No. 14-111418-A

IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

DAN E. TURNER AND PHILLIP L. TURNER
APPELLANTS

VS.

QUALITY CONTRACTORS, LLC et al
APPELLEES

BRIEF OF APPELLANTS DAN E. TURNER AND PHILLIP L. TURNER

Appeal from District Court of Shawnee County, Kansas
The Honorable Franklin Theis, Jr.
District Court Case No. 07-C-919

Dan E. Turner #6300
Phillip L. Turner #12577
801 S. W. Western Avenue
Topeka, Kansas 66606-1446
(785) 357-6541
Attorneys for Appellants

ORAL ARGUMENT REQUESTED

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NATURE OF THE CASE

The first appeal was dismissed as being premature because of the outstanding issue of the money held by the Turner's in their trust account. (R.O.A. Vol.19, pg. 2460) The Turners asserted an attorneys lien on the proceeds to cover their expenses and attorney fees for the recovery of the money which they held .(R.O.A. Vol. 22, pg. 1). The district court determined the turners were not entitled to the recovery of any attorney fees because there was not a recovery based upon the district court's prior findings of a valid sale. The district court also denied the Turner's the recovery of their expenses. (R.O.A. Vol.19, pg. 2468. 2477 and 2489)

This case involves the attempt of the Defendants to manipulate the purchase of real estate owned by Jordan Patterson American Legion Post #319, the first Black American Legion Post in the United States by Quality Contractors, LLC, through its President, Jerry Pritchard. Pritchard, with the help of Verdell Bugg. Jordan Patterson Post #319 was the first Black American Legion Post and was built on property that contains the historical caves of the Underground Railroad used by black slaves escaping from the slave States prior to the Civil War. While the property had never been placed on the historical register, its historical significance plays into the Black History of the City of Topeka and the Brown vs. Board of Education Historical School which is located a short distance away.

The factual testimony of the parties involved in the dispute between Jordan Patterson and the Defendants clearly shows the attempted manipulation by Pritchard and Bugg to purchase the Post. Commander of the Post, Willie Jackson was removed in November 2005. Mr. Bugg replaced Mr. Jackson with James Anderson, who was basically illiterate and may have been incompetent, and who resided in one of Mr. Jackson's rental properties, for $50.00 per month at

the time. (R.O.A. Vol. 13 pg.1257, Undisputed Statement of Anderson #12 & #13)

The record also established that all the meetings to remove Mr. Jackson and to replace Mr. Jackson as Commander with James Anderson took place in Mr. Bugg's drinking establishment known as Tewzenuff and located at 1465 SE Washington, Topeka, Kansas. The record also established that the written contract was signed at Mr. Bugg's drinking establishment. (R.O.A. Vol. 13, pg. 1257, Undisputed Fact of Bugg #26)

None of the Defendants dispute the fact that immediately after the removal of Jackson as Commander that Anderson brought a proposal to sell the Post at a regularly scheduled meeting, without notification to the members of Legion either verbally or in writing, brought before the members attending a proposal to sell the American Legion Post #319. This meeting took place on December 6, 2005, and by voice vote allegedly approved the sale by those attending.

After the meeting of December 6, 2005, Henry Holly, III the Adjutant elected at the October meeting wrote a letter dated December 21, 2005 rejecting the sale of the Post at 811 SE 15th, Topeka, Kansas. He stated that until the developer can meet with the membership on the first regular meeting night of the new year, which would be January 10, 2006, at Euclid Masonic Lodge Hall, 410 SE Arter, Topeka, Kansas, that as Adjutant he was suspending any attempted sale of the Post. (R.O.A. Vol. 13 pg.1257, Exhibit A) The record and evidence clearly establishes no such meeting took place.

The record of testimony of James Anderson establishes without a doubt that Mr. Anderson was functionally illiterate and that any correspondence in his name was prepared for his signature by others. After the letter of Henry Holly, III, Adjutant, of December 21, 2005, James Anderson, Commander attempted to remove Henry Holly, III as the Adjutant. (R.O.A.

Vol. 13 pg.1257 Letter of James Anderson, Commander, dated December 29, 2005 Exhibit B)

After receiving James Anderson, Commander's letter, Adjutant Henry Holly, III inquired of the State American Legion located at 1314 SW Topeka Blvd, Topeka, Kansas as to the authority of Mr. James Anderson, Commander of Post #319 in removing him as the Post Adjutant of Jordan Patterson American Legion Post #319. In a letter dated January 5, 2006, Charles M. Yunker, Adjutant American Legion Department of Kansas wrote a response to Adjutant Henry Holly, III, dated January 5, 2006, stating that Mr. Anderson did not have the authority to remove him and stated unequivocally in the second paragraph of his letter "therefore you are and remain the elected Adjutant of Jordan Patterson Post #319, Topeka, Kansas."

He further responded to the question of the sale of the Post on December 6, 2005, by stating,

> "as per the question regarding the sale of the Post Home; every member whose dues are paid and current has a vested interest in the Post Home. Therefore the officers, especially the Post Commander and Adjutant, have a legal and moral obligation to notify all members in writing that a vote will be taken whether or not to sell the Post Home or other real estate. The standard time frame for such notices is 30 days in advance of the vote whether or not to sell; further the notice should at a minimum include the evaluation of the property in question, the projected selling price (or the amount offered by the prospective buyer), and an explanation why selling the Post Home should be considered. In addition, the Post should present a plan outlining the future plans for the Post itself and what the proceeds of any such sale would be used for in the future. Without such a notification vote by the general membership a Post Home and other real estate cannot be sold because every member is entitled to the basic principles of equal protection and due process."

