THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2023-001661

Brandi Clarkson .....Appellant,

v.

J. King Real Estate, LLC and Jason Ernest King, ...Respondents.

INITIAL BRIEF OF APPELLANT

J. Gregory Studemeyer
S.C. Bar # 5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
(803) 393-4399
greg@studemeyerlawfirm.com
Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATUTES AND CONSTITUTIONAL PROVISIONS

STATEMENT OF ISSUES ON APPEAL

1. In denying Clarkson's motion for a new trial, the trial court held that a "breach of contract, even if repeated and capable of repetition, is insufficient to establish a claim under the SCUTPA." In *Beneficial Financial I, Inc. v. Windham*, the Court of Appeals held that a breach of contract is sufficient to establish a claim under the SCUTPA. Was the trial court's denial of Clarkson's motion for new trial controlled by an error of law?
2. A motion for directed verdict must be denied if a verdict for the nonmoving party would be reasonably possible under the facts as liberally construed in his or her favor. Clarkson produced evidence sufficient to permit a reasonable jury to conclude that JKRE had engaged in unfair and deceptive acts in the conduct of trade or commerce that are capable of repetition. Did the trial court err in granting the Defendant's motion for directed verdict on Clarkson's SCUTPA cause of action?
3. Intentional interference with prospective contractual relations consists of intentional and improper methods of diverting or taking away ongoing or prospective business or contractual rights from another. Clarkson produced evidence that King interfered with her legitimate expectation of benefits arising from contracts that she procured between buyers and sellers. Did the trial court err in granting a directed verdict as to Clarkson's claim for intentional interference with prospective contractual relations?

STATEMENT OF THE CASE

This action was initiated by the filing of a summons and complaint on July 21, 2020. In her complaint, while reserving the right to supplement in accordance with Rule 15(d), SCRCP to address five (5) additional transactions, Clarkson alleged that her broker, J. King Real Estate, LLC ("JKRE"), had failed and refused to pay her a commission of $3,660.00 earned on the sale of

property located at 520 Green Street in West Columbia. The complaint set forth claims for breach of contract and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").[1]

On September 2, 2020, JKRE filed an answer in which it denied the material allegations of the complaint and asserted affirmative defenses of *payment*, accord and satisfaction, estoppel, waiver, condition precedent, and set-off and recoupment.[2] JKRE further asserted counterclaims for prior material breach and conversion of a key to JKRE's office and sought an award of attorneys' fees and costs under The South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA"), S.C. Code Ann. Section 15-36-10, et seq.

In addition, on September 2, 2020, JKRE filed a notice of motion and motion to dismiss. Therein, JKRE asserted that "the Complaint plainly state[d] frivolous and baseless 'claims' that were not ripe at the time of filing of the Complaint and would fall outside of the boundaries of the South Carolina Unfair Trade Practices Act, and otherwise fail[ed] to state a claim for relief." Again, JKRE sought an award of attorneys' fees and costs under S.C. Code Ann. Section 15-36-10, *et seq.*

On September 15, 2020, Clarkson filed a reply. Therein, Clarkson denied the material allegations of the counterclaims.

On October 2, 2020, Clarkson filed a motion to serve an amended and supplemental complaint with a proposed amended and supplemental complaint. Therein, Clarkson asserted that JKRE had threatened her with claims of interference to exclude her from her pending transactions and had failed and refused to pay her additional commissions of $5,550.00 earned on the sale of

---

[1] The South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann. §§41-10-10, et seq. does not apply to independent contractors. See *Adamson v. Marianne Fabrics, Inc.*, 301 S.C. 204, 391 S.E.2d 249 (1990). See also *Hennes v. Shaw*, 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012).

[2] JKRE paid Clarkson her commission, minus a $50 "transaction fee," on the 520 Green Street transaction and transferred two transactions to Clarkson's new broker between the time of filing the initial complaint and the time of filing the motion to amend and supplement.

property at 503 Concord Place Road, $9,411.44 earned on the sale of property at 1023 Old Town Road, and $4,260.00 earned on the sale of property at 249 Trinity Three Road. Clarkson further alleged that JKRE had systematically and deceptively withheld illegal and unauthorized "transaction fees" from her on 58 transactions. [3] The proposed amended and supplemental complaint asserted claims for breach of contract, intentional interference with prospective contractual relations, and violation of the SCUTPA.

On October 19, 2020, Clarkson filed a memorandum in opposition to motion to dismiss. On October 27, 2020, Clarkson filed a memorandum in support of motion to amend and supplement complaint. On October 28, 2020, the Honorable Walton J. McLeod, IV issued a consent order resolving Defendant's motion to dismiss and Plaintiff's motion to serve an amended and supplemental complaint.

On October 29, 2020, Clarkson filed the amended and supplemental complaint. On November 13, 2020, JKRE filed an answer to amended and supplemental complaint. Therein, JKRE again asserted that the amended and supplemental complaint failed to state a cause of action upon which relief could be granted and otherwise denied the material allegations. JKRE also reasserted *payment*, failure to mitigate damages, accord and satisfaction, estoppel, waiver, condition precedent, and set-off and recoupment as affirmative defenses and counterclaims of prior material breach and conversion. JKRE again sought an award of attorneys' fees and costs under S.C. Code Ann. Section 15-36-10, et seq.

On October 29, 2020, JKRE also filed a notice of motion and motion to dismiss amended and supplemental complaint. Therein, JKRE suggested that the amended and supplemental

---

[3] See *Freeman v. J.L.H. Investments, LP, a/k/a Hendrick Honda of Easley*, 414 S.C. 362, 778 S.E.2d 902 (2015).

complaint asserted a frivolous claim for tortious interference with a prospective contract, a frivolous claim under the SCUTPA, and frivolous claims not supported by the facts. Again, JKRE sought an award of attorneys' fees and costs under S.C. Code Ann. Section 15-36-10.

On November 23, 2020, Clarkson filed a reply. Therein, Clarkson denied the material allegations of the counterclaims.

On January 19, 2021, Clarkson filed a memorandum in opposition to motion to dismiss. On February 12, 2021, JKRE filed a memorandum in support of motion to dismiss amended and supplemental complaint. On February 16, 2021, Clarkson filed Plaintiff's reply memorandum.

