒ | ☐ |
| 16. Previous damage caused by fire? | ☐ | ☒ | ☐ |
| 17. Violations or variances of building codes or zoning ordinances? | ☐ | ☒ | ☐ |
| 18. Restrictions to property use? (covenants or deed) | ☐ | ☒ | ☐ |
| 19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? | ☐ | ☒ | ☐ |
| 20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property? | ☐ | ☒ | ☐ |
| 21. Owners' association fees or "common area" expenses or assessments? | ☐ | ☒ | ☐ |
| 22. Flood hazards or that the property is in a federally-designated flood plain? | ☐ | ☒ | ☐ |
| 23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? | ☐ | ☒ | ☐ |
| 24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property? | ☐ | ☒ | ☐ |

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

#1. Foundation / Slab stabilization by Ram Jack in November 2009.

Initials: JS Seller 4/6 Date 4/6 Buyer 7/8/2010 Date

Rev. 1/03

Page 3 of 4

744 0830?

"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 119 Milway Rd., Farm, SC 29063

The property is currently: owner-occupied _____ leased _____ in an estate _____ in foreclosure _____
vacant X (If vacant, how long?) 5 months

Owner's Name(s): Sparrow Group, LLC.

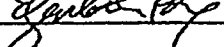
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: [Signature] member Date: 4/7/10

Owner Signature: _____ Date: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature:  Date: 7/8/2010

Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)

Elizabeth Box, et al, Plaintiff(s)
vs.
The Sparrow Group, LLC, et al, Defendant(s)

JUL 24 2015



Service of Process by
Southern Pride Process
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

COPY

Case No: 2015-CP-40-4129

RICK HALL LAW FIRM
Attn: Mr. Frederick I. Hall III
P.O. Box 1898, 301 Gibson Rd
Lexington, SC 29071

AFFIDAVIT OF SERVICE

Bryan S. Jones

State of: South Carolina ss.

County of: Lexington

Name of Server: Lester L. Franzen, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of eighteen, was not a party to this action;

Date/Time of Service that on 13-Jul-2015 12:50 pm

Place of Service: at 406 W Royal Tower Road, City of Irmo, State of SC

Documents Served: the undersigned served the documents described as:

Civil Action Coversheet

Summons and Complaint

Service of Process on, A true and correct copy of the aforesaid document(s) was served on:

Person Served, and Bryan S. Jones

Method of Service: By personally delivering them into the hands of same.

Description of Person The person receiving documents is described as follows:

Receiving Documents: Sex M; Skin Color W; Hair Color Brown; Facial Hair _____
Approx. Age 40; Approx. Height 5'10; Approx. Weight 150

Signature of Server: Subscribed and sworn to before me this
13 day of July, 2015.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

[Signature]

Notary Public for South Carolina

My Commission Expires: March 1, 2020

[Signature]
Signature of Server

Elizabeth Box, et al, Plaintiff(s)
vs.
The Sparrow Group, LLC, et al, Defendant(s)

JUL 24 2015



Service of Process by

Southern Pride Process
(803) 386-8559

PO Box 7125
Columbia, SC 29202-7125

COPY

RICK HALL LAW FIRM
Attn: Mr. Frederick I. Hall III
P.O. Box 1898, 301 Gibson Rd
Lexington, SC 29071

Case No: 2015-CP-40-4129

AFFIDAVIT OF SERVICE
The Sparrow Group, LLC

State of: South Carolina ss.
County of: Lexington

Name of Server: Lester L. Franzen, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 13-Jul-2015 12:50 pm

Place of Service: at 406 W Royal Tower Road, City of Irmo, State of SC

Documents Served: the undersigned served the documents described as:
Civil Action Coversheet
Summons and Complaint

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:
The Sparrow Group, LLC

By delivering them into the hands of an officer or managing agent whose name and title is
Bryan S. Jones, Registered Agent

Description of Person Receiving Documents: The person receiving documents is described as follows:

Sex M; Skin Color W; Hair Color Brown; Facial Hair _____
Approx. Age 40; Approx. Height 5'10; Approx. Weight 150

Signature of Server: Subscribed and sworn to before me this
13 day of July, 2015.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

[Signature]
Notary Public for South Carolina
My Commission Expires: March 1, 2020

[Signature]
Signature of Server

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

2015-CP-40-04129

Elizabeth Box,)
)
 Plaintiff,)
)
 v.) Transcript of Record
)
 The Sparrow Group, LLC and Bryan)
 S. Jones,)
)
 Defendants.)

November 3, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Tanya Gee, Judge

A P P E A R A N C E S:

Jennifer Cooper, Esquire
Attorney for the Plaintiff

Eric Hale, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION

PAGE NO.

Motions Hearing

EXHIBITS:

No exhibits were marked to this proceeding.

Certificate of Court Reporter 26

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THE COURT: All right. This is Elizabeth R. Box verses The Sparrow Group, LLC. This is a Motion to Dismiss filed by the defendant. Mr. Hale represents the defendant; is that correct?

MR. HALE: That's correct, Your Honor.

THE COURT: All right. This is your motion. I'll hear from you.

MR. HALE: Thank Your Honor. I apologize. Counsel has just advised me that I was to send my memorandum by the 28 and I didn't send that memorandum ahead of time.

THE COURT: Okay.

MR. HALE: I do have one today.

THE COURT: You can pass it up.

(Document passed to the Court.)

THE COURT: Thank you. And you have given it to --

MR. HALE: I have. I'll try not to make this motion last two terribly long. I'll just give you a brief background on what the case is about.

THE COURT: Sure, and I have read the file so I do know that this is a plaintiff suing an inspector of the home and his LLC, and he filed a Motion to Dismiss based on several grounds, primarily the first one being statute of limitations had run and then another of other grounds. So I think I understand the factual background of the case. If

1 you can --

2 MR. HALE: I wish it was as simple as an inspector and
3 his LLC. This is actually the seller of the home.

4 THE COURT: Okay.

5 MR. HALE: The seller of the home is Sparrow Group, LLC.
6 The sole member of Sparrow Group LLC is Brian Jones.
7 Sparrow Group sold to Ms. Box a house in Friarsgate back in
8 2010. And prior to the actual closing in 2009, Sparrow
9 Group gave to Ms. Box, the plaintiff, a residential property
10 conditional disclosure. And in that they disclosed that
11 there had been foundation/slab stabilization by Ram Jack in
12 November of 2009. The closing transpired and sometime
13 thereafter, July 11, 2012, the plaintiff calls Ram Jack back
14 out to her house. And at that point in time they say --
15 they tell her they'll give her a copy of the estimate that
16 was provided to the seller and they say, well, we told him
17 to do -- we recommended all these thing, he only did these
18 two things. We recommended five things, he did two. And so
19 based upon her finding out in July, July 11, 2012 a
20 complaint was filed in this matter on July 8, 2015. So all
21 the causes of action, everything in the whole case stems
22 from he had a company, he had an estimate and he didn't tell
23 us about the estimate and he didn't tell us about the
24 repairs that were recommended. And from that we get the
25 many different causes of action; fraud, breach of contract,

1 accompanied by a fraudulent act, negligent
2 misrepresentation, a violation of the Residential Property
3 Disclosure Act and an unfair trade practices claim.

4 So I'm going to start first with what I think is
5 probably the easiest portion of my Motion to Dismiss, which
6 is as the case pertains to Brian Jones, who is, again, his
7 only relationship to this case is being the sole member of
8 Sparrow Group, LLC

9 Now, I'm just going to refer to their exhibits because
10 I didn't attach them to my memorandum.

11 THE COURT: Okay.

12 MR. HALE: Their Exhibit No. 2 is a copy of the
13 Disclosure Act.

14 THE COURT: Does anybody have a copy of the exhibits.
15 These I think were emailed to me and the exhibits -- I
16 printed out the memorandum but not the exhibits.

17 MS. COOPER: I can provide that, Your Honor.
18 (Documents passed to the Court.)

19 THE COURT: Thank you. All right. Which exhibit did
20 you just ask me to turn to?

21 MR. HALE: Exhibit D and also Exhibit 2, initially.
22 Exhibit D is the --

23 THE COURT: Residential Property Disclosure Statement.
24 Yes.

25 MR. HALE: Correct, Your Honor. I'll ask you to turn to

1 the last page of that, Page 4. The one sentence which I
2 think is key to the dismissal of Mr. Jones as a party
3 defendant in any cause of action and that's in the
4 Purchaser's Acknowledgment. In that about three lines up
5 is, the purchaser is acknowledging that quote the
6 representations are made by the owner and not the owner's
7 agents or subagents. The owner is identified in the prior
8 paragraph as Sparrow Group, LLC. So to the extent of this
9 case or any of its causes of action are predicated on non-
10 disclosure or a faulty disclosure, that said that the only
11 person that made a representation to this buyer was Sparrow
12 Group, LLC., and for that reason I believe that Mr. Jones
13 should be dismissed from this case.

14 Would you like me to address all the other ones or
15 would you like me to take them one at the time?

16 THE COURT: Go ahead and make all your arguments and
17 then I'll hear all the arguments from --

18 MR. HALE: All right. The secondary argument is as to
19 all causes of action against all defendants. Again, this
20 defendant was given that disclosure, which Your Honor is
21 looking at and in it -- and in that disclosure it says
22 foundation/slab stabilization by Ram Jack November 2009.
23 That's on Page 3 of that document. Nowhere in the
24 plaintiff's complaint does it explain or allege or set forth
25 any facts anywhere that say well there was an impediment to

1 me contacting Ram Jack in 2009 when you made this
2 disclosure. In fact nothing changed. The identical thing
3 that she found in 2012 was the identical thing that would
4 have been available to her in 2009 by simply making a phone
5 call or contacting Ram Jack. Again, that document reading
6 the sentence before in that plaintiff's -- or that
7 Purchaser's Acknowledgment. Purchaser acknowledges that
8 he/she understands this is not a warranty by the owner or
9 the owner's agent. It is not a substitute for any
10 inspections that he/she may wish to obtain. Purchasers are
11 encouraged to obtain his/her own inspection by a licensed
12 home inspector or other professional.

13 THE COURT: Had there been an inspection of this place?

14 MS. COOPER: Yes, Your Honor.

15 MR. HALE: Yes, I believe there was. We haven't
16 progressed that far. I'm just trying to keep it to the
17 pleadings, but yes I believe a home inspection was done, but
18 Ram Jack was not called out.

19 And even according to their own allegations it's only
20 when she started seeing cracking and what not she calls Ram
21 Jack and finds out there had been this report. What I'm
22 saying is that that report was just as available to her in
23 2009/2010 when she purchased this house as it was when she
24 found it in 2012. The reason that's important is because
25 the statute of limitations would be three years from the

1 date when she knew or should have known by the exercise of
2 reasonable diligence that a cause of action occurred and so
3 defendant's argument would be that the plaintiff should have
4 or could have known in 2010 and 2009, when she received
5 this, the same thing she found out in 2012, therefore it's
6 barred by the statute of limitations.

7 THE COURT: All right. Let's stop there now and let --
8 Can you tell me your name?

9 MS. COOPER: Yes, ma'am. I'm standing in for Rick Hall.
10 He's in Atlanta. I'm Jennifer Cooper.

11 THE COURT: Jennifer Cooper?

12 MS. COOPER: Yes, ma'am.

13 THE COURT: Okay. Ms. Cooper, what say you, first of
14 all, about the naming of Mr. Jones in light of the
15 disclosure statement that says that representations are made
16 by the owner, not the owner's agent?

17 MS. COOPER: Your Honor, we assert that Mr. Jones, Bryan
18 Jones, as the sole member in Sparrow Group in his
19 represented capacity and as it's agent he is liable for his
20 own tort. He's been properly named in this action. The
21 fact that he acted as an agent of Sparrow Group does not
22 absolve him of any misrepresentations.

23 THE COURT: What misrepresentations are you alleging?
24 It's looks to me like they checked yes on the box as to No.
25 1, asking whether the seller of the property knows of any

1 problem or defect and --

2 MS. COOPER: Yes, Your Honor.

3 THE COURT: -- he said yes.

4 MS. COOPER: And he relied on -- if you read the first
5 page of the of the South Carolina Property Condition
6 Disclosure Statement Instructions, under number two, 2B,
7 which I'm not sure what -- the first page, under
8 instructions to property owners, it states if you checked
9 yes or no to any question and subsequently something happens
10 to the property to render statement incorrect or inaccurate,
11 for example the roof begins leaking you must promptly
12 provide the purchaser corrected statement so they may
13 correct the problem. Further under A, if you checked yes to
14 any question you must explain the problem or attach a
15 descriptive report from an engineer or contractor. If you
16 attach the report you will not be liable for any inaccurate
17 or incomplete information in your report as long as you were
18 not negligent in obtaining or transmitting this information.

19 Your Honor, he was required per the instructions to
20 enter under the LR -- to submit a copy of his report. His
21 report being the actual Ram Jack agreement for the work. No
22 where is it considered an estimate. And if you look back to
23 the Ram Jack report, Your Honor, it says that the following
24 items are recommended to enhance the future performance of
25 your foundation. We feel an obligation to inform you of

1 potential problems if these problems are not corrected. He
2 had that available.

3 Ms. Box, further, Your Honor, had an independent
4 inspection done. That independent inspection revealed no
5 issues with the foundation. First of all, the home was
6 built in 1976, it's a slab home. Actually, he lived in the
7 house longer, it had been freshly painted, freshly mudded,
8 cracks had been hidden. Basically what he did -- he's in
9 the business of flipping houses, Your Honor. That's the
10 Sparrow Group. That's just a -- a little background. She's
11 a first time home buyer. She felt like she had done
12 everything she had to. She had a real estate agent she
13 trusted and relied upon. She had seen several houses and
14 ended up with this one because of representations. You see
15 in her affidavits if she would have known about this she
16 says she would not -- most likely would not have purchased
17 this home. Even though the report was out there there was
18 no reference to -- he did not fulfill his requirement to
19 provide her with a copy of that report. He represented
20 specifically foundation/slab stabilization. In other words,
21 he represented it's -- there may have been a problem, but
22 it's been corrected, Your Honor. Then she had an
23 inspection. As far as naming him --

24 THE COURT: But isn't he -- by virtue of checking yes
25 he's saying he is aware of a defect and his explanation --

1 it says explain the problem or attach a descriptive report.

2 So --

3 MS. COOPER: That's not --

4 THE COURT: -- he writes there have been foundation/slab
5 stabilization which would be a defect and Ram Jack came in
6 November of 2009. At that point, if she wanted more
7 information about that wasn't she on notice to ask for more
8 information?

9 MS. COOPER: Your Honor, you would think, however he
10 represented it had been stabilized. This is an affirmative
11 false statement and it also requires him to provide a copy
12 of that report if there was one. And --

13 THE COURT: Where does it say you have to provide a
14 report if there is one. It just says you must explain the
15 problem or attach a descriptive report.

16 MS. COOPER: It says, if you attach a report you will
17 not be liable for inaccurate or incomplete information.

18 THE COURT: And you're saying if you don't attach the
19 report --

20 MS. COOPER: You are liable.

21 THE COURT: -- you are liable?

22 MS. COOPER: Yes, ma'am.

23 THE COURT: You think that's what that says?

24 MS. COOPER: That's what that says. Yes, ma'am.

25 THE COURT: Okay.

1 MS. COOPER: At first, we'll go back to the argument
2 about he was acting in a representative capacity.

3 As I said, Your Honor, she entered the contract first
4 time in July 8, 2010. She was provided a residential
5 property disclosure at the same time that she was signing
6 the contract for purchaser of the home, Mr. Jones had filled
7 out this property disclosure in April of 2010. I think
8 when the property was originally listed. He, on behalf of
9 his corporation made a false representation, a written
10 statement, that work on the slab foundation had been done.
11 Basically, he had a record and a receipt for partial work
12 completed on the home, but he represented that it had been
13 stabilized, but he failed to disclose that the foundation
14 work was not completed and fraudulently represented that it
15 had been.

16 THE COURT: Where does he say that it's completed?

17 MS. COOPER: It says stabilization, in other words, he
18 had the home stabilized by Ram Jack in November of 2009.
19 That's an affirmative false representation, Your Honor.

20 THE COURT: But the question that he's answering isn't
21 about what you did to correct the problem. The question
22 he's answering is what is the defect.

23 MS. COOPER: That's correct, Your Honor.

24 THE COURT: Okay.

25 MS. COOPER: But that's why -- that's public policy and

1 the common law behind this. That's why it is so important
2 that he attach that report, which he did not. She -- it was
3 after she moved in when the settling started and she
4 attributed it initially to the age of the home, like I said,
5 Your Honor, some settling issues. She wasn't sure so she
6 contacted Ram Jack and that's when she found out there had
7 been prior work in which the work had not been completed.
8 And, Your Honor, as the seller and sole owner and member of
9 Sparrow Group, which was the business of buying and selling,
10 flipping, if you will, homes, he was required to make
11 complete and accurate statements to would-be purchasers.
12 Further, he's liable for any incomplete and inaccurate
13 statements that may have induced or did induce Ms. Box to
14 purchase the home. She said in her affidavit, as I said,
15 Your Honor, she would not have purchased this home if she
16 would have known about the extent of the foundation repairs
17 that had not been completed. That's as to Mr. Brian Jones.

18 THE COURT: Okay.

19 MS. COOPER: I believe there's a lot more argument,
20 Your Honor, in the brief, the memo we provided as well.

21 THE COURT: All right. Mr. Hale, your argument is that
22 by virtue of disclosing a defect to the foundation in this
23 residential disclosure report in 2010, the statute of
24 limitations was -- she knew or should have known of the
25 foundation problem at that time?

1 MR. HALE: That's correct, Your Honor.

2 THE COURT: What is your response to Ms. Cooper's
3 argument that the Sparrow Group was required to provide the
4 report, that Ram Jack created in 2009?

5 MR. HALE: Well, Your Honor, just the plain language of
6 the disclosure form that says if you answer yes, check yes
7 to any questions you must explain the problem, which is what
8 that section is there for, explain the problem or attach a
9 descriptive report. It's not a -- explain the report and
10 attach a descriptive report. I understand that my being
11 here making a different argument in terms the dismissal
12 today, having attached the report, of course, I mean, I'd be
13 here saying this -- you own document says -- if I attach it
14 you have no way of getting to me. So that's why I'm making
15 the argument today. Even though I could have I didn't have
16 to.

17 THE COURT: Did your client affirmatively tell the buyer
18 that the foundation problems had been corrected?

19 MR. HALE: The only allegation that I know of -- we
20 haven't gotten to that stage yet, but the only allegation in
21 this complaint is what Your Honor is looking at. That there
22 was -- that this report was given to her and she was told on
23 this report -- this report says if you see anything -- if
24 you have a problem and you answered yes and tell us what the
25 problem is, and I tell you the problem is I have foundation

1 issues. So my answer to you is foundation/slab
2 stabilization by Ram Jack in November of 2009. To my
3 knowledge to the allegations contained in the complaint that
4 is the only allegation of any representation that's been
5 made to this client.

6 THE COURT: And there was some stabilization by Ram Jack
7 done in November of 2009?

8 MR. HALE: That's correct, Your Honor. We've got
9 attached as Exhibit --

10 THE COURT: Where are we in the discovery process
11 because this is clearly not a Motion to Dismiss. I'm
12 looking at things outside of the complaint and the answer
13 here, we're beyond the pleadings. I've got --

14 MR. HALE: -- well --

15 THE COURT: -- affidavits in front of me, I've got this
16 Residential Disclosure Act in front of me?

17 MR. HALE: Sure. This is the very, very beginning
18 stages. It is actually a Motion to Dismiss. I believe that
19 the defendants attached most of this to the complaint. So I
20 wasn't really relying on a lot of this stuff out there. I
21 was relying on what was attached to complaint. But I did,
22 because I thought I might need to introduce a couple more
23 documents that I assumed we all were going to be in
24 agreement on since they form the foundation of everything.
25 I might offer a couple more documents. But we are --

1 THE COURT: You know that transforms this into a Motion
2 for Summary Judgment?

3 MR. HALE: It does, Your Honor.

4 THE COURT: Okay. All right.

5 Now, Ms. Cooper, is there anything in discovery that
6 you might be able to discover to show that there had been
7 more representation other than this residential disclosure?

8 MS. COOPER: Yes, Your Honor. We were -- this was our
9 first hearing and we had -- I -- like I said, standing in
10 for Rick, but I can tell you that they've not had very many
11 discussions about this case at all, from what I understand.
12 I know the real estate agent is involved. I have met with
13 him, but I haven't gotten an affidavit from him yet. As to
14 other representations, Your Honor, I believe there were.
15 I'd also like to call attention to the Ram Jack calls for
16 services which is, you know, basically their recommendation
17 to stabilize. If you look at both of those together, the
18 one completed in November of 2009 for the seller, himself,
19 as well as the buyer in July 11, 2012 when she started
20 discovering the settling and the crack in the foundation.
21 If you will look, if you will see the specific defects and
22 services that were recommended where the defendant initialed
23 and declined the services are the specific services that
24 three years later, almost, Ram Jack recommended to Ms. Box
25 to complete the repair. It would be a different case, Your

1 Honor, if this wasn't the exact same repairs that were
2 recommended initially. Also, not just on the face of it,
3 these defects were hidden. She did obtain, like she said,
4 that independent inspection that revealed no issues, it was
5 only after she moved in that she started seeing, you know,
6 doorways cracking and settling and could see where they had
7 muddied. We have pictures of all that and that will be
8 discoverable at a later date, but where the actual door jams
9 were muddied and painted over, freshly painted to hide and
10 conceal these defects.

11 THE COURT: Okay. All right, Mr. Hale, do you have any
12 other arguments here?

13 MR. HALE: Thank Your Honor. It's kind of, I guess,
14 corollary to the first two arguments. Again, I don't know
15 of any additional discovery or any additional findings of
16 fact are going to change the fact that this defendant had
17 this disclosure in 2009 and the same thing, the same
18 information she found in 2012 were available to her in 2009,
19 and so for that reason we believe the statute of limitations
20 would bar this action. That kind of rolls into my next
21 argument which is to the allegation of fraud and negligent
22 misrepresentation. One key element of these causes of
23 action is the element that the defendant -- the plaintiff,
24 I'm sorry, had a right to rely upon the statements, and that
25 kind of goes into the argument that, again, you were given

1 this information and you were told it wasn't a guarantee,
2 you were told you needed to get your own home inspector or
3 other professional out there to look at it and here we are
4 five years after the fact and you're saying well -- you
5 didn't have any right to rely on that until you found the
6 smoking gun or until you found what you thought was a
7 smoking gun. And that kind of rolls into the argument about
8 the economic losses which basically states, I'm paraphrasing
9 here, but basically states that when your duties arise
10 entirely out of the contract then you're not allowed to
11 recover in Court. A person can't negligently perform a
12 contract and so -- an example of the functions of this case
13 actually pertains to the breach of contract accompanied by a
14 fraudulent act. That actually is a contract cause of
15 action, but it incorporates elements of the tort of fraud
16 into it.

17 Now, the under -- the case of Conner verses the City of
18 Forest Acres is a 2002 Supreme Court case. There are three
19 elements for cause of action, breach of contract accompanied
20 by a fraudulent act. There has to be breach of contract and
21 then there has to be fraudulent intent relating to the
22 breach of the contract, not merely to its making and a
23 fraudulent act accompanying that breach. There's been no
24 allegation of a fraudulent act in the act of breaching. So
25 we would argue for that reason that cause of action fails.

1 And finally they allege a cause of action under South
2 Carolina Unfair Trade Practices Act. I've got a case that I
3 feel is pretty well -- it's cited in the original motion but
4 I'll hand up Your Honor a copy if you'd like to see it.

5 THE COURT: Yes, please.

6 (Document handed to the Court.)

7 MR. HALE: This is the case of Key Company verses Vanco
8 Distributors (sp). In this case the defendant made a
9 contract with plaintiff was going to be allowed to put its
10 gaming machines and other advertising and merchandising in
11 front of the defendant's store and notwithstanding their
12 contract to the extend the defendant nonetheless took all
13 the equipment stuck it in the back room and the plaintiff
14 got exactly zero benefit of bargain of the contract.
15 Unfortunately for the plaintiff, their attorneys decided
16 that they only wanted to sue under the Unfair Trade
17 Practices Act. They didn't pursue any other causes or
18 actions. The Court went on and said that in essence even an
19 intentional breach of contract cannot in and of itself
20 create a cause of action for the Unfair Trade Practices Act.