(R.O.A. Vol. 13 pg.1257, Exhibit F)

In spite of the letter of January 5, 2006, by the Adjutant of the State American Legion and objection of the elected Adjutant, Henry Holly, III, Anderson attempted to execute a real estate

contract dated January 5, 2006 at Mr. Buggs bar. The contract does not have the signature of the Adjutant as required by the State and Local by-laws. On January 25, 2006, Post Adjutant Henry Holly, III, notified Mr. Pritchard by letter that the sale was null and void. His letter stated:

> "Enclosed you will find what we are lead to believe by Mr. Bugg is a copy of your contract delivered by you to select members and not through the mail. Wherein a special meeting, void of total membership awareness an elect members of the executive board. Therefore let the record so show this contract you sent through your currier (Mr. Bugg's and possibly other falsely influenced by the malicious rumors, is null and void.) Wherein Mr. Bugg's and possibly others were deceived by your threats Mr. Pritchard is in this collusion. "

By a notice of January 25, 2006, letter, the contract of January 5, 2006, was deemed null and void. (R.O.A. Vol. 13 pg.1257, Exhibit G).

In an attempt to ratify the contract a forged letter dated January 27, 2006 was sent to all current members of Jordan Patterson American Legion #319 stating that they had a legal and binding contract signed by the representatives of the Post. In his letter on page 2, it was stated

> "1. The contract agreement is legal and binding.
> 2. Post #319 has no charter corporation status with the State of Kansas;
> 3. the buyer has a right to file legal action (lawsuit) against Post #319 and all of its members, if the contract is resented; and
> 4. <u>All Post #319</u> members <u>are personally liable</u> to <u>pay any money awarded buyer</u>."

These statements were false, knew to be false by Mr. Anderson when made for the specific intent to threaten and influence members into believing that if they did not vote yes they would be personally liable for money damages to Mr. Pritchard. (R.O.A. Vol. 13 pg.1257, Exhibit H).

The attempt to legalize the illegal sale of the Post by sending out a ballot to the members established in a regular meeting to cast the vote on February 18, 2006, at 2:00 p.m. at 410 SE Arter, (Masonic Lodge) violated the rules of the Post because the Adjutant is responsible for all

such notifications. The letter further violated the requirements set out in the State Adjutant's letter to Adjutant Holly dated January 5, 2006, in that the notice did not give a 30-days notice for the vote date, did not disclose an appraised value for the property, and did not establish the ballots were sent to each dues paying member nor when the ballots were counted there was not a written roster of those who voted and whether the vote cast either yes or no. Mailed ballots were required to be returned to Mr. Anderson Private Post Office Box without accountability to the American Legion Post. By the very nature of the letter of January 27, 2006, with statements intended to intimidate the members to vote yes to confirm the illegal sale of the Legion property on the 5th day of January, 2006, said sale would be void.

Members of Jordan Patterson Post #319 obtained an opinion from Sterling S. Waggoner, Waggoner, Arterburn & Standiferd, dated March 28, 2006, concerning the validity of the sale. On March 28, 2006, Sterling Waggoner wrote Tom R. Barnes, Attorney at Law, at 2887 SW MacVicar , Topeka, Kansas 66611, attorney for Quality Contractors, notifying the Buyer that the sale was considered improper and that the members did not want to sell the property in question. (R.O.A. Vol. 13 pg.1257, exhibit J)

Eelection of new officers were held and Kenneth Hill was nominated and approved as the Post Commander in May of 2006 pursuant to notice sent out by the Adjutant of the Post to the membership. There is no known response from Tom Barnes to Sterling Waggoner inquiring; however on May 23, 2006, Stephen D. Latterman claiming to represent Quality Contractors responded to Mr. Waggoner's letter on May 23, 2006. On June 22, 2006, Sterling S. Waggoner, Attorney for the American Legion responded to Mr. Latterman's letter filing his objection to any further attempt to sell the property as requested in Mr. Latterman's letter. (R.O.A. Vol. 13

pg.1257, Exhibit 31H)

Despite the objection to the sale, sent by Sterling Waggoner in his letter of June 22, 2006 Quality Contractors attempt to close the sale on August 11, 2006 at Capital Title and Insurance Company and Commonwealth Land Title Insurance Company. All correspondence from Sterling Waggoner was sent to Capital Title Insurance Company and Commonwealth Land Title Insurance Company prior to the closing placing them on notice that the Post membership objected to the sale and that the sale was not valid. As part of the sales process an indemnity agreement was signed by Quality Contractors to indemnify Capital Title Insurance Company and Commonwealth Land Title Insurance Company if it was determined that James Anderson did not have the authority to execute the warranty deed. (R.O.A. Vol. 13 pg.1257 See exhibit 31I). No one corresponded or advised Mr. Waggoner of the alleged closing despite the fact that his letter stated specifically that James Anderson was a former Commander and all correspondence should be directed to Mr. Waggoner's office.

STANDARD OF REVIEW

The standard of review for issues decided by summary judgment has been set forth by the Kansas Supreme Court in *Nungesser v. Bryant*, 283 Kan. 550 (2007)

> 'Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, 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. The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in

the case. On appeal, we apply the same rules and where we find reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied.' [Citation omitted.]" *State ex rel. Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005).

STATEMENT OF ISSUES

1. **There was no Authorized Contract to Sell the Real Property**

   A. **The Written Contract Expired**

   B. **The Written Contract was Never Properly Approved**

   C. **Failure to Prove Sufficient Consideration**

2. **Actual or Apparent Authority**

3. **Competency and Duress**

4. **Affidavit of James Anderson**

5. **The Turners are entitled to their attorney fees and expenses**

ARGUMENTS AND AUTHORITIES

This appeal arises out of the lower court's granting of summary judgment in favor of the Defendants. (R.O.A. Vol. 18, pg. 2337) Jordan Patterson sought reconsideration which was also denied. (R.O.A. Vol. 18 pg. 2404) The lower court then entered its journal entry of judgment disposing of all remaining issues. (R.O.A. Vol. 18 pg. 2433) Jordan Patterson filed an appeal. (R.O.A. Vol. 18 pg. 2443) which was dismissed as premature. (R.O.A. Vol. 19, pg. 2460) The Turners on remand asserted their attorney's lien for attorney fees and expenses. (R.O.A. Vol. 22, pg. 1) The district court determined the sale was valid and therefore the Turners were not entitled to any attorney fees or expenses. (R.O.A. Vol.19, pg. 2468. 2477 and 2489) The Turners have standing to assert these issues.