On March 17, 2021, the Honorable Debra R. McCaslin issued an order denying JKRE's motion to dismiss and motion for sanctions. In her order, Judge McCaslin specifically found that Clarkson's claims for tortious interference with prospective contractual relations and violation of the SCUTPA were "not frivolous."

On July 13, 2021, JKRE filed a notice of motion and motion for summary judgment with a supporting affidavit of Jason Ernest King ("King"). Among other things, the affidavit stated that JKRE charged Clarkson "transaction fees" in exchange for paperwork reviews conducted by King "to make sure that all legal requirements [were] satisfied."

On October 28, 2021, Clarkson filed an affidavit in opposition and a memorandum in opposition to Defendant's motion for summary judgment. On October 30, 2021, JKRE filed a memorandum in support of motion for summary judgment. On December 16, 2021, the Honorable H. Steven DeBerry, IV issued a Form 4 denial of JKRE's motion for summary judgment based on the existence of multiple genuine issues of material fact.

On December 20, 2021, JKRE filed an amended answer to amended and supplemental complaint. Therein, JKRE again asserted that the amended and supplemental complaint failed to

state a cause of action upon which relief could be granted and otherwise denied the material allegations. JKRE also set forth *payment*, failure to mitigate damages, accord and satisfaction, estoppel, waiver, condition precedent, set-off and recoupment, and S.C. Code Ann. Section 15-32-530 as affirmative defenses and asserted counterclaims for prior material breach and conversion. Again, JKRE sought an award of attorney's fees and costs under S.C. Code Ann. Section 15-36-10, et seq.

The same day, Clarkson filed a reply to amended answer to amended and supplemental complaint. Therein, Clarkson denied the material allegations of the counterclaims.

On February 4, 2022, Clarkson filed a motion to serve a second amended and supplemental complaint with a proposed second amended and supplemental complaint. Therein, Clarkson moved to add King as a person who committed, participated in, directed, or authorized the unfair and deceptive acts and practices.

On June 9, 2022, Clarkson filed Plaintiff's memorandum in support of motion to serve a second amended and supplemental complaint. On June 13, 2022, JKRE filed a memorandum in opposition to Plaintiff's second motion to amend. On August 18, 2022, the Honorable William P. Keesley issued a Form 4 order granting Clarkson's motion.

On August 25, 2022, Clarkson filed an amended summons and the second amended and supplemental complaint. On September 30, 2022, the Defendants filed an answer to second amended and supplemental complaint. Again, the Defendants asserted that the second amended and supplemental complaint failed to state a cause of action upon which relief could be granted and otherwise denied the material allegations. The Defendants also set forth *payment*, failure to mitigate damages, accord and satisfaction, estoppel, waiver, condition precedent, set-off and recoupment, corporate veil, and S.C. Code Ann. Section 40-57-10, et seq. as affirmative defenses

and asserted counterclaims for prior material breach and conversion. Again, the Defendants sought an award of attorney's fees and costs under S.C. Code Ann. Section 15-36-10, et seq.

On November 10, 2022, Clarkson filed a reply. Therein, Clarkson denied the material allegations of the counterclaims.

This matter came before the Honorable Donald B. Hocker for a jury trial from July 24 – 26, 2023. At the close of the Plaintiff's case, Judge Hocker granted the Defendants' motions for directed verdict on Clarkson's claims for violation of the SCUTPA and tortious interference with prospective contractual relations. The jury returned a verdict for Clarkson for $16,338.22 on her claim for breach of contract and a verdict on the counterclaim for $379.68.

On August 2, 2023, Clarkson filed a motion for new trial. On August 7, 2023, JKRE and King filed a memorandum in opposition to Plaintiff's motion for new trial. On August 9, 2023, Clarkson filed a reply memorandum. On September 18, 2023, Judge Hocker issued an order denying Clarkson's motion for new trial.

On October 17, 2023, Clarkson timely served and filed notice of appeal. The amount involved on appeal is $19,221.44, representing the three subject real estate commissions and the sum of $2,250.00, representing "transaction fees" withheld by JKRE on 46 occasions.

STANDARD OF REVIEW

In an action at law, when a case tried by a jury is appealed, "the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the jury's findings." *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006).

When a circuit court's ruling on a motion for a directed verdict is appealed, an appellate court must apply the same standard as the circuit court. *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*,

399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012). When ruling on directed verdict, "the [trial] court must view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to the nonmoving party" and must deny the motion "[i]f the evidence at trial yields more than one reasonable inference or its inference is in doubt." *Kunst v. Loree*, 424 S.C. 24, 37–38, 817 S.E.2d 295, 301–02 (Ct. App. 2018). "When considering [such] motions, neither the [circuit] court nor the appellate court has [the] authority to decide credibility issues or to resolve conflicts in the testimony or [the] evidence." *Parrish v. Allison*, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). In essence, the court must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his or her favor. *Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (2008).

"On appeal, the appellate court reviews a denial of a new trial motion for an abuse of discretion." *Duncan v. Hampton Cty. Sch. Dist. No. 2*, 335 S.C. 535, 547, 517 S.E.2d 449, 455 (Ct. App. 1999). A trial judge's order granting or denying a new trial upon the facts will not be disturbed unless his decision is wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law. *South Carolina State Highway Department v. Clarkson*, 267 S.C. 121, 226 S.E.2d 696 (1976).

FACTS

This action arose from a dispute between Clarkson, a real estate agent, and JKRE, a real estate brokerage firm. The dispute involved commissions withheld from Clarkson after termination of her employment and junk fees withheld from her throughout her employment.

King is the sole member and manager of JKRE, a domestic limited liability company with its principal place of business in Lexington County. (T.p. 38, lines 14 – 16). King, who describes

himself as a real estate investor, established JKRE in 2015. (T.p. 340, lines 18 - 19; p. 38, lines 11 – 13).

Trade and commerce

JKRE advertises real estate to buyers and sellers, offers real estate for sale, and sells real estate to businesses and consumers. (T.p. 38, lines 17 – 24). JKRE has a website that it uses for marketing and to recruit prospective agents. (T.p. 38, line 25 - p. 39, line 9).

