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| STATE OF SOUTH CAROLINA<br>COUNTY OF LEXINGTON<br>Brandi Clarkson,<br>Plaintiff,<br>v.<br>J. King Real Estate, LLC, and Jason Ernest King,<br>Defendants. | IN THE COURT OF COMMON PLEAS<br>ELEVENTH JUDICIAL CIRCUIT<br>Civil Action No.: 2020-CP-32-02477<br>**ORDER DENYING PLAINTIFF'S MOTION FOR NEW TRIAL** |

THIS MATTER COMES BEFORE THE COURT on Plaintiff's Motion for New Trial dated August 2, 2023 (the "Motion").

This matter was tried before the undersigned and a jury for three (3) days in Lexington County beginning on July 24, 2023, and ending with a verdict in favor of both parties on July 26, 2023. Plaintiff contends this court erred as a matter of law when granting Defendants' motion for partial directed verdict on July 25, 2023. For the reasons set forth below, Plaintiff's Motion is DENIED.

1. On July 25, 2023, Defendants moved for partial directed verdict on Plaintiff's second cause of action and third cause of action. Upon consideration of the law provided by both parties, including their pre-trial briefs, and the arguments raised by counsel and the undersigned's own research and analysis of the issues raised in the motion, the undersigned granted Defendants' motion for directed on Plaintiff's claim for tortious interference with prospective contractual relations against Jason Ernest King ("Mr. King") and Plaintiff's claim for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") against Mr. King and J. King Real Estate, LLC ("JKRE").

2. On July 26, 2023, Plaintiff asked this court to grant her oral motion under Rule 59(e), SCRCP, and reconsider or alter the grant of Defendants' motion for directed verdict. The court received and considered additional argument and legal authorities from the Plaintiff. Upon

due consideration, the undersigned denied Plaintiff's request for reconsideration.

3. The analysis and relief sought in the instant Motion mirrors the argument Plaintiff raised on the last day of trial. Specifically, Plaintiff's Motion asks that this court, pursuant to Rule 59(e), SCRCP, to reconsider its grant of a motion for directed verdict. Although the motion is captioned as one for a new trial, the substance of the motion is a motion for reconsideration of the court's judgment under Rule 59(e), SCRCP, as it does not invoke either Rule 50(b), SCRCP, the 13th juror doctrine, or one of the bases for a new trial under South Carolina common law. *See* Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005) (citing Mickle v. Blackmon, 255 S.C. 136, 140, 177 S.E.2d 548, 549 (1970) and requiring motion for new trial to be treated as a motion for reconsider based on the motion's substance and effect as opposed to how it was captioned by party.)

4. In ruling on a motion for directed verdict, this court must view the evidence and all its reasonable inferences in the light most favorable to the nonmoving party. Long v. Norris & Assocs. Ltd., 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct.App.2000). When the evidence yields only one inference, a directed verdict in favor of the moving party is proper. Id. On the other hand, the trial court must deny a motion for a directed verdict when the evidence yields more than one inference or its inference is in doubt. McMillan v. Oconee Mem'l Hosp., Inc., 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). If more than one inference can be drawn from the evidence, a jury issue is created and the motion should be denied and the case must be submitted to the jury. Jinks v. Richland County, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); Long, 342 S.C. at 568, 538 S.E.2d at 9; Adams v. G.J. Creel Sons, Inc., 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). However, this rule does not authorize the submission of speculative, theoretical, and hypothetical views to the jury. Proctor v. Dep't of Health and Envtl. Control, 368 S.C. 279, 292–93, 628 S.E.2d 496, 503

(Ct.App.2006). The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror. The Huffines Co., LLC v. Lockhart, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct.App.2005). In deciding whether to grant or deny a directed verdict motion, the trial court is concerned only with the existence or nonexistence of evidence. Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 15, 567 S.E.2d 881, 888 (Ct.App.2002).

**Tortious Interference with Prospective Contractual Relations**

5. The undisputed evidence at trial shows that Mr. King is the broker-in-charge and sole member of JKRE. Plaintiff's Second Amended and Supplemental Complaint, filed August 24, 2022, added Mr. King as a party to this action, and Plaintiff's claim for "Tortious Interference with Prospective Contractual Relations" is directed solely at him.