1. There was no Authorized Contract to Sell the Real Property

Jordan Patterson's attorney on June 22, 2006 sent a letter to counsel for the Buyer Defendant Qaulity Contractors LLC. A copy of this letter was provided to Defendant Capital Title Insurance. The letter contained a number of material statement of facts. It is noted that James Anderson was the former commander of the Post. Second James Anderson was present on March 14, 2006 when the Post authorized Mr. Waggener and his firm to represent the Post with only one member voting no. The vote to sell the real property was not taken at a duly noticed meeting of Jordan Patteron's but was rather through the mail with the votes being sent to Commander Anderson's post office box contrary to the bylaws of Jordan Patterson. It was further noted that the written contract had the incorrect name as the seller and the problem that no money was to be paid other than $1. It was also noted that the closing was extended without authorization by thirty days. Finally, there was no attempt to close the real property during the unauthorized extension to close. Counsel for Jordan Patterson then asked for the production of any proof that the State Legion had in fact found the sale to be valid. No proof was ever sent in regard to this letter nor was any ever produced during this litigation by the Defendants other than the letter of January 5, 2006 from State Adjutant Yunkers which supports the position of Jordan Patterson. (R.O.A. Vol. 13 pg. 1257, Exhibit 31H).

The Kansas Supreme Court set forth in the case of *Osterhaus v. Toth*, 291 Kan. 759 (2011) the standard to be used concerning a written contract.

> The legal effect of a written instrument is a question of law. It may be construed and its legal effect determined by the appellate court regardless of the construction made by the district court. *Foundation Property Investments v. CTP*, 286 Kan. 597, Syl. 2, 186 P.3d 766 (2008). The primary rule for interpreting written contracts is to ascertain the parties' intent. If the terms of the contract are clear, the

intent of the parties is to be determined from the language of the contract without applying rules of construction. *Anderson v. Dillard's, Inc.*, 283 Kan. 432, 436, 153 P.3d 550 (2007); see *National Bank of Andover v. Kansas Bankers Surety Co.*, 290 Kan. 247, Syl. , 225 P.3d 707 (2010).

A. The Written Contract Expired

Assuming the written contract to sell the real property was in fact properly approved and ratified by the members of Jordan Patterson, which is specifically disputed, the written contract expired by its own terms before the August 11, 2006 alleged closing. The original date for closing was April 15, 2006. (R.O.A. Vol. 13, pg. 1257, Bugg Exhibit #2) This written contract then was allegedly amended at some point in time by extending the closing date by 30 days. The alleged Amendment was then altered at some point in time to reflect that closing was extended for 60 days. (R.O.A. Vol. 13 pg. 1257, Bugg Exhibit #2) Again the Amendment was never submitted nor approved by the members of Jordan Patterson. This would have set the closing on the written contract to take place on or before May 15, 2006. The written contract expired by its own terms on May 15, 2006 by the failure to close.

This material fact was noted to the Defendant Quality Contractors LLC on June 22, 2006 which also stated that Jordan Patterson did not wish to proceed forward with the alleged sale. The lower court completely disregarded these material facts to which a jury could find that the written contract had expired and had been terminated by Jordan Patterson.

B. The Written Contract was Never Properly Approved

The Kansas Supreme Court in the case of *Gospel Tabernacle Body of Christ Church v. Peace Publisher & Co.*, 211 Kan. 420 (1973) discussed the requirement that when a church body transfers real property that it must be after approval of the members of the congregation. Jordan

Patterson believes that the same rationale should apply in this case.

> In *Glader v. Schwinge,* 336 Ill. 551, 168 N. E. 658 (1929), the court distinguished a deed to trustees for the benefit of a church society and a deed to trustees for the general body of any church denomination for the purpose of promoting a particular religious principle or doctrine of faith. The court said:
> ". . . Where a deed to trustees for the benefit of a church society contains no express declaration of trust for the general body of any church denomination or for the teaching or practice of any particular religious principles or doctrines of faith, the right to the possession, control and use of the property is solely in the members of the church society. . . ." (p. 557.)

The alleged first vote of December 6, 2005 was a red hearing and is of no value because James Anderson even admitted there was no vote on December 6, 2005 and that the only thing that was agreed to on December 6, 2005 was to enter into negotiations. (R.O.A. Vol. 13, pg. 1257, Undisputed Statements of James Anderson #41 and #42.) The only real issue Defendants Pritchard, Qaulity Contractors, LLC Capital Title Insurance Co LC, Deanna Zimmerman and Verdell Bugg and James Anderson have arises out of the validity of the second vote.

In order to sell Jordan Patterson's real property the Post was required to submit to Adjutant Henry Holley a resolution to authorize the sale of the Post real property and request a notice of sale and request for a ballot to be held to vote on the sale. (R.O.A. Vol. 13 pg. 1257, Exhibit 17 Duties and of Adjutant and Article VII Section 2(a). Undisputed Statements of Adjutant Henry Holley #6, #25, #26 and #40.) At a minimum there must be as documented by State Adjutant Charles Yunker letter advising Adjutant Henry Holley of January 5, 2006 that "as for your questions regarding the selling of the Post Home; every member whose dues are paid and current has a vested interest in the Post Home. Therefore, the officers, especially the post Commander and Adjutant,. Have a legal and moral obligation to notify all members in writing a vote will be taken whether or not to sell the Post Home

or other real estate. The standard time frame for such notice is 30 days in advance of the vote whether or not to sell; further the notice should at a minimum include valuation of the property in question, the projected selling price (or the amount offered by the prospective buyer), and an explanation why selling the Post Home should be considered. In addition the Post should present a plan outlining the future plans for the Post itself and what the proceeds of any such sale would be used for in the future. Without such a notification and vote by the general membership a Post Home and other real estate cannot be sold because every member is entitled to the basic principals of equal protection and due process.". (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ervin Jones #20, #21. The Defendants appear to be asserting that these are not valid requirements but no contrary authority has been given disputing the State Adjutant Yunker's letter. Given the standards for summary judgment the lower court erred in not finding that these were in fact the requirements to sell the real property.