On May 31, 2018, JKRE presented Clarkson, a newly licensed real estate agent, with a Broker-Salesperson Agreement ("the Agreement"). (T.p. 47, lines 11 -13 and Ex. 1). The Agreement was drafted by King in 2015. (T.p. 39, lines 13 – 15). The Agreement provided, in pertinent part:

> 4. Salesperson agrees . . . *to sell* any and all real estate listed with the Broker, to solicit additional listings and clients of said Broker, procure and . . . *represent buyers* and otherwise promote the business of serving the public in real estate transactions . . .
>
> * * *
>
> 6. . . . When the Salesperson shall perform any *service* hereunder, whereby a commission is *earned*, said commission shall when *collected*, be divided between the Broker and Salesperson, in which division the Salesperson shall receive a proportionate share as set out in the "Commission Schedule" and the Broker shall receive the balance . . .
>
> * * *
>
> 7. . . . when the commission shall have been *collected* from the party or parties for whom the *service* was performed, *said Broker shall hold the*

same in trust for said Salesperson and himself to be divided according to the terms of this agreement.

* * *

9. . . . The Salesperson shall not be liable to the Broker for office help or expense . . .

* * *

11. The Salesperson shall be deemed to be an *independent contractor* and not a servant, employee, or partner of the Broker . . .

* * *

13. This contract and the association created hereby *may be terminated by either party hereto, at any time upon notice given to the other*; *but the rights of the parties to any commissions which accrued prior to said notice, shall not be divested* by the termination of this contract, except that the commission of said Salesperson on *transactions in process, but not closed*, may be subject to deductions for *necessary*[4] *client services*, clerical and administrative work which will be carried out at the discretion of the Broker.

[emphasis added].

The Agreement referred to JKRE's policy manual ("the Policy Manual"), also drafted by King and furnished to Clarkson on May 31, 2018. (T.p. 41, lines 5 – 13 and Ex. 2). The policy manual provided in pertinent part:

When a broker is licensed to supervise agents, the broker also has the

[4] The plain, ordinary, and popular meaning of the word "necessary" is "absolutely needed" or "required". *Arrendondo v. SNH SE Ashley River Tenant, LLC*, 443 S.C. 69, 856 S.E.2d 550 (2021).

the following responsibilities:

* * *

f. Paying agents on the Thursday following the closing

(Ex. 2, pp. 5-6).

Effect on public interest

King drafted the Agreement and the Policy Manual in 2015. (T.p. 39, lines 13 – 15; p. 41, lines 5 – 7). King estimated that JKRE had hired approximately 25 agents and provided copies of the Agreement and the Policy Manual to each agent hired, with the Policy Manual provided to agents on an annual basis. (T.p. 39, lines 7 – 12; p. 41, lines 8 – 13).

Included in the Policy Manual is a "welcome letter" that provided, in pertinent part, "We value you as part of our team and our *relationship-based culture*," and, "We want to become our clients' agents for life." (T.p. 41, line 14 – p. 42, line 8 and Ex. 2, p. 2). King recognized that the personal *relationship* between the agent and the client is an important part of the real estate business. (T.p. 42, lines 9 – 14).

King prepared a commission schedule ("the Commission Schedule") in 2015, which JKRE had used approximately 25 times. (T.p. 43, lines 10 – 21 and Ex. 3).

JKRE has a trust account, but it does not hold an agent's commission in this account. Instead, all commissions are deposited into JKRE's operating account. (T.p. 44, lines 9 – 21). JKRE uses this operating account to pay agent commissions, expenses, and King's salary. (T.p. 44, lines 19 – 24).

Clarkson and King signed the Agreement and the Commission Schedule dated May 31, 2018, on June 1, 2018. (T.p. 47, lines 11 – 13).

The Commission Schedule provided: "Salesperson/Broker will *earn* 70 % of the total

commission, including bonuses. Salesperson/Broker will *earn* 100% of their commission once the Brokerage has earned $20,000 for the calendar year." "Salesperson/Broker," as used in the Commission Schedule, refers to Clarkson. (T.p. 47, line 21 – p. 48, line 1 and Exhibit 3).

King also prepared an "Agent Commission Worksheet" ("Worksheet") in 2015. (T.p. 48, line 18 – p. 49, line 1and Ex. 4). Agents are required to submit a Worksheet to receive their commissions. (T.p. 49, lines 2 – 5). The Worksheet had been used more than one hundred times. (T.p. 49, lines 6 – 7).

junk fees

Clarkson submitted the Worksheet to receive her first commission approximately four weeks after signing the Agreement. (T.p. 132, line 19 – p. 133, line 1). The Worksheet included a $50.00 deduction for a "Transaction Fee," which had not been mentioned in the Agreement, the Policy Manual, or the Commission Schedule. (T.p. 51, lines 4 – 7). Despite Clarkson's protests, a "Transaction Fee" was deducted from her commissions on numerous transactions. (T.p. 133, line 20 – p. 136, line 7 and p. 195, lines 18 – 25).[5]

The relationship between Clarkson and King began to deteriorate approximately six months prior to Clarkson's departure from JKRE. (T.p. 139, line 23 – p. 140, line 3).

Prior to providing notice of termination, Clarkson "capped" for 2020, meaning that Clarkson had generated $20,000.00 for JKRE in that calendar year and no longer had to split her commissions with the brokerage. (T.p. 53, lines 3 – 16). On July 2, 2020, King sent an email to Clarkson, congratulated her on "capping" and referring to her as a "top producer," but questioning her professionalism. (T.p. 56, line 20 – p. 57, line 19 and Ex. 5).

[5] The parties stipulated that JKRE had charged Clarkson "transaction fees" on 44 occasions. (T.p. 213, lines 8 – 24).

King knew that Clarkson was upset by the email. (T.p. 57, lines 20 – 24). On July 9, 2020, Clarkson came to King's office to speak with him and told King that she wanted to leave JKRE. (T.p. 58, lines 3 – 6).

Pending transactions

Clarkson had transactions pending on six properties; *contracts had been signed*, but closing had not yet taken place. (T.p. 58, lines 7 – 9). King acknowledged that Clarkson had a financial interest in those transactions. (T.p. 58, lines 10 – 12).

