

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
COURT

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT

Kimberly Ann Condra,

C/A NO.: 2018-CP-46-02502

Plaintiff,

v.

Gregory Scott Childers and  
Jeffrey Steven Childers

**RECEIVED** ORDER

DEC 16 2020

SC Court of Appeals

Defendants.

This matter came before the court for a non-jury trial on August 20 and 21, 2020. The Plaintiff was represented by Lucy L. McDow. The Defendant, Gregory Scott Childers, was represented by James W. Boyd. The Defendant, Jeffrey Steven Childers, was represented by David Benson. Plaintiff alleges causes of action against Gregory Scott Childers for fraud in the inducement, negligent misrepresentation, and violations of the Unfair Trade Practices Act. The Plaintiff alleges causes of action against the Defendant, Jeffrey Steven Childers, for negligence, and violation of the Unfair Trade Practices Act. At the end of the Plaintiff's case, the Defendant, Jeffrey Steven Childers, attorney made a Motion for a directed verdict, which I granted.

The Plaintiff entered into a written contract with Defendant Gregory Scott Childers for remodeling work on her home on June 25, 2017. The agreement provided that work would be commenced on June 26, 2017 and would be substantially complete within 90 days after construction began. Prior to hiring the Defendant, Gregory Scott Childers, the Plaintiff had obtained a permit from the city of Rock Hill to make renovations to the home. Plaintiff testified

she hired various individuals to work on the home but items were stolen from the home and the work was not completed. Plaintiff paid the Defendant, Gregory Scott Childers, \$52,000.00. Gregory Scott Childers commenced work on the Plaintiff's home but never completed it and ceased working on the home in October of 2017. Plaintiff then hired a licensed contractor to partially complete the renovations. The Defendant, Gregory Scott Childers, was not a licensed contractor or builder in the State of South Carolina and had no authority to obtain building permits. On the causes of action for fraud and for negligent misrepresentation the Plaintiff testified that the Defendant falsely represented to her that he was licensed to do remodeling work, that he would get the necessary city permits for the work, that he carried liability insurance and would use reasonable care to meet the requirements of State, Federal and local laws. Evidence was introduced that the Defendant did have liability insurance at the time he entered the contract with the Plaintiff. The Defendant had been sent a notice that his insurance would be cancelled in July for non-payment on the insurance. There was no evidence presented that the Defendant's insurance was cancelled in July. At the time the Defendant made the representation he did have liability insurance so it was not a false statement. The other misrepresentations center around the Defendant being unable to comply with the requirements of the law because he was unlicensed. In order to maintain a case for fraud the Plaintiff must prove all nine elements of fraud. If one element is not proven then the Plaintiff's case fails. The issue in this case is whether or not the Plaintiff had a right to rely on the Defendant's misrepresentations. When relying on representations, one has a duty to use reasonable prudence and diligence under the circumstances. Various circumstances which will be considered include the form and materiality of the representation, the respective age, experience, intelligence and mental and physical condition of the parties, and relations in respective knowledge and means of knowledge of the

parties. In *Florentine Corporation v. Peda I, Inc.*, 287 S.C. 382, 339 S.E. 2d 112 (1985), the court stated, "Where there is no confidential or fiduciary relationship in an arm's length transaction between mature, educated people is involved, there is no right to rely. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." In applying these principles to this case, the court considered findings of that. This was an arm's length transaction. The Plaintiff is a mature, educated individual who has an M.B.A. and has worked in the banking industry for years. Plaintiff obtained a permit to make renovations to her home. S.C. Code Section § 40-59-260 imposes a duty on the Plaintiff to make sure people employed by her have the licenses required by state law, county and municipal license ordinances. The court finds that the Plaintiff was not acting reasonably when she neglected the duty imposed on her by law to see that the people hired by her were licensed. Plaintiff could plainly see that the permit she had obtained was still on the house and had never been replaced with another permit obtained by the Defendant. There is no liability for representations made when the truthfulness of the representations are easily within reach and can be ascertained by the exercise of due diligence. *Schnellmann v. Roettger*, 368 S.C. 17, 627 S.E.2<sup>d</sup> 742 (Ct.App.2006), *O' Shields v. Southern Fountain Mobile Homes Inc.*, 262 S.C. 276, 204 S.E.2<sup>d</sup> 50 (1974), *Lowders v. Price* 190 S.C. 392, 3 S.E.2d 38 (1939). The Plaintiff could have easily checked whether or not the Defendant was licensed by requesting the Defendant show her a license or by checking the public records online. Applying the facts of this case to the principals of law outlined above, I find that the Plaintiff did not reasonably rely on the misrepresentations of the Defendant and that any reliance on the misrepresentations of the Defendant were not reasonable. Therefore, Plaintiff's causes of action for fraud in the inducement and negligent misrepresentation fail.

Plaintiff also alleges a cause of action for violation of the Unfair Trade Practices Act. The Unfair Trade Practices Act states that unfair methods of competition and unfair or deceptive acts of practices in the conduct of any trade or commerce are unlawful. An act or practice is unfair when it is offensive to public policy or when it is immoral, unethical or oppressive. To be actionable under the Unfair Trade Practices Act, the act or practice must have an adverse impact upon the public interest. An unfair or deceptive act or practice has an impact upon the public interest if the act or practice has the potential for repetition. The Plaintiff has met the public interest element. The Plaintiff introduced into evidence that the Defendant has, on numerous occasions, entered contracts for home improvements and construction without having a license.

Although not interpreting Unfair Trade Practices Act in the case of *Lenz v. Walsh*, 362 S.C. 603, 608 S.E.2d 471 (S.C. Ct. App. 2005), the court held that a homeowner not recover payments made to an unlicensed contractor merely because the contractor did not hold a license when the contract was executed. The court quoted *Hawkins v. Holland* 388 S.E.2d 221, 97 (N.C. Ct. App. 291), for the proposition that, "equity and principles of restitution do not require that unlicensed contractors be completely uncompensated or that contracting homeowners receive the completed construction without cost." Based on *Lenz*, I find that the act of building or construction without the appropriate licenses is not an unfair method of competition or an unfair act or practice as defined by Section § 39-5-20 (a) of the Unfair Practices Trade Act.

For the reasons set forth in this order, I find a verdict for the Defendant, Gregory Scott Childers, on all causes of action.

**AND IT IS SO ORDERED.**

September \_\_\_\_\_, 2020  
York, SC

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William A. McKinnon  
Circuit Court Judge



York Common Pleas

**Case Caption:** Kimberly Ann Condra VS Gregory Scott Childers , defendant, et al  
**Case Number:** 2018CP4602502  
**Type:** Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge

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