There was in fact no such resolution ever submitted to Adjutant Henry Holley authorizing a sale of the Post real property. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ulyssis Wright #20). Chairman of the Executive Committee Robert Taylor testified that he had no authority and that it first had to be taken to the executive board and he never even got the chance to submit it to the executive committee. (R.O.A. Vol. 13 pg. 1257 Undisputed Statements of Robert Taylor #11). Adjutant Henry Holley testified that he never took any minutes of any executive committee meeting to move forward on the sale. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #50).

Adjutant Henry Holley never did prepare a Notice and Ballot to be sent out to the members. The Notice and Ballot contrary to the by-laws were allegedly prepared by James Anderson. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #39, #41, #49. Undisputed Statements of Ervin Jones #24). Further Adjutant Holley believed the alleged signature of James Anderson on the letter of January 27, 2006 was a forgery and that the language used in the threatening letter was language that James Anderson would never use and that James Anderson was not authorized to send out correspondence to the Post by the by-laws. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #41 and #42)

The Ballot did not contain any of the required information the State Adjutant Yunkers said was required at a minimum to be included for a proper vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ervin Jones #25 and #26). Further the required thirty days was not provided since the time period was only from January 27, 2006 to February 18, 2006.

Adjutant Henry Holley testified he did not receive a copy of the letter nor a ballot on the vote. (R.O.A. Vol. 13 pg.1257, Undisputed Statements of Henry Holley #39 and #44). Kenneth Hill did not receive the letter or ballot on the vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #12 and #49). Treasurer Robert Brown testified that he did not received a ballot to vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Brown #3).

At the time of the meeting Treasurer Robert Brown showed up because he heard about it and tried to vote but they refused to allow him to vote. (R.O.A. Vol. 13 pg.

1257, Undisputed Statements of Robert Brown #7). Kenneth Hill showed up at the meeting with George Thompson and others but they were not allowed to vote even though they had not received any notice. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement of Kenneth Hill #45, #46).

Adjutant Henry Holley arrived late on February 18, 2006 and when he did arrive he made the announcement that the ballot was not valid. People did not receive ballots, the ballots were mailed back to Mr. Anderson and not the Adjutant and you could not vote at the meeting and it appeared the ballots had been tampered with and he was not allowed to conduct the count. (R.O.A. Vol. 13 pg. 1257 Undisputed Statements of Henry Holley #45, #46, and #47 and Undisputed Statements of Kenneth Hill #47, #48). Chairman Robert Taylor admitted that there was no valid vote taken according to the by-laws. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement of Robert Taylor #15). There was a material issue of fact which needed to be decided by the trier of fact as to whether or not there was a valid vote of the members of the Jordan Patterson Post to sell its real property and awarding summary judgment was in error.

The Defendants avoid these facts by ignoring the requirements as set out by State Adjutant Yunkers as to the requirements. The Defendants ignore the testimony of Chairman Robert Taylor who testified that he specifically told Mr. Pritchard on January 5, 2006 that the contract had to be taken back to the members and voted on before it was authorized and it would only then be valid and that he had no authority. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #5, #6, #7 and #10). There can be no doubt and there are no facts which contradict Chairman Robert Taylor's testimony

and therefore there was no authority except if the members of the Post voted validly to sell the real property. James Anderson admitted that he had no written document which authorized him to sign the contract on behalf of Jordran Patterson. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #58).

Adjutant Henry Holley on February 18, 2006 notified the members that the vote and ballot was invalid. Adjutant Henry Holley has since that date taken the same position and no new vote to authorize the sale was ever submitted. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #48, #49). Contrary to the Defendants belief there was in fact a vote taken to rescind the sale after May 9, 2006 when the new officers were elected. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #70).

James Anderson knew that the vote was invalid as of February 18, 2006. James Anderson knew that there was a dispute as to the sale of the real property because he admitted he received a copy of the March 28, 2006 letter of Sterling S. Waggener in his April 3, 2004 letter to Mr. Waggener. (R.O.A. Vol. 13 pg. 1257, Exhibit L and J). James Anderson knew that new elections had occurred and he had been removed as commander because he wrote a letter to the Post complaining about the election after the fact on May 1, 2006. (R.O.A. Vol. 13 pg. 1257, exhibit P).

James Anderson without authority on April 12, 2006 attempted to extend the closing date on the alleged contract for either 30 to 60 days, however, the sellers name on the contract was never changed to the Plaintiff rendering the contract invalid and unenforceable. Even Mr. Buggs admitted that there was no authorization to extend the

closing date by the Post. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement of Verdell Bugg #58).

Jordan Patterson submitted sufficient material facts to raise a material question of fact as to whether or not there was a valid vote of the members of the Jordan Post to authorize the sale of the Post's real property. Jordan Patterson had also submitted sufficient material facts to raise a material question of fact as to whether or not James Anderson had any authority to appear on August 11, 2006 and sign a warranty deed on behalf of the Post. The Defendants were not entitled to summary judgment and the lower court's decision should be reversed and remanded for trial on all issues.

C. Failure to Prove Sufficient Consideration

The State Adjutant Yunkers stated it was required that before selling the Post's real property that it needed to be appraised and the Post members informed of the appraised value verse any offer to purchase the Post's real property. ((R.O.A. Vol. 13 pg. 1257, Exhibit F) There was in fact no appraisal ever obtained by the Post. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #15, #29, #30).

Officers of the Post believed that the real property was worth substantially more than $120,000.00. Adjutant Henry Holley believed that the Post's real property was worth substantially more then $120,000.00. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley, #29, #61). Commander Hill believed the real property was worth more than $2,000,000.00. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #42). Chairman Robert Taylor believed the real property was worth more than $500,000.00. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor

#8 and #31). Chairman Robert Taylor of the executive committee testified Mr. Bugg believed that the price was a cheap price when he was asked if he would sell his property for the same price and he said heck no. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #14). Robert Taylor believed the real property was worth more than what was offered because his house was worth $70,000.00 and the Post had a whole lot more real property. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #19).

Given the officers valuation of the real property and the failure to provide an appraisal to the Post members to vote on there is a question of fact of a material fact whether or not sufficient consideration was given if it is assumed the vote was properly noticed which it was not.

