THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2019-000120

Gary Griffin and Rachel Griffin,

Plaintiffs/Appellants,

v.

Shannon Rollings, d/b/a Shannon Rollings Real Estate, LLC,

Defendant/Respondent.

[INTIAL] REPLY BRIEF OF APPELLANT

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I. THE BUYERS WERE NOT AWARE OF THE ADJOINING LANDOWNER'S CLAIM TO THEIR FRONT YARD

Respondent Realtor contends that "there is no dispute that the Griffins had notice of the issues with Mr. Turner's claims to the Property." [Respondent's Brief, P. 8, 20, 21]

Despite all the discussion between the interested parties about the easement, Respondent Rollings has pointed to no evidence that anyone specifically informed the Griffins that Turner had a claim to their front yard. While the Griffins admit that they were repeatedly informed about receiving an ingress-egress easement at closing, they were not informed about Turner's claim to their property.

The closing attorney explained to the Griffins that the easement would guarantee them right of access to their property over the roadway of Lake Selisa Drive: "the purpose of the Deed of Easement was what? ... to remove any doubt that the purchasers had an absolute right to use the roadway [Lake Selisa Drive], for ingress and egress ... I showed it to them at closing." [Taylor Depo. P. 56, L. 9 to P. 57, L. 1] The Griffins testified, "Richard Taylor ... told us that it was to access our property ... the easement was for our protection, that they had it straightened out ... that was the extent of it." [Griffin Depo. P. 216, L. 8-21]

Contrary to the entire argument of the Respondent, there is no law, custom, usage, or reasonable inference that when purchasers of real property are given a roadway easement at closing guaranteeing their right to travel down the street to their property, the purchasers are charged with notice (constructive or inquiry notice), that the grantor of the easement also claims ownership of the purchasers' adjoining front yard. There simply is no logical or reasonable connection between the purchase of a street easement on one hand, and an adverse property claim to a portion of an adjoining front yard on the other hand. Awareness of the former does not reasonably, legally, or logically, suggest any form of notice of the latter.

When the Griffins were asked, "Did the Rollins at any time, or anybody else inform you that, when you moved into this house, when you took title to this house and moved in it, that a neighbor had a legal claim to half your front yard," Mr. Griffin responded, "No... No. No, sir." [Griffin Depo. P. 207, L. 11-21] In addition, both of the Griffins presented supporting affidavits to the trial court below that prior to their purchase of the property they were completely unaware of Turner's encroachment and ownership claim to their front yard. [R. Grif. Afd. Par. 2, 6; G. Grif. Afd. Par. 2, 5]

While Respondent's "Reply" does point out numerous pages of testimony confirming the Griffins' awareness of road access easement, the

Realtor does not responsively point to any evidence that distinguishes the Griffins discernable awareness of Turner's ***adverse claim against their land.***

II. DEFENDANT REALTOR DID NOT COMPLY WITH THE REQUIREMENTS OF THE RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT

The Residential Property Condition Disclosure Act does not require the Griffins to prove that the Realtor had actual notice of Turner's adverse property claim to the Griffins' front yard. S.C. Code Ann. § 27-50-70(B) (2018) imposes liability on a real estate listing agent who had "***reasonable cause to suspect*** that the information [in the Disclosure Statement], was false, incomplete, or misleading." [Emphasis added] Contrary to the arguments of the Respondent, the Griffins presented to the trial court evidence that Rollings had reason to suspect that there was a problem with the land actually purchased by the Appellants. The Griffins claim to be victims of the (legally required), marketing paperwork of the realtor.

The Griffins contend that because Rollings' (and/or her office staff), possessed advance knowledge about the payment of the $1,500.00 for the easement, the real estate broker had the requisite "reasonable cause" "to suspect" the Disclosure Statement was false and misleading.

Both realtor Rollings and the prior owners, Milton and Teresa Rollins, actually knew before the closing date, that Dennis Turner wanted to be compensated for the destruction of his fence that had been located at least partly in the Griffin's front yard. Turner was not going to sign the Deed of Easement until he was compensated $1,500.00 which he calculated to be the amount of damage to his property.

