



Defendant Realtor acted as agent for Milton and Teresa Rollins, sellers of the Subject Property. Shortly after the purchase of the property, the neighbor, Mr. Dennis Turner attempted to assert claim to portions of the front yard of the Griffins and began to erect a fence. By Order of the Master in Equity, Mr. Turner was directed to take down the fence and not to place any obstruction on the Griffin property.

The historical facts regarding the land upon which the Subject Property sits are significant. In 1972 W.M. Gregory, a developer and his daughter, Barbara Parr, developed and conveyed residential lots to various purchasers in the subdivision where the Subject Property is located. Dennis Turner owns the property located at 9 Lake Selisa Drive. He is the adjoining landowner. In August of 2007, Turner acquired a quit-claim deed that purportedly granted him an ownership interest in both the paved portion of Lake Selisa Drive and the abutting properties within a fifty (50) foot right of way of the street. The Plaintiffs allege that shortly after the quit-claim deed was recorded, Mr. Turner began giving notice of his ownership of Lake Selisa Drive to adjoining landowners.

On January 16, 2015, Milton and Teresa Rollins sold the Subject Property to the Plaintiffs via general warranty deed prepared by closing attorney Richard Taylor. In connection with this transaction, Mr. Taylor prepared a Deed of Easement which conveyed to the Griffins the right to ingress and egress the Subject Property. In exchange for this easement, the Rollins paid Mr. Turner one thousand and five hundred dollars (\$1,500.00). The Plaintiffs claim; however, that they had no knowledge of any conflict or property dispute with Mr. Turner. They claim that knowledge of this conflict was fraudulently withheld from them by Defendant Realtor. Defendant Realtor denies having any prior knowledge of Mr. Turner's claims to the Subject Property.

The essence of the Plaintiffs' claim is that the Defendant Realtor was negligent in failing to disclose Mr. Turner's history of attempting to exercise control and limit access to the Subject Property and for failing to ensure that her clients- the Rollins- disclosed this information on the South Carolina Residential Property Condition Disclosure Statement.

Defendant Realtor was previously involved in Civil Action No. 2017-CP-02-01437 where the Plaintiffs brought claims against Fidelity Bank, Milton P. Rollins, Teresa F. Rollins and Shannon Rollings, d/b/a Shannon Rollings Real Estate, LLC. A voluntary dismissal of Defendant Realtor without prejudice was entered on December 11, 2017. The present action was served upon the defendants in September 2018. Plaintiffs seek to consolidate this action with Civil Action No. 2017-CP-02-01437. The same causes of action for negligence are present in both as it relates to Defendant Realtor.

#### **STANDARD OF REVIEW**

Rule 56(c) of the South Carolina Rules of Civil Procedure states that a motion for summary judgment must be granted, if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgments as a matter of law." *Bennett v. Carter*, 421 S.C. 374, 379, 807 S.E.2d 197, 200 (2017). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 747 S.E.2d 178 (2013); *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 746 S.E.2d 35 (2013).

Summary judgment is warranted when plain, palpable, and undisputable facts exist on which reasonable minds cannot differ. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C.

432, 814 S.E.2d 643, 654 (Ct. App. 2018), rehearing denied (June 21, 2018) (citing *NationsBank v. Scott Farm*, 320 S.C. 299, 302-03, 465 S.E.2d 98, 100 (Ct. App. 1995)). A grant of summary judgment expedites the disposition of cases not requiring the services of a fact finder. *Cunningham v. Anderson City*, 414 S.C. 298, 301-02, 778 S.E.2d 884, 886 (2015) (citing *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003)). To survive a motion for summary judgment a plaintiff must offer evidence of a genuine issue of material fact with regard to each element of each cause of action. *McLaughlin v. Williams*, 379 S.C. 451, 665 S.E.2d 667, 456, 670 (Ct. App. 2008).

### **FINDINGS**

The Plaintiffs seek damages for the Defendants Realtor's alleged "gross negligent failure to provide them with a Disclosure Statement that contained complete and honest information that had been at least reviewed and signed by the sellers of the property . . ." See, Complaint, ¶¶ 11 and 13. The Plaintiffs, further, contend that the Defendant Realtor "knowingly and falsely marketed the property without ever disclosing the property claim of an adjoining neighbor." *Id.* The Defendant Realtor asserts that she had no knowledge of any issue regarding title to the Subject Property at the time the disclosure statement was made. The affidavits of Shannon Rollins are uncontroverted with the material submitted by the Plaintiffs.

