THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2016-002552

Walter L. Pepperman, II, and T. Ann Pepperman, Appellants,

v.

Henry H. Edwards, and Pamela J. Edwards, Respondents.

Final Brief Of Appellants

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Appellants, Pro Se

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II. Did Not The Courts Below Incorrectly Construe The Residential Property Condition Disclosure So As To Exclude From Its Coverage The Roof Leakage In The Property's Barn?

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STATEMENT OF THE CASE

This civil action was commenced in the Magistrate's Court for the County of Spartanburg on August 3, 2015, seeking damages for the replacement of the roof on the barn of residential equine real property, purchased by appellants from respondents, on account of multiple roof leaks, which rendered that building unsuitable for the housing of appellants' three horses. The existence of the barn and related fenced pasture was an important factor in appellants' decision to purchase the property from respondents, who had developed the property and built the house and barn. Appellants contended that the required residential property condition disclosure statement had represented that there were no roof leaks and that, in any event, the leaking barn roof constituted a latent defect in violation of the implied warranty against such defects which was implicit in the real property sale. Respondents' defense was that they were unaware of any barn roof leaks, and that the property condition disclosure did not apply to the barn. Respondents also filed a retaliatory counterclaim against appellants based on alleged problems with a townhouse conveyed to them by appellants in connection with appellants' purchase of respondents' property.

A trial was held in the Magistrate's Court on November 30, 2015. A decision was ultimately issued by the Magistrate on May 13, 2016, and dated April 29, 2016, in which relief was denied on both appellants' claims and respondents' counterclaim. The essence of the ruling on appellants' claims was that the barn roof did leak, but the property condition disclosure covered only the house and not the barn. However, the decision contained nothing with regard to appellants' latent defect claim.

Appellants filed a Notice of Appeal to the Court of Common Pleas on May 23, 2016. Thereafter, the Magistrate wrote a new opinion differing in several respects from the one appellants had appealed, and included it in its return filed July 29, 2016. Appellants would never have known about this new decision if they had not gone to the Court Clerk's office to inspect the file prior to and in preparation for the hearing on their Notice of Appeal. That hearing in the Court of Common Pleas was held on August

23, 2016.

At the hearing, appellants argued that the Magistrate Court had made two errors of law which required correction on appeal and were within the appellate jurisdiction on the Court of Common Pleas. First, the Magistrate had failed properly to construe the Residential Property Condition Disclosure Statement ("the disclosure") by holding that it did not apply to the barn. Second,the Magistrate failed to apply the law of the State of Carolina relating to the implied warranty against latent defects as set forth in the case of Lane v. Trendholm, 229 SE 2d 729 (Supr. Ct. 1976).

In its Order Affirming The Holding Of The Magistrate Judge dated September 9, 2016, which is the Order here appealed from, the Court of Common Pleas held that the disclosure did not apply to the barn but, as with the Magistrate Court, apparently ignored the implied warranty against latent defects claim and made no ruling with respect to it, although it did acknowledge in its opinion that"Appellants sued Appellees on a latent defect claim."

Appellants did not receive the required written notice of this Order until December 16, 2016.

The Notice of Appeal in this Court was served on December 19, 2016, the timing of which was explained in the affidavit accompanying it. An Amended Notice of Appeal was served on January 10, 2017, to correct a mistake in the form of the caption.

The purpose of this appeal is respectfully to request that this Court reverse these errors of law, with particular emphasis on the implied warranty against latent defects claim, which will be addressed first in the Argument that follows. Appellants will also submit that the courts below did not correctly construe the disclosure, and will also ask this Court to examine certain improper procedures below which appellants believe fail to comport with the fair and orderly administration of justice in this State.

ARGUMENT

I. Appellants Are Entitled To A Judgment On Their Latent Defect Claim Under Settled South Carolina Law Based Upon The Record Below.

