

App. 1

Rel: 01/12/2018

STATE OF ALABAMA – JUDICIAL DEPARTMENT
THE SUPREME COURT
OCTOBER TERM, 2017-2018

1160876

Brenda Sewell v. Brad Bull et al. (Appeal from Tuscaloosa Circuit Court: CV-16-901029).

PARKER, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a) (1) and (a) (2)(E), Ala. R. App. P.

Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

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**IN THE CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA**

SEWELL BRENDA,)
Plaintiff,)
V.) Case No.: CV-2016-
) 901029.00
BULL BRAD,)
BLUE CREEK REALTY)
GROUP, LLC, GEORGETOWN)
CONSTRUCTION COMPANY,)
L.L.C.,)
Defendants.)

ORDER

The MOTION FOR SUMMARY JUDGMENT filed by BULL BRAD, BLUE CREEK REALTY GROUP, LLC and GEORGETOWN CONSTRUCTION COMPANY, L.L.C. is due to be and hereby is GRANTED. Costs taxed as paid.

DONE this 30th day of May, 2017.

/s/ M. BRADLEY ALMOND
CIRCUIT JUDGE

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IN THE SUPREME COURT OF ALABAMA

[SEAL]

February 16, 2018

1160876 Brenda Sewell v. Brad Bull et al. (Appeal from Tuscaloosa Circuit Court: CV-16-901029).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on February 16, 2018:

Application Overruled. No Opinion. Parker, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on January 12, 2018:

Affirmed. No Opinion. Parker, J. – Stuart, C.J., and Shaw, Wise, and Sellers, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

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I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 16th day of February, 2018.

/s/ Julia Jordan Weller
Clerk, Supreme Court of Alabama

BRENDA SEWELL,	* IN THE CIRCUIT
Plaintiff,	* COURT FOR
	* TUSCALOOSA
vs.	* COUNTY, ALABAMA
	* CIVIL ACTION NO.
BRAD BULL, BLUE	* CV 2016-
CREEK REALTY GROUP,	* _____
LLC, and GEORGETOWN	*
CONSTRUCTION	*
COMPANY, L.L.C.,	*
Defendants.	*

COMPLAINT

Recitations Applicable to all Causes of Action

1. The plaintiff is and has been at all relevant times, a resident of Tuscaloosa County, Alabama.

2. The defendant Brad Bull is a founding member and a managing member of Blue Creek Realty Group, LLC, (hereinafter “Blue Creek”) and GEORGETOWN CONSTRUCTION COMPANY, L.L.C., (hereinafter “Georgetown”) which entities have at all relevant times operated as businesses in Tuscaloosa County, Alabama.

3. On March 19, 2014, for the sum of Forty Eight Thousand (48,000.00) Dollars, Georgetown conveyed to the plaintiff, by instrument recorded in Deed Book 2014 Page 3734, the following parcel of undeveloped land in Tuscaloosa County, Alabama:

A parcel of land being situated in the SE/4 of the NW/4 and in the SW/4 of the NE/4 of Section 4, Township 21 South, Range 12 West, in

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Tuscaloosa County, Alabama, and being more particularly described as follows: Beginning at a set capped rebar at the northwest corner of Lot 20, according of the R.K. Bell Survey of Elrod as recorded in Plat Book 2 at Page 32 in the Probate Office of Tuscaloosa County, Alabama; thence run in an easterly direction along the south right-of-way of County Road No. 140, having a radius of 995.01 feet, an arc length of 181.88 feet, and a chord bearing and distance of S 80°11'18" E, 181.62 feet to a concrete right-of-way monument at P.T. Station 705+00.3; thence run S 85°25'29" E for 202.73 feet to a capped rebar at the northwest corner of Lot 5, according to the map of Sipsey Cove Plat No. One as recorded in Plat Book 2011 at Page 9 in said Probate Office; thence run S 4°37'03" W for 414.17 feet along the west line of said Lot 5 to a capped rebar on the north right-of-way of the Southrail Railroad; thence run N 82°16'07" W for 68.97 feet along said north right-of-way to a point; thence run in a northwesterly direction along said north right-of-way, being the arc of a curve to the right, having a radius of 1358.01 feet, an arc length of 290.41 feet, and a chord bearing and distance of N 76°08'32" W, 289.86 feet to a set capped rebar at the southwest corner of said Lot 20 point; thence run N 0°18'46" E for 381.41 feet along the west line of said Lot 20 to the Point of Beginning;

Said parcel of land being referred to hereinafter as the "Premises."