21 In this case, that's all we really have is an
22 allegation that there was some duty which would have been
23 created, presumably, by this contract to give a disclosure,
24 which we of course dispute, but if we assume there was this
25 duty there had been no allegation of any public impact here.

1 There's only an allegation that he didn't disclose facts to
2 the defendant, I mean the plaintiff. And so without
3 something more the Unfair Trade Practices Act just simply
4 cannot survive. Thank you.

5 THE COURT: Thank you.

6 MS. COOPER: Your Honor.

7 THE COURT: Yes, ma'am.

8 MS. COOPER: Thank you. We'll start with statute of
9 limitations argument, because I think we keep going --

10 THE COURT: Sure, I think that's a good one to focus on.

11 MS. COOPER: Okay. So we allege plaintiff filed within
12 the statute of limitations based upon the discovery rule and
13 we're asking that his motion should be denied. As alleged
14 in the pleading she did not discover it until July, 2012.
15 In fact, a prior report from a foundation repair company had
16 been withheld from her. She filed a cause of action on July
17 8, three days prior to the running of the three year statute
18 of limitations. We had actually met with her prior to that
19 and told her she probably just needed to call a foundation
20 specialist and that is when she got the report and found
21 that. In the meantime her mom had passed and a lot of
22 things happened. She came to see us, right. Like I said,
23 we're very new to this at this point. However the plaintiff
24 was served on July 13, as appears in the affidavit of
25 service. Filed with the Court on July 22. We've attached

1 that as Exhibit A, Your Honor. That's well within the 120
2 day tolling period. Further, breach of contract actually
3 did not commence from the date of the breach but the day the
4 breach is discovered. The same is true for breach of
5 contract accompanied by a fraudulent act. You Honor, I
6 think that's (Inaudible) which was cited in our memo. This
7 discovery will also cause an action in tort or an action on
8 the liability as the statute reads. The action must be
9 brought within three years under South Carolina Code
10 Annotated 15-3-530. We've laid the argument out, I think
11 pretty sufficiently, in the memo, Your Honor, and we suggest
12 that either way the statute of limitations is based on the
13 discovery rule.

14 We'll go to the argument, Your Honor, that he had
15 against the plaintiff's claims of fraud, negligent
16 misrepresentation and breach of contract accompanied by
17 fraud arise from duty independent contractor not barred by
18 economic loss. Well, Your Honor. Economic loss (inaudible)
19 products liability (inaudible) the duties arising out of
20 contract, only those duties arising out of contract
21 pertaining to property. The seller's duty arise from the
22 contract but are also found in common law as well as
23 statutes which are separate and independent of the contract.
24 That's the reason we have this South Carolina Property
25 Condition Disclosure form, Your Honor. Those are separate

1 duties that a seller has to rely on outside of just the
2 contract for purchase or sale of properties. The plaintiff
3 claims a right out of an affirmative duty to disclose
4 material pre-existing facts in relation to the purchase of a
5 home economic loss should not bar. A home is not a product.
6 Policies and considerations are not different than they are,
7 I believe the Kennedy case which we cited, Your Honor. A
8 home is a person's largest asset. A person's home is their
9 castle. This young woman, a first-time home buyer had a
10 right to rely on representations that were required by the
11 statutes independent of the contract. There is serious
12 policy considerations here that Mr. Jones concealed,
13 withheld or hid the truth from Ms. Box is material to the
14 heart of this matter. This constitutes fraud when those
15 defects are withheld. Mr. Jones made an affirmative
16 statement of false that the house had been stabilized by Ram
17 Jack when, in fact, the house had not been stabilized and
18 only partial work repair was completed. Basically, Your
19 Honor, the parties were not on equal footing. He was a
20 seller who had facts material to the purchase of this
21 property which she had no way of knowing, Your Honor.
22 Economic loss (inaudible) products liability which there is
23 no tort liability or product defect that the damage suffered
24 by the plaintiff only to the product itself. So this is
25 very distinguishable from a home, Your Honor. Kennedy

1 provided exception which was residential real estate and I
2 believe the Stack case (sp) Your Honor, which we cited Your
3 Honor extended that to also protect homeowners.

4 Finally the argument as to Unfair Trade Practices, Your
5 Honor. I'll refer back to my memo and keep this brief.
6 Basically -- and basically we stated attorney -- under
7 Unfair Trade Practices Act an act is unfair under Unfair
8 Trade Practice when it's offensive to public policy as we
9 stated here. In this case we seriously argue the point in
10 the Ram Jack report he was legally obligated to report under
11 the South Carolina Residential Protection Act is not immoral
12 or against public policy as it was materially and directly
13 relevant to the purchase of this home and was concealed from
14 the plaintiff. Persons or any legal entity suffering loss
15 of money from real or personal property as a result of use
16 or (inaudible) by another person of unfair or deceptive acts
17 may bring an action to recover actual damages. Further --
18 and that's under South Carolina Code Annotated 39-5-440. To
19 recover under this act a plaintiff must also prove violation
20 of the act, proximate cause and damages, which we assert,
21 Your Honor, the facts will show we can prove. As to the
22 element that requires adverse impact to the public. South
23 Carolina courts have known to (inaudible) Unfair Trade
24 Practices Act, an unfair or deceptive act or practice must
25 have an impact upon the public interest. Since 1986 South

1 Carolina Courts are required (inaudible) cause of actions
2 adversely effected the public interest. Our case law
3 instructs that a deceptive act is any act with the tendency
4 to deceive. Even a truthful statement may be deceptive if
5 it has the capacity or tendency to deceive. This evidence,
6 Your Honor, (inaudible) Ram Jack report was intentionally
7 withheld. In this case Sparrow and Jones had information
8 that they did not disclose that they were legally obligated
9 to disclose which is evidence of
10 illegal, immoral and unethical conduct which would have an
11 impact on the public interest. For that reason, Your Honor,
12 we ask that this Motion to Dismiss or in the alternative a
13 Motion for Summary Judgment be denied.

14 THE COURT: Okay.

15 MS. COOPER: We appreciate this memo we received today
16 and we would just respectfully request for an opportunity to
17 respond to that.

18 THE COURT: All right. I did just receive the
19 memorandum in support of defendant's Motion to Dismiss. I
20 think it's clocked in November 3. It's just handed up to
21 me. I'll take this matter under advisement to give the
22 plaintiff an opportunity to respond to that memo.

23 Ms. Cooper, will you be able -- when will you be able
24 to respond? Rather than just dictate to you if you will
25 tell me --

1 MS. COOPER: If you could give me 14 days. Rick comes
2 back into town on Thursday evening. We have depositions
3 that were previously scheduled, so -- I probably can --
4 probably 10 days.

5 THE COURT: 10 days. Okay. I'll ask that you provide
6 me with any reply memorandum within 10 days and I will issue
7 a ruling shortly there after.

8 MR. HALE: Thank you, Your Honor.

9 MS. COOPER: Thank you.

10 (This proceeding was concluded.)
11
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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR RICHLAND
COUNTY, SOUTH CAROLINA, ON THE 3 DAY OF NOVEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

May 21, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

v.

Sparrow Group, LLC and
Bryan S. Jones,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-40-4129

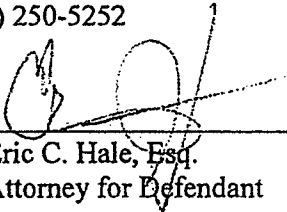
MOTION TO DISMISS

RICHLAND COUNTY
FILED
2015 AUG 13 PM 2:43
JEANNETTE W. MCNEIL
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that the attorney for Defendants, Sparrow Group, LLC and Bryan S. Jones, will, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the above-referenced court for an order pursuant to Rules 3(a), 9(b), 12(b)(6) and/or 12(e) of the South Carolina Rules of Civil Procedure dismissing this matter and/or compelling the Plaintiff to make a more definite statement of facts, as appropriate. Alternatively, Defendants ask that the Court construe this motion as one for summary judgment to the extent matters beyond the filings in this case are necessary to consider this motion.

This Motion is made on the grounds that: (a) the statute of limitations has run on each and every claim asserted by Plaintiff; (b) Defendant, Bryan S. Jones, is a member of co-Defendant, Sparrow Group, LLC and the causes of action are improperly asserted against him in his individual capacity; (c) Plaintiff has failed to set forth sufficient facts to show each element of fraud, specifically the element of Plaintiff's right to rely; (d) correspondingly, the economic loss rule acts to preclude causes of action sounding in tort as the relationship between the parties is one completely of contract; and (e) Plaintiff's cause of action under SC Code § 39-5-10 et seq., fails to state any facts tending to support the essential element of an adverse impact upon the public interest. (See *Key Company, Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct. App. 1987) (A mere breach of contract, even intentional, is not actionable under SCUTPA)). This Motion is based on the filings in this case and the applicable case law. A memorandum in support of this motion shall be filed prior to the hearing on the same.

Law Office of Eric C. Hale, LLC
125 Executive Pointe Blvd., Ste. 204
Columbia, SC 29210
(803) 250-5252

BY: 

Eric C. Hale, Esq.
Attorney for Defendant

Dated: August 13, 2015
Columbia, South Carolina

Motion to Dismiss or SJ in Alternative

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

vs.

The Sparrow Group, LLC and
Bryan S. Jones.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2015-CP-40-04129

Plaintiff's
Memorandum in
Opposition to
Defendants' Motion to
Dismiss

RICHLAND COUNTY
FILED
2015 OCT 29 AM 9:26
JANETTE W. NICHAPE
CLERK

TO: ERIC C. HALE, ESQUIRE, ATTORNEY FOR THE DEFENDANTS
THE SPARROW GROUP, LLC AND BRYAN S. JONES:

I. Introduction

This case concerns the plaintiff's purchase of a home in New Friarsgate subdivision in Irmo, South Carolina, which she purchased in good faith, after a home inspection, from the Seller, The Sparrow Group, LLC (Sparrow). Sparrow and its sole member, Bryan S. Jones, represented the house to have had certain repairs to the foundation (specifically that it had been stabilized) which led the plaintiff, Elizabeth Box, to believe had corrected any major structural defects. After she purchased the home, but within the three year statute of limitations, she discovered on July 11, 2012, that in fact the repairs which had allegedly been done were inadequately performed because more extensive repairs to stabilize the foundation were recommended but not done.

SCANNED

Jones, The Sparrow Group's sole member, did not disclose that he had a prior report from Ram Jack, a foundation repair company, that had recommended much more extensive repair than that which was in fact done. Box filed this action alleging fraud, breach of contract accompanied by fraud, negligent misrepresentation, violation of the S.C. Residential Property Condition Disclosure Act and the South Carolina Unfair Trade Practices Act based upon the fact that the Ram Jack report which was withheld from her recommended extensive repairs to the foundation which were not done. The defendants, Sparrow and Jones, have moved to dismiss the case based upon (a) the statute of limitations, (b) Sparrow has been allegedly been improperly named in his individual capacity, (c) the plaintiff's alleged lack of any right to rely on the representations or concealment, (d) the claims are barred by the economic loss rule, and (e) plaintiff has failed to state facts sufficient to make a claim for unfair trade practices.

For the reasons set forth herein, this motion should be denied.

II. Standard of Review

In reviewing a motion to dismiss, the court must presume all well-pled facts to be true. *Overcash v. South Carolina Elec. & Gas Co.*, 364 S.C. 569, 614 S.E. 2d 619 (2005). A trial court in its discretion may consider matters

outside the pleadings and treat a motion to dismiss as a motion for summary judgment, if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the South Carolina Rules of Civil Procedure. *Brown v. Leverette*, 291 S.C. 364, 353 S.E. 2d 697 (1987). "All pleadings shall be construed so as to do substantial justice to all parties." Rule 8 (f), S.C.R.C.P.

III. Argument

A. Plaintiff Filed This Action within the Statute of Limitations Based on the Discovery Rule and Therefore Defendant's Motion to Dismiss Her Claims on the Running of the Limitations Period Must Be Denied.

As alleged in her pleadings, Box did not discover until July 11, 2012 the fact that a prior report from the foundation repair company known as Ram Jack had been withheld from her. She filed this present action in the Circuit Court on July, 8 2015, three days prior to the running the of three year statute of limitations as codified in S. C. Code § 15-3-530. Upon filing of an action, the statute of limitations is tolled for a period of 120 days if the complaint has not served within the statute of limitations. See Rule 3 (a)(2), SCRCPP. The complaint in this action was served on July 13, 2015 as appears from the affidavit of service filed with the court on July, 22, 2015, attached as **Exhibit A**, well within the 120 day tolling period. Moreover, the statute of limitations for a breach of contract action does not commence

from the date of the breach, but rather from the date the breach is discovered.

An action for breach of contract must be brought within three years from the date the action accrues. S.C.Code Ann. § 15-3-530(1) (Supp.1997). The discovery rule determines the date of accrual for a breach of contract action. *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989), *overruled on other grounds by Atlas Food Sys. and Servs., Inc. v. Crane Nat'l Vendors Div.*, 319 S.C. 556, 462 S.E.2d 858 (1995). Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence. *Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (Ct.App.1985), *cert. dismissed by* 288 S.C. 468, 343 S.E.2d 613 (1986), *and overruled on other grounds by Atlas Food*, 319 S.C. 556, 462 S.E.2d 858.

Maheer v. Tietex Corp., 331 S.C. 371, 376-77, 500 S.E.2d 204, 207 (Ct. App. 1998)

The same is true for an action for breach of contract accompanied by fraudulent act. See, e.g. *Wilson Group, Inc. v. Quorum Health Resources, Inc.* 880 F. Supp. 416 (D.S.C. 1995). The discovery rule also applies to actions in tort or an action on a liability, as the statute reads. It provides that an action must be brought in part:

Within three years:

- (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;
 - (2) an action upon a liability created by statute other than a penalty or forfeiture;
 - (3) an action for trespass upon or damage to real property;
- S.C. Code Ann. § 15-3-530

Under the discovery rule, the statute of limitations begins to run when the cause of action reasonably ought to have been discovered. *Hedgepath v. American Telephone & Telegraph Co.* 348 S.C. 340. 559 S.E.2d 327 (Ct. App. 2001) In this case, Box had no idea that Jones had within his possession a report from Ram Jack which had recommended very extensive repairs which were not completed. A copy of that report is attached as **Exhibit B**, which bears Jones' signature shows that he declined recommended repairs- the exact same repairs which Ram Jack recommended to Ms. Box as of July 11, 2012, when Ram Jack provided her the report which it had given to Jones in November, 2009, **Exhibit C**. The Ram Jack report of November 2009 clearly shows that Jones knew that more extensive repairs were needed or at least recommended. Instead of attaching the report to the S. C. Residential Property Condition Disclosure Statement (Disclosure Statement or SCRPCD) Jones withheld the report, **Exhibit D**. The Instructions under the LLR approved disclosure form provides under section 2 in pertinent part that:

- a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.

The Disclosure Statement further requires that if any question regarding existing problems or defects that is answered in the affirmative that any relevant report, if it exist, be attached. (Disclosure Statement at p. 3 of 4)

Instead of disclosing the report, as provided above, Jones withheld it and it did not resurface until Ram Jack provided her a copy when she contacted Ram Jack about the problems she was having in July 2012. This is when she discovered the fraud and the breach of contract. Since the Court must take the allegations of the complaint as true if it decides this matter as a motion to dismiss, Box has pled that she did not discover the Ram Jack report. (Complaint ¶ 9) Because the discovery rule applies to all claims she has asserted and because she filed within the Statute of Limitations when the tolling period of 120 days from the filing of the action is considered, the Court should deny the Motion to Dismiss based on the running of the Limitations period. Should the Court decide that the matter should be treated as a Motion for Summary Judgment, the evidence as submitted in the attached exhibits and the plaintiff's affidavit indicates that she did not discover the Ram Jack report of November 2009, which was

given to Jones, until July 11, 2012. This evidence creates a genuine issue of material fact as to the limitations defense based upon the discovery rule.¹

B. A Defendant Who Acts in a Representative Capacity or as An Agent is Liable for His Own Torts and Jones Has Been Properly Named in This Action. The Fact that Jones Acted As an Agent of The Sparrow Group Does Not Absolve Him of Misrepresentations He Made.

The Complaint alleges that Jones, individually, and as an agent of the Sparrow Group represented that the property which is the subject of this action had had its foundation stabilized by Ram Jack when in fact the repairs which had been recommended on November 9, 2009 had not been completed and only part of the recommended work was done. (Complaint ¶12) The complaint further alleges that the representation that the foundation had been repaired was false and known to be false at the time it was made, or in the alternative, was made in reckless disregard of the truth. (Id. ¶ 13)

It is the long settled law of this state that an agent who commits a tort is liable even though he acts in a representative capacity. An agent's liability for his own tortious acts is unaffected by the fact that he acted in his representative capacity. *Lawlor v. Scheper*, 232 S.C. 94, 98-99, 101 S.E.2d

¹ The three year statute of limitations stated in S.C. Code § 15-3-530 applies to the plaintiff's breach of contract, fraud and negligence claims. The S. C. Unfair Trade Practices Act contains its own limitations period of three years from the date of discovery of the unlawful conduct. S.C. Code § 39-5-150.

269, 271 (1957). Because under a motion to dismiss the allegations of the complaint must be taken as true, it must be assumed that Jones made the false representations complained of for the purpose of misleading Ms. Box. This is sufficient to state a claim against Jones, and therefore, the Motion to Dismiss Jones should be denied. Under SCUPTA, an officer, director or controlling person may be held liable for an unfair trade practice or acts he or she personally committed. See *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005).

Plaintiff has sued Jones individually and as an agent for Sparrow for his fraudulent and/or negligent misrepresentations in this case and as a controlling person under the South Carolina Unfair Trade Practices Act (SCUPTA). The complaint alleges that Jones knowingly provided false information or an incomplete Disclosure Statement by withholding the Ram Jack report in which repairs had been recommended but were not done. (Complaint ¶ 27) The complaint also alleges that this has the potential for repetition and these allegations are sufficient to state a claim. Plaintiff's affidavit also supports these facts as stated. Therefore, the Motion to Dismiss and/or for Summary Judgment should be denied.

C. A Buyer Has the Right to Rely on Statements of Pre-existing Fact Pertaining to the Condition of a Home Where There is Special or Superior Knowledge That the Seller Alone Has and There is a Duty to Speak.

As pled in the complaint, which must be taken as true, Jones and Sparrow had pre-existing knowledge that extensive repairs had been recommended by Ram Jack according to the November 9 proposal which recommended steel piers be added to the foundation in areas B, C and D, which Jones declined. In the Disclosure Statement he gave, Jones did not attach this report and affirmatively represented that the foundation had been stabilized. (Disclosure Statement at p. 3)

Where one party possesses superior knowledge with respect to a transaction than the other party, the person with lesser knowledge, or means of knowledge, has a right to rely on the representations of one who possesses special information. *Giles v. Lansford and Gibson, Inc.*, 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985). The Court in *Giles* noted:

Whether or not reliance upon a representation in a particular case is justifiable or excusable, what constitutes reasonable prudence and diligence with respect to such reliance, and what conduct constitutes a reckless or conscious failure to exercise such prudence, **will depend upon the various circumstances involved**, such as the form and materialty [sic] of the representations, the respective intelligence, experience, age, and mental and physical condition of the parties, **and the relation and respective knowledge and means of knowledge of the parties**, citing *Thomas v. American Workmen*, 197 S.C. 178, 182, 14 S.E.2d 886, 888, 136 A.L.R. 1, 4 (1941). (Emphasis added)

Giles v. Lanford & Gibson, Inc., 285 S.C. 285, 289, 328 S.E.2d 916, 918 (Ct. App. 1985)

Here, Box was at a distinct disadvantage and did not possess equal knowledge or information about the past Ram Jack report, which was withheld from her and Jones had special or superior knowledge in relation to Box about what repairs had been recommended to the foundation. Under these circumstances, Box had right to rely. "Where a party to a transaction conceals some material fact within his own knowledge, which is his duty to disclose he is guilty of actual fraud." *Aiken County v. BSP Div. of Envirotech Corp.*, 886 F. Supp. 2d 661 (D.S.C. 1989), citing *Lawson v. Citizens & Southern National Bank of South Carolina*, 259 S.C. 477, 193 S.E.2d 124, 126 (1972). There is no question here that Jones had a duty to disclose this information according to the SCRPCD Act, as well as by common law, because of his relationship with Box as a prospective purchaser of this home and his superior knowledge of repair recommendations that had been made. See, e.g. *Aiken County v. BSP Div. of Envirotech Corp.*, supra. (affirming verdict of fraud in connection with false representations made concerning the testing of a sludge system designed to separate sludge from water so that cleansed water could be discharged into the Savannah River upon proof that the system in fact had not been tested, which was not disclosed)

D. The Plaintiff's Claims of Fraud, Negligent Misrepresentation, and Breach of Contract Accompanied by Fraud Arise from

Duties Independent of Contract and Are Not Barred By the Economic Loss Rule. The Economic Loss Rule is A Doctrine of Product Liability Law and Applies Only to Duties Arising out of Contract Pertaining to Products, Not Real Property. Thus, Where Plaintiff's Claims Arise Out of an Affirmative Duty to Disclose Material Pre-existing Facts in Relationship to the Purchase of a Home, the Economic Loss Rule Does Not Apply.

The economic loss rule protects only those defendants who have breached contractual duties. *Enhance-it, LLC v. American Access Technologies, Inc.*, 413 F. Supp.2d 626 (D.S.C. 2006) “The economic loss rule is a creation of modern law of product liability.” *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E. 2d 143 (2009). The economic loss rule applies where duties are created *solely* by contract. *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 384 S.E.2d 730 (1989). The duty to disclose material information which may relate to entering into a contract arises from common law and is independent of the contract. This case of course does not involve product liability but the purchase and sale of residential real estate. “A home is typically an individual’s largest investment and a completely different type of manufactured good than any other type of product a consumer will buy.” *Sapp*, 386 S.C. 148. A house is not a product in the sense of product liability law and hence is treated differently. The *Kennedy* court recognized an exception to the economic loss rule in the context of residential real estate, understanding that an exception must

exist “to protect homeowners.” Sapp, 386 S.C. at 147. While the rule was explicitly created to provide a tort remedy against builders or suppliers of building materials, there is no real policy reason to distinguish between a builder and a business engaged in selling real estate, such as Sparrow.

Moreover, the damage here is not just to the foundation, but has extended to the interior of the home resulting in cracked sheet rock and wall damage in the interior of the home. (Box Affidavit at ¶6, Exhibit E) The economic loss rule has been held not to bar recovery in an asbestos case because the product caused harm to “other property,” including the building itself. *Kershaw v. County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390 396 S.E. 2d 369 (1990). Thus, as the Court held in *Sapp*, “where a **product** damages only itself, tort law provides no remedy and the action lies in contract; but when personal injury or other property damage occurs, a tort remedy may be appropriate.”

Furthermore, though the *Kennedy* court recognized that its holding there was an exception to the economic loss rule, it noted that liability in tort would still exist in tort for those who “concealed defects from an unwitting buyer” in the context of buying and selling homes. *Kennedy*, 299 S.C. 340. No South Carolina case has held that common law fraud, which recognizes a duty to disclose material information, has been abrogated by

the economic loss rule. Indeed, “as a general rule, a party induced to enter a contract by fraud has a choice among causes of action and remedies.” *Enhance –It, LLC*, 413 F. Supp. 2d 626, 632. “If the fraud gives rise to a breach of promise or warranty, he may elect to sue in contract or in tort,” (Id, citing *Baezea v. Robert E. Lee Chrysler, Plymouth Dodge, Inc.* 279 S.C. 468, 309 S.E.2d 763, 766 (1983) . “Actions in tort often have their beginning in contractual matters. “ *Charles v. Merc. Co. v. Armour & Co.*, 156 S.C. 397, 153 S.E. 473, 477 (1930). Under South Carolina law, when an identical set of facts entitle the plaintiff to alternative remedies in either tort or contract, he may plead and prove his entitlement to either or both, but he is not entitled to a double recovery. *Minyard Enterprises, Inc. v. Southeastern Chemical & Solvent Co.*, 184 F. 3rd 373, (4th Cir. 1999); *Save Charleston Found v. Murray*, 286 S.C. 170, 333 S.E.2d 60, 64 (1985).