King asked Clarkson how she wanted to handle her pending transactions. (T.p. 58, lines 22 – 25). When Clarkson suggested taking them with her to a new brokerage, King told her that she could not. (T.p. 59, lines 1 – 6). Instead, King argued that JKRE was not obligated to pay her anything and argued that the Agreement gave him the right to withhold commissions from an agent upon termination. (T.p. 59, lines 7 – 16).

Though the meeting became heated, Clarkson expressed her willingness to continue working on her pending transactions and King agreed to allow her to do so. (T.p. 60, lines 1 – 5).

Clarkson returned to King's office on the following day to clean out her office, and King presented Clarkson with a proposed termination agreement. (T.p. 60, lines 6 – 11 and Ex. 7). The termination agreement provided:

> Salesperson will maintain *the customer relationship with the client that is in contract* to close and receive a __ 70 __ [sic] compensation for the transaction. This compensation is contingent upon the agent providing regular updates, contact information for the client and completing the closing. J. King Real Estate reserves the right to adjust for *necessary* client services, clerical and administrative work which will be carried out at the discretion

of the Broker. (emphasis added).

Although King represented that he had no intention of getting involved "any more than we already were" in the pending transactions, and that his intention "was to let her finish the deals," he nonetheless proposed that JKRE retain 30% of the commissions due to Clarkson, plus fees for "*necessary* client services, clerical and administrative work." (T.p. 61, lines 13 – 23).

Clarkson refused to sign the proposed settlement agreement, and King refused to change it. (T.p. 62, lines 8 – 11).

Deception and interference

Unbeknownst to Clarkson, while King continued representing to her that it was his intention to "let her finish the deals," King contacted each of the clients, lenders, other agents, and closing attorneys and told them that because Clarkson was no longer with JKRE, he would be handling each of the transactions. (T.p. 62, line 16 – p. 63, line 6). One of the clients contacted by King was Clarkson's aunt, whom King admits was "very upset" by his contact. (T.p. 63, lines 11 – 12).

On July 11, 2020, King received an email from Clarkson with an update on two of the pending transactions in which she also asked King to stop undermining her *relationships* with the clients. (T.p. 63, line 13 – P. 64, line 18 and Ex. 7).

Within one hour, King responded

> I don't want to be involved any more than I need to be. *Legally*, I have to be involved. *You have the relationship.* I'm looking to you to keep the wheels on the bus and be the liaison with the client. If everything goes smoothly and the client is happy with you and J. King Real Estate, then you get your cut of the commission . . .

(Ex. 8).
[emphasis added].

King intended for Clarkson to believe that she still had a *relationship* with JKRE while representing to everyone else that no such *relationship* existed. On July 13, 2020, counsel for Clarkson sent a demand for adequate assurance of performance to King. (Ex. 9). On July 14, 2020, King sent an email to Clarkson that said:

> Due to the *legal* nature of our severed business *relationship*, you are no longer allowed to have any communication with any of J. King Real Estate's clients. Any communication will be viewed as interfering with the transaction.

(Ex. 10).
[emphasis added].

Ultimately, King authorized Clarkson to attend the 520 Green Street closing with her aunt that occurred on July 14, 2021, and paid Clarkson 100% of the commission earned on that transaction. (T.p. 72, lines 6 – 13 and Ex. 11). Following this transaction, JKRE prohibited Clarkson from participating in any of the remaining transactions. (T.p. 76, lines 20 – 22). JKRE transferred two transactions (Sweetwater Drive and Saw Cheek) to Clarkson's new brokerage. (T.p. 76, line 23 – p. 77, lines 11). The three pending transactions that remained with JKRE generated $19,221.44 in commissions. (Ex. 73, 74, and 75). Thereafter, King sent checks to Clarkson representing approximately 70% of this total marked "*Payment* in full" which Clarkson declined to accept. (T.p. 192, line 19 – p. 194, line 22 and Ex. 65-69).

I. THE TRIAL COURT'S RULING ON DIRECTED VERDICT AND NEW TRIAL WERE CONTROLLED BY ERRORS OF LAW.

A. The South Carolina Unfair Trade Practices Act ("SCUTPA") creates a private right of action for a plaintiff harmed by a defendant's unfair and deceptive acts in the conduct of trade or commerce that is capable of repetition.

To recover in an action under the SCUTPA, a plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). *Estate of Carr*, 379 S.C. at 43, 664 S.E.2d at 89 (*citing* S.C. Code Ann. § 39-5-10 – 560). An act is "unfair" under the SCUTPA when it is offensive to public policy or when it is immoral, unethical, or oppressive. *Beneficial Financial I, Inc. v. Windham*, 431 S.C. 256, 268, 847 S.E.2d 793, 800 (Ct. App. 2020). A deceptive act is any act which has a tendency to deceive. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct.App.2000). "Trade" and "commerce," as used in the SCUTPA, include "*any* trade or commerce *directly or indirectly* affecting the people of this State." S.C. Code Ann. § 39-5-10. [emphasis added].

B. The potential for repetition of an unfair or deceptive act is sufficient to establish a claim under SCUTPA, regardless of whether the unfair act sounds in contract or tort.

In denying Clarkson's motion for a new trial, the lower court held that "[o]ur 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." Order Den. Pl.'s Mot. New Trial, Sept. 9, 2023, p. 10. This holding, which was not accompanied by a citation to any statute or case, is incompatible with established South Carolina law. Put differently, it is plainly erroneous.

In *Beneficial Financial,* the Court of Appeals addressed a SCUTPA claim arising out of a breach of contract between a mortgagee and mortgagor. In that case,

> Beneficial admitted it was in the business of providing mortgages to homeowners. According to the pleadings and Windham's affidavit, Beneficial force-placed hazard insurance on Windham's home in breach of its contract with Windham, prejudicing Windham by raising his mortgage payments so substantially Windham was no longer able to pay down his principal. Instead, Windham found himself with a pending foreclosure. Beneficial's unfair practice of force-placing hazard insurance in violation of a mortgage contract has the potential for repetition.

Id. at 270, 847 S.E.2d at 800.