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4. The Premises were advertised by Blue Creek and led the plaintiff to the defendants.

5. The Premises were marketed as a site for a residence, and one or more of the defendants advertised as being able to build on the Premises for the prospective purchaser. The Premises were advertised on site as being a part of "Sipsey Cove," a subdivision, but in fact it was not a part of said subdivision.

6. The plaintiff, prior to committing to purchase the Premises, asked the defendant Brad Bull, if the Premises would "perk." Brad Bull said that the Premises would perk. Both parties understood that in order to use an Onsite Sewage Treatment and Disposal System approved by the Tuscaloosa County Health Department, the Premises would have to have an Effluent Disposal Field having a permeability that would support the system. Permeability is measured by "percolation rate." A disposal field having an acceptable percolation rate is said to "perk".

7. The Premises are located in the community of Elrod, Alabama. There are no municipal facilities in or near Elrod to receive and treat domestic sewage. Residents in that community must rely upon Onsite Sewage Treatment and Disposal Systems. At all times relevant, the defendants knew of this fact and knew that the Premises would not support such a system.

8. Based upon the representation of Brad Bull, the plaintiff entered into an agreement to purchase the premises on March 7, 2014.

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9. The plaintiff, relying upon the representation of the defendants, sold her residence and prepared to build on the Premises. In April or May of 2016, the plaintiff learned that the Premises would not perk.

10. The Premises were part of a larger parcel of land that the defendants attempted to subdivide, but were unable to do so because the Premises area of the larger parcel would not perk. Failing to obtain subdivision approval required by state statute and Tuscaloosa County regulations, the defendants sold the Premises by “metes and bounds,” circumventing state law and county regulations.

11. The Premises comprise about three and a half acres of undeveloped land that has virtually no utility, and has no fair market value for the purpose for which it was advertised and purchased.

FIRST CAUSE OF ACTION

Negligence Per Se

12. The defendants were aware of the state laws and county regulations governing land sold for development. The defendants knew that the Premises were required to be approved under subdivision statutes and regulations, and that the statutes and regulations were there to protect innocent prospective purchasers from the very injury experienced by the plaintiff.

13. The defendants’ violation of statutes and regulations proximately caused the plaintiff to expend a large sum of money for the Premises, to her injury.

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Wherefore, the plaintiff demands judgment against the defendants, and each of them, in an amount to be determined by the trier of fact, sufficient to make the plaintiff whole, with costs.

SECOND CAUSE OF ACTION

Fraud

14. The defendants, by and through the defendant Brad Bull, represented that the Premises would perk. That representation was false and the defendant Brad Bull knew it to be false. Plaintiff believed the representation and in reliance upon the representation purchased the Premises to her injury.

Wherefore, the plaintiff demands judgment against the defendants, and each of them, in such amount to be determined by the trier of fact, compensatory and punitive, with costs.

THIRD CAUSE OF ACTION

Deceit

15. The defendants, by and through Brad Bull, willfully deceived the plaintiff with an inducement to pay good money for bad land, to her injury, either knowing that the Premises would not perk, or without reasonable basis for believing that the Premises would perk.

Wherefore, the plaintiff demands judgment against the defendants, and each of them, in such

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amount to be determined by the trier of fact, compensatory and punitive, with costs.

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P. O. Box 2786
Tuscaloosa, Alabama 35403
Tel. 205 758 5591

/s/ Isaac P. Espy

Isaac P. Espy (ESP-001)
Attorney for the Plaintiff

Defendants' Address:

803 Main Avenue
Northport, Alabama 35476

JURY DEMAND

The plaintiff demands a trial by jury for all issues in this cause.

/s/ Isaac P. Espy

Isaac P. Espy (ESP-001)
Attorney for the Plaintiff

BRENDA SEWELL,	* IN THE CIRCUIT
Plaintiff,	* COURT FOR
	* TUSCALOOSA
vs.	* COUNTY,
	* ALABAMA
BRAD BULL, BLUE	* CIVIL ACTION NO.
CREEK REALTY GROUP,	* 63-CV 2016-901029.00
LLC, and GEORGETOWN	* _____
CONSTRUCTION	* _____
COMPANY, L.L.C.,	* _____
Defendants.	* _____

FIRST AMENDMENT TO THE COMPLAINT

Comes the plaintiff in the above styled cause, and amends her complaint by adding the following to the recitation of ¶ 9 of the complaint:

“The plaintiff is unlearned in engineering, law or real estate, and reasonably relied upon the false representation of the defendant Brad Bull – trained in each of these areas – as to the character of the Premises. The fraudulent representation of the defendant Brad Bull concealed the facts that would have led the plaintiff to earlier bring this action. The fraudulent representation of the defendant Brad Bull lulled the plaintiff into complacency until the time came to prepare for construction of her home on the Premises. The ability of the land to perc is not an obvious character and the plaintiff reasonably relied upon one knowledgeable in that field of expertise.”