In sum, Box has asserted tort claims, including fraud, which induced her to enter into a contract to purchase real property, not a product. The economic loss rule applies to products, not homes. The pleadings allege, and there is evidence to show, that material information concerning needed repairs to the foundation of this home was withheld and concealed. Plaintiff's cause of action for breach of contract accompanied by fraud does not sound in tort and hence is not within the ambit of the motion. An action

for breach of contract accompanied by a fraudulent act is an action *ex contractu*, not *ex delicto*, *Cain v. United Insurance Company of America*, 232 S.C. 397, 102 S.E.2d 360; *Ross v. American Income Life Insurance Company*, 232 S.C. 433, 102 S.E.2d 743; however, it partakes of elements of both contract and tort. Being an action *ex contractu*, it necessarily follows the complaint must contain allegations of a breach of contract before any damages are recoverable and there must be further allegations that the breach was accompanied by a fraudulent act. *Peeples v. Orkin Exterminating Co.*, 244 S.C. 173, 178, 135 S.E.2d 845, 847 (1964).

Therefore, the defendants' Motion to Dismiss or For Summary Judgment should be denied as to the tort claims of fraud and negligent misrepresentation.

E. Plaintiff's Cause of Action for Violation of the South Carolina Unfair Trade Practices Act (SCUPTA) Alleges Conduct Which is Unethical, Immoral and Violates Public Policy and which is Capable of Repetition. Therefore, It Sufficiently States a Cognizable Claim Under the UTPA.

An act is "unfair" under the UTPA when it is offensive to public policy or when it is immoral, unethical, or oppressive. *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006), *rehearing denied*. In this case, it cannot seriously be argued that withholding the Ram Jack report, which Jones was legally obligated to disclose by the SCRPCD Act does not violate public

policy or is not immoral, as it was material that was directly relevant to the purchase of this home and was concealed from the plaintiff.

Under the UTPA, “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce” are unlawful. S.C. Code Ann. § 39-5-20(a) (1985). **Persons or any legal entity suffering an ascertainable loss of money or real or personal property** “as a result of the use or employment by another person of an unfair or deceptive method, act or practice” may bring an action to recover actual damages. S.C. Code Ann. § 39-5-140(a) (1985) (emphasis added). To recover under the Act, a plaintiff must prove a violation of the Act, proximate cause, and damages. *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct.App.1995).

As to the element requiring an adverse impact on the public, South Carolina Courts have noted:

To be actionable under the UTPA, an unfair or deceptive act or practice must have an impact upon the public interest. S.C.Code Ann. § 39-1-10(b) (Trade as used in this article “shall include any trade or commerce *directly or indirectly affecting the people of this State.*”) (emphasis added); see *Haley Nursery Co. v. Forrest*, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989). “Since 1986, South Carolina courts have required that a plaintiff bringing a private cause of action under UTPA allege and prove the defendant’s actions adversely affected the public interest.” *Daisy Outdoor Adver. Co. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). “An impact on the public interest may

be shown if the acts or practices have the potential for repetition.” *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing *Crary v. Djebelli*, 502 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)); *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct.App.2005); *Noack Enters., Inc. v. Country Corner 30 Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 480, 351 S.E.2d 347, 350-51 (Ct.App.1986).

444546 The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. *Singleton*, 358 S.C. at 379, 595 S.E.2d at 466; *Daisy*, 322 S.C. at 496, 473 S.E.2d at 51 (citing *Haley*, 298 S.C. at 524, 381 S.E.2d at 908; *Dowd v. Imperial Chrysler-Plymouth, Inc.*, 298 S.C. 439, 442, 381 S.E.2d 212, 214 (Ct.App.1989); *Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 613, 358 S.E.2d 156, 159-60 (Ct.App.1987)). These two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA. *Daisy*, 322 S.C. at 497, 473 S.E.2d at 51. Nevertheless, a plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition. *Id.* at 493, 473 S.E.2d at 49; see also *Crary*, 329 S.C. at 388, 496 S.E.2d at 23 (“The plaintiff need not allege or prove anything further in relation to the public interest requirement.”).

Wright v. Craft, 372 S.C. 1, 29-30, 640 S.E.2d 486, 501-02 (Ct. App. 2006)

“Our case law instructs that a deceptive act is any act which has a tendency to deceive. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct.App.2000), citing ” *Wright v. Craft*, supra.

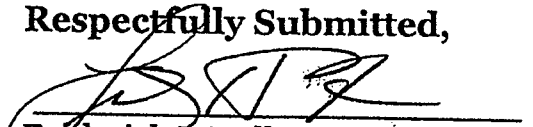
“Even a truthful statement may be deceptive if it has a capacity or tendency to deceive.” *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120

(Ct.App.2005) (citations omitted). The evidence creates a reasonable inference that the Ram Jack Report was intentionally withheld. This constitutes some evidence of a deceit.

In the case at bar, Sparrow and Jones had information which they did not disclose that they were legally obligated to disclose. This is evidence of immoral, unethical and deceitful conduct which is capable of repetition and as such would have an impact upon the public interest. The defendants' Motion to Dismiss or For Summary Judgment should be denied as the plaintiff's SCUPTA claim.

Respectfully Submitted,

By:


Frederick I. Hall, III, Esquire
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(803) 957-7717 Facsimile
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ATTORNEY FOR PLAINTIFF

Lexington, S.C.
October 27, 2015

Elizabeth Box, et al, Plaintiff(s)
vs.
The Sparrow Group, LLC, et al, Defendant(s)

JUL 24 2015



Service of Process by
Southern Pride Process
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

COPY

Case No: 2015-CP-40-4129

RICK HALL LAW FIRM
Attn: Mr. Frederick I. Hall III
P.O. Box 1898, 301 Gibson Rd
Lexington, SC 29071

AFFIDAVIT OF SERVICE

Bryan S. Jones

State of: South Carolina ss.
County of: Lexington

Name of Server: Lester L. Franzen, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of eighteen, was not a party to this action;

Date/Time of Service that on 13-Jul-2015 12:50 pm

Place of Service: at 406 W Royal Tower Road, City of Irmo, State of SC

Documents Served: the undersigned served the documents described as:
Civil Action Coversheet
Summons and Complaint

Service of Process on, A true and correct copy of the aforesaid document(s) was served on:
Person Served, and Bryan S. Jones

Method of Service: By personally delivering them into the hands of same.

Description of Person The person receiving documents is described as follows:
Receiving Documents: Sex M; Skin Color W; Hair Color Brown; Facial Hair _____
Approx. Age 40; Approx. Height 5'10; Approx. Weight 150

Signature of Server: Subscribed and sworn to before me this
13 day of July, 2015.

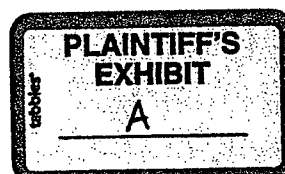
Undersigned declares under penalty of perjury that the foregoing is true and correct.

Bryan S. Jones

Notary Public for South Carolina

My Commission Expires: March 1, 2020

Lester L. Franzen
Signature of Server



Elizabeth Box, et al, Plaintiff(s)
vs.
The Sparrow Group, LLC, et al, Defendant(s)

JUL 24 2015



Service of Process by

Southern Pride Process
(803) 386-8559

PO Box 7125
Columbia, SC 29202-7125

COPY

RICK HALL LAW FIRM
Attn: Mr. Frederick I. Hall III
P.O. Box 1898, 301 Gibson Rd
Lexington, SC 29071

Case No: 2015-CP-40-4129

AFFIDAVIT OF SERVICE

The Sparrow Group, LLC

State of: South Carolina ss.
County of: Lexington

Name of Server: Lester L. Franzen, undersigned, being duly sworn, deposes and says that at time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service that on 13-Jul-2015 12:50 pm

Place of Service: at 406 W Royal Tower Road, City of Irmo, State of SC

Documents Served: the undersigned served the documents described as:
Civil Action Coversheet

Summons and Complaint

Service of Process on, Person Served, and Method of Service: A true and correct copy of the aforesaid document(s) was served on:
The Sparrow Group, LLC

By delivering them into the hands of an officer or managing agent whose name and title is
Bryan S. Jones, Registered Agent

Description of Person Receiving Documents: The person receiving documents is described as follows:
Sex M; Skin Color W; Hair Color Brown; Facial Hair _____
Approx. Age 40; Approx. Height 5'10; Approx. Weight 150

Signature of Server: Subscribed and sworn to before me this
13 day of July, 2015.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

[Signature]
Notary Public for South Carolina
My Commission Expires: March 2020

[Signature]
Signature of Server

803-337-3200 office
803-518-5337 cell



Patents #467331
#491158
Patent Pending



**PATENTED STEEL PIER AND/OR HELICAL ANCHOR
AGREEMENT FOR THE WORK**

AGREEMENT MADE NOVEMBER 12, 20 09

Between **Ram Jack of South Carolina, Inc.** and

MR. BRYAN JONES
(Site Address) 119 MILLWAY ROAD
IRMO SC 29063

(Owner or Owner's Agent) referred to as "Owner" and
Ram Jack of SC, Inc., referred to as "Ram Jack".

I. Purpose of The Work

The sole and exclusive purpose of The Work is to improve horizontal alignment of the foundation beam and/or to prevent further settlement of the foundation in the immediate area of The Work.

II. Areas of the Work

The areas of The Work are limited to that immediate portion of the foundation beam supported by a series of piers as indicated on the Service Plan beginning with the first pier and ending with the last pier.

III. Description of The Work

Install Ram Jack patented steel piers in the areas designated on The Service Plan and Cost of Services.

- A. Remove plants as necessary in the immediate areas of The Work.
- B. Excavate a small opening, approximately 3'x3' at each pier location.
- C. Place the support brackets under foundation beam.
- D. Install the extended guide sleeve through the support bracket.
- E. Hydraulically advance steel piling sections through the support bracket until final refusal.
- F. Lift the foundation beam uniformly in the areas of The Work to reduce slab deflection within the practical limitation of the structure.
- G. Secure all piers after lift is accomplished with Ram Jack patented securing technique.
- H. Replace soil in excavated areas. Replace concrete and replace original plants as required in the course of The Work.

IV. Price of The Work

The Owner shall pay Ram Jack for performance of The Work as described in this Agreement the sum of

TWELVE THOUSAND SEVEN HUNDRED
FIFTY & NO/100 (\$ 12,750.00)

V. Collection

A non-refundable down payment of \$ 1000 is due with signed agreement, and the total sum for The Work is due immediately upon completion. Please pay Supervisor immediately upon completion of The Work. Should Ram Jack be required to bring suit in any court for payment due under this Agreement, Ram Jack shall be entitled to reasonable attorney's fees from the Owner and interest at the highest rate allowable by law beginning from date of default. The payment of the total sum is a condition precedent to the validity of all warranties offered by Ram Jack.

Form 1 Rev. 4/02

VI. Arbitration

Ram Jack and Owner agree that any controversy or claim whether such claim is for breach of contract, tort, violation of statutes, or otherwise, arising out of or relating to this Agreement, any representations or warranties, expressed or implied, or the goods or services of Ram Jack, shall be settled by arbitration in accordance with the Construction Industry arbitration rules of the American Arbitration Association pursuant to the Federal Arbitration Act and judgment upon the award rendered by the arbitrator may be confirmed, entered and enforced in any court having jurisdiction. The result of any such arbitration, whether or not accepted is binding.

VII. Partial Invalidity

Should any portion of this Agreement be declared null and void, the remainder of this Agreement shall remain valid and enforceable by either party.

VIII. Entire Agreement

The Owner has had an opportunity to read and understand and agrees to abide by the entire Agreement for The Work, all of which is incorporated by specific reference as the following: (Please initial)

- ☒ Agreement for The Work
- ☒ Limitations of The Work
- ☒ Service Plan
- ☒ Cost Services
- ☒ Limited Lifetime Warranty
- ☒ Causes of Foundation Failure

Any changes or alterations in this Agreement must be agreed to in writing and signed by a corporate officer in order to be valid. The terms of this Agreement are intended by the parties as final expression of their Agreement with respect to such terms and also as a complete and exclusive statement of all terms.

Executed this 12th day of NOVEMBER, 20 09
RAM JACK OF SOUTH CAROLINA, INC

Representative [Signature]

Owner [Signature]

Date 11/12/09

Owner _____

Date _____

Record on Appeal 72



Patents #467
#4911
Patent Pending

RAM JACK OF SOUTH CAROLINA, INC.

LIMITATIONS OF THE WORK

1. Plumbing

Separations in plumbing may exist prior to The Work and/or may occur as a result of The Work. The Owner releases Ram Jack from all responsibility for damage to plumbing as a result of The Work or consequential damages to the structure caused by plumbing leaks. RAM JACK STRONGLY RECOMMENDS A HYDROSTATIC PLUMBING TEST OF ALL SUPPLY AND WASTE SYSTEMS.

2. Pre-existing Defects

The Owner releases Ram Jack from all responsibility for damages caused by pre-existing defects. Such defects may include, but are not limited to, insufficient steel or cable reinforcement, insufficient or weak concrete.

3. Recovery Exclusion

Ram Jack specifically excludes any representation of "leveling", "fixing" or "closing cracks." The supervisor for The Work will not lift the foundation beyond a practical limit unless a waiver for excessive damages is agreed to and signed by the Owner. Lifts may be hindered by cosmetic repairs of previous damages.

4. Concrete Replacement

If the scope of The Work includes installation of piers through concrete, replacement concrete may not match existing concrete.

5. Limitation of Proposed Remedy

The proposed remedies do not exclude the need for additional work now or in the future. The Work is not intended, nor is it represented, to be an "All-inclusive Fix."

6. Plants

Plants that are affected by excavation may not survive. No Warranty of any kind is extended to plant survival. The Owner may choose to hire a professional nurseryman to remove and replace plants in order to improve their chance of survival.

7. Damage Exclusion

Ram Jack shall exercise due diligence in performing The Work. However, cracks may develop in concrete, brick, sheetrock, rock veneer or other rigid materials during the course of The Work. Ram Jack shall not be liable for any such damages.

8. Potential for Future Movement

There is always potential for future movement of the foundation as described in "Causes of Foundation Failure." Ram Jack recommends waiting through at least one seasonal moisture cycle before making any cosmetic repairs.

It is the Owner's responsibility to take care of the following items should there be a problem either now or in the future:

- Water lawn during dry periods.
- Correct plumbing leaks as soon as they are discovered.
- Remove large trees or shrubs in areas adjacent to the foundation.
- Install root barriers where roots of large trees or shrub may affect foundation.
- Install guttering and down-spouts where necessary and remove excess water away from the foundation.
- Install sub-surface drainage systems.
- Provide positive surface drainage away from the foundation.



COST FOR SERVICES

Ram Jack of South Carolina, Inc.
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Confidential information for Ram Jack use only

Name MR. BRYAN JONES

Number Home 803 781 7895 Work 803 260 2810

Site Address 119 Millway Road

City / State IRMO SC Zip 29063

~~Push Pier depth exceeding 25 ft. will be charged extra \$ 18 /foot~~

Helical Pier depth exceeding 14 ft. will be charged extra \$ 22 /foot

The following items are recommended to enhance the future performance of your foundation. We feel an obligation to inform you of potential problems if these items are not corrected:

X [Signature]

	Services Recommended	Adjustments	Total	Services Declined	Services Accepted
<u>A1-A6</u> Steel Piers/Area A: (Proposed <u>6</u> piers)	\$ <u>6000.00</u>	<u>- 900.00</u>	\$ <u>5100.00</u>	X	\$ _____
<u>B1-B15</u> Steel Piers/Area B: (Proposed <u>15</u> piers)	\$ <u>15000.00</u>	<u>- 2250.00</u>	\$ <u>12750.00</u>	<u>[Signature]</u>	\$ _____
<u>C1-C18</u> Steel Piers/Area C: (Proposed <u>18</u> piers)	\$ <u>18000.00</u>	<u>- 2700.00</u>	\$ <u>15300.00</u>	<u>[Signature]</u>	\$ _____
<u>D1-D9</u> Helix Piers/Area D: (Proposed <u>9</u> piers)	\$ <u>9000.00</u>	<u>- 1350.00</u>	\$ <u>7650.00</u>		\$ _____
<u>E1</u> Helix Piers/Area E: (Proposed <u>1</u> piers)	\$ <u>1000.00</u>	<u>- 150.00</u>	\$ <u>850.00</u>	<u>[Signature]</u>	\$ _____
Pressure Grouting: _____	\$ _____		\$ _____		\$ _____
Concrete Removal & Replace: _____	\$ _____		\$ _____		\$ _____
Fortress Straps: _____	\$ _____		\$ _____		\$ _____
Block Piers: _____	\$ _____		\$ _____		\$ _____
Pier & Beam: _____	\$ _____		\$ _____		\$ _____
Permit: _____	\$ <u>N/C</u>		\$ <u>N/C</u>		\$ _____
Other Services _____	\$ _____		\$ _____		\$ _____
TOTAL \$ <u>15000.00</u>		<u>- 2250.00</u>	\$ <u>12750.00</u>		\$ _____

Total Due Ram Jack Services \$ 12,750.00

Total Other Services \$ _____

TOTAL DUE UPON COMPLETION* \$ 12,750.00

* PAYMENT DUE UPON COMPLETION OF EACH SERVICE

The Costs for Services described above is part of the contract which also includes the Service Plan, Terms and Conditions, and Lifetime Limited Warranty.

Customer Signature _____

Date _____

Ram Jack Representative [Signature]

Date _____

11/9/09



COST FOR SERVICES

Ram Jack of South Carolina, Inc.
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Confidential Information for Ram Jack use only

Name Mrs Beth Box
Number Home 803 391 2036 Work _____
Site Address 119 Millway Rd
City / State IRMO S.C. Zip 29063

Push Pier depth exceeding _____ ft. will be charged extra \$ _____ /foot

Helical Pier depth exceeding 25 ft. will be charged extra \$ 18 /foot

The following items are recommended to enhance the future performance of your foundation. We feel an obligation to inform you of potential problems if these items are not corrected:

	Services Recommended	Adjustments	Total	Services Declined	Services Accepted
Steel Piers/Area A: (Proposed _____ piers)	\$ _____	_____	\$ _____	_____	\$ _____
Steel Piers/Area B: (Proposed <u>15</u> piers)	\$ <u>15000.00</u>	<u>-2250</u>	\$ <u>12,750.00</u>	_____	\$ _____
Steel Piers/Area C: (Proposed <u>18</u> piers)	\$ <u>18000.00</u>	<u>-2700</u>	\$ <u>15,300.00</u>	_____	\$ _____
Helix Piers/Area D: (Proposed _____ piers)	\$ _____	_____	\$ _____	_____	\$ _____
Helix Piers/Area E: (Proposed <u>1</u> piers)	\$ <u>1000.00</u>	<u>-150.00</u>	\$ <u>850.00</u>	_____	\$ _____
Pressure Grouting: _____	\$ _____	_____	\$ _____	_____	\$ _____
Concrete Removal & Replace: _____	\$ _____	_____	\$ _____	_____	\$ _____
Fortress Straps: _____	\$ _____	_____	\$ _____	_____	\$ _____
Block Piers: _____	\$ _____	_____	\$ _____	_____	\$ _____
Pier & Beam: _____	\$ _____	_____	\$ _____	_____	\$ _____
Permit: <u>IRMO</u>	\$ <u>150.00</u>	<u>N/A</u>	\$ <u>150.00</u>	_____	\$ _____
Other Services _____	\$ _____	_____	\$ _____	_____	\$ _____
TOTAL \$ _____	_____	_____	\$ _____	_____	\$ _____

Total Due Ram Jack Services \$ _____

Total Other Services \$ _____

TOTAL DUE UPON COMPLETION* \$ _____

*PAYMENT DUE UPON COMPLETION OF EACH SERVICE

The Costs for Services described above is part of the contract which also includes the Service Plan, Terms and Conditions, and Lifetime Limited Warranty.

Customer Signature _____

Date _____

Sen He Edwards July 11
Ram Jack Representative Date

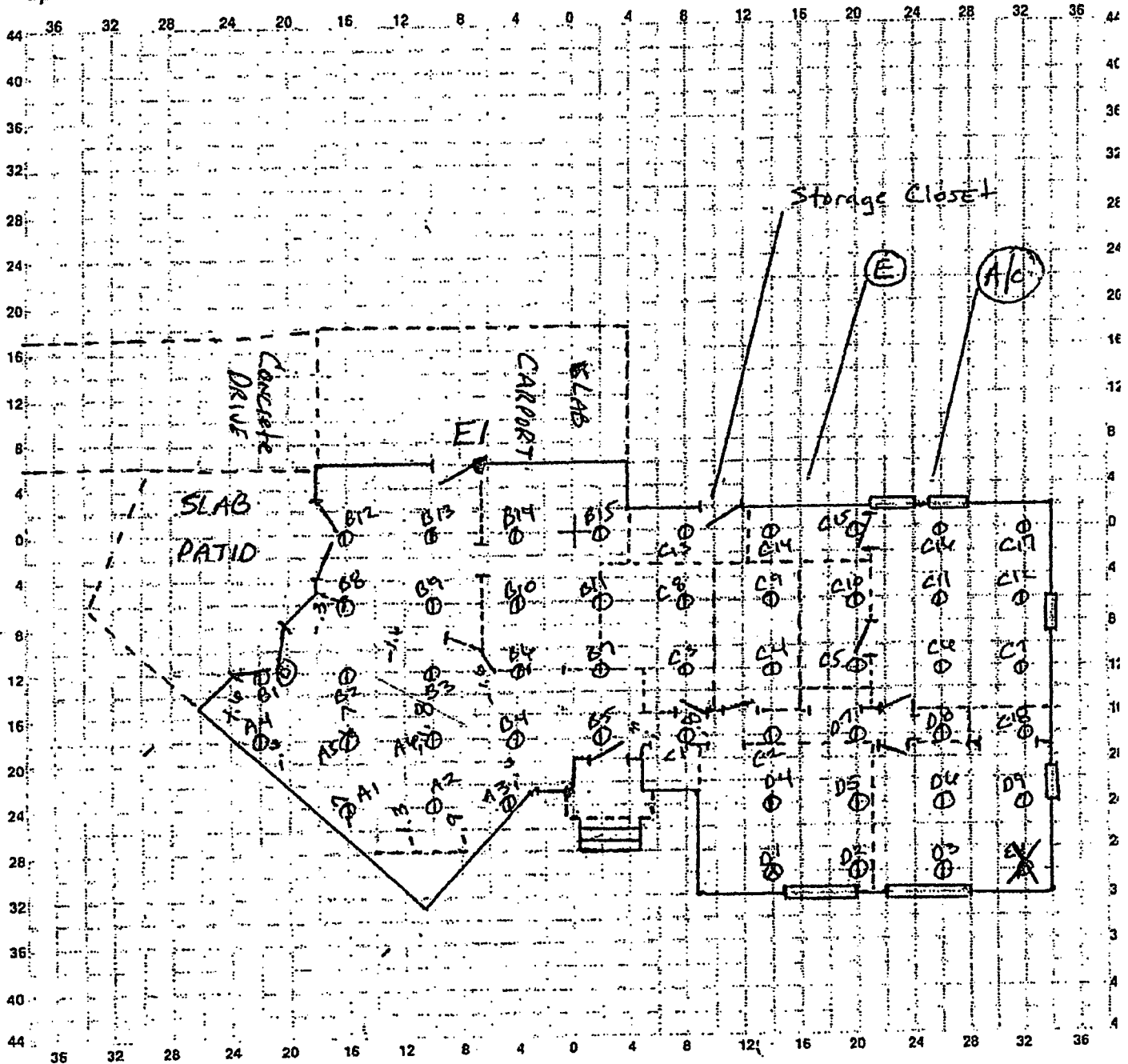
2012



Elevation Profile and Service Plan

Ram Jack of South Carolina, Inc.
Headquarters
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Confidential Information for Ram Jack use only
Special Instructions:



Scale 3/16" = 2'

● Pier Placement

■ Pier in Concrete

⊕ Tree

⊕ Helical Pier w/ Stab Bracket

⊗ Helical Pier w/ Beam Bracket

⊕ Pressure Grouting

Name Elizabeth Bax

Site Address 119 Millway Road

Number Home 803 382 2031

City/State IRMO SC Zip 29063

Date July 11 Ram Jack Representative Scottie Edwards

Estimated Job Cost \$ _____

2012



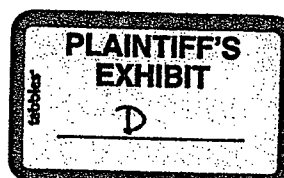
STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: JD Seller 7/10 Date 7/13 Buyer 1/3 Date
Rev. 1/03

Page 1 of 4



Record on Appeal 77

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

	Yes*	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood <u>X</u> composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure <u>1976</u> (<u>34</u> yrs.)	☒	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering <u>5 months</u>	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc.)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump <u>X</u> baseboard ___ b. Cooling source: central <u>X</u> wall/window unit(s) ___ c. Fuel source: electricity <u>X</u> natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ /cooling unit ___ <i>A/C Handler - new 1/1/10 Condenser -</i>	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county <u>X</u> community system ___ private well ___ b. water pipes are: copper <u>X</u> galvanized ___ PVC/CPVC <u>X</u> polybutylene ___	☐	☒	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system <u>X</u> city/county system available ___ b. Does the system require a pump? Yes ___ No <u>X</u> c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No <u>X</u>	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan <u>X</u> sump pump ___ irrigation system ___ cable tv wiring or satellite dish <u>X</u> security system ___ or other systems ___	☐	☒	☐

Initials: JS Seller 4/1/10 Date 4/1/10 Buyer JS Date 4/1/10
Rev. 1/03

Page 2 of 4

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

- | | Yes* | No | No
Representation |
|--|--------------------------|-------------------------------------|--------------------------|
| 13. Room additions or other structural changes? | ☐ | ☒ | ☐ |
| 14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | ☐ | ☒ | ☐ |
| 15. Nuisances (noise, odor, smoke, etc.) affecting the property? | ☐ | ☒ | ☐ |
| 16. Previous damage caused by fire? | ☐ | ☒ | ☐ |
| 17. Violations or variances of building codes or zoning ordinances? | ☐ | ☒ | ☐ |
| 18. Restrictions to property use? (covenants or deed) | ☐ | ☒ | ☐ |
| 19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? | ☐ | ☒ | ☐ |
| 20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property? | ☐ | ☒ | ☐ |
| 21. Owners' association fees or "common area" expenses or assessments? | ☐ | ☒ | ☐ |
| 22. Flood hazards or that the property is in a federally-designated flood plain? | ☐ | ☒ | ☐ |
| 23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? | ☐ | ☒ | ☐ |
| 24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property? | ☐ | ☒ | ☐ |

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

#1 Foundation / Slab stabilization by Ram Jack in November 2009.