When Turner was asked how he arrived at the $1,500.00 figure to charge for the easement, he testified, "... there was a matter of Rollins had destroyed *our fence ...* " [Turner Depo. P. 19, L 7-20] Turner added, "Rollins is the one responsible for those damages and Rollins will pay for it. And I believe the closing statement accordingly shows that it came out of Rollins proceeds from the sale." [Turner Depo. P. 20, L. 4-8]

Respondent Rollings admitted in her affidavit that "the day before closing, the closing attorney, Richard W. Taylor contacted our office and informed us ... that in order to have Mr. Turner sign the easement, the Rollins had to pay $1,500.00 to Mr. Turner." [Rollings Afd. Par. 11] Rollings further admitted that "Buddy Whitmir with our office [Shannon Rollings Real Estate] spoke with the Rollins who agreed to have the $1,500.00 deducted from their sale proceeds." [Rollings Afd. Par. 12]

The key allegation ignored by the trial court was Teresa Rollins

testimony that, "We paid the $1500 because ***we were told by our realtor*** [Shannon Rollings], that Mr. Turner honestly felt like one of our renters had damaged a fence and that he would write a letter of easement if we would pay the $1500 for --- we didn't pay for an easement. We paid for what Mr. Turner believed was damage to his fence by one of our renters." [Rollins Depo. P. 51, L 8-14] When specifically asked if they knew where the subject fence was located and had they seen it, both Rollins responded, "But it was on the grass. Yes." "Yes we had seen it." [Rollins Depo. P. 51, L 18 – P. 52, L 2]

Both Rollings and the Rollins possessed actual knowledge before the closing date, that adjoining neighbor Dennis Turner was allegedly owed $1,500.00 for damage to his fence and that the easement money was a means to obtain payment for past property damage. Turner was willing to sign a Deed of Easement if he was compensated $1,500.00 for past damage to his fence located at least partly in the "grassy" section of the Griffins' front yard. Because the sellers, the Rollins, were "told by their realtor" that they had to pay for damage to Turner's fence, the realtor had compelling *"cause to suspect* that the [encroachment], information [in the Disclosure Statement], was false, incomplete, or misleading." S.C. Code Ann. § 27-50-70(B) (2018)

Yet, the most compelling evidence that the Realtor failed to comply with the Residential Property Condition Disclosure Act involved Rollings failure

to meet the requirements of S.C. Code Ann. § 27-50-70(A) (2018). The listing agent was suppose to "inform" the Rollins of their "prescribed" disclosure "obligations." The trail court erroneously ignored material evidence that the Disclosure Statement was a fabrication created intentionally, or by gross negligence, in the realty office of the Respondent. Rollins never actually signed or initialed the Disclosure Statement that was provided to the Griffins. [Rollins Depo, P. 39, L. 22 to P. 42, L. 2] The sellers were never shown the Disclosure Statement until their own lawyer showed it to them months after the closing. [Rollins Depo, P. 39, L. 11 to P. 40, L. 9; P. 41, L. 6 to 11] Realtor Rollings never got the Defendant sellers, Milton and Teresa Rollins, to personally review and actually sign the form. Instead, someone from Rollings office called Teresa Rollins on the telephone and orally requested some of the disclosure information used in the form, but never actually showed the Rollins the completed disclosure form. [Rollins Depo, P. 41, 54, 56, 58] [1]

Rollings mishandling of the form, violated the realtor's legal obligation to "inform" the Rollins in good faith of their "prescribed" disclosure

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[1] Respondent repeatedly argued that she cured the "initial" misleading Disclosure Statement by "uploading" an "updated Disclosure Statement" which contained information that was not misleading. [Respondent's Brief, P. 6, 7, 17] Rollings pointed to no evidence that the Griffins were made aware that the form they executed had ever been revised, corrected, or "updated."

"obligations." S.C. Code Ann. § 27-50-70(A) (2018). Teresa Rollins testified that if she had ever been shown the Disclosure form she would have checked the boxes "no representation," with regard to adverse claims and encroachments. [Rollins Depo, P. 44, 45]

III. THE TEN YEAR STATUTE OF LIMITATIONS, S.C. CODE ANN. §15-3-350, APPLIES TO PERSONS WHOSE RIGHT OF ACTION ARISES UNDER TITLE TO REAL PROPERTY

Respondent Realtor contends that the ten year statute of limitations does not apply to the Griffins' case because a Disclosure Statement "may be a disclosure about or concerning the title to real property but is not 'founded upon' or derived from the title." S.C. Code Ann. § 15-3-350. Further, Respondent argues that a defective "disclosure form" "does not ... create a defect in title," pursuant to the express language of S.C. Code Ann. § 27-50-50(B)(2). [Respondent's Brief, P. 12, 13]

First, the Appellants responsively contend that the ten year statute of limitations would apply to this case because the following highlighted language in the statute expressly provides actionable standing to the Griffins under the ten year law:

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 (2018).