6. The South Carolina Supreme Court requires Plaintiff to present evidence of the following in order to submit a claim of intentional interference with prospective contractual relations to a jury: 1) an intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) an injury that results therefrom. Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). South Carolina requires Plaintiff to show that she was "unsuccessful in acquiring an expected contract due to a third party's intentional and wrongful actions." United Educ. Distributors, LLC v. Educ. Testing Serv., 350 S.C. 7, 15, 564 S.E.2d 324, 328 (Ct.App.2002). This requirement is unavoidable. "The plaintiff must actually demonstrate, at the outset, that [she] had a truly prospective (or potential) contract with a third party...." Id. Put another way, a "prospective contractual relation is something less than a contractual right, something more than a mere hope. In short, it is a reasonable probability that contractual relations will be realized." United Educ. Distributors, LLC v. Educ. Testing Serv., 350 S.C. 7, 16, 564 S.E.2d 324, 329 (Ct.App.2002) (quoting SNA, Inc. v. Array, 51 F.Supp.2d

554, 567 (E.D.Pa.1999) (internal quotations omitted)).

7. Plaintiff contends, correctly, that she presented evidence at trial of the fact that she "had the relationship" with Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller, and that Mr. King was looking to Plaintiff "to keep the wheels on the bus and be the liaison with the client." (Motion, p. 11.)

8. Plaintiff further contends that she was a "third party beneficiary of the contracts between the buyers and the sellers on the pending transactions." (Id.) This is not a reasonable inference, as Plaintiff failed to place any of these contracts into evidence.

9. However, even assuming Plaintiff is characterizing the evidence at trial correctly, she still points only to *existing* contracts with Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller, not to any *prospective* economic or contractual relationship as required to establish a claim for intentional interference with prospective contractual relations. Plaintiff presented no evidence of any prospective contracts of any kind at trial, and therefore she failed to create any question of fact for the jury on this cause of action.

10. Moreover, " there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party." United Educ. Distributors, LLC, 350 S.C. at 14, 564 S.E.2d at 328. As Plaintiff puts it, "What is actionable is the luring away, by devious, improper and unrighteous means, of the customer of another." (Motion, p. 12) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 39, 56 A.2d 31, 36 (1989)).

11. Plaintiff presented no sufficient evidence at trial of wrongful interference of a contract *belonging to Plaintiff*, whether ongoing or prospectively, by Mr. King. Rather, the only

reasonable inference from the evidence at trial is that Mr. King was acting at all times on behalf of JKRE, which was the only party to the contracts with Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller.

12. Specifically, Plaintiff and Mr. King each testified that Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller entered into contractual relationships solely with the real estate brokerage firm JKRE. Plaintiff testified that, at her first substantive conversation with each of these clients, she provided them with the South Carolina Disclosure of Real Estate Brokerage Relationships forms required by SCLLR. Specifically, she informed each of the clients: (1) about the difference between a broker-in-charge like Mr. King and an associated licensee like her; (2) that Mr. King, as broker-in-charge, is the person in charge of JKRE; and (3) that she, as an associated licensee, may only work through him. Plaintiff testified that she explicitly informed that Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller that by choosing to work with her, their "business relationship is legally with the brokerage firm and not with" her, the associated licensee.

14. JKRE's standing as the sole contracting party to with Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller is in accordance with and mandated by South Carolina's real estate law. In Title 40, Chapter 57 of the South Carolina Code of Laws, the Legislature mandated that agreements for the provision of professional real estate services to clients are solely between the real estate brokerage firm and the client. Associated licensees like Plaintiff "may not advertise, market, or offer to conduct a real estate transaction involving real estate owned, in whole or in part, by another person without first obtaining a written listing agreement *between the property owner and the real estate brokerage firm with whom the licensee is associated.*" S.C. CODE ANN. § 40-57-135(E)(1) (emphasis added).

15. Likewise, Mr. King, as JKRE's sole owner and broker-in-charge, is under statutory

and fiduciary duties to act on behalf of the brokerage firm and its clients. For example:

(a) Mr. King is required to supervise all employees and associated licensees, like Plaintiff, to ensure her compliance with the real estate laws, and he must prevent and curtail improper practices by those he supervises. S.C. CODE ANN. § 40-57-135(A)(1), (3).

(b) Mr. King is obliged to review and approval all forms of contractual and disclosure documents routinely used by JKRE. S.C. CODE ANN. § 40-57-135(A)(2).

(c) Only Mr. King is permitted to receive and handle funds paid from a real estate transaction. S.C. CODE ANN. § 40-57-135(A)(7).