Initials: SP Seller YH Date 8/1 Buyer JD Date 8/24
Rev. 1/03

Page 3 of 4

"Yes" explanations continued:

744 0830

Owner(s) Acknowledgement

Property Address: 119 Milway Rd., Toms, SC 29063

The property is currently: owner-occupied leased in an estate in foreclosure
vacant X (If vacant, how long?) 5 months

Owner's Name(s): Sparrow Group, LLC.

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: [Signature] member Date: 4/7/10

Owner Signature: _____ Date: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature:  Date: 7/8/2010

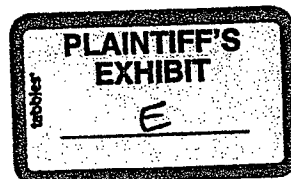
Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Civil Action No.: 2015-CP-40-04129
Elizabeth Box,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	AFFIDAVIT OF ELIZABETH BOX
The Sparrow Group, LLC and	)	
Bryan S. Jones.	)	
	)	
Defendant.	)	

Personally appeared before me, Elizabeth R. Box, who first being duly sworn, deposes and states as follows:

1. That on or about July 3, 2010, I entered into a contract to purchase a home which is described as 119 Milway Road in Richland County, South Carolina in the New Friarsgate Subdivision. I signed a contract, a copy of which is attached to my affidavit as Exhibit 1.
2. The owner of the property at that time was The Sparrow Group, LLC, which I understand to be owned and operated by Mr. Bryan S. Jones.
3. Prior to the purchase of the home, I had a home inspection done, which did not indicate that there were any problems with the foundation of the home.
4. The inspection did recommend certain repairs to other areas of the house.
5. I was provided a copy of a South Carolina Property Condition Disclosure Statement, attached hereto as Exhibit 2 of my affidavit, which led me to believe that the foundation had been properly stabilized and repaired, when in fact, it had not been.



6. On July 11, 2012, after experiencing problems with my home, including increased cracking and separation of the sheetrock in my house, I was provided with a prior report that apparently been given to Bryan S. Jones in November of 2009. I had contacted the same service company that apparently had performed some of the repairs which it had recommended but that left other significant areas of the foundation undone. Although Ram Jack had recommended repairs to areas B, C and E of the foundation, Mr. Bryan S. Jones declined these services.

7. I was not provided a copy of this report when I was given the South Carolina Residential Property Condition Disclosure form, which I understand to require disclosure of all material information concerning repairs to the home, including any previous reports that were obtained.

8. When I contacted Ram Jack and was provided a copy of this report on July 11, 2012, I was surprised to learn that I had not been given this information although it apparently had been given directly to Bryan S. Jones as signified by his signature on the proposal dated November 12, 2009.

9. Had I been given this information earlier, I may not have purchased this home or at least would have required that these repairs be completed before closing on this particular house.

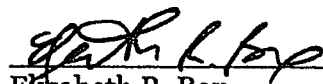
10. I believe that his information was material to my purchase of the home and I certainly would have considered it prior to entering into a contract and likely would not have purchased this home if the seller had not agreed to make repairs to the property prior to closing.

11. A copy of the Ram Jack report which Mr. Jones was given is attached to my affidavit as Exhibit 3. It also includes the repair services that he declined. A copy of the

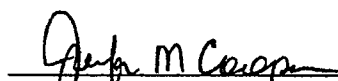
Ram Jack report that I was given on July 11, 2012 is attached to my affidavit as Exhibit 4 and disclosed as the areas of the foundation that they recommended be repaired.

12. As the court can see, these are the same areas of repair which were left undone by Mr. Jones.

FURTHER THE AFFIANT SAYETH NOT.


Elizabeth R. Box

SWORN to before me
This 26th day of October, 2015.


Notary Public for South Carolina
My Commission Expires: 11/30/19

Final
Contract

ERA WILDER REALTY, INC.



CONTRACT OF SALE
RESIDENTIAL



Revised 08/88

PROPERTY SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

1. PARTIES: This Contract of Sale is entered into on July 3, 2010 between
Buyer(s) Elizabeth R. Box (hereinafter called "Buyer"), and
Seller(s) Sparrow Group LLC (hereinafter called "Seller").

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures (location:

Lot _____ Block _____ Phase _____ Subdivision New Friesland
Address 119 Milway Rd Unit # _____ City Irmo Zip 29063
Tract 03215-02-11 County of Richland State of South Carolina

3. PRICE: The purchase price is \$ 112,000.00

4. EARNEST MONEY:

A. \$ 500.00 Earnest money is paid by Check (X) Cash () Other ()

B. \$ _____ Additional earnest money to be delivered on or before _____

C. Earnest money to be held in trust by ERA Wilder Realty (Broker/Agent)

D. Broker/Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he/she has the right to withdraw any interest earned. However, through this written agreement, the responsibility of the released interest to Broker/Agent is considered for the earnest money deposited in and held in the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning withdrawal and disposition of an earnest money deposit, the deposit will be retained in Broker/Agent's escrow account until Broker/Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-135 (1976). If a court action is brought by Broker/Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Broker/Agent's attorney's fees and court costs.

5. TRANSACTION COSTS: Buyer's Transaction Costs include all closing costs generated by the type of financing selected, pre-paid recurring items, mortgage insurance and discount points. Seller's Transaction Costs include preparation of deed, any recording charge based on value of the Property (deed stamp), all costs necessary to deliver a marketable title (including recording of satisfaction), property taxes prorated to the day of closing and the real estate brokerage fee. Buyer's and Seller's Transaction Costs will be paid as follows: (Select, initial and date only one of the options below)

A. (Buyer/Date 8/3/10 / Date) (Seller/Date 8/3/10 / Date) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs, as well as pay for Buyer's non-allowable costs if the financing type selected in Paragraph 6(1) is either VA or FHA.

OR

B. (Buyer/Date 8/3/10 / Date) (Seller/Date 8/3/10 / Date) Seller will pay Buyer's Transaction Costs not to exceed \$ 3,150.00 which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer's Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

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BUYER

8/3/10

Initials

7/3/2010

Initials

SELLER

7/3/10

Initials

7/3/10

Initials

Exhibit 1

Record on Appeal 84

6. **FINANCING:** Buyer's obligation under this Contract is ☒ if not ☐ contingent on Buyer obtaining financing. All financing contingencies herein automatically expire five (5) Business Days prior to the closing date set forth in Paragraph 7 and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract. See Paragraph 21.

A. **FINANCING TYPE:** Financing type will be: Lender-provided Conventional ☐; FHA ☒; VA ☐; Seller-provided ☐; Cash (no financing required) ☐; Other _____.

Note: If Buyer utilizes FHA or VA financing, an FHA/VA Addendum signed by Buyer and Seller must accompany this Contract. Utilizing FELA or VA financing will require Seller to pay for certain loan-related closing costs termed "non-allowable costs". VA financing will additionally require Seller to pay for the cost of conducting the VA required termite (C-100) inspection.

B. **APPLICATION FOR FINANCING:** If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's address to Seller or Seller's Broker. Buyer will also furnish Lender all documents now required for the processing of this loan from a different and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be returned to Buyer. See Paragraph 4(D).

2. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

3. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Broker.

C. **SELLER FINANCING:** If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 13 of this Contract or in a separate Addendum to this Contract.

D. **CASH TRANSACTION:** In a cash transaction, Buyer agrees to provide Seller or Seller's Broker within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

B. **APPRAISAL CONTINGENCY:** This Contract is ☒ if not ☐ contingent on lot or parcel with building and improvements thereon. If any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have 24 hours after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If the Parties are unable to reach agreement within the prescribed time frame then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. **SELLER'S MORTGAGE PAY OFF:** (Seller/Date Initials / Date) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. **CONVEYANCE DATE OF CLOSING/POSSESSION:** (Buyer and Seller to initial and date Paragraph 7A) Conveyance will be made subject to all encumbrances and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed. If applicable, list of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Elizabeth R. Box or as otherwise stipulated by Buyer, and delivered to reputable place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before August 20 at 10, unless extended pursuant to Paragraph 7(D) or by mutual agreement.

A. (Buyer/Date 8/1/20 / Initials / Date) Seller will be obligated to vacate and give possession of the Property (free of debt and in a clean condition) to Buyer: at closing ☒ 24 hours after closing ☐ 48 hours after closing ☐ or in accordance with attached agreement ☐.

BUYER [Signature] 8/1/20
Initials Date

SELLER [Signature] 7/9/20
Initials Date

8. If Buyer has provided written loan commitment without additional conditions, or 5) a cash transaction Buyer has met the terms and conditions of Paragraph 4(D), the earnest money will be refunded within the stipulated time limit of this Contract; both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or inspection selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "inspector" will mean a person or company, licensed or certified, either required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the inspector is inspecting, assembling or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspection, any re-inspections, appraisal and final walk through. Seller agrees to allow Buyer or Inspector selected by Buyer the right to re-inspect the Property to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD: (If Property being sold "As-Is" proceed to Paragraph 10 - PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but not be limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). (Note: If Buyer utilizes VA financing Seller will be required to pay for the cost of conducting the VA required items (CL-100) inspection.) Any re-inspections that may be required will be at Buyer's expense. If this Contract is contingent on the sale and closing of Buyer's Property, then the Due Diligence Period will begin on the date Seller or Seller's Broker receives written notification that that contingency is removed.

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an inspection is a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommending any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.
2. If Buyer, in his sole discretion, determines the results of any inspection, examinations or tests conducted to be unsatisfactory, Buyer may terminate this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.
3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, itemizing specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from Seller's receipt of the Addendum to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:

BUYER [Signature] 7/8/2018
Date

SELLER [Signature] 7/7/18
Date

- a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
- b. Buyer will have 24 hours after the end of the negotiating period, or any extension to the period, to accept Property "As-Is" in current condition with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
- c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraphs, then either party can terminate this Contract by providing written notice of termination to the other and reimbursement will be made to Buyer. See Paragraph (D). Seller's failure to respond to the Inspection Report Addendum within the time (5) Business Days period will be deemed to be a refusal to do repairs/replacements.

D. **STANDARD APPRAISAL/INSPECTIONS:** If Buyer uses MIA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to the Due Diligence or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (Terms of Paragraph 9 do not apply). (Select initial and date of the sentence below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) **PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is" with all defects including but not limited to lead-based paint, lead-based paint hazards, environmental hazards, active installations of nuclear damage from radiation, other wood destroying organisms or fungi and for any damage, problems (CL-100). Buyer will have the same ten (10) Business Day Due Diligence Period as stipulated in Paragraph 9(A) to have Property inspected, examined and tested to determine its condition. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspection. Based on suspicion related, Buyer may, protected under the terms of this Contract or void this Contract by providing copies of any inspection reports and written notice of termination to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) **PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD**
All Parties agree that Property is being sold "As-Is". Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives the right to both request repairs and replacements and to void this Contract based on inspection results.

11. CONDITION OF PROPERTY: After any inspection by Buyer and after any repairs or replacements made as a result of any such inspection, Seller agrees to maintain the Property (including lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect its value when conditions are disclosed by Seller, Buyer or without intentional concealment in place in the Property.

12. PROPERTY CONDITION DISCLOSURE STATEMENT: (Select initial and date of the sentence below)

A. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that a Residential Property Condition Disclosure Statement as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement, or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in any material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

OR

B. (Buyer/Date Initials / Date) (Seller/Date Initials / Date) Buyer and Seller agree that Seller will not complete and provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-10, Paragraphs (1-13).

13. LEAD-BASED PAINT: Buyer is advised that if the Property was built prior to 1978, it may contain lead-based paint and has a "Disclosure of Information and Acknowledgement of Lead-Based and/or Lead-Based Paint Hazards" form is hereby made as Addendum to this Contract and will be signed by both Buyer and Seller and Underwritten.

BUYER [Signature] 7/8/10
Date

SELLER [Signature] 7/9/10
Date

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14. HOME WARRANTY COVERAGE: Buyer and Seller agree that a home warranty will ☒ will not ☐ be provided at closing. If applicable, the warranty premium will be paid by Buyer ☐ Seller ☒ in an amount not to exceed \$ 485.00, provided by AHS (home warranty company) and written by the Buyer's Broker ☒ Seller's Broker ☐. If the price of the warranty is being covered the dollar amount entered in the paragraph, Buyer shall be responsible for the difference at closing. Broker may receive a fee for listing of a home warranty.

15. PROPERTY DOCUMENTATION: (Buyer and Seller, after reviewing information in Paragraphs 15(A)-(I))
(Buyer/Date 7/2/18) (Seller/Date 7/2/18) Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the deed, plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract Buyer have a survey of the subject Property made to verify land size/boundary dimensions, structures existing, structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and that Buyer obtain appropriate Flood, Earthquake and Wind/Hail damage insurance coverage effective at the time of closing.

A. Seller represents that the Property is:

Connected to a public/community sewer system ☒ septic tank ☐

Connected to a public/community water system ☒ well system ☐ Other _____

B. Seller represents that to the best of Seller's knowledge the Property is ☐ is not ☒ partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequently, it is determined that the property is in a flood zone, Buyer will have 3 Business Days after receipt of Notice from Lender to provide written Notice to Seller of the Buyer's intent to terminate. Upon termination, earnest money will be returned to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within 3 Business Days, shall constitute Buyer's agreement to purchase flood insurance to close the transaction.

C. Seller represents that the Property is ☐ is not ☒ subject to a special assessment of any governing body, including, but not limited to, a homeowner's association, or otherwise. The special assessment fee is \$ _____.

D. Seller represents that the Property is ☐ is not ☒ subject to a mandatory association fee (i.e., homeowner's association fee) or otherwise. If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____ and is payable to _____.

16. ADDITIONAL CONTINGENCIES: (Initial and date either Paragraph A or B if applicable and Paragraph C if other contingencies apply)

A. SALE AND CLOSING CONTINGENCY

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on the sale and closing of the Buyer's Property not later than the closing date agreed to in Paragraph 7 of this Contract. Property is located at the following address: _____ Buyer's failure to disclose the address of this contingency will constitute a default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

1. Buyer represents that the Buyer's Property identified in Paragraph 16(A) above is ☐ is not ☒ currently listed with real estate company.

2. As long as this contingency remains in effect, Seller may continue to market Seller's Property and can accept another offer to purchase as a Primary Contract, with this contingency Contract becoming a Back-up Contract upon agreement of both Parties to the Back-up contract. If agreement cannot be reached, this Contract will become null and void and earnest money will be released to Buyer. See Paragraph 4(E).

3. If Buyer does not remove this contingency by the closing date in Paragraph 7, this Contract will automatically become null and void unless both Parties agree to extend the closing date. If Contract is voided, earnest money will be released to Buyer. See Paragraph 4(D).

4. Once Buyer accepts a Contract of Sale on the Property with all contingencies removed or waived (other than this one), with any Due Diligence Period or repair negotiations completed, and with a closing occurring prior to the date said time period for the Seller's closing, Buyer will provide written notice of the acceptance to Seller. This Contract will then become contingent on completion of the closing of the sale of Buyer's Property. See Paragraph 16(B) below.

BUYER [Signature] 7/2/18

SELLER [Signature] 7/2/18

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B. CLOSING CONTINGENCY

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on completion of the closing of the sale of Buyer's Property, the Contract for which has all contingencies removed or waived (other than financing) with any Due Diligence Period in order for negotiations completed, and releasing documents at a date/time prior to the date/time specified for closing the Seller's property. Buyer's Property is located at _____

1. Buyer to provide documentation of sale of Buyer's Property upon request.

2. Seller may continue to market Seller's Property for sale; however, any offer received will be negotiated as a Back-Up Contract.

C. OTHER CONTINGENCIES

(Buyer/Date Initials / Date) (Seller/Date Initials / Date) This Contract is contingent on: _____

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shutters, doors, fences, planters, blinds, lamp posts, mail boxes, storage sheds, lawn irrigation system and all related equipment; pool and spa equipment; window and door screens; storm windows and doors; garage door opener and remote; satellite dishes; Seller-owned security systems; smoke detectors; gas logs; central vacuum system; landscape lighting; central/air conditioning; ceiling fans and remotes; installed artwork; light bulbs; mobile phones; heating and air system registers and filters; such as equipment, appliances, cabinets, furniture and fixtures, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

19. ADJUSTMENTS: Real estate taxes, homeowner association/condo fees, and rents when applicable, will be adjusted as of the date of closing. Tax proration pursuant to this Contract are to be based on the tax information available and deemed reliable by the Closing Attorney on the date of closing and to be provided on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied through date of closing and Buyer will pay for those assessments levied after the date of closing.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right within (10) Business Days after notice of such damage to terminate this Contract. Upon written notification, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely notice of termination, the Parties will proceed according to the terms.

BUYER

(Signature)
Initials

7/8/2010
Date

SELLER

(Signature)
Initials

7/9/10
Date

21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or to terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fees for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Broker Agent harmless. If either Buyer or Seller refuses to execute release, Broker Agent will hold the earnest money in trust until such release is executed or a court of competent jurisdiction directs legal disposition. If a contract is brought by Broker Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Broker Agent's attorney's fees and court costs.
22. **MEDIATION:** Buyer and Seller agree to immediately dispute resolution out of or relating to this Contract, the breach of this Contract, services provided in relation to this Contract, or any existing transaction, before resorting to arbitration or litigation. Disputes will be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS. Disputes will include representations made by Buyer, Seller or any real estate broker or other person or entity in connection with this sale purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-43-10 et. seq. shall not apply to this Contract.
23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as it is in its entirety.
24. **NON-RESIDENT TAX:** Seller hereby agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Seller who are not residents of South Carolina as defined in said statute.
25. **EXPIRATION OF OFFER:** This offer from Buyer will (be withdrawn) at _____ o'clock, _____ M. (Eastern Time) on _____ unless accepted or countered by Seller in written form prior to such time.
26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.
27. **NOTICE AND DELIVERY:** Notice means a written communication, including offers, counteroffers and amendments. Addressed to one Party to this Contract to the other. Notice to a broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery means any method of hand-carried, mail by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.
28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.
29. **DEFINITIONS:**
- A. In this Contract, a single Business Day is defined as a twenty-four (24) hour period, beginning at the time of final acceptance of this Contract, excluding Saturdays, Sundays and Federal legal holidays.
- B. Final contract acceptance will occur at the time and date when the Party making the last offer receives written Notice that the offer has been accepted. The Agent representing this Party will fill in the final contract acceptance date and time on the last page of this Contract. If the Party is misrepresented, they will assume responsibility for filling in the required information. All deadlines and times set forth in this Contract will begin at time of final Contract acceptance unless otherwise agreed to by Buyer and Seller.
- C. In this Contract, closing is defined as the time and date that the Closing Attorney delivers funds.
- D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Broker.

BUYER (Signature) 7/8/10
Date Date

SELLER (Signature) 7/9/10
Date Date

30. HUD-1 SETTLEMENT STATEMENT RELEASE: Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of the HUD-1 Settlement Statement for the transaction.

31. MCCABE'S LAW: Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Brokers and all affiliated agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as real estate agents and not as an attorney, architect, engineer, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge reading, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to (a) tile, drain, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric, gas, or fire systems; (2) condition of the Property; any matters which would be reflected by a current survey of the Property or the accuracy of the title; (3) title to the Property including the existence or absence of easements, encroachments, perfect title, encumbrances, restrictions, covenants, and backlogs and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

<u><i>Elizabeth R. Box</i></u> Buyer's Signature	0.23 <u>Elizabeth R. Box</u> Buyer's Printed or Typed Name	<u>7/8/10 12:30pm</u> Date/Time
_____ Buyer's Signature	0.24 _____ Buyer's Printed or Typed Name	_____ Date/Time
<u><i>Charles Caughman</i></u> Seller's Signature	0.25 <u>Charles Caughman</u> Seller's Printed or Typed Name	<u>7/8/10</u> Date/Time
_____ Seller's Signature	0.26 _____ Seller's Printed or Typed Name	_____ Date/Time

<u>Charles Caughman / ERA Wilder Realty</u> Buyer's Agent/Company as known by Buyer is a Client (Customer)	<u>622-6171</u> Agent's Telephone Number
<u>Kathryn Sandifer / ARI</u> Seller's Agent/Company as known by Seller is a Client (Customer)	<u>318-7691</u> Agent's Telephone Number

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT 5 O'CLOCK PM ON <u>7/8/10</u> DATE
ACCEPTANCE ENTERED BY <u>[Signature]</u> AGENT

Copyright © 2008 by the Central Carolina REALTORS® Association. This is a Standard Form of the Central Carolina REALTORS® Association. This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®, REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice. This form may not be edited, revised or changed without the prior written consent of the Central Carolina REALTORS® Association and changes must be both bolded and italicized.



