THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS
THE HONORABLE DOYET A. EARLY, III
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2019-000120
CIVIL ACTION NO. 2018-CP-02-020606

Gary Griffin and Rachel Griffin.,

APPELLANTS,

versus

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

RESPONDENT.

FINAL BRIEF OF RESPONDENT

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II. The Trial Court properly granted summary judgment to the defendant realtor because (1) she complied with the requirements of the Residential Property Condition Disclosure Act in connection with the issuance of the disclosure statement by the sellers; and (2) the purchasers were aware of issues with the claims of the adjoining landowner prior to the closing of the sale of the property and decided to move forward with the purchase despite their knowledge and therefore cannot maintain any claim based on reliance upon the disclosure statement.

COUNTERSTATEMENT OF THE CASE

This case arises out of the allegations by Plaintiffs Gary and Rachel Griffin that Defendant Shannon Rollings d/b/a Shannon Rollings Real Estate, LLC was negligent by publishing an allegedly false South Carolina Residential Property Condition Disclosure Statement on behalf of her seller clients.

The Griffins filed suit against Defendant Rollings in the Court of Common Pleas for Aiken County on August 30, 2018. [R.pp. 12-18; Compl.] The suit arose from a real estate transaction which closed on January 16, 2015 between the Griffins and the sellers Milton and Teresa Rollins[1] (the "Sellers"). Defendant Rollings served as the realtor for the Sellers. The Griffins allege that in connection with the real estate transaction, Defendant Rollings negligently failed to provide them with an accurate South Carolina Residential Property Condition Disclosure Statement because the Disclosure Statement purportedly failed to disclose information concerning a boundary dispute with an adjoining landowner. Due to Defendant Rollings' alleged "grossly negligent conduct" in failing to provide the Griffins with an accurate Disclosure Statement concerning the property claim of the adjoining neighbor, the Griffins sought actual and punitive damages. [R.pp. 12-18; Id.]

Defendant Rollings answered the Complaint on September 11, 2018, denying the material allegations of the Complaint and asserting as an affirmative defense, among others, the expiration of the statute of limitations. [R.pp. 19-24; Answer.]

On November 5, 2018, Defendant Rollings filed a Motion for Summary Judgment. [R.pp. 74-75; Mtn.] On December 3, 2018, Defendant Rollings filed a

[1] Defendant Rollings is of no relation to the Rollins despite the similar last names. For ease in the Brief, the Rollins are referred to as the "Sellers." [R.p. 29, ll. 1-5; Tr., p. 5.]

Memorandum in Support of her Motion for Summary Judgment with exhibits, including an affidavit of Defendant Rollings. [R.pp. 76-126; Memo. with Exhibits.] Defendant Rollings filed a Supplemental Affidavit of Defendant Rollings with exhibits on December 6, 2018. [R.pp. 127-144; Supp. Aff. with Exhibits.] Defendant Rollings argued she was entitled to summary judgment on the Griffins' negligence claims because (1) she complied with the requirements of the Residential Property Condition Disclosure Act; (2) the Griffins were aware of the claims of the adjoining landowner prior to closing on the sale of the property; and (3) the applicable three-year statute of limitations had expired before the Griffins filed their suit against Defendant Rollings for negligence. [R.pp. 76-85; Memo.]

The Motion for Summary Judgment was heard before the Honorable Doyet A. Early, III on December 11, 2018. [R.pp. 25-73; Hearing Tr.] On January 10, 2019, Judge Early granted Defendant Rollings' Motion for Summary Judgment and dismissed the Griffins' action with prejudice. [R.pp. 1-9; Order.] The Griffins filed their Notice of Appeal on or about January 24, 2019.

COUNTERSTATEMENT OF FACTS

This action arises out of a real estate transaction which took place on January 16, 2015 involving the property located at 8 Lake Selisa Drive, North Augusta, South Carolina (the "Property"). [R.pp. 86-94; Real Estate Purchase Agreement.] The plaintiffs in this action, Gary and Rachel Griffin, purchased the Property from the Sellers on January 16, 2015 via a general warranty deed prepared by closing attorney Richard W. Taylor. [R.pp. 86-94; 115; Id.; General Warranty Deed.] Defendant Rollings acted as the agent for the Sellers. [R.p. 127, ¶ 3; Supp. Aff. of Rollings, ¶ 3.]

