

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.

RECORD ON APPEAL

VOLUME I

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

Shaun C. Blake, Esq. (S.C. Bar # 76349)
Rogers Lewis Jackson & Mann, LLC
1901 Main Street, Suite 1200
Post Office Box 11803
Columbia, South Carolina 29211
(803) 256-1268
sblake@rogerslewis.com
Attorney for Respondents

RECEIVED

MAR 22 2024

SC Court of Appeals

INDEX

Order Denying Plaintiff's Motion For New Trial. 3

Order Granting Leave To Deposit Funds Into The Court. 20

Complaint. 24

Answer. 29

Notice Of Motion And Motion To Dismiss filed by J. King Real Estate. 34

Reply. 36

Amended and Supplemental Complaint. 38

Answer To Amended And Supplemental Complaint. 71

Reply. 78

Amended Answer To Amended And Supplemental Complaint. 80

Reply To Amended Answer To Amended And Supplemental Complaint. 87

Motion To Serve A Second Amended And Supplemental Complaint. 89

Memorandum In Opposition To Plaintiff's Second Motion To Amend. 102

Second Amended And Supplemental Complaint. 107

Answer To Second Amended And Supplemental Complaint. 119

Reply. 127

Motion For New Trial. 129

Memorandum In Opposition To Plaintiff's Motion For New Trial. 142

Jason King's Notice Of Motion And Verified Motion For Award Of Costs And
Reasonable Attorneys' Fees. 157

Transcript. 161

Exhibits. 454

Verdict Form. 566

Certificate of Counsel..... 567

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**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), SCRCF, 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), SCRPC, 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), SCRPC, as it does not invoke either Rule 50(b), SCRPC, 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 reasonable 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), SCRPC, 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.



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

Electronically signed on 2023-09-18 13:11:22 page 17 of 17

ELECTRONICALLY FILED - 2023 Oct 19 4:16 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477
ELECTRONICALLY FILED - 2023 Sep 18 1:12 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**ORDER GRANTING LEAVE TO
DEPOSIT FUNDS INTO THE COURT**

THIS MATTER comes before the undersigned on the motion of J. King Real Estate, LLC (“JKRE”), who seeks leave to deposit the entire amount of the judgment, plus interest accrued prior to its payment of the Judgment to Plaintiff on September 29, 2023, into the Clerk of Court pursuant to Rule 67, SCRPC, to obtain stays of the accrual of further post-judgment interest and any execution of the judgment in favor of the Plaintiff (the “Motion”).

A jury trial commenced in this matter on July 24, 2023, in Lexington County, South Carolina before the undersigned. On July 26, 2023, Plaintiff and JKRE each submitted their claims for breach of contract against the other to the jury. The jury returned a verdict that: (1) awarded Plaintiff \$16,338.22 against JKRE; and (2) awarded JKRE \$379.68 against Plaintiff. On August 2, 2023, Plaintiff moved for a new trial. On September 18, 2023, the undersigned entered the court’s Order denying Plaintiff’s Motion for New Trial.

On September 29, 2023, JKRE filed notice that it had delivered payment of \$16,667.82 to Plaintiff, a sum representing the entire amount of the Judgment in favor of the Plaintiff with all interest accruing on that Judgment between July 27, 2023, and September 29, 2023. See South Carolina Supreme Court issued Order 2023-01-04-01. On October 19, 2023, Plaintiff filed a Notice of Appeal of this court’s denial of Plaintiff’s Motion for New Trial. On October 20, 2023, JKRE received the check back from the Plaintiff that contained JKRE’s payment made on September 29,

2023. JKRE filed for relief under Rule 67, SCRPC, on the same day.

Rule 67, SCRPC, authorizes a party to deposit the sum of a judgment, or a portion thereof, into the court with leave of court. The South Carolina appellate courts have upheld the application of Rule 67, SCRPC, and have concluded that Rule 67 serves a beneficial purpose. See, Russo v. Sutton, 317 S.C. 441, 454 S.E.2d 895 (1995); Small v. Pioneer Machinery, Inc., 330 S.C. 62, 496 S.E.2d 884 (Ct. App. 1998); Duval v. Heritage Life Ins. Co., 339 S.C. 616, 529 S.E.2d 566 (Ct. App. 2000). Specifically, in Russo, the Supreme Court reasoned that "[s]uch a rule encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal." Russo, 454 S.E.2d at 896.

The South Carolina Supreme Court has held that a party's deposit of funds pursuant to Rule 67, SCRPC, prevents the accrual of interest during the court's determination of post-trial motions and any subsequent appeal. Russo, 317 S.C. at 444, 454 S.E.2d at 896. Likewise, the South Carolina Court of Appeals, in refusing an argument against precedent and for post-judgment interest following a deposit with the court under Rule 67, has stated that, following Russo, the law is "unmistakably clear" that a "judgment debtor's deposit of funds into court pursuant to Rule 67, SCRPC, pending the debtor's own appeal stops the accrual of interest on the judgment." Duval, 339 S.C. at 620, 529 S.E.2d at 568.

Furthermore, Rule 62(d), SCRPC, in accordance with S.C. CODE ANN. § 18-9-130, provides that this court may stay any efforts by the Plaintiff to obtain execution of or to conduct any proceedings to enforce a monetary judgment upon appeal. This court may order such surety as it may deem proper, up to and without exceeding the amount of the judgment, to protect the Plaintiff's interest in the interim. Id.

JKRE's deposit of money into the Court in an amount that meets the Judgment plus all

accrued interest up to the time of JKRE's payment of the Judgment is wholly sufficient to protect the interests of the Plaintiff, as it "ensures the availability of funds to satisfy the judgment." Small v. Pioneer Mach., Inc., 330 S.C. 62, 65, 496 S.E.2d 884, 885 (Ct. App. 1998); see S.C. CODE ANN. § 18-9-130 (stating that the "bond or surety may not exceed the amount of the judgment").

Upon consideration and based on the foregoing, the undersigned has considered the merits of the Motion and has determined it is based on good cause and should be GRANTED.

IT IS, THEREFORE, ORDERED that within five (5) days of notice of this ORDER, JKRE may deposit \$16,667.82 into the Clerk of Court of Lexington County as payment of the Judgment plus accrued post-judgment interest.

IT IS FURTHER ORDERED that the Clerk of Court for Lexington County shall deposit the funds with any bank or financial institution authorized to receive public funds in an interest bearing account, and the funds, including interest earned thereon, shall be withdrawn only upon further order of this Court after notice to all parties;

IT IS FURTHER ORDERED that, upon this deposit by JKRE, the further accrual of interest following the deposit by JKRE is stayed pursuant to Russo and Duval; and Plaintiff shall not attempt to execute upon the Judgment in her favor or take any other proceedings for its enforcement pending further order of this Court after notice.

IT IS SO ORDERED.



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

Electronically signed on 2023-11-15 07:59:57 page 4 of 4

ELECTRONICALLY FILED - 2023 Nov 15 8:53 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

| | | |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON |) | CASE NO.: 2020-CP-32-_____ |
| Brandi Clarkson, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | COMPLAINT |
| J. King Real Estate, LLC, |) | |
| |) | |
| Defendant. |) | |

The Plaintiff above named, complaining of the Defendant herein, reserving the right to supplement this Complaint pursuant to Rule 15(d), SCRPC, would respectfully show unto the Court:

PARTIES

1. The Plaintiff is a resident of the County of Lexington, State of South Carolina.
2. The Defendant is a domestic limited liability company with its principal place of business in the County of Lexington, State of South Carolina.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Venue is proper in Lexington County pursuant to S.C. Code Ann. Section 15-7-30(E)(1) and 15-7-30(E)(2) since the Defendant has its principal place of business in Lexington County and since the most substantial part of the alleged act or omission giving rise to the cause of action occurred in Lexington County.

BACKGROUND

5. Heretofore, on or about June of 2018, the Plaintiff and the Defendant entered into a Broker-Salesperson Agreement (“agreement”) prepared by the Defendant incorporating the

Defendant's policy and procedures manual and a "Commission Schedule".

6. The agreement provided in paragraph 6 that 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. The agreement further provided in paragraph 7 that 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.

8. The agreement further provided in paragraph 9 that the Salesperson shall not be liable to the Broker for office help or expense.

9. The Defendant's policy and procedures manual provides in Section IV, paragraph 2 that when a broker is licensed to supervise agents, the broker also has the following responsibilities:

f. Paying agents on the Thursday following the closing.

10. The Commission Schedule provided that Salesperson/Broker will earn 70% of the total commission, including bonuses and Salesperson/Broker will earn 100% of their commissions once the Brokerage has earned \$20,000 for the calendar year.

11. The Defendant earned \$20,000 for the calendar year in June of 2020.

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.

**FOR A FIRST CAUSE OF ACTION
(breach of contract)**

13. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

14. On July 9, 2020, the Plaintiff exercised her right pursuant to paragraph 13 of the agreement to terminate.

15. Paragraph 13 provided that the rights of the parties to any commission 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 client services, clerical and administrative work which will be carried out at the discretion of the Broker.

16. At the time of termination, the Plaintiff had six transactions in process which had not closed.

17. Rather than honoring the course of dealing between the parties for the payment of a \$50 transaction fee, the Defendant has insisted upon taking 30% of the Plaintiff's commissions earned in accordance with the Defendant's agreement, policy and procedures manual, and "Commission Schedule".

18. On July 14, 2020, one of the six transactions, 520 Green Street, closed.

19. The Plaintiff was entitled to a 100% commission of \$3,660 on the Green Street transaction payable on Thursday, July 16, 2020, in accordance with the Defendant's agreement, policy and procedures manual, and "Commission Schedule".

20. The Defendant has failed and refused and continues to fail and refuse to pay the Plaintiff the commission she has earned.

21. Additional closings are scheduled for July 28, 2020; July 31, 2020; August 1, 2020;

October; and December of 2020.

- 22. The Defendant intends to withhold all of the commissions the Plaintiff has earned.
- 23. The Plaintiff reserves her right to supplement her Complaint to address commissions earned on transactions in process that have not closed.
- 24. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendant for actual damages.

FOR A SECOND CAUSE OF ACTION
(violation of the Unfair Trade Practices Act)

- 25. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.
- 26. The Defendant has engaged in unfair or deceptive acts or practices.
- 27. The Defendant's unfair trade practices were willful, offensive to public policy, and were immoral, unethical, and oppressive.
- 28. The Plaintiff has suffered actual, ascertainable damages as a result of the Defendant's use of the unfair trade practice.
- 29. The unfair trade practice had an adverse impact on the public interest in that the Defendant's procedures create a potential for repetition of the unfair and deceptive acts.
- 30. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to an award of treble damages along with a reasonable award of attorney's fees and costs.

WHEREFORE, the Plaintiff prays for actual damages, treble damages, a reasonable award of attorney's fees, the costs of this action, and for such other and further relief as the Court may deem just and proper.

Signature on following page.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer

J. Gregory Studemeyer

SC Bar #5416

7478 Carlisle Street

P.O. Box 1014

Irmo, S.C. 29063

(803) 393-4399

Irmo, South Carolina

July 21, 2020

ELECTRONICALLY FILED - 2020 Jul 21 2:49 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,
v.
J. King Real Estate, LLC,
Plaintiff,
Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

ANSWER

(Jury Trial Demanded)

Defendant, responding to the Complaint, answers as follows:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRPC - Failure to State a Claim)

1. The Complaint fails to state a cause of action upon which relief can be granted, and it should be dismissed according to Rule 12(b)(6), SCRPC.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. References to paragraphs are to those paragraphs enumerated in the Complaint. Defendant denies each allegation in the Complaint not specifically herein admitted.

3. Defendant admits paragraph 1 through 4.

4. Responding to paragraph 5 through 8, Defendant admits that it entered into a contract entitled "Broker-Salesperson Agreement" with Plaintiff effective May 31, 2018 (the "Agreement"). Defendant explicitly pleads the each of terms of the Agreement as if stated herein, and denies any statements inconsistent with that Agreement.

5. Responding to paragraphs 9 and 10, Defendant explicitly pleads the each of terms of the document referenced as if stated herein and denies any statements inconsistent with that document.

6. Defendant denies paragraph 11 as stated.

7. Defendant denies paragraph 12 as stated, but it admits that Defendant assesses a \$50 transaction fee against the total commission for every closing.

8. Paragraph 13 requires no further response. To the extent a response is required, Defendant reincorporates all prior responses.

9. Paragraphs 14 & 15 state legal conclusions, which require no response. Further responding, Defendant explicitly pleads the each of terms of that Agreement as if stated herein, and it denies any statements inconsistent with that Agreement.

10. Defendant denies paragraph 16 as stated.

11. Defendant denies paragraph 17.

12. Defendant denies paragraph 18 as stated. Further responding, Defendant admits that transaction documents were executed between the buyer and seller of 520 Green Street, W. Columbia, SC 29172 on or about July 14, 2020 (the "Green Street transaction.").

13. Defendant denies paragraph 19 as stated. Further responding, Defendant states that it timely paid Plaintiff 100% of the \$3,610.00 commission she was entitled to receive in connection with the "Green Street transaction." Plaintiff accepted, by endorsement and cashing Defendant's check no. 3842, full payment, settlement and satisfaction of her claim for any payment associated with the "Green Street transaction."

14. Defendant denies paragraph 20.

15. Defendant denies paragraphs 21 and 22. Further responding, Defendant has paid to Plaintiff 100% of all commissions she is entitled to receive in accordance with the Agreement.

16. Defendant denies paragraphs 23 through 30 and Plaintiff's claim for

entitlement to any relief. Further responding, Plaintiff's Complaint includes claims that were plainly not ripe, are not actionable under the South Carolina Unfair Trade Practices Act, and that are therefore frivolous under S.C. Code Ann. § 15-36-10, et seq.

FOR A THIRD DEFENSE
(Payment)

17. Defendant pleads its payments to Plaintiff occurring since July 9, 2020 - including its payments for alleged "claims" that were not ripe at the time of the filing of this Complaint - as a full and complete bar to Plaintiff's claims.

FOR A FOURTH DEFENSE
(Accord and Satisfaction)

18. Likewise, Plaintiff knowingly agreed to accept \$3,610.00 as full payment of commission" on the Green Street transaction, and she did accept and cash this payment when she endorsed and deposited Defendant's check no. 3842.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Prior Material Breach)

19. In the event that Plaintiff has any ripe claims, Plaintiff has materially breached her Agreement with Defendant by failing to perform her duties under it and converting Defendant's property, including its keys, in violation of paragraph 14 of the Agreement, resulting in actual and consequential damages to Defendant.

20. As a result of Plaintiff's prior material breaches, as may be further discovered in the course of this action, Plaintiff is barred from pursuing her claims.

21. Further, as a result of Plaintiff's material breaches, Defendant is entitled to recover all actual and consequential damages it has suffered as a result of Plaintiff's breaches of the Agreement.

22. Defendant is entitled to a jury trial on this claim.

FOR A SIXTH DEFENSE
(Estoppel)

23. In the alternative, Plaintiff's conduct of accepting and failing to return Plaintiff's funds, which has been relied upon by Defendant to its detriment, estop Plaintiff from seeking relief.

FOR A SEVENTH DEFENSE
(Waiver)

24. In the alternative, Plaintiff has knowingly waived her rights against Defendant in connection with the alleged transactions described in her Complaint.

FOR AN EIGHTH DEFENSE
(Condition Precedent)

25. In the alternative, Plaintiff has failed to satisfy the conditions precedent for her payment.

FOR A NINTH DEFENSE
(Set-off and Recoupment)

26. To the extent that Plaintiff maintains any claim against Defendant arising out of any contract or agreement between them Plaintiff, in the same capacity and in similar transactions with Defendant, has failed to comply with her obligations owed to Defendant. Therefore, Defendant is entitled to reduce or diminish the claim of Plaintiff as a consequence of her failures to perform her obligations owed to Defendant.

WHEREFORE, Defendant respectfully requests that that court enter judgment in its favor against Plaintiff, including dismissal of Plaintiff's Complaint in its entirety with prejudice; or, in the alternative, grant Defendant a jury trial; and at the conclusion of this matter, award Defendant judgment for its actual damages, consequential damages, costs, reasonable attorneys' fees, and such other relief as the Court deems equitable or

appropriate at law or as required by S.C. Code Ann. § 15-36-10, et seq.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
Email: sblake@rogerslewis.com

September 3, 2020

ATTORNEYS FOR J. KING REAL ESTATE, LLC

ELECTRONICALLY FILED - 2020 Sep 02 5:31 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

J. King Real Estate, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**NOTICE OF MOTION
AND MOTION TO DISMISS**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for Defendant will move before the presiding judge on the tenth day after service hereof, or as soon as thereafter as may be convenient for the court in accordance with the South Carolina Supreme Court's Order dated April 22, 2020 RE: operation of the Trial Courts During the Coronavirus Emergency, Appellate Case No. 2020-000447, for an order dismissing this case under Rule 12(b)(6), SCRCP and allowing Defendant to submit an affidavit of attorneys' fees and costs to be awarded under S.C. Code Ann. § 15-36-10, et seq. The basis of the motion is that the Complaint plainly states frivolous and baseless "claims" that were not ripe at the time of the Complaint and would fall outside of the boundaries of the South Carolina Unfair Trade Practices Act and otherwise fails to state a claim for relief. Plaintiff has failed to make any effort to amend the Complaint.

Defendant reserves the right to add additional grounds and supplement this Motion. This Motion will be further based on a memorandum to be filed in the future in the time requested by the presiding judge, documents incorporated by reference in the Complaint, applicable case law, and any such matters as the Court may deem just and proper. Defendant specifically reserve the right to supplement this Motion in the future.

[Signature on Following Page]

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
Email: sblake@rogerslewis.com

September 3, 2020

ATTORNEYS FOR J. KING REAL ESTATE, LLC

ELECTRONICALLY FILED - 2020 Sep 02 5:37 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

| | | |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON |) | CASE NO. 2020-CP-32-02477 |
| Brandi Clarkson, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | REPLY |
| J. King Real Estate, LLC, |) | |
| |) | |
| Defendant. |) | |

The Plaintiff, replying to the Answer (and counterclaim) of the Defendant, would respectfully show that:

AS TO THE FIRST, SECOND, THIRD, FOURTH, SIXTH, SEVENTH EIGHT, AND NINTH DEFENSES

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the Complaint.

AS TO THE FIFTH DEFENSE AND COUNTERCLAIM

2. Each and every allegation not hereinafter specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.
3. The allegations contained in paragraphs 19, 20, and 21 are denied.
4. The allegations contained in paragraph 22 are admitted and the Plaintiff joins in the Defendant's request for a jury trial on all issues.

WHEREFORE, having fully replied to the Answer (and counterclaim) herein, the Plaintiff prays that the same be dismissed with costs, that she be granted judgment on her Complaint, and for such other and further relief as the Court may deem just and proper.

Signature on following page.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399

Irmo, South Carolina
September 15, 2020

ELECTRONICALLY FILED - 2020 Sep 15 1:50 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

| | | |
|---------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON |) | CASE NO. 2020-CP-32-02477 |
| Brandi Clarkson, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | AMENDED AND |
| |) | SUPPLEMENTAL COMPLAINT |
| J. King Real Estate, LLC, |) | |
| |) | |
| Defendant. |) | |

The Plaintiff above named, complaining of the Defendant herein, would respectfully show unto the Court:

PARTIES

1. The Plaintiff is a resident of the County of Lexington, State of South Carolina.
2. The Defendant (hereafter referred to as "Defendant, Broker, or Brokerage"), is a domestic limited liability company with its principal place of business in the County of Lexington, State of South Carolina.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Venue is proper in Lexington County pursuant to S.C. Code Ann. Section 15-7-30(E)(1) and 15-7-30(E)(2) since the Defendant has its principal place of business in Lexington County and since the most substantial part of the alleged act or omission giving rise to the cause of action occurred in Lexington County.

BACKGROUND

5. The Defendant is engaged in the business of advertising, offering for sale, and the sale of real property directly or indirectly affecting the people of this State.

6. On May 31, 2018, the Defendant, as Broker, and the Plaintiff, as Salesperson, entered into a Broker-Salesperson Agreement (“agreement”) drafted by or for the Defendant, incorporating the Defendant’s policy and procedures manual and a “Commission Schedule”. Copies of the agreement, the Defendant’s 2020 Policy Manual, and the commission schedule are attached hereto and incorporated herein by reference as Exhibits A, B, and C, respectively.

7. The agreement provided in paragraph 6 that “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”.

8. The agreement further provided in paragraph 7 that “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 agreement further provided in paragraph 9 that “the Salesperson shall not be liable to the Broker for office help or expense”.

10. The Defendant’s policy and procedures manual provides in Section IV, paragraph 2 that “when a broker is licensed to supervise agents, the broker also has the following responsibilities:

* * *

f. *Paying agents on the Thursday following the closing*”.

11. The Commission Schedule provided that “Salesperson/Broker will earn 70% of the total commission, including bonuses and Salesperson/Broker will earn 100% of their

commissions once the Brokerage has earned \$20,000 for the calendar year”.

12. The Defendant Brokerage generated \$20,000 from the Plaintiff’s efforts for the calendar year on June 29, 2020.

13. Thereafter, the Defendant Brokerage had no further right under the agreement to receive any share of the commissions generated by the Plaintiff.

14. On July 2, 2020, the Defendant congratulated the Plaintiff, acknowledging that the Plaintiff had “capped”. Copies of the Plaintiff’s Agent Commission Worksheet marked “Capped” by the Defendant and the Defendant’s congratulatory email to the Plaintiff are attached hereto and incorporated herein by reference as Exhibits D and E.

15. Once the Plaintiff “capped”, the Plaintiff was of no use to the Defendant as the Defendant could no longer legitimately share in the commissions that the Plaintiff generated for the remainder of the calendar year.

16. On July 9, 2020, the Plaintiff exercised her right pursuant to paragraph 13 of the agreement to terminate.

17. Paragraph 13 of the agreement provided that “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 client services, clerical and administrative work which will be carried out at the discretion of the Broker”.

18. At the time of termination, the Plaintiff had the following six *transactions in process, but not closed* (“transactions”):

(a) 520 Green Street, West Columbia (Listing)

(b) 503 Concord Place Road, Irmo (Listing/Buyer)

(c) 1023 Old Town Road, Irmo (Buyer)

(d) 249 Trinity Three Road, Irmo (Listing)

(e) 160 Sweetwater Drive, Hopkins (Listing)

(f) 544 Saw Creek Lane, Lexington (Buyer)

19. Initially, the Defendant agreed to allow the Plaintiff to finish the six transactions, contingent upon the Plaintiff providing regular updates, contact information for the client, and completing the closing.

20. On July 10, 2020, the Defendant tried to bully the Plaintiff into signing a Termination Agreement (including a release of the Defendant) authorizing the Defendant to continue receiving a 30 percent share of the commissions generated by the Plaintiff as if the Plaintiff had not "capped". A copy of the Termination Agreement is attached hereto and incorporated herein by reference as Exhibit F.

21. Thereafter, the Defendant began interfering with the Plaintiff's transactions by contacting the clients with whom the Defendant admittedly had no relationship.

22. Thereafter, the Defendant acknowledged that it was the Plaintiff, not the Defendant, who had the relationships with the clients, and that the Defendant "was looking for [the Plaintiff] to keep the wheels on the bus and be the liaison with the client".

23. The Defendant suggested that "if everything goes smoothly and the client is happy with you and J King Real Estate, then you get your *cut* of the commission". Copies of emails between the Plaintiff and the Defendant documenting their communications are attached hereto and incorporated herein by reference as Exhibits G and H.

24. At that point, the Plaintiff had already "capped" and was entitled to 100% of the commissions in accordance with the commission schedule, not just a *cut*.

25. On July 13, 2020, the Plaintiff demanded adequate assurance of performance by letter to the Defendant, a copy of which is attached hereto and incorporated herein by reference as Exhibit I.

26. On July 14, 2020, instead of providing assurance, the Defendant retaliated by notifying the Plaintiff that, "Due to the legal nature of our severed business relationship, you are 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". A copy of the Defendant's email is attached hereto and incorporated herein by reference as Exhibit J.

27. On July 14, 2020, the first of the six transactions, 520 Green Street, West Columbia, closed.

28. The Plaintiff's 100% commission on the Green Street transaction was due and payable on July 16, 2020, *the Thursday following the closing*, in accordance with the agreement.

29. On July 15, 2020, the Plaintiff made a second demand for adequate assurance of performance by email to Defendant's first attorney, a copy of which is attached hereto and incorporated herein by reference as Exhibit K.

30. On July 17, 2020, the Defendant's first attorney proposed to release the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker and for the Defendant to complete the remaining four transactions and pay the Plaintiff 70 percent, rather than 100 percent of her commissions, suggesting that "the agreement gave the Defendant sole discretion to determine post-termination splits".

31. The only exercise of discretion authorized by the agreement was "necessary client services, clerical and administrative work which will be carried out at the discretion of the broker", not the amount of commissions withheld by the Defendant from the Plaintiff.

32. On July 21, 2020, the Plaintiff filed a summons and complaint, reserving the right to supplement in accordance with Rule 15(d), SCRPC.

33. On the same date, the Defendant, through his first attorney, threatened that the Defendant would hold the Plaintiff's money in trust for 18 months until a judge confirmed the Defendant's position.

34. On July 23, 2020, the Defendant wisely issued a check, albeit a week late, to the Plaintiff for 100% of the commission due on the Green Street transaction, less a "Transaction Fee", marked "payment in full for 520 Green Street commission".

35. The Plaintiff elected to deposit the Defendant's check, even though it was late and reduced by the "Transaction Fee" to avoid the 18 month delay in payment threatened by the Defendant.

36. On July 28, 2020, the second of the six transactions, 503 Concord Place Road, closed.

37. The Plaintiff's 100% commissions for representing both the seller and buyer on the Concord Place Road transaction was due and payable on July 30, 2020, *the Thursday following the closing*, in accordance with the agreement.

38. The commissions due to the Plaintiff from the Defendant for the Concord Place Road transaction was \$5,550.

39. On July 29, 2020, the Defendant transferred the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker.

40. On July 30, 2020, the third of the six transactions, 1023 Old Town Road, closed.

41. The Plaintiff's 100% commission on the Old Town Road transaction was due and payable on August 6, 2020, *the Thursday following the closing*, in accordance with the

agreement.

42. The commission due to Plaintiff for the Old Town Road transaction was \$9,411.44.

43. On August 5, 2020, the Defendant mailed a letter to the Plaintiff with a check in the amount of \$10,691.40, rather than the amount due of \$14,961.44, marked "Payment in full for 503 Concord Pl & 1023 Old Town Rd".

44. The Defendant proposed to pay the Plaintiff approximately 70% of her commissions due, rather than 100% due after she "capped" on June 29, 2020.

45. In addition, the Defendant proposed to deduct \$379.68 from Plaintiff's commissions to cover expenses incurred in replacing locks at the brokerage.

46. The Defendant chose to incur this expense before a scheduled appointment for the Plaintiff to return her key to the brokerage.

47. Since the Defendant incurred this expense as a result of Defendant's own impulsive behavior rather than in response to any refusal on the part of the Plaintiff to return the key, this is also an improper deduction from Plaintiff's rightfully earned commissions.

48. On September 15, 2020, the Plaintiff rejected the Defendant's tender of its untimely and deficient check and returned it to the Defendant.

49. On September 25, 2020, the final transaction, 249 Trinity Three Road, closed.

50. The Plaintiff's 100% commission on the Trinity Three Road transaction was due and payable on October 1, 2020, *the Thursday following the closing*, in accordance with the agreement.

51. The commission due to the Plaintiff on the Trinity Three Road transaction was \$4,260.00.

52. The Plaintiff is due the total sum of \$19,221.44 representing 100% of the commissions earned on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in accordance with the agreement.

53. In addition to withholding the Plaintiff's commissions, the Defendant's interference in the Plaintiff's transactions adversely affected the clients.

54. The seller of the Green Street property, the Plaintiff's elderly aunt, was subjected to unnecessary and avoidable anxiety in connection with the sale of her deceased daughter's home by the Defendant's insistence upon substituting for the Plaintiff.

55. The Defendant caused unnecessary anxiety to the purchaser of the Concord Place Road property by sending him an email stating that there was now a "legal situation" and that he was to have no further contact with the Plaintiff.

56. The Defendant caused unnecessary anxiety for the seller of the Concord Place Road property by lying to her and telling her that the Plaintiff was encouraging the buyer to decline executing a contract extension.

57. The Defendant attempted to sabotage the Trinity Three Road transaction by failing to timely negotiate repairs for the sellers, a separated couple, misrepresenting to them that a closing had been scheduled, causing the wife to vacate prematurely and reoccupy without her furnishings, and causing her husband to take off from work four separate times to travel from Virginia to South Carolina for closings which had not been scheduled.

58. The wife entered into a contract to purchase a new home through the Plaintiff upon the sale of Trinity Three Road, but the Defendant encouraged her husband to back out of the sale and relist with him to sabotage the wife's purchase in retaliation toward the Plaintiff.

59. In addition to unfairly withholding commissions earned by the Plaintiff, the

Defendant systematically and deceptively withheld illegal and unauthorized "Transaction Fees" from the Plaintiff on 58 transactions, and from other salespersons, not permitted by the agreement, by pre-printing the illegal and unauthorized "Transaction Fee" on the Defendant's Agent Commission Worksheets as reflected on Exhibit D.

FOR A FIRST CAUSE OF ACTION
(breach of contract)

60. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

61. The agreement between the Plaintiff and the Defendant was a valid and binding agreement supported by adequate consideration.

62. The agreement between the Plaintiff and the Defendant included an implied covenant of good faith and fair dealing.

63. The Plaintiff performed her part of the agreement and was, at the appropriate time, able, ready, and willing to perform her part of the agreement.

64. The Defendant breached the agreement by failing to tender commissions due on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in a timely manner and in the full amount due, repeatedly deducting unauthorized "Transaction Fees" from the Plaintiff's commissions, and in other particulars as set forth herein.

65. The Plaintiff has suffered damages as set forth herein.

66. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to actual damages including prejudgment interest on each commission from the date due thereof and on each of the 58 "transaction fees" wrongfully deducted by the Defendant from the Plaintiff's commissions.

FOR A SECOND CAUSE OF ACTION
(intentional interference with prospective contractual relations)

67. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.
68. The Defendant diverted or took away ongoing or prospective business or contractual rights from the Plaintiff, which methods are not within the privilege of fair competition.
69. The Defendant's interference was for an improper purpose or the Defendant's method of interference was improper under the circumstances.
70. The Plaintiff was damaged by the Defendant's interference.
71. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to an award of both actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(violation of the Unfair Trade Practices Act)

72. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.
73. The Defendant engaged in unfair or deceptive acts in the conduct of trade or commerce.
74. The Defendant's unfair or deceptive acts affected the public interest.
75. The Defendant's acts have the potential for repetition.
76. The Defendant's procedure of having a salesperson sign his Broker-Salesperson Agreement, and then making unauthorized deductions under the guise of discretion, creates a potential for repetition of the Defendant's unfair and deceptive acts, and in this case has been repeated on the Concord Place Road, Old Town Road, and Trinity Three Road transactions.

77. The Defendant's acts of misappropriating a salesperson's commission after a salesperson has "capped", has been repeated with the Plaintiff on the Concord Place Road, Old Town Road, and Trinity Three Road transactions, making it likely that they will continue absent deterrence.

78. The Defendant's acts of withholding illegal and unauthorized "Transaction Fees" from salespersons, including the Plaintiff, have also been repeated at least 58 times, making it likely that they will continue absent deterrence.

79. The Defendant's unfair and deceptive trade practices were willful, offensive to public policy, immoral, unethical, and oppressive.

80. The Plaintiff has suffered actual, ascertainable damages as a result of the Defendant's use of the unfair and deceptive trade practices.

81. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to an award of treble damages along with a reasonable award of attorney's fees and costs.

WHEREFORE, the Plaintiff prays for actual damages, punitive damages, treble damages, a reasonable award of attorney's fees, the costs of this action, and for such other and further relief as the Court may deem just and proper.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399

Irmo, South Carolina
October 2, 2020

BROKER-SALESPERSON AGREEMENT

Made this 31st day of May, 2018

by and between J King Real Estate, LLC hereinafter referred to as Broker,

and Brandi Clarkson, hereinafter referred to as Salesperson,

for and in consideration of their mutual premises and agreements and for their mutual benefits.

Broker is engaged in business as a real estate brokerage in State of South Carolina, and is qualified to and does operate a general real estate business and is duly qualified to and does procure the listings of real estate for sale and prospective purchasers thereof and has and does enjoy the good will of, and a reputation for fair dealings with the public, and WHEREAS, said Broker maintains an office address at 7522 Irmö Dr, Suite 4, Columbia, SC 29212. All salespersons shall work out of their homes and can use the office address as their business address.

Broker and said Salesperson will form the association hereinafter agreed to under the terms and conditions hereinafter set out, NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants hereinafter contained, it is mutually agreed as follows:

1. Broker agrees to make available to the Salesperson all current listings of the Office, except such as the Broker for valid and usual business reasons may place exclusively in the temporary possession of some other Salesperson, and agrees, upon request, to assist the Salesperson in his work by advice and instruction and agrees to provide full cooperation in every way possible.
2. Broker agrees that the Salesperson may not share with other Salespersons of the Office now operated by said Broker in connection with the subject matter of this contract.
3. The Salesperson agrees that they will supply their own personal materials such as staplers, business cards, tape, note pads, pens, pencils, etc.
4. Salesperson agrees to work diligently and with his best efforts to sell any and all real estate listed with the Broker, to solicit additional listings and clients of said Broker, procure and diligently represent buyers and otherwise promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest profit possible.
5. Salesperson agrees to conduct his business and regulate his habits, so as to maintain and to increase the good will and reputation of the Broker and the Salesperson, and the parties hereto agree to conform to and abide by all laws, rules and regulations, codes of ethics, and policy and procedures manual that are binding upon or applicable to real estate brokers and real estate salespersons.
6. The commissions to be charged for any services performed hereunder shall be those determined by the Broker, and the Broker shall advise the Salesperson of any special contract relating to any particular transaction which he undertakes to handle. 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. In the event of special arrangements

EXHIBIT A

with any client of the Broker or the Salesperson on property listed with the Broker or controlled by the Salesperson, a special division of commission may apply, such rate of division to be agreed upon in advance by the Broker and the Salesperson. In the event that two or more Salespersons participate in such a service, or claim to have done so, the amount of the commission over that accruing to the Broker shall be divided between the participating salespersons according to agreement between them or by standards set out in the policy and procedures manual.

7. In no case shall the Broker be personally liable to the Salesperson for any commissions, nor shall said Salesperson be personally liable to said Broker for any commissions, but 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.

8. Commissions from the party or parties for whom the services may have been performed, shall be distributed provided however, that the Salesperson has performed their duties as it relates to that transaction. The Salesperson also agrees that if he has a balance on his account with Broker that commissions may be retained by Broker for payment of that account. The amount of that payment shall not exceed the amount due to Broker.

9. The Broker shall not be liable to the Salesperson for any expenses incurred by the Salesperson, nor for any of his/her acts. The Salesperson shall not be liable to the Broker for office help or expense. The Salesperson shall have no authority to bind the Broker by any promise or representation, unless specifically authorized in a particular transaction. The Salesperson shall not give any statements on behalf of J King Real Estate, LLC. or any of its management or staff. The Broker shall not be responsible for negligent or unlawful acts of the Salesperson. In case of negligence or unlawful acts by the Salesperson, the Salesperson will be solely responsible for any expenses or attorney's fees related to it. Suits for commissions shall, agreeable to the law, be maintained only in the name of the Broker, however any costs incurred in such suit will be split by the same percentages as the Broker and Salesperson participated or would have participated in the commission.

10. The Salesperson is responsible for insuring that the Broker has copies of all correspondence, memos, records, forms, etc. on all transactions in which the Salesperson is involved. The Salesperson shall maintain the confidentiality of any information in all transactions. The Broker and the Salesperson agree that any suits filed against them shall be deemed to be confidential and that the suit will not be discussed with other salespeople or other brokers. The Broker and Salesperson also agree that any cost incurred in such suit shall be split by the same percentages as the Broker and Salesperson participated or would have participated in the commission.

11. The Salesperson shall be deemed to be an independent contractor and not a servant, employee, or partner of the Broker. Salesperson will complete a W9.

12. Broker will carry Errors & Omissions Insurance that will cover the Salesperson when they lawfully act as a representative 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 client services, clerical and administrative work which will be carried out at the discretion of the Broker.

14. The Salesperson shall not, after the termination of this contract, use to his/her own advantage, or the advantage of any other person or corporation, any information gained for or from the files or business of the Broker. Any and all notebooks, forms, literature, keys, computer programs and/or licenses paid by the Broker, etc. are to be returned to the Broker. Listings are the property of the Broker and as such will remain the property of the Broker until expiration.

This agreement shall be binding upon and the benefits shall inure to the heirs, successors and assigns of the parties hereto. This agreement shall be governed by the laws of the State of South Carolina. This agreement is personal to the parties hereto and may not be assigned, sold or otherwise conveyed by either of them. The failure of any party hereto to enforce at any time any of the provisions or terms of this agreement shall not be construed to be a waiver of such provision or term, nor of the right of any party thereafter to enforce such term or provision.

This agreement constitutes the entire agreement between the Broker and Salesperson, and that there are no agreements or understandings concerning such agreement which are not fully set forth herein, or stated within the Broker's Policy and Procedures Manual.

Salesperson further agrees that should an immediate family member be affiliated in any way with another real estate company that they will notify Broker and understand that it may be cause for Broker to terminate this agreement.

IN WITNESS WHEREOF, the parties hereby have signed or caused to be signed, this agreement this 31st day of MAY 2018.

BROKER [Signature] DATE 6-1-18

SALESPERSON Mandi Clarkton DATE 5/31/18



2020

Policy Manual



J King Real Estate

EXHIBIT B

FILED FROM MEATLY FILED 2020-04-20 10:28 AM IN INDIANAPOLIS, INDIANA COUNTY CLERK'S OFFICE 202004201028

Table of Contents

| | |
|---|---|
| I. Welcome Letter | 2 |
| II. Standards and Expectations..... | 3 |
| 1. About J King Real Estate..... | 3 |
| 2. Our Vision..... | 3 |
| 3. Mission Statement..... | 3 |
| 4. Workplace Etiquette | 3 |
| 5. Dress Code | 3 |
| 6. What We Provide..... | 4 |
| 7. Dedication to Our Clients..... | 4 |
| III. Branding Requirements and Standards | 4 |
| 1. Overall Branding | 4 |
| 2. Social Media..... | 4 |
| IV. Handling Agency at J King Real Estate | 5 |
| 1. Agency Designations and Definitions..... | 5 |
| 2. Broker in Charge Responsibilities | 5 |
| 3. Working for Sellers..... | 6 |
| 4. Working with Buyers..... | 7 |
| 5. Brokers and Supervising Agents..... | 8 |
| 6. Agent Responsibilities..... | 8 |

I. Welcome Letter

To J King Real Estate Personnel:

Thank you for choosing J King Real Estate. We value you as part of our team and our relationship-based culture. Please feel free to ask questions; no one knows all the answers, however together we will find answers and solutions.

As with any business, we have many challenges as we continue to grow. We are all in this together and look to develop relationships that meet our goals.

Our motto "Honest Agents. Genuine Service." reflects our philosophy of business. We want to become our clients' agent for life.

Sincerely,

Jason King

| | | |
|---|---|---|
|  | <p>Jason King Owner, Broker in Charge Cell 803-318-4712 Office 803-386-9488</p> |  |
| | <p>7522 Irmo Dr., Suite 4 Columbia, SC 29212 jeking76@gmail.com JKingRealEstate.com</p> | |

II. Standards and Expectations

1. About J King Real Estate

Owned and operated by Jason King, J King Real Estate has developed into a successful business. Established in 2016 as a small real estate brokerage, J King Real Estate has grown with agents, while maintaining a personal, participatory management style including one-on-one attention.

2. Our Vision

We strive to be honest agents and become our clients' agent for life.

3. Mission Statement

To grow an honest, family-like brokerage that provides genuine service and expert knowledge; to offer relationship-based sales that truly help people with their real estate needs, throughout their lifetime; to provide one-on-one, personal attention supported by a team that is on the cutting edge of technology and marketing.

4. Workplace Etiquette

Work etiquette is the way that we govern the expectations of social behavior in a workplace. Basically, it means to "respect and protect time, people, and processes." For example:

- Maintain proper manners and engage with co-workers in a spirit of cooperation and respect
- Monitor the volume of your conversations; be sensitive to how loudly you may be speaking
- Keep personal telephone conversations and emails brief and at a minimum; be ever mindful that others are nearby and that this is a place of business
- Avoid the urge to be "helpful" in outside the scope of your license.
- Sharing professional information is wonderful, gossiping is not; if you need an ear to listen, go to management
- Be sensitive to scents and smells surrounding you; this rule does not only apply to workplace etiquette, but social etiquette in general; save cologne and perfume for social occasions and ask if fresh flowers and potpourri bother co-workers before installing them in your space
- Avoid foods with strong smells and aromas that will travel throughout the office; when eating at your desk or in shared areas, be considerate of the smell and/or the mixture of smells
- Keep your personal workspace clean and neat at all times; generally, less is better when it comes to office décor; remember to use discretion when displaying personal items not to overdo, clutter, and obstruct your work area
- Use shared areas with respect and courtesy; workplace kitchens can be the biggest source of co-worker tension; simply clean up after yourself
- Restrooms run a close second to kitchens as annoyance spots; be considerate of others; notify management if supplies are low or out and of any plumbing problems

5. Dress Code

The formality of the workplace dress code is normally determined by the number and type of interactions employees have with clients and the type of work performed.