STATE OF SOUTH CAROLINA RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT

INSTRUCTIONS TO PROPERTY OWNERS

1. South Carolina Code of Laws Title 27 Chapter 50 Article 1 requires that beginning January 1, 2003, an owner of residential real estate (single-family homes and buildings with up to four dwelling units) shall provide to a purchaser this property condition disclosure statement which must be completed prior to signing a contract of sale. This disclosure statement must be provided in connection with the sale, exchange, option and sale under a lease with an option to purchase. This disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited. A complete list of exemptions may be found in Section 27-50-30.
2. You must check one of the boxes for each of the 24 questions on pages 2 and 3 of this form.
 - a. If you check "Yes" for any question, you must explain the problem or attach a descriptive report from an engineer, contractor, pest control operator or other expert or public agency. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in the report as long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No" for any question, you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misrepresentation.
 - c. If you check "No Representation" for any question, you are stating that you are making no representation regarding the conditions or characteristics of the property, but you may have a duty to disclose even if you know or should have known of them. Please consult with an attorney to determine any potential liability you may have for checking this answer.
 - d. If you check "Yes" or "No" for any question and subsequently something happens to the property to render your statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly provide the purchaser a corrected statement or you may correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker or salesperson, you remain solely responsible for completing and delivering this statement to the purchaser. The broker or salesperson must disclose any material facts about your property which he/she knows or reasonably should know, regardless of your responses on this statement. You are to complete this form yourself and answer all questions truthfully and as fully as possible. By signing below you acknowledge that the failure to disclose known material information about the property may result in liability.
4. You must provide the completed statement to the purchaser prior to the time you and the purchaser sign a contract to purchase your property or as otherwise agreed to in the contract. You should provide the purchaser a copy of this statement containing your signature and keep a copy signed by the purchaser for your records.

Initials: SE Seller 4/1/10 Date MP Buyer 1/5/2014 Date
Rev. 1/03

Page 1 of 4

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM (MALFUNCTION OR DEFECT) WITH ANY OF THE FOLLOWING:

- | | Yes* | No | No Representation |
|--|-------------------------------------|-------------------------------------|--------------------------|
| | ☒ | ☐ | ☐ |
| 1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications?
a. Siding: masonry ___ wood <u>X</u> composition/hardwood ___ vinyl ___ synthetic stucco ___
b. Approximate age of structure <u>1976</u> (<u>34</u> yrs.) | ☒ | ☐ | ☐ |
| 2. Roof (leakage or other problem)?
a. Approximate age of roof covering <u>5 months</u> | ☐ | ☒ | ☐ |
| 3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure? | ☐ | ☒ | ☐ |
| 4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)? | ☐ | ☒ | ☐ |
| 5. Plumbing system (pipes, fixtures, water heater, etc.)? | ☐ | ☒ | ☐ |
| 6. Heating and/or air conditioning?
a. Heat source: furnace ___ heat pump <u>X</u> baseboard ___
b. Cooling source: central <u>X</u> wall/window unit(s) ___
c. Fuel source: electricity <u>X</u> natural gas ___ propane ___ oil ___
d. Approximate age of heating unit ___ /cooling unit ___
<u>A: Handler - new 1/10</u> <u>Condenser -</u> | ☐ | ☒ | ☐ |
| 7. Water supply (including water quality, quantity and water pressure?)
a. water supply is: city/county <u>X</u> community system ___ private well ___
b. water pipes are: copper <u>X</u> galvanized ___ PVC/CPVC <u>X</u> polybutylene ___ | ☐ | ☒ | ☐ |
| 8. Septic system?
a. Type system: septic tank ___ community system ___
connected to city/county system <u>X</u> city/county system available ___
b. Does the system require a pump? Yes ___ No <u>X</u>
c. Has the septic system been serviced/pumped during your ownership? | ☐ | ☒ | ☐ |
| 9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)? | ☐ | ☒ | ☐ |
| 10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms?
a. Is there a transferable termite bond? Yes ___ No <u>X</u> | ☐ | ☒ | ☐ |
| 11. Drainage, grading or stability of soil or retaining structure? | ☐ | ☒ | ☐ |
| 12. Other built-in systems and fixtures?
central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___
exhaust fan ___ ceiling fan <u>X</u> sump pump ___ irrigation system ___
cable tv wiring or satellite dish <u>X</u> security system ___ or other systems ___ | ☐ | ☒ | ☐ |

Initials: JS Seller 4/1/10 Date 4/1/10 Buyer JS Date 4/1/10
Rev. 1/03

Page 2 of 4

REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF ANY:

- | | Yes* | No | No
Representation |
|--|--------------------------|-------------------------------------|--------------------------|
| 13. Room additions or other structural changes? | ☐ | ☒ | ☐ |
| 14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination? | ☐ | ☒ | ☐ |
| 15. Nuisances (noise, odor, smoke, etc.) affecting the property? | ☐ | ☒ | ☐ |
| 16. Previous damage caused by fire? | ☐ | ☒ | ☐ |
| 17. Violations or variances of building codes or zoning ordinances? | ☐ | ☒ | ☐ |
| 18. Restrictions to property use? (covenants or deed) | ☐ | ☒ | ☐ |
| 19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property? | ☐ | ☒ | ☐ |
| 20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property? | ☐ | ☒ | ☐ |
| 21. Owners' association fees or "common area" expenses or assessments? | ☐ | ☒ | ☐ |
| 22. Flood hazards or that the property is in a federally-designated flood plain? | ☐ | ☒ | ☐ |
| 23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing? | ☐ | ☒ | ☐ |
| 24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property? | ☐ | ☒ | ☐ |

***IF YOU ANSWERED "YES" TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE FOR YOUR EXPLANATION AND ATTACH ANY RELEVANT PROFESSIONAL REPORTS.**

#1 Foundation / Slab stabilization by Ram Jack in November 2009.

Initials: SE Seller 4/10 Date 4/10 Buyer 7/3 Date 7/3
Rev. 1/03

Page 3 of 4

"Yes" explanations continued:

744 0830

Owner(s) Acknowledgement

Property Address: 119 Millway Rd., Irvine, SC 29063

The property is currently: owner-occupied leased in an estate in foreclosure
vacant X (If vacant, how long?) 5 months

Owner's Name(s): Sparrow Group, LLC.

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: [Signature] member Date: 4/7/10

Owner Signature: _____ Date: _____

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature:  Date: 7/8/2010

Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)

803-337-3200 office
803-518-5337 cell



Patents #467331
#491158
Patent Pending

PATENTED STEEL PIER AND/OR HELICAL ANCHOR
AGREEMENT FOR THE WORK

AGREEMENT MADE NOVEMBER 17, 20 09

Between Ram Jack of South Carolina, Inc. and

MR. BRYAN JONES
(Site Address) 119 MILLWAY ROAD
IRMO SC 29063

(Owner or Owner's Agent) referred to as "Owner" and
Ram Jack of SC, Inc., referred to as "Ram Jack".

I. Purpose of The Work

The sole and exclusive purpose of The Work is to improve horizontal alignment of the foundation beam and/or to prevent further settlement of the foundation in the immediate area of The Work.

II. Areas of the Work

The areas of The Work are limited to that immediate portion of the foundation beam supported by a series of piers as indicated on the Service Plan beginning with the first pier and ending with the last pier.

III. Description of The Work

Install Ram Jack patented steel piers in the areas designated on The Service Plan and Cost of Services.

- Remove plants as necessary in the immediate areas of The Work.
- Excavate a small opening, approximately 3'x3' at each pier location.
- Place the support brackets under foundation beam.
- Install the extended guide sleeve through the support bracket.
- Hydraulically advance steel piling sections through the support bracket until final refusal.
- Lift the foundation beam uniformly in the areas of The Work to reduce slab deflection within the practical limitation of the structure.
- Secure all piers after lift is accomplished with Ram Jack patented securing technique.
- Replace soil in excavated areas. Replace concrete and replace original plants as required in the course of The Work.

IV. Price of The Work

The Owner shall pay Ram Jack for performance of The Work as described in this Agreement the sum of

TWELVE THOUSAND SEVEN HUNDRED
FIFTY AND NO/100 \$ (12,750.25)

V. Collection

A non-refundable down payment of \$ 1500 is due with signed agreement, and the total sum for The Work is due immediately upon completion. Please pay Supervisor immediately upon completion of The Work. Should Ram Jack be required to bring suit in any court for payment due under this Agreement, Ram Jack shall be entitled to reasonable attorney's fees from the Owner and interest at the highest rate allowable by law beginning from date of default. The payment of the total sum is a condition precedent to the validity of all warranties offered by Ram Jack.

Form 1 Rev. 4/02

VI. Arbitration

Ram Jack and Owner agree that any controversy or claim whether such claim is for breach of contract, tort, violation of statutes, or otherwise, arising out of or relating to this Agreement, any representations or warranties, express or implied, or the goods or services of Ram Jack, shall be settled by arbitration in accordance with the Construction Industry arbitration rules of the American Arbitration Association pursuant to the Federal Arbitration Act and judgment upon the award rendered by the arbitrator may be confirmed, entered and enforced in any court having jurisdiction. The result of any such arbitration, whether or not accepted is binding.

VII. Partial Invalidity

Should any portion of this Agreement be declared null and void, the remainder of this Agreement shall remain valid and enforceable by either party.

VIII. Entire Agreement

The Owner has had an opportunity to read and understand and agrees to abide by the entire Agreement for The Work, all of which is incorporated by specific reference as the following: (Please initial)

- ☒ Agreement for The Work
- ☒ Limitations of The Work
- ☒ Service Plan
- ☒ Cost Services
- ☒ Limited Lifetime Warranty
- ☒ Causes of Foundation Failure

Any changes or alterations in this Agreement must be agreed to in writing and signed by a corporate officer in order to be valid. The terms of this Agreement are intended by the parties as final expression of their Agreement with respect to such terms and also as a complete and exclusive statement of all terms.

Executed this 12th day of NOVEMBER, 20 09
RAM JACK OF SOUTH CAROLINA, INC.

Representative

Owner

Date

Owner

Date

Exhibit 3

Record on Appeal 96



Patents #4673
#4911:
Patent Pend

RAM JACK OF SOUTH CAROLINA, INC.

LIMITATIONS OF THE WORK

1. Plumbing

Separations in plumbing may exist prior to The Work and/or may occur as a result of The Work. The Owner releases Ram Jack from all responsibility for damage to plumbing as a result of The Work or consequential damages to the structure caused by plumbing leaks. RAM JACK STRONGLY RECOMMENDS A HYDROSTATIC PLUMBING TEST OF ALL SUPPLY AND WASTE SYSTEMS.

2. Pre-existing Defects

The Owner releases Ram Jack from all responsibility for damages caused by pre-existing defects. Such defects may include, but are not limited to, insufficient steel or cable reinforcement, insufficient or weak concrete.

3. Recovery Exclusion

Ram Jack specifically excludes any representation of "leveling", "fixing" or "closing cracks." The supervisor for The Work will not lift the foundation beyond a practical limit unless a waiver for excessive damages is agreed to and signed by the Owner. Lifts may be hindered by cosmetic repairs of previous damages.

4. Concrete Replacement

If the scope of The Work includes installation of piers through concrete, replacement concrete may not match existing concrete.

5. Limitation of Proposed Remedy

The proposed remedies do not exclude the need for additional work now or in the future. The Work is not intended, nor is it represented, to be an "All-inclusive Fix."

6. Plants

Plants that are affected by excavation may not survive. No Warranty of any kind is extended to plant survival. The Owner may choose to hire a professional nurseryman to remove and replace plants in order to improve their chance of survival.

7. Damage Exclusion

Ram Jack shall exercise due diligence in performing The Work. However, cracks may develop in concrete, brick, sheetrock, rock veneer or other rigid materials during the course of The Work. Ram Jack shall not be liable for any such damages.

8. Potential for Future Movement

There is always potential for future movement of the foundation as described in "Causes of Foundation Failure." Ram Jack recommends waiting through at least one seasonal moisture cycle before making any cosmetic repairs.

It is the Owner's responsibility to take care of the following items should there be a problem either now or in the future:

- Water lawn during dry periods.
- Correct plumbing leaks as soon as they are discovered.
- Remove large trees or shrubs in areas adjacent to the foundation.
- Install root barriers where roots of large trees or shrub may affect foundation.
- Install guttering and down-spouts where necessary and remove excess water away from the foundation.
- Install sub-surface drainage systems.
- Provide positive surface drainage away from the foundation.



COST FOR SERVICES

Ram Jack of South Carolina, Inc.
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Confidential information for Ram Jack use only

Name MR. BRYAN JONES

Number Home 803 781 7895 Work 803 260 2810

Site Address 119 MILLWAY Road

City / State IRMO SC Zip 29063

~~Push Pier depth exceeding 25 ft. will be charged extra \$ 18 /foot~~

Helical Pier depth exceeding 14 ft. will be charged extra \$ 22 /foot

The following items are recommended to enhance the future performance of your foundation. We feel an obligation to inform you of potential problems if these items are not corrected:

X PL

	Services Recommended	Adjustments	Total	Services Declined	Services Accepted
<u>A1-A6</u> Steel Piers/Area A: (Proposed <u>6</u> piers)	\$ <u>6000.00</u>	<u>- 900.00</u>	\$ <u>5100.00</u>	X	\$ _____
<u>B1-B15</u> Steel Piers/Area B: (Proposed <u>15</u> piers)	\$ <u>15000.00</u>	<u>- 2250.00</u>	\$ <u>12750.00</u>	<u>PL</u>	\$ _____
<u>C1-C18</u> Steel Piers/Area C: (Proposed <u>18</u> piers)	\$ <u>18000.00</u>	<u>- 2700.00</u>	\$ <u>15300.00</u>	<u>PL</u>	\$ _____
<u>D1-D9</u> Helix Piers/Area D: (Proposed <u>9</u> piers)	\$ <u>9000.00</u>	<u>- 1350.00</u>	\$ <u>7650.00</u>		\$ _____
<u>E1</u> Helix Piers/Area E: (Proposed <u>1</u> piers)	\$ <u>1000.00</u>	<u>- 150.00</u>	\$ <u>850.00</u>	<u>PL</u>	\$ _____
Pressure Grouting: _____	\$ _____		\$ _____		\$ _____
Concrete Removal & Replace: _____	\$ _____		\$ _____		\$ _____
Fortress Straps: _____	\$ _____		\$ _____		\$ _____
Block Piers: _____	\$ _____		\$ _____		\$ _____
Pier & Beam: _____	\$ _____		\$ _____		\$ _____
Permit: _____	\$ <u>N/C</u>		\$ <u>N/C</u>		\$ _____
Other Services _____	\$ _____		\$ _____		\$ _____
TOTAL \$ <u>15000.00</u>		<u>- 2250.00</u>	\$ <u>12750.00</u>		\$ _____

Total Due Ram Jack Services \$ 12,750.00

Total Other Services \$ _____

TOTAL DUE UPON COMPLETION* \$ 12,750.00

*PAYMENT DUE UPON COMPLETION OF EACH SERVICE

The Costs for Services described above is part of the contract which also includes the Service Plan, Terms and Conditions, and Lifetime Limited Warranty.

Customer Signature _____

Date _____

Ram Jack Representative _____

Date _____

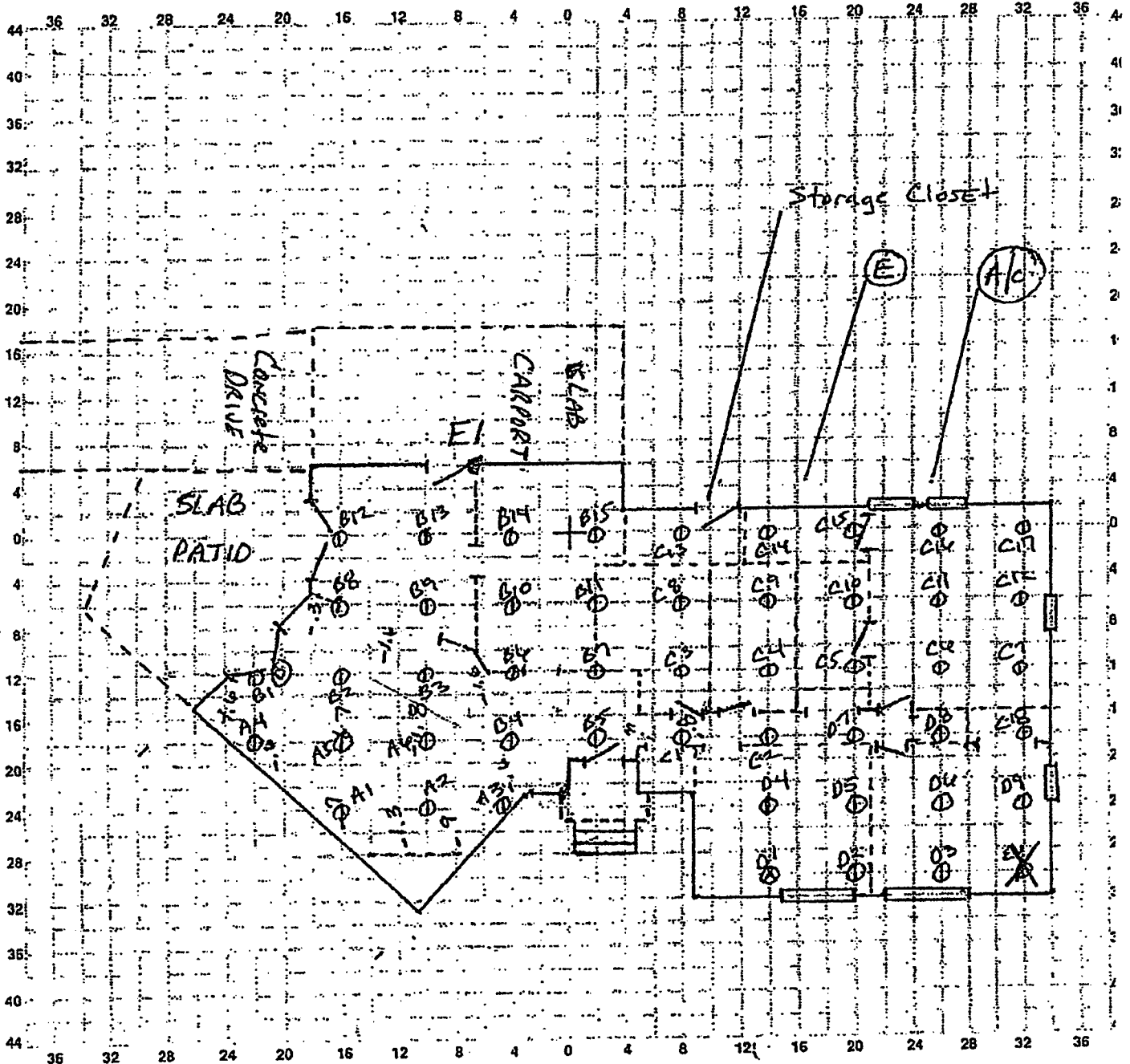
11/9/09



Elevation Profile and Service Plan

Ram Jack of South Carolina, Inc.
Headquarters
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Reference Information for Ram Jack use only
Special Instructions:



Scale 3/16" = 2'

Pier Placement

Pier in Concrete

Tree

Helical Pier w/ Slab Bracket

Helical Pier w/ Beam Bracket

Pressure Grouting

Name Elizabeth Bax

Site Address 119 Millway Road

Number Home 803 382 2034

City/State IRMO SC Zip 29063

Date July 11, 2012 Ram Jack Representative Scottie Edwards

Estimated Job Cost \$

2012



COST FOR SERVICES

Ram Jack of South Carolina, Inc.
2075 US Hwy 21 S
Ridgeway, SC 29130
(866) 735-3085

Confidential Information for Ram Jack use only

Name Mrs Beth Box
Number Home 803 397 2036 Work
Site Address 119 Millway Rd
City / State IRMO S.C. Zip 29063

Push Pier depth exceeding _____ ft. will be charged extra \$ _____ /foot

Helical Pier depth exceeding 25 ft. will be charged extra \$ 18 /foot

The following items are recommended to enhance the future performance of your foundation. We feel an obligation to inform you of potential problems if these items are not corrected:

	Services Recommended	Adjustments	Total	Services Declined	Services Accepted
Steel Piers/Area A: (Proposed _____ piers)	\$ _____	_____	\$ _____	_____	\$ _____
Steel Piers/Area B: (Proposed <u>15</u> piers)	\$ <u>15000.00</u>	<u>-2250</u>	\$ <u>12,750.00</u>	_____	\$ _____
Steel Piers/Area C: (Proposed <u>18</u> piers)	\$ <u>18000.00</u>	<u>-2700</u>	\$ <u>15,300.00</u>	_____	\$ _____
Helix Piers/Area D: (Proposed _____ piers)	\$ _____	_____	\$ _____	_____	\$ _____
Helix Piers/Area E: (Proposed <u>1</u> piers)	\$ <u>1000.00</u>	<u>-150.00</u>	\$ <u>850.00</u>	_____	\$ _____
Pressure Grouting: _____	\$ _____	_____	\$ _____	_____	\$ _____
Concrete Removal & Replace: _____	\$ _____	_____	\$ _____	_____	\$ _____
Fortress Straps: _____	\$ _____	_____	\$ _____	_____	\$ _____
Block Piers: _____	\$ _____	_____	\$ _____	_____	\$ _____
Pier & Beam: _____	\$ _____	_____	\$ _____	_____	\$ _____
Permit: <u>IRMO</u>	\$ <u>150.00</u>	<u>N/A</u>	\$ <u>150.00</u>	_____	\$ _____
Other Services _____	\$ _____	_____	\$ _____	_____	\$ _____
TOTAL \$ _____	_____	_____	\$ _____	_____	\$ _____

Total Due Ram Jack Services \$ _____

Total Other Services \$ _____

TOTAL DUE UPON COMPLETION* \$ _____

*PAYMENT DUE UPON COMPLETION OF EACH SERVICE

The Costs for Services described above is part of the contract which also includes the Service Plan, Terms and Conditions, and Lifetime Limited Warranty.

Customer Signature _____

Date _____

Sen H. Edwards July 11
Ram Jack Representative Date

2012

Exhibit 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

v.

Sparrow Group, LLC and
Bryan S. Jones

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-40-4129

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

TO: FREDERICK I. HALL, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF

FACTS

In the within action the Plaintiff purchased a home from the Seller, The Sparrow Group, LLC (hereinafter "Sparrow"). As part of the transaction, Sparrow completed a Residential Property Disclosure Statement wherein Sparrow advised the Plaintiff that foundation/slab stabilization services had been performed by Ram Jack in November of 2009. The Plaintiff alleges that on July 11, 2012 she discovered more extensive repairs had been suggested by Ram Jack but were not done.

Plaintiff filed the instant action alleging: 1) fraud; 2) breach of contract accompanied by fraud; 3) negligent misrepresentation; 4) violation of the S.C. Residential Property Condition Disclosure Act; and 5) violation of the South Carolina Unfair Trade Practices Act. Each and every of these claims arises from the allegation that the Ram Jack report was wrongfully withheld from Plaintiff. Defendants, Sparrow and Bryan S. Jones (hereinafter "Jones"), have moves to dismiss the case based upon: 1) Jones is improperly named in his individual capacity; 2) the statute of limitations; 3) Plaintiff has failed to state facts sufficient to make a claim under

the SC Unfair Trade Practices Act; (d) Plaintiff's lack of the right to rely; and (e) the economic loss rule.

STANDARD OF REVIEW

In considering a motion to dismiss, the court must base its ruling solely on the allegations set forth in the complaint. *Carnival Corp. vs. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014). If the facts and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal is improper. *Id.* If the trial court considers matters outside of the pleadings in ruling on a motion to dismiss, the motion will be treated as one for summary judgment and disposed of as provided in Rule 56, SCRCF. Rule 12(b), SCRCF; *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009).

I. Argument

A. Bryan Jones is improperly named as a Defendant in his individual capacity.

The Complaint alleges that Jones, individually, and as an agent of the Sparrow represented that the subject property had foundation stabilization services performed by Ram Jack in November of 2009. It is also alleged that Jones failed to disclose that all of the suggested repairs had not been completed.

Plaintiff's assertion that an agent who commits a tort is liable even though he acts in a representative capacity or that under SCUPTA, an officer, director or controlling person may be held liable for an unfair trade practice or acts he or she personally committed is inapplicable to the undisputed facts of the present case. In short, the Plaintiff's entire case relies upon the interaction of two documents: (1) the S.C. Residential Property Condition Disclosure; and (2) a copy of a report from Ram Jack. The Plaintiff's assertion is the Defendants knew of the report

and withheld the same despite being obligated to disclose the same. However, the disclosure makes it clear that Plaintiff acknowledged “that the representations are made by the owner and not the owner's agent(s) or subagent(s).” **Exhibit D** of Plaintiff’s memorandum. Thus, to assert any cause of action against Jones arising from disclosures or non-disclosures under the agreement is in contravention of the four corners of the agreement amongst the parties and fails as a matter of law.