The historical facts regarding the land upon which the Property sits are necessary for an understanding of the background of this case. In 1972, W.M. Gregory, a developer, and his daughter, Barbara Parr, developed and conveyed residential lots to various purchasers where the Property is located. [R.p. 104, ¶ 3; *Griffin v. Fidelity Bank*, 2017-CP-02-01437, ¶ 3.] Dennis Turner owns the property located at 9 Lake Selisa Drive and is the adjoining landowner. In August 2007, Mr. 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. [R.p. 104, ¶ 4; Id. at ¶ 4.] The Griffins 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. [R.p. 105, ¶ 5; Id. at ¶ 5.] Mr. Turner purportedly erected a fence across the front yard of the Property in 2011. [R.p. 105, ¶ 6; Id. at ¶ 6.] The Griffins allege that the Sellers subsequently tore down the fencing located in the front yard of the Property. [R.p. 105, ¶ 6; Id.]

On May 12, 2014, the Sellers decided to sell the Property and hired Defendant Rollings to serve as their real estate agent. [R.p. 127, ¶ 3; Supp. Aff. of Rollings, ¶ 3.] Prior to the Sellers hiring Defendant Rollings in May of 2014, she had never served as their real estate agent and had never listed the Property for sale. [R.p. 127. ¶ 4; Id. at ¶ 4.]

The Sellers completed, executed, and transferred the required South Carolina Residential Property Condition Disclosure Statement ("Disclosure Statement") electronically to Defendant Rollings' agency. [R.p. 128, ¶ 7; Id. at ¶ 7.] When the Sellers completed their Disclosure Statement, Defendant Rollings had no actual or constructive knowledge of any issues with the title of the Property or any of the issues with the adjacent neighbor, Dennis Turner. [R.p. 128, ¶ 6; Id. at ¶ 6.]

When an agency receives an executed Disclosure Statement from the sellers, it is standard procedure for the agent to both upload it to the MLS and include it as part of the brochures placed inside the property. [R.p. 128, ¶ 8; Id. at ¶ 8.] When Defendant Rollings received the originally executed Disclosure Statement from the Sellers, she uploaded it to the MLS and included it in the associated brochures. [R.p. 128. ¶ 9; Id. at ¶ 9.]

Defendant Rollings was not initially aware that the Sellers had failed to check the boxes where they were to indicate or disclose any "land use restrictions affecting the real property" where the Property sits. [R.p. 128, ¶ 10; Id. at ¶ 10.] Upon realizing that the Sellers had not completed this section of the Disclosure Statement, Defendant Rollings arranged for them to do so. Once completed and executed by the Sellers, the revised and updated Disclosure Statement was uploaded to the MLS on May 23, 2014. [R.pp. 128, ¶

11; 132-136; Id. at ¶ 11; Updated Disclosure Statement attached as Ex. A to the Supp. Aff. of Rollings.]

Defendant Rollings believes that when the Griffins became interested in the Property, their agent, Grant Sutton, may have downloaded the initial version of the Disclosure Statement from the MLS to review with his clients in between Defendant Rollings uploading the initial version and the updated, completed version. [R.pp. 128-129, ¶ 12; Supp. Aff., ¶ 12.]

Thereafter, Defendant Rollings received an offer/contract and associated documentation, including the initial version of Disclosure Statement executed by the Griffins from their agent. [R.p. 129, ¶ 13; Id. at ¶ 13.] The Disclosure Statement was executed by the Griffins on December 11, 2014 and received by Defendant Rollings' office on or about the same date. No issues regarding the initial version of the Disclosure Statement or its incompleteness were brought to Defendant Rollings' attention by the Griffins or their agent. [R.pp. 129, ¶ 14; 137-141; Id. at ¶ 14; Initial Disclosure Statement attached as Ex. B to the Supp. Aff. of Rollings.] In fact, Defendant Rollings had no knowledge of the incompleteness of the Disclosure Statement, which the Griffins executed after careful review and consideration with their agent, until the filing of this action. [R.p. 129, ¶ 15; Supp. Aff. at ¶ 15.]

Defendant Rollings did not know nor had any reason to suspect that there were any issues concerning the Property until December 18, 2014, four days after the Griffins executed the Disclosure Statement. On that day, Defendant Rollings' office received a telephone call from Dennis Turner regarding his claim of ownership of the road where

the Property is located. The telephone call from Mr. Turner came after the Property was under contract with the Griffins. [R.p. 129. ¶ 16; Id. at ¶ 16.]

After receiving the telephone call from Mr. Turner, Defendant Rollings contacted the Sellers and asked them about Mr. Turner's alleged ownership of the road. The Sellers informed Defendant Rollings that they had legal access to the road. Defendant Rollings had been reassured by the Sellers that they had legal access to the road, and she had no reason to believe that there were any issues with the title of the Property. She had no reason to believe that the information provided on the updated Disclosure Statement was false or misleading. [R.pp. 129-130, ¶¶ 17-19; Id. at ¶¶ 17-19.]