At J King Real Estate, business casual is considered appropriate which includes attire that professionally represents J King Real Estate and is appropriate for the setting.

6. What We Provide

- To our agents, we provide coverage of liability through the brokerage, resources and training with an emphasis on mentorship
- To our clients, we provide the best genuine service we can in an honest environment

7. Dedication to Our Clients

Our clients' interests come first; we want to be the standard of quality and build lifelong relationships.

III. Branding Requirements and Standards

1. Overall Branding

The South Carolina Real Estate Licensee Statute found in South Carolina Code 40-57-105(1), governs the requirements and standards. J King Real Estate requires the following, as defined by law and procedures:

- a. The BIC shall review and approve all advertising and marketing materials of associated licensees/team members to ensure compliance
- b. Associated licensees/team members shall not advertise or conduct regular business at an office location other than the one under which their license is affiliated
- c. Licensees must identify the first and last name under which their license is issued when advertising as a real estate sales person, broker or property manager in any medium as well as the phrase 'by J King Real Estate'
- d. Team members must be affiliated under the same office established under the BIC; whenever a team name is identified in marketing real estate services, the name of brokerage office under which they team members are affiliate must also be identified prominently and visibly in the immediate proximity of the team name, 'by J King Real Estate'; the brokerage name must be 25% of the marketing piece
- e. Using music or quoting lyrics, and some photography, in marketing material is prohibited due to copyright laws without written permission from the artist or publisher; however, a safe solution is to use royalty-free music and pictures sites
- f. Only approved company logos, mottos and slogans may be used
- g. The BIC shall regularly review office policy manuals with associated licensees/team members

2. Social Media

Social media is a way to help you better connect, engage and grow business. At J King Real Estate, we engage on many platforms and expect our agents to do the same.

Your social media profile provides another way to get more traffic and leads. Each piece of content that you post to social media is a representation of you and J King Real Estate and is subject to our branding requirements and standards.

We have some standards regarding social media:

- a. Social media must be shared with J King Real Estate page; social media and public internet sites are a huge reflection on you and the brokerage in today's market
- b. Social media enables us to link to influencers; your lenders, contractors, attorneys, etc.
- c. You must share social media sites with the brokerage and the brokerage expects you to share also
- d. Please note: social media is not linked to MLS; if an agent withdraws a listing and then relists, the agent must change all social media sites; for example, the link on Facebook album will take the user to the J King Real Estate site associated with the link displayed on social media; because the listing has been withdrawn, the link no longer exists.

Remember that every time you post something on your site now, you are representing yourself as an agent and J King Real Estate.

IV. Handling Agency at J King Real Estate

1. Agency Designations and Definitions

- **Transaction Brokerage:** The general rule at J King Real Estate is to not allow transaction brokerage arrangements, with few exceptions. Call the Broker in Charge should questions arise.
- **Dual Agency:** If an agent has a previous buyer's agent agreement or an existing one that wants to see any listing with J King Real Estate, the agent may end up with two clients. The agent must ask both clients, and both must agree, to allow the agent to represent both parties. Reread the state agency disclosure document; the agent cannot be an advocate of either the buyer or seller. The agent becomes the messenger in this capacity; the agent cannot offer any information that may adversely affect either party. The agent may ask questions and implement what the clients tell the agent rather than advising or telling either client what to do.
- **Designated Agency and Sub Agency:** J King Real Estate does not allow these designations without special permission. If either of these situations should arise, call the Broker in Charge.

2. Broker in Charge Responsibilities

The Broker in Charge is the person who has met the experience and education requirements, and has passed the examination for a broker license. This enables the BIC to collect a fee, salary, commission or other valued consideration in a variety of real estate situations, such as, but not limited, property management, real estate sale, exchange, purchase and lease. The liability for advertising associated with the brokerage, also rests with the BIC.

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

- a. Instructs and trains or provides training resources
- b. Verifies continued licensing
- c. Is responsible for agent behavior, performance and legal compliance
- d. Provides some services and making resources
- e. Often maintains a brokerage website for agent marketing
- f. Paying agents on the Thursday following the closing

Considerable risks exist in the operation of a brokerage. To minimize this risk, brokers assume the responsibility of education and constantly monitoring their agents.

3. Working for Sellers

While an agent working on a broker's behalf, the agent handles transactions for sellers as well. After an agency agreement is signed, the duties on behalf of sellers may include:

1. Securing marketable pictures of the property, inside and outside
2. Listing homes for sale on the local, MLS, Multiple Listing Service and social media
3. Sharing the listings with other MLS broker members to get buyers to the property
4. Advising the home seller in preparing their home for listing and showings
5. Supervising showing, report to sellers results and feedback
6. Submitting all offers to the seller for consideration
7. Helping the seller negotiate offers to try and execute a purchase contract with a buyer
8. Working on the seller's behalf in coordinating the transaction process
9. Delivering and explain documents, disclosures and transaction items
10. Working with the seller through the closing

Important General Listing Requirements

The Standard Operating Procedures show the detail of listing a property; however, the following shows general requirements:

1. Make sure you have the following documents completed before you advise, recommend or begin working with your client: Agency Disclosure, Agency Agreement, MLS Input Form, Property Disclosure, Lead Paint Disclosure, if appropriate, copy of the Tax Record, extension for listing and a copy of the listing
2. The agent needs to ensure that all property owners have signed the appropriate documents; if any changes are made to the documents, the client must initial and date such change
3. Input MLS when completed
4. Under Contract: Within 24 business hours the following is required in our office: Escrow deposit made by company; make sure that you make a copy of the earnest money check; It is also important that you write the address, seller's name and purchasers name on the deposit slip

4. Working with Buyers

On the other side of the transaction, brokers and agents work with people wanting to buy a property by providing advice and services to help them to find a property that fits their needs and completing the steps of the transaction by helping buyers locate all properties in their desired area, in their price range and meeting their criteria. After the agency agreement is sign, the tasks may include:

- a. Coordinating and helping buyers to visit and view properties
- b. Assisting/recommending lenders for pre-approval
- c. When a decision is made to attempt a purchase, helping the buyer craft their initial offer and purchase agreement
- d. Working with the buyer on their behalf in negotiations with the seller through their agent/broker
- e. Once a purchase contract is executed, coordinating the transaction process on the buyer side
- f. Delivering and explaining documents in the transaction process
- g. Coordinating inspections, reports and repair negotiations
- h. Assisting buyers through to closing and taking possession process

Important General Buyer Requirements

The Standard Operating Procedures show the detail of dealing with a buyer; however, the following shows general requirements:

1. Make sure you have the following documents completed before you advise, recommend or begin working with your client: Agency Disclosure and Agency Agreement
2. Recommend that your buyer obtains pre-qualification; you may recommend a lender
3. Verify everything; your buyer may not be as aware as they think
4. Discuss the process with your buyer, i.e. warranties, inspections, appraisals, etc.
5. Research MLS to best match your buyer with properties
6. Under Contract: Within 24 business hours the following is required in our office: Escrow deposit made by company. Please make sure that you make a copy of the earnest money check. It is also important that you write the address, seller's name and purchasers name on the deposit slip.

Additional Critical Responsibilities:

- Periodically review the documentation kept in the Agent Hub; it is kept up to date by the office staff
- When a file for a listing or buyer or when a property goes under contract or closes, all the respective documentation is sent to kingrealestateteam@gmail.com; the subject line shows the address and all documents are attached in separate files

May 7, 2020

- All earnest money must be deposited within 48 business hours of a ratified contract; the holder of these funds, the property address, name of the buyer and seller must accompany the funds
- All files, buyers and listings, may not be removed from the office without specific permission from the BIC
- If an agent recruits a new agent, the agent may earn 10% of the brokerage commission
- All agents need to schedule an appointment with the BIC; ad hoc meetings are frowned upon and may not meet the agents' needs; early mornings are considered best for phone calls and/or face-to-face engagements
- If an agent is going to be out of time and available, please send dates and contact numbers to kingrealestate@gmail.com; check your email, voicemail and request your calls be handled by another agent, if possible

5. Brokers and Supervising Agents

When a broker is licensed to have agents working under the broker, sometimes called Broker in Charge (BIC), the agents handle most or all of the brokerage transactions.

Real estate brokers licensed at the highest state levels set standards of practice in the area and are tasked with maintaining high levels of customer/client service and compliance with all state-based real estate laws.

Considerable risk exists in the operation of a brokerage. To minimize this risk, brokers assume the responsibility of educating and constantly monitoring their agents. Many agents are happy to work in that manner, but ambitious agents may choose to take advantage of the higher-level opportunities that come with working as a real estate broker.

6. Agent Responsibilities

A professional real estate agent provides guidance and assistance to sellers and buyers in marketing and purchasing property for the right price under the best terms. In addition, the agent will determine the client's needs and financial abilities to propose solutions that best suits them, while following the guidelines that include:

- a. **Accounting:** The agent must account for all funds entrusted to him/her and not commingle (combine) client/customer funds with personal and/or business funds
- b. **Care:** The agent must use all of their skills to the best of their ability on behalf of the client
- c. **Confidentiality:** The agent must keep confidential any information given to them by their client, especially information that may be damaging to the client in a negotiation
- d. **Disclosure:** The agent must disclose to the client any information they receive that may benefit the client's position in a negotiation
- e. **Loyalty:** The agent owes undivided loyalty to the client and puts the client's interests above their own
- f. **Obedience:** The agent must obey all lawful requests from the client

Commission Schedule

1. 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.
2. Salesperson/ Broker will earn 10% of the brokerage portion of the commission split after referral fees, on any Salesperson/ Broker that they recruit to J King Real Estate, LLC. This continues as long as that Salesperson/ Broker earns an 80% split or less.
3. All Commission increases start with the next transaction after the YTD Commission goals are reached.
4. REFERRAL FEES PAID TO OTHER REAL ESTATE FIRMS All referrals fees are taken off the top of the Gross Commission and the balance of the commission is then split normally.
5. AWARD & BONUS PROGRAMS From time to time Award or Bonus Programs may be available to agents. These programs are at the discretion of the Broker and will be according to guidelines he or she sets out.
6. Salesperson may sell and buy 1 personal home a year and owe no commission to the brokerage.
7. Any Listing commission under 4% must be approved by the BIC.

Salesperson / Broker Mandi Clarkson

Date 5/31/18

Brokerage [Signature]

Date 6-1-18

EXHIBIT C

Page 4



9

ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

Agent Commission Worksheet

Date 10/29/2020 Agent Brandi Clarkson
 Property Address 133 Hunters Grove Drive
 Buyer Gertrude Susan Pope
 Seller McGuinn Homes

Sales Price \$ 144,900 Total Commission \$ 4,347.00

Funds Received at Closing \$ 4,347.00
 Escrow Funds held by J King Real Estate \$ _____
 Total Commission \$ 4,347.00

~~Less (-) Referral Fee (Attached Referral Agreement) \$ _____
 Company Name _____
 Company Address _____~~

Brokerage Commission % 30 \$ 1,304.10
 Agent Commission % 10 \$ 3,042.90

Less (-) Transaction Fee \$ 50.00
~~Less (-) Other Fees \$ 394.40 over CAP!~~

Total Owed to Agent \$ 3,387.30 2992.90
+ 394.55
3387.45

Capped!!!

Date Paid 7-2-2020 Check # 3829 By [Signature]

EXHIBIT D



Brandi Clarkson <brandihomeagain@gmail.com>

Commission Checks

Jason King <jeking76@gmail.com>

Thu, Jul 2, 2020 at 7:26 PM

To: Brandihomeagain <Brandihomeagain@gmail.com>

Brandi,

Attached are the revised commission sheets and your checks are in your office. Congrats on Capping!! That is an amazing job. Half way through the year and with all of the Covid issues.

It is a little bittersweet. I do not feel that you truly appreciate all that the brokerage does for you. I stayed up at the office even though we were supposed to meet earlier and go over this. It took over an hour to make sure this was correct. I postponed my vacation to make sure you get your pay check.

I feel that much of this time could have been saved if you had reviewed the check first, seperated the deposits, went over the commission sheets in detail and submitted them to the brokerage correctly as separate transactions. Technology can not fix this.

J King Real Estate provides quite a bit on the back end and we bend over backwards for you as a top producer. I want you to grow, reach your goals and be the best agent that you can be. All I ask in return is loyalty, respect and professionalism.

We recently sat down and discussed professionalism and how you represent J King Real Estate. The comment that was made to McGuinn about them discriminating against Susan Pope is not a good look for you as an agent or J King Real Estate. This can be handled in a more professional manner.

I say these things not to be mean or belittle you. I say them because I know that you have a talent for real estate and can really be great and an asset to J King Real Estate. But, I always have to weigh an asset vs the liability they bring. My hope is that you think about real estate as a career and not a job. Not as transactions or monthly paychecks, but as long term relationships and success. Remember also, that you are a leader and other agents follow your example.



Jason King | (Owner, Broker in Charge)
7522 Irmo Drive, Suite 4, Columbia, SC 29212

803-318-4712 866-786-7439

jeking76@gmail.com

www.jkingrealestate.com



Com Sheets 07022020.pdf
689K

ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

EXHIBIT E



J. King Real Estate, Inc.

Date: 7/10/2020

Between Salesperson: Brandi Clarkson

And Broker: J King Real Estate

Upon Termination of the Broker-Salesperson Agreement, the Salesperson and Broker agree to the following:

1. Salesperson will maintain the customer relationship with the client that is in contract to close and receive a 70 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.
2. The parties agree that this is a settlement to a disputed matter and that both feel this is a proper and fair resolution. Both parties release each other from any claims, known or unknown, that they may have against the other as a result of the association and termination thereof.
3. All paperwork will be submitted to J King Real Estate within 24 hrs of being signed.

Salesperson

Date

Broker

Date

EXHIBIT F

ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

M Gmail

Brandi Clarkson <brandihomeagain@gmail.com>

503 Concord Place and 1023 Old Town Road

Brandi Clarkson <brandihomeagain@gmail.com>
To: Jason King <jeking76@gmail.com>

Sat, Jul 11, 2020 at 12:47 PM

Right now we plan to close 503 Concord Place on 7/28 and 1023 Old Town Road on 7/31 or before. This is not concrete and was just discussed on Friday. The addendums will be done first of this week and I will send them to you once executed.

Additionally:

You calling all the clients is freaking them out to the point that they are all considering terminating contracts completely. You agreed that you would allow me to finish these transactions provided I give you updates which I am doing. Please stop trying to undermine my relationships with the clients of contracts I wrote. It will only hurt you in the long run and it is not coming across as a good look for you or J. King Real Estate.



Brandi Clarkson
Real Estate Professional
803-463-8142
brandihomeagain@gmail.com
HomeAgainProp.com



HomeAgain Properties
Your Best Friend in Real Estate



ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

EXHIBIT G



Brandi Clarkson <brandhomeagain@gmail.com>

503 Concord Place and 1023 Old Town Road

Jason King <jeking76@gmail.com>
To: Brandi Clarkson <brandhomeagain@gmail.com>

Sat, Jul 11, 2020 at 1:29 PM

Brandi,

I do not want to be involved any more than I need to be. Legally I have to be involved. You have the relationship. I'm looking for 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. I had great conversations with the clients and everyone involved in the transactions. I only spoke well of you and expect you to do the same. No one seemed uneasy.

1. Green St looks smooth for Tuesday. We just need a time from the attorney
2. Concord looks good for the 28th. Do you want me to send an extension addendum to them or you, to present?
3. Old Town- attached is the extension addendum for GSH for Crystal to sign. Is Palmetto goes to absorb the cost to extend the lock?
4. Trinity Three sounds really rocky with the inspections. It may fall through unless you can work something out. Joshua is going to copy you on the repair addendum.
5. Thanks for the update on Saw Creek
6. Sweetwater- The buyer has completed their inspections and moving forward?

[Quoted text hidden]



Jason King | (Owner, Broker In Charge)
7522 Irmo Drive, Suite 4, Columbia, SC 29212

803-318-4712 866-786-7439

jeking76@gmail.com

www.jkingrealestate.com



Addendum - 1023 Old Town Road - Closing date .pdf
549K

EXHIBIT H



STUDEMEYER LAW FIRM

7478 Carlisle Street | Post Office Box 1014
Irmo, South Carolina 29063
(803) 393-4399

J. Gregory Studemeyer
greg@studemeyerslawfirm.com

Ryan G. Studemeyer
ryan@studemeyerslawfirm.com

July 13, 2020

via email jkking76@gmail.com
and Confirmed by U.S. Mail

Mr. Jason King
Owner, Broker in Charge
J. King Real Estate
7522 Irmo Drive, Suite 4
Columbia, South Carolina 29212

Re: Brandi Clarkson v. Jason King d/b/a J. King Real Estate

Dear Mr. King:

I represent Ms. Brandi Clarkson in connection with certain claims against you. These claims arise out of her Broker-Salesperson Agreement with you. I'm hopeful that common sense will prevail and that this matter will be resolved amicably.

It is my understanding that Ms. Clarkson has earned \$36,927.50 in commissions on transactions which have not yet closed. She is ready, willing, and able to take all necessary measures to complete these closings. I understand that you wish for her to accept substantially less than what you owe her, suggesting that the difference is for "necessary client services and clerical and administrative work to be carried out at your discretion", in retaliation for exercising her right to terminate her relationship with you. Simply put, that dog won't hunt.

I understand that closings are tentatively scheduled for 503 Concord Place and 1023 Old Town Road. I also understand that you are calling Brandi's clients as well as the lenders, other agents, and builders and interfering in her relationships with them. In addition, you should know that whatever you put in writing will always come back to haunt you.

If you don't already know, any competent lawyer will tell you that South Carolina law prohibits intentional interference with contractual relationships and interference with prospective economic advantage. Call it what you like, but Ms. Clarkson was the procuring cause for all of these transactions. Your interference with her expectation of payment for services rendered exposes you to

EXHIBIT I

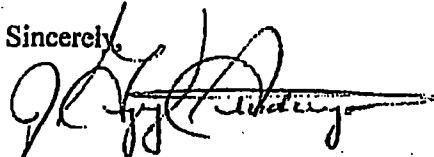
Mr. Jason King
July 13, 2020
Page 2

both actual and punitive damages.

As suggested at the beginning of this letter, I'm hopeful that common sense will prevail and that this matter can be resolved amicably. All Ms. Clarkson wants is to complete the transactions that she procured, be paid the commissions that she has earned, and move on.

It will never get any cheaper than it is right now to conclude your relationship with Ms. Clarkson in a professional manner. If this matter can be resolved amicably, please confirm that you will pay her 100% of the commissions she has earned in a timely manner upon the closing of each transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Gregory Studemeyer", with a long horizontal flourish extending to the right.

J. Gregory Studemeyer

cc: Ms. Brandi Clarkson

ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

M Gmail

Brandi Clarkson <brandhomeagain@gmail.com>

J King Real Estate

Jason King <jeking76@gmail.com>

To: Brandihomeagain <Brandhomeagain@gmail.com>

Tue, Jul 14, 2020 at 9:09 AM

Brandi,

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. We have received notification of the transfer of your real estate license to Fathom real estate and you can not legally work with 2 brokerages.



Jason King | (Owner, Broker In Charge)
7522 Irma Drive, Suite 4, Columbia, SC 29212

803-318-4712, 866-786-7439

jeking76@gmail.com

www.jkingrealestate.com



ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

EXHIBIT J



Greg Studemeyer <greg@studemeyerlawfirm.com>

J King Realty and Brandi Clarkson

Greg Studemeyer <greg@studemeyerlawfirm.com>
To: Gary Pickren <gary@blaircato.com>
Bcc: Brandi Clarkson <brandihomeagain@gmail.com>

Wed, Jul 15, 2020 at 6:18 PM

Hey, Gary:

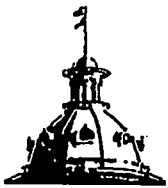
Ms. Clarkson is due a commission of \$3,660.00 tomorrow on the Green Street property that closed yesterday. Please confirm that Jason will pay her as he has in the past on the Thursday following the closing.

With regard to the remaining transactions, Ms. Clarkson is willing to do the work, if any, to finish them up and get paid was is due to her. If Jason insists on doing the work himself and paying her anyway, that works too. I understand that Ms. Clarkson has relationships with all of these people and wants to make sure that everyone is comfortable.

I'll be out of my office at another day's worth of depositions tomorrow and may be difficult to reach.

Thanks,

Greg



J. Gregory Studemeyer
Studemeyer Law Firm

7478 Carlisle Street | P.O. Box 1014
Irmo, SC 29063

www.studemeyerlawfirm.com

Office: (803) 393 4399 | Cell: (803) 397 5676

[Quoted text hidden]

ELECTRONICALLY FILED - 2020 Oct 29 9:38 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

EXHIBIT K

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

J. King Real Estate, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**ANSWER TO AMENDED AND
SUPPLEMENTAL COMPLAINT**

(Jury Trial Demanded)

Defendant, responding to the Complaint, answers as follows:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRPC - Failure to State a Claim)

1. The Complaint fails to state a cause of action upon which relief can be granted, and it should be dismissed according to Rule 12(b)(6), SCRPC. Defendant incorporates herein its Motion to Dismiss filed contemporaneously with this Answer.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. References to paragraphs are to those paragraphs enumerated in the Complaint. Defendant denies each allegation in the Complaint not specifically herein admitted.

3. Defendant admits paragraph 1 through 4.

4. In response to paragraph 5, Defendant states that it is a real estate brokerage firm defined by S.C. Code 40-57-30(24) and is engaged in the business of real estate brokerage as defined in S.C. Code 40-57-30(23). To the extent that paragraph says anything otherwise, it is denied.

5. Responding to paragraphs 6 through 9, Defendant admits that it entered into a contract entitled "Broker-Salesperson Agreement" with Plaintiff effective May 31, 2018 (the "Agreement"). Defendant explicitly pleads the each of terms of the Agreement

as if stated herein, and denies any statements inconsistent with that Agreement.

6. In response to paragraphs 10 and 11, Defendant responds by stating that Plaintiff is characterizing documents. The documents, to the extent that Plaintiff meets her burden of proof that they are a true and accurate record, speaks for themselves, and Defendant denies any characterization of them.

7. Defendant denies paragraphs 12 and 13 as stated.

8. In response to paragraph 14, Defendant responds by stating that Plaintiff is characterizing documents. The documents, to the extent that Plaintiff meets her burden of proof that each is a true and accurate record, speaks for itself, and Defendant denies any characterization of them.

9. Defendant denies paragraph 15.

10. In response to paragraph 16, Defendant admits that Plaintiff terminated that agreement at her election. The remainder of paragraph 16 is denied.

11. In response to paragraph 17, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

12. Defendant denies paragraphs 18 through 22 as stated.

13. In response to paragraph 23, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

14. Defendant denies paragraph 24.

15. In response to paragraph 25, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

16. In response to paragraph 26, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

17. Defendant denies paragraph 27 as stated.

18. Defendant denies paragraph 28.

19. In response to paragraph 29, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

20. Defendant denies paragraph 30 as stated.

21. Defendant denies paragraph 31.

22. Responding to paragraph 32, Defendant admits that Plaintiff filed a premature, improper Summons and Complaint on July 21, 2020. The remainder of the paragraph asserts a legal conclusion which requires no response.

23. Defendant denies paragraph 33 as stated.

24. In response to paragraph 34 and 35, Defendant admits that it has paid Plaintiff 100% of any amount that could be due to her in connection with a real estate transaction that involved property located at 520 Green Street, Columbia, South Carolina.

Plaintiff accepted that payment as payment in full and complete satisfaction of any claim for payment in connection with that residential real estate location. Any assertion by Plaintiff to the contrary is denied.

25. Defendant denies paragraph 36 as stated.

26. Defendant denies paragraphs 37 and 38.

27. Defendant denies paragraph 39 as stated, but further responding, Defendant states that it, certain clients, and Fathom Realty SC, LLC entered into novation agreements transferring certain broker relationships from Defendant to Fathom Realty SC, LLC which were, upon information and belief, subject to Plaintiff initial premature and improper summons and complaints filed in this action.

28. Defendant denies paragraph 40 as stated.

29. Defendant denies paragraphs 41 and 42.

30. In response to paragraph 43, Defendant admits that he delivered a payment of \$10,691.40 to Plaintiff on August 5, 2020 reflecting a full payment of any amount Plaintiff could ever be entitled to receive under the Agreement, and yet she returned the full payment in favor of pursuing her premature and improper summons and complaint.

31. Defendant denies paragraphs 44 as stated.

32. Defendant denies paragraph 45 as stated. Further responding, Defendant admits that Plaintiff owes it at least \$379.68 for breaching the Agreement.

33. Defendant denies paragraph 46 and 47.

34. Defendant denies paragraph 48 as stated.

35. Defendant denies paragraph 49 as stated.

36. Defendant denies paragraphs 50 through 81 and Plaintiff's claim for

entitlement to any relief. Further responding, Plaintiff's Complaint includes claims that are plainly frivolous under S.C. Code Ann. § 15-36-10, et seq.

FOR A THIRD DEFENSE
(Payment)

37. Defendant pleads its payments and tenders to Plaintiff occurring since July 9, 2020 as a full and complete bar to Plaintiff's claims.

FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)

38. Plaintiff has an duty to mitigate her damages, and yet Plaintiff has failed to take such actions, such as accept tender of unconditional payments, in order to prop up her premature and improper summons and complaint and pursue frivolous claims.

39. As a result of Plaintiff's failure to perform her duty to mitigate her damages, Plaintiff's claims must be diminished or barred.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

40. Likewise, Plaintiff knowingly agreed to accept \$3,610.00 as full payment of commission" on the Green Street transaction, and she did accept and cash this payment when she endorsed and deposited Defendant's check no. 3842.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Prior Material Breach)

41. In the event that Plaintiff has any ripe claims, Plaintiff has materially breached her Agreement with Defendant by failing to perform her duties under it and converting Defendant's property, including its keys, in violation of paragraph 14 of the Agreement, resulting in actual and consequential damages to Defendant.

42. As a result of Plaintiff's prior material breaches, as may be further

discovered in the course of this action, Plaintiff is barred from pursuing her claims.

43. Further, as a result of Plaintiff's material breaches, Defendant is entitled to recover all actual and consequential damages it has suffered as a result of Plaintiff's breaches of the Agreement.

44. Defendant is entitled to and demands a jury trial on this claim.

FOR A SEVENTH DEFENSE
(Estoppel)

45. In the alternative, Plaintiff's conduct of accepting and failing to return Plaintiff's funds, which has been relied upon by Defendant to its detriment, estop Plaintiff from seeking relief.

FOR AN EIGHTH DEFENSE
(Waiver)

46. In the alternative, Plaintiff has knowingly waived her rights against Defendant in connection with the alleged transactions described in her Complaint.

FOR A NINTH DEFENSE
(Condition Precedent)

47. In the alternative, Plaintiff has failed to satisfy the conditions precedent for her payment.

FOR A TENTH DEFENSE
(Set-off and Recoupment)

48. To the extent that Plaintiff maintains any claim against Defendant arising out of any contract or agreement between them Plaintiff, in the same capacity and in similar transactions with Defendant, has failed to comply with her obligations owed to Defendant. Therefore, Defendant is entitled to reduce or diminish the claim of Plaintiff as a consequence of her failures to perform her obligations owed to Defendant.

WHEREFORE, Defendant respectfully requests that that court enter judgment in its favor against Plaintiff, including dismissal of Plaintiff's Complaint in its entirety with prejudice; or, in the alternative, grant Defendant a jury trial; and at the conclusion of this matter, award Defendant judgment for its actual damages, consequential damages, costs, reasonable attorneys' fees, and such other relief as the Court deems equitable or appropriate at law or as required by S.C. Code Ann. § 15-36-10, et seq.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
Email: sblake@rogerslewis.com

November 13, 2020

ATTORNEYS FOR J. KING REAL ESTATE, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Brandi Clarkson,)
Plaintiff,)
v.)
J. King Real Estate, LLC,)
Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

REPLY

The Plaintiff, replying to the counterclaim imbedded in the Answer To Amended And Supplemental Complaint, would respectfully show that:

AS TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SEVENTH, EIGHTH, NINTH, AND TENTH DEFENSES

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the Amended And Supplemental Complaint.

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM

2. Each and every allegation not hereinafter specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.

3. The allegations contained in paragraphs 41, 42, and 43 are denied.

4. The allegations contained in paragraph 44 are admitted and the Plaintiff joins in the Defendant's request for a jury trial on all issues.

WHEREFORE, having fully replied to the Defendant's counterclaim, the Plaintiff prays that the same be dismissed with costs, that she be granted judgment on her Amended And Supplemental Complaint, and for such other and further relief as the Court may deem just and proper.

Signature on following page.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399

Irmo, South Carolina
November 23, 2020

ELECTRONICALLY FILED - 2020 Nov 23 11:23 AM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

Brandi Clarkson,

Plaintiff,

v.

J. King Real Estate, LLC,

Defendant.

**AMENDED ANSWER TO AMENDED
AND SUPPLEMENTAL COMPLAINT**

(Jury Trial Demanded)

With the consent of Plaintiff, per Rule 15(a), Defendant files this Amended Answer, responding to Plaintiff's Amended Complaint as follows:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRPC - Failure to State a Claim)

1. The Complaint fails to state a cause of action upon which relief can be granted, and it should be dismissed according to Rule 12(b)(6), SCRPC. Defendant incorporates herein its Motion to Dismiss filed contemporaneously with this Answer.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. References to paragraphs are to those paragraphs enumerated in the Complaint. Defendant denies each allegation in the Complaint not specifically herein admitted.

3. Defendant admits paragraph 1 through 4.

4. In response to paragraph 5, Defendant states that it is a real estate brokerage firm defined by S.C. Code 40-57-30(24) and is engaged in the business of real estate brokerage as defined in S.C. Code 40-57-30(23). To the extent that paragraph says anything otherwise, it is denied.

5. Responding to paragraphs 6 through 9, Defendant admits that it entered into a contract entitled "Broker-Salesperson Agreement" with Plaintiff effective May 31, 2018

(the "Agreement"). Defendant explicitly pleads the each of terms of the Agreement as if stated herein and denies any statements inconsistent with that Agreement.

6. In response to paragraphs 10 and 11, Defendant responds by stating that Plaintiff is characterizing documents. The documents, to the extent that Plaintiff meets her burden of proof that they are a true and accurate record, speaks for themselves, and Defendant denies any characterization of them.

7. Defendant denies paragraphs 12 and 13 as stated.

8. In response to paragraph 14, Defendant responds by stating that Plaintiff is characterizing documents. The documents, to the extent that Plaintiff meets her burden of proof that each is a true and accurate record, speaks for itself, and Defendant denies any characterization of them.

9. Defendant denies paragraph 15.

10. In response to paragraph 16, Defendant admits that Plaintiff terminated that agreement at her election. The remainder of paragraph 16 is denied.

11. In response to paragraph 17, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

12. Defendant denies paragraphs 18 through 22 as stated.

13. In response to paragraph 23, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

14. Defendant denies paragraph 24.

15. In response to paragraph 25, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

16. In response to paragraph 26, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

17. Defendant denies paragraph 27 as stated.

18. Defendant denies paragraph 28.

19. In response to paragraph 29, Defendant responds by stating that Plaintiff is characterizing a document. The document, to the extent that Plaintiff meets her burden of proof that it is a true and accurate record, speaks for itself, and Defendant denies any characterization of it.

20. Defendant denies paragraph 30 as stated.

21. Defendant denies paragraph 31.

22. Responding to paragraph 32, Defendant admits that Plaintiff filed a premature, improper Summons and Complaint on July 21, 2020. The remainder of the paragraph asserts a legal conclusion which requires no response.

23. Defendant denies paragraph 33 as stated.

24. In response to paragraph 34 and 35, Defendant admits that it has paid Plaintiff 100% of any amount that could be due to her in connection with a real estate

transaction that involved property located at 520 Green Street, Columbia, South Carolina. Plaintiff accepted that payment as payment in full and complete satisfaction of any claim for payment in connection with that residential real estate location. Any assertion by Plaintiff to the contrary is denied.

25. Defendant denies paragraph 36 as stated.
26. Defendant denies paragraphs 37 and 38.
27. Defendant denies paragraph 39 as stated, but further responding, Defendant states that it, certain clients, and Fathom Realty SC, LLC entered into novation agreements transferring certain broker relationships from Defendant to Fathom Realty SC, LLC which were, upon information and belief, subject to Plaintiff initial premature and improper summons and complaints filed in this action.
28. Defendant denies paragraph 40 as stated.
29. Defendant denies paragraphs 41 and 42.
30. In response to paragraph 43, Defendant admits that he delivered a payment of \$10,691.40 to Plaintiff on August 5, 2020, reflecting a full payment of any amount Plaintiff could ever be entitled to receive under the Agreement, and yet she returned the full payment in favor of pursuing her premature and improper summons and complaint.
31. Defendant denies paragraphs 44 as stated.
32. Defendant denies paragraph 45 as stated. Further responding, Defendant admits that Plaintiff owes it at least \$379.68 for breaching the Agreement.
33. Defendant denies paragraph 46 and 47.
34. Defendant denies paragraph 48 as stated.
35. Defendant denies paragraph 49 as stated.

36. Defendant denies paragraphs 50 through 81 and Plaintiff's claim for entitlement to any relief. Further responding, Plaintiff's Complaint includes claims that are plainly frivolous under S.C. Code Ann. § 15-36-10, et seq.

FOR A THIRD DEFENSE
(Payment)

37. Defendant pleads its payments and tenders to Plaintiff occurring since July 9, 2020 as a full and complete bar to Plaintiff's claims.

FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)

38. Plaintiff has a duty to mitigate her damages, and yet Plaintiff has failed to take such actions, such as accept tender of unconditional payments, in order to prop up her premature and improper summons and complaint and pursue frivolous claims.

39. As a result of Plaintiff's failure to perform her duty to mitigate her damages, Plaintiff's claims must be diminished or barred.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

40. Likewise, Plaintiff knowingly agreed to accept \$3,610.00 as full payment of commission" on the Green Street transaction, and she did accept and cash this payment when she endorsed and deposited Defendant's check no. 3842.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Prior Material Breach)

41. In the event that Plaintiff has any ripe claims, Plaintiff has materially breached her Agreement with Defendant by failing to perform her duties under it and converting Defendant's property, including its keys, in violation of paragraph 14 of the Agreement, resulting in actual and consequential damages to Defendant.

42. As a result of Plaintiff's prior material breaches, as may be further discovered in the course of this action, Plaintiff is barred from pursuing her claims.

43. Further, as a result of Plaintiff's material breaches, Defendant is entitled to recover all actual and consequential damages it has suffered as a result of Plaintiff's breaches of the Agreement.

44. Defendant is entitled to and demands a jury trial on this claim.

FOR A SEVENTH DEFENSE
(Estoppel)

45. In the alternative, Plaintiff's conduct of accepting and failing to return Plaintiff's funds, which has been relied upon by Defendant to its detriment, estop Plaintiff from seeking relief.

FOR AN EIGHTH DEFENSE
(Waiver)

46. In the alternative, Plaintiff has knowingly waived her rights against Defendant in connection with the alleged transactions described in her Complaint.

FOR A NINTH DEFENSE
(Condition Precedent)

47. In the alternative, Plaintiff has failed to satisfy the conditions precedent for her payment.

FOR A TENTH DEFENSE
(Set-off and Recoupment)

48. To the extent that Plaintiff maintains any claim against Defendant arising out of any contract or agreement between them Plaintiff, in the same capacity and in similar transactions with Defendant, has failed to comply with her obligations owed to Defendant. Therefore, Defendant is entitled to reduce or diminish the claim of Plaintiff as a

consequence of her failures to perform her obligations owed to Defendant.

FOR AN ELEVENTH DEFENSE
(Section 15-32-530)

49. In the alternative, Plaintiff pleads the recovery limits of section 15-32-530 as an affirmative defense.

WHEREFORE, Defendant respectfully requests that that court enter judgment in its favor against Plaintiff, including dismissal of Plaintiff's Complaint in its entirety with prejudice; or, in the alternative, grant Defendant a jury trial; and at the conclusion of this matter, award Defendant judgment for its actual damages, consequential damages, costs, reasonable attorneys' fees, and such other relief as the Court deems equitable or appropriate at law or as required by S.C. Code Ann. § 15-36-10, et seq.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
Email: sblake@rogerslewis.com

December 18, 2021

ATTORNEYS FOR J. KING REAL ESTATE, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Brandi Clarkson,)
)
)
Plaintiff,)
)
)
v.)
)
J. King Real Estate, LLC,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

REPLY TO AMENDED ANSWER
TO AMENDED AND SUPPLEMENTAL
COMPLAINT

The Plaintiff, replying to the counterclaim imbedded in the Amended Answer To Amended And Supplemental Complaint, would respectfully show that:

AS TO THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SEVENTH, EIGHTH, NINTH, TENTH, AND ELEVENTH DEFENSES

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the Amended And Supplemental Complaint.

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM

2. Each and every allegation not hereinafter specifically admitted, qualified, or explained is denied and strict proof is demanded thereof.

3. The allegations contained in paragraphs 41, 42, and 43 are denied.

4. The allegations contained in paragraph 44 are admitted and the Plaintiff joins in the Defendant's request for a jury trial on all issues.

WHEREFORE, having fully replied to the Defendant's counterclaim, the Plaintiff prays that the same be dismissed with costs, that she be granted judgment on her Amended And Supplemental Complaint, and for such other and further relief as the Court may deem just and proper.

Signature on following page.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer

J. Gregory Studemeyer

SC Bar #5416

7478 Carlisle Street

P.O. Box 1014

Irmo, S.C. 29063

(803) 393-4399

Irmo, South Carolina
December 20, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Brandi Clarkson,)
)
)
Plaintiff,)
)
v.)
)
J. King Real Estate, LLC,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

**MOTION TO SERVE A SECOND
AMENDED AND SUPPLEMENTAL
COMPLAINT**

TO: SHAUN C. BLAKE, ESQ., ATTORNEY FOR DEFENDANT:

The Plaintiff, by and through her undersigned counsel, hereby moves pursuant to Rule 15(a), SCRCP to serve a second amended and supplemental complaint. A copy of the second amended and supplemental complaint is attached hereto and incorporated herein by reference.

The undersigned certifies that consultation with opposing counsel would serve no useful purpose.

STUDEMAYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
Post Office Box 1014
Irmo, South Carolina 29063
803-393-4399
Attorney for the Plaintiff

Irmo, South Carolina
February 4, 2022

| | | |
|------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF LEXINGTON |) | CASE NO. 2020-CP-32-02477 |
| Brandi Clarkson, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | SECOND AMENDED AND |
| |) | SUPPLEMENTAL COMPLAINT |
| J. King Real Estate, LLC and |) | |
| Jason Ernest King, |) | |
| |) | |
| Defendants. |) | |

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

PARTIES

1. The Plaintiff is a resident of the County of Lexington, State of South Carolina.
2. Defendant, J. King Real Estate, LLC (hereafter referred to as "the Company"), is a domestic limited liability company with its principal place of business in the County of Lexington, State of South Carolina.
3. The Company is a real estate brokerage firm as defined by S.C. Code Ann. Section 40-57-30(24).
4. Defendant, Jason Ernest King ("King"), is a resident of the County of Richland, State of South Carolina.
5. King owns the Company and is the Company's sole member and manager.
6. At all times set forth herein, King personally committed, participated in, directed, or authorized the commission of the foregoing acts.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and the subject matter of this action.
8. Venue is proper in Lexington County pursuant to S.C. Code Ann. Section 15-7-30(E)(1) and 15-7-30(E)(2) since the Company has its principal place of business in Lexington County and since the most substantial part of the alleged acts or omissions giving rise to these causes of action occurred in Lexington County.

BACKGROUND

9. The Company is engaged in the business of advertising, offering for sale, and the sale of real property directly or indirectly affecting the people of this State.
10. On May 31, 2018, the Company, as Broker, and the Plaintiff, as Salesperson, entered into a Broker-Salesperson Agreement (“agreement”) drafted by King, incorporating the Company's policy and procedures manual and a “Commission Schedule”. Copies of the agreement, the Company’s 2020 Policy Manual, and the commission schedule are attached hereto and incorporated herein by reference as Exhibits A, B, and C, respectively.
11. The agreement provided in paragraph 6 that “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”.
12. The agreement further provided in paragraph 7 that “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”. (emphasis added).

13. The agreement further provided in paragraph 9 that “the Salesperson shall not be liable to the Broker for office help or expense”.

14. The Company's policy and procedures manual provides in Section IV, paragraph 2 that “when a broker is licensed to supervise agents, the broker also has the following responsibilities:

- * * *
- f. *Paying agents on the Thursday following the closing*”.

15. The commission schedule provided that “Salesperson/Broker will earn 70% of the total commission, including bonuses and Salesperson/Broker will earn 100% of their commissions once the Brokerage has earned \$20,000 for the calendar year”.

16. The Company generated \$20,000 from the Plaintiff's efforts for the calendar year on June 29, 2020.

17. Thereafter, the Company had no further right under the agreement to receive any share of the commissions generated by the Plaintiff.