The alleged written contract provided only for the payment of $1 dollar on closing and was never modified even after the discrepancy was noted to the Buyers attorney on two occasions. This is irrespective of the fact that the contract was not in the name of the Plaintiff and therefore invalid. The payment of $1 under the contract was clearly not sufficient consideration.

2. Actual or Apparent Authority

The Kansas Supreme Court in the case of *Theis v. Du Pont, Glore Forgan, Inc.*, 212 Kan. 301 (1973) set forth the standards to be used to determine whether or not actual or apparent authority existed for a transaction.

> The law recognizes two distinct types of agencies, one actual and the other ostensible or apparent. The authority of an actual agent may be either express or implied. The distinctions between express, implied and apparent authority are

explained in *Greep v. Bruns*, 160 Kan. 48, 159 P. 2d 803, as follows:
"The authority of an actual agent may be either express or implied. It is express if the one sought to be charged has delegated authority to the agent by words which expressly and directly authorize him to do a delegable act. It is implied if from statements of the parties, their conduct and other relevant circumstances it appears the intent of the parties was to create a relationship permitting the assumption of authority by an agent which when exercised by him would normally and naturally lead others to believe in and rely on his acts as those of the principal.

"An ostensible or apparent agent is one whom the principal has intentionally or by want of ordinary care induced and permitted third persons to believe to be his agent even though no authority, either express or implied, has been conferred upon him." (Syl. paras. 4 and 5)
These distinctions have been frequently articulated by this court. See *Carver v. Farmers & Bankers Broadcasting Corp.*, 162 Kan. 663, 179 P. 2d 195; *Shugar v. Antrim,* 177 Kan. 70, 276 P. 2d 372; *Rodgers v. Arapahoe Pipe Line Co.,* 185 Kan. 424, 431, 345 P. 2d 702.

The lower court ignored all of Jordan Patterson's arguments by making a finding that the election of Kenneth Hill as president was invalid, therefore James Anderson was still the president and could have appeared at the closing and signed the warranty deed. (R.O.A. Vol. 18 pg. 2337) The lower court had no authority to set aside the election as that issue has never been before the court. James Anderson as the alleged former commander would have standing to assert such a claim of an invalid election however his answer filed with the lower court on November 30, 2007 did not make any such claim or affirmative request for relief. (R.O.A. Vol. 8 pg. 718) Further, even if the question of whether or not Kenneth Hill was properly elected as president is a question of a material fact which the lower court could not decide.

The lower court ignored the fact that Adjutant Henry Holley and Commander Anderson were elected in the fall of 2005 in the same manner as Commander Kenneth Hill and Adjutant Henry Holley were elected in May 2006. James Anderson testified that Mr. Jackson did not know that he was going to be removed on November 15, 2005 prior to the meeting. (R.O.A. Vol.

13 pg. 1257, Depo. Anderson 04/16/08 pg. 68:21-25) James Anderson testified that Mr. Jackson refused to resign so a vote was taken and Mr. Jackson was removed as commander. (R.O.A. Vol. 13 pg. 1257, Depo. Anderson 04/16/08 pg. 69:11-24)

Verdell Bugg admitted there was no notice sent out to members of the intention of holding a special election to remove Mr. Jackson and the other officers. (R.O.A. Vol. 13 pg.1257, Undisputed Statement of Fact Bugg, #29, #30, #31 and #32). The lower court in its memorandum decision made a finding that the elections of the Legion are scheduled annually for August of each year. Further that if there is to be a new election that five (5) days notice is required. James Anderson by his own testimony admitted Mr. Jackson the properly elected commander appeared at the November 15, 2005 meeting and was not aware that he was going to be removed, that after a request that he resign was made and he refused, the Legion attempted to remove him and hold a new election and vote James Anderson in as commander. Commander Kenneth Hill testified that the national, state and the judge advocate approved his election. (R.O.A. Vol. 13 pg.1257, Undisputed Statement of Fact Hill #33).

Whether or not Kenneth Hill and James Anderson were improperly elected are material facts in dispute . The lower court in the motion to reconsider side stepped this issues by finding that the testimony of James Anderson about his own election could not be believed. (R.O.A. Vol. 18 pg. 2404). The lower court's decisions are internally inconsistent and the lower court failed to give the weight of the evidence in favor of Jordan Patterson but instead gave it to the Defendants.

There can be no implied authority defense because the purchaser Quality Contractors LLC through its officer Jerry Pritchard were notified on January 5, 2006 by the Chairman Robert Taylor that they had no authority. Chairman Robert Taylor testified that he specifically told Mr.

Pritchard on January 5, 2006 that the contract had to be taken back to the members and voted on before it was authorized and it would only then be valid and that he had no authority. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #5, #6, #7 and #10). There can be no doubt and there are no facts which contradict Chairman Robert Taylor's testimony and therefore there was no authority except if the members of the Post voted validly to sell the real property.

The only real issue arises out of the validity of the second vote. In order to sell the Post real property the Post was required to submit to Adjutant Henry Holley a resolution to authorize the sale of the Post real property and request a notice of sale and request for a ballot to be held to vote on the sale. (R.O.A. Vol. 13 pg. 1257, Exhibit 17 Duties and of Adjutant and Article VII Section 2(a). Undisputed Statements of Adjutant Henry Holley #6, #25, #26 and #40). At a minimum there must be as State Adjutant Charles Yunker advised Adjutant Henry Holley in his January 5, 2006 letter that "as for your questions regarding the selling of the Post Home; every member whose dues are paid and current has a vested interest in the Post Home. Therefore, the officers, especially the post Commander and Adjutant,. Have a legal and moral obligation to notify all members in writing a vote will be taken whether or not to sell the Post Home or other real estate. The standard time frame for such notice is 30 days in advance of the vote whether or not to sell; further the notice should at a minimum include valuation of the property in question, the projected selling price (or the amount offered by the prospective buyer), and an explanation why selling the Post Home should be considered. In addition the Post should present a plan outlining the future plans for the Post itself and what the proceeds of any such sale would be used for in the future. Without such a notification and vote by the general membership a Post Home

and other real estate cannot be sold because every member is entitled to the basic principals of equal protection and due process.". (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ervin Jones #20, #21). The Defendants appear to be asserting that these are not valid requirements but no contrary authority has been given disputing the State Adjutant Yunker's letter.