It is undisputed that the barn roof leaked in multiple places. The leaks are shown in the color photographs appended to appellants' pleadings in the Magistrate Court (R. pp. 30-34), which were taken on the day they were discovered several months after settlement (R. p.26). And, the Magistrate found as a fact that the barn roof leaked (R. p. 4, line 3; p.6, line 3). The Magistrate also found as a fact that this was a latent situation by referring to evidence that the leaks occurred when water hit the roof from a certain angle (R. p. 6, lines 5-7).). See also R. p. 87, lines 15-17. The Circuit Court Judge referred to the discovery of the leaks "with the first driven rain " that appellants experienced after purchasing the property (R. p.8, lines 3-4), and accurately described appellants' case as a latent defect claim (R. p. 8, lines 4-5). Appellants promptly notified respondents of the latent defect claim after its discovery (R. pp.26 & 35), proved the latent defect with expert testimony (R. pp. 25& 84), and presented that claim to the courts below (R. p. 12, pars. 5 & 8; p. 21, pars. 3-5; pp. 63-64, pars. 7-8; pp. 83, lines 16-25, & p. 84, lines 1-6).

In the light of this acknowledged proof, appellants are at a loss to explain why both courts below chose to ignore the applicable law which required, on this record, a finding in their favor on the latent defect claim and an award to them of the damages they proved in having to replace the defective roof. That law is set out in Lane v. Trenholm, supra.

In that case, the Supreme Court of South Carolina, in holding that caveat venditor is the common law of this State [229 SE2d at 730], said:

> "Under the rule of Caveat venditor, a sale ' raises an implied warranty (against latent defects) from the fairness and fullness of the price paid, upon this clear and reasonable ground, that in the contract of sale, the purchaser is not supposed to part with his money, but in the expectation of an adequate advantage, or recompense.' Champneys v. Johnson, supra, p. 272 (language in parenthesis is my interpolation).'Selling for a sound price raises an implied warranty that the thing sold is free from defects, known and unknown, (to the seller).' Southern Iron & Equipment Co, v. Railway Co., supra, 151 S.C. p. 525, 149 S.E. 271"

* * * *

> "The law should not orphan the purchaser of a house, who has likely invested his life savings, and executed a 20, 30, or 40 year mortgage, by operation of the doctrine of Caveat emptor. Trenholm placed the house in the stream of commerce and exacted a fair price for it. Its liability is not founded upon fault, but because it has profited by receiving a fair price and, as between it and an innocent purchaser, the innocent purchaser should be protected from latent defects."

Lane v. Trenholm, supra. at 229 SE2d 730-731.

Here, the courts below did exactly what Trenholm says should not be done in South Carolina- orphaned appellants as purchasers of improved real estate with a latent defect, i.e. a horse barn with a leaking roof.

It should also be noted that, in the Lane v. Trenholm case, the defendant seller, who was held liable for the latent defect, was not the builder of the house there in question, whereas here the defendant respondents were the builders of the house and barn. And, although the implied warranty breached there was that the house was fit for use as a residence, here the breached implied warranty was that the barn was fit for use as a barn to house horses. While the sale in that case was of just a house with a defective septic system and it was found to be the sale of a product with a clearly defined proposed use [229 SE2d at 730], the same rationale applies here – the sale of the barn as part of the overall real estate transaction was the sale of a product with a clearly defined proposed proposed use – to keep and protect appellants' horses and their food, tack and gear. Indeed, in anticipation of settlement, respondents knew the specific proposed use and built a third stall because appellants have three horses and the barn only contained two stalls. And, it would have made no difference in Trenholm if the house was not new because the defective septic system would still have been a latent defect actionable as a breach of the implied warranty arising from the sale.

In short, the denial to the purchasers of real property developed by respondents of the benefit of an implied warranty against latent defects produces consequences that are unfair and unjust. It leaves a purchaser damaged by a latent defect without a remedy. Here, the courts below expressly acknowledged the existence of the latent defect and yet left appellants without any legal recourse. In fact, the Circuit Court Judge said appellants did not raise errors of law (R. p. 9, line 10), which as

demonstrated above is flatly incorrect. See also in particular R. p. 89, lines 14-19, & p. 91, lines 19-25. The Trenholm case was cited to that Court (R. p. 84, line 20; p. 85, line 14; & p.86, line 4), but was ignored in its opinion (R. pp. 7-9).