18. On July 2, 2020, King congratulated the Plaintiff, acknowledging that the Plaintiff had “capped”. Copies of the Plaintiff's Agent Commission Worksheet marked “Capped” by King and King's congratulatory email to the Plaintiff are attached hereto and incorporated herein by reference as Exhibits D and E.

19. Once the Plaintiff “capped”, the Plaintiff was of no use to the Company as the Company could no longer legitimately share in the commissions that the Plaintiff generated for the remainder of the calendar year.

20. On July 9, 2020, the Plaintiff exercised her right pursuant to paragraph 13 of the agreement to terminate.

21. Paragraph 13 of the agreement provided that “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* client services, clerical and administrative work which will be carried out at the discretion of the Broker”. (emphasis added).

22. At the time of termination, the Plaintiff had the following six *transactions in process, but not closed* (“transactions”):

- (a) 520 Green Street, West Columbia (Listing)
- (b) 503 Concord Place Road, Irmo (Listing/Buyer)
- (c) 1023 Old Town Road, Irmo (Buyer)
- (d) 249 Trinity Three Road, Irmo (Listing)
- (e) 160 Sweetwater Drive, Hopkins (Listing)
- (f) 544 Saw Creek Lane, Lexington (Buyer)

23. Initially, King agreed to allow the Plaintiff to finish the six transactions, contingent upon the Plaintiff providing regular updates, contact information for the client, and completing the closing.

24. On July 10, 2020, King tried to bully the Plaintiff into signing a termination agreement (including a release of the Company) authorizing the Company to continue receiving a 30 percent share of the commissions generated by the Plaintiff as if the Plaintiff had not “capped”. A copy of the termination agreement is attached hereto and incorporated herein by reference as Exhibit F.

25. Thereafter, King began interfering with the Plaintiff’s transactions by contacting the clients with whom King admittedly had no relationship.

26. Thereafter, King acknowledged that it was the Plaintiff, not King, who had the relationships with the clients, and that King *“was looking for [the Plaintiff] to keep the wheels on the bus and be the liaison with the client”*. (emphasis added).

27. King suggested that *“if everything goes smoothly and the client is happy with you and J King Real Estate, then you get your cut of the commission”*. (emphasis added). Copies of emails between the Plaintiff and King documenting their communications are attached hereto and incorporated herein by reference as Exhibits G and H.

28. At that point, the Plaintiff had already *“capped”* and was entitled to 100% of the commissions in accordance with the commission schedule, not just a *cut*.

29. On July 13, 2020, the Plaintiff demanded adequate assurance of performance by letter to King, a copy of which is attached hereto and incorporated herein by reference as Exhibit I.

30. On July 14, 2020, instead of providing assurance, King retaliated by notifying the Plaintiff that, *“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”*. A copy of King’s email is attached hereto and incorporated herein by reference as Exhibit J.

31. On July 14, 2020, the first of the six transactions, 520 Green Street, West Columbia, closed.

32. The Plaintiff’s 100% commission on the Green Street transaction was due and payable on July 16, 2020, *the Thursday following the closing*, in accordance with the agreement.

33. On July 15, 2020, the Plaintiff made a second demand for adequate assurance of performance by email to King’s first attorney, a copy of which is attached hereto and

incorporated herein by reference as Exhibit K.

34. On July 17, 2020, King's first attorney proposed to release the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker and for King to complete the remaining four transactions and pay the Plaintiff 70 percent, rather than 100 percent of her commissions, suggesting that "the agreement gave the company sole discretion to determine post-termination splits".

35. The only exercise of discretion authorized by the agreement was "necessary client services, clerical and administrative work which will be carried out at the discretion of the broker", not the amount of commissions withheld by the Company from the Plaintiff.

36. On July 21, 2020, the Plaintiff filed a summons and complaint, reserving the right to supplement in accordance with Rule 15(d), SCRCP.

37. On the same date, the Company, through its first attorney, threatened that the Company would hold the Plaintiff's money in trust for 18 months until a judge confirmed the Company's position.

38. On July 23, 2020, the Company wisely issued a check, albeit a week late, to the Plaintiff for 100% of the commission due on the Green Street transaction, less a "Transaction Fee", marked "payment in full for 520 Green Street commission".

39. The Plaintiff elected to deposit the Company's check, even though it was late and reduced by the "Transaction Fee" to avoid the 18 month delay in payment threatened by the Company.

40. On July 28, 2020, the second of the six transactions, 503 Concord Place Road, closed.

41. The Plaintiff's 100% commissions for representing both the seller and buyer on

the Concord Place Road transaction was due and payable on July 30, 2020, *the Thursday following the closing*, in accordance with the agreement.

42. The commissions due to the Plaintiff from the Company for the Concord Place Road transaction was \$5,550.

43. On July 29, 2020, the company transferred the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker.

44. On July 30, 2020, the third of the six transactions, 1023 Old Town Road, closed.

45. The Plaintiff's 100% commission on the Old Town Road transaction was due and payable on August 6, 2020, *the Thursday following the closing*, in accordance with the agreement.

46. The commission due to Plaintiff for the Old Town Road transaction was \$9,411.44.

47. On August 5, 2020, the Company mailed a letter to the Plaintiff with a check in the amount of \$10,691.40, rather than the amount due of \$14,961.44, marked "Payment in full for 503 Concord Pl & 1023 Old Town Rd".

48. The Company proposed to pay the Plaintiff approximately 70% of her commissions due, rather than 100% due after she "capped" on June 29, 2020.

49. In addition, the Company proposed to deduct \$379.68 from the Plaintiff's commissions to cover expenses incurred in replacing locks at the brokerage.

50. The Company chose to incur this expense before a scheduled appointment for the Plaintiff to return her key to the brokerage.

51. Since the Company incurred this expense as a result of King's own impulsive behavior rather than in response to any refusal on the part of the Plaintiff to return the key, this is

also an improper deduction from Plaintiff's rightfully earned commissions.

52. On September 15, 2020, the Plaintiff rejected the Company's tender of its untimely and deficient check and returned it to the Company.

53. On September 25, 2020, the final transaction, 249 Trinity Three Road, closed.

54. The Plaintiff's 100% commission on the Trinity Three Road transaction was due and payable on October 1, 2020, *the Thursday following the closing*, in accordance with the agreement.

55. The commission due to the Plaintiff on the Trinity Three Road transaction was \$4,260.00.

56. The Plaintiff is due the total sum of \$19,221.44 representing 100% of the commissions earned on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in accordance with the agreement.

57. In addition to withholding the Plaintiff's commissions, King's interference in the Plaintiff's transactions adversely affected the clients.

58. The seller of the Green Street property, the Plaintiff's elderly aunt, was subjected to unnecessary and avoidable anxiety in connection with the sale of her deceased daughter's home by King's insistence upon substituting for the Plaintiff.

59. King caused unnecessary anxiety to the purchaser of the Concord Place Road property by sending him an email stating that there was now a "legal situation" and that he was to have no further contact with the Plaintiff.

60. King caused unnecessary anxiety for the seller of the Concord Place Road property by lying to her and telling her that the Plaintiff was encouraging the buyer to decline executing a contract extension.

61. King attempted to sabotage the Trinity Three Road transaction by failing to timely negotiate repairs for the sellers, a separated couple, misrepresenting to them that a closing had been scheduled, causing the wife to vacate prematurely and reoccupy without her furnishings, and causing her husband to take off from work four separate times to travel from Virginia to South Carolina for closings which had not been scheduled.

62. The wife entered into a contract to purchase a new home through the Plaintiff upon the sale of Trinity Three Road, but King encouraged her husband to back out of the sale and relist with him to sabotage the wife's purchase in retaliation toward the Plaintiff.

63. In addition to unfairly withholding commissions earned by the Plaintiff, the Defendants systematically and deceptively withheld illegal and unauthorized "Transaction Fees" from the Plaintiff on 58 transactions, and from other salespersons, not permitted by the agreement, by pre-printing the illegal and unauthorized "Transaction Fee" on the Company's Agent Commission Worksheets as reflected on Exhibit D.

64. While representing to the Plaintiff that the "Transaction Fee" was for his assistant, King has submitted an affidavit in this action asserting that he charged the Plaintiff transaction fees for reviewing paperwork to insure all legal requirements are satisfied.

65. King has thus admitted that he has engaged in the unauthorized practice of law.

66. Based upon the foregoing, all transaction fees deducted from the Plaintiff's commissions should be disgorged.

FOR A FIRST CAUSE OF ACTION
(breach of contract)

67. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

68. The agreement between the Plaintiff and the Company was a valid and binding

agreement supported by adequate consideration.

69. The agreement between the Plaintiff and the Company included an implied covenant of good faith and fair dealing.

70. The Plaintiff performed her part of the agreement and was, at the appropriate time, able, ready, and willing to perform her part of the agreement.

71. The Company breached the agreement by failing to tender commissions due on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in a timely manner and in the full amount due, repeatedly deducting unauthorized "Transaction Fees" from the Plaintiff's commissions, and in other particulars as set forth herein.

72. The Plaintiff has suffered damages as set forth herein.

73. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to actual damages including prejudgment interest on each commission from the date due thereof and on each of the 58 "transaction fees" wrongfully deducted by the Company from the Plaintiff's commissions.

FOR A SECOND CAUSE OF ACTION
(intentional interference with prospective contractual relations)

74. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

75. King diverted or took away ongoing or prospective business or contractual rights from the Plaintiff, which methods are not within the privilege of fair competition.

76. King's interference was for an improper purpose or King's method of interference was improper under the circumstances.

77. The Plaintiff was damaged by King's interference.

78. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled

to an award of both actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION
(violation of the Unfair Trade Practices Act)**

79. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

80. The Defendants engaged in unfair or deceptive acts in the conduct of trade or commerce.

81. The Defendants' unfair or deceptive acts affected the public interest.

82. The Defendants' acts have the potential for repetition.

83. The Defendants' procedure of having a salesperson sign their Broker-Salesperson Agreement, and then making unauthorized deductions under the guise of discretion, creates a potential for repetition of the Defendants' unfair and deceptive acts, and in this case has been repeated on the Concord Place Road, Old Town Road, and Trinity Three Road transactions.

84. The Defendants' acts of misappropriating a salesperson's commission after a salesperson has "capped", has been repeated with the Plaintiff on the Concord Place Road, Old Town Road, and Trinity Three Road transactions, making it likely that they will continue absent deterrence.

85. The Defendants' acts of withholding illegal and unauthorized "Transaction Fees" from salespersons including the Plaintiff, for the unauthorized practice of law, have also been repeated at least 58 times, making it likely that they will continue absent deterrence.

86. The Defendants' unfair and deceptive trade practices were willful, offensive to public policy, immoral, unethical, and oppressive.

87. The Plaintiff has suffered actual, ascertainable damages as a result of the Defendants' use of the unfair and deceptive trade practices.

88. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to an award of treble damages along with a reasonable award of attorney's fees and costs.

WHEREFORE, the Plaintiff prays for actual damages, punitive damages, treble damages, a reasonable award of attorney's fees, the costs of this action, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

By: s/J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399
Attorney for the Plaintiff

Irmo, South Carolina
February 4, 2022

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,

v.

J. King Real Estate, LLC,

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S SECOND MOTION TO
AMEND UNDER RULE 15(a), SCRCP**

Defendant hereby responds in opposition to Plaintiff's Motion dated February 4, 2022.

By way of background, Plaintiff initiated this lawsuit in July 2020 claiming she was entitled to receive six (6) residential real estate commissions from Defendant for dealings that were either closed or might close after Plaintiff voluntarily terminated her brokerage agreement with Defendant. She initially sued under theories of breach of contract and SCUTPA.

In response to Defendant's Motion to Dismiss, Plaintiff filed a Motion to serve a more detailed Amended and Supplemental Complaint on October 2, 2020, which reduced the number of commissions she was pursuing, added a claim tortious interference with prospective contracts, added more allegations about a \$50 transactional fee that Defendant deducted from Plaintiff's commissions on certain closings, and attached exhibits A through K to the Complaint. In response, Defendant consented to the entry Order allowing Plaintiff to amend her complaint and mooted its Motion to Dismiss.

As this case was coming up for trial, Plaintiff filed a spurious motion, pursuant to Rule 15(a), SCRCP, to amend her second time – this time to add the existing Defendant's owner as a party. She now attempts to switch her tort claim as one against the Defendant to one against Defendant's owner, Mr. King, and attempts to add a claim against Defendants' owner, individually, under the SCUTPA claim.


ANALYSIS

First and foremost, Plaintiff's motion must be denied, as Plaintiff's Motion is not permitted under Rule 15, SCRCP. Our appellate courts have made it clear that Rule 15 does not allow a Plaintiff to amend a Complaint to assert claims against a new Defendant. Valentine v. Davis, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct.App.1995) (Holding that Rule 15 cannot be used to add a new party to the case, as "**Rule 15(a) only permits an existing plaintiff to add, modify, delete, or change claims against an existing defendant.**") (emphasis added). Therefore, Plaintiff's motion must be denied.

Second, even if Rule 15 did apply, Plaintiff cannot prevail because she unduly delayed in attempting to amend her pleadings again.

"Amendments to pleadings may properly be denied where 'there are circumstances such as inexcusable delay, or the taking of the adverse party by surprise, or the like, which might justify a refusal to amend.'" Dunbar v. Carlson, 341 S.C. 261, 270, 533 S.E.2d 913, 918 (Ct. App. 2000) (quoting Braudie v. Richland County, 217 S.C. 57, 59-60, 59 S.E.2d 548, 549 (1950)). Plaintiff has filed a memorandum that attempts to avoid the perception of undue delay in seeking this "amendment" by claiming that she did not learn that Jason King owned J. King Real Estate, LLC until his deposition in November 2021. This misrepresentation is disproven by a cursory review of the Amended Complaint Plaintiff filed in October 2020. For example, Plaintiff's first Amended Complaint plainly identifies Jason King, both by name and visage, as the Owner of J. King Real Estate.

Jason King

| | | |
|---|--|--|
|  | Jason King Owner, Broker in Charge Cell 803-318-4712 Office 803-386-9488 |  |
| | 7522 Irmo Dr., Suite 4 Columbia, SC 29212 jeking76@gmail.com JKingRealEstate.com | |

(Excerpt from Ex. B, p. 3, to Plaintiff's Amended Complaint).

Moreover, the emails between Plaintiff and Jason King during the time that they did business together, like those attached as Exhibit E and Exhibit H to Plaintiff's Amended Complaint, confirm Plaintiff had actual knowledge of Mr. King's ownership prior to bringing this lawsuit, and that her legal counsel had this knowledge prior to file the last Amended Complaint.



Jason King | (Owner, Broker in Charge)
7522 Irmo Drive, Suite 4, Columbia, SC 29212

803-318-4712 866-786-7439

jeking76@gmail.com

www.jkingrealestate.com



Com Sheets 07022020.pdf
689K

(Excerpt from Ex. E to Plaintiff's Amended Complaint).

Likewise, the letter from Mr. Studemeyer, Plaintiff's counsel dated a week before he filed this action confirms that he knew Mr. King owned Defendant prior to bringing this lawsuit.



STUDEMAYER LAW FIRM

7478 Carlisle Street | Post Office Box 1014
Irmo, South Carolina 29063
(803) 393-4399

J. Gregory Studemeyer
g@studemeylawfirm.com

Ryan G. Studemeyer
ryan@studemeylawfirm.com

July 13, 2020

via email jking76@gmail.com
and Confirmed by U.S. Mail

Mr. Jason King
Owner, Broker in Charge
J. King Real Estate
7522 Irmo Drive, Suite 4
Columbia, South Carolina 29212

Re: Brandi Clarkson v. Jason King d/b/a J. King Real Estate

Dear Mr. King:

(Excerpt from Ex. E to Plaintiff's Amended Complaint).

Third and finally, even if Plaintiff's Motion could be brought under Rule 15, Rule 15 would not allow this belated amendment due to the prejudice to Defendant and Mr. King as the added party. Patton v. Miller, 420 S.C. 471, 492, 804 S.E.2d 252, 263 (2017) (relying upon and summarizing the holding in Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014) as "affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend.") This case was up for trial – this following a consent order filed by this court moving the trial previously. Plaintiff only filed this motion after the case was up for trial again, and it appears it was filed with a wrongful intent to delay. (Ex. A).

Defendant has already pursued three (3) dispositive motions in this case, conducted several rounds of written discovery, and prepared this case for trial. Mr. King has already had to participate in this case as the Defendant's owner by providing all the discovery on its behalf, providing affidavit testimony (which was filed in support of Plaintiff's Motion for Summary Judgment and is incorporated herein by reference), and providing deposition testimony. (Ex. B). To permit the Plaintiff, on the eve of trial, to add a new Defendant and subject the Defendants to additional dispositive motions and discovery is unduly burdensome. Because this undue burden arises due to nothing but the Plaintiff's own dilatory conduct and failure to amend her claims thoroughly in October 2020, there is no justifiable basis under Rule 15, SCRPC to grant Plaintiff another amendment.

For the foregoing reasons, Defendant requests that the motion be denied.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
Kevin Maroney, Esq. (S.C. Bar #102545)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Email: sblake@rogerslewis.com
kmaroney@rogerslewis.com

June 10, 2022

ATTORNEYS FOR J. KING REAL ESTATE, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Brandi Clarkson,)
)
)
Plaintiff,)
)
v.)
)
J. King Real Estate, LLC and)
Jason Ernest King,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

**SECOND AMENDED AND
SUPPLEMENTAL COMPLAINT**

The Plaintiff above named, complaining of the Defendants herein, would respectfully show unto the Court:

PARTIES

1. The Plaintiff is a resident of the County of Lexington, State of South Carolina.
2. Defendant, J. King Real Estate, LLC (hereafter referred to as "the Company"), is a domestic limited liability company with its principal place of business in the County of Lexington, State of South Carolina.
3. The Company is a real estate brokerage firm as defined by S.C. Code Ann. Section 40-57-30(24).
4. Defendant, Jason Ernest King ("King"), is a resident of the County of Richland, State of South Carolina.
5. King owns the Company and is the Company's sole member and manager.
6. At all times set forth herein, King personally committed, participated in, directed, or authorized the commission of the foregoing acts.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the parties and the subject matter of this action.
8. Venue is proper in Lexington County pursuant to S.C. Code Ann. Section 15-7-30(E)(1) and 15-7-30(E)(2) since the Company has its principal place of business in Lexington County and since the most substantial part of the alleged acts or omissions giving rise to these causes of action occurred in Lexington County.

BACKGROUND

9. The Company is engaged in the business of advertising, offering for sale, and the sale of real property directly or indirectly affecting the people of this State.
10. On May 31, 2018, the Company, as Broker, and the Plaintiff, as Salesperson, entered into a Broker-Salesperson Agreement ("agreement") drafted by King, incorporating the Company's policy and procedures manual and a "Commission Schedule". Copies of the agreement, the Company's 2020 Policy Manual, and the commission schedule are attached hereto and incorporated herein by reference as Exhibits A, B, and C, respectively.
11. The agreement provided in paragraph 6 that "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".
12. The agreement further provided in paragraph 7 that "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". (emphasis added).

13. The agreement further provided in paragraph 9 that “the Salesperson shall not be liable to the Broker for office help or expense”.

14. The Company's policy and procedures manual provides in Section IV, paragraph 2 that “when a broker is licensed to supervise agents, the broker also has the following responsibilities:

* * *
f. *Paying agents on the Thursday following the closing*”.

15. The commission schedule provided that “Salesperson/Broker will earn 70% of the total commission, including bonuses and Salesperson/Broker will earn 100% of their commissions once the Brokerage has earned \$20,000 for the calendar year”.

16. The Company generated \$20,000 from the Plaintiff’s efforts for the calendar year on June 29, 2020.

17. Thereafter, the Company had no further right under the agreement to receive any share of the commissions generated by the Plaintiff.

18. On July 2, 2020, King congratulated the Plaintiff, acknowledging that the Plaintiff had “capped”. Copies of the Plaintiff’s Agent Commission Worksheet marked “Capped” by King and King’s congratulatory email to the Plaintiff are attached hereto and incorporated herein by reference as Exhibits D and E.

19. Once the Plaintiff “capped”, the Plaintiff was of no use to the Company as the Company could no longer legitimately share in the commissions that the Plaintiff generated for the remainder of the calendar year.

20. On July 9, 2020, the Plaintiff exercised her right pursuant to paragraph 13 of the agreement to terminate.

21. Paragraph 13 of the agreement provided that “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* client services, clerical and administrative work which will be carried out at the discretion of the Broker”. (emphasis added).

22. At the time of termination, the Plaintiff had the following six *transactions in process, but not closed* (“transactions”):

- (a) 520 Green Street, West Columbia (Listing)
- (b) 503 Concord Place Road, Irmo (Listing/Buyer)
- (c) 1023 Old Town Road, Irmo (Buyer)
- (d) 249 Trinity Three Road, Irmo (Listing)
- (e) 160 Sweetwater Drive, Hopkins (Listing)
- (f) 544 Saw Creek Lane, Lexington (Buyer)

23. Initially, King agreed to allow the Plaintiff to finish the six transactions, contingent upon the Plaintiff providing regular updates, contact information for the client, and completing the closing.

24. On July 10, 2020, King tried to bully the Plaintiff into signing a termination agreement (including a release of the Company) authorizing the Company to continue receiving a 30 percent share of the commissions generated by the Plaintiff as if the Plaintiff had not “capped”. A copy of the termination agreement is attached hereto and incorporated herein by reference as Exhibit F.

25. Thereafter, King began interfering with the Plaintiff’s transactions by contacting the clients with whom King admittedly had no relationship.

26. Thereafter, King acknowledged that it was the Plaintiff, not King, who had the relationships with the clients, and that King “*was looking for [the Plaintiff] to keep the wheels on the bus and be the liaison with the client*”. (emphasis added).

27. King suggested that “if everything goes smoothly and the client is happy with you and J King Real Estate, then you get your *cut of the commission*”. (emphasis added). Copies of emails between the Plaintiff and King documenting their communications are attached hereto and incorporated herein by reference as Exhibits G and H.

28. At that point, the Plaintiff had already “capped” and was entitled to 100% of the commissions in accordance with the commission schedule, not just a *cut*.

29. On July 13, 2020, the Plaintiff demanded adequate assurance of performance by letter to King, a copy of which is attached hereto and incorporated herein by reference as Exhibit I.

30. On July 14, 2020, instead of providing assurance, King retaliated by notifying the Plaintiff that, “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”. A copy of King’s email is attached hereto and incorporated herein by reference as Exhibit J.

31. On July 14, 2020, the first of the six transactions, 520 Green Street, West Columbia, closed.

32. The Plaintiff’s 100% commission on the Green Street transaction was due and payable on July 16, 2020, *the Thursday following the closing*, in accordance with the agreement.

33. On July 15, 2020, the Plaintiff made a second demand for adequate assurance of performance by email to King’s first attorney, a copy of which is attached hereto and

incorporated herein by reference as Exhibit K.

34. On July 17, 2020, King's first attorney proposed to release the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker and for King to complete the remaining four transactions and pay the Plaintiff 70 percent, rather than 100 percent of her commissions, suggesting that "the agreement gave the company sole discretion to determine post-termination splits".

35. The only exercise of discretion authorized by the agreement was "necessary client services, clerical and administrative work which will be carried out at the discretion of the broker", not the amount of commissions withheld by the Company from the Plaintiff.

36. On July 21, 2020, the Plaintiff filed a summons and complaint, reserving the right to supplement in accordance with Rule 15(d), SCRCR.

37. On the same date, the Company, through its first attorney, threatened that the Company would hold the Plaintiff's money in trust for 18 months until a judge confirmed the Company's position.

38. On July 23, 2020, the Company wisely issued a check, albeit a week late, to the Plaintiff for 100% of the commission due on the Green Street transaction, less a "Transaction Fee", marked "payment in full for 520 Green Street commission".

39. The Plaintiff elected to deposit the Company's check, even though it was late and reduced by the "Transaction Fee" to avoid the 18 month delay in payment threatened by the Company.

40. On July 28, 2020, the second of the six transactions, 503 Concord Place Road, closed.

41. The Plaintiff's 100% commissions for representing both the seller and buyer on

the Concord Place Road transaction was due and payable on July 30, 2020, *the Thursday following the closing*, in accordance with the agreement.

42. The commissions due to the Plaintiff from the Company for the Concord Place Road transaction was \$5,550.

43. On July 29, 2020, the company transferred the Sweetwater Drive and Saw Creek Lane transactions to the Plaintiff's new broker.

44. On July 30, 2020, the third of the six transactions, 1023 Old Town Road, closed.

45. The Plaintiff's 100% commission on the Old Town Road transaction was due and payable on August 6, 2020, *the Thursday following the closing*, in accordance with the agreement.

46. The commission due to Plaintiff for the Old Town Road transaction was \$9,411.44.

47. On August 5, 2020, the Company mailed a letter to the Plaintiff with a check in the amount of \$10,691.40, rather than the amount due of \$14,961.44, marked "Payment in full for 503 Concord Pl & 1023 Old Town Rd".

48. The Company proposed to pay the Plaintiff approximately 70% of her commissions due, rather than 100% due after she "capped" on June 29, 2020.

49. In addition, the Company proposed to deduct \$379.68 from the Plaintiff's commissions to cover expenses incurred in replacing locks at the brokerage.

50. The Company chose to incur this expense before a scheduled appointment for the Plaintiff to return her key to the brokerage.

51. Since the Company incurred this expense as a result of King's own impulsive behavior rather than in response to any refusal on the part of the Plaintiff to return the key, this is

also an improper deduction from Plaintiff's rightfully earned commissions.

52. On September 15, 2020, the Plaintiff rejected the Company's tender of its untimely and deficient check and returned it to the Company.

53. On September 25, 2020, the final transaction, 249 Trinity Three Road, closed.

54. The Plaintiff's 100% commission on the Trinity Three Road transaction was due and payable on October 1, 2020, *the Thursday following the closing*, in accordance with the agreement.

55. The commission due to the Plaintiff on the Trinity Three Road transaction was \$4,260.00.

56. The Plaintiff is due the total sum of \$19,221.44 representing 100% of the commissions earned on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in accordance with the agreement.

57. In addition to withholding the Plaintiff's commissions, King's interference in the Plaintiff's transactions adversely affected the clients.

58. The seller of the Green Street property, the Plaintiff's elderly aunt, was subjected to unnecessary and avoidable anxiety in connection with the sale of her deceased daughter's home by King's insistence upon substituting for the Plaintiff.

59. King caused unnecessary anxiety to the purchaser of the Concord Place Road property by sending him an email stating that there was now a "legal situation" and that he was to have no further contact with the Plaintiff.

60. King caused unnecessary anxiety for the seller of the Concord Place Road property by lying to her and telling her that the Plaintiff was encouraging the buyer to decline executing a contract extension.

61. King attempted to sabotage the Trinity Three Road transaction by failing to timely negotiate repairs for the sellers, a separated couple, misrepresenting to them that a closing had been scheduled, causing the wife to vacate prematurely and reoccupy without her furnishings, and causing her husband to take off from work four separate times to travel from Virginia to South Carolina for closings which had not been scheduled.

62. The wife entered into a contract to purchase a new home through the Plaintiff upon the sale of Trinity Three Road, but King encouraged her husband to back out of the sale and relist with him to sabotage the wife's purchase in retaliation toward the Plaintiff.

63. In addition to unfairly withholding commissions earned by the Plaintiff, the Defendants systematically and deceptively withheld illegal and unauthorized "Transaction Fees" from the Plaintiff on 58 transactions, and from other salespersons, not permitted by the agreement, by pre-printing the illegal and unauthorized "Transaction Fee" on the Company's Agent Commission Worksheets as reflected on Exhibit D.

64. While representing to the Plaintiff that the "Transaction Fee" was for his assistant, King has submitted an affidavit in this action asserting that he charged the Plaintiff transaction fees for reviewing paperwork to insure all legal requirements are satisfied.

65. King has thus admitted that he has engaged in the unauthorized practice of law.

66. Based upon the foregoing, all transaction fees deducted from the Plaintiff's commissions should be disgorged.

FOR A FIRST CAUSE OF ACTION
(breach of contract)

67. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

68. The agreement between the Plaintiff and the Company was a valid and binding

agreement supported by adequate consideration.

69. The agreement between the Plaintiff and the Company included an implied covenant of good faith and fair dealing.

70. The Plaintiff performed her part of the agreement and was, at the appropriate time, able, ready, and willing to perform her part of the agreement.

71. The Company breached the agreement by failing to tender commissions due on the Concord Place Road, Old Town Road, and Trinity Three Road transactions in a timely manner and in the full amount due, repeatedly deducting unauthorized "Transaction Fees" from the Plaintiff's commissions, and in other particulars as set forth herein.

72. The Plaintiff has suffered damages as set forth herein.

73. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to actual damages including prejudgment interest on each commission from the date due thereof and on each of the 58 "transaction fees" wrongfully deducted by the Company from the Plaintiff's commissions.

FOR A SECOND CAUSE OF ACTION
(intentional interference with prospective contractual relations)

74. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

75. King diverted or took away ongoing or prospective business or contractual rights from the Plaintiff, which methods are not within the privilege of fair competition.

76. King's interference was for an improper purpose or King's method of interference was improper under the circumstances.

77. The Plaintiff was damaged by King's interference.

78. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled

to an award of both actual and punitive damages.

**FOR A THIRD CAUSE OF ACTION
(violation of the Unfair Trade Practices Act)**

79. Each and every previous allegation is realleged herein in the same manner and to the same extent as if repeated.

80. The Defendants engaged in unfair or deceptive acts in the conduct of trade or commerce.

81. The Defendants' unfair or deceptive acts affected the public interest.

82. The Defendants' acts have the potential for repetition.

83. The Defendants' procedure of having a salesperson sign their Broker-Salesperson Agreement, and then making unauthorized deductions under the guise of discretion, creates a potential for repetition of the Defendants' unfair and deceptive acts, and in this case has been repeated on the Concord Place Road, Old Town Road, and Trinity Three Road transactions.

84. The Defendants' acts of misappropriating a salesperson's commission after a salesperson has "capped", has been repeated with the Plaintiff on the Concord Place Road, Old Town Road, and Trinity Three Road transactions, making it likely that they will continue absent deterrence.

85. The Defendants' acts of withholding illegal and unauthorized "Transaction Fees" from salespersons including the Plaintiff, for the unauthorized practice of law, have also been repeated at least 58 times, making it likely that they will continue absent deterrence.

86. The Defendants' unfair and deceptive trade practices were willful, offensive to public policy, immoral, unethical, and oppressive.

87. The Plaintiff has suffered actual, ascertainable damages as a result of the Defendants' use of the unfair and deceptive trade practices.

88. Based upon the foregoing, the Plaintiff is informed and believes that she is entitled to an award of treble damages along with a reasonable award of attorney's fees and costs.

WHEREFORE, the Plaintiff prays for actual damages, punitive damages, treble damages, a reasonable award of attorney's fees, the costs of this action, and for such other and further relief as the Court may deem just and proper.

STUDEMEYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399
Attorney for the Plaintiff

Irmo, South Carolina
August 24, 2022

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

J. King Real Estate, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**ANSWER TO SECOND AMENDED
AND SUPPLEMENTAL COMPLAINT**

Defendants, responding to the Second Amended and Supplemental Complaint (the "Complaint"), answers as follows:

FOR A FIRST DEFENSE
(Rule 12(b)(6), SCRPC - Failure to State a Claim)

1. The Complaint fails to state a cause of action upon which relief can be granted, and it should be dismissed according to Rule 12(b)(6), SCRPC. Defendants incorporate herein by reference J. King Real Estate's LLC Motion to Dismiss filed November 13, 2020, and its memorandum filed February 12, 2021.

FOR A SECOND DEFENSE
(Qualified General Denial)

2. Defendants deny each allegation in the Complaint not expressly admitted below. References to "paragraphs" are to those enumerated in the Complaint.

3. Responding to allegations of the Complaint pertaining to the parties, jurisdiction, and venue, paragraphs 1 through 9, Defendants admit only that J. King Real Estate, LLC ("JKRE") is a limited liability company formed in South Carolina that maintains its principal place of business in Lexington County, and Jason Ernest King ("Mr. King") owns its membership interest. JKRE is a real estate brokerage firm defined by S.C. Code 40-57-30(24) and is engaged in the business of real estate brokerage as defined in S.C. Code 40-57-30(23). Defendants do not contest venue or jurisdiction.

4. Responding to paragraphs 10 through 15, Defendants admit only that JKRE and Plaintiff entered into a contract entitled "Broker-Salesperson Agreement" with Plaintiff effective May 31, 2018 (the "Agreement"). The documents otherwise referenced in these paragraphs speak for themselves, and Defendants deny any statements inconsistent with those statements.
5. Defendants deny paragraphs 16 and 17 as stated.
6. Responding to paragraph 18, the documents referenced in the paragraph speaks for themselves, and Defendants deny any statements inconsistent with those statements.
7. Defendants deny paragraph 19.
8. Responding to paragraph 21, the document referenced speaks for itself, and Defendants deny any statements inconsistent with it.
9. Defendants deny paragraphs 22 through 26 at stated.
10. Responding to paragraph 27, the document referenced speaks for itself, and Defendants deny any statements inconsistent with it.
11. Defendants deny paragraphs 28 through 30 at stated.
12. Responding to paragraph 31, Defendants only admit that a loan closing conference was conducted at the Templeton Law Firm in Lexington, SC, between Robert Husted, Judy C. Levine, and Ameris Bank on July 14, 2020, regarding the real property located at 520 Green Street, West Columbia, SC 29172; Defendants further state that a "closing" under JKRE's policies and course of dealing with Plaintiff is not completed prior to the irrevocable delivery of the commissions to JRKE.
13. Defendants deny paragraphs 32 through 37 as stated, except that it admits

that the public index for Lexington County shows that J. Gregory Studemeyer filed a Summons and Complaint in the Plaintiff's name on July 21, 2020.

14. Responding to paragraphs 38 and 39, Defendants admit JKRE timely issued Plaintiff a check for the entire amount of the payment that represents 100% of any amount that could be due to her in connection with a real estate transaction involving 520 Green Street, West Columbia, SC 29172. Plaintiff accepted, executed and deposited that payment as payment in full and complete satisfaction of any claim for payment in connection with that residential real estate location.

15. Responding to paragraphs 40 to 42, Defendants only admit that a loan closing conference was conducted at the Hanson Law Firm in Columbia, SC, between Zachary Christin, Krystal Follett, Tim Collins, and LendUS, LLC, on July 28, 2020, regarding the real property located at 503 Concord Place Road, Irmo, SC 29063; Defendants further state that a "closing" under JKRE's policies and course of dealing with Plaintiff is not completed prior to the irrevocable delivery of the commissions to JRKE.

16. Defendants deny paragraph 43 as stated. Defendants admit that JKRE and Fathom Realty SC, LLC entered into a "Novation of Broker" contract with Ari Whittaker, and entered into a separate "Novation of Broker" contract with Susan Sato, on July 29, 2020. Defendants received no commission or compensation whatsoever for their time and expense associated with their representation of either client.

17. Responding to paragraphs 44 to 46, Defendants only admit that a loan closing conference was conducted at the Hanson Law Firm in Columbia, SC, between Krystal Collins, Great Southern Homes, Inc., and LendUS, LLC, on July 30, 2020,

regarding the real property located at 1023 Old Town Road, Irmo, SC 29063; Defendants further state that a “closing” under JKRE’s policies and course of dealing with Plaintiff is not completed prior to the irrevocable delivery of the commissions to JRKE.

18. In response to paragraphs 47 and 52, Defendants admit only that JKRE timely delivered a payment of \$10,691.40 to Plaintiff on August 5, 2020, reflecting a full payment of any amount Plaintiff could ever be entitled to receive under the Agreement, and yet she rejected this payment on the advise of her counsel, failed to mitigate her damages, and instead opted to pursue a premature and improper lawsuit against JKRE. Defendants state that Plaintiff owes JKRE at least \$379.68 for breaching the Agreement by failing to return property as required by the Agreement.

19. Responding to paragraphs 53 through 55, Defendants only admit that a loan closing conference was conducted at McAngus Goudelock & Courie in Columbia, SC, between Charles Miller, Darlene Miller, Anthony Gibson, Sandra Caicedo, and Mortgage Solutions of Colorado, LLC, on September 24, 2020, regarding the real property located at 249 Trinity Three Road, Irmo, SC 29063; Defendants deny that a “closing” is completed prior to the irrevocable delivery of the proceeds as required by law.

20. Except for admitting that the “Broker-Salesperson Agreement” with Plaintiff effective May 31, 2018, is a valid and binding contract, Defendants deny the remainder of the Complaint and Plaintiff’s claim for entitlement to any relief. Further responding, Plaintiff’s Complaint, like its prior versions, includes claims that are plainly frivolous under S.C. Code Ann. § 15-36-10, et seq. Defendants are entitled to sanctions, including attorneys’ fees and costs, as permitted by law as a result.

FOR A THIRD DEFENSE
(Payment)

21. Defendants plead JKRE's payments and tenders to Plaintiff occurring since July 9, 2020 as a full and complete bar to Plaintiff's claims.

FOR A FOURTH DEFENSE
(Failure to Mitigate Damages)

22. Plaintiff has a duty to mitigate her damages, and yet Plaintiff has failed to take such actions, such as accept tender of unconditional payments, in an effort to bolster her premature and improper summons and complaint and pursue frivolous claims.

23. As a result of Plaintiff's failure to perform her duty to mitigate her damages, Plaintiff's claims must be diminished or barred entirely.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

24. Likewise, Plaintiff knowingly agreed to accept \$3,610.00 as full payment of commission" on the Green Street transaction, and she did accept and cash this payment when she endorsed and deposited Defendant's check no. 3842.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Prior Material Breach)

25. In the event that Plaintiff has any ripe claims, Plaintiff has materially breached her Agreement with JKRE by failing to perform her duties under it and converting JKRE's property, including its keys, in violation of paragraph 14 of the Agreement, resulting in actual and consequential damages to JKRE.

26. As a result of Plaintiff's prior material breaches, as may be further discovered in the course of this action, Plaintiff is barred from pursuing her claims.

27. Further, as a result of Plaintiff's material breaches, JKRE is entitled to

recover all actual and consequential damages it has suffered as a result of Plaintiff's breaches of the Agreement.

28. JKRE is entitled to and demands a jury trial on this claim.

FOR A SEVENTH DEFENSE
(Estoppel)

29. In the alternative, Plaintiff's conduct of accepting and failing to return JKRE's funds, which has been relied upon by Defendants to their detriment, estop Plaintiff from seeking relief.

30. Moreover, on more than fifty (50) occasions following the making of the Agreement, Plaintiff agreed that JKRE was entitled to recuperate its transaction fee from commissions. JKRE continued to provide beneficial support to Plaintiff in reliance on Plaintiff's acquiescence and their course of dealings to its detriment. Plaintiff obtained the benefit of JKRE's support, and now she is estopped from claiming that she and JKRE did not agree that JKRE was entitled to recover its transaction fees.

FOR AN EIGHTH DEFENSE
(Waiver)

31. In the alternative, Plaintiff has knowingly waived her rights against Defendants in connection with the alleged transactions described in her Complaint.

FOR A NINTH DEFENSE
(Condition Precedent)

32. In the alternative, Plaintiff has failed to satisfy the conditions precedent for her payment from JKRE.

FOR A TENTH DEFENSE
(Set-off and Recoupment)

33. To the extent that Plaintiff maintains any claim against Defendants arising

out of any contract or agreement between them, then Plaintiff, in the same capacity and in similar transactions with Defendants, has failed to comply with her obligations owed to Defendants. Therefore, Defendants are entitled to reduce or diminish the claim of Plaintiff as a consequence of her failures to perform her obligations owed to Defendants.

FOR AN ELEVENTH DEFENSE
(Corporate Veil – S.C. Code 33-44-303)

34. Mr. King is entitled to the full benefit of the corporate veil afforded to him by South Carolina law. Plaintiff's attempt to pierce the corporate veil is an action in equity that requires a bifurcated and separate bench trial on the merits.

FOR A TWELFTH DEFENSE
(SC Licensing Law of Real Estate Brokers, Brokers-in-Charge, and Salespersons)

35. All parties to this action are licensed and regulated by South Carolina, including S.C. Code § 40-57-5, et seq, and the regulations promulgated by the South Carolina Department of Labor, Licensing and Regulation ("SC Licensing Law"). Plaintiff's claims are in derogation of SC Licensing Law, as she seeks to assert rights and privileges that are not afforded to her as a mere "salesperson" under South Carolina law and in derogation of it. To the extent that Plaintiff asserts common law claims based upon a right are preempted by the provisions of SC Licensing Law.

WHEREFORE, Defendants respectfully requests that that court enter judgment in their favor against Plaintiff, including dismissal of Plaintiff's Complaint in its entirety with prejudice.

In the alternative, grant Defendants a trifurcated jury trial (a jury trial on all claims so trial; a trial on punitive damages, if permitted by the results of the initial phase of the trial as provided for in S.C. Code § 15-32-520; and a bench trial on the merits of

Plaintiff's attempt to pierce the corporate veil against Mr. King.

In either event, at the conclusion of this matter, Defendants request that that court judgment for them for actual damages, consequential damages, costs, reasonable attorneys' fees, and such other relief as the Court deems equitable or appropriate at law or as required by S.C. Code Ann. § 15-36-10, et seq.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON MANN & QUINN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
Email: sblake@rogerslewis.com

September 30, 2022

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Brandi Clarkson,)
)
Plaintiff,)
)
v.)
)
J. King Real Estate, LLC and)
Jason Ernest King,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

REPLY

The Plaintiff, replying to the Answer To Second Amended And Supplemental Complaint, would respectfully show that:

AS TO THE FIRST THROUGH FIFTH AND SEVENTH THROUGH TWELFTH DEFENSES

1. The Plaintiff reaffirms and reiterates all of the allegations contained in the second amended and supplemental complaint.