(d) Mr. King is also obligated to be available to the public to discuss or resolve complaints and disputes that arise during the course of real estate transactions being conducted by JKRE's associated licensees. S.C. CODE ANN. § 40-57-135(A)(4).

16. Plaintiff has failed to identify anything improper or untoward about Mr. King contacting JKRE's clients and assuming control over all aspects of the transactions once Plaintiff voluntarily moved her license it under a new broker-in-charge, Dan Lang, of Fathom Realty on July 10, 2020. Mr. King, as the broker-in-charge for JKRE, was required to do so under South Carolina law given the agency relationship between JKRE and each of its clients.

17. In contrast, South Carolina law prohibited Plaintiff from continuing to provide professional services for any of JKRE's clients after she disassociated her license from Mr. King and moved it to Mr. Lang of Fathom Realty on July 10, 2020. South Carolina law provides, "A licensee may not conduct real estate business under another name or at an address other than the one for which his license is issued." S.C. CODE ANN. § 40-57-135(C)(3).

18. The only evidence at trial was that neither Mrs. Levine, Ms. Collins, Mr. Christian, nor Ms. Miller ever entered into any contract or client relationship with Fathom Realty or its

licensees; they remained clients of JKRE at all times until the transactions at issue were completed.

19. Once Plaintiff transferred her license transferred to Fathom Realty, she had no ability under South Carolina law to act as a real estate licensee for JKRE and receive compensation for that work. S.C. CODE ANN. § 40-57-135(B) ("an associated licensee may not receive compensation from an activity requiring a real estate license from an entity or person other than the one for which the license is issued.") Therefore, Plaintiff presented no evidence for any jury to determine that Mr. King tortiously interfered with any contractual relationship belonging to Plaintiff.

20. Plaintiff presented no evidence that Mr. King ever acted outside of his professional capacity for the Broker as its sole member and broker-in-charge. Therefore, Plaintiff presented no basis for the jury to determine that Mr. King was not entitled to the benefit of the corporate shield afforded to him under South Carolina law. S.C. Code Ann. § 33–44–303 (2006) ("A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager."); Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC, 406 S.C. 596, 606, 753 S.E.2d 840, 845 (2012) (an LLC manager may be held personally liable for tortious interference with a contract if it is determined he is acting in his individual capacity as a separate entity from the LLC).

21. The only reasonably inference from the evidence presented at trial is that Plaintiff was never entitled to compensation directly from Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller. Plaintiff's entitlement to payment for any professional activities she performed for JRKE's clients was under the Broker-Salesperson Exhibit entered into evidence as Exhibit 1 and the documents attached to or referenced in it.

22. Therefore, the sole question for the jury, based on the evidence presented at trial

and South Carolina's real estate law, was whether Plaintiff was entitled to receive a contractual commission payment from JKRE in connection with those transactions. This inquiry is the subject of Plaintiff's breach of contract action, which was submitted to and determined by the jury. Therefore, Plaintiff's motion under Rule 59(e), SCRCP, asking the court to reconsider its grant of directed verdict in favor of Mr. King on her second cause of action, must be denied, and there is no basis for a new trial.

**South Carolina Unfair Trade Practices Act.**

23. Plaintiff contends that JKRE breached its contract, which Mr. King prepared and has caused JKRE to use since 2015, by failing to pay all of the commissions she claims due to her under the Broker-Salesperson Agreement and those documents referenced in or attached to it.

24. Specifically, she contends that JKRE, acting through Mr. King: (1) collected approximately $2,200 in $25 or $50 transaction fees during the course of the agreement that were not provided for in her agreement with JKRE and not known to Plaintiff until she was involved in her first transaction with JKRE; and (2) paid her $6,070.36 less in commissions than her agreement required on four (4) transactions following her termination of that agreement in 2020.

25. Mr. King testified that JKRE has used substantially the same agreements with approximately 25 other agents. Mr. King testified that no other agent has ever disputed any transaction fee, which he testified to were standard in the industry and below the rates typically charged. Plaintiff failed to present any evidence at trial of any other agent disputing any payment of any transaction fees ever collected by JKRE.

26. The parties stipulated that, on each of transactions occurring during the term of the Broker-Salesperson Agreement, Plaintiff completed an Agent Commission Worksheet showing a total owed to her on the transaction. Each of these worksheets were stipulated into evidence, and

on all but two, Plaintiff indicated that the amount due to her was less the transaction fee. On the other two transactions, JKRE waived the transaction fee.