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/s/ Isaac P. Espy
Isaac P. Espy (ESP-001)
Attorney for the Plaintiff

[Certificate Of Service Omitted]

BRENDA SEWELL,	*	IN THE CIRCUIT
Plaintiff,	*	COURT FOR
	*	TUSCALOOSA
vs.	*	COUNTY,
	*	ALABAMA
BRAD BULL, BLUE	*	
CREEK REALTY GROUP,	*	CIVIL ACTION NO.
LLC, and GEORGETOWN	*	63-CV 2016-901029.00
CONSTRUCTION	*	
COMPANY, L.L.C.,	*	
	*	
Defendants.	*	

SECOND AMENDMENT TO THE COMPLAINT

Comes the plaintiff in the above styled cause, and amends her complaint by adding the following:

FOURTH CAUSE OF ACTION

Negligence Per Se as Broker

16. The defendant Brad Bull, and the defendant Blue Creek Realty Group, LLC, are “licensees” governed under ALA. CODE (1975) Title 34, Chapter 27. Section 34-27-84 of that Chapter imposes an obligation on licensees to provide brokerage services to all parties to the transaction honestly and in good faith. It further requires meaningful disclosure of the role of the licensee and the interest the licensee has in property offered for sale.

17. Section 34-27-36 of the Chapter makes punishable by fine, suspension or revocation of license, the following:

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“(a)(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling . . . real property of his or her own. . . .”

“(a)(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. . . .”

“(a)(19) Violating or disregarding any provision of this chapter or any rule, regulation or order of the commission.”

The Administrative Code, 790-X-3-.13 requires a licensee to meaningfully disclose the role of the licensee in a proposed transaction.

18. The defendant Brad Bull and the defendant Blue Creek Realty Group, LLC, by fraud and deceit, violated the applicable statutes and regulations, enacted for the narrow class including plaintiff, and such violation proximately caused the plaintiff to expend a large sum of money for the Premises, to her injury.

19. The conduct of the defendant Brad Bull concealed the facts that led to this cause of action, and prevented earlier filing of this complaint.

Wherefore, the plaintiff demands judgment against the defendants, and each of them, in an amount to be determined by the trier of fact, sufficient to make the plaintiff whole, with costs.

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/s/ Isaac P. Espy
Isaac P. Espy (ESP-001)
Attorney for the Plaintiff

[Certificate Of Service Omitted]

**IN THE CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA**

BRENDA SEWELL,	§	
Plaintiff,	§	
v.	§	
BRAD BULL,	§	Civil Action No.
BLUE CREEK REALTY GROUP,	§	CV-2016-901029
LLC, and GEORGETOWN	§	
CONSTRUCTION COMPANY, LLC,	§	
Defendants.	§	
	§	
	§	

ANSWER

Defendants Brad Bull, Blue Creek Realty Group, LLC, and Georgetown Construction Company, LLC, state the following as their answer to the plaintiff's Complaint:

FIRST DEFENSE

The plaintiff's complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The defendants respond to each allegation of the Complaint as follows:

1. Admitted.

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2. Defendants admit that Brad Bull is a member and a manager of both Blue Creek Realty Group, LLC and Georgetown Construction Company, LLC, and that Blue Creek Realty and Georgetown Construction do business in Tuscaloosa County, Alabama. All other allegations of this paragraph are denied.

3. Admitted. A true, correct, accurate, and complete copy of the warranty deed is attached to this Answer as Exhibit B.

4. Denied.

5. Denied.

6. Denied.

7. Defendants admit that residents in the Elrod community generally rely on septic tank systems for sewage treatment and disposal. All other allegations of this paragraph are denied.

8. Defendants admit that plaintiff entered into a Real Estate Sales Contract with Georgetown Construction Company, LLC on March 7, 2014. A true, correct, accurate, and complete copy of the contract is attached to this Answer as Exhibit A. All other allegations of this paragraph are denied.

