

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
CASE No. 2020 CP 10 04076

ATLANTIC INTERNATIONAL INC., D/B/A
COLDWELL BANKER COMMERCIAL
ATLANTIC, JOHN W. TRUE AND AARON
B. ROWLEY,

PLAINTIFFS,

v.

IBYDIT, LLC, 1537 BEN SAWYER
BLVD, LLC, CURT NESBITT, RICHARD
M. MCCOLL, EAST ISLANDS REAL
ESTATE, INC., AND ASHLEY HAYNES,
INDIVIDUALLY AND AS AGENT OF EAST
ISLANDS REAL ESTATE INC.,

DEFENDANTS.

ORDER GRANTING
SUMMARY JUDGMENT IN
FAVOR OF DEFENDANTS

RECEIVED

Oct 04 2023

SC Court of Appeals

This matter came before the Court on May 30, 2023 on the following motions: Defendant, 1537 Ben Sawyer Blvd LLC's ("1537") Motion for Summary Judgment filed on October 5, 2022; Defendants, East Island Real Estate Inc. ("East Island"), and Ashley Haynes' ("Haynes") (collectively the "East Island Parties") Motion for Summary Judgment filed on January 23, 2023; and Defendants, IBYDIT LLC ("IBYDIT") and Curt Nesbitt's ("Nesbitt") (collectively the "IBYDIT Parties") Motion for Summary Judgment filed on May 19, 2023. This Court having reviewed the pleadings and materials filed and submitted by the parties and having heard oral arguments, grants the Defendants' motions for summary judgment identified above as described herein.

BACKGROUND

1537 owned real property located at 1537 Ben Sawyer Blvd, Mount Pleasant, S.C. (the “Property”) On March 2, 2020, 1537 entered into a one-time showing agreement with East Island resulting in a buy sale agreement between 1537 and IBYDIT. The purchase price was \$1,100,000 and commissions in the amount of \$44,000 were paid to East Island at the time of closing on July 13, 2020.

Months prior to the sale, in January 2020, Aaron Rowley (“Rowley”) and John True (“True”), real estate agents with Atlantic International Inc. (“Atlantic” and collectively with Rowley and True, “Plaintiffs”) had communications with 1537 and Curt Nesbitt (“Nesbitt”). It is undisputed that neither 1537 nor IBYDIT had any formal written agreements with Plaintiffs, despite communications and attempts to do so during these communications.

On September 15, 2020, Plaintiffs filed suit seeking to recover real estate commissions against Defendants under causes of action for breach of contract and good faith and fair dealing, quantum meruit, civil conspiracy, fraud and misrepresentation, promissory estoppel and interference with contractual relationship.¹

After Plaintiffs filed this suit, and in response to filing the suit against East Islands, East Islands filed a complaint against Plaintiffs with the South Carolina Real Estate Commission (“Commission”) for violations under S.C. Code Section 40-57-10 et. seq. and Section 10-1-10 et. seq. involving their failure to gain written representation agreements with 1537 and IBYDIT regarding the listing and purchase of the Property. Plaintiffs entered into a Memorandum of

¹ All causes of action asserted were as to all Defendants except for the cause of action for interference with contractual relationship which was only asserted against East Islands.

Agreement with the Commission in July of 2022 stipulating to the fact that neither a listing agreement nor buyer representation agreement were executed, despite the parties communications and good faith attempts to do so. The Commission entered three separate Orders publicly reprimanding each of the Plaintiffs and concluded that Plaintiffs' conduct, and specifically their failure to obtain a listing agreement or buyer's representation agreement with regard to the Property, by their own admission, violated S.C. Code Ann. §40-57-135.

LEGAL STANDARD

A trial court should grant summary judgment "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 a judgment as a matter of law." Rule 56(c), SCRCP; *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005). To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

The burden of clearly establishing the absence of a genuine issue of material fact is upon the party seeking summary judgment. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 376, 597 S.E.2d 181, 183 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the non-moving party's case, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). Rather, the non-moving party must come forward with specific facts showing a genuine issue for trial. *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999).

