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SC Court of Appeals

Exhibit B

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|--|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON |) | CASE NO.: 2019-CP-10-05395 |
| |) | |
| R. Kent Porth and Panorama Point, LLC, |) | |
| |) | |
| Plaintiffs, |) | ORDER DENYING PLAINTIFFS' |
| |) | MOTION TO ALTER OR AMEND |
| vs. |) | |
| |) | |
| Robert P. Wilkins, Jr., RPW Development, |) | |
| Inc., Southern Visions Realty, Inc., and |) | |
| Consolidated Multiple Listing Service, Inc., |) | |
| |) | |
| Defendants. |) | |

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This matter comes before the Court on Plaintiffs motion under Rule 59(e), SCRCP seeking reconsideration of this Court’s February 16, 2021 Order granting the motion to dismiss of Defendants Robert P. Wilkins, Jr., RPW Development, Inc., and Southern Visions Realty, Inc. (“Order”). In support of their motion, Plaintiffs submitted a motion with memorandum and a reply memorandum. Defendants submitted a memorandum in opposition, and a sur-reply. The motion is now ripe for review.

Decision

“A party may wish to file a Rule 59(e) motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

In their motion, Plaintiffs argue both that this Court’s Order misunderstood or failed to consider certain issues, and that the Court did not rule on certain issues raised by the Plaintiffs. Further, contrary

to Rule 59 (e) the Plaintiffs also set forth new and never previously asserted or argued issues concerning legal issues and facts not before the court.¹

With respect to issues that Plaintiffs alleged this Court misapprehended, Plaintiffs argue. this Court's Order (1) failed to accept the allegations in their Complaint as true, (2) improperly concluded that Plaintiffs' action was subject to any statute of limitations, (3) to the extent a statute of limitations did apply, improperly applied the statute of limitations, (4) misconstrued Plaintiffs' public policy arguments; (5) misconstrued South Carolina law concerning fraud, (6) incorrectly held that Plaintiffs' allegations that the Defendants violated S.C. Code §§40-57-135(D)(4), 40-57-137(M) and 40-57-139 on their own do not provide grounds for a civil cause of action, (7) misunderstood South Carolina' Unfair Trade Practices statute, and (8) incorrectly held that Plaintiffs' alleged ignorance of the law did not toll the statute of limitations applicable to their claims, (9) incorrectly applied the law of unjust enrichment, (10) misapprehended the law of quantum meruit, and (11) incorrectly stated that the Defendants "earned" commissions and fees.

As it relates to issues allegedly not ruled upon by the Court, Plaintiff alleges that this Court's Order (1) did not rule on Plaintiffs allegations of intrinsic fraud, (2) did not address Plaintiffs' allegations that Defendant Wilkins signed a "fraudulent listing agreement," (3) did not address Plaintiffs' public policy arguments, (4) did not address Plaintiffs' allegations that various attorney's representing the Defendants allegedly concealed fraud, (5) failed to address Plaintiffs' argument that Defendants have unclean hands, and (6) did not address Plaintiffs' "good faith reliance on fiduciary status of the Defendants" argument.

In addition, Plaintiffs allege that this Court's Order violates the equal protection clause of the South Carolina Constitution.

¹ Attached to the Motion to Reconsider was an exhibit that was not previously submitted to the Court and not part of the original Complaint.

In opposition, Defendants argue that this Court's Order (1) properly concluded that allegations concerning violations of the statute dealing with licensed real estate professionals alone does not support a civil cause of action, (2) correctly ruled that a plain reading of the statute referenced by Plaintiffs demonstrates that Plaintiffs' allegations do not state a civil cause of action, (3) properly held that Plaintiffs' "ignorance of the law" argument did not toll the applicable statutes of limitations which clearly expired, and (4) properly held that Plaintiffs' claims are legal, not equitable.

Defendants also submitted a sur-reply objecting to the Court's consideration of certain arguments that Defendants allege were made for the first time in their reply memorandum.

After careful consideration of the parties' respective positions, and review of the submissions made to this Court, the Court is unable to find any fact or issue of law that was misapprehended or overlooked in its February 16, 2021 Order. Accordingly, Plaintiffs' motion to alter or the February 16, 2021 Order is respectfully DENIED.

IT IS SO ORDERED!

[Judge's Electronic Signature to Follow]



Lexington Common Pleas

Case Caption: R Kent Porth , plaintiff, et al VS Robert P Wilkins Jr , defendant, et al

Case Number: 2020CP3200005

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153