The decisions of both lower courts, in failing to address the determinative implied warranty claim, must be reversed. Apparently, they both were too distracted with the disclosure claim to realize that a decision on the beach of implied warranty claim would have rendered it moot.

II. Appellants Are Entitled To A Judgment On Their Misrepresentation In The Required Disclosure Claim.

This is of course an alternative claim that need not be reached by this Court in the event of a favorable decision on Argument I.

The Magistrate Court found that the transaction here in question was subject to the Residential Property Condition Disclosure Statement, which represented that the roof did not leak, but held that the Statement did not apply to outbuildings such as the barn, the roof of which did leak (R. p. 3, lines 12-13; p. 4, lines 1-5; p. 5, lines 12-13& p.6, lines 1-5).

This issue was never raised by respondents with appellants before the trial in the Magistrate Court (R. p. 78, par. 5). Before then, respondents simply denied that the barn roof leaked (R. p. 17, par.2). Accordingly, being surprised at this new contention, appellants addressed it immediately after the hearing in writing in a letter to the Magistrate Judge dated December 1, 2015 (R. pp. 79-81). Although that Judge never even opened the envelope containing the letter (R. p. 78, par. 5) (See also in part Argument III, infra.), it provided in relevant part:

> "At the trial, the Edwards for the first time contended that their disclosure, which was part of the agreement/contract involving 165 Old Melvin Hill Road, Campobello, and which represented that there was no roof leakage, did not cover the barn. The first two pages of that four page document were attached to the Complaint, and the full four pages were handed up to Court at trial. It is entitled State of South Carolina Residential Property Condition Disclosure Statement. The sales agreement/contract itself is entitled Agreement/Contract To Buy And Sell Real Estate (Residential).
> In the latter, the property to be sold is described under the heading 'Property' at paragraph 3 as follows; 'The Seller will sell and the Buyer will buy for the purchase price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems and fixtures, if any, thereon and further described below ...' There then follows identification of the Property as 165 Old Melvin Hill Road, Campobello, State of South Carolina. Zip 29322, County of Spartanburg.
> Accordingly, the residential property involved in this transaction included the barn as an appurtenant interest, improvement and/or fixture thereon. And, this is the same residential property to which the disclosure attached to the agreement/contract applied.
> Attached hereto is a copy of page 1 of the agreement/contract containing the above quoted terms. If the barn was covered by the sales agreement/contract, it was covered by the appended disclosure. It was part of the residential property that was being sold and purchased, and the condition of which was being disclosed."

(R. p. 79).

In the Court of Common Pleas, the Judge said " The real estate contract may include the barn, outbuildings, or other structures, but they are not included in the Disclosure Statement since they are not categorized as a dwelling unit."(R p. 9, lines 6-7), apparently relying on a statutory definition of real property meaning "the lot or parcel and the dwelling unit described in a real estate contract subject to this article." (R. p. 8, line 22). This is a narrow construction of that statutory definition. If the statutory scheme is intended to protect the home buying public in South Carolina as that Court said (R. p. 9, line 8), the statute should be construed broadly so as to extend such protections to the greatest extent reasonably possible.

The " lot or parcel ... described in a real estate contract subject to this article" portion of this definition (R. p. 8, line 22) should therefore be broadly construed to include appurtenant interests, improvements, and/or fixtures thereon as part of the residential real property being conveyed and as specifically included in the language of the standard South Carolina residential real estate contract (R. p. 46, par.3). There can be no logical reason for such not to be included as "Property" as that term is defined in the standard contract (R. p. 46, par. 3). Why shouldn't the document entitled "Residential Property Condition Disclosure Statement " (R. p. 58, title) relate to and cover the condition of the entire residential property being conveyed? Why shouldn't purchasers of residential real estate be protected from latent defects in the property that involve some aspect of it in addition to the house?