The Court finds that there are no genuine issues of material fact with regard to the Plaintiffs' claims, and summary judgment is appropriate at this time.

#### **I. The Court finds that Defendant Realtor complied with S.C. Code Ann. § 27-50-70.**

Pursuant to South Carolina law, a real estate brokerage firm or agency providing services to a client, through an agency agreement is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. S.C. Code Ann. §40-57-350(A). As

agent for the sellers in the real estate transaction at issue, the Defendant Relator owed no duty to the Plaintiffs, buyers of the Subject Property, to discover any issues regarding the title of the Subject Property. Her duties were to the sellers, only. S.C. Code Ann. §40-57-350(C).

The Residential Property Condition Disclosure Act sets out specific duties that listing agents and/or selling agents must comply with regarding such disclosures. *See*, S.C. Code Ann. §27-50-10, *et seq.* As agent for the sellers in the real estate transaction, the Defendant Realtor had a duty to “inform in writing each owner covered by the listing agreement of the owner’s obligations” regarding the disclosure statement. S.C. Code Ann. § 27-50-70(A). This same provision of the Code goes on to detail, in pertinent part, that: “[i]f the listing agent performs this duty, [s]he is not liable for the owner’s refusal or failure to provide a prospective purchaser with a disclosure statement. *Id.* What is more is that the listing agent or selling agent is not liable to a purchaser if “(1) the owner provides the purchaser with a disclosure statement that contains false, incomplete, or misleading information; and (2) the real estate licensee did not have reasonable cause to suspect that the information was false, incomplete, or misleading.

The Defendant Realtor was hired by the Rollins, then owners of the Subject Property, as their agent in May of 2014. *See*, Affidavit of Rolling, ¶ 3. Prior to being contacted and hired by the Rollins, the Defendant Realtor was not familiar with the Subject Property. *Id.* at ¶ 4. At the time the Defendant Realtor had the Plaintiffs complete the Disclosure Statement, she had no actual or constructive knowledge of any title issues related to the Subject Property nor was she aware of any disputes with Mr. Turner. *Id.* at ¶ 6. She had no reason to believe that the information provided by the Rollins was false, incomplete, or misleading. *Id.*

What is more is that the Defendant Realtor heard nothing more regarding Mr. Turner’s claim or any disputes regarding the title to the Subject Property until January 15, 2015, a day

prior to the scheduled closing. *Id.* at ¶ 11. It was then that she was informed by the closing attorney, Mr. Taylor, that it was necessary to obtain an easement from Mr. Turner prior to closing. *Id.* Importantly, during this conversation, Mr. Taylor informed the Defendant Realtor that the Rollins would need to pay Mr. Turner \$1500.00 (fifteen thousand dollars) in exchange for the easement. *Id.* at ¶¶ 11. Monumental is the fact that neither the Defendant Realtor, nor anyone from her office played a part in negotiating the easement or the amount of the related payment with Mr. Turner. *Id.* at ¶ 13.

Based upon the evidence before the Court, it was only after receiving notice of the required easement and negotiation that the Defendant Realtor's office made contact with the Rollins regarding the payment of funds which they agreed to have deducted from the proceeds from the sale of the Subject Property. *Id.* at ¶ 12. *See also*, Exhibit A to Affidavit of Rollings.

The Plaintiffs, ironically, allege that prior to closing on January 16, 2015, they were:

[U]nacquainted with any of the residents of Lake Selisa Drive; unacquainted with the abutting property owner Dennis Turner and his seven year history of attempting to exercise ownership of Lake Selisa Drive, its right-of-way, and the front yards of adjoining lot owners; . . . unaware that Dennis Turner claimed colorable title to a cross section of [their] front yard . . .

Complaint, ¶ 8. There is; however, ample evidence in the record demonstrating that the above allegations are simply untrue. The Plaintiff Daniel Griffin, himself, was well aware of the negotiated easement and related payment prior to closing on the Subject Property; such is, in the very least, evidenced by his receipt of an email from his agent, Grant Sutton. *See*, Affidavit of Rolling, ¶ 14. *See also*, Exhibit B to Affidavit. Therein, the Plaintiffs' realtor indicates that he had contacted the Defendant Realtor and informed her of the issues regarding title and the resolution thereof. *Id.* Also significant is the fact that the Plaintiff Daniel Griffin, met with Mr. Turner and his wife regarding the resolution of the property dispute on the Wednesday prior to

closing and it appears that they were able to establish a “good relationship,” *Id.* at ¶ 15., *See also*, Exhibit C to Affidavit. Furthermore, the closing attorney discussed the easement and its legal significance with the Plaintiffs on the date of the closing. *See*, Dep. of Taylor, pg. 56, lines 14-25 through pg. 58, line 1, attached hereto as Exhibit H.