The "cardinal rule of statutory construction" mandates that the words used by the legislature "must be given their plain and ordinary meaning." *Hitichi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, at 178, 420 S.E.2d 843, at 846 (1992) The highlighted words emphasized above are without ambiguity.

The Griffins are such "person[s] under whose title the action is prosecuted." Because the Griffins own the land "in question," they have the lawful right to bring the action. Having purchased the property, they were "seized or possessed of the premises in question." The Griffins seek redress for "the committing of the act in respect to which such action is prosecuted." The publication of a materially false and misleading Disclosure Statement was the "committed" "act" that is being "prosecuted."

Such a "committed act" would not be actionable by the Griffins but

for their taking title to the property, or they being the "person[s] under whose title the action is prosecuted." The cardinal rule of statutory construction would not reasonably give any other "plain and ordinary" meaning to the critical words of S.C. Code Ann. § 15-3-350 (2018). Griffins' case is "an action *founded upon a title to real property ... or services out of the same.*"

Griffins agree with the Respondent's argument based on S.C. Code Ann. § 27-50-50(B)(2), that the Realtor's "failure to provide the disclosure form" to the Griffins "does not ...create a defect in title." [Respondent's Brief, P. 13] The defect in the Griffins' title was created by the adjoining neighbor's historical attempts to encroach upon the Griffins property. The Griffins are the persons "seized of the premises" "***under whose title*** the action is prosecuted." The publication of the defective Disclosure Statement was the relevant **"act" "committed"** by the Realtor that mislead the Griffins into purchasing the "premises in question."

Contrary to the argument of the Respondent, S.C. Code Ann. § 15-3-350 does not require that the Disclosure Statement "be founded upon or be derived from title." Rather, the statutory language highlighted above requires that the "cause of action" be "founded upon a title."

Second, the legislature of South Carolina expressly defined the "Scope" of the Residential Property Condition Disclosure Act at S.C. Code Ann. § 27-

50-20, to include such "causes of action" as has been brought by the Griffins. The Disclosure Statement law provides:

> This article applies to the following ***transfers of residential real property*** consisting of at least one but not more than four dwelling units: (1) sale or exchange; (2) installment land sales contract; or (3) lease with an option to purchase contract. [Emphasis added]

Lawful "transfers of residential real property" in the State of South Carolina are residential property conveyances that occur exclusively by means of properly executed and recorded deeds and titles. While not all Disclosure Statement disputes may be "founded upon title to real property," the present action arises from the alleged negligent, or deliberate, conduct of a Realtor who had legal obligations associated with the "transfer" process. S.C. Code Ann. § 27-50-70(B).

The Griffins' "cause of action" is "founded upon a title to real property" because it is derived from a defective "transfer of residential real property" that resulted in them being "seized or possessed of the premises in question." S.C. Code Ann. § 27-50-20; S.C. Code Ann. § 15-3-350. In South Carolina, whenever there is a lawful "transfer of residential real property" there is also the proper preparation and issuance of a Disclosure Statement that follows the

property. Like the South Carolina Court of Appeals held in *Jenkins v. Brown*, 340 S.C. 557, at 561, 532 S.E. 2d 302 (Ct. App. 2000), the Disclosure Statement is also an interest that "runs with the land" (such as a tobacco allotment).

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

April 23, 2019

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of the Appellants on Shannon Rollings by depositing a copy of it in the United States Mail, postage prepaid, on January 23, 2019, addressed to her attorneys of record, David A. Anderson and Carmen Ganjehsani, P.O. Drawer 7788, Columbia, SC 29202.

April 23, 2019

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April 23, 2019

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RE: ***Gary Griffin and Rachel Griffin v. Shannon Rollings et. al.***
Case No. 2019-000120
Filing Appellants' Initial Reply Brief and Appellants' Supplemental Designation of Matter

Dear Clerk:

With regard to the above referenced case, please find enclosed the Plaintiffs/Appellants Initial Reply Brief and Supplemental Designation of Matter with attached Proofs of Service.

Most Sincerely,

Calvin A. Rouse

CR/sem
Encl:
Cc

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