There was in fact no such resolution ever submitted to Adjutant Henry Holley authorizing a sale of the Post real property. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ulyssis Wright #20). Chairman of the Executive Committee Robert Taylor testified that he had no authority and that it first had to be taken to the executive board and he never even got the chance to submit it to the executive committee. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #11). Adjutant Henry Holley testified that he never took any minutes of any executive committee meeting to move forward on the sale. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #50).

Adjutant Henry Holley never did prepare a Notice and Ballot to be sent out to the members. The Notice and Ballot contrary to the by-laws were allegedly prepared by James Anderson. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #39, #41, #49). James Anderson knew that it was the Adjutant's job to send out notices. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #26. Undisputed Statements of Ervin Jones #24). Further Adjutant Holley believed that the alleged signature of James Anderson on the letter of January 27, 2006 was a forgery and that the language used in the threatening letter was language that James Anderson would never use and that James Anderson was not authorized to send out correspondence to the Post by the by-laws. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #41 and #42). The Ballot did not contain any of the required

information the State Adjutant Yunkers said was required at a minimum to be included for a proper vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Ervin Jones #25 and #26). Thirty days was not provided from January 27, 2006 to February 18, 2006.

Adjutant Henry Holley testified that he did not receive a copy of the letter nor a ballot on the vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #39 and #44). Kenneth Hill did not receive the letter or ballot on the vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #12 and #49). Treasurer Robert Brown testified that he did not receive a ballot to vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Brown #3).

At the time of the meeting Treasurer Robert Brown showed up because he heard about it and tried to vote but they refused to allow him to vote. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Brown #7). Kenneth Hill showed up at the meeting with George Thompson and others but they were not allowed to vote even though they had not received any notice. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement of Kenneth Hill #45, #46). Adjutant Henry Holley arrived late on February 18, 2006 and when he did arrive he made the announcement that the ballot was not valid. People did not receive ballots, the ballots were mailed back to Mr. Anderson and not the Adjutant and you could not vote at the meeting and it appeared the ballots had been tampered with and he was not allowed to conduct the count. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #45, #46, and #47, Undisputed Statements of Kenneth Hill #47, #48). Chairman Robert Taylor admitted that the was no valid vote taken according to the by-laws. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement of Robert Taylor #15). There is a material issue of fact as to whether or not there was a valid vote of the members

of the Jordan Patterson Post to sell its real property.

The Defendants avoid these facts by ignoring the requirements as set out by State Adjutant Yunkers. The Defendants ignore the testimony of Chairman Robert Taylor who testified that he specifically told Mr. Pritchard on January 5, 2006 that the contract had to be taken back to the members and voted on before it was authorized and it would only then be valid and that he had no authority. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #5, #6, #7 and #10). There can be no doubt and there are no facts which contradict Chairman Robert Taylor's testimony and therefore there was no authority except if the members of the Post voted validly to sell the real property.

Adjutant Henry Holley on February 18, 2006 notified the members that the vote and ballot was invalid. Adjutant Henry Holley has since that date taken the same position and no new vote to authorize the sale was ever submitted. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #48, #49). Contrary to the Defendant's belief there was in fact a vote taken to rescind the sale after May 9, 2006 when the new officers were elected. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #70).

James Anderson knew that the vote was invalid as of February 18, 2006. James Anderson knew that there was a dispute as to the sale of the real property because he admitted he received a copy of the March 28, 2006 letter of Sterling S. Waggener in his April 3, 2004 letter to Mr. Waggener. (R.O.A. Vol. 13 pg. 1257, Exhibit L and J). James Anderson knew that new elections had occurred and he had been removed as commander because he wrote a letter to the Post complaining about the election after the fact on May 1, 2006. (R.O.A. Vol. 13 pg. 1257 Exhibit P).

James Anderson without authority on April 12, 2006 attempted to extend the closing date on the alleged contract for either 30 to 60 days, however, the sellers name on the contract was never changed to the Plaintiff rendering the contract invalid and unenforceable. Even Mr. Buggs admitted that there was no authorization to extend the closing date by the Post. (R.O.A. Vol. 13 pg. 1257 Undisputed Statement of Verdell Bugg #58).

The last correspondence from the Post's attorney of June 22, 2006 was sent to counsel for the Buyer Qaulity Contractors LLC and a copy was provided to Capital Title Insurance. In this letter a number of statements are made. First it is noted that James Anderson is the former commander of the Post. Second James Anderson was present on March 14, 2006 when the Post authorized Mr. Waggener and his firm to represent the Post with only one member voting no. The vote was not taken at a duly noticed meeting rather through the mail with the votes being sent to Commander Anderson's post office box. It was further noted that the contract had the incorrect name as the seller and the problem that no money was to be paid other than $1. Again it was noted that the closing was extended without authorization by thirty days. Finally, there was no attempt to close the real property during the unauthorized extension to close. Counsel for the Post then asked for the production of any proof that the State Legion had in fact found the sale to be valid. No proof was ever sent in regard to this letter nor was any ever produced during this litigation by the Defendants other than the letter of January 5, 2006 from State Adjutant Yunkers which supports the position of the Plaintiff. (R.O.A. Vol. 13 pg. 1257, Exhibit 31H). The lower court committed error when it ignored these material facts which raised the issue as to whether or not James Anderson had knowledge that the sale was not authorized and whether or not the Buyer had knowledge that the sale was not authorized nor did Jordan Patterson wish to proceed with the

sale after the written contract expired.

There was material question of fact as to whether or not a valid vote of the members of the Post to authorize the sale of the Post's real property. There was a material question of fact as to whether or not James Anderson had any authority to appear on August 11, 2006 to sign a warranty deed on behalf of the Post. There is no question that Adjutant Henry Holley never signed any sales contract to sell the Post's real property nor did he ever sign a warranty deed transferring the Post's real property to Quality Contractors, LLC. There were material questions of fact as to whether or not the Defendant Buyer Quality Contractors through its counsel and the Defendant Capital Title Insurance Company, LC could even argue about actual or apparent authority in light of the receipt of the June 22, 2005 notice letter that there was in fact no such authority. The Defendants were not entitled to summary judgment on their motion of apparent or implied authority given the abundance of material facts which are at issue and therefore the decision of the lower court should be remanded for trial on these issues.