On January 15, 2015, the day before closing, the closing attorney, Richard W. Taylor, contacted Defendant Rollings' office and informed her about the issues with Dennis Turner and his claim of ownership. He further informed Defendant Rollings that an easement from Mr. Turner was necessary for closing and that, in order to have Mr. Turner sign the easement, the Sellers had to pay $1,500.00 to Mr. Turner. [R.p. 130, ¶ 20; Id. at ¶ 20.] On that same day, Defendant Rollings spoke to the Sellers who agreed to have the $1,500.00 deducted from their sale proceeds. In this e-mail, Defendant Rollings once again confirmed that, per the Sellers, there had never been a question as to the legal access to the Property. The Sellers, however, agreed to the easement to alleviate any potential issues with Mr. Turner. [R.pp. 130, ¶ 21; Id. at ¶ 21; E-mail dated Jan. 15, 2015 attached as Ex. C to the Supp. Aff. of Rollings.]

Defendant Rollings was not involved in any way with the negotiation of the easement and had no knowledge of the easement, or negotiations of the same, until she was informed by Grant Sutton that the Sellers needed to pay Mr. Turner the $1,500.00 in

exchange for the easement. There is no evidence that Defendant Rollings knew how the $1,500.00 amount was determined or if it was payment for anything other than the grant of the easement. [R.pp. 130, ¶ 22; 143; Supp. Aff. at ¶ 22; Sutton Jan. 15, 2015 e-mail attached as Ex. D. to the Supp. Aff. of Rollings.]

Subsequently, Defendant Rollings learned that the Griffins had met with Mr. Turner prior to closing on January 13, 2015 to specifically discuss the easement. During this meeting, Mr. Turner agreed that the Griffins had a right to the Property. It also appeared that, at that point, the Griffins and the Turners had a good relationship as evidenced in an e-mail the Griffins received from their agent which stated:

> The buyer met with Mr. Dennis Turner and his wife last night with regards to the Deed of Easement. She signed the agreement but he wanted a little clarification. As I understand it he does not disagree that the new homeowner has the right to the property. Mr. Turner and Daniel Griffin (the buyer) have a good relationship and Mr. Turner is happy that Daniel will be his new neighbor.

[R.pp. 130, ¶ 23; 144; Supp. Aff. at ¶ 23; Jan. 14, 2015 E-mail from Sutton attached as Ex. E to the Supp. Aff. of Rollings.]

As shown by the e-mail above, there is no dispute that the Griffins had notice of the issues with Mr. Turner's claims to the Property and the easement prior to the January 16, 2015 closing date. [R.pp. 130-131, ¶ 24; Supp. Aff. at ¶ 24.]

To resolve the issues with Mr. Turner's purported claims to the Property, closing attorney Richard Taylor prepared a Deed of Easement which conveyed to the Griffins the right to ingress and egress the Property. [R.p. 116; Deed of Easement.] The Sellers paid Mr. Turner $1,500.00 in exchange for the easement. [Id.]

Despite their awareness of the disputes with Mr. Turner prior to closing, the Griffins filed this action against Defendant Rollings claiming that they had no knowledge

of any conflict or property dispute with Mr. Turner. [R.pp. 14-15, ¶ 8; Compl., ¶ 8.] The Griffins claim Defendant Rollings was negligent in failing to disclose Mr. Turner's history of attempting to exercise control and limit access to the Property and for failing to ensure that her seller clients disclosed this information on the Disclosure Statement. [R.pp. 16-17, ¶¶ 11-13; Id. at ¶¶ 11-13.] The Trial Court granted summary judgment to Defendant Rollings because (1) the applicable statute of limitations expired on the Griffins' claims against Defendant Rollings; (2) Defendant Rollings complied with the requirements of the Residential Property Condition Disclosure Act; and (3) the Griffins were aware of the claims of the adjoining landowner prior to closing on the sale of the Property. [R.pp. 1-9; Order.]

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c) of the South Carolina Rules of Civil Procedure. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). Rule 56(c) provides a motion for summary judgment shall 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 judgment as a matter of law." See Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181 (2013). "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." Id.; Wachovia Bank, N.A. v. Coffey, 404 S.C. 421, 425, 746 S.E.2d 35, 38 (2013).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (citations omitted). The party seeking summary judgment under Rule 56(c) has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis, 358 S.C. at 518, 595 S.E.2d at 822. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 518-19, 595 S.E.2d at 822. "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Id. at 518, 595 S.E.2d at 822.