B. Plaintiff filed this action beyond the statute of limitations.

For purposes of commencement of the statute of limitations, and in the light most favorable to the Plaintiff, the earliest possible accrual of any cause of action was at closing, August 20, 2010. Plaintiff alleges she did not discover until July 11, 2012 that more extensive repairs had been suggested by Ram Jack but were not done. Plaintiff filed the instant action on July, 8 2015. A cause of action for damage to real property must be brought within three years of when the damage occurred. S.C. Code Ann. § 15-3-530(3) (2005). An exception lies in the discovery rule, which tolls the starting of the statute of limitations until a person discovers or should have known through reasonable diligence that a potential claim might exist. S.C. Code. Ann. § 15-3-535 (2005); *Barr v. City of Rock Hill*, 330 S.C. 640, 644-45, 500 S.E.2d 157, 160 (Ct. App. 1998). Likewise, SCUTPA has a three-year statute of limitations, as section 39-5-150 of the South Carolina Code provides that “[n]o action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.”

On July 8, 2010, Plaintiff admittedly received the SC Residential Property Condition Disclosure Statement (the “Disclosure”) notating that stabilization work had been performed by Ram Jack in November 2009. This Disclosure and the referenced work provided by Ram Jack is

the foundation of every claim asserted by the Plaintiff in so much as it is alleged that Defendant concealed the truth by not disclosing additional work suggested by Ram Jack or otherwise provide Plaintiff with a copy of the estimate for the work completed in 2009.

Even measured against the exacting dismissal standard, it seems an insurmountable hurdle for Plaintiff to delay the start of the statute of limitations to July 11, 2012 when she allegedly discovered the original repair estimate by Ram Jack. In fact, when the Plaintiff actually discovered the report is of no consequence as the Plaintiff alleges no facts, nor are there any reasonable inferences, justifying the delay in obtaining a document which was identifiable on July 8, 2010. Indeed the Disclosure made it clear that Plaintiff “understands that this is not a warranty by owner; that it is not a substitute for any inspections he/she may wish to obtain; ... Purchaser(s) is/are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.” **Exhibit D** of Plaintiff’s memorandum. The Plaintiff has alleged no circumstance or obstruction that changed from the time of the initial disclosure that would justify the delay in her failing to obtain a copy of the Ram Jack report. Or to put it a different way, the standard is not when she actually discovered the disclosure was allegedly incomplete, but when she “could or should have discovered the breach through the exercise of reasonable diligence.” And, again, it seems an insurmountable hurdle for Plaintiff to delay the start of the statute of limitations to July 11, 2012, when she allegedly discovered the original repair estimate by Ram Jack, without at least some factual allegation that there was some impediment to the discovery of that report that was removed during the time between August 2010 and July 11, 2012. Although the court must construe all inferences reasonably deducible from the facts in favor of the Plaintiff, the Defendant would submit that an inference that the Plaintiff could not or should not

have discovered the breach through the exercise of reasonable diligence requires an unreasonable construction of the facts as they are currently pleaded.

C. Plaintiff had no right to rely

Plaintiff must offer must plead specific facts as to each element of fraud and negligent misrepresentation. Rule 9 SCRCF; see also *Steele v. Rogers*, 306 S.C. 546, 552, 413 S.E.2d 329, 333 (Ct. App. 1992)

The elements of fraud are:

(1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Hendricks v. Hicks, 374 S.C. 616, 620, 649 S.E.2d 151, 152-53 (Ct. App. 2007).

The elements of fraud are:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 473-74, 581 S.E.2d 496, 504 (Ct. App. 2003).

The primary difference between fraud and negligent misrepresentation is that fraud requires conveying a known falsity, while negligent misrepresentation is conveying a negligently made false statement. *Armstrong v. Collins*, 366 S.C. 204, 219-20, 621 S.E.2d 368, 375-76 (Ct. App. 2005). While the two causes of action differ, both fraud and negligent misrepresentation contain

“the necessary element that the hearer had the right to rely upon the misrepresentation or fraud.”

Id.

Plaintiff's claims against the defendants are based on her assertion that the Disclosure Statement completed by Jones was a misrepresentation. Because Plaintiff's claims are require that the Disclosure Statement as a misrepresentation, the Court must determine whether Plaintiff was entitled to rely on the Disclosure Statement. The Disclosure Statement contains the following disclaimer:

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) is/are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Plaintiff was clearly advised that the disclosure was not a warranty and granted the Plaintiff the privilege and responsibility to inspect the home prior to closing, including consulting any “other professional” as would have been able to identify the problems now complained of. Moreover the disclosure clearly states “[f]oundation/slab stabilization by Ram Jack in November 2009”. Nowhere is it stated that all recommended repairs were completed. Nowhere does it say that the disclosure was a guarantee of the continued stability of the home. The Plaintiff does not allege that Plaintiff asked Plaintiff for the estimate, that Defendant refused to provide her with the estimate, or that there was some impediment to her obtaining the estimate from Ram Jack or some “other professional” that would have identified any problems. Defendant offers that in light of the disclaimer and the absence of any fact pleadings tending to demonstrate that the alleged defect was undiscoverable at the time of purchase the Defendant has failed to plead the necessary element of right to rely.

D. The Plaintiff's claims of fraud, negligent misrepresentation, and breach of contract accompanied by a fraudulent act arise from duties imposed entirely by contract and are barred by the economic loss rule.

The economic loss rule assists in determining whether contract or tort theories are applicable to a given case. *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 345, 384 S.E.2d 730, 736 (1989). South Carolina has recognized limited tort actions where the damages were purely economic losses. *Id.* (cause of action in negligence available where new home builder has violated a legal duty, no matter the type of resulting damage); *Beachwalk Villas Condo. Ass'n, Inc. v. Martin*, 305 S.C. 144, 147, 406 S.E.2d 372, 374 (1991) (extending the *Kennedy* decision to architects). Whether a plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed. A plaintiff may only maintain an action in tort for purely economic loss if the breach of duty arises *independently* of any contract duties. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49, 55, 463 S.E.2d 85, 89 (1995) (design professionals can be liable in tort for purely economic loss when design professional owes a professional duty to the plaintiff separate and distinct from contract duties). However, "[a] breach of duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." *Id.*

The general thrust of cases where the courts of this state refuse to enforce economic loss rule involve fiduciary or special relationships, not those of buyer and seller. *Lloyd v. Walters*, 276 S.C. 223, 226 S.E.2d 888 (1981) (special duty for attorney to a corporate shareholder when attorney breached a duty to the corporation). However, no such duty exists in the present action. It is axiomatic that a person cannot negligently breach a contract. And in the present case the alleged fraud/misrepresentation is entirely contained within the contract representations,

according to the pleadings as they are now pleaded. Nowhere is the application of the application of this rule to the present facts more clear than in the cause of action for breach of contract accompanied by a fraudulent act. To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: “(1) a breach of contract; (2) *fraudulent intent relating to the breaching of the contract and not merely to its making*; and (3) *a fraudulent act accompanying the breach*.” *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (emphasis added). Nowhere has the Plaintiff pleaded that there was fraud in the breaching of the contract. The only alleged fraud is contained in the contract itself.

E. Plaintiff's cause of action for violation of the South Carolina Unfair Trade Practices Act (SCUPTA) fails to state a claim under the SCUTPA.

A mere breach of a contract, even voluntary, does not constitute a violation of the UTPA. *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986) (UTPA is not available to address a private wrong where the public interest is unaffected).

The seminal case on this point is *Key Co., Inc. v. Fameco Distributors, Inc.*, 357 S.E.2d 476 (S.C. Ct. App. 1987). In *Key Co.* the Plaintiff alleged that the Defendant refused to allow Plaintiff to use Defendant's premises for the display and operation of coin-operated video game machines, as it contracted to do. *Id.* Similarly in the present case the Plaintiff has alleged nothing more than the Defendant failed to disclose a report as required by contract. As in the *Key Co.* case, the cause of action does not allege any practices that either directly or indirectly affected the rights of anyone but the Plaintiff and Defendant. The *Key Co.* Court went on to conclude that a “deliberate or intentional refusal ... breach of its contract ... without more, does

not constitute a violation of the UTPA.” *Id.* citing *Atlantic Purchasers, Inc. v. Aircraft Sales, Inc.* 705 F.2d 712 (4th Cir.1983) (an intentional breach of a valid contract, without more, is not a violation of the North Carolina Unfair Trade Practices Act); *Chancellors Racquet Club v. Schwarz*, 661 S.W.2d 194 (Tex. Ct. App. 1983) (a mere failure to perform a promise does not under every circumstance constitute a misrepresentation that violates the Texas Deceptive Practices Consumer Protection Act). Likewise, in the instant action the Plaintiff has failed to plead any facts that allege any practices that either directly or indirectly affected the rights of anyone but the Plaintiff and Defendant. Accordingly the SCUTPA claims should be dismissed.

LAW OFFICE OF ERIC C. HALE, LLC

By: _____

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Dated: November 3, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

vs.

The Sparrow Group, LLC and
Bryan S. Jones.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)
) Civil Action No.: 2015-CP-40-04129
)

Plaintiff's Supplemental
Memorandum in Opposition
to Defendants' Motion to
Dismiss

RICHLAND COUNTY
FILED
15 NOV 12 PM 2:06
ANNETTE W. MORRIS
C.C.P. & G.S.

TO: ERIC C. HALE, ESQUIRE, ATTORNEY FOR THE DEFENDANTS
THE SPARROW GROUP, LLC AND BRYAN S. JONES:

I. Introduction

This matter came before the Court for hearing and argument on November 3, 2015 on defendants' Motion to Dismiss. At that time, defense counsel handed up a memorandum in support of the defendants' motion to dismiss or in the alternative for summary judgment. Plaintiff had already filed her Memorandum as required by the Court of both parties prior to the hearing. Since the defense did not file its memo prior to the hearing, the Court granted plaintiff additional time to respond to the arguments raised by the defendants. Therefore, in accordance with the Court's leave to submit additional response and argument in opposition to the defendants' Motion to Dismiss, plaintiff responds as follows.

II. Argument

A. Jones Has Been Properly Named in His Individual Capacity and as an Agent for Sparrow.

Plaintiff, Elizabeth Box, sued Jones individually and as an agent for The Sparrow Group, LLC (Sparrow) for failing to disclose material information pertaining to the foundation of the home she purchased in New Friarsgate subdivision in 2010. It has long been the law of this State that an agent who commits a tort is liable even though he acts in a representative capacity. *Lawlor v. Scheper*, 232 S.C. 94, 98-99, 101 S.E.2d 269,271 (1957) A corporation or other legal entity may only act through its agents. Though Sparrow is an LLC, its sole member is Bryan Jones and the Ram Jack Report in this case which was furnished to Jones when he allegedly had the foundation stabilized in November of 2009 was written to him in his individual capacity. See Exhibit B to Pl. Memo in Opp. to Defendants' Motion to Dismiss.

The "Agreement" was between Ram Jack of S.C., Inc. and Mr. Bryan R. Jones, and therefore, it was Jones' agreement with Ram Jack- though it pertained to the subject residence – 119 Millway Rd., Irmo, S.C. The Agreement recommended extensive repairs to Areas A, B, C, D and E on the "Cost for Services" attachment to the Agreement between Ram Jack and Jones. Jones declined to repair Areas B, C, and E but did not disclose

this to Box, though he evidently had been given the report as indicated by his signature and initials.

Box sued Jones and Sparrow for fraud, which has been clearly recognized as a viable cause of action in the context of the sale of residential real estate. See *Bryn v. Walker*, 275 S.C. 83, 267 S.E.2d 601 (1980) (holding that a buyer who has been induced by fraud to purchase real estate may maintain an action for in the nature of fraud and deceit to recover damages resulting from fraud, citing, 37 Am. Jur. 2d *Fraud and Deceit*, Sec. 333) In *Bryn*, the South Carolina Supreme Court allowed an action for fraud pertaining to false representations made by the seller Bryn concerning, among other things, the structural stability of a house.

Jones maintains that he should be dismissed because the representations made in the Residential Disclosure Statement were only those of the owner and not the agents or subagents. Jones, however, is the sole owner and member of the Sparrow Group, an LLC. The Sparrow Group must act through its members or agents. And Box has alleged that Jones is an agent of Sparrow. The law supports this allegation. See, e.g. S.C. Code § 33-44-104 under the South Carolina Limited Liability Act pertaining to Supplemental Principles of Law, which provides, in part: "Unless displaced by particular provisions of this chapter, the principles of

law and equity supplement this chapter.” The Official Comment goes on to state, in part, that:

Supplementary principles include, but are not limited to, the law of **agency**, estoppel, law merchant, and all other principles listed in UCC Section 1-103 (Section 36-1-101), including the law relative to the capacity to contract, **fraud, misrepresentation**, duress, mistake, bankruptcy, and other invalidating clauses. (emphasis added)

Comment to S.C. Code § 33-44-104

Moreover, Jones rests his argument for his dismissal on the Disclosure Statement, which states that “the representations are made by the **owner**, and not the owner’s agent(s) or subagent(s).” However, this form is a form approved by the South Carolina Real Estate Commission, which regulates real estate agents, and when read in context with the Residential Property Condition Disclosure Act, S.C. Code § 27-50-70, it is clear that the Disclosure Statement is referring to real estate agents, not other principals and agents of the owners themselves. See, e.g. S.C. Code § 27-5—70 (B (2)), which provides that:

A listing agent or selling agent is not liable to a purchaser if:

- (1) the owner provides the purchaser with a disclosure form that contains false, incomplete, or misleading information; and
- (2) the real estate licensee did not know or have reasonable cause to suspect the information was false, incomplete, or misleading.

Jones’ argument that the Disclosure Statement exonerates him is without merit and his motion to dismiss him individually or as an agent

should be denied. Whether someone is or is not an agent is normally a question of fact. Generally, “[q]uestions of agency ordinarily should not be resolved by summary judgment where there are *any* facts giving rise to an inference of an agency relationship.” (Emphasis added). *Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E.2d 24 (1980); *Jamison v. Howard*, 271 S.C. 385, 247 S.E.2d 450 (1978). *Fernander v. Thigpen*, 278 S.C. 140, 142, 293 S.E.2d 424, 425 (1982)

Finally, the South Carolina Supreme Court has not yet decided the “novel issue” of whether the LLC Act absolves an LLC member of personal liability for negligence committed while acting in furtherance of the company business. *Jade Street, LLC v. R. Design Construction Co. LLC*, 405 S.C. 384, 787 S.E. 2d 770 (2013). As a general rule, important questions of novel impression should not be decided on a motion to dismiss. *Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Gen. Servs.*, 346 S.C. 158, 551 S.E.2d 263 (2001).

B. Plaintiff Filed this Action Within Three Years of Discovering the Fraudulent Nondisclosure of the Ram Jack Report, which She Discovered, and Reasonably Could Not Have Discovered Until it was Given to Her on July 11, 2012.

Box did not learn, and reasonably could not have learned or discovered the Ram Jack Report until it was given to her by Ram Jack

which she called when she began to notice problems with her walls cracking in 2012. Box had no idea Jones had a report from Ram Jack which recommended extensive repairs that were not done, and which Jones withheld from her. Moreover, Box exercised reasonable diligence and had the home inspected prior to purchasing it and the inspector reported the foundation to have been acceptable. See Home Inspection Report, **Exhibit 1**. Thus, Box had no basis to believe that a cause of action existed until she discovered the Ram Jack Report on July 11, 2012. See Supplemental Affidavit, **Exhibit 2**).

As acknowledged by the defense, the statute of limitations does not run until a person discovers or should have discovered through reasonable diligence that a potential claim might exist. Def. Brief at 3. S.C. Code 15-3-535 (2005). The same is true for the plaintiff's SCUPTA claim. "No action may be brought under this chapter more than three years after the discovery of the unlawful conduct which is the subject of the suit." S.C. Code § 39-5-150. The unlawful conduct here is the withholding of the Ram Jack Report, which Sparrow and Jones had a statutory and common law duty to disclose and attach to the Disclosure Statement in order to avoid liability. The Disclosure Act provides in pertinent part:

(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. **The disclosure statement must**

contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. **The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:**

**(1) the water supply and sanitary sewage disposal system;
(2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;**

S.C. Code Ann. § 27-50-40

Because there is evidence that Box did not, and reasonably could not, have discovered the Ram Jack report until July, 11, 2012 because it was withheld from her and she filed this action within three years from that date, there is a genuine issue of fact as to the running of the limitations period and defendants' motion to dismiss and/or for summary judgment should be denied.

C. Box Had Both a Statutory and Common Law Right to Rely upon the Representations Made in the Disclosure Statement and a Right to Have Disclosed The Ram Jack Report, which was Withheld.

While it is true that there is no right to rely upon a representation between educated people who are negotiating *at arm's length and on equal footing*, it is equally true, as has been fully briefed, that where one party has knowledge that is superior to the other, there is a corresponding right to rely upon the one who has superior knowledge and means of knowledge but

does not disclose it. See, e.g. *Florentine v. Peda I., Inc.* 287 S.C. 382, 339 S.E.2d 112 (1985); *Giles v. Landford and Gibson, Inc.* 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985)

The case of *Bryn v. Walker*, cited *supra*, is precisely on point with regard to the right to rely where one party holds special or superior knowledge and the parties are not on equal footing.

As to the reliance element of fraud:

It is generally held that one has no right to rely on representations as to the condition, quality or character of property . . . where the parties stand on an equal footing and have equal means of knowing the truth. The contrary is true, however, **where the parties do not have equal knowledge and he to whom the representations are made** has no opportunity to examine the property, or by fraud is prevented from making an examination, **or where an ordinary inspection would not have disclosed the condition with respect to which the representation was made.** 37 Am.Jur.2d, 363, Fraud and Deceit, Section 273.

Applying the aforementioned, we hold that where, as here, the agent asserts special knowledge of the property and makes representations of facts, the truth of which are not reasonably ascertainable by the purchaser due to their latent nature, the purchaser can justifiably rely on those representations.

Byrn v. Walker, 275 S.C. 83, 88, 267 S.E.2d 601, 603-04 (1980)

Under these facts, there is undisputed and direct evidence that Sparrow and Jones knew that Ram Jack had recommended extensive repairs to the foundation that were knowingly declined but not disclosed to the plaintiff, Box. In oral argument, the Court inquired as to whether Jones

and Sparrow had disclosed the defect. Jones did not disclose the defect and to the contrary, Jones represented that the defect with the foundation had been in fact corrected and "stabilized". Fraud can be active concealment of the truth and nondisclosure may serve as the representation in a number of ways. For example, if the defendant chooses to speak, he or she must disclose enough of what they know to prevent their words from being misleading. *Giles v. Lanford, supra*; and *Aiken County v. BSP Division of Envirotech Corp.*, 657 F.Supp. 1339 (D.S.C 1986) And fraud is not limited to oral or written words, but may be the exhibition or withholding of a document. See *Farmers Bank of McCormick v. Talbert* 97 S.C. 74, 81 S.E. 305 (1914) (sustaining a finding of fraud in the defendant's obtaining credit of \$500 on a draft attached to a bill of lading for cotton worth less than \$300)

Not only did Box have a common law right to rely upon Jones and Sparrow, who had superior knowledge, she had a statutory right to rely on the disclosure statement required by The Residential Property Condition Disclosure Act. The Act provides that:

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be **false, incomplete, or misleading** is liable for actual damages proximately caused to the purchaser and court costs. The court may

award reasonable attorney fees incurred by the prevailing party.
(emphasis added)

S.C. Code Ann. § 27-50-65

There would be no actionable relief under this proviso if there were no right to rely upon the disclosure statement. While Box had a statutory obligation to inspect under §27-50-80, she complied with this obligation and the ordinary inspection noted the foundation to be acceptable.

D. Plaintiff's Damages are Not Purely Economic and The Economic Loss Rule Applies Only in Product Liability Cases.

Plaintiff has already pointed out to the Court that the “economic loss rule” does not apply in the context of the sale and purchase of a home, and contrary to what defense has argued, the South Carolina Supreme Court has specifically recognized that an action in common law fraud and deceit will lie where false representations have been made by a seller to a buyer of real estate in the case of *Bryn v. Walker, supra*. Furthermore, land is unique and is treated differently than ordinary products. It is on the principle that equity will specifically enforce a contract for sale of land on the assumption that it is unique, and money damages would be inadequate. E.g., *Armstrong v Henson*, 139 SC 156, SE 439 (1927); *Shannon v Freeman*, 117 SC 480, 109 SE 405 (1921). The uniqueness of land or real estate inheres in the notion that “a man’s home is his castle.” It is a place

where we find peace and rest, share joy and sorrow. Money alone cannot replace these. The loss here is not purely economic. The economic loss rule does not apply to this case and the defense argument to the contrary is legally incorrect.

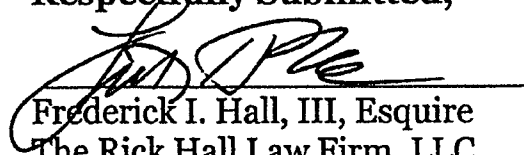
Finally the defense argues that “[n]o where has the Plaintiff pleaded that there was fraud in the breaching of the contract.” Def. brief at p. 8. This is simply not true. Plaintiff has specifically pled that “Sparrow breached the contract, with fraudulent intent, by committing fraudulent acts accompanying the breach by withholding a prior Ram Jack report which recommended numerous additional repairs, which were not done.” (Complaint at ¶ 9) The complaint also alleges “that such acts were characterized by dishonesty in fact and by a dishonest design or plan to withhold the prior Ram Jack report.” (Id.)

III. Conclusion

For the reasons set forth herein, as well as those in Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, the defendant's motion should be denied.