9. Denied.

10. Defendants admit that the warranty deed described the property by metes and bounds. All other allegations of this paragraph are denied.

11. Defendants admit that the land was undeveloped, and consisted of about three and a half acres. All other allegations of this paragraph are denied.

FIRST CAUSE OF ACTION

Negligence Per Se

12. Denied.

13. Denied.

The defendants deny the allegations of the unnumbered paragraph following Paragraph 13, and specifically deny that the plaintiff is entitled to any relief.

SECOND CAUSE OF ACTION

Fraud

14. Denied.

The defendants deny the allegations of the unnumbered paragraph following Paragraph 15, and specifically deny that the plaintiff is entitled to any relief.

THIRD CAUSE OF ACTION

Deceit

15. Denied.

The defendants deny the allegations of the unnumbered paragraph following Paragraph 15, and specifically deny that the plaintiff is entitled to any relief.

Except as expressly admitted herein, these defendants deny each and every material allegation of the plaintiff's Complaint, and demand strict proof thereof. These defendants deny that the plaintiff is entitled to any relief.

ADDITIONAL DEFENSES

Without assuming any burden of pleading, proof, or persuasion, the defendants assert the following additional defenses:

1. The plaintiff's claims are barred by the applicable statute(s) of limitations.
2. The defendants assert all terms of the contract and the deed as a defense to the plaintiff's claims.
3. The plaintiff's claims are barred by the rule of caveat emptor.
4. The plaintiff purchased the property "as is, without warranty," and did not rely on any alleged misrepresentations.
5. The plaintiff's claims are barred by contributory negligence.
6. The plaintiff has failed to properly mitigate damages, if any.
7. The plaintiff's claims are barred by waiver, estoppel, or laches.
8. The plaintiff's claims are barred by unclean hands.

9. These defendants have, at all times, acted in good faith and without malice or intent to injure the plaintiff.

10. The plaintiff's claims are barred by release, consent, ratification, or acquiescence.

11. The plaintiff is not entitled to punitive damages. Any recovery of punitive damages is limited by the restrictions and caps provided by Alabama law. Under any circumstances, punitive damages should not exceed those allowed by Ala. Code (1975) § 6-11-21. No punitive damages are appropriate because the prerequisites of Ala. Code (1975) § 6-11-27 have not been met, and such punitive damages should not be awarded because the prerequisites of Ala. Code (1975) § 6-11-20.

12. Any award of punitive damages to the Plaintiff in this action would violate the Constitutional safeguards provided to the defendants under the Constitution of the State of Alabama.

13. Any award of punitive damages to the Plaintiff in this action would violate the Constitutional safeguards provided to the defendants under the Constitution of the United States of America.

14. These defendants reserve the right to amend this answer as warranted through the discovery process and to assert additional defenses that may become known to them.

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Respectfully submitted,

/s/ Chad L. Hobbs

CHAD L. HOBBS (HOB012)

Attorney for the Defendants

Of Counsel:

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Docket No. 1160876

In the

SUPREME COURT OF ALABAMA

Brenda Sewell

v.

Brad Bull, Blue Creek Realty Group, LLC,
and Georgetown Construction Company, L.L.C.

Appeal from the Circuit Court for Tuscaloosa County
63-CV-2016-901029.00

Application for Rehearing

And

Brief of the Appellant

Isaac P. Espy
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Attorney for the Appellant

Oral Argument Requested

Application for Rehearing

Comes Brenda Sewell (hereafter “Brenda”), appellant in this cause, and respectfully requests that this Honorable Court re-consider its decision of January 12, 2018, wherein it ruled adversely to the [sic] Brenda by affirming the trial court, without opinion. As basis for the application, she sets out the following:

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Rule 40(b) of the ALA. R. APP. P. reads:

The application for rehearing must state with particularity the points of law or the facts the applicant believes the court overlooked or misapprehended.

Brenda is incapable of adhering to this rule, and denied its utility, because neither the trial court below nor this Court gave an opinion – based on fact or law – as to why the plaintiff below cannot have her day in court.

Wherefore, appellant requests the Court to disclose its opinion and if adverse allow a second, meaningful, application for rehearing.

Respectfully submitted this 23rd day of January, 2018.