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM

- 2. Each and every allegation not hereinafter admitted, qualified, or explained is denied.
- 3. The allegations contained in paragraphs 25, 26, and 27 are denied.
- 4. The allegations contained in paragraph 28 are admitted.

WHEREFORE, having fully replied to the Answer To Second Amended And Supplemental Complaint, the Plaintiff prays that the same be dismissed with costs, that she be given judgment on her second amended and supplemental complaint, and for such other and further relief as this Court may deem just and proper.

STUDEMAYER LAW FIRM, P.C.

By: s/ J. Gregory Studemeyer
J. Gregory Studemeyer
SC Bar #5416
7478 Carlisle Street
P.O. Box 1014
Irmo, S.C. 29063
(803) 393-4399
Attorney for the Plaintiff

Irmo, South Carolina
November 10, 2022

ELECTRONICALLY FILED - 2022 Nov 10 4:05 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

Brandi Clarkson,)
)
)
Plaintiff,)
)
v.)
)
J. King Real Estate, LLC and)
Jason Ernest King,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-32-02477

MOTION FOR NEW TRIAL

TO: SHAUN C. BLAKE, ESQ., ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, through her undersigned attorney, will move before the Honorable Donald B. Hocker at 10:00 A.M. on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court and counsel for a new trial pursuant to Rule 59(a), SCRPC on the grounds that the Court erred in granting a directed verdict against the Plaintiff on her causes of action for interference and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").

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 and to deny the motion when either the evidence yields more than one inference or its inference is in doubt. *Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc.*, 379 S.C. 31, 38, 664 S.E.2d 83, 86 (2008) (reversing the grant of a directed verdict in an action under the SCUTPA). 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. *Id.* [emphasis added].

The Court was inclined to view this case only as a contract dispute, but the fact that this case originated from a contract dispute is not dispositive as to whether a valid claim for violation of the SCUTPA may be levied. *See e.g. Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 258 S.E.2d 156 (Ct.App. 1987); *Haley Nursery Co., Inc. v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989) *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 536 S.E.2d 399 (Ct.App. 2000); *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004); *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct.App. 2006) (all SCUTPA cases arising out of contract disputes). It was up to the jury to determine:

1. If it was fair for the brokerage to draft and sign a contract with the Plaintiff that provided that the brokerage would pay the Plaintiff 100% of the commissions she accrued upon generating \$20,000 for the brokerage, only for the brokerage to then freeze the Plaintiff out of three transactions in which commissions had accrued and deduct 30% from her transactions under the guise of “necessary client services, clerical and administrative work” after the Plaintiff had generated \$20,000 for the brokerage;

2. If it was fair for the brokerage to deduct unauthorized “transaction fees” from the Plaintiff and every other agent except the broker for “legal compliance” reviews that were never mentioned in the broker-salesperson agreement, policy manual, or commission schedule; and

3. If it was fair for the brokerage to bait the Plaintiff with checks marked “payment in full” or “payment” for 30% less than she was due in an effort to establish accord and satisfaction and payment as affirmative defenses.

Viewing the evidence and the inferences that reasonably could have been drawn therefrom in the light most favorable to the Plaintiff, the evidence presented to the jury demonstrated the following facts:

1. The Plaintiff and the brokerage entered into an agreement composed of three documents: (1) a broker-salesperson agreement; (2) a policy manual; and (3) a commission schedule;
2. Paragraph 4 of the broker sales person agreement provided:

Salesperson agrees to work diligently and with [her] best efforts to sell any and all real estate listed with the Broker, to solicit additional listings and clients of said Broker, procure and diligently represent buyers and otherwise promote the business of serving the public in real estate transactions to the end that each of the parties hereto may derive the greatest profit possible;

[emphasis added].

3. Paragraph 9 of the broker-salesperson agreement provided that the salesperson shall not be liable to the Broker for office help or expense;
4. Paragraph 13 of the broker-salesperson agreement provided:

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 client services, clerical and administrative work which will be carried out at the discretion of the Broker;

[emphasis added].

5. Under the terms of the commission schedule, the Plaintiff was entitled to 70% of her accrued commissions and the brokerage was entitled to 30% until such time as the Plaintiff generated \$20,000 for the brokerage. Thereafter, the Plaintiff was entitled to 100% of accrued commissions;
6. The Plaintiff's commissions accrued when contracts between buyers and sellers were executed, and payable upon collection by the brokerage;

7. On June 29, 2020, the Plaintiff exceeded the \$20,000 threshold for the calendar year;
8. The Plaintiff was entitled to 100% of her accrued commissions from that point forward;
9. The brokerage marked the Plaintiff's agent commission worksheet "capped" and sent her an email congratulating her on exceeding the \$20,000 threshold;
10. The Plaintiff and the broker met on July 9, 2020, to discuss termination of their agreement;
11. At that time, the Plaintiff had several transactions pending on which 100% commissions had accrued which were not to be divested under paragraph 13 of the agreement;
12. The Plaintiff anticipated that three of the transactions would close within three weeks;
13. During the meeting, the broker proposed to retain 30% of the commissions accrued on these transactions;
14. The broker prepared a proposed settlement agreement authorizing the brokerage to retain 30% of the commissions accrued on these transactions;
15. The Plaintiff declined to sign this proposed settlement agreement and instead demanded that the brokerage honor the commission schedule that it drafted and entered into with the Plaintiff;
16. Without telling the Plaintiff, the broker contacted each of the buyers and sellers, their lenders, their closing attorneys, and all other agents associated with the transactions to inform them that the Plaintiff was no longer associated with the brokerage;

17. At the same time, the broker continued to rely on the Plaintiff to provide updates to the brokerage on the transactions, and the broker acknowledged that as the Plaintiff was the party who had cultivated relationships with the clients, he was depending on the Plaintiff to “keep the wheels on the bus” through closing;
18. The Plaintiff issued a demand for adequate assurance of performance to the brokerage, seeking confirmation that the brokerage would honor the terms of the commission schedule;
19. After receiving a demand for adequate assurance of performance from the Plaintiff, the broker advised the Plaintiff that “due to the legal nature of [their] severed business relationship, [the Plaintiff was] no longer allowed to have any communications with any of his clients;”
20. Thereafter, the first of the transactions closed;
21. The broker allowed the Plaintiff to attend the closing with the seller, the Plaintiff’s great aunt, and the broker paid the Plaintiff 100% of the accrued commission, minus a \$50 “transaction fee;”
22. The Plaintiff was excluded from further participation in the remaining transactions;
23. Thereafter, the second of the transactions, Concord Place Road, closed and the brokerage collected the commission accrued by the Plaintiff;
24. Thereafter, the third of the transactions, Old Town Road, closed and the brokerage collected the commission accrued by the Plaintiff;
25. Thereafter, the broker transferred two pending transactions, Saw Creek Lane and Sweetwater Drive, to the Plaintiff’s new broker;
26. Thereafter, the broker sent a check for \$10,691.40 to the Plaintiff marked “Payment

- in full for 503 Concord Pl & 1023 Old Town Rd,” rather than the \$14,908.58 that had accrued;
27. The Plaintiff declined partial payment and returned the check to the broker;
 28. Thereafter, the final transaction, Trinity Three Road, closed;
 29. Thereafter, the broker sent a check for \$13,151.08 to the Plaintiff marked “Payment for 503 Concord Pl/1023 Old Town Rd/249 Trinity Three Rd”, rather than the \$19,118.58 that had accrued;
 30. The Plaintiff again declined partial payment and returned the check to the broker;
 31. The broker contended that the difference between the \$19,118.58 accrued and the \$13,151.08 tendered was for “necessary client services, clerical and administrative work carried out at the discretion of the broker” pursuant to paragraph 13 of the agreement;
 32. The amount tendered by the broker was approximately 70% of the total commissions accrued;
 33. The broker justified withholding approximately 30% of the commissions accrued by itemizing 330 emails, 122 text messages, and 54 phone calls on the three transactions that were originally scheduled to close within three weeks of the termination of the broker-salesperson agreement;
 34. In addition to tendering less than 100% of the commissions accrued on the three transactions, the broker also deducted unauthorized “transaction fees” on 56 of the Plaintiff’s 58 transactions;
 35. While the broker explained to the Plaintiff that transaction fees were for his assistant, the broker testified that he charged the Plaintiff transaction fees “to make

sure that all legal requirements [were] satisfied.”

LAW

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 and to deny the motion when either the evidence yields more than one inference or its inference is in doubt. *Estate of Carr*, 379 S.C. at 38, 664 S.E.2d at 86. The plain and ordinary meaning of inference is a “conclusion reached by considering other facts and deducing a logical consequence from them.” *Inference*, Black's Law Dictionary (11th ed. 2019).

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*, 379 S.C. at 38, 664 S.E.2d at 86. Given the evidence presented to the jury, and considering the jury's determination that the brokerage should not retain most of the accrued commissions, it was reasonably possible that the jury could have returned a verdict for the Plaintiff. Therefore, even if the Court was not persuaded on the Plaintiff's SCUTPA and tortious interference causes of action, it was inappropriate for the Court to grant a directed verdict.

ARGUMENT

UNFAIR TRADE PRACTICES

As set forth in *Estate of Carr*, to recover in an action under the SCUTPA, the 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). S.C. Code Ann. § 39-5-10-560 (Supp.2007).

The broker did not challenge that the first element, the trade and commerce element, was

satisfied. The broker admitted that he was a real estate investor and broker who deals in buying and selling real property to businesses and consumers.

The second element 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). “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.

The broker admitted that he drafted the broker-salesperson agreement, policy manual, and commission schedule. He admitted that he has used these documents since 2015 and that he has used them in connection with hiring approximately 25 agents. The broker further admitted that he had not read through the documents and could not say whether the transaction fees were mentioned in them, acknowledging that the first time that a new agent would learn of these fees in writing would be when the agent was entitled to receive commission on her first transaction.

The Plaintiff demonstrated actual repetition of the broker's oppressive conduct on her three transactions. She also demonstrated that the company's procedures of having an employee sign an agreement suggesting that his or her commissions would not be divested upon departure from the brokerage, only to have the brokerage make deductions for “necessary” client services, has the potential for repetition. Whether the broker's emails, text messages, and phone calls after the Plaintiff's resignation constituted “client services” or were “necessary” was an issue of fact that should have been decided by the jury.

Moreover, the Plaintiff demonstrated that the broker deducted unauthorized “transaction fees” from her and every other agent on serial occasions “to make sure that all legal requirements

were satisfied.” The jury may also have deemed charging of transaction fees to the Plaintiff and other agents for the unauthorized practice of law to be unfair or deceptive.

An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. *deBondt*, 342 S.C. at 269, 536 S.E.2d at 407. A deceptive practice is one which has a tendency to deceive. *Id.* “Even a truthful statement may be deceptive if it has a tendency to deceive. *Id.* The unauthorized practice of law is a felony pursuant to S.C. Code Ann. § 40-5-310, and it is axiomatic that acts that are deemed felonies are offensive to public policy.

Liberally construing the facts in her favor, it would have been reasonably possible for the jury to return a verdict in favor of the Plaintiff on the SCUTPA cause of action. The jury reasonably could have concluded that the broker had interfered with the transactions and “padded his time” in an effort to justify withholding 30% of the Plaintiff’s commissions. *See Barnes v. Jones Chevrolet Co., Inc.*, 292 S.C. 607, 358 S.E.2d 156 (1987) (concluding that padding bills for auto repair is an unfair trade practice).

Liberally construing the facts in her favor, the jury could have reasonably concluded that the broker had presented her with conflicting documents concerning her compensation. On the one hand, the broker provided her with a broker-salesperson agreement that never mentioned a “transaction fee” and which further indicated that she would not be liable to the broker for office help or expense (paragraph 9). On the other hand, the broker subsequently provided the Plaintiff with an agent commission worksheet when her first commission was paid four weeks later, automatically deducting from the Plaintiff’s commission a \$50 fee that the broker explained was for his assistant. *See Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (2004) (the practice of having customers sign both an unconditional sales contract and a conditional bailment

agreement are patently unfair and deceptive acts.)

The broker admitted that he currently has 11 salespersons working for him. The brokerage charges everyone but the broker a \$50 transaction fee on every transaction.

Whether an act or practice is unfair or deceptive within the meaning of the SCUTPA depends upon the surrounding facts and the impact of the transaction on the marketplace. *deBondt*, 342 S.C. at 269, 536 S.E.2d at 407. The SCUTPA should not be construed to increase a plaintiff's burden of proving liability since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to prove than it would be under common law principles. *Id.* at 270, 536 S.E.2d at 407.

Four clients of the brokerage came forward to testify about how the broker's exclusion of the Plaintiff from their transactions affected them. One testified that she spent \$2,000 on Airbnb rentals and hotels and, once her savings were depleted, slept on a mattress on the floor of the house she was selling as a result of the broker's involvement. The same witness testified that the Plaintiff represented her in a purchase transaction that was contingent upon the sale of her house. A reasonable jury could infer that the broker's repeated delays and announcement of closing dates that had never been agreed upon were retaliatory acts intended to burden the Plaintiff's clients and prevent the Plaintiff from receiving a commission.

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. All that a Plaintiff must show is some evidence relating to the potential for public harm.

This Court relied upon certain language in *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) for the proposition that it was the legislature's intent to limit the application of the SCUTPA to only those unfair or deceptive acts or practices in the conduct of trade or commerce which affect the public interest. As explained in *Barnes, supra* (decided by the South Carolina Supreme Court five months after *Noack*), unfair or deceptive acts with the potential for repetition are deemed to have an impact on the public interest.

INTERFERENCE

As set forth in his email to the Plaintiff (Exhibit 8), the broker acknowledged that the Plaintiff “had the relationship” with each client and further acknowledged that he was “looking for the Plaintiff to keep the wheels on the bus and be the liaison with the client.” Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller each testified that they never met or had any contact with the broker in connection with their transactions until he called them to tell them that he was taking over.

The Plaintiff was a third-party beneficiary of the contracts between the buyers and the sellers on the pending transactions. The fundamental purpose of the broker-salesperson agreement was captured in paragraph 4: “to sell any and all real estate listed... to the end that each of the parties hereto may derive the greatest profit possible.”

Paragraph 75 of the Second Amended And Supplemental Complaint alleged that the broker diverted or took away ongoing or prospective business or contractual rights from the plaintiff, which methods are not within the privilege of fair competition. The broker admitted

that he collected 100% of the commissions.

Paragraph 76 further alleged that the broker's interference was for an improper purpose or the broker's method of interference was improper under the circumstances. By pushing the Plaintiff out of her pending transactions and denying the Plaintiff contact with the clients, the broker was able to pad his timesheets so as to assert a claim for 30% of the Plaintiff's accrued commissions.

"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 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 (2002). "What is actionable is the luring away, by devious, improper and unrighteous means, of the customer of another." *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 563 A.2d 31, 36 (1989).

The broker admitted that he contacted Mrs. Levine, Ms. Collins, Mr. Christian, and Ms. Miller (and all of the other agents, lenders, and closing attorneys) to tell them that the Plaintiff was no longer associated the brokerage without telling the Plaintiff in advance. After contacting these parties, he led the Plaintiff to believe that she still had a relationship with the brokerage and directed her to perform various tasks on the pending transactions. (Exhibit 8).

By prohibiting the Plaintiff from communicating with her buyers and sellers, the broker diverted commissions earned by the Plaintiff and padded his time to justify withholding 30%. The jury should have been allowed to decide whether or not the broker lured away the Plaintiff's buyers and sellers by devious, improper and unrighteous means.

CONCLUSION

The Court has the power to grant a new trial for prejudicial errors committed during the course of the trial. If, after the verdict and upon reflection the Court determines that there was an error, properly noted by counsel at the time, in the admission or exclusion of evidence, or the instructions, or in other aspects of the trial, the Court should order a new trial not only as a matter of fairness, but also to prevent a useless appeal which will often result in a re-trial.

Harry M. Lightsey & James F. Flanagan, South Carolina Civil Procedure 380 (2nd ed. 1985).

Based upon the foregoing, the Plaintiff moves for a new trial.

STUDEMAYER LAW FIRM, P.C.

/s/ J. Gregory Studemeyer

J. Gregory Studemeyer

S.C. Bar # 5416

7478 Carlisle Street

P.O. Box 1014

Irmo, S.C. 29063

(803) 393-4399

Attorney for the Plaintiff

Irmo, South Carolina
August 2, 2023

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
Brandi Clarkson,
Plaintiff,
v.
J. King Real Estate, LLC, and Jason Ernest King,
Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S
MOTION FOR NEW TRIAL**

This matter was tried 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 for New Trial ("Motion") should be denied.

STANDARD OF ANALYSIS

On the morning of July 26, 2023, Plaintiff asked this court to grant her oral motion under Rule 59(e), SCRPC, and reconsider or alter the grant of Defendants' motion for directed verdict. The court correctly denied Plaintiff's request. The analysis and relief sought in the instant Motion mirrors the argument Plaintiff raised on the last day of trial.

Specifically, Plaintiff asks that this court, pursuant to Rule 59(e), SCRPC, 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), SCRPC, as it does not invoke either Rule 50(b), SCRPC, 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.)

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 Env'tl. 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).

ARGUMENT

A. The Court properly granted Jason Ernest King's Motion for Directed Verdict on Plaintiff's claim for Tortious Interference with Prospective Contractual Relations.

Defendant Jason Ernest King ("Mr. King") is the broker-in-charge and sole member of Defendant J. King Real Estate, LLC ("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.

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)).

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.) 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. 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.

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)). Plaintiff presented no sufficient evidence at trial of wrongful interference of a contract *of hers*, whether ongoing or prospective, 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.

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.

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).

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, 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). 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). 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). 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).

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.

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). 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. 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.

Finally, 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).

The only reasonable 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 JKRE's clients was under the Broker-Salesperson Exhibit entered into evidence as Exhibit 1 and the documents attached to or referenced in it. 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), SCRPC, 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.

B. The Court properly granted Defendants' Motion for Directed Verdict on Plaintiff's claim for violation of the South Carolina Unfair Trade Practices Act.

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. 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.

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.

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. 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. The parties also stipulated into evidence: (1) 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 (2) 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." The undisputed evidence 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.)

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.) 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.

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. 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).

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 commercial agreement – even if it has been repeated or is capable of repetition – is insufficient to establish a claim under SCUTPA.

In S.C. Code Ann. § 39–5–20(b), the 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)). The United States District Court for the District of South Carolina has repeatedly 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)).

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 Plaintiff did not receive her contractual expectations. 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).

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.”)

In Columbia E. Assocs. v. Bi-Lo, Inc., 299 S.C. 515, 386 S.E.2d 259 (Ct.App.1989), 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.

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.

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.

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.

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.

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.

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)). 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.”

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.” 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.”)).

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

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Plaintiff’s request for reconsideration under Rule 59(e), SCRCF and a new trial be denied in its entirety. No judgement

has been entered into the record as of the filing of this Memorandum. However, as any judgment would not be final until the court's denial of the instant Motion, Defendants respectfully request that they be afforded TEN (10) DAYS from the date of the entry of the court's denying the Plaintiff's Motion for New Trial to submit an affidavit in support of its fees and costs in accordance with Rule 54(d), SCRCP, S.C Code Ann. §§ 15-37-10 to 220, and S.C. Code 15-36-10, et. seq.

Respectfully submitted,

s/ Shaun C. Blake
Shaun C. Blake, Esq. (S.C. Bar # 76349)
ROGERS LEWIS JACKSON & MANN, LLC
1901 Main Street, Suite 1200
Columbia, SC 29201
Phone: 803-256-1268
Fax: (803)252-3653
sblake@rogerslewis.com

Attorneys for Defendants

August 7, 2023

ELECTRONICALLY FILED - 2023 Aug 07 11:19 PM - LEXINGTON - COMMON PLEAS - CASE#2020CP3202477

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Brandi Clarkson,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2020-CP-32-02477

**JASON KING'S NOTICE OF MOTION
AND VERIFIED MOTION FOR
AWARD OF COSTS AND
REASONABLE ATTORNEYS' FEES**

To: The Hon. Donald B. Hocker and the Plaintiff named above:

On September 18, 2023, the Hon. Donald B. Hocker denied Plaintiff's post-trial Motion for New Trial and granted all parties until September 28, 2023, to submit all post-trial motions for fees and costs. Therefore, Jason King, by and through his undersigned counsel, hereby moves for the issuance of an Order awarding him costs and reasonable attorneys' fees under applicable South Carolina law as set forth hereinbelow.

GROUND FOR MOTION

Plaintiff initiated this lawsuit in July 2020 claiming that J. King Real Estate, LLC, ("JKRE") owed her commissions on six (6) residential real estate commissions. In response to JKRE's motion to dismiss that Complaint, Plaintiff filed a Motion to serve a more detailed Amended and Supplemental Complaint on October 2, 2020, which reduced the number of commissions she was pursuing, added a tort claim against JKRE, added additional allegations about a transactional fee that Defendant deducted from Plaintiff's commissions on certain closings, and attached exhibits A through K to the Complaint. In response, JKRE consented to the entry Order allowing Plaintiff to amend her complaint and mooted its Motion to Dismiss.

On January 12, 2022, this case was placed on February 14, 2022, trial roster. In response, on February 4, 2022, Plaintiff filed a motion to amend her Complaint a second time – this time to

add Jason King ("Mr. King") as a party, to drop Plaintiff's tort claim against JKRE, and to add claims for tortious interference with prospective contract and violations of the South Carolina Unfair Trade Practices Act against Mr. King. JKRE opposed the motion as spurious and an improper delay of the trial of the case.

Likewise, Mr. King opposed Plaintiff's Motion to Amend to add him to this action. However, on August 18, 2022, the court entered an order permitting Plaintiff to file a Second Amended Complaint. Mr. King denied liability in his Answer to the Second Amended Complaint, conducted the deposition of Plaintiff to determine whether there was any merit at all to the claims asserted against him, and successfully obtained a motion for directed verdict on all claims against him at the trial of this case against him. Plaintiff's post-trial efforts to overturn the court's decisions at trial have been unsuccessful.

1. Taxable costs allowed as of course to Jason King under Rules 54(d) & (e), SCRPC.

Mr. King prevailed on all claims asserted against him at trial. Therefore, he is entitled to recover from Plaintiff all taxable costs as provided in Rule 54(d) & (e), SCRPC and S.C. Code Ann. § 15-37-10 to 15-37-40. As set forth in detail in the Verified Declaration by Shaun C. Blake, Eq. of Costs and Attorneys' Fees filed in support of this Motion, which is incorporated herein by reference, the total taxable costs Mr. King is entitled to recover is \$1,931.77.

2. Reasonable Attorneys' Fees sought by Jason King under Rule 54(e)(1), SCRPC and S.C. Code Ann. § 15-36-10(C)(1)(c).

In response to his being added as a party ten (10) days before this matter was subject to trial in February 2022, Mr. King prayed for an award of reasonable attorneys' fees under the South Carolina Frivolous Proceedings Act, S.C. Code Ann 15-36-10, et seq in his Answer to the Plaintiff's Second Amended Complaint. At his first opportunity to do so, Mr. King prevailed on

all claims against him as a matter of law because the Plaintiff failed to present any evidence at trial that would permit the jury to draw an inference that she might possess a meritorious claim against Mr. King.

S.C. Code Ann. § 15-36-10(C)(1) states: “At the conclusion of a trial and after ... a case has been dismissed by a directed verdict, ... upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.” Mr. King contends that Plaintiff’s claim against him meet the statutory definition of a “frivolous” claim in violation of S.C. Code Ann. § 14-36-10(C)(1)(c) in two ways. First, this court has resolved that Plaintiff failed to present any evidence that could create an inference of liability against Mr. King for tortious interference with a prospective contract or violation of the SCUTPA. Given the absence of any prospective contract of any kind, or the evidence of any dispute other than the contractual dispute between JKRE and Plaintiff, her claims against Mr. King were never “reasonably founded in fact.”

Second, Plaintiff made no effort to add Mr. King to this litigation for nearly 18 months despite always knowing that he was the owner of J. King Real Estate, LLC and was the person she dealt with directly on her contractual matters with the brokerage firm. Instead, no motion to add Mr. King was made until after discovery was conducted, mediation was unsuccessfully completed, dispositive motions were resolved, the case was transferred to the trial roster, and the case ten (10) days before being subject to called for trial at the February 14, 2022 roster meeting. This, coupled with the absence of any supporting facts, demonstrates that Mr. King’s addition to this case “was interposed merely for delay,” rendering the claims against him frivolous under S.C. Code Ann. § 14-36-10(C)(1)(c). Lollis v. Dutton, 421 S.C. 467, 489, 807 S.E.2d 723, 734 (Ct. App. 2017).

Therefore, the total amount of reasonable attorneys’ fees and costs Mr. King is entitled to recover from Plaintiff due to her violation of S.C. Code Ann. § 15-36-10(C)(1)(c) is \$24,957.50.

CONCLUSION

For the reasons stated herein and as evidenced by the Verified Declaration by Shaun C. Blake, Eq. of Costs and Attorneys' Fees submitted herewith, Mr. King respectfully asks that he be awarded **\$1,931.77** in taxable costs and **\$24,957.50** in reasonable attorneys' fees.

s/ Shaun C. Blake
Shaun C. Blake, Esq. (SC Bar No. 76349)
ROGERS LEWIS JACKSON & MANN, LLC
1901 Main Street, Suite 1200
Post Office Box 11803
Columbia, SC 29211
Phone: (803) 256-1268
Facsimile: (803) 252-3653
Email: sblake@rogerslewis.com

September 28, 2023

| | INDEX OF WITNESSES | |
|----|-------------------------|-----------------------------|
| 1 | | |
| 2 | | |
| 3 | Jason King | |
| 4 | | Direct by G. Studemeyer 37 |
| 5 | Judy Levine | |
| 6 | | Direct by G. Studemeyer 86 |
| 7 | | Cross by S. Blake 89 |
| 8 | Crystal Collins | |
| 9 | | Direct by G. Studemeyer 107 |
| 10 | Darlene Miller | |
| 11 | | Direct by G. Studemeyer 113 |
| 12 | Zachary Christian | |
| 13 | | Direct by G. Studemeyer 119 |
| 14 | Brandi Clarkson | |
| 15 | | Direct by G. Studemeyer 127 |
| 16 | | Cross by S. Blake 198 |
| 17 | Jason King | |
| 18 | | Direct by S. Blake 300 |
| 19 | | Cross by G. Studemeyer 328 |
| 20 | | Redirect by S. Blake 347 |
| 21 | Daniel Lang | |
| 22 | | Direct by S. Blake 349 |
| 23 | | |
| 24 | Verdict | 407 |
| 25 | Certificate of Reporter | 411 |

Exhibits

All exhibits were pre-marked and entered as stipulations prior to trial.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 haven't taken one yet, if you can, just raise your
2 hand. That will be the cue for me to take a break.
3 So don't hesitate to do that if we go a little bit
4 longer than an hour and a half. Is the plaintiff
5 ready to call your first witness?

6 MR. STUDEMEYER: Yes, Your Honor.

7 THE COURT: Okay. You may proceed.

8 MR. STUDEMEYER: Jason King.

9 THE COURT: Okay. All right. Come around,
10 Mr. King.

11 THE CLERK: Do you swear or affirm the
12 testimony you give will be the truth, and nothing
13 but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Have a seat, please, sir. State
16 your full name for the record.

17 THE WITNESS: Jason Ernest King.

18 JASON ERNEST KING, being first duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STUDEMEYER

22 Q. You live in Irmo?

23 A. Yes, sir.

24 Q. And that's in Richland County?

25 A. Yes, sir.

1 Q. You're a real estate investor?

2 A. Yes, sir.

3 Q. And you also own a brokerage.

4 A. Yes, sir.

5 Q. Okay. You own J. King Real Estate.

6 A. Yes, sir.

7 THE COURT: (Inaudible.)

8 MR. STUDEMEYER: Oh, I'm sorry. I'll come
9 close to you.

10 BY MR. STUDEMEYER

11 Q. You established your real estate business in
12 2015?

13 A. Yes, sir.

14 Q. And you're the sole member and manager of that
15 company.

16 A. Yes, sir.

17 Q. You advertise real estate to buyers and
18 sellers.

19 A. Yes, sir.

20 Q. You offer real estate for sale.

21 A. Yes, sir.

22 Q. You sell real estate to businesses and
23 consumers.

24 A. Yes, sir.

25 Q. You have a website.

1 A. Yes, sir.

2 Q. You use that website for marketing.

3 A. Yes, sir.

4 Q. You also use that website to recruit
5 prospective agents.

6 A. Yes, sir.

7 Q. Since establishing your brokerage, you've hired
8 between 15 and 20 agents, right?

9 A. Yes, sir.

10 Q. Actually it's more than that now. How many
11 agents altogether have you hired?

12 A. Probably about 25 at this point.

13 Q. All right. Now you drafted a document entitled
14 Broker-Salesperson Agreement in 2015, correct?

15 A. Yes, sir.

16 Q. Okay.

17 THE COURT: Just so the record's clear, all of
18 the exhibits in this case have been agreed to in the
19 evidence from either the plaintiff or the defense,
20 correct?

21 MR. BLAKE: Your Honor, yes. We had stipulated
22 to the entrance of the exhibits.

23 THE COURT: Okay. All right. Very good.
24 Thank you.

25 MR. STUDEMAYER: Does the jury already have a

1 copy of the binder?

2 MR. BLAKE: The jury does not have a copy of
3 the binder. The witness has a copy.

4 MR. STUDEMEYER: Okay. All right. All right,
5 let's see. This is a copy that's up on the screen.
6 That is the Broker-Salesperson Agreement.

7 THE COURT: Can you see that okay, Mr. King?

8 THE WITNESS: Yes, sir. I can see what it is.

9 THE COURT: Okay.

10 BY MR. STUDEMEYER

11 Q. That's the agreement you drafted?

12 A. Yes, sir.

13 Q. Okay. Now Paragraph 5 of your agreement -- and
14 you have the same thing there in front of you?

15 A. No, sir.

16 THE COURT: Do you have an extra notebook, or
17 do you want me to share the Court's notebook with
18 him?

19 MR. BLAKE: I think Madam Court Reporter has
20 one in front of her. I thought it would be used for
21 witnesses.

22 THE COURT: Okay. All right. Can you part
23 with that Madam Court Reporter? Can you part with
24 that? Do you need that? You do. Okay. Okay.

25 BY MR. STUDEMEYER

1 Q. All right. Mr. King, Paragraph 5 of your
2 agreement refers to a policy and procedures manual,
3 correct?

4 A. Yes, sir.

5 Q. And you drafted a policy manual in 2015,
6 correct?

7 A. Yes, sir.

8 Q. Okay. And your policy manual is provided to
9 each agent on an annual basis.

10 A. Yes, sir.

11 Q. And you have provided copies of your policy
12 manual to about 25 agents?

13 A. Yes, sir.

14 Q. Okay. And your policy manual, and I believe
15 you have that in front of you. Now your policy
16 manual -- and this, this is what you're looking at.
17 The welcome letter?

18 A. Yes, sir.

19 Q. Okay. Just make sure -- I'm going to read a
20 part of your policy manual. Just confirm for the
21 jury, if you would, that I'm accurate.

22 Your policy manual includes a welcome letter
23 that states, quote, we value you as part of our team
24 and our relationship-based culture, and we want to
25 become our client's agents for life.

1 A. Where are you?

2 Q. Your welcome letter in the policy manual that
3 you drafted.

4 THE COURT: It will be Tab Number 2.

5 THE WITNESS: Okay. I see. I'm sorry.

6 BY MR. STUDEMEYER

7 Q. Is that what it says?

8 A. Yes, sir.

9 Q. Okay. So you know that the personal
10 relationship between an agent and a client is an
11 important part of the real estate business.

12 A. Yes, sir. Was that a question?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Okay. And you developed relationships with
16 clients as an agent yourself?

17 A. Yes, sir.

18 Q. And those relationships were important to you?

19 A. Yes, sir.

20 Q. And those relationships have resulted in repeat
21 business to you over the years.

22 A. Yes, sir.

23 Q. Okay. Now if you just go back to the
24 agreement, the Broker-Salesperson Agreement. And

25 I'm referring to Paragraph 6. Okay. I'll read,

1 I'll read it and you tell me if I'm right.

2 Paragraph 6 of your agreement says, quote, when
3 the salesperson shall perform any service hereunder
4 whereby a commission is earned, said commission
5 shall, when collected, be divided between the broker
6 and salesperson in which division the salesperson
7 shall receive a proportionate share as set out in
8 the commission schedule. That right?

9 A. Yes, sir.

10 Q. Okay. And you prepared a commission schedule,
11 didn't you?

12 A. Yes, sir.

13 Q. Okay. Okay. Hold that up if you would. It's
14 probably Exhibit E in your binder.

15 A. Three? I have them numbered.

16 Q. Oh, I'm sorry. Three then. Okay, we're on the
17 same page?

18 A. Yes, sir.

19 Q. Okay. Your -- you have used this commission
20 schedule at least 25 times, correct?

21 A. Yes, sir.

22 Q. All right. Now, let's do -- let's go back to
23 Paragraph 7 of the agreement. Your Exhibit
24 Number 1. All right. And I'm looking at
25 Paragraph 7. I'll read it. You tell me if I'm

1 right.

2 Quote, when the commission shall have been
3 collected from the party or parties for whom the
4 service was performed, said broker shall hold the
5 same in trust for a said salesperson and himself to
6 be divided according to the terms of this agreement.
7 Right?

8 A. Yes, sir. That's the second half of it.

9 Q. Okay. Now you have a trust account but you do
10 not hold an agent's commission in it.

11 A. No, sir.

12 Q. Okay.

13 A. A trust account is meant for earnest money.

14 Q. Okay. But you don't put an agent's commission
15 in a trust account.

16 A. No, sir.

17 Q. You just put it in your operating account.

18 A. Right. That would be illegal.

19 Q. Okay. In fact, you deposit all commissions in
20 your operating account.

21 A. Yes, sir.

22 Q. And you pay yourself a salary out of that
23 operating account.

24 A. Yes, sir.

25 Q. Okay. Let's look at Paragraph 9 of your

1 agreement. Tell me if I'm reading this correctly.
2 The salesperson shall not be liable to the
3 broker for office help or expense.
4 A. Where are you starting?
5 Q. Paragraph 9 of your agreement.
6 A. But you're halfway through the paragraph? Is
7 that where you're starting?
8 Q. What?
9 A. You said -- what did you start with? The
10 salesperson?
11 Q. (Inaudible).
12 A. Okay.
13 Q. Did I read that correctly?
14 A. You said, the salesperson.
15 Q. Shall not be liable to the broker for office
16 help or expense.
17 A. Correct.
18 Q. Okay. In other words, Brandi wasn't required
19 to pay for your secretary.
20 A. Correct.
21 Q. Okay. Now let's go to your policy manual
22 again. I think that's Number 2. And I'm looking at
23 Section 4, Paragraph 2-F, as in Frank, of your
24 policy manual. You with me?
25 A. Yes, sir.

1 Q. Okay. Tell me if I'm reading this correctly.
2 When a broker is licensed to supervise agents -- you
3 are licensed to supervise agents, right?

4 A. Yes, sir.

5 Q. Okay. When a broker is licensed to supervise
6 agents, a broker also has the following
7 responsibilities. You with me so far?

8 A. Yes, sir.

9 Q. F. Paying agents on the Thursday following the
10 closing. Is that right?

11 A. Yes, sir.

12 Q. Okay. And that's in the policy manual that you
13 prepared.

14 A. Yes, sir.

15 Q. Okay. Now let's go back to the agreement,
16 Paragraph 13?

17 A. Where are we going?

18 Q. Your Broker-Salesperson Agreement. In
19 Paragraph 13. All right. With me?

20 A. Yes, sir.

21 Q. Okay. I'll read it. You tell me if it's
22 accurate. This contract and the association created
23 hereby may be terminated by either party hereto at
24 any time upon notice given to the other. But the
25 rights of the parties to any commissions which

1 accrued prior to said notice shall not be divested
2 by the termination of this contract, except that the
3 commission of said salesperson on transactions in
4 process but not closed, may be subject to deductions
5 for necessary client services, clerical and
6 administrative work, which will be carried out at
7 the discretion of the broker. Is that right?

8 A. Yes, sir.

9 Q. You wrote that language.

10 A. Yes, sir.

11 Q. Okay. Now you signed this Broker-Salesperson
12 Agreement with Ms. Clarkson on May 31, 2018?

13 A. Yes, sir.

14 Q. Okay. And your commission schedule is also
15 signed by Ms. Clarkson on May 31, 2018.

16 A. Which one is the commission schedule? What
17 number is it?

18 THE COURT: Three.

19 THE WITNESS: Three. Yes, sir.

20 BY MR. STUDEMAYER

21 Q. All right. Now I'm going to read some language
22 from your commission schedule. Just tell me if I'm
23 accurate.

24 Salesperson/Broker -- now that refers to
25 Ms. Clarkson, right?

1 A. Yes, sir.
2 Q. Okay.
3 Salesperson/Broker will earn 70 percent of the
4 total commission including bonuses. Right?
5 A. Yes, sir.
6 Q. And then it goes on to say
7 Salesperson/Broker -- that's Ms. Clarkson, right?
8 A. Yes, sir.
9 Q. Will earn 100 percent of their commission once
10 the brokerage has earned \$20,000 for the calendar
11 year. Correct?
12 A. Yes, sir.
13 Q. All right. And what that meant was, once
14 Brandi put \$20,000 in your pocket, she was entitled
15 to 100 percent of her commissions going forward.
16 Correct?
17 A. Into J. King Real Estate.
18 Q. Okay. All right. Now, let's take a look at
19 this Agent Commission Worksheet. It should be -- I
20 think it's Number 4. Yeah, that's it. All right.
21 Now, you -- are you with me on this Agent Commission
22 Worksheet?
23 A. Yes, sir.
24 Q. Okay. And that's another one of the forms that
25 you prepared. Correct?

- 1 A. Yeah. The template for, yes. Yes, sir.
- 2 Q. Okay. All right. Now, your agents are
- 3 required to submit one of these forms to get their
- 4 paycheck, aren't they?
- 5 A. Yes, sir.
- 6 Q. All right. And you have used this form over a
- 7 hundred times?
- 8 A. Yes, sir.
- 9 Q. Okay. And you included a deduction, or a
- 10 transaction fee, on your template?
- 11 A. It's typed in there.
- 12 Q. Okay.
- 13 A. I didn't include it. But yes, we have all
- 14 agreed it's \$50 for the transaction fee.
- 15 Q. Okay. On your blank agent commission
- 16 worksheets that you distributed to your employees,
- 17 you already added a \$50 deduction on it.
- 18 A. No, sir.
- 19 Q. Okay. All right. This transaction fee was
- 20 never even mentioned in that Broker-Salesperson
- 21 Agreement was it?
- 22 A. I do not know.
- 23 Q. You drafted it.
- 24 A. Yes, sir.
- 25 Q. This lawsuit has been going on three years.

- 1 And you don't know?
- 2 A. I do not know.
- 3 Q. Okay.
- 4 A. Sorry.
- 5 Q. All right. Your transaction fee was never even
6 mentioned in your policy manual, was it?
- 7 A. I do not know.
- 8 Q. You have used this thing 25 times.
- 9 A. Yes, sir.
- 10 Q. And you still don't know.
- 11 A. I do not know.
- 12 Q. Okay. This -- your transaction fee was not
13 mentioned in this Agent Commission Worksheet
14 template, was it?
- 15 A. Say that again.
- 16 Q. The transaction fee.
- 17 A. Right.
- 18 Q. I'm sorry. Was not mentioned in the commission
19 schedule that you gave to Ms. Clarkson whenever you
20 hired her.
- 21 A. Correct.
- 22 Q. So the first time she ever saw anything about a
23 transaction fee was when she got paid the first
24 time.
- 25 A. We discussed it before that.

1 Q. Okay. Just listen to me.

2 A. Well, you said the first time that it was
3 mentioned. We discussed it prior to that.

4 Q. The first time you gave her anything in writing
5 about a transaction fee was long after she came to
6 work?

7 A. Yes, that's possible. Yes, sir.

8 Q. Okay. All right. Now, let's go back to that
9 transaction fee -- excuse me, the commission
10 schedule. I'm sorry, Agent Commission Worksheet.

11 THE COURT: Mr. Studemeyer, when you get to a
12 good stopping point, I want to take a little, short,
13 afternoon break. So I'm going to leave it up to you
14 when that good stopping point is, okay?

15 MR. STUDEMEYER: Okay. Well, why don't we do
16 that right now.

17 THE COURT: Okay, if you're good with that.

18 MR. STUDEMEYER: Yes, sir.

19 THE COURT: Then ladies and gentlemen, we're
20 going to take a short afternoon break. Go back to
21 the jury room, get yourself something to drink, use
22 the restroom if you need to, and we'll get you back
23 out shortly. Remember my previous instruction. No
24 discussion among yourselves about anything related
25 to this case. And we'll get you back out. Okay?

1 (WHEREUPON, the jury exited the courtroom
2 at 3:59 p.m.)