27. The parties also stipulated that on each transaction during the term of her agreement with JKRE, it delivered her a check in the amount she wrote down as due to her on each Agent Commission Worksheet, and she deposited each check.

28. The parties also stipulated into evidence: (a) Plaintiff's email dated July 10, 2020, in which she stated, "Although you interpret what the contract says much differently I should receive the commission earned minus the $50 transaction fee;" and (b) Plaintiff's initial Complaint filed in this case on July 21, 2020, which stated in paragraph 12, "The Plaintiff and the Defendant had a course of dealing whereby the Plaintiff paid the Defendant a $50 transaction fee for clerical and administrative work."

29. The undisputed evidence admitted at trial also shows that Plaintiff accepted a check as "payment in full" from JKRE for the Green Street transaction on or about July 23, 2020, which represented 100% of the commission collected minus a $50 transaction fee. (Exhibits 12 and 13.)

30. The Broker-Salesperson Agreement states that commission payments to Plaintiff on transactions in process, but not closed, at the time she terminated the Agreement, may be subject to deductions for necessary client services carried out at the discretion of JKRE. (Exhibit 1, par. 13.)

31. JKRE withheld a total of $6,020.36 on the Concord Place, Old Town Road, and Trinity Three Road transactions, which were in progress but not closed at the time Plaintiff terminated her agreement with JKRE. The parties stipulated as evidence an exhibit detailing over 120 hours of work, valued at over $21,000, which Mr. King performed to close those three (3) transactions. (Exhibit 64.). Plaintiff failed to offer any evidence at trial to rebut the fact that Mr.

King performed any of this work or that his normal hourly rate of compensation is $173 per hour.

32. The private right of action under SCUTPA is a remedy created by the Legislature. "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.2d 578, 581 (2000). "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.

33. Our courts and legal scholars have discussed at length the legislative intent behind SCUTPA:

> The legislature intended in enacting the UTPA to control and eliminate "the large scale use of unfair and deceptive trade practices within the state of South Carolina." ... To this end, the act authorizes the Attorney General to bring an action in the name of the State to enjoin unfair or deceptive acts or practices in the conduct of any trade or commerce when to do so "would be in the public interest." .... The requirement of Section 39–5–140(b) that the clerk of court notify the Attorney General of any action brought by a private party pursuant to Section 39–5–140(a) indicates that the private cause of action created by the latter section was intended by the legislature to serve the same objective and to be similarly restricted in scope.

Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 477–78, 351 S.E.2d 347, 349 (Ct. App. 1986) (emphasis added).

34. Plaintiff's private contract dispute with Broker does not fall within the type of "large scale use of unfair and deceptive trade practices" that the Legislature had in mind when it passed SCUTPA. Our courts have repeatedly held that a breach of a private contractual agreement – even if it has been repeated or is capable of repetition – is insufficient to establish a claim under SCUTPA.

35. In S.C. Code Ann. § 39–5–20(b), the South Carolina Legislature specifically instructs state courts to be guided by the decisions of the Federal Trade Commission (FTC) and the Federal Courts construing the Federal Trade Commission Act. As Plaintiff correctly points out,

an unfair trade practice has been defined as one "offensive to public policy or which is immoral, unethical, or oppressive." (Motion p. 9.) This is substantially the same as the standard under the Federal Trade Commission Act, which defines an unfair trade practice as "an 'immoral, unethical, oppressive, unscrupulous' act." Bessinger v. Food Lion, Inc., 305 F. Supp. 2d 574, 582 (D.S.C. 2003), *aff'd sub nom.* Bessinger v. Food Lion, LLC, 115 F. App'x 636 (4th Cir. 2004) (comparing South Carolina law under SCUTPA and federal law as provided under S.C. Code § 39-5-20(b)).

36. The United States District Court for the District of South Carolina has repeated pointed out that an intentional breach of contract is not "immoral, unethical, oppressive or unscrupulous," and that to ignore the distinction would improperly allow contract law to be engulfed by SCUTPA. Id. (quoting McMaster v. Ford Motor Co., 122 S.C. 244, 115 S.E. 244, 246–47 (1921)).

37. As the South Carolina Supreme Court has noted, "Contract law seeks to protect the expectancy interest of the parties." Sapp v. Ford Motor Co., 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009) (re-establishing the economic loss rule as the dividing line between contract and tort law). Here, when viewing the evidence presented at trial and weighing the credibility of the witnesses, a reasonable jury could infer – and did infer – Plaintiff did not receive her contractual expectations.