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/s/ Isaac P. Espy
Isaac P. Espy (ESP-001)
Attorney for the Appellant
Brenda Sewell

[4] **Brief of the Applicant**

TABLE OF AUTHORITIES

Cases

Bright v. Westmoreland county, 380 F.3d 729 (3d. 2004)7
Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673 ().....6, 8
Carey v. Phiphus [sic], 435 U.S. 247 (1978).....7
Fuentes v. Shevin, 407 U.S. 67 (1972).....7
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)6, 7
Teer v. Johnston, 60 So.3d 253 (Ala. 2010).....5

Constitutions

Amendment XIV § 1, U. S. Constitution6
Article I § 13, Alabama Constitution6

Rules

ALA. R. APP. P. 40(b).....2, 6

[5] ISSUE: HAS THE APPELLANT/APPLICANT BEEN DENIED FULL RIGHTS OF APPEAL (AND DUE PROCESS) FOR LACK OF ANY DISCLOSED SUBSTANTIVE OPINION THAT DISPOSES OF HER CLAIMS?

This cause was filed below in fraud, and in negligence *per se*. The defendants Brad Bull, *et al.* (hereafter “Bull”) filed a motion for summary judgment, defending (1) based upon the prophylactic against fraud set

out in *Teer v. Johnston*, 60 So.3d 253 (Ala. 2010), and (2) the statute of limitations as to all counts. The trial court granted the motion for summary judgment without opinion. This Court affirmed without opinion.

In her principal brief Brenda argued that *Teer* should be modified or overruled based on the constitutional protection of due process, and the core of Alabama jurisprudence. In addition, she argued that the counts in negligence *per se* stood alone and were viable regardless of *Teer*.

These same arguments were made in opposition to the motion for summary judgment in the trial court. But because neither the trial court nor this Court disclosed an [6] opinion, Brenda does not know why she is unable to present her case to a finder of fact.

Unless this Court grants rehearing, and issues an opinion, Brenda is denied the opportunity to meaningfully address this Court's decision under Rule 40(b).

Absent this Court's expression by opinion, Brenda is left to wonder: (1) was her counsel ineffective? (2) did the trial court simply transfer the issue to appeal? (3) did the trial or appellate court misconstrue the facts? Or (4) was the law misapplied?

Due Process under the §1 of Amendment XIV of the U. S. Constitution and under Article I §13 of the Alabama Constitution may be amorphous in definition, but nonetheless requires fundamental fairness to litigants. Fairness, in the context of this litigation is

the right to know *why* the plaintiff can't cross the trial court threshold.

Fairness of procedure is "due process in the primary sense." *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, 681 (1930), *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123 (1951)

[7] Due Process is "'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions . . ." *Carey v. Piphus*, 435 U.S. 247, 266 (1978).

Written in another context but universally applicable, the U. S. Supreme Court wrote in *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972):

It has long been recognized that fairness can rarely be obtained by secret, one-sided determination of facts decisive or rights . . .

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 171-72 (1951):

No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.

In *Bright v. Westmoreland County*, 380 F.3d 729 (3d. Cir. 2004), the Court reversed a district court judgment because it was not the independent product of the judge. At 732, it wrote:

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Judicial opinions are the core work-product of judges. They are much more than findings of fact and conclusions of law; they constitute the logical and [8] analytical explanations of why a judge arrived at a specific decision. They are tangible proof to the litigants that the judge actively wrestled with their claims and arguments and made a scholarly decision based on his or her own reason and logic.

Though clearly written from a different context, the philosophy of the *Bright* opinion nicely states the expectations of litigants whose substantive, serious claims land in the province and power of the judiciary. *Bright* dealt with a tainted written explanation of judgment. Brenda has none.

Due process does not impose upon a state a particular appellate remedy or procedure. But:

. . . [W]hile it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect.

Brinkerhoff-Faris Trust & Savings Co., 281 U.S. 673, 682 (1930).

Due process is not served when, after a regular proceeding (summary judgment, appeal), a decision is

rendered that cannot be reasonably questioned because it is [9] without published basis. The full panoply of due process is truncated when the decision of the court of last resort just says: "Go hence."

Due process does not prevent Brenda from losing her case; it protects her against arbitrary justice or honest error. Due process entitles her to know why she lost her case. She has been denied that protection and that closure.

[10] Conclusion

For the reasons cited in Brenda's principal brief, reply brief, and here, the Court should expand its order of January 12, 2018 to include the basis by which the trial court was affirmed, and allow a second application for rehearing after having the benefit of the facts and law upon which the Court's decision was made.

Respectfully submitted this 23rd day of January, 2018.

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/s/ Isaac P. Espy
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Attorney for the Appellant
Brenda Sewell

[11] [Certificate Of Service Omitted]