3 THE COURT: Feel free to get off the witness
4 stand, but you can't talk to anybody about your
5 testimony.

6 THE WITNESS: Okay.

7 THE COURT: All right. We'll take a short
8 break.

9 (WHEREUPON, the Court took a recess.)

10 (WHEREUPON, the jury entered the courtroom
11 at 4:15 p.m.)

12 THE COURT: Let the record reflect the jury is
13 back in. You may proceed.

14 MR. STUDEMEYER: Thank you, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. STUDEMEYER

17 Q. I think we were talking about this agent
18 commission worksheet just before we broke. And,
19 again, this is a form, a template that you prepared.

20 A. Yes, sir.

21 Q. All right. This Agent Commission Worksheet,
22 this one was filled out by Ms. Clarkson, right?

23 A. Correct.

24 Q. Okay. She wrote in the name of the -- her
25 name, and the property address, and who the buyer

1 was, and all that kind of stuff --

2 A. Yes, sir.

3 Q. -- right? And tell the jury, if you would,
4 what this -- what that says and who wrote it.

5 A. Capped. I wrote that.

6 Q. Okay. Now that capped -- let's see. That was
7 June 29, 2020?

8 A. Yes, sir.

9 Q. All right. And so what that means is that
10 during the first six months of 2020, she met her
11 goal so that she could cap, right?

12 A. Yes, sir.

13 Q. And what that meant was that after that
14 transaction she was entitled to 100 percent of her
15 commissions. Do you agree with that?

16 A. Yes, sir.

17 Q. Okay. Now, 2020 was three years ago, just at
18 three years ago now, correct?

19 A. Yes, sir.

20 Q. And in 2020 we had been in -- June of 2020 we
21 had been dealing with COVID for about three or
22 four months. Do you agree with that?

23 A. I guess so. It's hard to remember, but maybe.
24 Yes, sir.

25 Q. Okay. And when we began dealing with COVID,

1 the government started giving away money. Do you
2 remember that?

3 A. Yes, sir. I guess so.

4 THE COURT: I may have an objection. At least
5 Mr. Blake is standing.

6 MR. BLAKE: Yeah, Your Honor. I have an
7 objection. I'm not quite sure where we are going
8 with this, but we certainly don't have any evidence
9 about this issue that's been presented.

10 THE COURT: Can you lay a foundation for it?

11 MR. STUDEMEYER: I can do that, Your Honor.

12 THE COURT: Okay. Try to lay a foundation.
13 Certainly, Mr. Blake, if you want to renew your
14 objection, you feel free to.

15 MR. BLAKE: Thank you, Your Honor.

16 BY MR. STUDEMEYER

17 Q. Mr. King, by the -- June 29th of 2020, the real
18 estate business was good. You agree with that?

19 A. Yes, sir.

20 Q. 2020 was probably the best year you ever had,
21 wasn't it?

22 A. No, sir.

23 Q. Okay. But it was a good year.

24 A. Yeah, up until that point that was the best
25 year I had. Yes, sir.

1 Q. And during that period of time people were
2 standing in line to buy houses.

3 A. Yes, sir.

4 Q. Okay. And people were paying more than the
5 asked price to get a house.

6 A. Okay.

7 Q. You agree with that?

8 A. In some cases. Yes, sir.

9 Q. Okay. All right. So at that point you didn't
10 really need a top producer like Ms. Clarkson
11 anymore, did you?

12 A. I always need my top producers.

13 Q. Okay. Other less qualified real estate agents
14 could sell houses to people when they are standing
15 in line to buy. Do you agree with that?

16 A. Maybe not the right way, but yes, sir. Yes,
17 sir.

18 Q. All right. Now, this document we're looking at
19 up on the screen now involving the, the -- oh, the
20 Pope transaction. You, you became annoyed with
21 Ms. Clarkson over that transaction, didn't you?

22 A. Yes, sir.

23 Q. Okay. And you became annoyed because a closing
24 attorney wrote a check for your company for a lower
25 amount than the company was entitled to, correct?

1 A. That's not why I was annoyed, but that is what
2 happened.

3 Q. Okay.

4 A. Yes, sir.

5 Q. All right. Now, your relationship with
6 Ms. Clarkson unraveled fairly quickly after this
7 transaction.

8 A. That was not the start of it, but yes, sir.

9 Q. Okay. Now, you sent her, you sent her an email
10 on July the 2nd, 2020. Do you remember that?

11 A. No, sir. I do not.

12 Q. All right. Well, let's take a look.

13 THE WITNESS: It's Number 6.

14 BY MR. STUDEMEYER

15 Q. Okay. It's Exhibit Number 6. You have that?

16 A. Yes, sir.

17 Q. Okay. Now, I'm going to read a portion of this
18 email, and you just tell me if I'm accurate, okay?

19 A. Yes, sir.

20 Q. This is from, from you to Brandi Clarkson.
21 It's dated July the 2nd, 2020, at 7:26 p.m., right?

22 A. Yes, sir.

23 Q. And you start off by saying, Brandi, attached
24 are the revised commission sheets and your checks
25 are in your office. Congrats on capping. Two

1 exclamation points. That is an amazing job.

2 Halfway through the year and with all the COVID
3 issues -- that's what you wrote?

4 A. Yes, sir.

5 Q. Okay. All right. Now another portion of your
6 email -- let me paraphrase for a second. You
7 expressed your concern about Ms. Clarkson's
8 professionalism. You agree with that?

9 A. Yes, sir.

10 Q. Okay. Now, the final paragraph of your email
11 to Ms. Clarkson said this. Tell me if I'm right
12 about this.

13 I say these things not to be mean or belittle
14 you. I say them because I know that you have a
15 talent for real estate and can really be great and
16 an asset to J. King Real Estate. But I always have
17 to weigh an asset versus the liability they bring.
18 That's what you said to her.

19 A. Yes, sir.

20 Q. Okay. And that upset her.

21 A. Is that a question? Yes, I think so.

22 Q. Yeah. And she wanted to come talk to you about
23 what you had written to her, right?

24 A. Yes, sir.

25 Q. Okay. And she did come to see you about a week

1 later.

2 A. Yes, sir.

3 Q. Okay. Now, when Brandi came to see you on July
4 the 9th, she told you that she was done. She was
5 moving on. Correct?

6 A. Yes, sir.

7 Q. Okay. And she had these six transactions
8 pending?

9 A. Yes, sir.

10 Q. Okay. And she had a financial interest in
11 those transactions.

12 A. Yes, sir.

13 Q. And she still has a financial interest in those
14 transactions.

15 A. That's for the jury to decide.

16 Q. Okay. You don't think she does.

17 A. I believe she did some work on these
18 transactions. Yes, sir.

19 Q. Okay. So she has a financial interest in those
20 transactions?

21 A. Yes, sir.

22 Q. Okay. All right. Now, when Brandi came to see
23 you on July the 9th, you asked her how she wanted to
24 handle those pending transactions.

25 A. Yes, sir.

1 Q. Okay. And she suggested taking them with her,
2 right?

3 A. Yes, sir, which you can't do.

4 Q. And you told her she could not take those
5 transactions?

6 A. Correct.

7 Q. Okay. Now, at that point you didn't believe
8 that you had to pay her anything.

9 A. If she was going to leave the company, correct.

10 Q. Okay. You believed that Paragraph 13 -- let's
11 put that back up there. Paragraph 13 of the
12 agreement. That's Number 1.

13 You believed that Paragraph 13 of the agreement
14 you drafted gave you the right to withhold
15 commissions from Brandi upon her termination.

16 A. Yes, sir.

17 Q. Even though it said any commission that's been
18 earned will not be divested?

19 A. In one paragraph it does say that. Yes, sir.

20 Q. Okay. All right. Now, this discussion between
21 you and Brandi became a little bit heated, didn't
22 it?

23 A. Yes, sir.

24 Q. You raised your voice at her, didn't you?

25 A. Yes, sir. We both did.

1 Q. During that meeting she told you that she was
2 willing to finish up these transactions.

3 A. Yes, sir.

4 Q. And you were willing to let her do that.

5 A. Correct.

6 Q. Now, Brandi came back to see you the next day,
7 correct?

8 A. Yes, sir.

9 Q. And you had prepared a termination agreement,
10 correct?

11 A. At her request.

12 Q. Okay. Let's see if we can pull that up. Do
13 you have it, Jason?

14 A. Number 7, I believe?

15 MR. BLAKE: Six.

16 THE WITNESS: Oh, yes, sir. Sorry, six.

17 BY MR. STUDEMAYER

18 Q. Now this -- according to this termination
19 agreement that you drafted, you proposed to take 30
20 percent of her commissions?

21 A. At her suggestion. Yes, sir.

22 Q. She had earned 100 percent, correct?

23 A. No, sir.

24 Q. Well, is that what that agreement says that you
25 drafted?

1 A. We haven't -- we hadn't received payment for
2 it. We hadn't earned it. We hadn't finished the
3 job yet.

4 Q. Okay. Well, certainly as of today all of those
5 commissions have found their way into your bank
6 account.

7 A. Yes, sir.

8 Q. And that -- it all happened within a couple of
9 months of her leaving.

10 A. Yes, sir.

11 Q. Okay. So that's not a question?

12 A. No, sir.

13 Q. Okay. All right. Now, at this time, July
14 9th and July 10th, at that point in time you had
15 no interest in getting involved in any of her
16 transactions.

17 A. I had to legally (inaudible) interests, and I
18 was already involved in them.

19 Q. Well, it was -- your intention was to not
20 participate in those transactions.

21 A. Any more than we already were. Yes, sir.

22 Q. Okay.

23 A. My intention was to let her finish the deals.

24 Q. Okay. And you had no intention of ever going
25 to any of those closings.

- 1 A. Not unless she left the brokerage or something
2 changed. Yes, sir.
- 3 Q. Okay. And she was not going to be associated
4 with the brokerage any longer under your termination
5 agreement, but you were going to pay her 70 percent
6 instead of a hundred percent?
- 7 A. Correct.
- 8 Q. Okay. Now she declined to sign that agreement.
- 9 A. Correct.
- 10 Q. And you were not willing to change it.
- 11 A. Correct.
- 12 Q. Okay. She left, right?
- 13 A. Yes, sir. She was very upset.
- 14 Q. She left your office?
- 15 A. Yes, sir.
- 16 Q. All right. And when she left, what you did
17 without telling her was, you called up every one of
18 those clients, didn't you?
- 19 A. I don't believe, sir, I did that day. Maybe I
20 did. Maybe.
- 21 Q. You admit you called all those clients?
- 22 A. Maybe I did. Yes, sir.
- 23 Q. And you called all the lawyers who were serving
24 as closing attorneys?
- 25 A. Probably. Yes, sir.

- 1 Q. And you called all the lenders who were
2 involved?
- 3 A. Yes, sir.
- 4 Q. And you called all the agents on the other side
5 of the transaction.
- 6 A. To get up to speed. Yes, sir.
- 7 Q. Okay. And one of the clients that you called
8 was Brandi's elderly aunt who was sitting right here
9 a few moments ago.
- 10 A. Yes, sir.
- 11 Q. Okay. And you knew that she became very upset.
- 12 A. Yes, sir.
- 13 Q. Now, you received an email from Brandi on July
14 the 11th with an update on two of the transactions,
15 correct?
- 16 A. Maybe.
- 17 Q. See if you can find it in there.
- 18 A. Okay. Yes, sir.
- 19 Q. All right. I'll read it to you. You tell me
20 if I'm accurate. This is from Brandi Clarkson to
21 Jason King, July the 11th. That was a Saturday,
22 correct?
- 23 A. Yes, sir.
- 24 Q. And it was Saturday, July 11th, 2020, at
25 12:47 p.m. And it goes, right now we -- this is

1 Brandi talking to you, right?

2 Right now we plan to close 503 Concord Place
3 Road on 7/28, and 1023 Old Town Road on 7/31 or
4 before. This is not concrete. It was just
5 discussed on Friday. The addendums will be done
6 first of this week and I will send them to you once
7 executed.

8 Additionally, you calling all the clients is
9 freaking them out to the point that they are all
10 considering terminating contracts completely. You
11 agreed that you would allow me to finish these
12 transactions provided I give you updates, which I am
13 doing. Please stop trying to undermine my
14 relationships with the clients of contracts I wrote.
15 It will only hurt you in the long run, and it is not
16 coming across as a good look for you or J. King Real
17 Estate. Is that accurate?

18 A. Yes, sir.

19 Q. Okay. Now, the reason Brandi was upset with
20 you was because you were calling all these people
21 without telling her.

22 A. If you say so.

23 Q. Well, what do you say?

24 A. I think she was threatening me at that point.

25 Q. Oh, let's -- I'm not talking about anybody

1 threatening anybody. What I'm asking you is do you
2 agree that you were calling all the people she was
3 dealing with without telling her?

4 A. No, sir.

5 Q. You disagree?

6 A. No, sir. I'm sure she knew what was going on
7 with the transactions just as much as we did. The
8 clients belong to J. King Real Estate and I have a
9 responsibility --

10 Q. But your --

11 THE COURT: Let him finish his answer.

12 MR. STUDEMEYER: Okay.

13 THE WITNESS: I had the responsibility to call
14 each of the clients, each of the lenders, and find
15 out what was going on with the process.

16 BY MR. STUDEMEYER

17 Q. All right. The question that I asked you was,
18 before you called Brandi's aunt, Ms. Levine, did you
19 tell Brandi --

20 A. No.

21 Q. -- that you were calling her aunt?

22 A. No, sir. I did not.

23 Q. Before you called Brian Simon, one of the
24 lenders, did you tell Brandi, I'm going to call this
25 lender and let him know what's going on?

1 A. No, sir.

2 Q. Okay. Did you call the -- did you call
3 Ms. Miller -- that before you called Ms. Miller, did
4 you tell Brandi what you were going to do?

5 A. No, sir.

6 Q. And how about Zachary Christian? When you
7 called them you told them there was now a legal
8 situation; that he was not to speak with her
9 anymore. You didn't tell her before you did that,
10 did you?

11 A. No, sir.

12 Q. Okay. And Ms. Collins, you contacted
13 Ms. Collins. Did you tell Brandi before you called
14 her, before you called Ms. Collins, I'm going to
15 call Ms. Collins and tell her there's a legal
16 situation going on?

17 A. No, sir.

18 Q. Okay. Now, you have an email up there from you
19 and this (inaudible) is dated July 11th?

20 A. Yes, sir.

21 Q. All right. Let me read this out loud and you
22 tell me if I'm accurate. This is from you to Brandi
23 that same Saturday afternoon, July the 11th, 2020,
24 at 1:29 p.m. You wrote, Brandi, I do not want to be
25 involved any more than I need to be. Legally I have

1 to be involved. You have the relationship. I'm
2 looking to you to keep the wheels on the bus and be
3 the liaison with the client. If everything goes
4 smoothly and the client is happy with you and J.
5 King Real Estate, then you get your cut of the
6 commission.

7 I had great conversations with the clients and
8 everyone involved in the transactions. I only spoke
9 well of you, and expect you to do the same. No one
10 seemed uneasy. Well, nobody, but Ms. Levine, right?

11 A. She did not at the time.

12 Q. All right. Okay. And Zachary Christian. He
13 wasn't exactly happy either, was he?

14 A. He seemed fine also. He wanted me to sign a
15 piece of paper stating that I would let Brandi keep
16 100 percent of her commission.

17 Q. Okay.

18 A. I asked him where that was coming from and he
19 said from Brandi.

20 Q. Now, again, you were telling Brandi that you
21 were looking to her to keep the wheels on the bus,
22 at the same time you were contacting all these
23 people she was dealing with. Right?

24 A. Yes, sir.

25 Q. Okay. Did you intend to mislead her?

1 A. No, sir.

2 Q. Did you intend for her to believe that she
3 still had a relationship with your company?

4 A. No, sir.

5 Q. All right. Let me, let me ask you again. At
6 that time period we're talking about, July the 11th
7 when you were telling Brandi one thing, keep the
8 wheels on the bus, and telling her clients something
9 different, did you intend for Brandi to believe that
10 she still had a relationship with your company?

11 A. I'm not sure what you're asking. As far as a
12 legal relationship, a business relationship? I
13 can't just drop the clients and not talk to them. I
14 have to talk to each one of them and explain what's
15 going on, that Brandi's leaving the company. And I
16 did expect for Brandi to keep the process smooth as
17 a liaison and speak with each of the clients. So a
18 relationship, yes. Not a client legal relationship,
19 but a personal relationship.

20 Q. All right.

21 A. And to keep everything as a smooth transition
22 from her to the brokerage J. King Real Estate.

23 Q. Okay. So do you agree with me that you were
24 telling her customers one thing --

25 A. Clients. Well, her customers but our clients.

1 Q. -- okay. But you were telling Brandi something
2 different?

3 A. I don't believe so.

4 Q. Okay. All right. Now, you received a letter
5 from me on July the 13th, correct?

6 A. Yes, sir.

7 Q. You have that in front of you?

8 A. Yes, sir.

9 Q. Let me read it. You tell me if I'm accurate.
10 Dear Mr. King, I represent Ms. Brandi Clarkson in
11 connection with certain claims against you. These
12 claims arise out of a Broker-Salesperson Agreement
13 with you. I'm hopeful that common sense will
14 prevail and that this matter will be resolved
15 amicably.

16 It is my understanding that Ms. Clarkson has
17 earned \$36,927.50 in commissions on transactions
18 which have not yet closed. She is ready, willing,
19 and able to take all necessary measures to complete
20 these closings. I understand that you wish for her
21 to accept substantially less than what you owe her,
22 suggesting that the difference is for necessary
23 client services, and clerical and administrative
24 work to be carried out at your discretion in
25 retaliation for exercising her right to terminate a

1 relationship with you.

2 Simply put that dog won't hunt. I understand
3 the closings are tentatively scheduled for 503
4 Concord Place, 1023 Old Town Road. I also
5 understand that you are calling Brandi's clients as
6 well as the lenders, other agents, and builders and
7 interfering in her relationships with them. In
8 addition, you should know that whatever you put in
9 writing will always come back to haunt you.

10 If you don't already know, any competent lawyer
11 will tell you that South Carolina law prohibits
12 intentional interference with contractual
13 relationships and interference with prospective
14 economic advantage. Call it what you like but
15 Ms. Clarkson was the procuring cause for all of
16 these transactions. Your interference with her
17 expectation of payment for services rendered exposes
18 you to both actual and punitive damages.

19 As suggested at the beginning of this letter, I
20 am hopeful that common sense will prevail and that
21 this matter can be resolved amicably. All
22 Ms. Clarkson wants is to complete the transactions
23 that she procured, and be paid the commissions that
24 she has earned, and move on. It will never get any
25 cheaper than it is right now to conclude your

1 relationship with Ms. Clarkson in a professional
2 manner. If this matter can be resolved amicably,
3 please confirm that you will pay her 100 percent of
4 the commissions she has earned in a timely manner
5 upon the closing of each transaction. Is that
6 accurate?

7 A. That is what you wrote. Yes, sir.

8 Q. And you chose not to exercise common sense.

9 A. No, sir. I did use common sense.

10 Q. Okay. What you did was you retaliated,
11 correct?

12 A. No, sir.

13 Q. All right. You have an email in front of you
14 that's dated July the 14th?

15 A. Yes, sir.

16 Q. All right. Let me read it to you and you tell
17 us if it's accurate. This is from Jason King to
18 Brandi, Thursday, July 14th, at 9:09 a.m.

19 Brandi, due to the legal nature of our severed
20 business relationship you are no longer allowed to
21 have any communication with any of J. King Real
22 Estate's clients. Any communication will be viewed
23 as interfering with the transaction. We have
24 received notification of the transfer of your real
25 estate license to Fathom Real Estate and you cannot

1 legally work with two brokerages. That's what you
2 wrote.

3 A. Yes, sir.

4 Q. She couldn't even talk to her aunt.

5 A. Correct.

6 Q. Okay. Now, ultimately, after Ms. Levine --
7 after you called her she was upset, you ultimately
8 allowed Brandi to go to that Green Street closing
9 with her, correct?

10 A. Yes, sir.

11 Q. Okay. And you actually paid Brandi 100 percent
12 of the commission on the Green Street transaction.

13 A. Yes, sir.

14 Q. Except for that transaction fee.

15 A. Yes, sir.

16 Q. Okay. Now other than the transaction fee, you
17 paid her just like you said you would in that
18 agreement that's marked as Exhibit 1.

19 A. Yes, sir.

20 Q. One hundred percent after she put 20,000 bucks
21 in your pocket.

22 A. Say that again.

23 Q. You agreed to pay her 100 percent of her
24 commissions after she put 20,000 bucks in your
25 pocket.

- 1 A. In J. King Real Estate. Yes, sir.
- 2 Q. Okay. Now, after -- can we have the copy of
- 3 the check for Green Street? All right. Do you have
- 4 Exhibit Number 13 in front of you?
- 5 A. Yes, sir.
- 6 Q. Okay. This is your -- Exhibit Number 13 is
- 7 your check, right?
- 8 A. Yes, sir.
- 9 Q. And you wrote it?
- 10 A. Yes, sir.
- 11 Q. And you made it out to Brandi Clarkson for
- 12 \$3,610?
- 13 A. Yes, sir.
- 14 Q. And then down there on the lower left-hand
- 15 corner you wrote, full payment for
- 16 520 Green Street -- actually it looks like you wrote
- 17 some above the line and some below. And I believe
- 18 this is supposed to say full payment of commission
- 19 for 520 Green Street, West Columbia.
- 20 A. Yes.
- 21 Q. Okay. When you wrote that check to Brandi you
- 22 were hoping that she would cash it.
- 23 A. Yes, sir.
- 24 Q. Because you thought that this would protect
- 25 you.

1 A. I was doing what I thought was right.

2 Q. You thought by putting payment in full on that
3 check that she would not be able to collect any more
4 money from you on that transaction, didn't you?

5 A. I believed that's what J. King Real Estate owed
6 Brandi Clarkson for the transaction on
7 520 Green Street.

8 Q. And you intended, Brandi, if you take this
9 check, this is all I'm ever going to pay you on that
10 transaction.

11 A. Yes, sir.

12 Q. Okay. And then after you did that, you tried
13 to use that payment against her, didn't you?

14 A. No, sir.

15 Q. You were here whenever I read the amended
16 complaint earlier today, correct?

17 A. Yes, sir.

18 Q. And you have filed an answer, both to the
19 original complaint and to an amended complaint,
20 right?

21 A. Yes, sir.

22 Q. That's a legal paper that's filed in the
23 courthouse, right?

24 A. Yes, sir.

25 Q. You read it, right?

1 A. Yes, sir.

2 Q. You were furnished with copies of the pleadings
3 your lawyer filed on your behalf.

4 A. Yes, sir.

5 Q. And included in that answer was an allegation
6 that Brandi accepted your check in full satisfaction
7 of anything that was owed to her on the Green Street
8 transaction. Is that right?

9 A. Yes, sir.

10 Q. Okay. Now, you -- after this Green Street
11 transaction was closed, and there were, there were
12 five other transactions left, correct?

13 A. Four transactions, but two sites on one.

14 Q. Okay.

15 A. So, yes, sir.

16 Q. And you kind of, sort of, did the right thing
17 on the Green Street transaction by paying Brandi 100
18 percent.

19 A. I felt like I did.

20 Q. Okay. And so, had you just paid Brandi 100
21 percent on these remaining transactions we wouldn't
22 be here today.

23 A. No, sir. The lawsuit was already filed and we
24 still felt like we did the right thing. We would
25 still be here today, right?

1 Q. If you had paid her on all those transactions
2 100 percent when it was due, we wouldn't be here.

3 A. I believe we would be.

4 THE COURT: Don't answer the question. I think
5 I've got an objection.

6 MR. BLAKE: Yeah, Your Honor, he's calling for
7 speculation about what Plaintiff's counsel would
8 have done in a hypothetical world that has nothing
9 to do with the lawsuit that Plaintiff's counsel
10 filed.

11 THE COURT: Okay. I'm going to sustain the
12 objection but re -- rephrase your question and we'll
13 see if Mr. Blake still has an objection.

14 MR. STUDEMEYER: Well, if it will satisfy him,
15 I will withdraw the question.

16 THE COURT: Okay. All right, very good. Thank
17 you.

18 MR. STUDEMEYER: Yes, sir.

19 BY MR. STUDEMEYER

20 Q. You prohibited Brandi from participating in the
21 remaining transactions.

22 A. Yes, sir, from that point forward.

23 Q. Ultimately, what you did was you agreed to
24 transfer two of those transactions from your
25 brokerage service, or brokerage firm, to Fathom

- 1 Realty.
- 2 A. Yes, sir.
- 3 Q. Okay. So you kind of, sort of, did the right
4 thing there, right?
- 5 A. I believe we did the right thing with all of
6 them.
- 7 Q. Well, you gave her a hundred percent minus the
8 \$50 transaction fee on Green Street, and you agreed
9 to transfer those Sweetwater Drive and Saw Creek,
10 you transferred those to Fathom Realty.
- 11 A. Yes, sir.
- 12 Q. Okay. So now we are down to three properties,
13 right?
- 14 A. Yes, sir.
- 15 Q. And on those three properties you neither paid
16 her 100 percent nor did you transfer them to Fathom.
- 17 A. Correct.
- 18 Q. Okay. Because you wanted some of the action.
19 You wanted some of the money.
- 20 A. I did legally handle those.
- 21 Q. Okay. All right. Now let's -- ultimately,
22 this Concord Place Road transaction closed, correct?
- 23 A. Say that again.
- 24 Q. The Concord Place Road transaction?
- 25 A. Oh, yes, sir.

- 1 Q. The Concord Place Road property was -- that was
2 originally owned by Ms. --
3 A. Collins.
4 Q. -- Ms. Collins. Okay. And that property was
5 sold to Mr. Christian, correct?
6 A. Correct.
7 Q. Before this lawsuit was filed you had never met
8 either one of those people, had you?
9 A. Crystal I had, but not in the professional
10 standpoint. Just personally.
11 Q. You -- Crystal didn't sign up with you to sell
12 her house, did she?
13 A. She signed up with J. King Real Estate.
14 Q. Okay. And who procured her sale?
15 A. J. King Real Estate did.
16 Q. Well, who on behalf of J. King Real Estate?
17 A. Brandi.
18 Q. Okay. Thank you. All right. Before this
19 lawsuit was filed, you never even met Zachary
20 Christian, had you?
21 A. No, sir. I had not.
22 Q. Hadn't even laid eyes on him.
23 A. Correct.
24 Q. And you had nothing to do with these
25 transactions before that.

1 A. No, sir. I still have to oversee them and
2 supervise it as the broker-in-charge.

3 Q. All right. You had nothing to do with Crystal
4 signing a listing agreement that Brandi (inaudible),
5 did you?

6 A. Correct.

7 Q. Okay. What you did, and what you typically do,
8 is you pre-sign listing agreements and leave them
9 around for people to fill out on your behalf.

10 A. I don't think it quite works that way but --
11 it's not random. We don't just leave listing
12 agreements and just hope they get signed, just leave
13 them laying around.

14 Q. Do you deny that that's the way you do
15 business?

16 A. Yes, sir.

17 Q. You sign these listing agreements?

18 A. Yes, sir.

19 Q. And then hope that an agent will go out and get
20 them signed?

21 A. No, sir. We do not just hope and pray.

22 Q. Okay. Okay. The Concord Place Road
23 transaction we were just talking about. Whenever
24 that transaction closed you took 100 percent of that
25 commission, right?

1 A. J. King Real Estate was written a check for 100
2 percent of the commission at closing, and it was
3 deposited into our operating account. Yes, sir.
4 Q. And that's the same operating account that you
5 pay yourself a salary out of.
6 A. Yes, sir.
7 Q. And that's the same operating account that you
8 pay your bills out of.
9 A. Yes, sir.
10 Q. How much of that did you spend on yourself?
11 A. Of what?
12 Q. Of that 100 percent commission.
13 A. So far I haven't spent any of that commission.
14 Q. I'm sorry?
15 A. So far I haven't spent any of that commission.
16 Q. You're saying that 100 percent of Brandi's
17 commission is still in your bank account?
18 A. Yes, sir.
19 Q. Okay.
20 A. In J. King Real Estate's bank account.
21 Q. Okay. Now, ultimately, this Old Town Road
22 transaction, it closed also, correct?
23 A. Yes, sir.
24 Q. Okay. And 100 percent of that commission went
25 into your bank account.

1 A. J. King Real Estate's. Yes, sir.

2 Q. Okay. And you never paid Brandi anything on
3 those transactions, did you?

4 A. No, sir. I did mail checks for both of those.

5 Q. You sent her these checks with that clever
6 little paid in full notation, didn't you?

7 A. I paid her for each of those transactions, yes,
8 sir.

9 Q. You sent her checks that said paid in full, and
10 it was the less than 100 percent, correct?

11 A. Yes, sir.

12 MR. BLAKE: Your Honor, I have to object. He's
13 mischaracterizing documents in evidence. That's not
14 what he said.

15 THE COURT: Well, I, I think if, in fact,
16 Mr. Studemeyer is mischaracterizing the documents, I
17 think the witness can offer an explanation or
18 correction. If he disagrees with what
19 Mr. Studemeyer is saying. So at this point I will
20 overrule.

21 MR. BLAKE: Fair enough. Thank you, Your
22 Honor.

23 BY MR. STUDEMAYER

24 Q. Now Ms. Clarkson declined these checks that you
25 sent her for less than 100 percent.

1 A. Yes, sir.

2 Q. And sent them back to you.

3 A. Yes, sir.

4 Q. And, so, like you say, the money is still in
5 your account.

6 A. Yes, sir.

7 Q. Okay. Now, you have had the use of that money
8 for three years.

9 THE COURT: What was your question? I'm sorry
10 I didn't hear it.

11 MR. STUDEMEYER: I said he's had the use of
12 that money now for three years.

13 THE WITNESS: The use?

14 BY MR. STUDEMEYER

15 Q. Yes.

16 A. It has been in my account for three years.
17 Yes, sir.

18 Q. And Brandi's had to wait for three years to get
19 paid.

20 A. Yes, sir. If that's a question. Yes, sir.

21 Q. If you had it to do all over again, you would
22 do the same thing, wouldn't you?

23 A. Yes, sir.

24 MR. STUDEMEYER: Okay. Your Honor, that's all
25 the questions I have for this witness.

1 THE JURY: Good morning.

2 THE COURT: You doing well? Ready to get back
3 to work? The plaintiff is ready to call its next
4 witness.

5 MR. STUDEMEYER: Yes, Your Honor. We call
6 Ms. Judy Levine.

7 THE CLERK: Raise your right and place your
8 left hand on the Bible, please. Do you swear or
9 affirm the testimony you give is the truth, the
10 whole truth, and nothing but the truth, so help you
11 God?

12 THE WITNESS: Yes.

13 THE CLERK: Have a seat, ma'am, and state your
14 full name for the record.

15 THE WITNESS: My name is Judy Levine.

16 MR. STUDEMEYER: Can you pull that microphone
17 closer?

18 THE WITNESS: Better? Do I have to say it
19 again?

20 MR. STUDEMEYER: (inaudible.)

21 THE WITNESS: Okay. L-E-V-I-N-E.

22 JUDY LEVINE, being first duly sworn, was
23 examined and testified as follows:
24
25

1 DIRECT EXAMINATION
2 BY MR. STUDEMAYER
3 Q. Okay. Ms. Judy, do you know Brandi Clarkson?
4 A. Yes. I'm her great, great aunt.
5 Q. Okay. So you have known Brandi your (sic)
6 entire life.
7 A. Right.
8 Q. Have you had occasion to do business with
9 Brandi?
10 A. Yes.
11 Q. Can you tell us what sort of business you have
12 done with Brandi?
13 A. She sold three of my properties. My husband
14 and I had rental property and she sold three of
15 them.
16 Q. Okay. Now when -- who was she working with at
17 the time she sold those properties?
18 A. J. King Realty.
19 Q. Okay. Had you ever met Jason King before then?
20 A. I don't think so. No.
21 Q. All right. Are you familiar with this Green
22 Street property we've been talking about?
23 A. Yes. That was the --
24 Q. Is that -- I'm sorry.
25 A. Okay. That was the property that my daughter

1 lived in with her husband.

2 Q. Okay. And how long did your daughter live
3 there?

4 A. Oh, probably ten years.

5 Q. Okay. And what happened with that property?

6 A. My daughter passed away and her husband stayed
7 there for about a year and a half, and he decided to
8 move back to his home. And it's time to close that
9 chapter, and so I sold it.

10 Q. Okay. Was that a difficult transaction to
11 handle?

12 A. It was a very difficult transaction. That was
13 closing the last chapter on my daughter's life.

14 Q. Okay.

15 A. And the house needed complete renovation, and
16 Brandi found me the workers. She came by to make
17 sure things were going smoothly. She checked on me
18 and checked on the workers. She helped me go
19 through that time.

20 Q. Okay. Who did you anticipate attending a
21 closing on it?

22 A. Brandi. She had been to my other closings with
23 me.

24 Q. Okay. All right. Can you, can you tell us
25 when you heard from Jason King for the first time?

1 A. He called me the morning of the closing, as
2 best I remember. He called me the morning of the
3 closing and told me that Brandi could not act as my
4 agent.

5 THE COURT: Can you speak up just a little bit,
6 please, ma'am? Thank you.

7 THE WITNESS: Sorry. He told me that Brandi
8 could not act as my agent on the morning of the
9 closing. And it, it was astounding. I mean, what
10 do you mean she can't act as my agent? She put in
11 the work. She sold the house. She helped me get
12 through it. I was flabbergasted.

13 And I think we had some text exchanges. I
14 think we had at least one phone call between
15 Mr. King and myself. And I didn't want him to go.
16 I didn't know how I was going to react to this final
17 chapter being closed. And I counted on Brandi.

18 And so I decided I'd go by myself for a moment,
19 and he -- I said, where is the closing. And he
20 said, I don't know, let me find out. And I thought,
21 I can't do this. So I called him or either texted
22 him back. I think I called him. And just
23 absolutely begged for Brandi to go even though she
24 couldn't be my agent. Could she go as Brandi, you
25 know? So it was a mess. It was a very traumatic

1 time. It was a mess.

2 BY MR. STUDEMAYER

3 Q. Okay. So a stranger was not a substitute for
4 Brandi?

5 A. No. Absolutely not. He didn't know the
6 background. He didn't know what we had been through
7 getting the house ready. Brandi got all the
8 workers, you know. She made suggestions on what,
9 you know, helped the sale of the house. Because I
10 had other things on my mind. I was emotionally
11 involved. I was emotionally connected to that
12 house.

13 Q. I understand.

14 A. My daughter lived there for a long time.

15 Q. All right. If you would please answer any
16 questions that Mr. Blake might have for you.

17 CROSS-EXAMINATION

18 BY MR. BLAKE

19 Q. Good morning, ma'am.

20 A. Good morning.

21 Q. It's nice to meet you.

22 A. Nice to meet you.

23 Q. Just briefly. You understood (inaudible) that
24 Ms. Clarkson had quit?

25 MR. BLAKE: I'm sorry. I've got to be on the

1 A. You know, this is unreasonable or this is
2 reasonable.

3 Q. But that never happened, right?

4 A. No, it didn't happen. No, thank goodness it
5 was a smooth closing. As Brandi's -- all of her
6 closings are smooth.

7 Q. Mr. King was there as your agent.

8 A. Mr. King did not come.

9 Q. Okay. And the closing went off without a
10 hitch?

11 A. Yes, it did.

12 Q. It was conducted by a licensed attorney.

13 A. I guess.

14 Q. And that licensed attorney distributed the
15 commission according to the HUD statement at your
16 closing, right?

17 A. I don't know about the commission.

18 Q. Okay. Fair enough. Well, have you seen --
19 were you here yesterday whenever we had the
20 commission check that was written to Brandi up on
21 the screen?

22 A. Yeah, but I couldn't read it from back there.

23 Q. That's fair. Is that the first time you've
24 seen that check?

25 A. Yes.

1 question about, you know, a relationship between the
2 customer, so to speak, and Ms. Clarkson.

3 THE COURT: Well, but I think, I'm certainly
4 not trying to tell you how to try your case. Okay.
5 I'm not doing that. But I think, you know, as it
6 relates to the Unfair Trade Practices Act the
7 failure to pay commissions -- we need to be very
8 careful whether or not that is related to an affect
9 on the public or not. Because whether or not
10 commissions have been paid or should have been paid,
11 have not been paid, whatever, really does not have
12 an affect on the public.

13 Now the fact that the plaintiff was not allowed
14 to be at a closing, or not allowed to be the agent,
15 you know, I think we're going a little bit far
16 afield as far as you trying to get in this affect --
17 the L1 elements of the Unfair Trade Practices
18 violation is the effect on the public and nonpayment
19 of commissions -- mm, that's -- we've got to be
20 careful of that.

21 MR. STUDEMAYER: Okay.

22 MR. BLAKE: It's a total non sequitur, Your
23 Honor. I would just like to put it on the record
24 one has literally nothing to do with the other. The
25 Unfair Trade Practices Act, that when it's

1 looking -- the damages have to have an impact on the
2 public interest. It's Ms. Clarkson's claim.

3 THE COURT: Right.

4 MR. BLAKE: It's not Ms. Levine's claim. She
5 is not a plaintiff.

6 THE COURT: Right. You know, now, if it was
7 alleged and -- again, we can talk about the Unfair
8 Trade Practices Act violation later, but just one
9 more observation I want to make. I think it's a
10 whole different ball game if it was alleged in this
11 case that Mr. King did some unfair things to some
12 customers of -- or clients of the real estate
13 agency. Then, yeah, I mean, that's a different
14 thing. But right now this is a dispute between the
15 employee and employer. We'll get into that later,
16 but suffice it to say, let's stay away from anything
17 as far as, you know, who did you think your agent
18 was, or broker was, or whatever. That way we can --

19 MR. STUDEMAYER: Okay. All right.

20 MR. BLAKE: Thank you, Your Honor.

21 THE COURT: Okay. All right. Thank you, guys.
22 Anybody need to take a quick break before we bring
23 the jury in?

24 MR. BLAKE: Can I get three minutes?

25 THE COURT: Yeah, yeah. You can take

1 three minutes. I've got you on the clock.

2 MR. STUDEMEYER: Thank you.

3 (WHEREUPON, the Court took a brief
4 recess.)

5 (WHEREUPON, the jury entered the courtroom
6 at 10:14 a.m.)

7 THE COURT: Let the record reflect the jury is
8 back in. Next witness for the plaintiff.

9 MR. STUDEMEYER: Your Honor,
10 Ms. Crystal Collins.

11 THE CLERK: Raise your right hand and place
12 your left on the Bible. Do you swear or affirm that
13 the testimony you give will be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Have a seat please, ma'am. State
17 your full name for the record.

18 THE WITNESS: My name is Crystal Garner
19 Collins.

20 CRYSTAL GARNER COLLINS, being first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STUDEMEYER

24 Q. Ms. Collins, can you tell us the name of the
25 street where you live?

- 1 A. Currently, 1023 Old Town Road.
- 2 Q. Okay. And how long have you lived there?
- 3 A. It was three years on July 30th of this year.
- 4 Q. Okay. And can you tell us the name of the --
- 5 where you lived before that?
- 6 A. Yes. 503 Concord Place Road.
- 7 Q. Okay. Now, do you know Brandi?
- 8 A. Yes, I do.
- 9 Q. How long have you known Brandi?
- 10 A. Since May the 28th of 2020.
- 11 Q. Okay. And how did you come to meet Brandi?
- 12 A. Brandi posted on social media, it's the
- 13 citizens of Irmo community page, that she had a
- 14 buyer interested in purchasing a house and there
- 15 wasn't anything available on the market. And I
- 16 reached out to her and told her I have -- we had
- 17 been thinking about selling our house. It's not
- 18 currently for sale, but it would probably be within
- 19 the price range that they were looking for. And so
- 20 that's -- we met that afternoon actually after that.
- 21 Q. Okay. And what did y'all do?
- 22 A. She came and looked at the house just to see if
- 23 it was something that they would be interested in.
- 24 And then later on that evening they came back and
- 25 looked at the house.

1 Q. Okay. Was anyone with Brandi when you met with
2 her?

3 A. No. Just me and Brandi.

4 Q. Okay. All right. Now did you end up selling
5 your house on Concord Place Road?

6 A. Yes, I did. I sold it to the (unintelligible).

7 Q. Okay. And then what did you do?

8 A. I purchased the house at Old Town Road.

9 Q. Okay. Now before, before -- do you remember
10 when the closing was on the Concord Place Road
11 property?

12 A. June the 28th.

13 Q. Okay. Now, --

14 A. No, sorry. Excuse me, July 28th.

15 Q. Okay. And I think we have that --

16 A. Yeah.

17 Q. Yeah. We have that on the calendar. Okay.
18 Had you met Jason King up until that time?

19 A. I did not know Jason really, but after I met
20 him I knew that I knew him from a field trip that
21 our kids went on in sixth grade to Marionette
22 Theater.

23 Q. Okay. You had never spoken to him about
24 selling your house.

25 A. No, never.

1 Q. And you had never spoken with him about buying
2 another house.

3 A. No, never.

4 Q. Okay. So when was the first time you heard
5 from Jason King after you went on this field trip
6 with your children?

7 A. I never heard from him up until the day he
8 called me on July the 10th.

9 Q. Okay. And tell the jury about that telephone
10 call.

11 A. On July the 10th I received a phone call from
12 Jason advising that Brandi could still assist me,
13 but I would need to copy him on any items regarding
14 the real estate purchase of the new home.