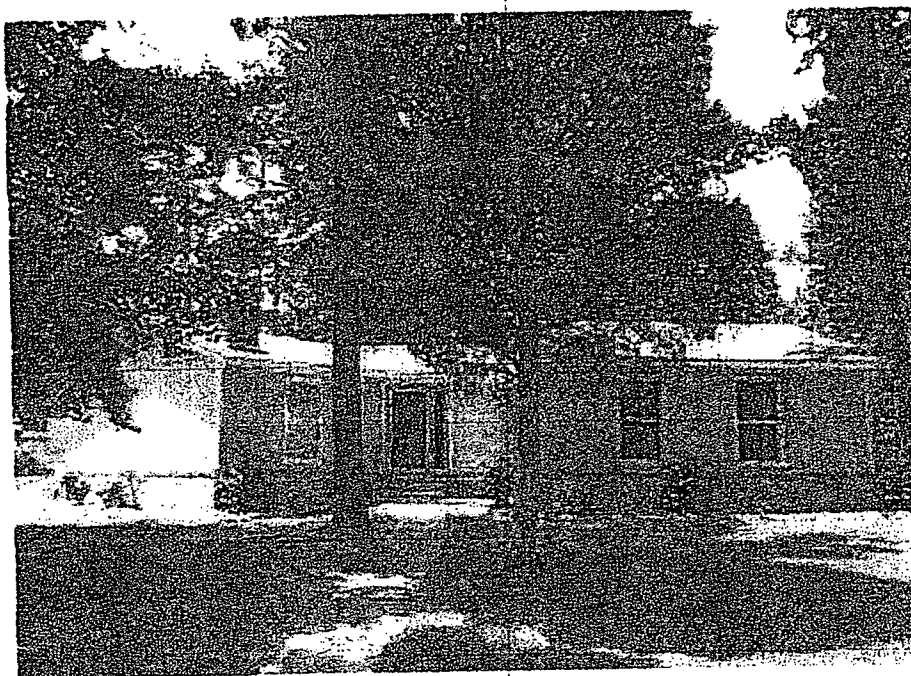
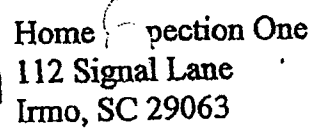
Respectfully Submitted,

By:


Frederick I. Hall, III, Esquire
The Rick Hall Law Firm, LLC

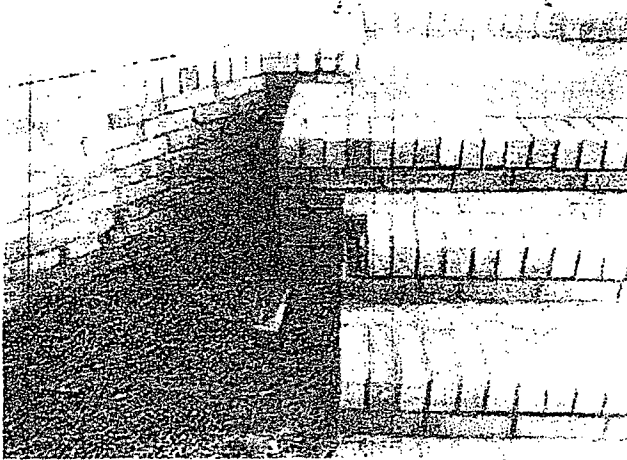
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Lexington, S.C.
October____, 2015

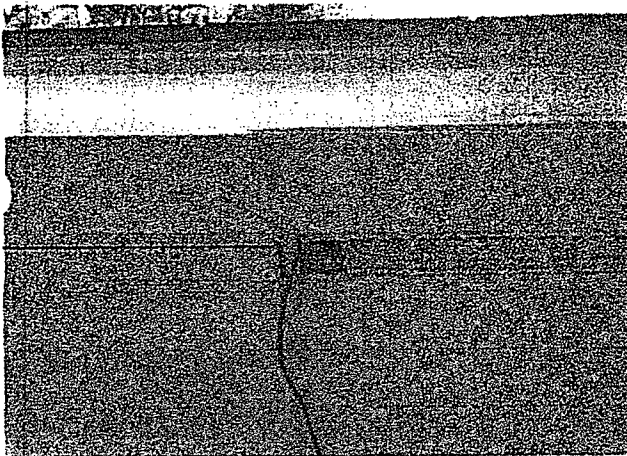


119 Milway Road

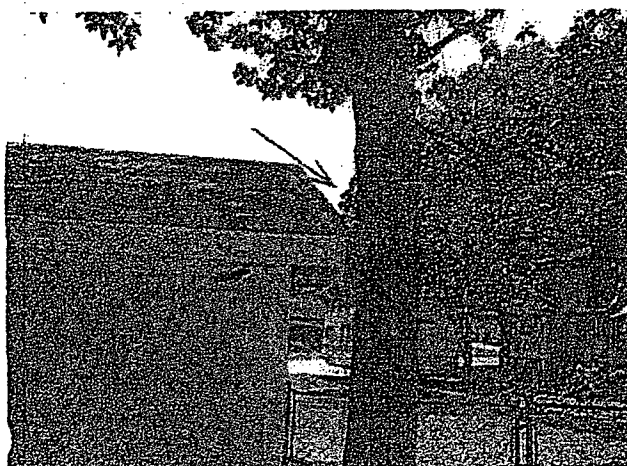




Front steps and patio step have bricks missing.



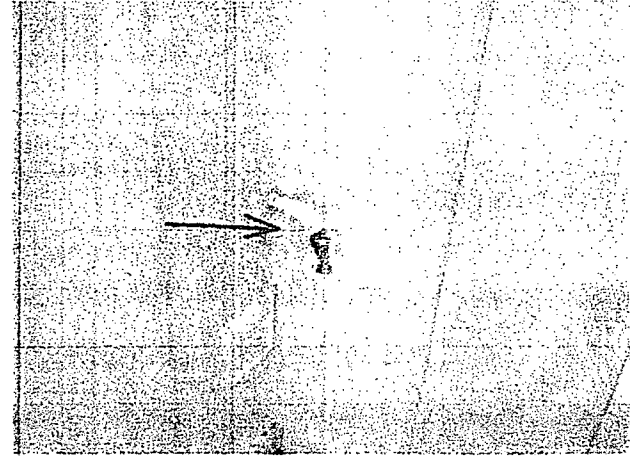
Recommend sealing all openings in soffit vents.



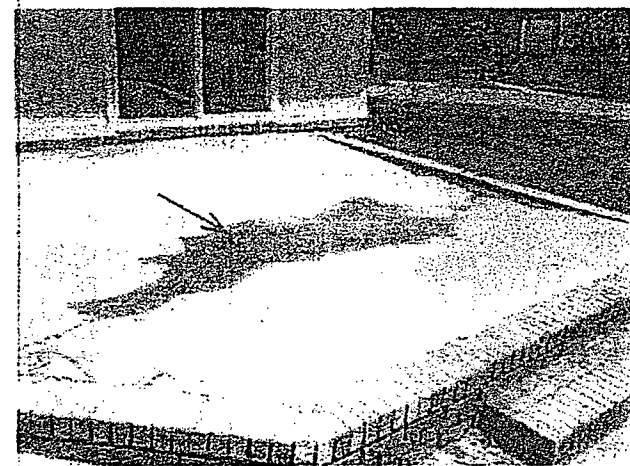
Tree is very close to rear left corner of home.



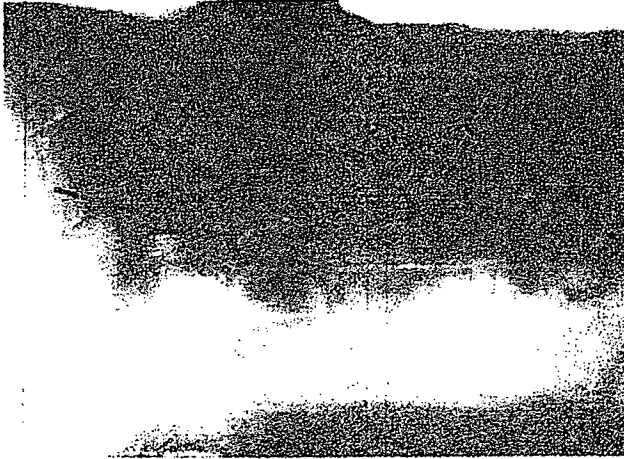
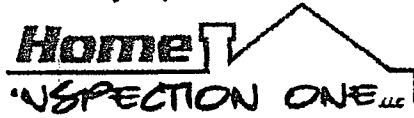
Roof return is sagging front left corner of home. There does appear have a been a repair in this area. Verify repair with home owner.



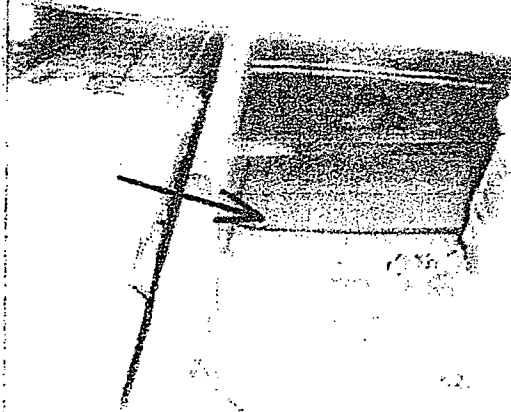
Rear exterior water spigot is not bolted to foundation.



Concrete patio has settled, water will pool in this area.



Brick mortar is being etched out in firebox.



Floor Insulation is missing below hvac unit/ductwork in attic.



Defective Summary

The following items or discoveries indicate that these systems or components do not function as intended or adversely affects the habitability of the dwelling; or warrants further investigation by a specialist, or requires subsequent observation. This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the function or efficiency of the home. This Summary is not the entire report. The complete report may include additional information of concern to the customer. It is recommended that the customer read the complete report.

Lots and Grounds

1. **Steps/Stoops:** Brick Front steps and patio step have bricks missing. A qualified contractor is recommended to evaluate and estimate repairs
2. **Patio:** Concrete Concrete patio has settled, water will pool in this area.
3. **Vegetation:** Trees & Shrubs Tree is very close to rear left corner of home.

Exterior Surface and Components

4. **Trim/Fascia/Soffits** Wood Roof return is sagging front left corner of home. There does appear have a been a repair in this area. Verify repair with home owner.
5. **Hose Bibs:** Gate valve Rear exterior water spigot is not bolted to foundation. A licensed plumber is recommended to evaluate and estimate repairs

Roof

6. **Main Roof Surface Material:** Fiberglass shingle Clean debris from roof

Attic

7. **Main Attic Ventilation:** Soffit vents Recommend sealing all openings in soffit vents. A qualified roofing contractor is recommended to evaluate and estimate repairs
8. **Main Attic Insulation:** Blown & Batt fiberglass Floor Insulation is missing below hvac unit/ductwork in attic.

Fireplace/Wood Stove

9. **Den Fireplace Fireplace Construction:** Brick Brick mortar is being etched out in firebox. A qualified contractor is recommended to evaluate and estimate repairs
10. **Den Fireplace Flue:** Tile Recommend cleaning and by a licensed chimney sweep prior to use

Kitchen

11. **Main level Kitchen Cabinets:** Wood doors need adjusting

Living Space

12. **All Living Space Doors:** Hollow wood type Door/s are sticking, Door/s will not close/latch properly

Laundry Room/Area

13. **Hall Laundry Room/Area Doors:** Hollow wood type Door/s are sticking,



Definitions

NOTE: All definitions listed below refer to the property or item listed as inspected on this report at the time of inspection

A	Acceptable	Functional with no obvious signs of defect.
NP	Not Present	Item not present or not found.
NI	Not Inspected	Item was unable to be inspected for safety reasons or due to lack of power, inaccessible, or disconnected at time of inspection.
M	Marginal	Item is functional and is in normal condition for age. Item may need monitoring or general maintenance in future or item may need minor maintenance or repair.
D	Defective	Item is not fully functional and requires repair or servicing or item needs immediate repair or replacement.

General Information

Property Information

Property Address 119 Milway Road
City State S.C. Zip

Client Information

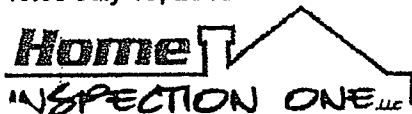
Client Name Beth box

Inspection Company

Inspector Name KEVIN BOST
Company Name Home Inspection One
Company Address 112 Signal Lane
City Imo State SC Zip 29063
Phone 803-622-4289 Fax 803.781.9836
E-Mail kevin@ScInspectionONE.com
Amount Received 245.00

Conditions

Others Present Buyer's Agent and Buyer Property Occupied No
Estimated Age Over 20 years Entrance Faces South
Inspection Date 7/13/10
Start Time 3m pm
Electric On ☒ Yes ☐ No ☐ Not Applicable
Gas/Oil On ☐ Yes ☐ No ☒ Not Applicable
Temperature 95
Weather Clear Soil Conditions Dry
Space Below Grade None
Building Type Single family Garage Carport
Sewage Disposal City How Verified Clean out
Water Source city How Verified Meter
Additions/Modifications None



Lots and Grounds

The home inspector shall observe: Decks, balconies, stoops, steps, areaways, porches and applicable railings; vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

The home inspector is not required to observe: Geological conditions; Soil conditions; Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); Detached buildings or structures; or Presence or condition of buried fuel storage tanks. The home inspector is not required to: Move personal items, panels, furniture, equipment, plant life, soil, snow, ice or debris that obstructs access or visibility.

The exterior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

1. ☒ ☐ ☐ ☐ ☐ Walks: Concrete
2. ☒ ☐ ☐ ☐ ☐ Driveway: Concrete
3. ☐ ☐ ☐ ☒ ☐ Steps/Stoops: Brick Front steps and patio step have bricks missing. A qualified contractor is recommended to evaluate and estimate repairs
4. ☐ ☐ ☐ ☐ ☒ Patio: Concrete Concrete patio has settled, water will pool in this area.
5. ☒ ☐ ☐ ☐ ☐ Porch: Concrete
6. ☐ ☐ ☐ ☒ ☐ Vegetation: Trees & Shrubs Tree is very close to rear left corner of home.
7. ☐ ☒ ☐ ☐ ☐ Retaining Walls:
8. ☒ ☐ ☐ ☐ ☐ Grading: Minor slope
9. ☒ ☐ ☐ ☐ ☐ Fences: Chain link

Exterior Surface and Components

The home inspector shall observe: Wall cladding, paint and trim; Entryway doors, screens, alterations and a representative number of windows; Garage door operators; eaves, soffits, and fascias. The home inspector shall: Describe wall cladding materials; Operate all entryway doors and a representative number of windows; Operate garage doors manually or by using permanently installed controls for any garage door operator; Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and Probe exterior wood components where deterioration is suspected.

The home inspector is not required to observe: Seasonal accessories; Presence of safety glazing in doors and windows; Garage door operator remote control transmitters;

The home inspector is not required to: Move personal items, panels, furniture, equipment, plant life, soil, snow, ice or debris that obstructs access or visibility.

The exterior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

All Exterior Surface

1. ☒ ☐ ☐ ☐ ☐ Type: Wooden
2. ☐ ☐ ☐ ☒ ☐ Trim/Fascia/Soffits Wood Roof return is sagging front left corner of home. There does appear have a been a repair in this area. Verify repair with home owner.
3. ☒ ☐ ☐ ☐ ☐ Entry Doors: Wood & metal
4. ☒ ☐ ☐ ☐ ☐ Windows: Vinyl single hung
5. ☐ ☒ ☐ ☐ ☐ Storm Windows:



Exterior Surface and Components (Continued)

6. ☐☐☐☐☒ Hose Bibs: Gate valve Rear exterior water spigot is not bolted to foundation. A licensed plumber is recommended to evaluate and estimate repairs
7. ☒☐☐☐☐ Door Bell: Hard wired
8. ☐☒☐☐☐ Gas Meter:
9. ☐☒☐☐☐ Main Gas Valve:

Roof

The home inspector shall observe: Roof covering; Roof drainage systems; Flashing; Skylights, chimneys, and roof penetrations; and Signs of leaks or abnormal condensation on building components. The home inspector shall: Describe the type of roof covering materials; and Report the methods used to observe the roofing.

The home inspector is not required to: Walk on the roofing; or Observe attached accessories including but not limited to solar systems, antennae, and lightning arrestors.

The roof of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Roof coverings and skylights can appear to be leak proof during inspection and weather conditions. Our inspection makes an attempt to find a leak but sometimes cannot. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

in Roof Surface

1. Method of Inspection: Ladder at eaves
2. ☒☐☐☐☐ Unable to Inspect: 0%
3. ☐☐☐☒ Material: Fiberglass shingle Clean debris from roof
4. Type: Gable
5. Approx Age: Unknown
6. ☐☐☒☐☐ Flashing: Not Visible
7. ☒☐☐☐☐ Plumbing Vents: PVC
8. ☒☐☐☐☐ Electrical Mast: Underground utilities
9. ☐☒☐☐☐ Skylights:

Main Chimney

10. ☒☐☐☐☐ Chimney: Brick
11. ☒☐☐☐☐ Flue/Flue Cap: Tile
12. ☒☐☐☐☐ Chimney Flashing: Aluminum



Garage/Carport

The home inspector shall observe: Wall cladding, paint and trim; Entryway doors, screens, alterations and a representative number of windows; Garage door operators; eaves, soffits, and fascias. The home inspector shall: Describe wall cladding materials; Operate all entryway doors and a representative number of windows; Operate garage doors manually or by using permanently installed controls for any garage door operator; Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and Probe exterior wood components where deterioration is suspected.

The home inspector is not required to observe: Seasonal accessories; Presence of safety glazing in doors and windows; Garage door operator remote control transmitters;

The home inspector is not required to: Move personal items, panels, furniture, equipment, plant life, soil, snow, ice or debris that obstructs access or visibility.

The exterior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

Front Garage

1. Type of Structure: Attached Car Spaces: 1 Car
2. ☒ ☐ ☐ ☐ ☐ Service Doors: Metal
3. ☒ ☐ ☐ ☐ ☐ Walls: Paint
4. ☒ ☐ ☐ ☐ ☐ Ceiling: Paint
5. ☒ ☐ ☐ ☐ ☐ Floor/Foundation: Poured slab
6. ☒ ☐ ☐ ☐ ☐ Electrical: 110 Volt

Electrical

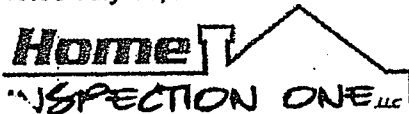
The home inspector shall observe: Service entrance conductors; Service equipment, grounding equipment, main over current device, and main and distribution panels; Amperage and voltage ratings of the service; Branch circuit conductors, their over current devices, and the compatibility of their ampacities and voltages; The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls; The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures; The operation of ground fault circuit interrupters; and Smoke detectors.

The home inspector shall describe: Service amperage and voltage; Service entry conductor materials; Service type as being overhead or underground; and Location of main and distribution panels. The home inspector shall report any observed aluminum branch circuit wiring. The home inspector shall report on presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central system.

The home inspector is not required to: Insert any tool, probe, or testing device inside the panels; Test or operate any over current device except ground fault circuit interrupters; Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or Observe: Low voltage systems; Security system devices, heat detectors, or carbon monoxide detectors; Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or Built-in vacuum equipment.

The electrical system of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Outlets were not removed and the inspection was only visual. Any outlet not accessible (behind the refrigerator for example) was not inspected or accessible. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D



Electrical (Continued)

1. Service Size Amps: 200 Volts: 220 VAC
2. ☒ ☐ ☐ ☐ ☐ Service: Aluminum
3. ☒ ☐ ☐ ☐ ☐ 110 VAC Branch Circuits: Copper
4. ☒ ☐ ☐ ☐ ☐ 220 VAC Branch Circuits: Copper
5. ☐ ☒ ☐ ☐ ☐ Aluminum Wiring:
6. ☒ ☐ ☐ ☐ ☐ Conductor Type: Romex
7. ☒ ☐ ☐ ☐ ☐ Electrical Wiring/Lighting 110 Volt
8. ☒ ☐ ☐ ☐ ☐ GFCI: Kitchen and bathrooms
9. ☒ ☐ ☐ ☐ ☐ Ground: Rod in ground only.
10. ☒ ☐ ☐ ☐ ☐ Smoke Detectors: Halls
- Storage room Electric Panel
11. ☒ ☐ ☐ ☐ ☐ Manufacturer: General Electric
12. Max Capacity: 200 Amps
13. ☒ ☐ ☐ ☐ ☐ Main Breaker Size: 200 Amps
14. ☒ ☐ ☐ ☐ ☐ Breakers: CU/AL

Structure

The Home Inspector shall observe: Structural components including foundations, floors, walls, columns or piers, ceilings and roof. The home inspector shall describe the type of Foundation, floor structure, wall structure, columns or piers, ceiling structure, roof structure. The home inspector shall: Probe structural components where deterioration is suspected; Enter under floor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected; Report the methods used to observe under floor crawl spaces and attics; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

The home inspector is not required to: Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely effect the health of the home inspector or other persons.

The structure of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

1. ☒ ☐ ☐ ☐ ☐ Structure Type: Wood frame
2. ☐ ☐ ☒ ☐ ☐ Foundation: Poured - not visible
3. ☒ ☐ ☐ ☐ ☐ Differential Movement: No visible movement or displacement noted
4. ☒ ☐ ☐ ☐ ☐ Bearing Walls: Frame
5. ☒ ☐ ☐ ☐ ☐ Floor/Slab: Poured slab



Attic

The home inspector shall observe: Roof framing, sheathing, ventilation, insulation depth, chimneys, and roof penetrations; and Signs of leaks or abnormal condensation on building components. The home inspector shall: Describe the type of attic framing and insulation; and Report the methods used to observe the attic.

The home inspector is not required to: Evaluate the efficiency of insulation other than by thickness. Enter areas lower than 3 feet, when entry could damage the property, or when dangerous or adverse situations are suspected; Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

The roof of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Roof coverings and skylights can appear to be leak proof during inspection and weather conditions. Our inspection makes an attempt to find a leak but sometimes cannot. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

Main Attic

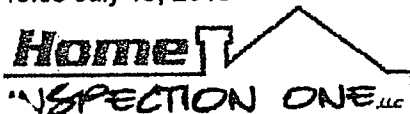
1. Method of Inspection: In the attic
2. ☐☐☒☐☐ Unable to Inspect: 20% Some areas not visible due insulation
3. ☒☐☐☐☐ Roof Framing: 2x4 Truss
4. ☒☐☐☐☐ Sheathing: Plywood
5. ☐☐☐☐☒ Ventilation: Soffit vents Recommend sealing all openings in soffit vents. A qualified roofing contractor is recommended to evaluate and estimate repairs
6. ☐☐☐☐☒ Insulation: Blown & Batt fiberglass Floor Insulation is missing below hvac unit/ductwork in attic.
7. ☒☐☐☐☐ Insulation Depth: R-30 or equal
8. ☐☒☐☐☐ Attic Fan:
9. ☐☒☐☐☐ House Fan:
10. ☒☐☐☐☐ Wiring/Lighting: 110 VAC
11. ☒☐☐☐☐ Moisture Penetration: No visible signs
12. ☒☐☐☐☐ Access: Scuttle door

Fireplace/Wood Stove

ANPNIM D

Den Fireplace

1. ☐☐☐☐☒ Fireplace Construction: Brick Brick mortar is being etched out in firebox. A qualified contractor is recommended to evaluate and estimate repairs
2. Type: Wood burning
3. ☐☒☐☐☐ Fireplace Insert:
4. ☐☐☐☒☐ Flue: Tile Recommend cleaning and by a licensed chimney sweep prior to use
5. ☒☐☐☐☐ Damper: Metal
6. ☒☐☐☐☐ Hearth: Raised



Plumbing

The home inspector shall observe: Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections; Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage; Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents; Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and Sump pumps.

The home inspector shall describe: Water supply and distribution piping materials; Drain, waste, and vent piping materials; Water heating equipment; and Location of main water supply shutoff device. The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.

The home inspector is not required to: State the effectiveness of anti-siphon devices; Determine whether water supply and waste disposal systems are public or private; Operate automatic safety controls; Operate any valve except water closet flush valves, fixture faucets, and hose faucets; Observe: Water conditioning systems; Fire and lawn sprinkler systems; On-site water supply quantity and quality; On-site waste disposal systems; Foundation irrigation systems; Spas, except as to functional flow and functional drainage; Swimming pools; Solar water heating equipment; or Observe the system for proper sizing, design, or use of proper materials.

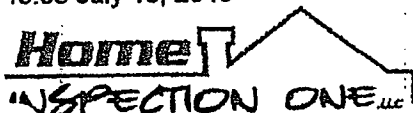
The plumbing in the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. Washing machine drain line for example cannot be checked for leaks or the ability to handle the volume during drain cycle. Older homes with galvanized supply lines or cast iron drain lines can be obstructed and barely working during an inspection but then fails under heavy use. If the water is turned off or not used for periods of time (like a vacant home waiting for closing) rust or deposits within the pipes can further clog the piping system. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your other inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

1. ☐ ☐ ☒ ☐ ☐ Service Line: Not visible
2. ☒ ☐ ☐ ☐ ☐ Main Water Shutoff: Front of house
3. ☒ ☐ ☐ ☐ ☐ Water Lines: CPVC & PVC Poured slab construction only visible water lines inspected
4. ☒ ☐ ☐ ☐ ☐ Drain Pipes: PVC Poured slab foundation only visible drain lines inspected
5. ☒ ☐ ☐ ☐ ☐ Service Caps: Accessible
6. ☒ ☐ ☐ ☐ ☐ Vent Pipes: PVC
7. ☐ ☒ ☐ ☐ ☐ Gas Service Lines:

Storage room Water Heater

8. ☒ ☐ ☐ ☐ ☐ Water Heater Operation: Functional
9. Manufacturer: Whirlpool
10. Type: Electric Capacity: 40 Gal.
11. Approximate Age: 2009 Area Served: Entire home
12. ☒ ☐ ☐ ☐ ☐ TPRV and Drain Tube: CPVC



Bathroom

The home inspector shall observe: Walls, ceiling, and floors; Steps, stairways, balconies, and railings; Counters and a representative number of installed cabinets; and A representative number of doors and windows. The home inspector shall: Operate bathroom fixtures, a representative number of windows and interior doors; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

The home inspector is not required to observe: Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; Carpeting, or Draperies, blinds, or other window treatments.

