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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2013-CP-30-3513

**RECEIVED**  
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SC Court of Appeals

Kathleen Lollis and Linda Campbell .....Appellants/Respondents,

vs.

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

**REPLY BRIEF OF  
APPELLANTS/RESPONDENTS**

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## ARGUMENT

### I. THERE IS NO BINDING CONTRACT BETWEEN RESPONDENTS AND APPELLANT LOLLIS.

Respondents argue that the lack of a meeting of the minds was not specifically argued at trial and cannot be raised on appeal. During the trial, Appellant Lollis testified that she did not sign a contract of sale agreeing to sell her property to Respondents and further testified that she had no knowledge of the contract before coming to Court. (R. p. 138, Ins. 8-17) Appellant Lollis was not present at the meeting to execute the contract of sale recorded on November 21, 2011 and she did not sign the contract. (R. p. 305, ln. 25 - p. 306, ln.16) Appellant Lollis never discussed selling her property with the attorney who drafted the contract. (R. p. 314, Ins. 16-19) Respondent Lisa Dutton acknowledged that Appellant Lollis never appeared at the meetings when the contracts were signed. (R. p. 508, Ins. 19-24) Respondent Dennis Dutton testified that he did not have any conversation with Appellant Lollis about the fact that he wanted to buy her property. (R. p. 613, Ins. 2-8) It is clear from the testimony that Appellant Lollis was unaware of the contracts between Appellant Lollis and Respondents and that she did not agree to sell her property to Respondents. It was not necessary for Appellant Lollis to use the term “meeting of the minds” to preserve that issue. It is clear from the testimony and arguments of trial counsel that Appellant Lollis was unaware of the agreement to sell her property. As such, there was no meeting of the minds with regard to the contracts of sale.

Respondents argue that Appellant Lollis gave her son, Frank Lollis, Power of Attorney and knew that he was signing documents on her behalf. Respondents argue that paragraph 6 under the “Findings of Fact” section of the Final Order recorded on July 6, 2015 supports this contention. Paragraph 6 under the “Findings of Fact” section of the Final Order state as follows, “The Lollis family lawyer, John Scurry, Jr., testified **he believed** that Frank Lollis had a Power of Attorney to sign documents on behalf of his mother and that she knew he was signing on her behalf. (R. p. 4, para. 6) (Emphasis added) The Order does not state that Appellant Lollis gave her son a Power of Attorney. It simply states that attorney Scurry **believed** that Appellant Lollis’ son had a Power of Attorney. To the contrary, attorney Scurry testified that he did not have in his possession a Power of Attorney nor did he know of one being filed. (R. p. 310, Ins. 15-19)

Attorney Scurry also testified that he did not prepare a Power of Attorney for Appellant Lollis designating Frank Lollis as Power of Attorney. It was his testimony that he **thought** he saw one. (R. p. 307, ln. 24 - p. 308, ln. 5) (emphasis added) Furthermore, attorney Scurry testified that he prepared a Power of Attorney for Appellant Lollis naming Appellant Linda Campbell as her Power of Attorney. (R. p. 337, ln 25 – p. 338, ln 13) This Power of Attorney was signed on November 23, 2011, just two (2) days after the signing of the contract with Respondent Lisa Dutton and more than one (1) year prior to the signing of the contract with Respondent Dennis Dutton (R. pgs. 846-849). At the time the December 20, 2012 contract was signed, Appellant Linda Campbell was the Power of Attorney for Appellant Lollis.