The evidence presented clearly shows that Defendant Realtor complied with the applicable laws and duties throughout this transaction and could not be expected to foretell further events between Plaintiffs and their neighbor, Dennis Turner.

Based upon the absence of any issue of material fact, in this regard alone, the Court finds that the Defendant Realtor is entitled to summary judgment as a matter of law.

**II. The statute of limitations, applicable to Plaintiffs’ claims as plead, has run.**

The Defendant Realtor, additionally, raised the statute of limitations as an affirmative defense in her Answer to the Plaintiffs’ Complaint.

In this regard, the Court is in receipt of and has considered the Plaintiffs’ *Motion for Summary Judgment on Defendant Shannon Rollings’ Statute of Limitations Defense*, filed on November 27, 2018. The Plaintiffs contend that their action is founded upon a title to real property and that the Disclosure Statement is a real estate service or devise that specifically relates to their interest in title to real property. It is based upon this that they contend the ten year statute of limitations, provided under S.C. Code Ann. § 15-3-350, is applicable to their present action.

The code provision relied upon by the Plaintiffs, entitled *Action founded on title or for rents or services*, provides:

No cause of action or defense to an action founded upon a title to real property or to rents or services out of the same shall be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor

of such person, was seized or possessed of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made.

S.C. Code Ann. § 15-3-350.

The Defendant Realtor disagrees and, instead, insists that the three-year statute of limitations is applicable. At the hearing, Defendant Realtor argued that the Plaintiffs are attempting to disguise their action, clearly one based in tort, as one for title to real property. The Court agrees.

In support of this position, Defendant Realtor relies upon the case of *Palmetto Co. v. McMahon*, 395 S.C. 1, 716 S.E.2d (Ct. App. 2011). There the plaintiff made the same argument that the Plaintiffs are attempting to make here. In that case, the parties entered into a written lease agreement. *Id.* The plaintiff, thereafter, filed an application and affidavit for collection of rent. *Id.* The magistrate determined that the applicable statute of limitations was ten years under §15-3-350. The Court of appeals, *unpersuaded by the labeling of plaintiff's claim* as one for distraint, found that the claim arose out of contract and not title to real property and determined that the three year statute of limitations was appropriate.

Moreover, during oral arguments, the Court specifically asked Plaintiffs' Counsel whether his clients had title to the property and counsel answered in the affirmative. As such, the action brought by the Plaintiffs is not the type of action that the legislature intended to be covered by §15-3-350. The Court finds that the Plaintiffs have not brought an action seeking to recover title to the Subject Property. They have, instead, brought a negligence action for damages based solely in tort. Therefore, the applicable statute of limitations is three years. *See*, S.C. Code Ann. § 15-3-530 (Code provision under the Article entitled *Actions Other than for Recovery of Real Property*).

The Plaintiffs stipulated to the dismissal of the Defendant Realtor from the active civil case, 2017-CP-02-1437, on December 11, 2017 and had a right to refile an action against Defendant Realtor. They simply chose not to do so within the applicable time period.

Consequently, the Court finds that the applicable statute of limitations for Plaintiffs' action has run and this action is barred.

**CONCLUSION**

Based upon the above, Plaintiffs cannot maintain an action against Defendant Realtor based upon the allegations of the Complaint. Therefore, the Court finds that Defendant Realtor's Motion for Summary Judgment should be granted. Accordingly, the Defendant's Motion for Summary Judgment is **GRANTED** and the Plaintiffs' case is hereby **DISMISSED** with prejudice.

**AND IT IS SO ORDERED.**

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The Honorable Doyet A. Early, III  
Chief Admin. Judge, Second Judicial Circuit

January \_\_, 2018  
\_\_\_\_\_, SC



Aiken Common Pleas

**Case Caption:** Gary Griffin , plaintiff, et al VS Shannon Rollings , defendant, et al  
**Case Number:** 2018CP0202060  
**Type:** Order/Summary Judgment

So Ordered

s/D.A. Early III 2136