15 Q. Okay. When was the next time you heard from
16 Jason?

17 A. On July the 14th, after we did the walk through
18 for the purchase of the new home Brandi and I
19 attended. I received a phone call as soon as I got
20 in the car that Brandi was no longer allowed to work
21 with me.

22 Q. Okay. Did you attend the closing for the
23 Concord Place Road?

24 A. Yes, I did.

25 Q. Who else was there?

1 A. Zach was there, and Jason.
2 Q. Okay. And did you attend the closing for the
3 Old Town Road property?
4 A. I did.
5 Q. Okay. And who was there for that?
6 A. Just me and Jason. I think my deceased husband
7 might have been there because he had to sign the
8 check because the one house was in both of our
9 names, and the new house is just solely in my name.
10 So he, we, I let them keep the check so I don't know
11 if he was at the 28th or if he was at the 30th. But
12 he was at one of those two.
13 Q. Okay. And when did your husband pass away?
14 A. December 12th of 2021.
15 Q. Okay. When were you supposed to close on the
16 Old Town Road property?
17 A. Let's see. The closing date originally of
18 July 17th.
19 Q. Okay. When did you actually close?
20 A. On -- which one?
21 Q. On the Old Town Road.
22 A. On July 30th.
23 Q. Okay. All right. Now, when was the next time
24 you heard from Jason King after that July 30th
25 closing?

1 A. I haven't spoken to him other than he was in
2 our neighborhood showing someone else another house,
3 because it was a new development at the time. And
4 he happened to be walking by in front of my house,
5 and I was on the front porch and we spoke. And that
6 was the end of it.

7 Q. Okay.

8 A. And then I also received a Facebook friend
9 request on Sunday.

10 Q. This past Sunday?

11 A. This past Sunday, yeah.

12 Q. Okay. All right. That's all the questions I
13 have. You can answer any questions Mr. Blake may
14 have.

15 A. Okay.

16 THE COURT: Any cross-examination?

17 MR. BLAKE: None, Your Honor. Thank you.

18 THE COURT: Okay, you can step down, ma'am.

19 MR. STUDEMEYER: And can Ms. Collins be
20 excused, Your Honor?

21 THE COURT: You can be excused from the
22 courthouse, and you're more than welcome to stay
23 with us if you like.

24 MR. STUDEMEYER: Our next witness will be
25 Ms. Darlene Miller.

1 THE COURT: Okay, come around Ms. Miller.

2 THE CLERK: Place your left and raise your
3 right. You're fine. Do you swear or affirm the
4 testimony you give will be the truth, the whole
5 truth, and nothing but the truth, so help you God.

6 THE WITNESS: I do.

7 THE CLERK: You can have a seat please, ma'am.
8 And state your full name for the record.

9 THE WITNESS: My name is Darlene Faye Miller.

10 DARLENE FAYE MILLER, being first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. STUDEMEYER

14 Q. Ms. Miller, can you tell us where, just the
15 name of the street where you live?

16 A. Trinity Three Road.

17 Q. Okay. And how long have you lived at that
18 address?

19 A. Did you -- I'm sorry. Did you say where I live
20 now or before?

21 Q. Yes, ma'am. Where do you live now?

22 A. 12 Grayson Grove Court, Columbia.

23 Q. Okay. Okay.

24 A. Three years.

25 Q. Before that you lived?

1 A. At Trinity Three.

2 Q. Okay. How long did you live at Trinity Three?

3 A. Probably about 14 years.

4 Q. Okay. And do you know Brandi Clarkson?

5 A. I do.

6 Q. And how did you get to know Brandi Clarkson?

7 A. She became my realtor for the Trinity Three
8 property, and then I also hired her as my realtor
9 for the property I live in now, 12 Grayson Grove
10 Court.

11 Q. Okay. Tell us about the Trinity Three Road
12 sales transaction.

13 A. Well, we called Brandi, my then husband and I,
14 to come over and look at the property to see what we
15 could list it for, and what we needed to do. And
16 she gave us some advice. Told us what needed to be
17 fixed and what didn't, you know, would be okay.
18 What kind of financing we should use, either
19 conventional or FHA. And we agreed. We signed the
20 contract and it wasn't two hours after she listed
21 the property that we have a buyer. Somebody wanted
22 to come over and look at it.

23 Q. Okay.

24 A. And that was about 8:00 at night. I remember
25 because I was tired.

- 1 Q. Okay. Were you happy about that?
- 2 A. Yeah, very happy about that.
- 3 Q. Okay. You mentioned -- you said your then
- 4 husband.
- 5 A. Yes.
- 6 Q. Is he still your husband?
- 7 A. No, sir.
- 8 Q. Okay. What happened?
- 9 A. We split up after 48 years, and he moved to
- 10 Virginia.
- 11 Q. Okay.
- 12 A. And I was left to handle the property.
- 13 Q. Okay. Did Brandi know that?
- 14 A. Yes, she did.
- 15 Q. Was she helpful?
- 16 A. Very helpful.
- 17 Q. Okay. Now when was your closing on the Trinity
- 18 Three Road property?
- 19 A. Finally the closing was September 25th, I
- 20 believe was the date.
- 21 Q. When was it supposed to have taken place?
- 22 A. Oh, there were so many different closing dates
- 23 that I can't even remember. At least four --
- 24 Q. Okay.
- 25 A. -- that I know of, or five.

1 Q. Okay. Can you tell us what happened? What do
2 you attribute that to?

3 A. Well, just incompetence, I would have to say,
4 on Mr. King's part. Because like I said, I was
5 stuck handling the property, so I was the one
6 communicating with him. And I just, just didn't
7 work well at all. I mean, I had no place to go.
8 And in emails I got -- in fact, he told me that he
9 got more emails from me than any other client he had
10 ever had. I guess I, more or less, was bothering
11 him.

12 And I told him I said, look, I said, I'm
13 homeless. I have no money. I'm here trying to pack
14 this house up myself, get the repairs done so that
15 we could both get our money and move on.

16 And I think Mr. King mentioned in an email,
17 like four times, is the property vacated, is it
18 vacated? Finally I said, look, I have no place to
19 go. I'm sleeping on a mattress on the floor in this
20 house. Yes, it's empty. He said, well, that's good
21 because I want to come over and look at it. I said,
22 that's fine, you know, I'll pack up my things and
23 go.

24 The property that I have now was contingent on
25 Trinity Three being sold because our money was tied

1 up in there. And if I didn't close on Trinity
2 Three, I had no place to go.

3 Q. Okay. Did you move any place between the two
4 houses?

5 A. Oh, my gosh, yeah. I went to an Airbnb for a
6 couple of weeks, which was \$2,000 a week. In and
7 out of hotels. And finally, like I said, I ran out
8 of money. You know, I said, I'm sorry I have to, I
9 have to sleep here. And that's what I did. I slept
10 there until he finally closed.

11 Q. Okay. And when you say you slept there, you
12 were sleeping on a mattress on the floor at Trinity
13 Three Road?

14 A. Yes. With nothing else.

15 Q. Can you, can you tell the jury when you heard
16 from Mr. King for the first time?

17 A. It was probably a week and a half, I'm
18 estimating, when I found out that he was taking
19 over. I think he had contacted my husband though.
20 And, you know, talked to him about whatever it was.
21 Because I then emailed Mr. King and said, you know,
22 since I'm here selling the property, I would
23 appreciate it if you contacted him and me at the
24 same time. Please don't contact us separately.

25 Q. Okay.

1 A. And then that's when he told me about all the
2 emails, that he had more emails from me than
3 anybody. But I was desperate.

4 Q. Okay. All right. Ms. Miller, thank you. If
5 you would please answer any questions Mr. Blake
6 might have.

7 THE COURT: Any cross-examination?

8 MR. BLAKE: None, Your Honor. Thank you.

9 THE COURT: You can step down, ma'am.

10 THE WITNESS: Thank you.

11 THE COURT: You are free to leave the
12 courthouse. You are more than welcome to remain
13 with us if you like.

14 THE WITNESS: Thank you.

15 MR. STUDEMEYER: Your Honor, at this time I
16 would like to call Mr. Zachary Christian.

17 THE CLERK: Do you swear or affirm the
18 testimony you give will be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please have a seat and state your
22 full name for the record.

23 THE WITNESS: Zachary Christian.

24 ZACHARY CHRISTIAN, being first duly sworn, was
25 examined and testified as follows:

1 DIRECT EXAMINATION
2 BY MR. STUDEMAYER
3 Q. Mr. Christian, can you tell us the name of the
4 street where you live?
5 A. 503 Concord Place Road.
6 Q. Okay. Is that the same property we have been
7 talking about on the calendar here?
8 A. Yes, sir.
9 Q. Okay. Do you know Brandi Clarkson?
10 A. Yes, sir, I do.
11 Q. Okay. And how long have you known Brandi?
12 A. I met Brandi in 2019 when she helped a dear
13 friend of mine find a rental property, who was going
14 through a rough divorce.
15 Q. Okay. And when was the next time you spoke to
16 Brandi after that?
17 A. We became Facebook friends. She spent -- we
18 looked at about three or four different rental
19 properties for my friend. She wanted me to tag
20 along, being a single woman. Brandi and I became
21 Facebook friends shortly after because I had told
22 her while we were finding Katie a place to stay that
23 when we were ready to look, that my spouse and I
24 would be reaching out to her. It was probably late
25 March or early April. It was right around the start

1 of COVID craziness that I reached out to Brandi,
2 that we had to decide whether we were going to renew
3 our lease for our apartment, or if we were going to
4 move. That we had a severe mold issue that our
5 apartment complex wouldn't handle because of COVID.

6 Q. Okay. So what did you do?

7 A. I sent Brandi a lengthy message laying
8 everything out on the table explaining that I was
9 recently getting a -- or that I had recently gotten
10 a promotion, that we were paying off our debt. And
11 I wanted to see what options we had because I didn't
12 want to live where I was living, and either wanted
13 to rent a house or buy a house.

14 Q. Okay. So what did Brandi do for you?

15 A. She called me immediately. Asked me questions
16 about where we were at financially, what we were
17 looking for. Got me in touch with a mortgage person
18 so that they could look and see what our options
19 were, and what we could afford, essentially.

20 Q. Okay. Were you comfortable with what Brandi
21 was doing for you?

22 A. Absolutely.

23 Q. Okay. And, ultimately, what was Brandi able to
24 do for you?

25 A. Brandi helped me buy my first house. We spent

1 weeks. It was the beginning of COVID and I have
2 several health issues so I trusted Brandi. She
3 would spend several days. She knew we were under a
4 time crunch. We had to give a 60-day notice of
5 whether or not we were going to renew or vacate our
6 apartment. And she knew that we were in a time
7 crunch to find a house, get under contract, and get
8 the pieces into play.

9 I needed to use down payment assistance because
10 I had depleted my savings trying to fix my
11 debt-to-income ratio. And so she was making sure
12 that the mortgage person that we worked with would
13 work with down payment assistance. She would go out
14 until 10:00 at night with my spouse and I until we
15 found a house. Nothing on the market was working
16 for us.

17 Q: Okay. And, ultimately, you found the Concord
18 Place Road property?

19 A: Yep. Brandi reached out on Facebook. Crystal
20 reached back out. That afternoon Brandi had sent me
21 a message saying that she thinks she found something
22 that we might like and asked if we were available
23 that evening. My spouse got off work at 9 p.m., and
24 9:30 we were over at Crystal and Tim's house looking
25 at the property.

1 Q. Okay. When you're talking about Crystal, what
2 you're telling the jury is the house that Crystal
3 Collins sold is the one that you bought.

4 A. Yes, sir. 503 Concord Place.

5 Q. Okay. All right. Now, was -- when was the
6 first time you ever heard of Jason King?

7 A. I heard of him through when I signed the
8 contract with Brandi, that he was her broker. The
9 first time I heard from Mr. King was on July 10th
10 about 6:30 p.m.

11 Q. Okay. And tell the jury about that
12 conversation.

13 A. I got a phone call from Mr. King explaining
14 that Brandi and him had severed their business
15 relationship, that she was going to still be a
16 person assisting, and that I just needed to keep him
17 in the loop. I told him on the phone that I would
18 like an email confirming that information. Because
19 at this point our closing had been pushed back.

20 There were several issues on both sides. The
21 Collins' family house was being pushed back. Ours
22 was being pushed back, and we were running out of
23 time to vacate our apartment.

24 Q. Okay. Did he do that?

25 A. I'm sorry?

1 Q. Did he send you an email?

2 A. No.

3 Q. Okay.

4 A. I emailed Mr. King the morning of July 13th,
5 that Monday morning, following up, stating that I
6 had spoken with my spouse. That we wanted to
7 continue but I was not confident in the situation.
8 There were many moving parts with the Collins' new
9 home being delayed. We were doing the down payment
10 assistance. I was receiving funds from a close
11 friend of mine through a gift letter to help us
12 cover the closing costs. There were repairs that
13 needed to be done, some that weren't going to happen
14 until after closing. And I wasn't confident that a
15 person I had never spoken with knew everything that
16 was going on.

17 Q. Okay. When was the next time you heard from
18 Mr. King?

19 A. I received an email from him the afternoon of
20 the 13th of July asking for me to send him a copy of
21 the contract extension that Brandi had drafted.

22 Q. Okay. Did you do that?

23 A. Yes, sir.

24 Q. Okay. When was the next time you heard from
25 Mr. King?

1 A. He responded to that email saying that the
2 contract looked good and asking me to sign it. And
3 I told him I was not comfortable signing it until I
4 had confirmation that I had someone who cared about
5 my best interests.

6 Q. Okay. And how did he respond to that?

7 A. He responded stating that there was now a legal
8 situation between him and Brandi. And that I was to
9 have no further contact -- I'm sorry. That was on
10 the 14th of July. He called and explained that
11 there was now a legal situation. That I was to have
12 no further contact with Brandi. And then
13 immediately called me after he sent that email
14 stating that I needed to -- asking me to sign the
15 contract extension so we could move forward. And I
16 told him that I was not pleased with the situation.
17 That I wanted us to close.

18 We were originally scheduled to close on July
19 17th. It was now being pushed back until July
20 24th. I told him that I was not comfortable
21 signing an agreement until I had time to speak it
22 over with my spouse. And that I was displeased with
23 the entire situation. That the situation between
24 him and Brandi was not my issue. And the issues
25 with the purchase of the Old Town Road property was

1 not my issue. And that I wanted to buy a house.

2 Q. Okay.

3 MR. BLAKE: Your Honor, if I may. I'm trying
4 to allow leniency, but there is a lot of hearsay
5 that's not admissible. Just try to keep it on the
6 rails.

7 THE COURT: Yes. Right. Only testify as to
8 what you know. Not what people have told you.

9 THE WITNESS: Yes, sir.

10 THE COURT: Try to phrase those questions,
11 Mr. Studemeyer, where you'll not be prone to elicit
12 some hearsay.

13 MR. STUDEMEYER: Okay, Your Honor.

14 BY MR. STUDEMEYER

15 Q: You ultimately closed on the property on
16 Concord Place Road?

17 A. On July 28th. Yes, sir.

18 Q. All right. That's all the questions I have.
19 Please answer any questions --

20 THE COURT: Mr. Blake?

21 MR. BLAKE: No questions, Your Honor. Thank
22 you.

23 THE COURT: All right. You can step down, sir.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: You can leave the courthouse, but

1 you're more than welcome to remain with us if you so
2 like.

3 Mr. Studemeyer, we have one more short witness
4 before we take a morning break? I didn't know where
5 you were in your --

6 MR. STUDEMEYER: No. Your Honor, the next
7 witness is going to be Ms. Clarkson.

8 THE COURT: Okay. All right.

9 MR. STUDEMEYER: We anticipate she is going to
10 be here a while.

11 THE COURT: I would think so. Okay, ladies and
12 gentlemen, we're going to take a morning break. And
13 then we'll start back in about ten or 15 minutes.
14 Go back in the jury room and we'll bring you back
15 out shortly.

16 (WHEREUPON, the jury exited the courtroom at
17 10:36 a.m.)

18 THE COURT: All right. We'll be in recess 10
19 to 15 minutes.

20 (WHEREUPON, the Court took a brief recess.)

21 (WHEREUPON, the jury entered the courtroom at
22 10:58 a.m.)

23 THE COURT: Let the record reflect that the
24 jury is back in. Next witness for the plaintiff.

25 MR. STUDEMEYER: Brandi Clarkson.

1 THE COURT: Come around please, ma'am.

2 THE CLERK: Do you swear or affirm the
3 testimony you give shall be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please have a seat. State your
7 full name for the record.

8 THE WITNESS: My name is Brandi Leigh Clarkson.

9 BRANDI LEIGH CLARKSON, being first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STUDEMEYER

13 Q. Brandi, where do you live?

14 A. You want my address?

15 Q. Yes. No, just the street address.

16 A. I live on Nursery Road in Lexington County.

17 Q. Okay. You have seen this calendar that we put
18 up here for the jury to follow. Can you tell us if
19 that accurately reflects when these closings took
20 place and when your commissions were due?

21 A. It does.

22 Q. Okay.

23 MR. STUDEMEYER: Your Honor, we would like you
24 to have a copy of the calendar marked as the next
25 exhibit.

1 THE COURT: Okay. All right. Is the calendar
2 not already in the notebook as part of the evidence?

3 MR. BLAKE: It's not, Your Honor.

4 THE COURT: Okay.

5 MR. BLAKE: It's a demonstrative.

6 THE COURT: Okay. All right. So mark it for
7 ID purposes only at this point.

8 MR. STUDEMEYER: Yes, Your Honor.

9 BY MR. STUDEMEYER

10 Q. All right, Brandi, are you married?

11 A. I am.

12 Q. And do you have children?

13 A. I have two adult children.

14 Q. What do you do for a living?

15 A. I'm a licensed realtor.

16 Q. And where do you work?

17 A. At Fathom Realty.

18 Q. How long have you been at Fathom?

19 A. Just like a month over three years.

20 Q. And where did you work before you worked at
21 Fathom?

22 A. I worked at J. King Real Estate.

23 Q. And what did you do before you got into the
24 real estate business?

25 A. I was an employee for School District Five for

1 13 years. I did administrative support and
2 secretarial work.

3 Q. Okay. Are you familiar with this
4 Broker-Salesperson Agreement that we have been
5 talking about?

6 A. I am.

7 Q. I think it's Exhibit Number 1.

8 A. Is this the book?

9 Q. Okay. When was this document presented to you?

10 A. It was presented to me, I believe, after my
11 second interview. That would have been in May of
12 2018.

13 Q. Okay. Was, was anything in this document
14 negotiable?

15 A. No.

16 Q. Okay. Now are you also familiar with the
17 policy manual?

18 A. Yes.

19 Q. When was that presented to you?

20 A. Around the same time if not the same day.

21 Q. Okay. Was anything in that document
22 negotiable?

23 A. No.

24 Q. And were you presented with -- are you familiar
25 with the commission schedule?

1 A. I am.

2 Q. Okay. You signed the Broker-Salesperson
3 Agreement and the commission schedule, correct?

4 A. That's correct.

5 Q. Okay. Now tell the jury if you would, what
6 your duties and responsibilities were to J. King.

7 A. I'm sorry. Are we talking about just right
8 there in the beginning?

9 Q. Yes.

10 A. Okay. So my responsibilities were to help
11 buyers, sellers, investors, and to represent them to
12 the best of my ability as my clients. I had to
13 explain what an agency relationship was. Make sure
14 all the documents were turned in, make sure all the
15 documents were correct, and see the entire
16 transaction through to closing.

17 Q. Okay. Had you ever been a real estate agent
18 before you began working with J. King?

19 A. I had never been a licensed real estate agent,
20 no.

21 Q. Okay. It -- was there somewhat of a learning
22 curve for you getting started as a new agent?

23 A. Yes, absolutely.

24 Q. Okay. How long did it take you to become
25 comfortable doing what you did as an agent?

1 A. Well, I put a lot of, a lot of thought into
2 changing careers before I did it. My grandmother
3 was a broker for decades so I had already been
4 around it, and I had studied. But to get
5 comfortable I had my first transaction go under
6 contract -- my first listing go under contract my
7 first month. I actually represented both sides of
8 that transaction. And I was able to, pretty much,
9 immediately work with the listing's side and the
10 buyer's side.

11 Q. Okay.

12 A. I felt very comfortable as far as my abilities
13 went, because I had prepared myself. Not because of
14 any leadership or any continuing ed. There was none
15 of that. I had prepared myself.

16 Q. Okay. What part, if any, did Jason King play
17 in your training or development as a new agent?

18 MR. BLAKE: Objection, Your Honor --

19 (digital recording failure for 13 seconds.)

20 THE COURT: (inaudible.)

21 MR. BLAKE: Okay. Thank you, Your Honor.

22 BY MR. STUDEMAYER

23 Q. This commission schedule, can you tell the jury
24 what your pay was supposed to be on that commission
25 schedule?

1 A. For each transaction I was to be paid 70
2 percent of the commission. Jason would get 30
3 percent of the commission. That was only
4 through paying \$20,000 to the brokerage. So each
5 closing he would get a little bit until we reached
6 that \$20,000 mark. At \$20,000 I no longer had to
7 pay the brokerage anything. And that was the day
8 that I signed it, that's what I was told.

9 Q. Okay. Now what did you have to do to get the
10 70 percent?

11 A. For me to get the 70 percent I had to work the
12 entire transaction. I had to complete all of the
13 paperwork myself, send it to his secretary, not to
14 him. I had to use Jason's DocuSign because there
15 were no tools at this brokerage, so we would use his
16 DocuSign. Our clients would get a DocuSign that
17 says Jason King invites you to sign something, not
18 the person they're working with.

19 And then, when the first closing I ever had,
20 which was Ballpark Road, was when I was presented
21 with the agent commission sheet to be paid. That's
22 the first time I ever saw that sheet. And the first
23 time I ever knew of the \$50 transaction fee.

24 Q. Okay. And how long was that after you came to
25 work?

1 A. About four weeks.
2 Q. Okay. All right. Now, I've already asked you
3 what you had to do to get 70 percent. What did
4 Jason have to do to get 30 percent?
5 A. Open a brokerage and hire agents.
6 Q. What did he have to do on your first
7 transaction?
8 A. He did nothing.
9 Q. What did he do on the next 57 transactions?
10 A. Nothing.
11 Q. So he got 30 percent for nothing --
12 A. That's correct.
13 Q. And you got 70 percent for everything?
14 MR. BLAKE: Objection, Your Honor, leading.
15 THE COURT: Okay.
16 MR. STUDEMEYER: I'll withdraw.
17 THE COURT: Try to rephrase it, Mr. Studemeyer.
18 MR. STUDEMEYER: Okay. Yes, sir.
19 BY MR. STUDEMEYER
20 Q. Okay. You mentioned the transaction fee. You
21 saw it for the first time four weeks after you
22 started working there. How did you react to that?
23 A. I was shocked. I said to him, what is it --
24 why am I giving you another \$50 on top of 30
25 percent, and what is it for? Why wasn't it

1 disclosed to me? And he said, it's for my
2 secretary. And I said, but I don't use your
3 secretary so why am I paying for your secretary?
4 And I just -- that first one I kind of let it go by.
5 But then every other closing I said something every
6 time. This should not be on here. I did not at any
7 time agree to pay you this.

8 Q. Okay. That commission schedule, did it say
9 that he got 30 percent plus \$50?

10 A. Absolutely not.

11 Q. Was the transaction fee ever mentioned in the
12 Broker-Salesperson Agreement?

13 A. Absolutely not.

14 Q. Was it ever mentioned in his policy manual?

15 A. No.

16 Q. Okay. Did it -- other agents have the same \$50
17 deduction?

18 MR. BLAKE: Objection, Your Honor, hearsay.

19 THE COURT: Well, I don't think it necessarily
20 calls for hearsay if she knows from being around
21 other agents and being in the office and common
22 knowledge amongst the agents. So I'll overrule.

23 THE WITNESS: Yes, they were charged the same
24 fee, and I know this because I mentored most of the
25 agents in the office.

1 BY MR. STUDEMEYER

2 Q. Okay. How many other agents were there at the
3 time you were there?

4 A. Jason's sister was there. Then Casey Hilton
5 joined. I brought two agents in but they very
6 quickly -- I'm sorry, I brought three agents in.
7 Each of them very quickly left. One was there for
8 24 hours. One was there for maybe three weeks, and
9 one was there for a couple of months. They all left
10 and then Jose was also there. So very minimal
11 agents.

12 Q. Okay. All right. When you saw this
13 transaction fee for the first time -- now, yesterday
14 Jason said y'all talked about it and that you agreed
15 to it. Is that the case?

16 A. Not at all.

17 Q. Okay. Did you think it was fair?

18 A. Not at all.

19 Q. Did you consider quitting over it?

20 A. It wasn't worth me quitting over because I had
21 put so much time and energy interviewing every
22 brokerage in town, making my decision. You know I
23 had just quit my job of 13 years. So I wasn't going
24 to be able to afford to pick up and go back -- to
25 pay all the fees again at another brokerage. And

1 honestly, at that point I still liked Jason.

2 So I said, it's \$50 and I let it go. And then
3 each time that the commission sheet came up I let
4 him know. At agent meetings I let him know. This
5 isn't fair to any of us. You still haven't made a
6 document for us to sign to agree to this. And to
7 this day, as far as I'm aware, he still hasn't.

8 Q. All right. So you stayed with J. King for
9 about two years?

10 A. Yes, sir.

11 Q. And during that two years do you know about how
12 many houses you listed for sale?

13 A. My first year, the first six months of 2018, I
14 believe I sold 11 houses for a little over
15 a million. The second year -- I have it over there
16 in my notebook, but I think it was 20-something
17 houses the second year, \$5 million worth of sales.
18 And then, of course, third is when I left.

19 Q. Okay. Now how did your performance compare
20 with the performance of the other agents with J.
21 King?

22 A. I was the top producer.

23 Q. Okay. And did Jason recognize you as a top
24 producer?

25 A. When it benefited him he did.

1 Q. Okay. Did Jason sell real estate as well?

2 A. Yes, sir.

3 Q. How did your performance compare with his?

4 A. We were neck and neck.

5 Q. Okay. And how did he react to that?

6 A. Not very well.

7 Q. Why was that?

8 A. We would, after a lot of prompting, we had some
9 cold call competitions and we'd have some
10 competitions with agents. Things like, you know, if
11 you can get a listing of -- whoever gets the most
12 listing appointments wins a gift card.

13 At first he tried to handicap me in the
14 competition. And I was pretty upset by that as were
15 all the other agents involved. Because he was
16 basically saying Brandi would need to get five more
17 than anyone else because it's just not fair. Y'all
18 don't have a chance. That's pretty insulting to all
19 the other agents at the table. They have a chance.
20 So --

21 MR. BLAKE: Your Honor, I would object. Under
22 Rule 403 B this doesn't have anything to do with any
23 (inaudible) in this case.

24 THE COURT: Relevance, Mr. Studemeyer? This
25 competition that they had going on.

1 MR. STUDEMEYER: Your Honor, I believe it, it
2 goes to motive behind what brought us here today.

3 MR. BLAKE: Motive isn't an element in any
4 claim or defense in this case.

5 THE COURT: Well, I'll allow it a little bit
6 longer, but I don't think you need to spend a lot of
7 time on it.

8 MR. STUDEMEYER: I understand, Your Honor.

9 BY MR. STUDEMEYER

10 Q. Okay, Brandi, if we could --

11 A. Yes.

12 Q. -- see if you can --

13 A. So the other agents fussed about it so I was
14 allowed to compete just like they were. But the
15 resolution was Jason would then compete with us as
16 well. And he would be eligible to receive his own
17 prize.

18 Q. Okay. Can you tell the jury when you began
19 thinking about leaving J. King?

20 A. Sure. Honestly, the first time I ever thought
21 about it when I got there Jason -- two other agents
22 had just left J. King Real Estate. Jason had taken
23 their client. So we had a couple who was buying who
24 needed assistance, and Jason didn't want to help
25 them. So he asked me if I would like them. So

1 their names are the Campbells.

2 The Campbells were trying to downsize. They
3 had a beautiful home in Ascot and they needed to
4 downsize. I took them on as clients and showed them
5 over a hundred homes within a year's time. None of
6 which suited their family. So what they ended up
7 doing, they moved in with her parents. So the
8 Buyer-Agency Agreement was terminated. Their
9 earnest money was given back to them and they were
10 no longer clients of the brokerage.

11 So I kept a relationship going with
12 Ms. Campbell and Mr. Campbell. And about six months
13 later they called me and they asked me if I would
14 put their Ascot home on the market. I did that. I
15 sold that home and when I turned the commission
16 sheet in, Jason said, I'm going to take 50percent.
17 And I said, for what? That was a referral. And I
18 said, no, it was a buyer referral and I drove them
19 around for a year as buyers showing them a hundred
20 homes. You have nothing to do with this listing.
21 They left J. King Real Estate. They came back and
22 called me.

23 We had a big argument about that. That was
24 probably six months or so before I left. But that
25 was where I started to see he was not who I thought

1 he was. And I wasn't ready to go at that point. I
2 was ready to start really telling him if these
3 things don't change, I am going to go.

4 Q. Okay. But you hung on for another six months.

5 A. I didn't just hang on, I helped him. I helped
6 him -- we had a lunch and he said, what would you
7 like to see me do that would make you happy, and
8 make all the other agents happy? I organized
9 trainings. I did his marketing for quite a while
10 and he did pay me. I mean \$10. That was more out
11 of the kindness of my heart than I needed \$10 an
12 hour. So I tried really hard to remain loyal, help
13 him grow his brokerage, and not have to change.
14 Changing brokerages is not fun.

15 Q. All right. There was some comment made
16 yesterday about you coming in and quitting before
17 you had finished your work. Is that accurate?

18 A. Not at all.

19 Q. All right. Were you prepared to finish up what
20 you had in process?

21 A. Yes, sir. All of them were finished with the
22 exception of going to the closing table. Two -- the
23 two that were novated, there was no way for them to
24 be finished. They were over a year out, which is
25 why he did end up novating them over. The rest of

1 those clients were supposed to close within
2 two weeks. All that was left was show up at the
3 closing table.

4 Q. Okay.

5 A. I, you know, things arose once I was kicked out
6 of the situation. They weren't there before I was
7 kicked out.

8 Q. Okay.

9 A. And I even helped coordinate all that. Can I
10 tell you a couple of for instances?

11 Q. Sure.

12 A. Okay. So with Ms. Darlene Miller, the lender
13 on that one wasn't the best lender. But the house
14 also wasn't in the best shape. So what we did was
15 when the house was listed, we listed it with \$2,000
16 in concessions and a new roof to be paid at closing.
17 We got a contract. The buyers loved the house.

18 Through it all -- because -- some of it was
19 because of the lender, but the closing and
20 Ms. Miller moving out, becoming homeless, sleeping
21 on a floor, then not even having the money to hire
22 movers to put her into her new place came from Jason
23 and his imaginary closings that the Millers
24 literally went to that were never scheduled. So
25 that was one of them.

1 With Crystal and Zach, that one was supposed to
2 close July 30 -- no, I'm sorry. The Millers were
3 supposed to close July 31st. Because of Jason it
4 was, it was closed in September.

5 Crystal and Zach, Crystal's fence was not done
6 at her new building. Zach's rate term was up. I
7 had to write the addendum for the contract to be
8 extended and send it to both of them. And then what
9 I also did for him was call his lender and ask them
10 if they could either waive the rate, the rate lock
11 extension fee, or pay it themselves, because it was
12 of no fault to them.

13 Jason wasn't doing any of that. So I took care
14 of that situation. Crystal and I were at her
15 inspection when she got the phone call from Jason
16 that she couldn't speak to me anymore. So all that
17 was left for Crystal was I did the addendum and I
18 took care of the rate lock, was do a final
19 walk-through and show up at closing.

20 For -- sorry, Judy, Judy was finished. I mean
21 it closed the day after I left. To be honest, Greg,
22 if I -- we'll get to why I, I did resign that day,
23 but I had no inkling that my clients were not going
24 to be taken care of and part of the punishment of
25 all of this.

1 Q. Okay. When you and Jason parted ways, did
2 you -- could you in your wildest dreams imagined
3 having to send hundreds of emails (inaudible) to get
4 these transactions closed?

5 A. No.

6 Q. Okay. All right. We -- your aunt was here.
7 She told us a little bit about the Green Street
8 transaction. Can you tell the jury how that
9 transaction was handled from your perspective?

10 A. Sure. I had already sold three properties for
11 her all of which were in great shape. This home was
12 not in great shape. So we spent months getting it
13 ready to go on the market. When she first called me
14 she wanted to sell it for about half of what we
15 ended up selling it for. And I said, no. We can
16 spend a little bit of money in here and get you
17 double that.

18 So we started the renovations. We listed it.
19 It very, very quickly went under contract. But I
20 was there with her through the whole thing. It was
21 awful. It wasn't just her daughter lived there.
22 Her daughter died there. So it was the last place
23 she had ever seen her daughter alive.

24 In the morning that she was told Brandi is not
25 going to closing with you, I'm coming, from Jason.

1 She told him no, you're not. I don't know you. And
2 I need her there. So she, she called me, left me a
3 voice mail.

4 MR. BLAKE: Your Honor, hearsay.

5 THE COURT: Well, I think she's already
6 testified to this, has she not?

7 MR. STUDEMEYER: I believe she has, Your Honor.

8 MR. BLAKE: She said it was left on a voice
9 mail. That was not testified to by Ms. Levine. And
10 again --

11 THE COURT: All right. If that was not
12 testified to -- I know that Ms. Levine did testify
13 to some of these things but if the voice message was
14 not testified to, then I would sustain the
15 objection.

16 MR. STUDEMEYER: Understood.

17 THE COURT: You cannot repeat what Ms. Levine
18 told you on the voice mail.

19 MR. BLAKE: Understood, Your Honor.

20 BY MR. STUDEMEYER

21 Q. All right, Brandi. Let's move on. Let me ask
22 you this. What, if anything, did Jason do to list
23 Ms. Judy's property for sale?

24 A. He didn't do anything to list her property. It
25 was too late on that one.

1 Q. What, if anything, did Jason do to sell
2 Ms. Judy's property?

3 A. Nothing.

4 Q. Okay. All right. And who went to the closing?

5 A. I did.

6 Q. And were you authorized to do that by Jason?

7 A. I was.

8 Q. And this was after he had told you you were to
9 no longer have any communication with these clients?

10 A. That's correct.

11 Q. But he made an exception for Ms. Judy?

12 A. She begged him to. And I went as her niece.

13 Q. Okay. All right. How did you become involved
14 in the Concord Place Road transaction?

15 A. So Zachary Christian and Joseph and I were
16 looking at homes for them, and none of them were
17 very suitable. They have some health problems so it
18 was really important that we find the right house
19 for them. And their, their price range was a little
20 tight. So I put an ad up and asked if anyone was
21 considering selling to, please, let me come and
22 preview the home so I could see if it was a home
23 they would be interested in. Crystal responded
24 pretty much that same day. And I called her.

25 I went out there and I looked at her home. She

1 really didn't -- I remember she really didn't want
2 anybody coming over that night. And I said, it's
3 okay. We are not here to judge anything in your
4 house. We just need to look at the house. We care
5 about the walls and the floor and the outside. So
6 she let us come.

7 And they really did want the house. And so I
8 was representing the Christians, and Crystal asked
9 me if I could represent her, too. And, of course, I
10 did. And we did it at a very economical rate so
11 that she could afford to purchase their new home,
12 and do any repairs that were going to be necessary
13 at Concord.

14 Q. Okay. What, if anything, did Jason do to
15 assist you with listing Crystal's home for sale?

16 A. Nothing. Jason never assisted me with listing
17 anyone's home or helping anyone buy the whole
18 two years.

19 Q. Okay. So what did he do if anything to assist
20 you with selling that home to Zachary?

21 A. Nothing.

22 Q. Okay. All right. Tell us about the Old Town
23 Road transaction.

24 A. So that's Crystal's new home. We searched for
25 some resales for a little bit. And ended up liking

1 the new construction home best, so we went over
2 there to Livingston Place, put her house under
3 contract. If I remember right, it's been
4 three years, but I think it was pretty much almost
5 completed. It had sheet rock and everything in it.
6 So we had to get her a loan. We had to do her blue
7 tape meeting. We had to do her inspections. And
8 after that is when I was kicked out of the equation
9 on it.

10 So my understanding is the last thing that was
11 left with was that fence, and they couldn't get the
12 fence up. And we still don't have a fence to this
13 day, I don't think. So the closing had to be
14 extended just a little bit because of that fence.

15 Q. Okay. So what, if anything, did Jason do to
16 assist you with selling the new home to Ms. Collins?

17 A. Nothing. All -- he kept -- the only thing
18 Jason ever did was put papers in a file, and,
19 actually, his secretary did that. Jason looked at
20 the files, but even after a contract was written,
21 that's not what he signed. Because the folders for
22 buyers and sellers were always kept in our agent hub
23 and they were pre-signed by Jason.

24 Q. Okay. Now what is an agent hub?

25 A. It's a room with a printer at the office. It

1 has a little shelf in there and a printer. And the
2 red folder is for buyers, the manila folder is for
3 sellers. Everything inside was pre-signed. Which
4 probably should have been a pretty big clue, except
5 I had no idea what I was doing. I was new. Brokers
6 aren't supposed to pre-sign papers.

7 Q. Okay.

8 A. They are supposed to sign them as they review
9 that the contracts are written properly.

10 Q. Okay. Now tell us how you became involved in
11 the Trinity Three Road transaction.

12 A. Mr. Miller, Chuck, reached out to me. There's,
13 there's two pretty large community groups on
14 Facebook in Irmo that I get a lot of clients from.
15 He reached out to me and asked me --

16 MR. BLAKE: Your Honor, hearsay again.

17 THE COURT: At this time she is testifying
18 about Chuck Miller? Okay. Chuck Miller, she's
19 going to try to quote Chuck Miller. He has not
20 testified so I would have to sustain the objection
21 unless you have an argument to make, Mr. Studemeyer,
22 that it's not being offered for the truth of the
23 matter asserted. I don't know. I don't know what
24 she's fixing to say.

25 MR. STUDEMEYER: Okay.

1 BY MR. STUDEMEYER

2 Q. Let's, let's do this. Let's just cut to the
3 chase and tell us about your getting a contract
4 signed, or whatever, to sell the Miller's house.

5 A. Okay. After they contacted me I went to the
6 home and looked the home over. I made some
7 suggestions about what she needed to do to get the
8 most money she could for it. It needed some
9 significant repairs. So we went through all of
10 that. We did some repairs. We decided to give
11 concessions for others and to go ahead and list the
12 house as getting a new roof after closing so that
13 that could be paid then. So I listed the home. It
14 went under contract very quickly. Everything was
15 going great on it as well.

16 I mean, the buyers were happy. They were
17 getting a new roof. They were getting \$2,000 in
18 closing costs. From my understanding, again, I was
19 kicked off of this deal, too. Then as soon as I was
20 kicked off Ms. Miller hired me to help her purchase
21 her new home. So the new home became contingent on
22 that home selling. Because of that I can discuss
23 that transaction with them. I can discuss whether
24 or not it's going to close. I can get updates from
25 the other agent and I can get updates from the

1 lender.

2 As I start seeing -- we're supposed to close
3 July 31st and we're -- now we're in August. So I
4 had to start making calls because the new, the
5 builder on the new home wants to know when are we
6 going to close.

7 MR. BLAKE: Your Honor, hearsay again. Could
8 you please instruct the witness not to talk about
9 what builders, lenders and those who are not
10 testifying --

11 (digital equipment failure for 4 seconds.)

12 THE COURT: -- so and so. And as a result of
13 that conversation you did whatever you may have
14 done. That's permissible. Just don't quote
15 somebody that's not testified or will not testify in
16 this case.

17 THE WITNESS: So I had a conversation with the
18 builder that they were very concerned as to why --
19 when we were going to be able to close on the new
20 townhome. So I had to start getting updates from
21 other folks in the transaction. I couldn't call
22 Jason and say can I get an update. So the update
23 that I got was there was some issue with the HVAC.
24 Ms. Miller was being encouraged to, to take the home
25 off the market and say no to the repairs. But she

1 couldn't because then she would really be homeless.
2 The lady was already sleeping on the floor.

3 So I believe in the end, and I'm not privy to
4 it, but I believe in the end they did the air
5 conditioning repair because we closed on her
6 townhome.

7 The situation was so dire for her. She had no
8 food. She had nothing. All of her belongings were
9 in storage. So my movers went to her storage
10 facility, moved what was left of her belongings to
11 her new home in Harbison Grove, and then I went and
12 grocery shopped because she had nothing left. She
13 had spent so much money coming to all of these
14 imaginary closings, and Mr. Miller driving in from
15 out of town --

16 MR. BLAKE: Your Honor, again she's testifying
17 about -- she's talking about conduct, dates, and
18 actions about people who are not testifying in this
19 case. She's got no foundation for this other than
20 the hearsay that she is assuming is true. She just
21 can't be allowed to just characterize all these
22 other parties' action.

23 THE COURT: Right. Try not to repeat what
24 others have told you. Okay? Sometimes it's hard.
25 I realize that. But do your very best. No

1 repeating what someone has told you who has not, or
2 will not, testify in this case.

3 BY MR. STUDEMEYER

4 Q. All right. Let's do this. Brandi, you've
5 mentioned a couple of times that you were kicked
6 out. Let me ask you this, were you kicked out or
7 did you quit?

