

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

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SC Court of Appeals

Elizabeth Box.....Appellant,

v.

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

[FINAL] REPLY BRIEF OF APPELLANT

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Appellant's Initial Reply Brief

I. Argument

- **The Explanation as to the Stabilization or Repair of the Foundation Defect in Sparrow Group and Jones' Disclosure Statement Is Ambiguous at Best and Misleading and False at Worst. Because the Explanation of Jones and Sparrow as to Whether or Not the Foundation Had Been Stabilized was At Least Ambiguous, Box Was Not on Notice of a Defect and the Trial Court Erred in Granting Summary Judgment.**

Sparrow Group and Jones, like the Trial Court, miss the mark in their analysis of the Disclosure Statement. Therefore they have not applied the correct legal analysis to the problem. The parties' contract to purchase and sell the property required the furnishing of a Property Condition Disclosure Statement.¹ It is well settled that when a written contract is ambiguous in its terms, the matter of the parties' intent [or understanding of the agreement] is a question of fact for the jury. *Ecclesiastes Production Ministries v. Outparcel Associates, LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) A contract is ambiguous when it capable of more than one meaning. *Id.*, 374 S.C. 499.

It is not Sparrow and Jones' response to the question of whether or not a defect previously existed or was present that is the problem here. It is

¹ Exhibit 1 to Affidavit of Elizabeth Box, Exhibit E to Pl.'s Memorandum in Opposition to Defendant' Motion to Dismiss. (R. p. 84; R. p. 81)

their explanation of the problem and the statement that there had been **“Foundation /slab stabilization by Ram Jack in November 2009,”** that is ambiguous at best and misleading and false at worst. Any reasonable person construing the Disclosure Statement might infer that the problem had been corrected, especially taken together with an independent home inspection that indicated that the slab foundation was acceptable.

Moreover, Sparrow and Jones acknowledge in their recitation of the facts that if they answered yes to any of the questions on the Disclosure Statement as to any existing problems, that in addition to providing any explanation, the Form required them to attach any relevant professional reports along with their explanation.² Instead, the Ram Jack report was withheld. Box could know about what was apparently intentionally concealed from her. She had the right to rely upon the representation which made that the foundation/slab had been stabilized, especially as an inexperienced first time home buyer, as Box was, who exercised reasonable diligence. Generally, “as between the parties, the recipient of a fraudulent misrepresentation of fact is justified in relying upon its truth, although he might have ascertained the falsity of the representation had he made an investigation [or inquired]”. *Restatement (Second) of Torts* Section 540

² Respondent’s Brief at p. 5

(1979). *Reid v. Harbison Dev. Corp.*, 285 S.C. 557, 560, 330 S.E.2d 532, 534 (Ct. App. 1985), *aff'd in part and remanded*, 289 S.C. 319, 345 S.E.2d 492 (1986). The Court in *Reid* explained:

Where the fact misrepresented or the matters which are concealed are peculiarly within the representor's knowledge and the representee is ignorant thereof, it is generally held that, although the real fact appears on the public records, the representee is under no obligation to examine the records, and his failure to do so does not defeat his right of action. This is especially true where the very representations relied on induced the hearer to refrain from an examination of the records, where the employment of an expert would have been required to deduce the truth from an examination of the records, where confidential relations existed, **or where the defrauded party was inexperienced**. In such cases the doctrine of constructive notice is inapplicable. (Emphasis added)

Reid v. Harbison Dev. Corp., 285 S.C. 557, 561, 330 S.E.2d 532, 534–35 (Ct. App. 1985), *aff'd in part and remanded*, 289 S.C. 319, 345 S.E.2d 492 (1986), citing 37 C.J.S. Fraud § 34c (1943)

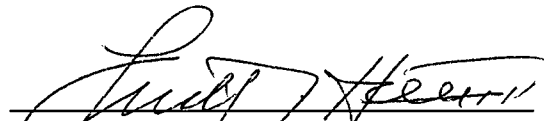
The Trial Court's holding that the statute of limitations had run is grounded in the premise that there was some existing problem with the foundation that had not been corrected.³ This was error because the statement that there had been slab stabilization is most certainly capable of being understood as having made the foundation firm. In addition, the burden was on Sparrow and Jones to attach a copy of the Ram Jack report

³ Order Granting Defendant's Motion for Summary Judgment at p. 3 (“**The Statement disclosed a problem with the foundation** and did not affirmatively state the foundation defects had been corrected.”) (R. p. 3) (Emphasis added)

and this burden was imposed by statute and as such, it was not the duty of Box to inquire about a report which she did not know existed.

For these reasons, as well as those stated in the Appellant's Brief, the Trial Court should have applied the discovery rule and held the statute did not begin to run until Box discovered the Ram Jack report and therefore denied summary judgment. Its decision granting summary judgment should therefore be reversed.

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