## **II. RESPONDENTS FAILED TO ESTABLISH THAT FRANK LOLLIS WAS AN AGENT FOR APPELLANT KATHLEEN LOLLIS.**

Respondents rely on their contention that Frank Lollis had Power of Attorney for Appellant Lollis to support their claim that he was acting as an agent for Appellant Lollis. As argued in the previous section, attorney Scurry testified that he did not have in his possession a Power of Attorney naming Frank Lollis as Power of Attorney, nor does he know if there is one filed. (R. p. 310, lns. 15-19) Appellant Linda Campbell was the Power of Attorney for Appellant Lollis at the time the second contract was signed. In November 2011, Appellant Lollis signed a Power of Attorney naming Appellant Linda Campbell as her Power of Attorney. (R. p. 337, ln 25 – p. 338, ln 13) (R. p. 807) Furthermore, the contracts at issue were not signed by someone as Power of Attorney for Appellant Lollis. The contracts purport to bear the signature of Appellant Lollis. They were not signed by Frank Lollis or someone else as the Power of Attorney for Appellant Lollis.

Appellant Lollis testified that, at the time of the signing of the contracts, no one had Power of Attorney for her. She further testified that she did not authorize anybody to sign her name to the contracts with the Duttons. (R. p. 139, lns. 11-21) Appellant Lollis testified that nobody else had her authority to try to sell her property to Respondent Lisa Dutton. (R. p. 140, lns. 9-11) There was no testimony from Appellant Lollis that she had given anyone authority to act as her agent or to enter into any agreement to sell the Cemetery Road property. In fact, Appellant Lollis clearly testified, as stated above, that no one had authority to act on her behalf with regard to the Cemetery Road property.

In their Initial Brief, Respondents cite numerous cases dealing with apparent agency. “The basis of apparent authority is representations made by the principal to the third party in reliance by the third party on these representations.” Young vs. S.C. Dept. of Disabilities and Special Needs, 374 S.C. 360, 367, 649 S.E.2d 488(2007) Appellant Lollis did not make any representations to Respondents Dutton. Respondent Lisa Dutton testified that her dealings were mostly with Frank Lollis and attorney Scurry. She further testified that Appellant Lollis was never present during the signing of the contracts. (R. p. 508, lns. 8-24) Respondent Dennis Dutton testified that he never spoke to Appellant Lollis about purchasing the property. (R. p. 614, lns. 4-8) Attorney Scurry never discussed with Appellant Lollis the idea of Respondents purchasing her property. (R. p. 317, lns. 16-23) It is clear that Appellant Lollis had nothing to do with the negotiations or signing of any contract relating to the Cemetery Road property. It is also clear that she had no discussion with Respondents about their interest in buying the Cemetery Road property. As such, she could not have made any representations to them as to Frank Lollis’ authority to act on her behalf.

Respondents also cite numerous cases which stand for proposition that agency may be implied from the words and conduct of the parties and the circumstances of the particular case, or from passive conduct which results in the misleading of third parties. The testimony of Appellant Lollis establishes that she had no knowledge of the contracts with Respondents Dutton. It is also clear from her testimony that she did not give Frank Lollis authority to enter into any agreement to sell the Cemetery Road property. She did not engage in any conduct which would imply the relationship of agency between her and her son, Frank Lollis. Since she had no discussions with Respondents about their desire to purchase the property, there were no representations from her which implied an agency. Appellant Lollis cannot be deemed to have engaged in passive conduct which resulted in the misleading of Respondents Dutton simply because she was unaware of what was taking place.

“While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority.” Richardson vs. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263, 265 (2009) Appellant Lollis testified that she did not give her son, Frank Lollis, authority to enter into any contract to sell the Cemetery Road property. It is clear from the testimony of Appellant Lollis, attorney Scurry, and Respondents, that Appellant Lollis did not

hold her son out as an agent. Furthermore, she did not knowingly permit her son to enter into any contract to sell the Cemetery Road property since she was unaware of what was taking place. Respondents further argue that Appellant Lollis ratified the contracts. This is not true. Appellant Lollis could not have ratified something she was unaware of. After learning about the contracts with Respondents Dutton, she took action to try to remove Respondents from her property and ultimately filed the underlying action.

Finally, Respondents argue that because Appellant Lollis “acquiesced in the contracts of sale for a long period of time and did not return the consideration paid by the Duttons to her agent, she has ratified her agreements and cannot now rescind them.” As previously argued, Appellant Lollis was unaware of any contract between herself and Respondents and had no discussions with Respondents about their desire to purchase her property. Without any knowledge of the alleged contracts, she could not have acquiesced in the contracts of sale. Therefore, she cannot have ratified the agreements.

