THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 15-CP-10-5415

Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo Hostel, LLC,

Appellants,

v.

Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Daniel Baker, Marie Baker, Matthew and Christina Bare, Andre Bauer, Peter Bierce, Brandon Blount, Barbara Brass, Richard T. Brewer, Sigrid Anne Eilertson, Reginald P. Brown IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Christina Cross, Darryl J Damico, Labar Daniel, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Timnah Giller, Virginia Geller, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Arthur Halvorson, Andrew Halvorson, Linda Hancock, Laura Hyatt, Mike Hartel, Nathan Herring, James Hicks Jr., Laurie Hicks, Preston G Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Mandi Walters, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Benjamin Levitt, Richard Levitt, Jesse Lutz, Nikou Manouchehri, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Amanda Lee Raymer, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Inderjit Singh, Avtar Singh, Alecia Stevens, Lee Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr, William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, AJB Trust, Anthony & Jacqueline Bradley, Trustees, Hartshorn Family Trust, Helene Kenny / Bridget Kenny Revocable Trust, Wilhelmina M. Wieters Life Estate Childrens Trust, 33 Bogard Street LLC, 249 Cumming, LLC, 253 Coming Street LLC, 259 East Bay LLC, 259 East Bay 10 B LLC, 272 D Coming St. LLC, Café International, Inc., Corner At Old Canton, LLC, Geer Interests LLC, Kit Properties LLC, Lambert-Weiss LLC, The Naws LLC, New Lease Capital LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC,

Defendants,

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Defendants,

Of whom

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Respondents.

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ARGUMENTS

I. THE RESPONDENTS ARE WRONG ABOUT THE STANDARD OF REVIEW.

The Respondents tell this Court that even though the circuit court granted summary judgment, the standard of review on appeal is not the summary judgment standard. (Respondents' Initial Brief, p. 3, fn. 2). They cite Electro-Lab of Aiken, Inc. v. Sharp Construction Co. of Sumter, Inc., 357 S.C. 363, 593 S.E.2d 170 (Ct. App. 2004) and Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976), *abrogated on other grounds by* In re Estate of Kay, 423 S.C. 476, 816 S.E.2d 542 (2018).

In Electro-Lab, "After a full trial on the merits, the trial judge ruled in favor of Sharp, . . ." 593 S.E.2d 170. In Townes Associates, the Supreme Court addressed standards of review after *trials*. "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." 221 S.E.2d at 775.

The Respondents are wrong about the basic issue of the standard of review. This disagreement between the Appellants and the Respondents speaks volumes.

II. THE APPELLANTS DO NOT ASK THE COURTS TO ENFORCE THE STR ORDINANCES, BUT DO ASK FOR THE APPLICATION OF ORDINANCE 54-905, AND THERE WERE NO ADMINISTRATIVE REMEDIES TO EXHAUST.

The Respondents write, "Appellants contend that Ordinance 54-905 permitted an immediate appeal to circuit court . . . " (Respondents' Initial Brief, p. 9). Appellants do not make that contention. Ordinance 54-905 permits an immediate lawsuit against the Defendants, and confers standing on the Plaintiffs.

The Respondents write, "The Lower Court's finding its Order [sic] (Order, p. 11) that

Appellants started the administrative review process but failed to complete the process before filing suit in Circuit Court is based on Appellant Holt's sworn deposition testimony. (Bob Holt Depo. at 158)." (Respondents' Initial Brief, pp. 8-9). First, the circuit court did not find that Appellants "started the administrative review process." Second, Mr. Holt is not an Appellant. Third, at page 158 of his deposition, Mr. Holt actually testified, "I have nothing to do with the city's enforcement action." (R. p. 105, lines 10-11).

The Respondents allege that the City did not enforce the STR ordinance. (Respondents' Initial Brief, p. 8). They offer no citation to the Record to support this allegation, because there is nothing in the Record to support this allegation. There is nothing in the Record to support this allegation because the allegation is not true. Inconsistently, two pages later, the Respondents cite to Mr. Holt's deposition, where he testified, "I don't know that they're not enforcing the ordinance." (R. p. 101, line 25-p. 102, line 1). "The fact that the City has taken no action cannot affect the plaintiff's rights, since the same act may furnish the basis for both criminal and civil redress." Momeier v. John McAlister, Inc., 203 S.C. 353, 27 S.E.2d 504, 508 (1943), citing Ezell v. Ritholz, 188 S.C. 39, 198 S.E. 419 (1938).