8 A. Oh, no, I was kicked out.

9 Q. Okay. Let's talk to the jury about when you
10 got kicked out and how that came about.

11 A. Okay. Jason was fine with me continuing on
12 with these transactions. That's why I have emails
13 that say, and they're in the evidence, you are the
14 wheels on the bus. You have the relationship with
15 these clients. I want you to be involved. He was
16 perfectly fine with it all until I asked to be paid
17 fairly.

18 When I asked to be paid fairly and he received
19 a letter from Greg simply asking to be paid, that's
20 when I was kicked out of everything. And the big
21 thing here is the day I called Greg. I thought I
22 was going to spend a \$3,500 retainer, have a letter
23 sent and get my money back besides what he charged
24 for the letter, because, surely, you're going to,
25 you're going to do the right thing here. Never in a

1 million years did I see this happening.

2 At that point in my life I had a daughter in
3 college, about to start college. A son in high
4 school. I had just left a job where I made \$20,000
5 a year. I couldn't afford to wait all this time for
6 my paycheck. It was the most difficult thing. I
7 wanted it to be done and settled. I did not want to
8 be sitting here three years later, now \$50,000 in
9 the hole out of my pocket that I couldn't afford,
10 plus the bill.

11 MR. BLAKE: Your Honor, I'm going to have to
12 ask you to ask the jury to disregard the statement.
13 That's not what the damages are in this case and
14 it's completely inappropriate that it has been
15 presented in front of this jury.

16 THE COURT: Is this line of testimony, it is
17 related to the damages that you are claiming in this
18 case, Mr. Studemeyer?

19 MR. BLAKE: \$50,000 is not the damages.

20 THE COURT: Well, I'm asking Mr. Studemeyer.

21 MR. STUDEMEYER: Your Honor, that number is not
22 the damages that we are seeking, okay.

23 THE COURT: I will sustain the objection. I
24 instruct the jury to disregard the last testimony.

25 MR. STUDEMEYER: All right.

1 BY MR. STUDEMEYER

2 Q. Brandi, let me ask you this. Were you in a
3 position to take a \$20,000 hit in the middle of a
4 pandemic?

5 A. No.

6 Q. Were you being paid minimum wage in addition to
7 your commissions up until that time?

8 A. You mean like a salary?

9 Q. Yeah.

10 A. No. The only time I was paid any additional
11 money was the few short months I did marketing, and
12 that was \$10 an hour.

13 Q. Okay. So if you didn't sell something, you got
14 paid nothing --

15 A. Right.

16 Q. -- is that right?

17 A. Yes.

18 Q. All right. How long -- we were talking about
19 getting kicked out. I'm not sure we got through
20 that part of your testimony. Tell the jury, if you
21 would, about the email that you got on July the
22 2nd that brought all this about.

23 A. Okay. Am I allowed to say why I got the email,
24 or do I have to leave that out?

25 Q. Well, why don't we just talk about the email

1 first.

2 A. Okay.

3 THE COURT: That would be Number 5, Exhibit
4 Number 5, I believe. You can refer to that if you
5 would like to in responding to the questions.

6 THE WITNESS: Okay. Okay, so this email
7 starts, starts talking about the revised commission
8 sheets because -- Jason writes this email because he
9 is upset with an attorney who wrote the checks wrong
10 for a recent closing that I had. I didn't realize
11 the attorney wrote the checks wrong because we were,
12 we were rushing -- the client that I was with, we
13 were rushing to get from her sale to her new-build
14 closing. The closings occurred in my car, not at a
15 table, because it was during COVID so you couldn't
16 really shuffle papers around and check things. So I
17 did not notice it.

18 I took it directly to the bank, which was also
19 very unorthodox. Jason would either say, bring the
20 checks to the office, or you can deposit them if you
21 actually want to get paid faster than I can get to
22 the bank, you can deposit them yourself. So I would
23 always deposit my own checks because I just don't
24 like having my money held. So I went to the bank.
25 I deposited the check and I went on about my day.

1 Well, he called me and said the check is wrong.
2 Well, it's already at the bank and the check is
3 wrong because of the attorney. So call the attorney
4 and we'll, we'll figure it out. Well, he, he
5 apparently thought we were going to have some
6 meeting. But I wasn't invited nor was I coming to a
7 meeting. I didn't write the check wrong.

8 So then he goes on to say congratulations on
9 capping. This is an amazing job. Halfway through
10 the year with all of the COVID issues. It is a
11 little bittersweet. I do not feel you appreciate
12 all this brokerage does for you. With that comment,
13 that -- each sentence of this letter kind of just
14 buried in at my heart.

15 All this brokerage does for me. What the
16 brokerage did for me was provide paper inside of
17 envelopes, and a website called Real Beats that I
18 had no control over whatsoever. No branding on it
19 at all. All of the leads went directly to Jason.
20 And a DocuSign which is in Jason's name. That's
21 what the brokerage provided to me. Along with two
22 signs the day I signed up. For 30 percent of every
23 one of my sales, that's what I got.

24 So that sentence right there just kind of
25 shocked me when I read it. Because I'm thinking,

1 what about everything I provided to you. You've
2 gotten \$40,000 in your pocket. And all of my sales
3 showing that you have a successful brokerage. I
4 didn't feel like it was a trade-off.

5 BY MR. STUDEMEYER

6 Q. Well, talk about that for a second.

7 A. Yeah.

8 Q. Who keeps a scorecard on real estate agents
9 about who sells what?

10 A. There's a couple of them. So if you are a real
11 estate professional and own a brokerage, the MLS
12 keeps a scorecard of not just how the agents are
13 performing, but how the overall brokerage is
14 performing. Well, in our brokerage it really was
15 just me and Jason. I mean the other agents sold a
16 little bit. No more than three, four houses a year.
17 So the MLS keeps a record.

18 If you're a licensed realtor, which he is not
19 and none of his agents can be because he is not,
20 that's a whole different scorecard. That's a public
21 scorecard. That's things like the Circle of
22 Excellence awards.

23 MR. BLAKE: Your Honor, this has nothing to do
24 with J. King Real Estate or her term there. And I'd
25 like to bring a 403 objection. I don't know why we

1 are hearing or talking about it.

2 THE COURT: Mr. Studemeyer.

3 MR. STUDEMEYER: Your Honor, I believe what she
4 is talking about is this email that she got from
5 Mr. King where he questions her professionalism.
6 And he's talking about all that he does for her.

7 MR. BLAKE: She's talking about the scorecard
8 from the Realtor Association that she just testified
9 he's not a part of.

10 THE COURT: I'll overrule at this point in
11 time. If you can tie it in somehow or other to the
12 email --

13 MR. STUDEMEYER: Okay.

14 THE COURT: -- I'll allow it.

15 MR. STUDEMEYER: Thank you, Your Honor.

16 BY MR. STUDEMEYER

17 Q. Brandi, first of all tell the jury what MLS
18 stands for.

19 A. It's actually CMLS and it's the Columbia
20 Multiple Listing Service. It's where every home
21 within our area is listed.

22 Q. Okay. And does CMLS maintain records as to who
23 sold what, or who sold how much?

24 A. Yes, sir.

25 Q. Okay. And is that a way to be recognized among

1 your peers in the real estate business?

2 A. Yes.

3 Q. Okay. Would it be important to you to actually
4 receive credit for what you sold?

5 A. It's one of the things that's important.

6 Q. Okay. All right.

7 A. Can I keep going?

8 Q. Yes.

9 A. Okay. The next sentence says I stayed up at
10 the office even though we were supposed to meet and
11 go over this. We were never supposed to meet. Just
12 because he sent me an email does not mean I have to
13 come up there on his demand. I'm a 1099 employee.
14 And I had other plans. I had done my part and
15 deposited his check in his bank account and that was
16 all I was prepared to do that day.

17 So then he goes on to say, it took me over an
18 hour to make sure this was correct, and I postponed
19 my vacation. It shouldn't have taken over an hour.
20 And honestly should have been an issue taken up with
21 the attorney's office. And we all have to postpone
22 vacations when we're in a leadership position, so.

23 Then it goes on to say, this is all my fault.
24 So he says, I feel that much of this time could have
25 been saved if you had reviewed the check first,

1 separated the deposits, went over the commission
2 sheets in detail, and then submitted them to the
3 brokerage correctly. Technology will not fix this.

4 J. King Real Estate provides quite a bit on the
5 back end and we bend over backwards for you as a top
6 producer. I want you to grow, reach your goals, and
7 be the best agent that you can be. All I ask in
8 return is loyalty, respect, and professionalism. No
9 one there ever bent over backwards for me one second
10 of the two years I was there. It's not my job to
11 check these commission checks. It's not my job to
12 make Jason's deposits. Those are all things that I
13 did in abundance of what I was supposed to be doing.
14 He's the boss. He's the owner. If his checks
15 aren't right, that's his problem. If he had systems
16 in place where agents brought checks to him for him
17 to check it, this wouldn't have happened ever. But
18 I had to get my client to her next closing. That's
19 what was most important that day. And that's what I
20 did. And then he wanted the checks in the bank by
21 5:00 so I raced to the bank and got them put in.

22 So then he goes on to say, we recently sat down
23 and discussed your professionalism and how you
24 represent J. King Real Estate. The comment that was
25 made to McGuinn about them discriminating against

1 Susan Pope is not a good look for you as an agent or
2 J. King Real Estate. This could have been handled
3 in a more professional manner. Okay. So that
4 paragraph is referring to a client that I have, and
5 he says her name so I'm assuming I can say her name
6 as well.

7 She is a retired Marine with extreme PTSD who
8 grew up in Mobile, Alabama. She was purchasing a
9 townhome and she was asking the builder to put her
10 fence in the backyard just like every other fence in
11 the neighborhood. They wouldn't do it.

12 MR. BLAKE: Your Honor, again, if we can ask
13 her not to say what other people --

14 THE COURT: I don't think that would be offered
15 for the truth of the matter asserted so I find it's
16 not hearsay. Overruled.

17 MR. BLAKE: Thank you.

18 THE WITNESS: So all she wanted was the same
19 thing everybody else got. And they kept refusing.
20 And my job as a realtor is not to be friends with
21 the builder. It's not to make J. King Real Estate
22 look good with the builder. It's to represent my
23 client. So, honestly, I was kind of doing both
24 because I called Ms. Wanda over at McGuinn and I
25 said, listen, what's about to happen is she is

1 feeling like you are discriminating against her.
2 She is not asking for anything anybody else doesn't
3 already have. And I want you to know you're about
4 to open a whole can of worms if that fence is not
5 where it needs to go, which is where she wants it.
6 It was that simple thing.

7 And Wanda thanked me. She said, my gosh, thank
8 you. We don't need something on the news. You
9 know, we don't need a client up here leaving a bad
10 Google review. And she's fine. Everything was fine
11 except Jason was mad because he cares more about the
12 builder than he does the client, so.

13 I even made sure that I knew that this was true
14 by emailing Wade McGuinn, the owner of McGuinn Homes
15 myself, and asking did I do something to offend you
16 for you to have called and complained on me? The
17 answer is no.

18 MR. BLAKE: Your Honor, again, please she's
19 describing a conversation with her and a party.

20 THE COURT: I'll sustain.

21 MR. STUDEMEYER: Okay.

22 BY MR. STUDEMEYER

23 Q. Let's move on, Brandi.

24 A. Okay.

25 Q. I think we are towards the end of that email.

1 A. We are. Then he says, I say these things not
2 to be mean or belittle you. I say them because I
3 know you have a talent for real estate. You can be
4 really great and an asset to J. King Real Estate.
5 But I always have to weigh an asset versus the
6 liability they bring. My hope is that you think
7 about real estate as a career and not a job. Not as
8 transactions, but as long-term relationships and
9 success. Remember also that you are a leader, and
10 other agents follow your example.

11 Q. How did, how did you react to him suggesting
12 that you are a liability?

13 A. I didn't react. I got this email -- sorry.
14 And I honestly didn't leave my house for five days
15 after I got it. I was so upset. For being talked
16 down to and basically said -- he did, he called me a
17 liability for doing exactly what I am supposed to do
18 as their realtor. It's my job.

19 Is it always pretty? No. It's not always a
20 pretty job to have. Do some people think I'm mean?
21 Yeah. Did my client get what they wanted? That's
22 what I want to know. Is my client happy? I don't
23 care what the other person thinks. Am I going to be
24 professional? As much as I can be, absolutely. But
25 if you're doing something wrong to my clients, I'm

1 going to call you out on it. And I'm sorry. That's
2 why people use me.

3 Q. Did the thought ever cross your mind that
4 Jason's trying to bait me into quitting?

5 A. Absolutely. And that is why I did not
6 immediately respond. I was really working through
7 what do I want to do here. Because I felt like if I
8 went up there to try to talk to him and explain
9 where I was coming from, it would turn into a large
10 argument, and he could likely terminate me. I
11 didn't want to do that.

12 I wasn't even sure if I was going to terminate.
13 But it ended up the fifth day when I woke up that
14 morning it was absolutely no plan. I got up. I
15 drove to Casey Hilton's house, which is right behind
16 the office. I let her know that, I'm sorry. I'm
17 going to Jason and I'm going to (inaudible). I'm
18 going to go resign and let him know that I'm going
19 to move my license and talk some stuff through.

20 My husband didn't know I was doing it. Nobody
21 knew I was doing it, except Casey when I pulled up
22 in her yard. So, yeah, I took this as very
23 threatening, very condescending. But mostly it
24 showed me that I couldn't morally or ethically work
25 for him anymore. I couldn't have my name on a sign

1 that had his on it.

2 Q. Okay. Tell us about the meeting that you had
3 with Jason.

4 A. I walked in and he said, did you get my email?
5 He pretty much immediately wanted to be combative.
6 I said, I got your email. Well, you didn't answer
7 so I wasn't sure. I said, this is me answering.
8 I'm here. And I said, I want to end this
9 conversation as friends. That was the very first
10 sentence. And I said, I'm not happy. I've tried to
11 be happy for the past year. I've tried to make this
12 a place that we could all be proud of. I'm not
13 proud to be here anymore. And you obviously aren't
14 proud to have me here because you said so in your
15 email.

16 So I said, can we just agree to part ways.
17 Let's talk about what's going to happen with the
18 clients. And he said I think you need to go home
19 and really think about this. And I said, I've been
20 thinking about this for five days, you know. I
21 started thinking about this six months ago when you
22 went to the Campbell closing. And I've thought
23 about it every time since, when you've shown your
24 true colors. I don't need to think about this
25 another day. I just want to move my license.

1 Because it was very much feeling like he's
2 going to hold me here. Like his face was uh-oh,
3 like, I guess I went too far with her this time. So
4 then he said, what do you, what do you want to do
5 with your clients? And I told him I wanted to take
6 them all with me. I said, they are all very close
7 to closing. They want, they hired me, they want me.
8 Can we not involve these innocent people. And he
9 said no. He said, they are staying here. I own
10 them. That's his favorite thing to say is, I own
11 them, like they're not humans.

12 And he said, I will give you 50percent. And I
13 said, no. And I said you owe me 100 percent. He
14 pulled his little Salesperson Agreement out and we
15 argued over what that sentence means. And I can
16 tell you I took it -- I wasn't dumb. I took it to
17 several people and got legal opinions about what
18 that sentence meant.

19 It does not mean he can do whatever he wants.
20 It does not mean he can take whatever he wants from
21 me --

22 MR. BLAKE: Your Honor.

23 THE WITNESS: -- according to the attorneys --

24 MR. BLAKE: Is she offering a legal opinion?

25 THE COURT: No, I don't think she's offering a

1 legal opinion. It's just her -- she was a party to
2 the agreement. She can certainly state what she
3 believed the agreement meant, and so I will overrule
4 the objection.

5 MR. BLAKE: Thank you.

6 THE COURT: You may proceed.

7 THE WITNESS: So we got into the argument about
8 that. And then he said, I'll pay you 70 percent.
9 And I said I earned 70 percent all year. That's how
10 you got the \$20,000 for me to cap. You don't get
11 any money, Jason. And I said, just let me go. And
12 he came across the table at me screaming, I don't
13 have to pay you a cent. So that's when the
14 screaming match started. And I did raise my voice.
15 I raised my voice and I said, you better sit down
16 because at this point I feel threatened.

17 And I was letting him know -- Jason carries a
18 gun. Most agents carry a gun. And I knew there was
19 a gun right there in the desk. And I really was
20 scared. I had never seen him act the way he was
21 acting. So I said, tell you what. We kept arguing.
22 I said, you draft up whatever it is that you want me
23 to agree to, whatever the highest amount of the
24 commissions is you are willing to pay me. And when
25 I come tomorrow to clean my office out, I will see

1 if I can sign the document. And so I left that day.

2 I got in my car. I transferred my real estate
3 license because I didn't want him to do something
4 weasely with that too. And I went on to make some
5 calls to some attorneys.

6 BY MR. STUDEMEYER

7 Q. Okay. When was the next time you spoke with
8 Jason?

9 A. The next morning I showed up in my SUV. I had
10 a lot of stuff up there to clean out of my office.
11 And I walked in his office first and I said, hey,
12 let me see the agreement you drafted. And he shows
13 me the agreement with the same sentence that he
14 doesn't understand, and because we can't agree on
15 what that sentence does mean, I said, I can't sign
16 this with the sentence on it. You knew that.
17 That's the whole point of the argument yesterday.

18 Then the next sentence released all liability.
19 And I said, I can't sign any part of this. And I
20 said, can I have a copy? And he said, no. So I
21 took my phone out and I snapped a picture. And I
22 don't know if that's the picture that I snapped or
23 not. But I snapped a picture before he could jerk
24 it back.

25 And I went in my office and started cleaning

1 out. Mike was helping me load some stuff in my car
2 and his secretary came outside. They were all --
3 everyone else was very nice. They wanted to know if
4 I wanted some other personal belongings that I was
5 letting them use, and I said no. Y'all can have it,
6 like, none of this was supposed to end on bad terms.

7 So then he comes out. We have another
8 screaming match about this key. Well, he hadn't
9 asked me to bring the key so I didn't have it with
10 me. I was coming to get all this stuff loaded in my
11 car and hoping all that stuff would fit in it. So I
12 said, I'll have to go get your key. And I said, and
13 I've got an appointment. I've got other things to
14 do. I'll bring the key back tonight at 6:00. You
15 have no -- you shouldn't have any concerns
16 whatsoever that I'm going to come steal something
17 from you. You know I've done nothing but bring
18 things to you and make this brokerage better. I'm
19 not going to touch your property, and you have
20 cameras.

21 So he agreed. He's like fine, fine, 6:00. So
22 I went on about my day. I think I actually came and
23 met with you that day. I had some other clients to
24 meet and at 4:00 I was going to grab the key and eat
25 some dinner and I got an email from him that said

1 the locks have been changed. I was not allowed on
2 the property. And if I was found on the property,
3 he would charge me with trespassing, I think is what
4 the email says. But that email came three years ago
5 so forgive me if I'm misquoting.

6 Q. Okay. When was the next time you spoke with
7 Jason? The next time you heard from him.

8 A. Email.

9 Q. Okay. And was this the email about keeping the
10 wheels on the bus? Okay.

11 A. Um, wait. It might have been me emailing him
12 because I think when I left there that day -- I'm
13 looking. When I left that day, because things had
14 went so bad, I sent him an email recapping what he
15 said. I'm looking for it. It's the one where the
16 defense is trying to say I agreed to 70 percent, but
17 that's not what it says. You know what number that
18 is?

19 Q. What about Exhibit Number 7? That's the --
20 excuse me, the email from you to Jason on July the
21 11th, that Saturday?

22 A. There's one before that. That's the one I'm
23 trying to find. I can't find it. I sent him an
24 email though just reiterating the conversation. And
25 it ended with something to the effect of I hope that

1 you plan to pay the 70 percent that you agreed to.
2 Not that I agreed to because I didn't agree to that.

3 Q. Okay.

4 A. Because I wanted something in writing that said
5 that's -- at least I got that much.

6 Q. Take a look at Exhibit 72.

7 A. Okay.

8 Q. I'm sorry, 71. Now this was an email from you
9 to Jason on Friday, July the 10th, 2020, at
10 5:57 p.m.

11 A. Before our 6:00 appointment.

12 Q. Okay?

13 A. Yep.

14 Q. Okay. Now if you would just read that email to
15 the jury.

16 A. Jason, there was no need to change the locks.
17 As I told you I would bring the key at 5:30 and was
18 on the way to do just that. I also have never given
19 you a reason to think that you would need to change
20 the locks. I was kind enough today to give April my
21 lamp, and you know I had no intention of ever
22 entering the brokerage for malicious intent.

23 I was shocked yesterday by your anger and
24 outburst. I'm also sorry that a meeting I began
25 with I hope we can still be friends went poorly as

1 well. Sadly, I have expressed my ongoing concerns
2 several times with you, and have been a loyal agent
3 and friend for the past two years to no avail. I
4 deserve to be where I feel supported and valued.
5 And my hope was that was J. King Real Estate.

6 Just a second.

7 All I asked for was what was -- all I asked for
8 was what was agreed upon when I signed on with J.
9 King Real Estate, and also what you promised at your
10 agent meeting on 6/25/2020. I worked very hard and
11 certainly helped to grow the brokerage, capping both
12 years. At the time I left I had earned a 100
13 percent commission. Although you interpret what the
14 contract says much differently, I should receive the
15 commission earned minus the \$50 transaction fee.
16 There is still work to do on each of these
17 transactions, which I am doing. These clients chose
18 me as their agent with the expectation that I would
19 represent them through the closing. They are all
20 aware that I have transferred brokerages and that
21 you agreed and that I would continue to represent
22 them through closing.

23 Against legal advice I was open to a
24 compromise. But I could not sign that agreement
25 because it contains the very sentence that we

1 interpret differently. I tried to explain that to
2 you as I also tried to explain my concerns. I have
3 to protect my business, as well.

4 As agreed I will represent these clients until
5 closing and communicate status updates via email. I
6 hope you will honor your commitment and compensate
7 me at the very minimum the 70/30 split you agreed to
8 pay me. And then it has Judy Levine's contact info.

9 Q. Okay. And did you get a response to this email
10 from Jason?

11 A. I don't remember. Is it in here?

12 Q. Take a look at -- take a look at Exhibit
13 Number 7.

14 A. The email to Jason, again? Okay.

15 Q. Did you have any conversation with Jason
16 between Friday afternoon at 5:57 and Saturday just
17 after noon when you sent this email marked as
18 Exhibit Number 7?

19 A. Not that I remember unless there's an email. I
20 mean we didn't speak on the phone or anything.

21 Q. Okay. All right. If you would read Exhibit
22 Number 7 to the jury.

23 A. Okay. Right now we plan to close 503 Concord
24 Place on 7/26, and 1023 Old Town Road on 7/34(sic)
25 or before. This is not concrete and was just

1 discussed on Friday. Addendums will be done first
2 of the week and I will send them to you once they
3 are executed. Additionally, you calling all the
4 clients is freaking them out to the point that they
5 are considering terminating their contracts
6 completely.

7 You agreed that you would allow me to finish
8 these transactions provided I give you updates,
9 which I am doing. Please stop trying to undermine
10 my relationships with the clients of the contracts
11 that I wrote. It will only hurt you in the long
12 run, and it is not coming across as a good look for
13 you or J. King Real Estate.

14 Now he says that was a threat. If you go back
15 to his nasty email, all I did was retype his words
16 about -- to me, about not being a good look back to
17 him. That's all I did. It was not a threat.

18 Q. Now did Jason tell you that he was calling all
19 your clients, or customers, or whatever -- your
20 friends. Did he, did he tell you before he did it,
21 I'm going to call Zachary and tell him there's a
22 legal situation? Or I'm going to call Crystal up,
23 or I'm going to call Ms. Miller up. Did he tell you
24 in advance what he intended to do?

25 A. He did not tell me that he was calling the

1 clients. He did not tell me he was calling lenders.
2 He did not tell me he was calling closing attorneys,
3 and he did not tell me he was calling builders. He
4 called everyone he could to let them know that there
5 was a legal situation, which everyone knows means
6 lawsuit.

7 Q. Okay. Now take a look at what's marked as
8 Exhibit Number 8. If you would, read that to the
9 jury.

10 A. Brandi, I do not want to be involved anymore
11 than I need to be. Legally I have to be involved.
12 You have the relationship. I'm looking forward --
13 I'm looking for you to keep the wheels on the bus
14 and be the liaison with the client. If everything
15 goes smoothly and the client is happy with you and
16 J. King Real Estate then you will get your cut of
17 the commission.

18 I had great conversations today with the
19 clients and everyone else involved in the
20 transactions. I only spoke well of you and expect
21 you to do the same. No one seemed uneasy.

22 Do you want me to keep going?

23 Q. Yes.

24 A. Number 1, Green Street looks good for Tuesday.
25 We just need a time from the attorney. Number 2,

1 Concord looks good for the 28th. Do you want me to
2 send an extension addendum to them or would you like
3 to -- to them or you to present? Old Town, attached
4 as an extension addendum from Great Southern Homes
5 for Crystal to sign. Is Palmetto going to absorb
6 the cost of the extension? Trinity Three sounds
7 really rocky with the inspections. It may fall
8 through unless you can get something worked out.
9 Joshua is going to copy you on the repair addendum.
10 Joshua is the buyer's agent.

11 Thanks for the update on Saw Creek.

12 Sweetwater, the buyer has completed their
13 inspections and is moving forward.

14 Q. Did you understand that you still had a
15 relationship with J. King Real Estate at the point
16 when you wrote that email?

17 A. When he wrote it?

18 Q. Whenever he wrote it?

19 A. Yeah. I no longer worked for J. King Real
20 Estate but we were attempting to have a relationship
21 for these clients.

22 Q. Okay. And you were being asked to keep the
23 wheels on the bus?

24 A. Yes.

25 Q. What did you understand keeping the wheels on

1 the bus to mean?

2 A. Well, to me it meant they want nothing to do
3 with Jason. So I need to keep the wheels on the bus
4 and make sure that these transactions close.

5 Q. Okay. What about the -- his comment about you
6 getting a cut if you kept the wheels on the bus?

7 A. So in that sentence he's basically threatening
8 me by saying things truthful about him. If anything
9 were to happen where these clients became upset or
10 these transactions did not close I wouldn't get my
11 cut. He kept calling it cut because at this point
12 he's still not abiding by the commission schedule,
13 all of the documents I signed that said I get 100
14 percent.

15 Q. Okay. Now with regard to the Trinity Three
16 Road transaction under Number 4 there where he says
17 Trinity Three sounds really rocky with the
18 inspections. It may fall through unless you can
19 work something out with Joshua. Was Jason still
20 telling you what to do at this time?

21 A. He was.

22 Q. Okay. Did you work something out as he
23 directed you to do?

24 A. I did. The Trinity Three was not rocky at all.
25 Inspections -- I was aware of what was on

1 inspections. The Miller's were ready, willing, and
2 able to do what needed to be done for the buyers to
3 close. There was never a threat of that contract
4 terminating.

5 Q. Okay.

6 MR. STUDEMEYER: Your Honor, if it's, if it's
7 acceptable to the Court, we think this would be a
8 good time to break for lunch.

9 THE COURT: Okay. All right. Let me. Y'all
10 come up here just a minute. Let me kind of get an
11 idea as far as time.

12 (WHEREUPON, an off-the-record discussion
13 took place in the presence of the jury.)

14 THE COURT: All right, ladies and gentlemen.
15 It looks like there's still some additional, what we
16 call direct, examination of this witness that still
17 needs to be done. And so we are going to go ahead
18 and break for lunch. It is almost 12:15. So if you
19 can be back here at 1:30. Hopefully, an hour and
20 15 minutes will be enough for you to get you
21 something to eat. And so be back here at 1:30. And
22 have a good lunch. Remember all of my instructions.
23 Let's be back here at 1:30.

24 (WHEREUPON, the jury exited the courtroom
25 at 12:14 p.m.)

1 THE COURT: Okay. You just can't talk to
2 anybody about your testimony. You can talk to them
3 about anything else, but just not anything about
4 your testimony, okay? All right. Y'all have a good
5 lunch. We'll see you at 1:30.

6 MR. BLAKE: Thank you, Judge.

7 MR. STUDEMEYER: Thank you, Your Honor.

8 (WHEREUPON, the Court took a recess.)

9 (WHEREUPON, the jury entered the courtroom
10 at 1:35 p.m.)

11 THE COURT: Let the record reflect that the
12 jury is back in. Ms. Clarkson, if you would come
13 back to the witness stand, please, ma'am. We are
14 still in direct examination. You may proceed.

15 MR. STUDEMEYER: Thank you, Your Honor.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. STUDEMEYER

18 Q: I think just before we broke we were talking
19 about the email from Jason to you suggesting that
20 you needed to keep the wheels on the bus. Correct?

21 A. Yes.

22 Q. Okay. And I believe you also addressed the
23 fact that at your request I sent a letter to Jason
24 asking him to pay you what was due when it was due.
25 Is that correct?

1 A. Yes, sir.

2 Q. Now take a look at Exhibit Number 9 in that
3 binder, and let me know if you recognize that
4 letter.

5 A. I do.

6 Q. Okay. Now after that letter was sent, did you
7 hear anything more from Jason?

8 A. Yes.

9 Q. Okay. How did -- when was the next time you
10 heard from Jason?

11 A. If I'm remembering correctly it was the email
12 that said that I could have no communication
13 whatsoever with the clients. Any communication
14 would be considered interference.

15 Q. Okay. Take a look at Number 10. Let's see if
16 you recognize that.

17 A. Yes.

18 Q. That's the email you are talking about?

19 A. It is.

20 Q. Okay. Did you want to abandon the clients who
21 were looking to you to close these transactions?

22 A. Never.

23 Q. You -- did you want to finish them?

24 A. Yes.

25 Q. Okay. But you were prevented from doing that?

1 A. That's correct.

2 Q. Okay. Now, when did you agree to go to work
3 with Fathom Realty?

4 A. I don't remember the exact date the license was
5 transferred. But it was pretty much immediately
6 after leaving J. King Real Estate.

7 Q. Okay. And tell the jury what happened with
8 regard to the Sweetwater transaction and the Saw
9 Creek transaction.

10 A. At the beginning of all of this I asked for
11 them all to be transferred. After -- I don't
12 remember exactly how many days because it's been
13 three years ago, but shortly after -- I think it was
14 towards the end of July, Jason contacted my broker,
15 Dan, and agreed to novate Susan Sato, which was a
16 vacant lot in Hopkins, and to novate a new build for
17 the Whitakers, which was over in Lexington. The
18 house still had at least 10 months of work to be
19 done.

20 So with him novating them, that's two
21 transactions I'm still entitled to 100 percent
22 commission on, but I did want them novated. I asked
23 for it. That in turn made it where I had to pay my
24 new fees at my new brokerage. So in order to not
25 have those clients forced into using an agent they

1 did not want to use, we went ahead and did the
2 novation, and I paid my Fathom fee on each one of
3 those.

4 Q. Okay. And how much were those fees?

5 A. So Fathom is a flat fee brokerage. We don't
6 have a split. We do have a transaction fee that's
7 clearly laid out in a book, and it's four -- well,
8 at the time that I joined it was \$450 per
9 transaction, and you capped at 12. So I paid \$450
10 for each of those transactions when they closed.

11 Q. Okay. For a total of \$900?

12 A. \$900. No commissions.

13 Q. Okay. All right. I think we've already talked
14 about the Green Street transaction. You were paid
15 all but \$50 of that commission, is that correct?

16 A. Yes, sir.

17 Q. But you weren't paid in a timely manner, right?

18 A. No, sir.

19 Q. Okay. So that's when you decided to file suit.

20 A. We filed suit, I thought, and I could, again,
21 it's been three years. It was either right after
22 Green Street, or right when we realized the next
23 check came and it was not the correct amount. We
24 did give him the opportunity to keep -- to do the
25 right thing.

1 Q. Okay. Can you tell the jury how much money you
2 are owed for the Concord Road transaction?

3 A. Yes. Concord Road home was both buyer and
4 seller at a very reduced rate. I believe the
5 commission on it was around \$6,000 for both sides.

6 Q. Okay. If you would I believe there are some
7 exhibits at the back of that binder. And see if you
8 have a copy of an agent commission worksheet dated
9 7/28/2020. It's not in the binder itself. It
10 should be in the back.

11 A. Oh. Okay. Yes.

12 Q. And what number is that marked as?

13 A. Exhibit 10 of 3.

14 Q. Does it have a sticker on it?

15 A. Mm hmm.

16 Q. Okay. What is that?

17 A. That's what it says. Ten of three, or Ten F
18 three?

19 THE COURT: Now, are you referring to the
20 worksheet concerning Concord Place?

21 MR. STUDEMEYER: Yes, Your Honor.

22 THE COURT: Okay. Mine's not marked. I mean,
23 that's okay, but it's, it does not have an exhibit
24 number on it.

25 MR. STUDEMEYER: Okay.

1 BY MR. STUDEMEYER

2 Q. So Brandi, according to this agent commission
3 worksheet that we are talking about, how much
4 commission are you due?

5 A. The commission was \$6,000 and I agreed to pay a
6 \$450 termite treatment for the both of them. So the
7 remaining, with the \$50 transaction fee, was \$5,550.

8 Q. Okay. Now this \$50 transaction fee, was
9 that -- did you type that in?

10 A. No.

11 Q. Do you know how that got on this document?

12 A. I can only assume that the person that created
13 it typed it in.

14 Q. And that was Jason King.

15 A. Correct.

16 MR. STUDEMEYER: Okay, can I see that document?

17 Your Honor, may I publish this to the jury?

18 THE COURT: Sure. It's in evidence so you can
19 certainly do that.

20 MR. STUDEMEYER: Okay.

21 BY MR. STUDEMEYER

22 Q. All right, Brandi. If you would see if you can
23 find the next agent commission worksheet for --

24 MADAM COURT REPORTER: You need to stay by the
25 microphone.

1 MR. STUDEMEYER: Oh, I'm so sorry.
2 BY MR. STUDEMEYER
3 Q. Brandi, see if you can find the -- let's see
4 the one we just did was for --
5 THE COURT: Concord Place Road.
6 MR. STUDEMEYER: Okay.
7 BY MR. STUDEMEYER
8 Q. See if you can find one for Old Town Road
9 that's dated -- you got it? It's dated July 29th,
10 2020?
11 A. Yes, sir.
12 Q. Okay. How much is due to you for 100 percent
13 commission on the Old Town Road transaction?
14 A. Before or after the transaction fee? After?
15 Q. Yeah.
16 A. Okay. \$9,408.58.
17 Q. Okay. Did you ever agree to this transaction
18 fee?
19 A. No.
20 MR. STUDEMEYER: May I publish this, Your
21 Honor?
22 THE COURT: Certainly.
23 BY MR. STUDEMEYER
24 Q. Now if you would, see if you see an agent
25 commission worksheet for the Trinity Three Road

1 property?
2 A. I do.
3 Q. Okay. And how much are you owed for a 100
4 percent commission on that property?
5 A. \$4,210.
6 Q. Okay. Does that include this \$50 transaction
7 fee, or deduct it from it?
8 A. It does.
9 Q. Okay. So the total amount is \$4,260, but this
10 form required you to deduct \$50.
11 A. Correct.
12 Q. Okay. So the \$4,210 is net giving Jason an
13 extra 50 bucks.
14 A. Correct.
15 Q. Okay.
16 MR. STUDEMEYER: Your Honor, may I publish
17 this?
18 THE COURT: You sure can.
19 BY MR. STUDEMEYER
20 Q. Brandi, if you would take a look at the --
21 Exhibit Number 11 in the binder.
22 A. Okay.
23 Q. Okay. And what is that?
24 A. It's the commission worksheet for 520 Green
25 Street.

1 Q. And that was your aunt's property?

2 A. Yes.

3 Q. Okay. And how much were you due for a 100
4 percent commission on that piece of property?

5 A. \$3,610.

6 Q. Okay. But Jason deducted \$50 from it?

7 A. That's with the \$50 deducted.

8 Q. Okay. And that was this transaction fee?

9 A. Correct.

10 Q. Okay. Now take a look at what's marked as
11 Exhibit Number 12.

12 A. Okay.

13 Q. Do you recognize that document?

14 A. I do.

15 Q. What is that?

16 A. This is the letter that he sent with the check
17 for the Green Street payment.

18 Q. Okay. If you would, please read that to the
19 jury.

20 A. The closing on 520 Green Street, West Columbia,
21 South Carolina, 29172 occurred on 7/14/2020
22 following your termination of the Broker-Salesperson
23 Agreement dated May 31st, 2018. Since the closing I
24 have had an opportunity to review the client
25 services, clerical and administrative work that was

1 required to be carried out following your
2 termination of the Broker-Salesperson Agreement.

3 While some of these items were required, I have
4 determined to forgo any deductions minus the
5 standard \$50 transaction fee in connection in order
6 to avoid an otherwise time-consuming and expensive
7 dispute with you regarding the same.

8 Accordingly enclosed you will find a check in
9 the amount of \$3,610, which is 100 percent of the
10 agent commission under the Broker-Salesperson
11 Agreement. I understand that the enclosed check
12 represents the entirety of the payment that you
13 believe is due from J. King Real Estate, LLC, in
14 connection with the 520 Green Street, West Columbia,
15 South Carolina, 29172 closing. But if I am
16 incorrect, please advise me at once.

17 Q. Okay. All right. Take a look at what's marked
18 under tab Number 13. Do you recognize that?

19 A. I do.

20 Q. Okay. What is that?

21 A. That's the check for \$3,610 with full payment
22 for 520 Green Street commission on it.

23 Q. Was it full payment?

24 A. It was 100 percent commission plus the
25 transaction fee taken out.

1 Q. Okay. All right. Were you in a position to
2 turn down that \$3,610 at the time?

3 A. No.

4 Q. Okay. All right. If you would take a look at
5 what's marked as Exhibit Number 65.

6 A. Did you say 60?

7 Q. Sixty-five.

8 A. Oh, sixty-five. Okay.

9 Q. Do you recognize that document?

10 A. I do.

11 Q. What is that?

12 A. It's the letter that accompanied the check for
13 Concord Place and looks like Old Town Road, too.

14 Q. Okay. If you would read that letter to the
15 jury.

16 A. The closing on 503 Concord Place Road, Irmo,
17 South Carolina 29063 occurred on 7/28/2020 following
18 your termination of the Broker-Salesperson Agreement
19 dated May 31st, 2018. The commission collected at
20 closing was fifty -- I'm sorry, \$5,550. Since the
21 closing I have an opportunity to review client
22 services, clerical and administrative work that was
23 required to be carried out following your
24 termination of the Broker-Salesperson Agreement. I
25 have determined this amount to be \$1,487.50,

1 including the standard \$50 transaction fee.

2 The closing on Old Town -- I'm sorry, closing
3 on 1023 Old Town Road, Irmo, South Carolina, 29063
4 occurred on July 30th, 2020, following your
5 termination of the Broker-Salesperson Agreement
6 dated May 31st, 2018. The commission collected at
7 closing was \$9,411.44. Since the closing I have had
8 an opportunity to review the client services,
9 clerical and administrative work that was required
10 to be carried out following your termination of the
11 Broker-Salesperson Agreement. I have determined
12 this amount to be \$2,402.86, including the standard
13 \$50 transaction fee.

14 Finally, you have an account with a J. King
15 Real Estate due to your refusal to return the keys
16 and the change of the locks that resulted. This
17 account balance is \$379.68 and it is being deducted
18 from these commission payments pursuant to
19 Paragraph 8 of the Broker-Salesperson Agreement.
20 Accordingly, enclosed you will find a check in the
21 amount of \$10,691.40, which is your agent commission
22 under the Broker-Salesperson agreement. I
23 understand that the enclosed check represents the
24 entirety of the payment to you from J. King Real
25 Estate, LLC, in connection with the 503 Concord

1 Place and 1023 Old Town Road closings. But if I am
2 incorrect, please advise me at once.

3 Q. All right. The -- what Jason sent to you was a
4 check for \$10,691, is that right, for both those
5 transactions?

6 A. And 40 cents.

7 Q. Okay. But you were actually due about 14 or
8 15,000?

9 A. That's correct.

10 Q. Okay. Do you know what that percentage works
11 out to be -- the difference?

12 A. It's relatively 30 percent.

13 Q. Okay. Just like he had been taking from you
14 for the last 18 months or so, correct?

15 A. Correct.

16 Q. All right. Now, let me ask you this. In the
17 roughly two years that you worked for Jason, did he
18 ever discuss with you client services, clerical and
19 administrative work?

20 A. The only thing I knew as far as clerical and
21 administrative work was I was not responsible for
22 payment for that. But yet the \$50 transaction fee
23 was explained to me to be for his secretary. So
24 everything pretty much contradicted -- his paperwork
25 contradicted his words. And that's one of the

1 reasons I contemplated leaving. None of it added
2 up.

3 Q. Okay. During the two years that you worked for
4 Mr. King, were you ever aware of him keeping time on
5 how long a telephone conversation lasted?

6 A. No.

7 Q. Were you ever aware of him watching his clock
8 when he was typing an email?

9 A. No.

10 Q. Did you ever agree to pay him \$173 an hour for
11 his time for making phone calls and typing?

12 A. Never.

13 Q. Have you ever seen him type?

14 A. I have.

15 Q. How does he type?

16 A. With two fingers.

17 Q. All right. Take a look at what's marked as
18 Exhibit Number 66 and tell us if you recognize that.

19 A. That's the check that was enclosed with the
20 letter and -- go ahead.

21 Q. What does that state at the bottom left-hand
22 corner?

23 A. Payment in full for 503 Concord Place and 1023
24 Old Town Road.

25 Q. Okay. Now, did you ever agree to take less

1 than you were owed?