Furthermore, summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations." McMaster v. Dewitt, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014); see Kreutner v. David, 320 S.C. 283, 286–87, 465 S.E.2d 88, 90 (1995) (affirming the circuit court's order granting summary judgment because the statute of limitations had run).

ARGUMENT

I. The Trial Court correctly granted summary judgment to the defendant realtor because the purchasers' negligence and failure to disclose claims arising out of a property condition disclosure statement were barred by the three-year statute of limitations for negligence actions; the ten-year statute of limitations for actions founded upon a title to real property or services out of the same did not apply because a disclosure statement does not derive from the title to real property and cannot create any interest in or any defect in the title to real property.

The Trial Court ruled that Defendant Rollings was entitled to summary judgment on the Griffins' claims because the applicable three-year statute of limitations provided

under S.C. CODE ANN. § 15-3-530 had expired. The Griffins' claims against Defendant Rollings stem from her alleged "grossly negligent failure to provide them with a Disclosure form that contained complete and honest information" and her alleged "market[ing] [of] the property without ever disclosing the property claim of an adjoining neighbor." [R.p. 17, ¶ 13; Compl., ¶ 13.] "Section 15-3-530 of the South Carolina Code . . . sets forth a three-year statute of limitations for negligence actions" and therefore applies to this case. Cline v. J.E. Faulkner Homes, Inc., 359 S.C. 367, 370, 597 S.E.2d 27, 29 (Ct. App. 2004); see also S.C. CODE ANN. § 15-3-530(1) and (5) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied" and "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law").

The closing of the sale of the Property occurred on January 16, 2015. The Griffins did not file this action until more than three years later on August 30, 2018. Consequently, the three-year statute of limitations under § 15-3-530 expired prior to the Griffins' filing of this action. The Griffins' claims set forth in the Complaint against Defendant Rollings are accordingly time barred.

The Griffins agree that if the three-year statute of limitations applies, their action against Defendant Rollings is time barred. [R.p. 59, ll. 21-25; Hearing Tr., p. 35, ll. 21-25.] On appeal, the Griffins contend that their claims against Defendant Rollings are subject to a ten-year statute of limitations under the provisions of S.C. CODE ANN. § 15-3-350 which 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 (emphasis added).

This particular code provision unambiguously only applies to those actions "founded upon a title to real property" or an action relating to rents or services "out of the same" which refers back to the "title to real property." See Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) ("The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation."). The crux of this statute is that the action must be based upon or arise out of a title to real property to trigger the ten-year statute of limitations period.

The Griffins argue on appeal that their negligence action is one "founded upon a title to real property or to . . . services out of the same" because the "Disclosure Statement was a real estate entitlement that uniquely arose from Appellants' interest in the title to their family residence." The Griffins also contend that the Disclosure Statement was a "'service' important to the Griffins' receipt of good 'title to real property.'"[2] The Griffins' arguments are unfounded.

A disclosure statement in a real estate property transaction does not arise out of the title to real property; rather it is a merely a statement which describes the characteristics and conditions of real property, including any "any encroachment of the real property from or to adjacent real property" affecting the real property. See S.C. CODE ANN. § 27-50-40. A disclosure statement may be a disclosure *about* or *concerning*

[2] Interestingly, the Griffins' counsel admitted to the Trial Court that the Griffins had good title. [R.pp. 57, ll. 17-18; 61, ll. 8-20; Tr. pp. 33; 37; supra, pp. 22-23.]

the title to real property but it is not *founded upon* or *derived* from the title. Consequently, the Residential Property Condition Disclosure Act specifically provides that a "[f]ailure to provide the disclosure form required by this article to the purchaser ***does not . . . create a defect in title.***" S.C. CODE ANN. § 27-50-50(B)(2) (emphasis added).

The Griffins are attempting to disguise their action, clearly one based in tort, as one founded upon a title to real property. The plaintiff in the case of Palmetto Co. v. McMahon, 395 S.C. 1, 716 S.E.2d 329 (Ct. App. 2011) made a similar argument to the one that the Griffins are attempting to make here. In Palmetto Co., the parties entered into a written lease agreement. Id. at 3, 716 S.E.2d at 330. After the defendant made sporadic rent payments, the plaintiff filed an application and affidavit for collection of rent by distraint in the magistrate's court. The defendant argued the statute of limitations was three years under S.C CODE ANN. § 15–3–530(1) for an action upon a contract, under which the plaintiff's action would have been time barred. The plaintiff argued the statute of limitations was ten years under S.C. CODE ANN. § 15–3–350 for a cause of action founded upon a title to real property or to rents out of the same. The magistrate's court found the ten-year statute of limitations applied when a party seeks to recover rents owed under a lease agreement. The defendant appealed to the circuit court, which affirmed the magistrate's court's ruling. Id.