1. THE ADMITTED STATUTORY VIOLATIONS ON THE PART OF PLAINTIFFS WARRANT SUMMARY JUDGMENT.

Plaintiffs admit that they did not comply with certain statutory requirements imposed upon “Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers” as required by S.C. Code Anno. §40-57-5 et. seq.

S.C. Code Anno. §40-57-135 provides in pertinent part as follows:

Duties of broker-in-charge and property managers-in-charge, associated licensees; office locations; policies and recordkeeping; management agreements; unlicensed employees.

(I)(1) A licensee shall properly complete an agency agreement transaction broker agreement, offer, and counteroffer.

(2) A listing or buyer’s representative agreement **must** be in writing and **must** set forth all material terms of the parties’ agency relationship...

Additionally, S.C. Code Anno. §40-57-370 provides in pertinent part:

(E) For all real estate transactions, **no agency relationship between a buyer, seller, landlord, or tenant and a real estate brokerage firm** and its associated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its associated licensees **agree, in writing, to the agency relationship**. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant, or licensee or created orally or by implication. A real estate brokerage firm may not be considered to have an agency relationship with a party or have agency obligations to a party but is responsible only for exercising reasonable care in the discharge of the real estate brokerage firm's specified duties, as provided in this chapter, and, in the case of a client, as specified in the agency agreement.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E. d 578, 581 (S.C. 2000) “Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.” *Id.* “Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” *Id.* “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the

expressed intent of the legislature.” *Id.*, quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03, at 94 (5th ed. 1992)).

Consistent with the rules of statutory construction and as determined by the Commission, Plaintiffs violated these statutory provisions. The statute provides that a listing agreement and buyer’s representation agreement must be in writing. As admitted by Plaintiffs there was no written listing or buyer’s agreement with Defendants. The statute provides no agency agreement will exist unless there is a writing agreeing to the agency relationship. There was no writing therefore there was no agency relationship. Furthermore, the statute clearly states an agency relationship cannot exist by implication, which is what Plaintiffs argue. Plaintiffs violated these statutory provisions. The violation of these statutory provisions entitles Defendants to judgment as a matter of law on all causes of action asserted by Plaintiffs.

Additionally, the doctrine of *in pari delicto* is “[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing.” Black’s Law Dictionary 794 (7th ed. 1999); and, *Myatt v. RHBT Financial Corp.*, 635 S.E.2d 545, 370 S.C. 391 (S.C. App. 2006). The doctrine of *in pari delicto* is grounded in the “general principle that a person cannot base a cause of action upon an illegal or immoral act, transaction or contract.” 4 S.C. Jur. *Action* § 21 (1991 & Supp. 2015). “It has been succinctly stated that no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act.” *Id.*, and *Lauren Proctor & Trans-Union Nat’l Title Ins. Co. v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 326, 778 S.E.2d 888, 892, n. 10 (2015) (stating that “the doctrine of *in pari delicto* is well-established and still recognized by our appellate courts”).

The Commission, as the governmental body that regulates Plaintiffs as real estate licensees, has determined Plaintiffs violated the laws that they are required to follow. Plaintiffs were found

to have violated the law by failing to adhere to the requirements of S.C. Code Ann. §40-57-135 and failing to obtain the necessary written agreements relating to the possible marketing and sale of the Property. All the causes of action asserted by Plaintiffs are based upon the concept they are entitled to a commission for the sale of the Property for which they had no agreements with the owner, 1537. All of the causes of action are based on the concept Plaintiffs are entitled to recovery notwithstanding the fact that they admittedly violated the law. *In pari delicto*, precludes Plaintiffs from any recovery under any cause of action.

NOW THEREFORE, IT IS

1. ORDERED that Defendant, 1537 Ben Sawyer Blvd LLC's Motion for Summary Judgment filed on October 5, 2022 is granted;
2. ORDERED that Defendants East Islands Real Estate Inc., and Ashely Haynes' Motion for Summary Judgment filed on January 23, 2023 is granted;
3. ORDERED that Defendants, IBYDIT LLC and Curt Nesbitt's Motion for Summary Judgment filed on May 19, 2023 is granted.

AND IT IS SO ORDERED.

JUDGE SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Atlantic International Inc , plaintiff, et al VS 1537 Ben Sawyer Blvd Llc , defendant, et al
Case Number: 2020CP1004076
Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766