3. Competency and Duress

There is an issue concerning the competency of James Anderson. This is a factual issue which prevented summary judgment from being granted on this point. James Anderson was 75 years of age in 2005. (R.O.A. Vol. 10 pg. 901 and (R.O.A. Vol. 13 pg. 1257 Undisputed Statements of James Anderson #1). James Anderson was unable to identify nor read exhibit B. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #5 and #6).

James Anderson admitted that he always had trouble reading, does not understand how to use a computer and does not know how to type. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #7, #8 and #9, #14, #15, #16). James Anderson admitted his ex-

wife believed that he had a drinking problem. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #22). James Anderson testified that he had never been a commander and was not now a commander. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #25).

James Anderson testified he has glaucoma in his eye and he had it back in 2005 and it prevents him from seeing because everything runs together. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #37). James Anderson admitted that he has problems reading and that when he had to read a document he had to have people read it too him. (R.O.A. Vol. 13 pg. 1257 Undisputed Statements of James Anderson #38 and Depo 04/16/08 pg. 92:8-22)

James Anderson testified that he could not read exhibit 14C. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #45). James Anderson testified that he did not understand what Adjutant Holley was saying in exhibit A. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #49 and Exhibit A). James Anderson during his deposition could not identify who his lawyer was. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #56).

James Anderson asserted during his deposition that exhibit 14B which allegedly is the letter terminating Adjutant Henry Holley as adjutant was in fact prepared by Mr. Holley and that Mr. Holley forged James Anderson's signature. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of James Anderson #63). Adjutant Henry Holley noticed up James Anderson for suspension on September 9, 2006 but did not suspended him because he had suffered a stroke. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #73 and exhibit Y).

Given the myriad of conflicting testimony as to what James Anderson did or did not do or what he could or could not do it should be up to the trier of fact to determine his competency at the time of the transactions. When a Defendant cannot even identify his own counsel it raises serious questions as to the competency of the witness. Jordan Patterson has provided sufficient justification to find there are in fact a material facts in dispute as to the competency of James Anderson during the relevant time periods in order give his testimony what weight it deserves.

There is also an issue concerning duress by the Defendants in regard to these claims. Jordan Patterson also asserted that Executive Committee member Robert Taylor testified that he was pressured to sign the contact and he did so under pressure but that he told Mr. Pritchard that the sale was not valid unless the body voted on it according to the by-laws and the sale was not properly voted on and therefore there was no sale. (R.O.A. Vol. 13 pg. 1257, Undisputed Statement Robert Taylor #1, #3, #4, #5, #6, #7, #10 #11, #15, #21, #30 and #35). Exhibit H is a letter allegedly sent by James Anderson which Adjutant Henry Holley believes was prepared by someone else as Mr. Anderson's signature is a forgery in which numerous threats are made against the members who signed the contract including the Buyer has a right to file legal action against its members and to personally purse the members. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Henry Holley #42 and #43 (See exhibit H)).

Commander Hill testified that Mr. Pritchard told him that he could get anything from any court or any judge in this city he wanted. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #34). Mr. Pritchard while on the Post's real property was arrested for a day and a night because Mr. Pritchard wanted him arrested for trespassing but no charges were ever brought. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #36, #38). Commander Hill

believes that the killing of Adjutant Henry Holley''s son who was shot eight times in the back was a message to the Legion. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Kenneth Hill #43).

Robert Taylor testified that his own life was threatened when he attempted to remove personal property from the Legion Post when a man picked up a pipe and threatened him and told him its was his property and everything on it and so Robert Taylor did not remove any personal property of the Post and left. (R.O.A. Vol. 13 pg. 1257, Undisputed Statements of Robert Taylor #27 #28.

There is a question of material fact as to how the various members who signed the alleged contract and the members who were sent a ballot would have voted if the forged letter of James Anderson of January 27, 2006 had not contained the various threats and whether or not they would have changed there votes based upon the threats made by the Defendant Pritchard.

4. Affidavit of James Anderson

The Affidavit of James Anderson is dated July 13, 2008 and then the date of July is crossed out by some unknown person and the month August was written in. (R.O.A. Vol. 10 pg. 901) The document is altered and therefore was not admissible as evidence and objection to its admissibility was made in response to its inclusion in the Defendants summary judgment motions. (R.O.A. Vol. 13, pg.1263) . The affidavit was never produced by any defendant in response to any outstanding discovery responses of the Plaintiff and therefore was not timely produced by any Defendant and should have been stricken as its production prevented the Jordan Patterson from examining the Defendant Anderson concerning its contents. Jordan Patterson deposed James Anderson on four separate occasions starting in April 2008 and ending in May 2008. The

affidavit is being used to change the testimony of the Defendant James Anderson and therefore was improperly admitted. Specifically, Plaintiff's Statement of Undisputed Facts of James Anderson are directly contradicted by this affidavit: 5, 6, 7, 8, 9, 14, 15, 16, 24, 25, 26, 38, 41, 42, 45, 46, 54, 55, 56, 58, 66, 67. (R.O.A. Vol. 13 pg. 1257)

After these depositions the counsel for Defendant Anderson took the position that James Anderson was unable to appear for further depositions due to medical reasons starting on June 10, 2008 and then on July 18, 2008 by filing Motions to Quash the Depositions due to James Anderson's medical condition. (R.O.A. Vol. 10 pg. 856). Why James Anderson's medical condition prevented the depositions but did not prevent the signing of the affidavit and is not addressed by any of the Defendants nor the lower court. It is unknown who filed the affidavit of James Anderson in this proceeding on December 19, 2008 without an certificate of service as to any party filing the same and was not provided to the Plaintiff until the Defendants filed there various motions for summary judgment starting in March 2009 and should have been stricken from the Court files for failure to follow the local rules. The lower court's refusal to strike the affidavit of James Anderson was a prejudicial error and the reliance by the lower court on the affidavit in support of its decision on the Defendants various motions for summary should be set aside as error.