The defendant appealed to the Court of Appeals, contending the language in the statute was clear and unambiguous that the three-year limitations period applied to contracts and a commercial lease agreement is a contract. The defendant further maintained that § 15-3-350 did not apply because it is only for an action founded upon

title to real property and actions for rent based upon title to real property. Id. at 4, 716 S.E.2d at 331.

The Court of Appeals agreed with the defendant and reversed. Construing the plain and unambiguous language of § 15-3-350, the Court found that though the plaintiff "titled its action as one for distraint, its claim for rent arose out of the lease, not its title to real property." Id. at 4-5, 716 S.E.2d at 331. The label the plaintiff gave to its action did not transform the subject matter of the action. In Palmetto Co., the subject matter of the action involved the collection of rents based upon a commercial lease agreement. Because the lease was a contract, the three-year statute of limitations under § 15-3-530(1) applied. Id. at 5, 716 S.E.2d at 331.

The action brought by the Griffins is not the type of action that the legislature intended to be covered by § 15-3-350. The Griffins have not brought an action seeking to recover title to the Property or any action founded upon services derived from the title to real property. Instead, the Griffins have brought a standard negligence action based on a failure to disclose for which the applicable statute of limitations is three years under § 15-3-530. No matter the label they attempt to give their action, it is simply a negligence claim.

The Griffins' reliance on Jenkins v. Brown, 340 S.C. 557, 532 S.E.2d 302 (Ct. App. 2000) does not mandate a different result. In Jenkins, the Court of Appeals determined that the ten-year statute of limitations applied to an action regarding the ownership rights to a tobacco allotment after its sale by a life-tenant. Id. at 561-62, 532 S.E.2d at 304. In concluding that the ten-year statute of limitations applied, the Court of

Appeals specifically noted "the historical precept that farm allotments run with the land." Id. at 562, 532 S.E.2d at 305.

In contrast, a property condition disclosure statement does not run with or create any interest in the land or real property. It is merely a disclosure about characteristics and conditions of the real property. Again, the Residential Property Condition Disclosure Act specifically provides that any failure to not provide the form will not create a defect in title. S.C. CODE ANN. § 27-50-50(B)(2). The disclosure statement cannot give or take away any title to the real property. It is merely a descriptive statement about, among other things, any encroachment of the real property from or to adjacent real property. S.C. CODE ANN. § 27-50-40. Accordingly, the Trial Court correctly ruled that the ten-year statute of limitations provided under § 15-3-350 for actions founded on title to real property or for services out of the same did not apply. The Griffins' claims against Defendant Rollings are time barred under the three-year statute of limitations set forth in § 15-3-530, and summary judgment to Defendant Rollings under this ground was appropriate.

II. The Trial Court properly granted summary judgment to the defendant realtor because (1) she complied with the requirements of the Residential Property Condition Disclosure Act in connection with the issuance of the disclosure statement by the sellers; and (2) the purchasers were aware of issues with the claims of the adjoining landowner prior to the closing of the sale of the property and decided to move forward with the purchase despite their knowledge and therefore cannot maintain any claim based on reliance upon the disclosure statement.

The Trial Court also granted summary judgment to Defendant Rollings on the separate grounds that she complied with the requirements of the Residential Property Condition Disclosure Act and because the Griffins were aware of the claims of the

adjoining landowner prior to closing on the sale of the property and moved forward with the purchase of the property in spite of their knowledge.

Pursuant to South Carolina law, a real estate brokerage firm or agency providing services to a client, thorough 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, Defendant Rollings owed no duty to the Griffins, buyers of the Property, to discover any issues regarding the title of the Property. Her duties were to the Sellers only. S.C. CODE ANN. § 40-57-350(C).

The Residential Property Condition Disclosure Act also 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, Defendant Rollings 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. Further, 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." S.C. CODE ANN. § 27-50-70(B). The evidence shows that Defendant Rollings complied with the requirements of the Residential Property Condition Disclosure Act.

Defendant Rollings was hired by the Sellers, the owners of the Property, as their agent in May 2014. [R.p. 127, ¶ 3; Supp. Aff. of Rollings, ¶ 3.] Prior to being contacted and hired by the Sellers, Defendant Rollings was not familiar with the Property. [R.p. 127, ¶ 4; Id. at ¶ 4.]

