

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 REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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INTRODUCTION

SCACR 208(b)(4)

Under SCACR 208 dealing with Initial Briefs, subsection (b)(4) is entitled "References to Record" and provides as follows:

"The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal ... to support the salient facts alleged."

The Brief Of Respondents contains no such references, nor any indications as to where there will be such references in their Final Brief (like appellants did with the indications R. ___ in their Initial Brief).

Accordingly, appellants are unable effectively to reply to statements in respondents' brief that do not show where there will be record support. Appellants further suggest that, in the light of this violation of SCACR 208(b)(4), this Court should not accept any salient facts alleged by respondents that are not substantiated by specific record support.

RESPONDENTS' STATEMENT OF THE CASE

There are three statements in Respondents' Statement Of The Case that nevertheless merit clarification or correction via this Reply.

At page 3 in referring to the Magistrate Court decision, respondents say "Nothing was acknowledged or addressed about a latent defect claim." This is correct insofar as the Magistrate's first decision (dated April 29, 2016) is concerned, where he simply ignored that aspect of appellants' case. But, it is incorrect when the Magistrate's second decision (dated July 29, 2016) is considered, which was issued after he saw appellants' Notice of Appeal to the Court of Common Pleas and realized he had not dealt with that part of appellants' case. In that decision, he acknowledged the existence of appellants' latent defect claim by referring to appellants' undisputed expert testimony dealing with the cause of the roof leaks at the trial. For more on this see Argument I infra.

Respondents then continue on page 3, regarding the hearing in the Court of Common Pleas, alleging that: "Appellants ... tried to enter new evidence and testimony not presented at the magistrate trial." That this is untrue is demonstrated by the transcript of that hearing, a copy of which appellants suspect respondents never ordered, but which will be included in the Record on Appeal at R. pp. 82-92 , and which shows that no such thing occurred.

Also on page 3, and referring to the Order of the Court of Common Pleas, respondents say that it "... did not acknowledge that any latent defect was proven". That Order expressly recognized that appellants made a latent defect claim (R. p. 8, lines 4-5), but failed to deal with it at all and limited its holding to the property condition disclosure issue, despite appellants having squarely presented the latent defect issue of law to it at the hearing with the citation of legal authority (R. p. 84, lines 3-6 & 19-20; p. 85, lines 14-25; and p. 86, lines 1-5).

Finally, respondents refuse to accept that the appeal to the Court of Common Pleas was based upon what appears on the face of the Magistrate Court's decisions, and this appeal is based on what appears on the face of the Court of Common Pleas decision and order. These are the places where the errors of law were made that appellants are asking this Court to correct and reverse.

ARGUMENT

I. THE FAILURE TO DECIDE THE LATENT DEFECT CLAIM WAS AN ERROR OF LAW

In their Supplement to Complaint in the Magistrate Court, appellants alleged that the barn roof leaked because the roof shingles had been installed incorrectly, and that the respondent sellers were the ones who installed the roof shingles incorrectly as they built the barn (R. p. 12, pars. 5 & 8). As the Magistrate Court's second decision shows (R. p.6, lines 5-7), the resulting latent defect claim was the reason for the expert testimony of the roofing contractor about the leaks (R. p. 25). This was separate and apart from the property condition disclosure claim, which the Magistrate clearly recognized after receiving appellants' Notice Of Appeal to the Court of Common Pleas (R. p. 74) and which then resulted in his filing a new second decision referring to that testimony (R. p. 6, lines 5-7).

Respondents at page 4 of their brief acknowledge the existence of this expert testimony, including how it described the incorrect installation of the shingles. Respondents also there claim: "Respondents could not prove the shingles were installed correctly". However, they gave no testimony at all about the shingles and never contested that they installed them (R. p. 84, lines 13-17).

Respondents claim at page 4 that appellants' letter to the Magistrate sent after the trial was "... trying to present testimony and evidence not heard at trial (sic)". As explained in appellants' Initial Brief at page 7, that letter was sent because respondents had never raised any issue about the property condition disclosure not covering the barn until the parties were actually in trial. Accordingly, appellants were surprised and attempted to address that issue in the letter, which as it turns out the Magistrate never opened even though he sat on the case without deciding it for just under five months. The letter went to the very point on which the Magistrate decided against appellants on the property condition disclosure claim and was intended to assist him in deciding that issue correctly. See Argument II, infra.