5. The Turners are entitled to their attorney fees and expenses

On August 9, 2012 the Turners filed their Notice of Attorney Lien in this proceeding asserting an attorneys lien on funds held in their Trust Account for attorney fees and expenses incurred pursuant to a written contract. (R.O.A. Vol.22, pg. 2) The Turners had entered into to a written employment contract with the Plaintiff in regard to the above captioned litigation.

(R.O.A. Vol. 22, pg. 8, employment contact) In October 2005 Henry Holley was voted in as the adjutant and his post election was confirmed by the state American Legion offices in January 2006. (R.O.A. Vol. 22, pg. 8, Holley Depo. 3/25/08, pg. 14:16-19) Adjutant Holley duties as adjutant were taking minutes, dealing with the membership, and administrative duties. (R.O.A. Vol.22, pg. 8, Holley Depo. 3/25/08, pg. 14:20-15:1) (R.O.A. Vol.22, pg. 8, Response to Summary Judgment filed June 1, 2009, pg. 53, 56-57).

Robert Brown was elected treasurer of the Post when Commander Willie Jackson was replaced by Commander Anderson. (R.O.A. Vol. 22, pg. 9, Depo. Brown, 03/25/08, pg.9:5-20) (See Response to Summary Judgment June 1, 2009, pg. 78) This written employment contract dated June 18, 2007 was executed by authorized officers of Jordan Patterson American Legion Post #39. Specifically, Robert E. Brown Financial Officer of the Post executed the written employment contract and his signature was notarized at the time. Specifically, Al Moore Judge Advocate of the Post executed the written employment contract and his signature was notarized at the time. Finally, Henry Holly III Adjutant of the Post executed the written employment contract and his signature was notarized at the time. In addition to Kenneth Hill as Post Commander. (R.O.A. Vol. 22, pg. 9, written employment contract).

Robert E. Brown Financial Officer of the Post and Henry Holly III Adjutant of the Post were officers elected at the same time as Commander Anderson and under the Court's prior orders were authorized officers of the Post. At the time of the filing of our original notice there were expenses of $10,969.79 and attorney fees of $43,612.00. These expenses and attorney fees did not include the first appeal which was dismissed as being premature by the Court of Appeals. The attorney fees incurred due to the first appeal are an additional $5,451.51. (R.O.A. Vol. 22,

pg. 9)

The written employment contract also expressly grants to our office an attorney lien to secure our attorney fees and expenses under the written employment contract. None of the provisions of the employment contract have been waived. (R.O.A. Vol. 22, pg. 6) The Intervenor in this proceeding did in fact ratify the actions of the Jordan Patterson American Legion Post #319, including the above officers actions and Kenneth F. Hill as commander of the Post by accepting and extending the time before the Post's dissolution. (R.O.A. Vol. 22, pg.10)

The district court found there was no recovery of money and therefore no attorney fees nor expenses could be a lien on the funds held in the Trust account. (R.O.A. Vol.19, pg. 2468. 2477 and 2489) The Turners basis for their appeal is that either the sales contract was not valid and therefore there was a positive recovery or because of the filing of the lawsuit were successful in recovering the purchase price.

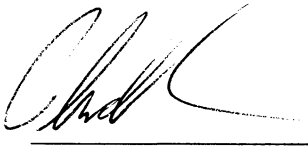
The alleged purchase contract included a check written on an Escrow Account from Capital Title Insurance Company see attached exhibit A which check became void on February 7, 2007. (R.O.A. Vol.19, pg. 2482) The underlying lawsuit was filed on July 5, 2007. (R.O.A. Vol.1, pg. 29) After the filing of the lawsuit, over a year transpired before any funds were turned over to Plaintiff's counsel for deposit into a trust account of the Turners on or about the 16th day of September 2008 based upon a cashiers check dated February 9, 2007. See attached cashier's check. (R.O.A. Vol. 19, pg. 2482). The only source of funds which came to the Plaintiff were through the efforts of Turners and this lawsuit. The district court erred in not allowing the Turners attorneys lien in the money which they held in trust.

In the alternative, the district court could not disallow the recovery of the Turner's expenses which are clearly allowed by contract irrespective of whether or not the Turner's were successful.

CONCLUSION

There are a number of material facts which the lower court decided which were in dispute. The lower court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. The lower court in this case resolved all of the facts and inferences in favor of the Defendants who filed the motions for summary judgment instead of Jordan Patterson. Given the improper basis of the decision by the lower court this case should be remanded for a trial on all issues and the Turner's should be allowed their attorneys lien for attorney fees and expenses incurred .

Respectfully submitted this 28th day of July, 2014



Phillip L. Turner, #12577
Turner & Turner
801 SW Western Ave.
Topeka, KS 66606
(785) 357-6541
(785) 357-5126 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was deposited in the US Mail, first-class postage prepaid, on the 28th day of July, 2014, addressed to the following:

Vincent Cox
CAVANAUGH & LEMON, PA
2942A SW Wanamaker Drive, Ste 100
Topeka, KS 66614-4135
Attorney for Defendant 15th Street Investments, LLC. and Commerce Bank & Trust Company

Stephen D. Lanterman
SLOAN, EISENBARTH, GLASSMAN,
MCENTIRE & JARBOE LLC
1000 Bank of America Tower
534 S. Kansas Avenue
Topeka, Kansas 66603-3456
Attorneys for Jerry Pritchard and Quality Contractors, LLC

Eric Kjorlie #08065
Historic Tinkham Veale Place
827 SW Topeka Blvd
Topeka, KS 66612-1608
Attorney for Verdell Bugg & James Anderson

James B. Biggs #14079
CAVANAUGH & LEMON, PA
2942A SW Wanamaker Drive, Ste 100
Topeka, KS 66614-4135
(785) 440-4000 phone
(785) 440-3900 fax
Attorney for Capital Title Insurance Company, LC and Deanna M. Zimmerman

Hal E. DesJardins
5897 S.W. 29th Street
Topeka, KS 66614
ATTORNEY FOR CHARLES M. YUNKER ADJUTANT, AMERICAN LEGION,

the original and copies to the Clerk of the Court of Appeals for the State of Kansas