38. However, like the dividing line between contract and tort law, our state appellate courts have repeatedly held that private contract disputes should not be engulfed by an expanded interpretation of what is "unfair" under SCUTPA:

> A deliberate or intentional breach of a valid contract, without more, does not constitute a violation of the SCUTPA. Otherwise, every intentional breach of a contract within a commercial setting would constitute an unfair trade practice and thereby subject the breaching party to treble damages.

Ardis v. Cox, 314 S.C. 512, 518–19, 431 S.E.2d 267, 271 (Ct.App.1993) (internal quotations omitted).

39. While Plaintiff has produced evidence that demonstrates that JKRE is capable of repeating its breach of contract with other agents, that merely addresses the public interest component under SCUTPA. The capability of repetition does not make a practice unfair or deceptive in the first instance:

> **The fact that the defendants in this case could repeat their acts, none of which may be inferred to have violated the applicable laws, cannot be deemed to have affected the public interest *unless* they are first adjudged unfair or deceptive trade practices.** The potential for repetition is only used to satisfy the public interest component necessary to bring an unfair trade practice within the scope of the UTPA. Otherwise, any act, regardless of its blatant legality, would become an unfair trade practice merely by its capability to be repeated. Such is not, and could not be, the import of the UTPA ....

Wingard v. Exxon Co., U.S.A., 819 F. Supp. 497, 506 (D.S.C. 1992) (emphasis added); *see also* Upstate Plumbing, Inc. v. AAA Upstate Plumbing of Greenville, LLC, No. 6:17-CV-521-BHH, 2018 WL 1471908, at *7 (D.S.C. Mar. 26, 2018) (Granting dismissal with prejudice of SCUTPA claim, observing: "It is theoretically possible that every substantiated instance of trademark infringement creates the potential for repetition. However, this does not eliminate the requirement that the public itself is the recipient of the harm in question.")

40. The South Carolina Court of Appeal's decision in Columbia E. Assocs. v. Bi-Lo, Inc., 299 S.C. 515, 386 S.E.2d 259 (Ct.App.1989) is instructive. In that case, the operator of a shopping center brought an action alleging breach of commercial lease agreement and violation of Unfair Trade Practices Act against supermarket operator Bi-Lo. The trial judge found that Bi–Lo had breached its lease agreement with Columbia East by its cessation of operation and the refusal to sublease to a competing supermarket chain damaged Columbia East in the amount of $400,000. Columbia East appealed the trial judge's grant of directed verdict in favor of Bi–Lo on the SCUPTA claim. Clearly a grocery store operator like Bi-Lo is capable of breaching other lease

agreements, and so the act complained of in this case was "capable of repetition." Nevertheless, the court affirmed the grant of directed verdict, holding that "a deliberate or intentional breach of a valid contract, without more, does not constitute a violation of the Unfair Trade Practices Act." Id.

41. Likewise, in Key Co. v. Fameco Distributors, Inc., 292 S.C. 524, 357 S.E.2d 476 (Ct.App.1987), the owner of coin-operated video game machines alleged a nightclub owner violated SCUTPA by continually disconnecting the machines and displaying them in undesirable locations in violation of the terms of their contract. After the Plaintiff took its machines, the nightclub owner moved in machines from another operator. A jury awarded plaintiff actual damages, and the trial court judge trebled the damages and awarded attorney fees and costs. On appeal, the South Carolina Court of Appeals reversed that decision, holding that deliberate or intentional breach of the contract with video machine owner, without more, did not constitute violation of SCUTPA. Key Co., 292 S.C. at 528, 357 S.E.2d at 478 ("An intentional breach of a valid contract is not, without more, a violation of the UTPA.") The South Carolina Court of Appeals held that SCUTPA claim did not exist, even though it is axiomatic that the nightclub owner could have repeated its conduct with other machine providers.

42. In her Motion, Plaintiff mistakenly relies on two automotive dealership cases, both of which are easily distinguishable. In Barnes v. Jones Chevrolet Co., 292 S.C. 607, 609, 358 S.E.2d 156, 158 (Ct.App.1987), the dealership charged a customer for parts and services it did not provide or perform, and the dealership did not disclose its "bill padding" to the customer. Id. Evidence at trial showed that the repairman and the owner of Jones Chevrolet were skimming and pocketing the cost of the parts not replaced and labor not performed. Id. The court held such deceptive, unfair dealings with a customer seeking auto repairs is an "unfair" trade practice capable

of being repeated on the public by the dealership. Id. at 613, 358 S.E.2d at 159.