Overall, a reading of respondents' Argument I shows that there was evidence supporting appellants' latent defect claim at the trial in the Magistrate's Court, notwithstanding their claims to the contrary.

In their last paragraph on page 5, respondents try to give short shrift to the applicability of the controlling Supreme Court case of Lane v. Trendholm, 229 SE2d 729 (Supr. Ct. 1976), relied upon by appellants and dealt with at length at pages 4-5 of their Initial Brief. While the house in that case may have been new, that does not change the fact that any sale of property gives rise to the implied warranty of fitness which is breached by the existence of a latent defect in the property sold. The Court of Common Pleas here knew that this was a latent defect claim arising out of the sale of property by respondents to appellants (R. p. 8, lines 4-5), that the defect was a leaking barn roof (R. p. 8, lines 1-4), and that appellants were relying on Lane v. Trendholm, supra. expressly cited to the Court (R. p. 84, lines 19-20; p. 85, lines 14-15; p. 86, lines 4-5; and p. 92, lines 6-14), but nevertheless and without explanation failed to decide that issue. See full explanation of issue in the Notice Of Appeal in that Court at R. pp. 63-64, par. 7). This was an error of law that must be reversed.

II. THE MISCONSTRUCTION OF THE PROPERTY CONDITION DISCLOSURE WAS AN ERROR OF LAW

Respondents' Argument II at page 8 of their brief is really not responsive to the detailed legal analysis set out in Argument II at pages 7-9 of appellants Initial Brief, and essentially leaves that Argument undisputed.

Notwithstanding respondents' "surprise", appellants were asking the Magistrate to find that the property condition disclosure did cover out buildings such as the barn, and the Magistrate's incorrect decision in that regard was a legal error brought to the Court of Common Pleas for correction which, unfortunately, was not corrected there and is now before this Court for correction.

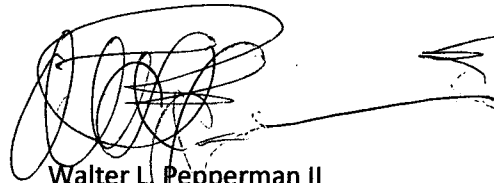
Respondents' comment concluding their page 6, about whether they should have known or did know about the latent defect is irrelevant. If there was a latent defect in the property they sold, they are legally responsible for it's repair whether they knew about it or not.

III. CERTAIN OCCURENCES IN THE LOWER COURTS FAILED TO COMPORT WITH FAIRNESS AND LEGAL ORDER

Appellants made this Argument at pages 10-11 of their Initial Brief in order to bring the matters set forth therein to the attention of this Court and for the benefit of future litigants, not the parties to this case as to which there would be no remedy. Appellants' reference to these procedures/events in the lower courts were directed to this Court hopefully taking some corrective action vis a vis those courts, not respondents. Accordingly, respondents allegations of error by appellants are non responsive and do not merit any reply except to say that they are denied and that there was never any issue in the Court of Common Pleas about a transcript of the Magistrate Court hearing.

CONCLUSION

On the basis of the foregoing Arguments and those set forth in appellants' Initial Brief, appellants respectfully request that the relief prayed for in the Conclusion to that brief at page 12 be granted. Two legal errors were presented to the Court of Common Pleas, in accordance with its statement made three times at the hearing (R. pp. 89, lines 14-19; p. 91, lines 19-21; and p. 92, line 2) that it only had jurisdiction to address legal errors. Those were that the Magistrate failed to deal with the latent defect claim under the implied warranty law of this State arising from the underlying real estate transaction, and that he misconstrued the required property condition disclosure. While the Common Pleas Court Judge said that he understood that these were the errors of law presented to him (R. p. 91, lines 22-25, and p. 92, lines 1-2), he ignored the first error despite the controlling law being cited to him, and he got the second one wrong.



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September 5, 2017