Respondents rely upon the large number of deeds and contracts filed with the Clerk of Court’s office which purportedly bear Appellant Lollis’ signature to support their position that Frank Lollis was acting as an agent for Appellant Lollis. Appellant’s trial counsel objected to the admission of these documents on the basis that they were not relevant to the underlying action as most of those documents do not pertain to any transactions with Respondents, nor did they relate to the Cemetery Road property. Respondents argue that the “wide variety of Kathleen Lollis signatures” in the public record support their position that Frank Lollis was the agent for Appellant Lollis. However, there was no testimony or other evidence to establish that Frank Lollis was the one to sign these documents in the name of Appellant Lollis. Furthermore, those documents do not establish that Frank Lollis had any authority to enter into a contract with the Respondents to sell the Cemetery Road property.

### **III. THE TRIAL COURT ERRED IN RELYING ON THE TESTIMONY OF CERTAIN WITNESSES OVER THE TESTIMONY OF APPELLANTS’ EXPERT WITNESSES.**

Respondents argue that the Trial Judge “rightly chose to believe neutral eyewitnesses” over the expert testimony of the forensic document examiner. One of the witnesses relied upon in the Findings of the Final Order (and referred to in the Initial Brief of Respondents) is Heather Fields. Ms. Fields is not a “neutral witness.” Ms. Fields testified that she knew Respondents and

had known them for the past five (5) or six (6) years. Her son went to school with Respondent Kelsey Dutton and she attends Church with Respondents. (R. p. 343, Ins. 12-21) Mrs. Fields acknowledged that she notarized the signature of Appellant Lollis on the Contract of Sale even though she did not see Appellant Lollis sign the contract. (R. p. 354, Ins 4-24) In addition, Mrs. Fields testified that she saw Frank Lollis sign the Contract of Sale dated December 2012. Appellant's trial counsel introduced Mrs. Fields deposition transcript to impeach her. (R. p. 345, In 23-p. 346, In 16 ) In her deposition, Mrs. Fields testified that "On December 17, 2012, Lisa Dutton came to Town Hall....She had brought me this document to be notarized and I notarized the document." (R. p. 354, In 4-p. 356, In 2) After reading her deposition testimony, Mrs. Fields then testified that she may have notarized the document for Respondent Lisa Dutton without having actually seen all of the parties sign the document. (R. p. 355, In 2 – p. 356, In 2) Despite the fact that Ms. Fields notarized a document when she did not see someone sign the same and admitted that she had known Respondents for five (5) to six (6) years, the Court found she was a neutral and credible witness. (R. p. 5, para. 10) This was clearly an erroneous finding by the trial Court.

Respondents also reference the testimony of Nancy Ridley in their Initial Brief. In the Final Order filed on July 6, 2015, the Court found that Frank Lollis signed Lisa Dutton's name on a corrective document to straighten out the manufacturer and model of the trailer in the original contract of sale and further found that his signature was confirmed by two neutral witnesses, John Scurry, Jr. and Nancy Ridley. (R. p. 6, para. 17) It was error by the Trial Judge to make a finding that the signature of Frank Lollis was confirmed by Nancy Ridley. Nancy Ridley did not observe anyone sign the amended contract. On direct examination by Respondents' counsel, Mrs. Ridley testified that she cannot state whether or not Frank Lollis was involved in the straightening out of the title in the original contract of sale. She further testified that she did not see anybody actually working on the papers...(R. p. 434, In. 16 - p. 436, In. 14; p. 441, Ins. 20-24) Accordingly, Nancy Ridley did not confirm the signature of Frank Lollis on the corrective document and it was error for the Trial Judge to find the same.