In unambiguously holding that a breach of contract, where capable of repetition, may serve as the basis for a SCUTPA claim, the Court in *Beneficial Financial* did not innovate, but merely affirmed an existing point of law. *See e.g. Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 609, 358 S.E.2d 156, 158 (Ct. App. 1987); *Haley Nursery Co., Inc. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989); *York v. Conway Ford*, 325 S.C. 170, 480 S.E.2d 726 (1997); *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004).

The lower court's error of law appears to be controlled by a misreading of South Carolina case law, especially *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). In its order denying Clarkson's motion for new trial, the lower court followed its erroneous holding on the sufficiency of a breach of contract claim with the following quotation from *Ardis*:

> 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.

Id. at 518-19, 431 S.E.2d at 271. [internal citations omitted in the original].

While the lower court cited this passage to stand for the proposition that a "breach of contract... is insufficient to establish a claim under the SCUTPA," a cursory review of the cases cited in *Ardis* reveals that this is not the case. Specifically, the Court in *Ardis* cited *The Key Co., Inc. v. Fameco Distributors, Inc.*, 292 S.C. 524, 357 S.E.2d 476 (Ct.App.1987) for the proposition that "a deliberate or intentional breach of contract, without more, does not constitute a violation of the SCUTPA." This principle originated with *United Roasters, Inc. v. Colgate-Palmolive Co.*, 649 F.2d 985 (4th Cir.1981), wherein the Fourth Circuit Court of Appeals held that where there was "no hint of any unfairness" in an intentional breach of contract, that breach could not serve as the basis for a UTPA claim. The words "without more," properly contextualized, are merely a reference to the first element of the SCUTPA: the act giving rise to a SCUTPA claim must be unfair or deceptive. The proposition forwarded and relied upon by the lower court, then, is not supported by *Ardis*, any of the cases cited by *Ardis*, or any of the precedents on which those cited cases rely.

B. The trial court committed an error of law in granting a directed verdict and in denying Clarkson's motion for a new trial on her SCUTPA cause of action.

Because the trial court's denial of Clarkson's motion for a new trial was controlled by an error of law, and a claim under SCUTPA may be based on any unfair or deceptive act in the conduct of trade or commerce which is capable of repetition, this Court should reverse the lower court and order a new trial on Clarkson's SCUTPA cause of action.

II. THE PUBLIC INTEREST REQUIREMENT FOR A VIOLATION OF THE SCUTPA CAN BE SATISFIED BY PROOF OF A POTENTIAL FOR REPETITION.

"The provision of any service constitutes "commerce" within meaning of [the SCUTPA],"and professional services are not excluded from this definition. *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996). [emphasis in original]. The Defendants stipulated that they engaged in trade or commerce. (T.p. 264, lines 12 – 22).

The second element of the SCUTPA, the public interest requirement, may be satisfied by proof of "facts demonstrating the potential for repetition of the defendant's actions." *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). [emphasis added]. "Plaintiffs . . . generally have shown potential for repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence . . . or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Id.* at 496, 473 S.E.2d at 51 (citations omitted).

A. The trial court, both prior to and at the directed verdict stage, refused to acknowledge or apply South Carolina Supreme Court precedent on the public interest requirement.

Both prior to and during trial, Clarkson presented the lower court with applicable law on the public interest requirement, specifically directing the trial court's attention to *Daisy Outdoor* prior to the directed verdict stage. (T.p. 271, line 21 – p. 273, line 19). Despite this presentation, the lower court refused to engage with the case law presented by Clarkson. The lower court never opined that Clarkson had failed to demonstrate the potential for repetition of unfair or deceptive acts, but, instead, focused on the relationship between the parties and only one of the bases for

Clarkson's SCUTPA claims. Prior to the directed verdict stage, the lower court indicated that it viewed the case as one merely for breach of contract, opining,

> [T]his is a dispute between employer and employee as far as whether or not money is owed... I'm certainly not trying to tell you how to try your case. Okay. I'm not doing that. But I think, you know, as it relates to the Unfair Trade Practices Act the failure to pay commissions -- we need to be very careful whether or not that is related to an effect on the public or not. Because whether or not commissions have been paid or should have been paid, have not been paid, whatever, really does not have an effect on the public.

(T.p. 104, line 6 – p. 105, line 12).

At the directed verdict stage, the trial court echoed these sentiments, holding

> Under the Unfair Trade Practices Act, the Act is not available to redress a private wrong where public interest is not involved. This is clearly a dispute between a realtor seeking commissions from her broker, and not one that the public would be interested in.

(T.p. 296, lines 20 – 25).

B. The trial court committed an error of law in granting the Defendants' motion for directed verdict on Clarkson's SCUTPA claims.

The lower court's failure to apply, or even acknowledge, expressly referenced South Carolina Supreme Court precedent was an error of law. *See State v. Philips*, 416 S.C. 184, 195, 785 S.E.2d 448, 453 (2016) ("[I]t is incumbent upon the court of appeals to apply this Court's precedent. *See* S.C. Const. art. V, § 9 ('The decisions of the Supreme Court shall bind the Court of

Appeals as precedents.'). Simply because a party does not expressly articulate the relevance of a particular case does not excuse the court of appeals from failing to apply controlling precedent... the court of appeals should not have overlooked recent case law—especially where it was expressly cited. Moreover, the court of appeals had the opportunity to correct its error on rehearing but declined to do so.").

Because the lower court's grant of a directed verdict was controlled by an error of law, and the public interest requirement of SCUTPA may be satisfied by proof of the potential for repetition of unfair and deceptive acts, this court should reverse the lower court and order a new trial on Clarkson's SCUTPA cause of action.

III. CLARKSON PRODUCED EVIDENCE SUFFICIENT TO PERMIT A REASONABLE JURY TO CONCLUDE THAT JKRE HAD ENGAGED IN UNFAIR AND DECEPTIVE ACTS IN THE CONDUCT OF TRADE OR COMMERCE THAT ARE CAPABLE OF REPETITION.

A. Clarkson presented evidence that JKRE violated the SCUTPA such that a verdict for Clarkson was reasonably possible.

Clarkson presented evidence of acts by King and JKRE that a reasonable jury could determine are unfair or deceptive within the meaning of the SCUTPA, that affected the public interest, and that caused Clarkson to suffer financial loss.