43. Similarly, in Singleton v. Stokes Motors, Inc., 358 S.C. 369, 595 S.E.2d 461 (2004), the Singletons decided to purchase a Silverado from Stokes Motors. Id. at 372, 595 S.E.2d at 462. Stokes had plaintiffs sign a sales contract; as part of the purchase price, the Singletons were to trade-in their Dakota and make a cash down payment of $1,600. The sales contract did not indicate that the sale was contingent upon credit approval. However, at the same time, the dealership had the Singletons sign a separate bailment agreement, which unlike the sales contract, provided that they were accepting Silverado subject to credit approval. The Singletons were allowed to drive off the lot in the Silverado, having given Stokes the Dakota trade-in and only $800 of the $1,600 required cash down payment. Id

44. Three weeks later, the Singletons returned to Stokes because Stokes claimed that the loan paperwork could not be completed due to Mr. Singleton's failure to produce proof of income. The salesperson had the Singletons sign a new sales contract that only required $800 as the required cash down payment and told them that their credit had been approved. Stokes never asked the Singletons to sign another bailment agreement during this second meeting. Instead, the Singletons were permitted to drive away in the Silverado again. Id.

45. Ultimately, Stokes could not verify Mr. Singleton's employment. In addition, contrary to Stokes's statements at the second meeting, the Singletons' credit was never approved. Therefore, Stokes repossessed the Silverado from the Singleton home before the first payment on the truck was even due. After the Silverado was repossessed, Mrs. Singleton went to Stokes to demand the return of the $800 down payment and the Dakota trade-in. Stokes refused to return either. Id.

46. The foregoing transaction is commonly called a "yo-yo" sale. The South Carolina

Supreme Court observed that "the 'yo-yo' or 'spot-delivery' sale typically proceeds in the following way:

> The consumer believes a vehicle's installment or sale is final and the dealer gives the consumer possession of the car 'on the spot.' The dealer later tells the consumer to return the car because the financing has fallen through. If the consumer does not return the vehicle or agree to rewrite the transaction on less favorable terms, the dealer repossesses the vehicle."

Id. at 380, 595 S.E.2d at 467 (quoting National Consumer Law Center, Unfair and Deceptive Acts and Practices 316 (5th ed. 2001)).

47. The Court further stated that, "Yo-yo sales are unlawful in at least seven states and several other states have issued regulations and administrative interpretations to car dealers on the subject. Such transactions are fundamentally unfair because they give all of the power to the dealer, and none to the customer."

48. The contractual dealings between JKRE and its agents are not at all like the type of deceptive, public-facing trade practices at issue when a car dealership engages in a "yo-yo" transaction or fraudulent "bill padding."

49. Rather, the relationship between JKRE and Plaintiff is more akin to an employment relationship, which are not within the scope of SCUTPA. *See* Davenport v. Island Ford, Lincoln, Mercury, Inc., 320 S.C. 424, 465 S.E.2d 737, 740 (Ct.App.1995) (The "employer-employee relationship does not fall within the intended scope of the [SC]UTPA" regardless of at-will status)); *see also* Rhoades v. Savannah River Nuclear Sols., LLC, 574 F. Supp.3d 322, 339 (D.S.C. 2021) (citing Indus. Packaging Supplies, Inc. v. Davidson, No. CV 6:18-0651-TMC, 2018 WL 10456201, at *7 (D.S.C. June 22, 2018) (dismissing Plaintiffs' SCUTPA claim for misappropriation of trade secrets because "disputes arising between employers and employees are private matters that fall outside the scope of the SCUTPA.")).

50 Because Plaintiff failed to present any evidence that would permit a jury to conclude that JKRE, or Mr. King as its controlling person, violated SCUPTA. Therefore, the court properly granted Defendants' motion for directed verdict.

THEREFORE, upon due consideration of all of the evidence presented at trial and the authorities and arguments presented by the attorneys for both counsel, the undersigned concludes that Plaintiff's Motion for reconsideration under Rule 59(e), SCRCP, be DENIED.

IT IS FURTHER ORDERED that all post-trial motions for costs and attorneys fees shall be submitted within ten (10) days of the entry of this Order.

IT IS SO ORDERED.

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Lexington Common Pleas

**Case Caption:** Brandi Clarkson VS J King Real Estate Llc

**Case Number:** 2020CP3202477

**Type:** Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167