The Respondents, and presumably the circuit court in its order, misread Momeier. The Respondents write, "the plaintiffs in Momeier applied to the Zoning Board for a variance to allow their commercial business in a residential area before going to circuit court." (Respondents' Initial Brief, p. 11). That is not what happened in Momeier.

> [O]ne of the *defendants* about the year 1933 endeavored to purchase a residence on Rutledge Avenue known as the Ficken property, with the intention of moving the entire business there. Application was made to the Zoning Board and a public hearing was had, after which the Board refused the petition. Thereafter, though well knowing that the property now in question, formerly known as the Edward W. Hughes home, was located in a "B" residence district, the McAlisters decided

> that it would be to their advantage to purchase that property and use it in their business as undertakers.
> 27 S.E.2d at 506 (emphasis added).

The Respondents argue that because there is no proof that any of the Appellants' properties are within 100 yards of any of the Respondents' properties, the parties cannot be neighbors. (Respondents' Initial Brief, p. 11). Again, the issue of "neighbor" is irrelevant to this case. But even more importantly, the Respondents have taken it upon themselves to pluck a distance out of thin air and declare that properties within 99 yards of each other are neighbors whereas properties 101 yards apart are not. South Carolina law does not support this contention.

III. THE RESPONDENTS ARE WRONG ABOUT THE NUISANCE CLAIM.

The Respondents write, "the Lower Court properly held Appellants they bring [sic] a public nuisance claim." (Respondents' Initial Brief, p. 16). This is simply not true. (R. pp. 19-20).

The Respondents write, "Rental income is not recoverable in a private nuisance claim." (Respondents' Initial Brief at 14).

> In other words, lost rental value includes the annoyance and discomfort experienced as the result of a temporary trespass or nuisance. The lost rental value of the property is the difference between the rental value absent the trespass or nuisance and the rental value with the trespass or nuisance. The rental value with the trespass or nuisance present would be less, in part, because a hypothetical renter would have to suffer the annoyance and discomfort of the nuisance or trespass. Thus, the lost rental value measures the monetary value of the harm to the property interest.
> Babb v. Lee County Landfill SC, LLC, 405 S.C. 129, 747 S.E.2d 468, 475 (2013).

This disagreement between the Appellants and the Respondents, where the Respondents argue one position but South Carolina law provides precisely the opposite, like the issue of the standard of review, and like the language of the UTPA's "regulatory exemption," speaks

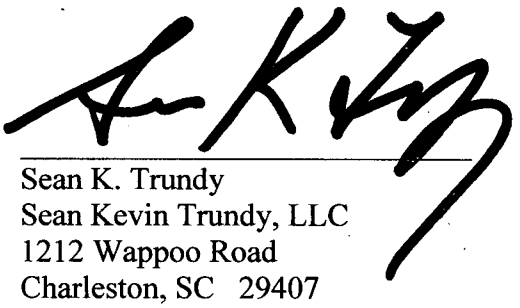
volumes.

CONCLUSION

There are many issues the Respondents do not mention in their Brief, including their failure to respond to discovery and the circuit court's failure to require them to do so.

The Respondents' Brief reinforces the reasons why reversal is the appropriate result in this case. The circuit court's order (1) ignores the existence of factual evidence which supports the Plaintiffs' four separate, independent causes of action; (2) views inferences which could be drawn from the Plaintiffs' evidence in the light most *favorable to the Defendants*; (3) construes all ambiguities, conclusions, and inferences arising from the evidence most strongly *against the Plaintiffs*; (4) applies the wrong law to the Plaintiffs' causes of action; and (5) when it does identify the accurate law, it misinterprets it.

The circuit court's order should be reversed.



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Charleston, South Carolina