Defendant Rollings had the Sellers complete, execute, and transfer the required Disclosure Statement electronically to Defendant Rollings' agency. [R.p. 128, ¶ 7; Id. at ¶ 7.] When the Sellers completed their Disclosure Statement, Defendant Rollings had no actual or constructive knowledge of any issues with the title of the Property or any of the issues with the adjacent neighbor, Dennis Turner. [R.p. 128, ¶ 6; Id. at ¶ 6.] When Defendant Rollings received the originally executed Disclosure Statement from the Sellers, she uploaded it to the MLS and included it in the associated brochures per the standard procedure of the agency. [R.p. 128, ¶¶ 8-9; Id. at ¶¶ 8-9.]

Defendant Rollings averred that she was not initially aware that the Sellers had failed to check the boxes where they were to indicate or disclose any "land use restrictions affected the real property" where the Property sits. [R.p. 128, ¶ 10; Id. at ¶ 10.] Upon realizing that the Sellers had not completed this section of the Disclosure Statement, Defendant Rollings arranged for them to do so, and once completed and executed by the Sellers, the revised and updated Disclosure Statement was uploaded to the MLS on May 23, 2014. [R.pp. 128, ¶ 11; 132-136; Id. at ¶ 11; Updated Disclosure Statement attached as Ex. A to the Supp. Aff. of Rollings.]

Defendant Rollings believes that when the Griffins became interested in the Property, their agent, Grant Sutton, may have downloaded the initial version of the Disclosure Statement from the MLS to review with his clients in between Defendant

Rollings uploading the initial version and the updated, completed version. [R.pp. 128-129, ¶ 12; Supp. Aff., ¶ 12.]

Defendant Rollings subsequently received an offer/contract and associated documentation, including the initial version of Disclosure Statement executed by the Griffins from their agent. [R.p. 129, ¶ 13; Id. at ¶ 13.] The Disclosure Statement was executed by the Griffins on December 11, 2014 and received by Defendant Rollings' office on or about the same date. No issues regarding the initial version of the Disclosure Statement or its incompleteness were brought to Defendant Rollings' attention by the Griffins or their agent. [R.pp. 129, ¶ 14; 137-141; Id. at ¶ 14; Initial Disclosure Statement attached as Ex. B to the Supp. Aff. of Rollings.] In fact, Defendant Rollings had no knowledge of the incompleteness of the Disclosure Statement, which the Griffins executed after careful review and consideration with their agent, until the filing of this action. [R.p. 129, ¶ 15; Supp. Aff. at ¶ 15.]

Defendant Rollings never knew nor had any reason to suspect that there were any issues concerning the Property until December 18, 2014, four days after the Griffins executed the Disclosure Statement. On that day, Defendant Rollings' office received a telephone call from Dennis Turner regarding his claim of ownership of the road where the Property is located. The telephone call from Mr. Turner came after the Property was under contract with the Griffins. [R.p. 129, ¶ 16; Id. at ¶ 16.]

After receiving the telephone call from Mr. Turner, Defendant Rollings contacted the Sellers and inquired about Mr. Turner's alleged ownership of the road. The Sellers informed Defendant Rollings that they had legal access to the road. Defendant Rollings had been reassured by the Sellers that they had legal access to the road, and she had no

reason to believe that there were any issues with the title of the Property. [R.pp. 129-130, ¶¶ 17-19; Id. at ¶¶ 17-19.] Defendant Rollings exercised the required due diligence and had no reason to believe that the information contained in the Disclosure Statement was false. [R.p. 130, ¶ 19; Id. at ¶ 19.]

Defendant Rollings heard nothing more regarding Mr. Turner's claim or any disputes regarding title to the Property until January 15, 2015, the day before closing. It was then that she was informed by the closing attorney, Richard Taylor, that it was necessary to obtain an easement from Mr. Turner prior to closing. Importantly, during this conversation, Mr. Taylor informed Defendant Rollings that the Sellers would need to pay Mr. Turner $1,500.00 in exchange for the easement. [R.p. 130, ¶ 20; Id. at ¶ 20.] Monumental is the fact that neither Defendant Rollings, nor anyone from her office, played a part in negotiating the easement or the amount of the related payment with Mr. Turner and had no knowledge that it was for anything more than the price of the easement. [R.pp. 130, ¶ 22; 143; Supp. Aff. at ¶ 22; Sutton Jan. 15, 2015 e-mail attached as Ex. D. to the Supp. Aff. of Rollings.]

It was only after receiving notice of the required easement and negotiation that Defendant Rollings' office made contact with the Sellers regarding the payment of funds which they agreed to have deducted from the proceeds from the sale of the Property. [R.pp. 130, ¶ 21; 142; Supp. Aff. at ¶ 21; E-mail dated Jan. 15, 2015 attached as Ex. C to the Supp. Aff. of Rollings.] The Sellers, again, indicated that there had never been any issue with regard to legal access to the Subject Property. [Id.]