1. A reasonable jury could determine that JKRE's practice of charging Clarkson mandatory "transaction fees" to perform "legal requirements" reviews is both unfair and deceptive.

Both Clarkson and King testified that Clarkson was not an employee of JKRE. (T.p. 159, lines 9 – 16; p. 335, lines 4 – 22). Clarkson and King testified that JKRE deducted a "transaction fee" from accrued commissions of agents prior to paying them. (T.p. 191, lines 20 – 25; p. 303,

line 20 – p. 304, line 5; p. 331, lines 6 -17). King testified that these "transaction fees" were deducted from commissions for "legal requirements" reviews performed by King. (T.p. 304, lines 1 – 5; p. 308, line 14 – p. 309, line 3). King further testified that Clarkson was not liable to the brokerage for "office help or expense." (T.p. 45, lines 2 – 17).

King is not a licensed attorney. (T.p. 319, lines 11 – 12). JKRE introduced no evidence that King was supervised by a licensed attorney before, during, or after his "legal requirements" reviews, and introduced no evidence that any licensed attorney had been involved in developing or reviewing his procedure for conducting the "legal requirements" reviews.

South Carolina limits the practice of law to licensed attorneys. *Brown v. Coe*, 365 S.C. 137, 139, 616 S.E.2d 705, 706 (2005). While there is "no comprehensive definition of the practice of law," our courts have recognized that "[t]he practice of law is not confined to litigation, but extends to activities in other fields which entail specialized legal knowledge and ability." *Boone v. Quicken Loans, Inc.*, 420 S.C. 452, 460, 803 S.E.2d 707, 711 (2017) (quoting *State v. Buyers Serv. Co.*, 292 S.C. 426, 430, 257 S.E.2d 15, 17 (1987)). As such, preparation of legal documents constitutes the practice of law when such preparation involves the giving of advice, consultation, explanation, or recommendations on matters of law. *Franklin v. Chavis,* 371 S.C. 527, 531 – 32, 640 S.E, 2d 873, 876 (2007) (quoting *State v. Despain*, 319 S.C. 317, 319, 460 S.E.2d 576, 578 (1995)). Even the preparation of standard forms that require no creative drafting may constitute the practice of law if one acts as more than a mere scrivener. *Id.*

King's testimony could allow a reasonable jury to conclude that in conducting "legal requirements" reviews he was acting as "more than a mere scrivener." King admitted to charging fees in exchange for opinions on questions of law. (T.p. 304, lines 1-4; p. 331, lines 9 – 16). Based

upon the evidence presented at trial, a reasonable jury could find that JKRE required Clarkson and all other agents to repeatedly pay for King to engage in the unauthorized practice of law.

Clarkson testified that these "transaction fees" were not disclosed, either verbally or in writing, at any point prior to entering a broker-salesperson *relationship* with JKRE. (T.p. 133, line 23 – p. 134, line 25). Clarkson further testified that the first time that she learned of these junk fees was when she was presented with the commission sheet that she was required to execute to receive a commission for her first transaction, approximately four weeks into her employment *relationship* with JKRE. (T.p. 133, line 23 – p. 134, line 25 and Ex. 17). In addition, Clarkson testified that payment of these "transaction fees" was a condition precedent to receiving her paycheck; JKRE would not tender accrued commissions without payment of these fees by agents. (T.p. 135, line 20 – p. 136, line 7).

King testified that he was the author of the Agreement, Policy Manual, and Commission Schedule provided to Clarkson and every other agent at JKRE. (T.p. 39, lines 13 -15; p. 41, lines 1 – 13; p. 43, lines 10 – 12). Implausibly, King testified that he had not read these documents and did not know if "transaction fees" were disclosed in any of these documents. (T.p. 49, line 19 – p. 50, line 21). King eventually acknowledged that the first time an agent was informed of "transaction fees" in writing was when an agent was presented with the Worksheet the agent had to execute to receive a commission for their first transaction. (T.p. 51, lines 4 – 7).

A reasonable jury could find that JKRE's practice of charging agents junk fees to have King engage in the unauthorized practice of law is offensive to public policy, immoral, unethical, or oppressive. A reasonable jury could further find that JKRE's refusal to disclose mandatory junk fees to agents prior to entering into a broker-salesperson agreement and then conditioning payment of earned commissions on payment of these fees is coercive and deceptive. Further, given King's

testimony that these practices had been repeated with his agents, Clarkson's testimony that King charged her junk fees on dozens of occasions, and Clarkson's testimony that she suffered monetary loss as a result of them, it is reasonably possible that a jury could have returned a verdict for Clarkson under the SCUTPA. (T.p. 50, lines 5 – 11; p. 195, line 18 – p. 196, line 18). Therefore, the lower court erred in granting the Defendants' motion for directed verdict.

B. A reasonable jury could determine that JKRE unlawfully withheld Clarkson's accrued commissions to coerce a fee split.

The Agreement between Clarkson and JKRE provided, in pertinent part, that it

...may be terminated by either party hereto, at any time upon notice given to the other; *but the rights of the parties to any commissions which accrued prior to said notice, shall not be divested by the termination of this contract*, except the commission of said salesperson on transactions in process, but not closed, may be subject to deductions for *necessary* client services, clerical and administrative work which will be carried out at the discretion of the Broker;

(Ex. 1, par. 13)
[emphasis added].

The parties further entered JKRE's policies and procedures manual into evidence. That manual provided that accrued commissions were to be paid to agents on "the Thursday following the closing." (Ex. 2, p. 5, par. 2-f; T.p. 46, lines 5 – 14).

Clarkson's commissions accrued upon execution of contracts between buyers and sellers, and were payable upon collection by JKRE. (Ex. 1, par. 6). *See e.g. Cass Co. v. Nannarello*, 274 S.C. 326, 262 S.E.2d 924 (1980). The commission schedule provided that until Clarkson generated $20,000.00 in commissions for JKRE in a calendar year, her commissions would be split, with 70% of the commissions going to Clarkson and 30% of the commissions going to JKRE. (T.p. 48, lines 3 - 5; p. 132, lines 1 – 8 and Ex. 3). Upon generating $20,000.00 in commissions for JKRE,

Clarkson was entitled to 100% of the commissions she earned for the remainder of the calendar year. (T.p. 48, lines 9 – 17). King testified that on June 29, 2020, Clarkson exceeded the $20,000.00 mark, and thereafter, under the terms of the broker-salesperson agreement, was owed 100% of her commissions. (T.p. 53, lines 6 – 16).