Indeed, many paragraphs of the disclosure itself demonstrate that it applies to the whole property conveyed and is not limited to the residence, i. e. #14 Environmental hazards, #15 Nuisance affecting the property, #17 Code or zoning violations, #18 Restrictions on property use, #19 Utility or other easements or encroachments from adjacent property, #20 Lawsuits or other legal proceedings involving the property, #22 Flood hazards, and #23 Contracts in place regarding the property (R. p. 60). Moreover, there is no reason why, for instance, the condition of #1 structural components, #4 electrical systems, #5 plumbing systems, #6 heating and air conditioning, etc. (R. p. 59) in any outbuilding,such as a garage, workshop, garden shed, cottage, or barn would not be covered.

Accordingly, the representation in the disclosure at #2 that there was no roof leakage or other problem (R. p. 59, par. 2) related to the condition of the residential real estate being sold, which in this instance included the barn as an appurtenant interest, improvement and/or fixture situated thereon in accordance with the underlying Contract to Buy and Sell real estate (R. p. 46, par.3).

The construction of these documents was an issue of law. The lower courts in this case misconstrued these documents and thereby committed legal error. This Court should properly construe the documents as set out above, and the lower courts should be reversed on this issue.

III. The Procedures/Events In The Lower Courts Described Herein Fail To Comport With The Fair And Orderly Administration Of Justice.

As referred to previously, the Magistrate Judge refused to consider appellants' written position on what turned out to be the decisive issue in that Court by not even opening the envelope containing it after the trial (R. p. 78, par. 5).

Following the filing of appellants' Notice of Appeal from the Magistrate Court's decision and opinion dated April 29, 2016 (R. pp. 62-64), a copy of which was sent to the Magistrate (R. p. 74), the Magistrate upon apparent review of that detailed Notice proceeded to write a new decision and opinion dated July 25, 2016 and to send it to the appellate Common Pleas Court with the return (R. pp. 5-6), giving no notice of it to the parties (R. p. 77, lines 9-10). This appears to have been an effort to shore up its original decision and opinion (R. p. 87, lines 15-17), but it was not the decision and opinion from which appellants had appealed.

The Court of Common Pleas, sitting as an appellate court on appellants' appeal from the Magistrate Court, never gave written notice of its decision on appeal to the parties (R. pp. 96 & 97), even though that Court had their mailing addresses and asked for their e mail addresses at the end of the appeal hearing (R. p. 90, lines 10-25)..

Appellants would never have known about any of the above had they not contacted the Clerk of Court, the first two events set out above by going to the Clerk's office to review the file in advance of and in preparation for the appeal hearing (R. pp. 75 & 76), and the third event by contacting the Clerk's office about having heard nothing about a decision from the Court after three months had passed from the appeal hearing (R. p. 96).

Appellants refer this Court to their letter to the Clerk dated August 24, 2016. with enclosures, with respect to the circumstances underlying the above first two points (R. pp. 77-81), and to the Affidavit of Walter L. Pepperman II filed in connection with the filing of the Notice of Appeal in this Court and covering the third point (R. pp. 94-95).

While not the subject of any specific request for relief for them in this Court, appellants believe that these transgressions merited being made known to this appellate tribunal because on their face they fail to comport with the fair and orderly administration of justice in this State and in the hope that some corrective action can be taken so as to avoid their repetition insofar as other litigants are concerned in the future.

CONCLUSION

As noted previously, the Circuit Court Judge said that appellants did not raise errors of law for its consideration (R. p. 9, line 10). This is belied by the Notice of Appeal that appellants presented to that Court (R. pp. 62-73), and is proven to be incorrect by the foregoing Arguments I and II. Based upon those arguments and the analysis and authorities therein, appellants respectfully request that the lower courts be reversed, and that this Court direct that judgment be entered in their favor and against respondents in the amount of $2000, with interest from April 29, 2015 (R. p. 15) as appropriate, plus all court costs in all three courts, including an expert witness fee of $100 for expert trial testimony on the cause of the barn roof leaks and the cost of replacing the defective barn roof (R. p. 25 & p. 15).

September 5, 2017

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