Defendant Rollings fulfilled her obligations and duties as a listing agent by having the Sellers complete the Disclosure Statement. She did not know or have any reason to

suspect the information the Sellers provided in the Disclosure Statement was false, incomplete, or misleading and when an issue did arise prior to closing, she confirmed with the Sellers that they had no issues with title to the Property. S.C. CODE ANN. § 27-50-70. Defendant Rollings had no reason to doubt that the Sellers had any issues with legal access or title to the Property, especially in light of the negotiated easement which all parties were aware of prior to closing. Defendant Rollings, as a matter of law, cannot be liable to the Griffins for any alleged false or inaccurate information in the Sellers' Disclosure Statement absent knowledge that the Statement was false. See Chastain v. Hiltabidle, 381 S.C. 508, 518-22, 673 S.E.2d 826, 831-33 (Ct. App. 2009) (holding trial court's grant of summary judgment to realtor was proper because there was no evidence that realtor knew or had reasonable cause to suspect the sellers' statements in the disclosure form about flooding were false, misleading or inaccurate).

Moreover, the Trial Court found that the Griffins were aware of any issues with Mr. Turner's claims to the Property prior to the closing on January 16, 2015. [R.pp. 6-7; Order, pp. 6-7.] The Griffins have not specifically challenged this ruling in the appeal. "An unappealed ruling is law of the case and requires affirmance." D.R. Horton, Inc. v. Wescott Land Co., 410 S.C. 319, 320, 764 S.E.2d 701, 701 (2014).

There is ample evidence in the Record demonstrating that the Griffins were well aware of any property claim or title issues prior to closing. The Griffins met with Mr. Turner prior to closing on January 13, 2015 to specifically discuss the easement. During this meeting, Mr. Turner agreed that the Griffins had a right to the Property. It appeared that, at that point, the Griffins and the Turners had a good relationship as evidenced in an e-mail the Griffins received from their agent which stated:

> The buyer met with Mr. Dennis Turner and his wife last night with regards to the Deed of Easement. She signed the agreement but he wanted a little clarification. As I understand it he does not disagree that the new homeowner has the right to the property. Mr. Turner and Daniel Griffin (the buyer) have a good relationship and Mr. Turner is happy that Daniel will be his new neighbor.

[R.pp. 130, ¶ 23; 144; Supp. Aff. at ¶ 23; Jan. 14, 2015 E-mail from Sutton attached as Ex. E to the Supp. Aff. of Rollings.]

As shown by the above e-mail, there is no dispute that the Griffins had notice of the issues with Mr. Turner's claims to the Property and the easement prior to closing. The Griffins, being well aware of any issues with the Property and the easement, had a choice not to close on the sale of the Property as evidenced by the closing attorney's testimony:

> Q: So the Griffins, did they have a choice in the matter as to whether to accept this Deed of Easement or to reject it?
>
> A: Yes, they did.
>
> Q: How could they symbolize that choice?
>
> A: By not closing the purchase of the property.

[R.p. 186, ll. 6-14; Taylor Dep., p. 67, ll. 6-14.]

Instead, the Griffins chose to move forward with the purchase of the Property in complete awareness that issues had arisen concerning claims of the adjoining landowner. The proximate cause of any damage they have allegedly suffered is by their own choices and not any alleged negligence of Defendant Rollings. See McLaughlin v. Williams, 379 S.C. 451, 456-61, 665 S.E.2d 667, 670-73 (Ct. App. 2008) ("[I]f the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of material fact.") (holding purchaser, based on his knowledge from

inspection reports, could not have reasonably relied on vendor's disclosure statement as a representation that there was no moisture damage; this was true even though there was evidence that the agent knew the disclosure statement was incomplete; the purchaser's knowledge of the moisture issues precluded any reliance upon the disclosure statement).

In their appellants' brief, the Griffins suggest that while they knew of the Deed of Easement, they were not aware of any other adverse title claims upon the front yard of the Property.[3] This distinction the Griffins attempt to make does not give credence to their claims. The Griffins were certainly aware that Mr. Turner was claiming rights to the road adjacent to the Property and that he desired payment for the Property to have ingress and egress rights. [R.pp. 130-131, ¶¶ 23-24; 144; Supp. Aff., ¶¶ 23-24; June 14, 2015 e-mail from Sutton to Griffin attached as Ex. E to the Supp. Aff.] At that point, the Griffins could have addressed any concerns about any other potential claims Mr. Turner may have had with the Property when they spoke with him on January 13, 2015 before the closing. [R.pp. 130, ¶ 23; 144; Supp. Aff., ¶ 23; Ex. E.] That issues had already arisen with the adjoining landowner should have put the Griffins on notice that further inquiry was necessary before they decided to close on the purchase of the Property.