**IV. APPELLANTS' INITIAL BRIEF DOES NOT CONTAIN MISREPRESENTATIONS.**

Respondents argue that there are numerous insistences in Appellants' Initial Brief that are either misleading or contrary to the facts. This is simply not true. The transcript, documents, and other evidence in the record support the allegations and arguments asserted by Appellants in their Initial Brief. For example, Respondents argue that Appellants misrepresented the evidence by the following statement, "Respondents did not present their own forensic document examiner or any other expert to contradict the expert testimony of Marvin H. Dawson." (Respondents' Initial Brief of Respondents/Cross-Appellants, pg 14, para 9) Respondents did not present a forensic document examiner or any other expert witness. Therefore, the statement made in Appellants' Initial Brief is not a misrepresentation.

Respondents also argue that the following statement is a misrepresentation "all parties involved acknowledge that Appellant Lollis did not receive any money for payment toward her property." (Respondents' Initial Brief of Respondents/Cross-Appellants, pg. 14, para 12) Appellant Lollis testified that she did not receive any money as a payment for the Cemetery Road properties. (R. p. 140, lns. 18-20; p. 143, ln. 24 - p. 144, ln. 1 and p. 144, lns. 19-21) Respondent Lisa Dutton testified that she made payments on her land and trailer to Frank Lollis, Appellant Campbell and her two (2) daughters. (R. p. 461, ln. 24 - p. 462, ln. 5) Respondent Dennis Dutton testified that he made payments to Frank Lollis and that Appellant Lollis would not have known what he was making a payment on. (R. p. 614, lns. 4-19) The checks presented by Respondents at trial as "proof" of payments made towards the Cemetery Road properties were made payable to Frank Lollis. The receipts presented by Respondents at trial as "proof" of payments made towards the Cemetery Road properties were allegedly signed by Frank Lollis (R. pgs. 917-921; R. p. 915; R. p. 916; R. p. 674) Respondent Dennis Dutton testified that his wife (Respondent Lisa Dutton) always filled out receipts and Frank Lollis signed them. (R. p. 619, lns. 6-14) There was no testimony that Appellant Lollis received any money for payment toward the Cemetery Road property. Therefore, the statement in Appellants' Initial Brief is not a misrepresentation.

One final example is Respondents argument that Appellants' Initial Brief misrepresented the evidence by stating, "The Court obviously found Appellants' expert to be reliable." (Respondents' Initial Brief of Respondents/Cross-Appellants, pg 14, para 10) The problem is that

Respondents have taken this one sentence out of context. The next sentence in Appellant's Brief reads as follows, "The Court relied on the conclusions of Appellants' expert that the purported signature of Frank Lollis releasing the lien on the trailer to Respondent Dennis Dutton was a genuine signature." (Initial Brief of Appellants, p. 13) (R. p. 6, para. 19) The point being made here is that the Court relied on the testimony of Appellants' expert in concluding that the signature on the title releasing the lien on the title was a genuine signature. By doing so, the Court obviously found the testimony of Appellants' expert was credible. Even though the Court relied on the opinion of Appellants' expert as to that one signature, the Court disregarded the remaining testimony of Appellants' expert despite the lack of any expert testimony to contradict his conclusions. This was an error by the Court.

**CONCLUSION**

For the foregoing reasons, this Court should reverse the decision of the trial Court.

**TURNER & BURNEY, P.C.**

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**April 15, 2016  
Laurens, South Carolina**

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that the Final Brief of Appellants/Respondents, Reply Brief of Appellants/Respondents, and Respondents Brief of Appellants/Respondents comply with Rule 211(b), SCACR.

April 21, 2016

TURNER & BURNEY, P.C.



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**PROOF OF DELIVERY**

I certify that I have served a copy of the Final Brief of Appellants/Respondents, Reply Brief of Appellants/Respondents, and Respondents Brief of Appellants/Respondents, on Respondents/Appellants, this the 22<sup>nd</sup> day of April, 2016, by hand delivering a copy to their attorney of record, John R. Ferguson, Esquire, at his address below:

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April 22, 2016

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