King testified that he and Clarkson met on July 9, 2020, to discuss termination of the broker-salesperson agreement. (T.p. 58, lines 3 – 6). At the time of this meeting, Clarkson had six transactions in which contracts between buyers and sellers had been executed (and, therefore, on which commissions had accrued), but in which closings had yet to take place. (T.p. 58, lines 7 – 21). King testified that despite the terms of the broker-salesperson agreement, King proposed that JKRE retain 30% of the commissions on these transactions, and King prepared a proposed settlement agreement authorizing JKRE to retain 30% of the commissions. (T.p. 60, lines 18 – 21). Both Clarkson and King testified that Clarkson refused to sign this proposed settlement. (T.p. 62, lines 3 – 11; p. 168, lines 9 – 19).

Of the six transactions in which contracts had been executed but closing had yet to take place, two that were not due to close for several months were novated to the brokerage to which Clarkson moved after leaving JKRE on July 29, 2020. (T.p. 140, lines 21 – 24).

On July 14, 2020, the first transaction in progress, in which Clarkson's great aunt was the seller of her deceased daughter's home, closed. (T.p. 72, lines 6 – 10). JKRE failed to pay Clarkson on the Thursday following the closing. (T.p. 182, lines 13 – 18). JKRE eventually paid Clarkson 100% of her accrued commission on this transaction, albeit a week late and with a $50 "transaction fee" deducted. (T.p. 72, lines 11 – 19; p. 187, line 16 – p. 188, line 25 and Ex. 11).

The three remaining transactions for which Clarkson had served as salesperson closed on July 28, 2020 (503 Concord Place Road), July 30, 2020 (1023 Old Town Road), and September

25, 2020 (249 Trinity Three Road). (T.p. 127, lines 17 – 21). Following these closings, JKRE repeatedly tendered checks to Clarkson for approximately 70% of the accrued commissions. (T.p. 191, line 3- page 193, line 7). JKRE represented that the retention of approximately 30% of the accrued commissions was for "*necessary* client services, clerical and administrative work." (T.p. 191, line 3 – p. 193, line 7). King prohibited Clarkson from contacting any clients associated with these transactions, thereby preventing Clarkson from investigating the validity (or lack thereof) of these deductions. (T.p. 76, lines 20 – 22; p. 124, lines 7 -12; p. 344, lines 10 – 13).

A reasonable jury could conclude that JKRE withheld Clarkson's accrued commissions to coerce her into accepting less than she was owed under the terms of the commission schedule, and that this coercion was unfair and deceptive. Further, given testimony that JKRE had tendered payment for less than the amount of the accrued commissions on numerous occasions and Clarkson's testimony that she suffered monetary loss as a result of JKRE's acts, it is reasonably possible that a jury could have returned a verdict for Clarkson under the SCUTPA. (T.p. 191, line 3- p. 193, line 7). Therefore, the lower court erred in granting the Defendants' motion for directed verdict.

C. A reasonable jury could determine that JKRE engaged in bill padding.

In *Barnes v. Jones Chevrolet Co., Inc.*, 292 S.C. 607, 358 S.E.2d 156 (Ct.App. 1987), defendant Jones Chevrolet submitted an itemized estimate of $3,762.28 to Barnes for the repair of his vehicle, and after allegedly completing repairs, submitted an itemized bill for that amount to Barnes. Barnes paid the bill and later discovered that parts and labor totaling $968.68, which were itemized on the estimate, were for parts not used and labor not performed. The Court of Appeals held that Jones Chevrolet's practice of bill padding was an unfair trade practice.

JKRE repeatedly tendered checks to Clarkson for approximately 70% of her accrued commissions, contending that the retention of approximately 30% was for "*necessary* client services,

clerical and administrative work." (T.p. 191, line 3- page 193, line 7). JKRE later presented a list of emails, text messages, and phone calls on the three transactions, all of which were originally scheduled to close within three weeks of the termination of the broker-salesperson agreement, to justify this retention at an "hourly rate" of $173.00. (T.p. 325, line 22 – p. 326, line 12; T.p. 192, lines 3 -12 and Ex. 64). Clarkson presented evidence that the labor King presented as "*necessary* client services, clerical and administrative work" on the three transactions was grossly disproportionate to the labor necessary to close the transactions, and further testified that she had never agreed to King's novel "hourly rate." (T.p. 140, line 21 – p. 141, line 7; p. 143, lines 1 – 5). King, whose income fluctuates based on annual sales, testified that this "hourly rate" was his determination of "how much [his] time was worth." (T.p. 326, lines 2 -8; p. 336, lines 7 - 13).

A reasonable jury could find that JKRE's retention of 30% of Clarkson's commissions post-termination on three separate transactions, premised on a never-before-used hourly rate and time billed for tasks, unsupported by any records entered into evidence, constituted unlawful bill padding. A jury could further find that JKRE's bill padding was unfair, and King's attempts to mislead Clarkson about the labor performed, and cost thereof, were deceptive. Further, given testimony by Clarkson that these practices had been repeated and Clarkson's further testimony that she suffered monetary loss as a result of them, a reasonable jury could have returned a verdict for Clarkson under the SCUTPA. Therefore, the lower court erred in granting the Defendants' motion for directed verdict.

D. A reasonable jury could determine that JKRE's attempts to induce a seller to abandon a sale and thereby prevent Clarkson from completing a contingent sale were unfair and deceptive.

Ms. Miller, the seller of 249 Trinity Three Road, testified that she had worked with Clarkson to arrange the sale of that property. (T.p. 114, lines 6 -22). Ms. Miller testified that the sale of 249 Trinity Three Road was a result of the end of her marriage, and given her financial constraints, she was unable to close on a new property until the sale of 249 Trinity Three Road closed. (T.p. 116, line 24 – p. 117, line 2). Prior to Clarkson's departure from JKRE, 249 Trinity Three Road went under contract. (T.p. 149, line 5 – 18). After Clarkson joined her new brokerage, but before 249 Trinity Three Road closed, Ms. Miller engaged Clarkson to find her a home to purchase upon closing. (T.p. 114, lines 6 -22; p. 149, lines 19 - 22).