More so, the Griffins admitted to the Trial Court at the summary judgment hearing that they had good title to the Property:

> The Court: Did your clients [the Griffins] have bad title?
>
> Counsel: No . . . .
>
> . . .

[3] The Griffins only make this suggestion in their factual statement of their appellants' brief; they do not make an argument regarding the Trial Court's finding of notice in the argument portion of their brief.

Counsel: What I'm claiming this a - - it's a title issue.

The Court: Well, you just told me you had good title.

Counsel: No. We don't cause this man [Mr. Turner] claims - - this man claims that he owns – Turner claims that he owns part of these folks front yard. . . .

The Court: [Counsel], I just asked you 10 minutes ago, 5 minutes ago, 3 minutes ago whether or not you had good title and you said you did. Do you or don't you?

Counsel: I believe that we do, but the adjoining neighbor does not.

[R.pp. 57, ll. 17-18; 61, ll. 8-20; Hearing Tr. pp. 33, ll. 17-18; 37, ll. 8 – 20.]

The Griffins thus are not even claiming that they do not have good title to the Property but yet they want to raise a claim against Defendant Rollings that she allowed delivery of a Disclosure Statement which purportedly did not disclose that the Sellers did not have good title. The Griffins admitted at the hearing that Mr. Turner's alleged further claims against the Property are not legitimate and that he does not have valid title. As the Court pointed out, if the Sellers had good title and the Griffins now have good title, how could the Sellers have even disclosed that the Property had bad title, much less Defendant Rollings, the realtor, who had no previous knowledge about the Property:

The Court: Did the Griffins get a title examination done? . . . .

Counsel: Absolutely . . . .

. . .

The Court: And did the title examination list as an exception a potential quit claim deed, a potential easement, or a potential anything that arises out of all this?

Counsel: There's - - see, here's - - his claim is not legitimate. His - - he [Mr. Turner] doesn't have a valid legal claim. He thinks

he has it. Everybody - - there's no court - - or nobody established that it is legitimate, but he's done this.

The Court: Well, then how are the [Sellers] supposed to know he's got a illegitimate claim to . . .

Counsel: Because they - - they were told. . . . .

The Court: Well, did the sellers tell the buyers?

Counsel: No. Sellers – nobody told them. The closing real estate agent didn't tell, the sellers didn't tell - - -

The Court: Well, how did the closing real estate agent know it?

[R.pp. 54, l. 5 – 55, l. 6; Hearing Tr., pp. 30, l. 5 – 31, l. 6.]

As shown by Defendant Rollings' Supplemental Affidavit, she did not know or have any reason to know of any claims of Mr. Turner to the Property. She knew nothing more than the Griffins did themselves – that Mr. Turner was making claims on the Property and demanding payment for an easement. Defendant Rollings knew nothing more than the Griffins as to how the amount of the payment for the easement was determined or if it covered anything more than the price of the easement.[4] The Griffins, being aware of Mr. Turner's claims prior to closing, could have halted the closing and investigated further by questioning Mr. Turner or could have chosen to forego the purchase of the Property. As such, the Trial Court therefore correctly granted summary

[4] At the summary judgment hearing, the Griffins made allegations that the $1,500.00 easement payment was for repair of Mr. Turner's fence across the front yard of the Property that the Sellers or their tenants allegedly tore down. The Griffins claimed that Defendant Rollings knew what the payment was for and that she must have then known about Mr. Turner's claims to the front yard but there was never any evidence presented that Defendant Rollings ever knew anything more than that the $1,500.00 was payment in exchange for the easement other than the Griffins' counsel's conclusory statements that she must have known. [R.pp. 55, l. 20 – 56, l. 3; 63, l. 6 – 65, l. 22; 67, ll. 11-19; Hearing Tr., pp. 31, l. 20 – 32, l. 3; 39, l. 6 – 41, l. 22; 43, ll. 11-19.]

judgment to Defendant Rollings on the Griffins' claims against her arising out of alleged negligence with respect to the delivery of the Disclosure Statement.

CONCLUSION

For the reasons set forth herein, Defendant Shannon Rollings d/b/a Shannon Rollings Real Estate, LLC respectfully requests this Court to affirm the Trial Court's grant of summary judgment.

Respectfully submitted,

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May 20, 2019.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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