The interior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. The inspection did not involve moving furniture and inspecting behind furniture, area rugs or areas obstructed from view. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

Hall Bathroom

- | | | | | | | |
|-----|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--|
| 1. | ☒ | ☐ | ☐ | ☐ | ☐ | Ceiling: Paint |
| 2. | ☒ | ☐ | ☐ | ☐ | ☐ | Walls: Paint |
| 3. | ☒ | ☐ | ☐ | ☐ | ☐ | Floor: Ceramic tile |
| 4. | ☒ | ☐ | ☐ | ☐ | ☐ | Doors: Hollow wood type |
| 5. | ☒ | ☐ | ☐ | ☐ | ☐ | Electrical: 110 Volt |
| 6. | ☒ | ☐ | ☐ | ☐ | ☐ | Counter/Cabinet: Wood |
| | ☒ | ☐ | ☐ | ☐ | ☐ | Sink/Basin: Molded single bowl |
| 8. | ☒ | ☐ | ☐ | ☐ | ☐ | Faucets/Traps: PVC trap |
| 9. | ☒ | ☐ | ☐ | ☐ | ☐ | Tub/Surround: Porcelain tub & Fiberglass |
| 10. | ☒ | ☒ | ☐ | ☐ | ☐ | Shower/Surround: Fiberglass |
| 11. | ☒ | ☐ | ☐ | ☐ | ☐ | Toilets: 1.6 Gpf/6Lpf |
| 12. | ☒ | ☐ | ☐ | ☐ | ☐ | Ventilation: Electric ventilation fan |

Master Bathroom

- | | | | | | | |
|-----|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|---------------------------------------|
| 13. | ☒ | ☐ | ☐ | ☐ | ☐ | Ceiling: Paint |
| 14. | ☒ | ☐ | ☐ | ☐ | ☐ | Walls: Paint |
| 15. | ☒ | ☐ | ☐ | ☐ | ☐ | Floor: Ceramic tile |
| 16. | ☒ | ☐ | ☐ | ☐ | ☐ | Doors: Hollow wood type |
| 17. | ☒ | ☐ | ☐ | ☐ | ☐ | Electrical: 110 Volt |
| 18. | ☒ | ☐ | ☐ | ☐ | ☐ | Counter/Cabinet: Wood |
| 19. | ☒ | ☐ | ☐ | ☐ | ☐ | Sink/Basin: Molded single bowl |
| 20. | ☒ | ☐ | ☐ | ☐ | ☐ | Faucets/Traps: PVC trap |
| 21. | ☒ | ☐ | ☐ | ☐ | ☐ | Shower/Surround: Ceramic tiles |
| 22. | ☒ | ☐ | ☐ | ☐ | ☐ | Toilets: 1.6 Gpf/6Lpf |
| 23. | ☒ | ☐ | ☐ | ☐ | ☐ | Ventilation: Electric ventilation fan |



Kitchen

The home inspector shall observe: Walls, ceiling, and floors; Steps, stairways, balconies, and railings; Counters and a representative number of installed cabinets; and A representative number of doors and windows. The home inspector shall: Operate all appliances and fixtures, a representative number of windows and interior doors; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

The home inspector is not required to observe: Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; Carpeting; or Draperies, blinds, or other window treatments.

The interior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. The inspection did not involve moving furniture and inspecting behind furniture, area rugs or areas obstructed from view. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

Main level Kitchen

1. ☒ ☐ ☐ ☐ ☐ Cooking Appliances: Whirlpool
2. ☒ ☐ ☐ ☐ ☐ Ventilator: Broan
3. ☒ ☐ ☐ ☐ ☐ Disposal: Badger
4. ☒ ☐ ☐ ☐ ☐ Dishwasher: Frigidaire
5. ☒ ☐ ☐ ☐ ☐ Sink: Stainless
6. ☒ ☐ ☐ ☐ ☐ Electrical: 110 Volt
7. ☒ ☐ ☐ ☐ ☐ Plumbing/Fixtures: PVC trap
8. ☒ ☐ ☐ ☐ ☐ Counter Tops: Laminate
9. ☐ ☐ ☐ ☒ ☐ Cabinets: Wood doors need adjusting
10. ☒ ☐ ☐ ☐ ☐ Ceiling: Paint
11. ☒ ☐ ☐ ☐ ☐ Walls: Paint
12. ☒ ☐ ☐ ☐ ☐ Floor: Viny flooring
13. ☒ ☐ ☐ ☐ ☐ Doors: Hollow wood type

Living Space

The home inspector shall observe: Walls, ceiling, and floors; Steps, stairways, balconies, and railings; Counters and a representative number of installed cabinets; and A representative number of doors and windows. The home inspector shall: Operate a representative number of windows and interior doors; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

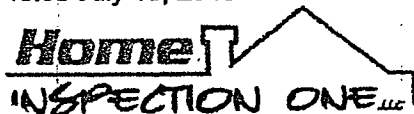
The home inspector is not required to observe: Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; Carpeting; or Draperies, blinds, or other window treatments.

The interior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. The inspection did not involve moving furniture and inspecting behind furniture, area rugs or areas obstructed from view. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

All Living Space

1. ☒ ☐ ☐ ☐ ☐ Closet: Walk-in & single
2. ☒ ☐ ☐ ☐ ☐ Ceiling: Paint
3. ☒ ☐ ☐ ☐ ☐ Walls: Paint



Living Space (Continued)

- 4. ☒ ☐ ☐ ☐ ☐ Floor: Carpet, vinyl, hardwood
- 5. ☐ ☐ ☐ ☒ ☐ Doors: Hollow wood type Door/s are sticking, Door/s will not close/latch properly
- 6. ☒ ☐ ☐ ☐ ☐ Windows: Vinyl single hung
- 7. ☒ ☐ ☐ ☐ ☐ Electrical: 110 Volt
- 8. ☐ ☒ ☐ ☐ ☐ Stairs/Handrails:

Laundry Room/Area

The home inspector shall observe: Walls, ceiling, and floors; Steps, stairways, balconies, and railings; Counters and a representative number of installed cabinets; and A representative number of doors and windows. The home inspector shall: Operate a representative number of windows and interior doors; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

The home inspector is not required to observe: Washers, dryers, paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; Carpeting; or Draperies, blinds, or other window treatments.

The interior of the home was inspected and reported on with the above information. While the inspector makes every effort to find all areas of concern, some areas can go unnoticed. The inspection did not involve moving furniture and inspecting behind furniture, area rugs or areas obstructed from view. Please be aware that the inspector has your best interest in mind. Any repair items mentioned in this report should be considered before purchase. It is recommended that qualified contractors be used in your further inspection or repair issues as it relates to the comments in this inspection report.

ANPNIM D

Hall Laundry Room/Area

- 1. ☒ ☐ ☐ ☐ ☐ Ceiling: Paint
- 2. ☒ ☐ ☐ ☐ ☐ Walls: Paint
- 3. ☒ ☐ ☐ ☐ ☐ Floors: Vinyl flooring
- 4. ☐ ☐ ☐ ☒ ☐ Doors: Hollow wood type Door/s are sticking,
- 5. ☐ ☒ ☐ ☐ ☐ Windows: Vinyl single hung
- 6. ☒ ☐ ☐ ☐ ☐ Electrical: 110 Volt
- 7. ☐ ☒ ☐ ☐ ☐ Laundry Tub:
- 8. ☒ ☐ ☐ ☐ ☐ Washer Hose Bib: Gate valve
- 9. ☒ ☐ ☐ ☐ ☐ Washer and Dryer Electrical: 110-240 VAC
- 10. ☒ ☐ ☐ ☐ ☐ Dryer Vent: Rigid metal
- 11. ☐ ☒ ☐ ☐ ☐ Dryer Gas Line:
- 12. ☒ ☐ ☐ ☐ ☐ Washer Drain: Wall mounted drain

GENERAL INFORMATION

The Home Inspection ONE - Goal

Our goal is to identify visual problems within the guidelines set down by the State of South Carolina for a Home Inspection that may have potentially significant repair expenses that would affect a client's decisions. We strive to add significantly to your knowledge of the home within the scope of the inspection. This Home Inspection is being conducted in accordance with the State of South Carolina Standards of Practice and is for the purpose of identifying major deficiencies, which might affect your decision. Copies of these Standards may be obtained from our Web-Site www.SCInspectionONE.com. This is NOT a Building Code or By-Law compliance inspection. NO comment is offered on any Environmental Concerns or Hazards in this report. Although minor problems may be mentioned, this report does not attempt to list them all.

If the seller has disclosed any information about the property's condition, past repairs, warranties, or any information they have about the home, please convey this to the inspector.

You are urged to attend the inspection (or re-inspection) and accompany the inspector during his examination of the property. The information you gain from this will be of great value to you. This report is a summary of that information. It is important for you to understand exactly what your professional home inspector is able to do for you and that the limitations are in his visual inspection and analysis. The inspection is of readily accessible areas of the property and is limited to the visual observation only. The inspector may not move furniture, lift carpet, remove panels or dismantle any items or equipment.

An inspection is intended to assist in evaluation of the overall condition of the property. The inspection is based on observation of the visible and apparent condition of the building and its components on the date of the inspection. The results of this home inspection are not intended to make any representation regarding latent or concealed defects that may exist and No warranty or guarantee is expressed or implied.

A more complete inspection using a Structural Engineer, Master Plumber, Electrician, and Environmental Engineer can be done. The charge for this inspection starts around \$2000.00. If your property inspector is not a licensed structural engineer or other professional whose license authorizes the rendering of an opinion as to the structural integrity of a building or its other component parts, you may be advised to seek a professional opinion as to any defects or concerns mentioned in this report. This is not a HVAC letter or Termite Inspection.

Problems With The Property

This report is not a guarantee or warranty; we cannot eliminate all your risk in purchasing. There are warranty programs that may be obtained to insure you against failure of some of the major systems of the property.

Property buyers after settlement and occupying the property, sometimes overlook important information and warnings contained in their reports. This can result in failure of equipment or other damage that could have been prevented if the inspector's advice and recommendations had been followed.

After occupancy, all properties will have some defects that are not identified in the inspection report. If a problem occurs that you feel the inspector's report did not give you sufficient warning of call him. A phone consultation may be able to advise you in assessing proposals offered by contractors for remedying the problem. Please consult your Home Inspector before you engage a contractor to examine or correct a possible defect. Unless prior consultation occurs, this company cannot assist you further.

Basements and Crawl Spaces

Basement or crawl space dampness is frequently noted in houses and the conditions, which cause it, are usually capable of determination by an experience building analysis. Often, however, in houses, which are being offered for sale, the visible signs on the interior of a basement or crawl space that would indicate a past or present water problem are concealed. For example, an area in the basement may be painted over, or basement storage may be piled against a wall where a problem has occurred. A crawl space may have a vapor barrier that covers signs of moisture. If there has been a dry period before the time of the inspection, signs of past water penetration may not be visible. In such a case, the building analysis may not be able to detect the signs of basement dampness or crawl space water penetration.

Elimination of some basement or crawl space dampness, whether slight or extensive, can usually be accomplished by one or both of the following actions; adding or realigning gutters and extending downspouts to discharge some distance from the house; and regarding in the vicinity of the house so that the slope goes away from the house rather than towards it. A proper slope away from the house for a distance of approximately 6 feet is 6 inches (one inch per foot). In some cases a French drain may be required.

If you have a basement dampness problem that persists in spite of efforts you have made, call us and we will give you consultation and advice.

Mold and Mildew

Mold and mildew can, to some people, cause skin irritation, upper respiratory congestion, headaches, and lack of energy and extreme symptoms like pulmonary hemorrhaging and even death. We do not know your history or the history of the house to determine if mold and mildew will affect you. Typically, it is present in some form in crawl spaces and damp areas. A Mold and Mildew inspection or identification is not part of this home inspection. We are not qualified, authorized, or licensed to inspect for, recognize, nor identify health related molds, mildew, or fungi. If you desire information about these issues, you may wish to have the structure inspected by a licensed Industrial hygienist.

Insect Boring Activity and Rot

If there is an inaccessible basement or crawl space, there is a possibility that past or present termite activity and/or rot exists in this area. Since no visual inspection can be made, it is not possible to make a determination of this damage if it exists.

Insect Boring Inspection

No inspection is made by this company to detect past or present insect boring activity. Most loans in S.C. will require a CL-100 termite inspection. We suggest you contact a qualified exterminator should you desire more information or a possible examination of the building and/or a warranty.

Testing the Air Conditioning System

We do not do HVAC or Heating systems letters as part of our regular home inspection. If the outside temperature has not been at least 60 degrees for the past 24 hours, an air conditioning system cannot be checked without possibly damaging the compressor. In this situation, it is suggested that the present owner of the property warrant the operational status of the unit on a one- time start-up and cool-down basis when warmer weather allows.

Equipment Estimated Life Expectancy

Air Conditioning Compressor has a normal life of 8 to 15 years.

Electric Furnace has a normal life of 15 to 20 years, although at times the heating elements have to be replaced.

Oil and Gas Fired Furnaces have a normal life of 15 to 20 years.

Heat Exchanger in a gas or oil furnace is hidden from view; it cannot be examined and its condition determined without being disassembled. Since this is not possible during a visual inspection, it is recommended that a service contract be placed on the unit and a service call made prior to settlement to check the condition of a heat exchanger.

Air Filters should be changed once every 30-60 days to provide proper air circulation throughout the house.

Heat Pumps outside units have a normal life of 6 to 10 years. Heat pumps need to be serviced at least once a year. Adequate airflow is more critical than with other forced air systems; the filter should be kept clean. It is not advisable to shut off supply grills to rooms except as required to balance heat and cooling.

Electric Baseboard Heaters have a normal life of 10-15 years.

Wells Examination of wells is not included in this visual inspection. It is recommended that you have the well water checked for purity by the local health authorities and, if possible, a check on the flow of the well in periods of drought.

Septic Systems The check of septic systems is not included in this visual inspection. You may request a separate septic system check. In order for the system to be accurately checked, the home should have been occupied within the last 30 days.

Water Pipes Galvanized pipes rust from the inside out and may have to be replaced within 20 to 30 years. This is usually done in two stages, horizontal piping in the basement first, and vertical pipes throughout the house later as needed. Copper pipes usually have more life expectancy and may last as long as 60 years before needing to be replaced.

Hot Water Heaters have a life expectancy of 8 to 12 years. Hot water heaters generally need not be replaced unless they leak. The heating elements in an electric hot water heater may require replacing prior to the end of life expectancy of the heater itself.

Ceramic Tiles installed in a mortar bed is excellent. It is still necessary to keep the joint between the tile and the tub/shower caulked or sealed to prevent water spillage from leaking through and damaging the ceiling below. Ceramic tile is often installed in mastic. It is important to keep the tile caulked or water will seep behind the tile and cause deterioration in the wallboard. Special attention should be paid to the area around faucets, other tile penetrations and seams in corners and along the floor.

Dishwashers and Disposals have a normal life of 5 to 12 years.

Ranges, Ovens and Refrigerators have a normal life of 15 to 20 years.

Shower Stalls with metal pans under the tile have a probable life of 8-10 years. Although a visual inspection is made to determine whether a shower pan is currently leaking, it cannot be stated with certainty that no defect is present or that one may not soon develop. Shower pan leaks often do not show except when the shower is in actual use. Vacant homes or seldom used showers may not show signs of leaks during a visual home inspection. If vacant or seldom used, you may want to stop-up the drain and fill shower with 2" water for 24 hours and then check sub-floor for leaks or moisture.

Smoke Detectors should be on every level of the home. It is recommended that they be installed near the mechanical equipment, as well as the ceiling in the hallway outside the sleeping area. They should be checked every 2-3 weeks to insure that they are functioning.

Federal Pacific Stal-lok Breakers have been found in some cases to not trip when over heater or shorted out. This could cause a fire. We recommend replacing if we see signs of overheating. You also may want to replace if breaker box is less than 200 amps

Aluminum Branch Wiring was used in the late 1960 to 1978 in some homes. Since aluminum will expand from heat, connections must be tight or heat will build up at the loose connection. Special connectors and outlets designed to insure tight connections should be used. We recommend that an electrician check this for you if we indicated that you have aluminum branch wiring.

Ground Fault Interrupters are recommended on all outdoor outlets and on interior outlets in wet areas, such as bathrooms and kitchen counter areas. GFCI's should be tested monthly to insure they are functioning. They were not required until the late 1980's.

Fireplaces should be cleaned on a routine basis to prevent buildup of creosote in the flue, which can cause a chimney fire. During a visual inspection it is not uncommon to be unable to detect the absence of a flue liner because of stoppage at the firebox, a defective damper, or lack of access from the roof.

Asbestos, Lead Paint, and Other Hazards are often present but not visible or cannot be identified during a visual inspection and are not checked as part of a home inspection. Samples need to be taken to a lab for testing. We can arrange for separate tests if you would like. Lead base paint has not been made since 1978.

Carpeting, Vinyl, and Underlying Flooring with floor insulation hide damage. Where floor covering has been installed, the materials and condition of floor underneath cannot be determined. Where floor insulation covers bottom of sub-flooring, we cannot remove all floor insulation to check, and damage may not be discovered.

Attic and floor insulation cover ceilings and sub-floors. We do not remove insulation to check condition below. We do not walk attics where ceiling joist are covered. This would cause damage to attic insulation. We do not remove floor insulation to check for damage.

Roof Inspections Many roofs are hazardous to walk on and in most cases can be satisfactorily inspected from the ground with binoculars or from a ladder. Walking on them may seriously damage some roofs, especially if the temperature is extremely hot or cold. Accordingly, the building analysis will base the inspection report on visual evidence that can be seen without walking on the roof.

"Satisfactory" Roof Covering When the report indicates that the roof is "satisfactory", that means it is satisfactory for its age and general usefulness. A roof, which is stated to be satisfactory, may show evidence of past or present leaks or may soon develop leaks. However, such a roof can be repaired and give generally satisfactory service within the limits of its age.

Asphalt and Fiberglass Shingles have a normal life of 20 to 30 years. Adequate attic ventilation plays an important role in the life of a roof.

Roof Flashing should be checked twice a year to insure it is fastened and properly caulked. Flashing is used around chimneys, vent pipes, where rooflines change, and where roofs run into adjoining walls.

Sidewalks and Driveways may get cracks from normal use. The usual cause of cracks are tree roots and settling. The life of the concrete can be extended if sealers are added.

Exterior Wood Surfaces need regular applications of paints or sealant to repel water and resist rot. Any wood in contact with the ground should be treated to resist rot. Decks and other wood should be nailed with galvanized or aluminum nails.

Roof and Surface Water Control must be controlled to maintain a dry basement. This means keeping gutters cleaned out and aligned, extending downspouts, installing splash blocks, and building up the grade so the roof and surface water are diverted away from the building. Any changes like gutter removal or re-grading lot may affect water control.

Cracks in Foundation Walls, Brick Veneer, and Concrete in many cases are characteristics of concrete and masonry products, and are caused by different things. The most common causes of cracking are shrinking of concrete, settlement due to different soil conditions, tree roots, and water drainage. There are guidelines for tolerances that are acceptable in new home construction in size of cracks in concrete, mortar and bricks. These guidelines range from 1/8" cracks in mortar joints, 5/16" in garage slabs, 3/16" in basement floors, to 1" settlement in garage floors, steps, and stoops. Cracks in brick veneer are more common in certain neighborhoods with a higher amount of red clay soil. Clay expands and contracts with the moisture level. A sprinkler system can help control the amount of moisture in the soil.

Cracks from Unstable Soil can, and sometimes do, get worse over time. Unstable soil can be from different moisture levels, under ground rock formations, and different types of soil. Controlling the amount of moisture in the soil can sometimes help control the settlement. There are foundation repair companies that can help stabilize the foundation from unstable soil conditions. If used, You should carefully read the warranty they offer. In most cases the warranty is against the crack opening up 1/4" or more for a 10-year period after the work is done. In most cases, this 1/4" is no more than the original crack, so you may not have gained much for your money.

Tree roots can work themselves under footings and concrete slabs, cracking and lifting it as the roots grow. Removal of trees, or cutting roots away can prevent this in most cases.

Water drainage can cause soil movement and/or settlement. It is important to have proper drainage and to maintain that drainage. Changing the drainage may change the soil conditions the foundation is use to. When adding a pool, removing or adding gutters, changing the landscaping, etc., etc., you should take into consideration as to how it may change the moisture levels around the foundation. Try to never disturb the soil around the foundation.

Polybutylene Plumbing (PB) water lines have had some problems and there has been some class action lawsuit against the manufacturers. We can only determine if there are visible leaking problems at the time of inspection. Polybutylene plumbing is still an approved product. We recommend that you check your Homeowners insurance policy to see if polybutylene plumbing is excluded from coverage.

Hardboard or Composite Exterior Siding come in many different types and manufacturers. There have been some class action lawsuits on past and current sidings. We can only determine if the siding has a current visible problem. We cannot determine the manufacturer of the siding, or possible future or non-visible problems.

Masonite siding is a brand of hardboard siding. We can not determine what brand of siding you have. The brand of siding may be on backside of siding, which is not visible without removal of the siding.

Insulated Glass Windows have a vacuum seal between the glass that may leak, allowing moisture in air in. Identification of moisture, or leaks is done by a visual inspection. At certain times this moisture may not be visible. We may not be able to identify leaking during inspection. I recommend that you inspect the glass at different times of the day to verify leaks. Checking all windows for Broken Insulated Glass seals is not part of the home inspection. If we see some, we will note it. We recommend that you have a glass company check all windows and replace as needed.

Disclosure

If any information about the home has been disclosed to you, please inform the inspector to aid him in his assessment. All products have some defects or failures under certain conditions it is not possible to know all possible product recalls, defects, or improper installation. We can only report what we find or see at time of the visual home inspection.

Visual Inspection

We can only inspect what we can see. Some areas are not accessible. We do not have seller permission to damage or deface visible surfaces. We do not move furniture, appliances, clutter, or stored items.

Building Codes

This is not a building code inspection. Homes or additions only have to meet building codes when they are constructed. Since codes change, we may not be able to tell if it meets the code the day it was built.

Age

Throughout this report where the age of appliances, roofs, etc., is stated, the age shown is approximate. It is not possible to be exact, but an effort is made to be as accurate as possible based on the visible evidence. If marked N/A then age is not known.

Acceptable

Functional with no visible or obvious signs of defects.

Not Present

Item not present, or not found.

Not Inspected

Item was unable to be inspected for safety reasons or due to lack of power, inaccessible, or disconnected at time of inspection.

Marginal

Item is not fully functional and requires repair or servicing.

Defective

Item needs immediate repair or replacement. It is unable to perform its intended function. The following items or discoveries indicate that these systems or components do not function as intended or adversely affects the habitability of the dwelling; or warrants further investigation by a specialist, or requires subsequent observation.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elizabeth Box,

Plaintiff,

vs.

The Sparrow Group, LLC and
Bryan S. Jones.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2015-CP-40-04129
)

) SUPPLEMENTAL
) AFFIDAVIT OF ELIZABETH BOX

2015 NOV 12 PM 2:37
JEANETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

Personally appeared before me, Elizabeth R. Box, who first being duly sworn,
deposes and states as follows:

1. That on or about July 3, 2010, I entered into a contract to purchase my first home at 119 Milway Road in Richland County, South Carolina in the New Friarsgate Subdivision. The home was built in 1976.

2. I was informed by the seller that the home had been stabilized on the South Carolina Residential Property Condition Disclosure provided to me.

3. The home had been freshly painted before I viewed and moved into it and therefore I was not on notice of any indication that there may be existing foundation problems.

4. Prior to the purchase of the home, I had a home inspection done, which did not indicate that there were any existing problems with the foundation of the home.

5. I believed that any problems had been repaired based upon the representation that seller made in the property disclosure and that there were no existing defects to the foundation. I further believe this information was material to my purchase of the home

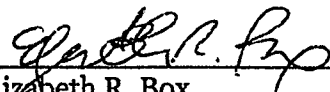


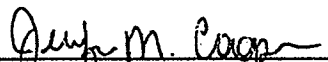
and I certainly would have considered it prior to entering into a contract and would not have purchased this home if I knew the home had any existing defects, especially a defect such as the foundation.

6. Moreover, I exercised reasonable diligence by ordering a home inspections, which noted that the foundation was "acceptable" and that there were no existing foundation defects.

FURTHER THE AFFLIANT SAYETH NOT.

SWORN to before me
This 9th day of November, 2015.


Elizabeth R. Box


Notary Public for South Carolina
My Commission Expires: 11/30/19