Thereafter, JKRE attempted to sabotage the closing of 249 Trinity Three Road. (T.p. 150, line 24 – p. 151, line 2; p. 176, line 6 – p. 178, line 4). Ms. Miller testified that she vacated the property on short notice at the instruction of JKRE and moved her furniture out of the property in anticipation of closing. (T.p. 116, lines 16 – 23). JKRE represented on at least four separate occasions that a closing had been scheduled when it had not been, causing Ms. Miller's ex-husband to travel from Virginia to South Carolina on each occasion. (T.p. 115, lines 19 -25).

As a result of JKRE's repeated delays, Ms. Miller could no longer afford to stay in an AirBnb or hotel while awaiting closing (T.p. 117, lines 5 – 8). She was reduced to returning to 249 Trinity Three Road and sleeping on the floor until closing. (T.p. 117, lines 8 – 14).

A reasonable jury could conclude that JKRE's repeated misrepresentations to Ms. Miller, including misrepresentations about the need to vacate 249 Trinity Three Road and notice of four separate closings that were never scheduled, were unfair and deceptive acts intended both to justify the deduction of fees from Clarkson's accrued commissions and deny Clarkson a sale at her new brokerage that JKRE knew was contingent upon the closing of 249 Trinity Three Road. These

unfair and deceptive acts clearly impacted the public interest; Ms. Miller testified that these misrepresentations caused her to deplete her savings on temporary shelter (T.p. 117, lines 5 – 10).

IV. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT AS TO CLARKSON'S CLAIM FOR INTENTIONAL INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS.

"The torts of intentional interference with contractual relations, with lawful business, and with prospective business advantage are closely related ... The general wrong involved in each tort consists of intentional and improper methods of diverting or taking away ongoing or prospective business or contractual rights from another, which methods are not within the privilege of fair competition." *United Educational Distributors, LLC v. Educational Testing Service*, 350 S.C. 7, 564 S.E.2d 324 n.1 (2002). A cause of action for intentional interference with prospective contractual relations generally stands following the loss of an identifiable contract or expectation. *Id.* at 14, 564 S.E.2d at 328. To recover on a cause of action for intentional interference with prospective contractual relations, a plaintiff must prove that (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. *Id.* at 14, 564 S.E.2d at 328. If a defendant acts for more than one purpose, his improper purpose must predominate in order to create liability. *Crandall Corp. v. Navistar Intern. Transp. Corp.*, 302 S.C. 265, 266, 395 S.E.2d 179 (1990). As an alternative to establishing an improper purpose, a plaintiff may prove the defendant's method of interference was improper under the circumstances. *Id.*

In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. *Eldeco, Inc. v. Charleston County School Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

Clarkson demonstrated that she suffered losses of $5,550.00 on the Concord Place Road transaction, $9,458.58 on the Old Town Road transaction, and $4,260.00 on the Trinity Three Road transaction. (T.p. 184, lines 2 – 7; p. 185, lines 12 – 19; p. 186, lines 3 – 14). Under the terms of the Agreement, because Clarkson had "capped" for 2020 prior to these closings, she was entitled to 100% of these commissions. (T.p. 333, lines 7 – 23). After the termination of the Agreement, King requested that she stay involved in these transactions, stating that he was "looking to her to keep the wheels on the bus." (T.p. 175, lines 7 -21; p. 340, line 22 – p. 341, line 10 and Ex. 8).

King's subsequent threats of claims for interference allowed him to divert or take away ongoing business between Clarkson and Christian, Collins, and Miller. (T.p. 180, line 9 – p. 181, line 1). Despite requesting that Clarkson remain the "liaison with the client[s]," King inserted himself into these transactions and alleged that he had performed such a substantial amount of labor as to be entitled to 30% of Clarkson's accrued commissions. (T.p. 67, lines 1- 3; p. 191, lines 10 – 15). As a result of Clarkson's refusal to forfeit the unauthorized deductions, she received nothing. (p. 194, lines 8 – 22).

Because a reasonable jury could find that King interfered with Clarkson's prospective contractual relations, this Court should reverse the lower court and grant a new trial on Clarkson's tortious interference with prospective contractual relations claim.

CONCLUSION

The lower court erred in directing a verdict on the UTPA claim on its mistaken belief that Clarkson was required to prove a tort against third parties. Evidence of a potential for repetition, generally speaking, in and of itself establishes the required public impact. *Daisy Outdoor,* S.C. 322 at 496, 473 S.E.2d at 51. The South Carolina Supreme Court has never required proof of torts against third parties (in addition to proof of a tort against the plaintiff). *Id.* A plaintiff proves an

adverse effect on public interest if she proves facts that demonstrate the potential for repetition. *Wright*, 372 S.C. at 23, 640 S.E.2d 4 at 498. The plaintiff need not allege or prove anything further in relation to the public interest requirement. *Id.* As set forth in *Estate of Carr*, *supra*, the standard is very low.

The lower court exacerbated its error when it acknowledged in its order denying Plaintiff's motion for new trial that "Plaintiff has produced evidence that demonstrates that JKRE is capable of repeating its breach of contract with other agents", but nonetheless concluded as a matter of law that withholding wages from a nominal employee to extract junk fees and commission splits is not unfair. This factual issue was for the jury to decide.

The lower court also erred in directing a verdict and denying Plaintiff's motion for new trial on the Plaintiff's intentional interference claim. Clarkson had accrued 100% of the commissions on the three pending transactions based upon her relationships with the clients. To suggest that Clarkson had no legitimate expectation in those commissions and that King did not interfere with that expectation by withholding those commissions is plainly erroneous.

For the reasons stated, this Court should reverse the judgment of the lower court.

Respectfully submitted,

/s/ J. Gregory Studemeyer
J. Gregory Studemeyer
S.C. Bar # 5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
greg@studemeyerlawfirm.com
Attorney for Appellant

January 17, 2024