2 A. I did not.

3 Q. Okay. Okay. Now, let's take a look at what's
4 marked as Exhibit Number 69. Do you recognize that?

5 A. Yes.

6 Q. What is that?

7 A. Another letter and another check.

8 Q. All right. If you would, read the letter to
9 the jury.

10 A. Brandi, your attorney keeps mailing the checks
11 I send you back to the attorney J. King Real Estate
12 had to hire to deal with your frivolous lawsuit
13 against it. I cannot imagine why this money was
14 returned other than some senseless desire to stir
15 disagreement between us and carry on with your
16 premature lawsuit that you filed. I have been
17 simply trying to timely issue the payment to you,
18 and now that I have -- wait. I have been simply
19 trying to timely issue the payment to you that I
20 have calculated due under the contract.

21 Your refusal to accept it now without any
22 strings attached is baffling to me. My letter did
23 not say that you agreed this was full payment. I
24 simply said that I believe that it's the full
25 payment J. King Real Estate could owe you without

1 regard for what you owe it from the proceeds of the
2 closings referenced on the check. The amount of the
3 check is the commission paid minus the deduction for
4 necessary client services, clerical and
5 administrative work done by J. King Real Estate
6 after you terminated the contract and filed a
7 lawsuit before these closings occurred.

8 I understand that you disagree that your
9 contract means what it plainly says, and that you
10 feel J. King Real Estate is not entitled to make
11 these deductions that it had to perform to
12 accomplish those closings after you terminated your
13 contract. This is simply the payment that J. King
14 Real Estate has calculated as due to you on these
15 three closings.

16 If you desire to continue to pursue some
17 frivolous lawsuit against J. King Real Estate and
18 waste both of our time and money, that is a shame.
19 But I suppose the lawyers can sort that out.

20 Q. Do you believe making a claim for \$20,000 worth
21 of paychecks is frivolous?

22 A. No.

23 Q. Have we addressed the Agent Commission
24 Worksheet for the Trinity Three Road transaction?
25 That would be in the very back of the binder.

1 A. Okay. Oh, they are over there.

2 Q. Now, when we sent -- when you asked me to send
3 a letter to Jason to ask him just to pay you what he
4 owed you, if he had been willing to do that, would
5 you have just forgotten about these transaction
6 fees?

7 A. Yes.

8 Q. That's all you wanted was just to finish your
9 work and move on, correct?

10 MR. BLAKE: Objection, Your Honor, leading.

11 THE COURT: Okay. Rephrase please.

12 BY MR. STUDEMEYER

13 Q. What did you want to accomplish?

14 A. I wanted to be paid the commission that I was
15 owed, and I wanted my clients to receive the best
16 service possible, which I am, they believe, would
17 have been from me.

18 Q. Do you know how much Jason took away from you
19 in transaction fees over the course of time you
20 worked for him?

21 A. I'm almost certain it's between \$3,000 and
22 \$4,000.

23 Q. Okay. Do you know how many transactions we are
24 talking about?

25 A. 58.

1 Q. Okay. And most of the time was it a \$50
2 transaction fee?

3 A. Yeah. Ninety nine percent of the time it was.
4 There was twice -- once I found a rental for --
5 that's how I met Zachary Christian. I think I got
6 paid \$100 to find that rental, and so Jason was
7 going to take the \$50 transaction fee. And I said,
8 are you really about to take half of my money. Like
9 you need that \$50? So he waived it.

10 Then there was another one. It was a
11 co-listing for one property and he attempted to take
12 \$50 from each agent on it, myself and Casey Hilton.
13 And I said something. And so he split it \$25 and
14 \$25 on that one.

15 Q. Okay. So that gets us down from 58 to about 56
16 transactions. And one of those would have been 25
17 instead of 50?

18 A. Correct.

19 Q. All right. So, see if this math makes sense to
20 you. If it's \$50 a transaction and there were 60
21 transactions, that would be \$3,000, right.

22 A. Mm hmm.

23 Q. Yes?

24 THE COURT: You must say your answer.

25 THE WITNESS: Yes. Sorry.

1 BY MR. STUDEMEYER

2 Q. Okay. So a little bit less than \$3,000 because
3 it was only 58 to begin with. 57 was zero and 56
4 was 25. Is that correct?

5 A. Yes.

6 Q. Okay. Okay, so in addition to the three
7 commissions represented by those three exhibits that
8 have been published to the jury, in the roughly
9 \$3,000 in transaction fees, are you also seeking to
10 recover the two fees you had to pay Fathom Realty
11 for the transferred transactions?

12 A. I consider them to be damages because I
13 wouldn't have -- again I earned 100 percent
14 commission. I worked very hard to earn 100 percent
15 commission. And I would not have had to pay
16 anything on those had Jason -- obviously I couldn't
17 have finished the one -- there's no way to do that
18 work for another brokerage and then come back and
19 finish for ten months, but they were definitely
20 damages I wouldn't have had to pay. They could have
21 actually signed a new contract with Fathom and just
22 completely been done with J. King Real Estate.
23 There was a lot of ways to find a solution that
24 could have made everyone happy, rather than where we
25 are sitting today.

1 Q. Okay. So how much altogether do you contend
2 that Jason owes you?

3 A. You want a dollar amount?

4 Q. Yeah.

5 A. So the 20 -- almost \$20,000 in commissions, the
6 transactions fees. I would like to see the \$900
7 novation fees. I, at this point, even not getting
8 paid the \$20,000, have come out of pocket at least
9 \$30,000 for the past three years just in attorney
10 fees.

11 MR. BLAKE: Objection, Your Honor.

12 MR. STUDEMEYER: Okay.

13 THE COURT: Sustain the objection and instruct
14 the jury to disregard it.

15 MR. STUDEMEYER: Okay. Brandi, that's all the
16 questions I have. Please answer any questions that
17 Mr. Blake may have for you.

18 MR. BLAKE: Thank you.

19 CROSS-EXAMINATION

20 BY MR. BLAKE

21 Q. Good afternoon, Ms. Clarkson.

22 A. Good afternoon.

23 Q. As you know I am Shaun Blake. I represent
24 Mr. King. I really want to talk about, to begin
25 with, this agreement that you had signed earlier.

- 1 A. Correct.
- 2 Q. Did you do one on every transaction?
- 3 A. I'm pretty sure I did.
- 4 Q. Okay. I believe you testified your first
5 transaction was on Ball Street. Right? Ballpark
6 Road?
- 7 A. Ballpark Road.
- 8 Q. Look with me at Exhibit 17, please. Are you
9 there?
- 10 A. Mm hmm. Yes, sir.
- 11 Q. And on the total owed to agent line you wrote
12 that \$8,760 down on that line, correct?
- 13 A. Yes.
- 14 Q. And down below there's a date paid indicated on
15 this record, right?
- 16 A. Yes.
- 17 Q. With a check number.
- 18 A. Yes.
- 19 Q. Countersigned by Mr. King, correct?
- 20 A. It's only signed by Mr. King.
- 21 Q. Okay. Well, you completed the \$8,760 as what
22 was owed, and then he signed showing that the check
23 was issued for that amount, correct?
- 24 A. Correct.
- 25 Q. Okay. And then your next transaction was that,

1 Q. And you wrote \$2,134 on the total owed to agent
2 line, correct?

3 A. Correct.

4 Q. It also was paid to you on the check indicated
5 below, correct?

6 A. Correct.

7 Q. Then you jump to December 27th. Another
8 transaction on 2117 Glenn Road, correct?

9 A. Correct.

10 Q. And on the total owed to agent line you wrote
11 \$2,722, correct?

12 A. Correct.

13 Q. And that's the check that you received for
14 payment in the amount you indicated, right?

15 A. Right.

16 Q. Now we've talked about this one before, you and
17 I. You were not licensed as a salesperson on
18 January 1, 2018, correct?

19 A. No. I got my license in June of 2018 -- or
20 May.

21 Q. Okay. So you believe the typed -- the date on
22 this document is a typo?

23 A. Yes.

24 Q. The check down below indicates that there is a
25 date paid on January 1st, 2018. Do you believe

1 guys.

2 (WHEREUPON, the jury entered the courtroom at
3 2:33 p.m.)

4 THE COURT: All right. Let the record reflect
5 the jury is back in. Mr. Blake, I believe there is
6 a stipulation between the attorneys that you want to
7 put on the record.

8 MR. BLAKE: Your Honor, the parties have
9 discussed and reviewed the evidence that has been
10 consented to to try to move this along. And on 42
11 occasions the commission worksheets that were
12 completed by Ms. Clarkson prior to her terminating
13 the agreement show there was a \$50 transaction fee
14 reduced before the amount written on the total owed
15 to agent line. On two transactions there was a \$25
16 transaction fee that was reduced from the amount
17 written on the total owed to agent line. On two
18 transactions J. King Real Estate waived the
19 transaction fee entirely per Mr. King. And, then of
20 course, there are the four closings that actually
21 happened at J. King Real Estate following the
22 termination. Green Street, Concord, those we talked
23 about, they were not -- Ms. Clarkson did not
24 complete an agent worksheet on those four.

25 THE COURT: Okay. All right. Very good.

1 Q. Okay. And he says that he wants you to grow,
2 reach your goals, and be the best agent that you can
3 be. Do you believe he meant that?

4 A. As long as I didn't become better than him is
5 what I believe.

6 Q. Okay. When he said that on July 2nd you
7 believed he means what he said?

8 A. No, I don't.

9 Q. Okay. In the courtroom with us is Mr. Lang.

10 A. Yes.

11 Q. And I understand that you were having, at this
12 point in time you had been having weekly
13 conversations with Mr. Lang for the prior
14 10-12 months. Is that correct?

15 A. When I say weekly they were not monthly
16 conversations. I don't know if it was every single
17 week, but Mr. Lang had a listing that I brought a
18 buyer to. And a lot of times when you bring buyers
19 to agent's listings the two of you talk a lot and
20 build a relationship. I did not know the entire
21 time that I was doing that transaction that Mr. -- I
22 call him Dan. I'm going to call him Dan if that's
23 okay. That Dan was a broker-in-charge. And I
24 certainly didn't know anything about Fathom Realty.

25 After the closing, like I do with a lot of

1 agents that I work with, Dan and I had lunch. And
2 that's when I found out he was a broker-in-charge.
3 We had had a really, really bad transaction, really
4 difficult, but he treated me nicely. We worked
5 together and we got through it, so we went to lunch,
6 and kind of became friends.

7 And then, yes, there were calls. Everyone that
8 works at Fathom loves Fathom. It's not a recruiting
9 thing. I haven't recruited anyone to Fathom. So we
10 --

11 Q. I didn't ask if you did.

12 A. Okay.

13 Q. I was just asking --

14 A. I'm trying to finish answering your question.

15 Q. Okay.

16 A. Okay. So Dan shared his love of Fathom with
17 me. He felt like I was a good agent, and he offered
18 to allow me to come work there.

19 Q. And you had weekly phone calls with him roughly
20 for the almost 12 months preceding this July 2nd
21 email, correct?

22 A. We became friends like any other agent that I
23 would call for advice, to run things by. I -- yeah,
24 we talked.

25 Q. And by July 2nd you had already set up and

1 attended a meeting for you and Casey, who was
2 another subagent at J. King Real Estate, to go have
3 a sit-down with Dan Lang to go through Fathom
4 Realty's Broker-Salesperson Agreement, correct?
5 A. Not entirely correct. So throughout that year,
6 just like I do with -- I don't do it anymore, but
7 with other brokerages they will hold trainings. And
8 if your brokerage doesn't have trainings, doesn't
9 have continuing ed, and you want to learn how to
10 do -- get more customers, do new things, you go to
11 other brokerage trainings. People do it all the
12 time.

13 I had been to a few of Fathom's. Casey had
14 went with me. And after, I don't remember the exact
15 date, after that Ascot house thing where he felt
16 like he was entitled to money he didn't earn, and
17 after the -- it just kept piling up, all of the,
18 whoa, this isn't, this isn't right kind of feelings.
19 After all that, I did call Dan and I said, I'm not
20 coming. Dan will, Dan will tell you when he gets up
21 here. I specifically told him every time I'm not
22 leaving Jason. I want to give Jason the opportunity
23 to do better. I want to give Jason the opportunity
24 to grow the brokerage. That was before he started
25 really making me question his ethics.

1 So after I started questioning the ethics I did
2 call Dan. I set up a meeting. And I said, look,
3 I've already made one big mistake with the broker
4 outfit. So I want to see if what you're saying is
5 true. Can I come to your office? Will you pull up
6 all the software? Can we go over everything and I
7 want to read it all in detail? And then if I have
8 questions, will you answer them? And this does not
9 mean I'm coming to Fathom. So if you don't want to
10 do it, I understand. It was going to take a couple
11 of hours of his time.

12 But he did it and it wasn't too good to be
13 true. There was a lot. After that meeting I came
14 back to Jason and told him all the things that I did
15 like. None of this was ever a secret. Jason knew.
16 They came to my open house -- well, not together,
17 but they were there at the same time.

18 So none of this was the way that you're kind of
19 phrasing it. It wasn't backhanded. I was very
20 honest about it. I was very honest about what was
21 bothering me. And very honest about the fact that I
22 was looking for more for my professional health,
23 basically.

24 Q. And I wasn't trying to suggest you were
25 backhanded, ma'am. I was trying to confirm that --

1 A. Okay.

2 Q. -- by July 2nd, you had already attended a
3 meeting with Dan Lang to go over his
4 Broker-Salesperson Agreement. Is that correct?

5 A. I don't know if it was July 2nd or not but,
6 yeah, I did have a meeting.

7 Q. And it was three to six weeks prior to you
8 terminating, correct?

9 A. Probably.

10 Q. Is that what you testified to when you gave
11 your deposition back in March?

12 A. If that's what it says.

13 Q. Okay. And as you just said, you liked what you
14 saw when you met --

15 A. Yeah.

16 Q. -- Mr. Lang, correct?

17 A. Yes.

18 Q. And so you then received this email on
19 July 2nd, and my understanding is that you then did
20 not leave your house for the next five days. Is
21 that correct?

22 A. No. I was very upset. I was very hurt. No, I
23 didn't leave my house for the whole five days. I
24 didn't want to run into Jason because I had -- I was
25 still trying to figure out what to do.

1 A. He did not know what I said to McGuinn. He did
2 not know if it was professional or unprofessional.
3 All Jason was concerned at -- about at that point
4 was, was McGuinn mad at J. King.

5 Q. Ma'am, that's a different question. I'm just
6 asking is what he's doing here --

7 A. Mm hmm.

8 Q. -- instructing a salesperson on how to interact
9 with another party, something that you now know is
10 the job of the broker-in-charge?

11 A. It's always been the job of the
12 broker-in-charge if there is unprofessionalism.

13 Q. You, at this time, were not a broker yet,
14 correct?

15 A. Correct.

16 Q. You obtained your salesperson license in 2018,
17 right?

18 A. Correct.

19 Q. You underwent 90 hours of training for that,
20 correct?

21 A. Correct.

22 Q. As a salesperson you then have to work for at
23 least three years under a broker-in-charge before
24 you are allowed to try to get your broker's license,
25 correct?

1 A. That's correct.

2 Q. And you began that journey with Mr. King at
3 J. King Real Estate, correct?

4 A. I started my real estate career there.

5 Q. That's right. You got your broker's license in
6 2022 eventually, correct?

7 A. Yes.

8 Q. You've never been a broker-in-charge though,
9 correct?

10 A. Correct.

11 Q. Since you left J. King Real Estate, your
12 license has always been subordinated to Mr. Lang's,
13 correct?

14 A. Correct.

15 Q. Okay. After this email you had no interactions
16 with Mr. King for five days.

17 A. Correct.

18 Q. Okay. And then you go into his office and you
19 tell him you're prepared to terminate your contract,
20 correct?

21 A. I went in his office like I testified to that
22 earlier, yes.

23 Q. Right. And then you went out into the parking
24 lot -- this was a Friday?

25 A. I would assume so. Did you look it up? I

1 don't have a calendar.

2 Q. We have had a calendar up here on the board for
3 much of the trial. But --

4 A. I don't have it memorized, but if you say it's
5 a Friday I have no reason to dispute that.

6 Q. You don't recall right now if it was a Friday?

7 A. I don't.

8 Q. Fair enough. But you went out into the parking
9 lot and you transferred your license to Mr. Lang.

10 A. I did.

11 Q. Was that on July 9th or July 10th?

12 A. I don't, I don't know.

13 Q. Okay. When did you receive notice that the
14 transfer of your license had been completed?

15 A. I think the brokers receive the notice that
16 licenses have been transferred.

17 Q. So you never received the notice that your
18 transfer had been completed?

19 A. I don't know.

20 Q. Okay.

21 A. I'm telling you that from my experience the
22 brokers receive the notice. I transferred it in the
23 parking lot because what happens is when brokers get
24 upset when an agent leaves, they can put you into
25 inactive status, which stops you from working. So I

1 to be bothered with them is what it is. He only
2 wanted the quick money that he did nothing to earn.
3 Q. Ma'am, the answer to my question is, yes. He's
4 the only broker you have ever heard of that was ever
5 willing to novate over and get no commission
6 (inaudible).
7 A. He's not the only broker I ever heard of, no.
8 Q. Okay. Let's talk about the allegation you just
9 made about there being \$36,000 that were due at the
10 time you sued. Do you agree that J. King Real
11 Estate owed you no commissions unless and until they
12 received a commission from a transaction, right?
13 A. I do not agree with that at all.
14 Q. Did you not read that in the agreement that
15 says commissions will be paid when received?
16 A. Have you read the listing or a buyer agency
17 agreement? Okay, both say that the commission is
18 earned at the time of contract, not closing.
19 Q. I'm talking about the Brokers-Salesperson
20 contract with Mr. King. It doesn't say whenever a
21 contract -- whenever a commission is earned under a
22 listing agreement. It says when the commission is
23 received.
24 A. Do you want to give me a number to look at?
25 Q. Go back to Number 1.

1 A. I don't think that's the way you phrased the
2 question.

3 THE COURT: What paragraph number, Mr. Blake?

4 MR. BLAKE: Page 2, Number 7, Your Honor.

5 THE COURT: Okay.

6 MR. BLAKE: Are you with me, ma'am?

7 THE WITNESS: Okay. So the question that I was
8 trying to reply to to you was basically what you
9 were saying, that I quit before the work was done.
10 The work was done when the contract was written. So
11 that commission was earned when the contract was
12 written.

13 I was just waiting on Jason to receive what I
14 had already earned 100 percent of.

15 BY MR. BLAKE

16 Q. In Paragraph 7 it says, in no case shall a
17 broker be personally liable to salespersons for any
18 commissions, nor shall said salesperson be liable
19 for the broker for any commissions. But when the
20 commission shall have been collected from the party
21 or parties for whom the service was performed, said
22 broker shall hold the same in trust for said
23 salesperson and himself to be divided according to
24 the terms of this agreement.

25 It very clearly says that the commission is

1 owed when the commission shall have been collected,
2 correct? Is that right?

3 A. As far as the Broker-Salesperson Agreement.

4 Q. So when you filed this lawsuit --

5 A. Mm hmm.

6 Q. -- five of the trans -- five of the six
7 transactions that you sued for commission over had
8 not closed, correct?

9 A. They don't have to close for the commission to
10 have been earned.

11 Q. They do have to close and the monies have to
12 have been collected before the broker gives the
13 money to you, correct?

14 A. And he was going to get the money. You're
15 missing the whole point. The commission was earned
16 when the contract was written. I earned 100 percent
17 commission that day. What we asked him to do in our
18 nice letter was pay me as he received the money.
19 That's all I ever wanted him to do. And to take
20 care of my clients, if he wasn't going to let me.

21 I didn't ask him to send \$20,000 out of his
22 pocket. We said he could pay it as they came in.

23 Q. But, ma'am, that's not what your contract said,
24 correct?

25 A. The contract says -- I'm going to try it one

1 more time, that on the commission when the contract
2 is written --

3 Q. I'm talking about the Broker-Salesperson
4 contract.

5 A. I asked him to pay a commission as the closing
6 occurred.

7 Q. And that ask is not what your
8 Broker-Salesperson contract said, right?

9 A. Yes.

10 Q. Because it says that this contract and the
11 association created hereby may be terminated by
12 either party at any time upon notice given to the
13 other. But the rights of the parties to any
14 commission which accrued prior to such notice shall
15 not be divested on termination of this contract
16 except by the commission, and it turns pages here,
17 of said salesperson on transactions in process but
18 not closed may be subject to deductions for
19 necessary client services, clerical and
20 administrative work, which will be carried out at
21 the discretion of the broker. That's what thr
22 contract says, correct?

23 A. That goes back to if the commission became
24 earned at the closing you might be right. That's
25 not what the contracts say at all. You can keep

1 looking at that but you know what I'm talking about.

2 Q. I know what you are talking about, ma'am. When
3 a contract is earned, is not addressed in this
4 contract.

5 A. It doesn't need to be. It's addressed in the
6 contracts that we write daily so --

7 Q. I understand, but those contracts don't entitle
8 you to commission because you individually are not a
9 party to those contracts --

10 A. Mm hmm.

11 Q. -- with those clients, correct?

12 A. That depends on how you look at it.

13 Q. I mean legally and who's on the actual
14 contract? Those agreements are agreements between
15 the client and the brokerage firm, not Brandi
16 Clarkson, correct?

17 A. I'm going to stick with the commission was
18 earned at the time of contract, which is exactly
19 what the agreements that the clients and I signed
20 say.

21 Q. Okay, ma'am, but again, that's not the question
22 that I'm asking.

23 A. Okay.

24 Q. Brandi Clarkson does not enter into real estate
25 agreements with clients. The brokerage firm does,

- 1 correct?
- 2 A. The brokerage firm signs as well, yes.
- 3 Q. All right. And you are not a party to that
- 4 contract at all, correct?
- 5 A. Not as far as the signature goes.
- 6 Q. Right. When you meet with clients --
- 7 A. Mm hmm.
- 8 Q. -- South Carolina LLR requires you to give them
- 9 the Disclosure of Real Estate Brokerage
- 10 Relationship, doesn't it?
- 11 A. Correct.
- 12 Q. The first time you meet them, right?
- 13 A. Yes.
- 14 Q. Okay. And the first substantive conversation
- 15 you have with them you have to explain to them whose
- 16 client they are, don't you?
- 17 A. Yes.
- 18 Q. And in bold you tell them, in other words when
- 19 you choose to work with any real estate licensee
- 20 your business relationship is legally with the
- 21 brokerage firm and not with the associated licensee.
- 22 Is that right?
- 23 A. That's what that says.
- 24 Q. You get every client to sign this document,
- 25 don't you?

1 A. I do.

2 Q. And you have Ms. Levine sign this document.

3 A. Mm hmm.

4 Q. Mr. Collins, the Millers signed this document.
5 Every client you have ever worked with at the
6 brokerage firm, first you gave this document to them
7 and explained to them they're the brokerage firm's
8 clients, not yours, correct?

9 A. That's correct.

10 Q. After the Green Street transaction closed you
11 did receive 100 percent of that commission, correct?

12 A. Minus the \$50 transaction fee, correct.

13 Q. Flip if you would to Exhibit 71, which is I
14 think the very last tab in there.

15 A. Okay.

16 Q. This is an email you sent on July 10th at
17 6:50 -- 5:57 p.m., is that right?

18 A. That's correct.

19 Q. This is after you have transferred your license
20 in the parking lot to Mr. Lang, correct?

21 A. That's correct.

22 Q. Okay. You say in the middle of the large
23 paragraph, although you interpret what the contract
24 says much differently, I should receive the
25 commission earned minus the \$50 transaction fee,

1 correct?

2 A. Yes.

3 Q. And earlier you testified, you told the jury
4 that at every chance you got you contested this \$50
5 transaction fee. At every closing, correct?

6 A. I did.

7 Q. Didn't transaction -- you didn't, you didn't
8 argue about it here though, correct? On July 10th
9 when you were setting out what your ask of Mr. King
10 is?

11 A. Mm hmm.

12 Q. You didn't contest it then, correct?

13 A. I was not contesting it then. The thing with
14 the \$50 transaction fee is it didn't matter how much
15 you contested it, he wasn't taking it off. Was it
16 worth not getting paid to save -- or was it worth
17 just giving him the \$50.

18 It's no different than the argument we just had
19 in here. Some things are just worth it. So, yes, I
20 did dispute it. I put on record I disputed it. But
21 am I going to quit or throw a complete conniption
22 fit over \$50? Probably not.

23 Q. Ma'am, when you filed this lawsuit on July 21st
24 you didn't contest the transaction fee in it,
25 correct?

1 A. At that point in time my attorney was aware
2 that I was upset about the transaction fees. But I
3 wasn't quite aware of just how illegal him
4 withholding transaction fees without my consent was.
5 So that's why you see that we didn't ask for the
6 transaction fees until a little bit later when my
7 attorney advised me, hey, Brandi, look at this.
8 Q. Did your attorney not create this document?
9 A. Yeah, he created it.
10 Q. Okay. And in this pleading filed on your
11 behalf it states, the plaintiff and the defendant,
12 in the course of dealing, whereby the plaintiff paid
13 the defendants a \$50 transaction fee for clerical
14 and administrative work. You agreed then it was the
15 course of dealing, the customary practice between
16 the parties for that transaction fee to be paid,
17 correct?
18 A. No. No. Not correct. I know you, you are
19 walking around with an iPod -- an iPad. My attorney
20 has six boxes, Banker Boxes of documents for this
21 file. So, yeah, it took a little while for my
22 attorney to be able to weed through everything and
23 figure out just how bad of a person Jason was. Just
24 how much he had done to me. Just how much he had
25 done to these clients.

1 A. That's what he says.

2 Q. Okay. And there was an out-of-town spouse
3 involved in this transaction, correct?

4 A. That's correct.

5 Q. And you would agree that the spouses were not
6 cooperating with each other, on that, correct -- on
7 that transaction, correct?

8 A. No. I don't agree with that at all.

9 Q. Okay.

10 A. The spouses got very furious because Jason
11 continued to tell them that the closing was
12 scheduled and occurring. Mr. Miller came back in
13 town, I believe, at least five times for closings
14 that Jason told him were scheduled that never were
15 scheduled. Then Ms. Miller moved out of her home so
16 that the buyers -- because Jason asked her is the
17 home vacant? So she moved so the buyers would be
18 able to close on their house. This was yet another
19 imaginary closing.

20 She stayed in an Airbnb. When she realized
21 Jason continued to give her false information she
22 ended up having to go back to her home at Trinity
23 Three and sleep on a mattress on the floor until I
24 could get her into her new townhome.

25 Q. Ma'am, you keep calling these imaginary

1 Q. After the closing on Concord Place and Old Town
2 Road you discussed a letter that we have now marked
3 as Exhibit 65. Can you flip to that tab for me?

4 A. I'm there.

5 Q. Okay. You received this letter?

6 A. Yes.

7 Q. It had a check enclosed.

8 A. Yes.

9 Q. And that check is on the following one,
10 Number 66, correct?

11 A. Yes.

12 Q. And that's the payment from Mr. King's
13 brokerage, J. King Real Estate, for \$10,691.40,
14 correct?

15 A. Yes.

16 Q. And you returned this payment, correct?

17 A. Yes.

18 Q. And if you flip to Exhibit 67. Did you receive
19 this letter as well?

20 A. Yes.

21 Q. In October?

22 A. I don't know that I received it in October.
23 Several of these came very late, but I did receive
24 it.

25 Q. Okay. And it enclosed a check to you as well,

1 correct?

2 A. Yes.

3 Q. This time the check was for \$13,151.08,
4 correct?

5 A. Yes.

6 Q. And that's the check here on the next Exhibit
7 dated September 30th, 2020, correct?

8 A. Correct.

9 Q. And it's the payment for Concord, Old Town and
10 Trinity Three, correct?

11 A. Yes.

12 Q. You agree this was sent to you and you returned
13 it.

14 A. I returned every check except Green Street.

15 Q. On October 12th, please flip to Exhibit 69,
16 we have this next letter. And it confirms what you
17 just said. It says your attorney keeps mailing the
18 checks I send you back to the attorney J. King Real
19 Estate had to hire to deal with the frivolous
20 lawsuit. You instructed Counsel to return those
21 checks?

22 A. I instructed my counsel to return the checks
23 and my counsel also instructed Jason and his counsel
24 to stop harassing me and contacting me. He was
25 aware that I had hired an attorney and he continued

1 to send me these letters and these checks stating
2 full payment when he knew it was not full payment.

3 Q. Well, ma'am, this letter specifically says it
4 does not say it is full payment.

5 A. It doesn't matter what the letter says.

6 Q. Well, the check also doesn't say full payment,
7 correct?

8 A. This specific check does not say full payment.
9 It says payment for.

10 Q. And so you deemed it harassing that Mr. King
11 was mailing you \$13,151.08 with no strings attached?
12 That was harassing to you?

13 A. It's not no strings attached.

14 Q. It specifically says no strings attached.

15 A. His letters are incredibly clever and
16 condescending, and he should not have been
17 contacting me when he knew I had legal
18 representation. So, yes, I did not send them back.
19 I took every check to Greg Studemeyer to send back
20 for me.

21 Q. And you testified earlier that you needed these
22 payments, correct?

23 A. Absolutely.

24 Q. They were sent to you, at least according to
25 this letter, without any strings attached, correct?

1 A. That's what Jason said.

2 Q. And yet you're still asking the jury today to
3 write down a verdict that includes \$13,151 of checks
4 that you refused to cash.

5 A. I'm asking the jury to award 100 percent
6 commission, which none of these checks stand for.

7 MR. BLAKE: Your Honor, if I could have just a
8 moment.

9 THE COURT: Sure. Take your time. Yeah.

10 MR. BLAKE: No further questions, Your Honor.

11 THE COURT: Okay.

12 MR. STUDEMAYER: No redirect, Your Honor.

13 THE COURT: No redirect? Okay. Ma'am, you can
14 step down.

15 Any further witnesses for the plaintiff?

16 MR. STUDEMAYER: No, Your Honor. The plaintiff
17 rests.

18 THE COURT: All right. Ladies and gentlemen, I
19 want you to go back to the jury room for just a
20 minute. I need to talk with the lawyers. This is
21 the point of the trial where we have some legal
22 issues. I want to talk to them about scheduling.

23 It may very well be what I will do is excuse
24 you for the remainder of the day but I want to talk
25 with them first. So go back to the jury room. It

1 shouldn't be long and we'll get you back out.
2 That's probably what (inaudible).

3 (WHEREUPON, the jury exited the courtroom
4 at 3:21 p.m.)

5 THE COURT: Okay. We'll take a five minute
6 break and then we'll chat about scheduling.

7 MR. BLAKE: That's great. Thanks, Your Honor.

8 (WHEREUPON, the Court took a brief
9 recess.)

10 (WHEREUPON, the Court went back on the
11 record at 3:30 p.m.)

12 THE COURT: All right. The plaintiff has
13 rested and at this time I'm inclined to -- and I
14 don't think the directed verdict stage will take
15 that terribly long, but it's about, well, 3:30 so
16 I'm kind of inclined to go ahead and send the jury
17 on. And then we'll, we'll deal with the directed
18 verdict. And we'll chat about the charge and then
19 start back, have the jury come back at 10:00. Y'all
20 come back about 9:45 in the morning.

21 I've got a 9:00 virtual conference in a case
22 and since I won't have any internet service back in
23 chambers I've had to do it out here, so that's kind
24 of my thinking. Y'all good with that?

25 MR. STUDEMeyer: Yes, sir.

1 MR. BLAKE: Yes, sir.

2 THE COURT: Okay. Let's bring the jury in and
3 I'll explain to them what we're doing.

4 (WHEREUPON, the jury entered the courtroom
5 at 3:32 p.m.)

6 THE COURT: All right. Let the record reflect
7 the jury is back in. Ladies and gentlemen, as I
8 mentioned very briefly before we took our break
9 we're at the point in the case where there's some
10 legal issues that I need to deal with, with the
11 lawyers on. And to avoid you having to sit back in
12 the jury room for an extended period of time, what I
13 want to do is go ahead and send you home for the
14 day. Have you back at 10:00 in the morning. I
15 think you would rather be elsewhere than just
16 sitting back there waiting on us.

17 So that's what we're going to do. Be back at
18 10:00 in the morning and we will, we'll proceed
19 forward. Okay? So have a good evening. Get some
20 rest and I'll see you in the morning.

21 (WHEREUPON, the jury exited the courtroom
22 at 3:33 p.m.)

23 THE COURT: We're at the directed verdict
24 stage. We have three causes of action that have
25 been raised in the last amended complaint, breach of

1 contract, intentional interference with the
2 contractual relations, and the Unfair Trade
3 Practices Act. I'm not trying to preemptively cut
4 you back on -- Mr. Blake on the -- I think there's
5 enough on the breach of contract to send, send to
6 the jury.

7 MR. BLAKE: No intention to go into breach of
8 contract, Your Honor.

9 THE COURT: So I think what we really need to
10 focus on is the other two causes of action.

11 MR. BLAKE: I understand, Your Honor.

12 THE COURT: So let's -- let me hear your
13 motions first on the Unfair Trade Practices Act.
14 And then, certainly, I'll give plaintiff an
15 opportunity to respond.

16 MR. BLAKE: Your Honor, on the Unfair Trade
17 Practices Act, as you know, I put a good deal of law
18 in that pretrial brief, Judge. And I'm relying
19 heavily on that law as the basis of this motion.
20 Our Court of Appeals and legal scholars have
21 discussed at length the legislative intent behind
22 SCUTPA.

23 The legislature intended to enact the UTPA to
24 control and eliminate large-scale use of unfair and
25 deceptive trade practices within the state of

1 South Carolina. The requirement of
2 Section 39-5-140(b) that the Clerk of Court notify
3 the Attorney General of any action brought by a
4 private party pursuant to 39-5-140(a) indicates that
5 the private cause of action created by the latter
6 section was intended by the legislature to serve the
7 same objective and to similarly be restricted in its
8 scope. That's from the Noack Enterprises case, Your
9 Honor. 290 S.C. 475 back in 1986.

10 The point of the Court there is that every
11 private dispute is not intended to fall within the
12 scope of the UTPA. That's true even if it's
13 connected to trade or commerce. To fall within the
14 scope of UTPA it has to rise to the level that a
15 Clerk of Court hears that this lawsuit was filed, is
16 supposed to pick up the phone and notify the
17 Attorney General to begin an investigation into the
18 allegations of this complaint. UTPA is not
19 something to be lightly put into a case as an effort
20 to try to treble the damages and attain and obtain
21 attorney's fees, which is often what this cause of
22 action appears to be turning into these days.

23 The Court went on to say that the legislature's
24 intent to limit the application of UTPA to only
25 those unfair and deceptive acts or practices during

1 the conduct of trade or commerce that affect the
2 public interest is made even more clear when one
3 considers the language used by Section 39-5-10 in
4 defining the terms trade and commerce, particularly
5 the language, quote, it shall include any trade or
6 commerce directly or indirectly affecting the people
7 of this state, end quote.

8 This language reflects the legislature's
9 attempt at an unfair or deceptive act or practice in
10 the conduct of any trade or commerce injuriously
11 affecting, quote, the people of this state, i.e. the
12 public interest, before it could be actionable under
13 the UTPA. It is, it is axiomatic, Your Honor, that
14 something must rise to the level of being an unfair
15 and deceptive act that affects the public interest
16 for it to be actionable. Those are two separate
17 requirements.

18 Often what we'll see is someone says, well,
19 it's capable of repetition, therefore it affects the
20 public interest, therefore it's actionable under the
21 UTPA. And Wegard, a Fourth Circuit case that I
22 cited in this brief that is describing
23 South Carolina, says that's not the intent. That's
24 not the intent.

25 Of course, any breach of contract, any person

1. can go breach of contract more than once. It's not
2 the fact that it is repetitive alone, or capable of
3 repetition alone, that makes it actionable. It has
4 to be both unfair and deceptive -- or deceptive
5 trade practice (inaudible) is capable of repetition
6 before it's actionable under the UTPA.

7 In this case what we have here is a breach of
8 contract. That's what's been alleged. There's a
9 broker-salesperson agreement that incorporates a
10 commission agreement that incorporates a handbook by
11 reference. That's a deal between a brokerage firm,
12 and that's Ms. Clarkson on the other side. That
13 deal is a private deal. It relates as to the two of
14 them. And whether or not Mr. King breached it
15 because he withheld too much of her commission
16 checks is the subject of a breach of contract
17 action.

18 The jury is going to get a chance to look at
19 the evidence that the plaintiff has put in to
20 determine did Mr. King owe her 100 percent. Did he
21 owe her 100 percent minus \$50 or \$25 here or there?
22 Did he owe her what he rendered? Did he overpay her
23 and could have actually kept back a lot more based
24 on the time he put in? They will get to analyze all
25 of those issues in the breach of contract case.

1 But the mere fact that he may have broken a
2 contract, even if it was intentional, willful, and
3 malicious, our case law says it's insufficient to
4 fall within the definition of unfair or deceptive
5 act. The intent of that statute is not to capture
6 private wrongs that are summed up in breach of
7 contract cases.

8 And because I was working on my charge, Your
9 Honor, last night I went ahead and I pulled some
10 additional law on this issue. And I'll try to put
11 some of it up on the screen if I get it open
12 properly. Well, Your Honor, I don't want to sit
13 here and waste your time as I flip. I just ask that
14 the Court read the Ardis versus Cox case that's also
15 cited in my brief.

16 In Ardis the Court said the fact that
17 defendants in this case could repeat their act --
18 that's the Wingard case. I apologize. In the
19 Wingard case the Court said, quote, the fact that
20 defendants in this case could repeat their act, one
21 of which may be inferred to have violated the
22 applicable laws, cannot be deemed to have an affect
23 on the public interest unless they are first
24 adjudged unfair or deceptive trade practices.

25 The potential for repetition is only used to

1 satisfy the public interest component necessary to
2 bring an unfair trade practice within the scope of
3 the UTPA. Otherwise any act regardless of its
4 blatant legality would become an unfair trade
5 practice merely by its capability to be repeated.
6 That's just not and could not be the import of the
7 UTPA.

8 Likewise in the Ardis case what the Court says,
9 the SCUTPA is unavailable to redress private wrongs
10 if the public interest is unaffected. The unfair or
11 deceptive act or practice that affects only the
12 parties to a trade or commercial transaction is
13 beyond the Act's embrace. Unfair or deceptive acts
14 or practices have the potential for repetition. A
15 deliberate or intentional breach of contract,
16 without more, does not constitute a violation of the
17 SCUTPA. Otherwise every intentional breach of a
18 contract in a commercial setting would constitute an
19 unfair trade practice and thereby subject the
20 breaching party to treble damages. Again, that's
21 just not the intent of the legislature here.

22 And, Your Honor, there has been some suggestion
23 that perhaps the public interest requirement can be
24 satisfied because there are three people here who
25 are -- who testified that they were displeased with

1. the fact that Ms. Clarkson couldn't see their
2. transaction through. However, that's not, that's
3. not what we're talking about.

4. The alleged breach of the contract is the
5. failure to pay the commissions. There's no alleged
6. breach of contract for Ms. Clarkson not being able
7. to continue to work with those individuals. That's
8. not one of the breaches (inaudible). If it were,
9. Your Honor would have to grant directed verdict on
10. that issue because, as I'm happy to walk you
11. through, Your Honor, she's not capable of
12. contracting with those clients. So that could never
13. be the subject of a breach of contract action for
14. her. I believe I elicited that testimony from her
15. on cross-examination.

16. The contracts are between brokerage firms and
17. their clients. She is not a party to that contract.
18. She is merely their subagent as reflected on the law
19. that I showed you earlier when we discussed this
20. from an objection standpoint, Your Honor.

21. And so, again, while I understand these three
22. folks were upset by the fact they weren't working
23. with her, that is not -- that upsetness (sic) is not
24. a factor to be considered in an UTPA case. That's
25. not the public interest. The public interest must

1 be the impact from the alleged wrongful act which is
2 here, merely, the failure to pay commissions.

3 Because this is a private transaction where the
4 parties have disputed whether or not Mr. King has
5 paid the right amount or not is certainly fair play
6 for a breach of contract case for this jury to
7 consider. And I would ask you to dismiss the UTPA
8 action as not arising to the level that the
9 legislature intended.

10 THE COURT: Mr. Studemeyer, do you want to
11 respond?

12 MR. STUDEMEYER: Yes, sir. Your Honor, first
13 of all, just to review briefly what I believe the
14 unfair acts have been -- what unfair acts have been
15 demonstrated. First of all, Your Honor, we believe
16 that withholding someone's paycheck as on serial
17 occasions in an effort to coerce the plaintiff to
18 accept less than what she has earned is unfair. We
19 believe that the defendant's acts of padding his
20 time to justify withholding thirty percent from
21 Ms. Clarkson is unfair. He's done that on three
22 transactions in this case. That is actual
23 repetition, and all we have to demonstrate is
24 potential repetition.

25 We have demonstrated in this case that Mr. King

1 has charged undisclosed transaction fees to 25
2 agents, on multiple occasions. We have demonstrated
3 that his procedures create a potential for this to
4 be repeated again, because he doesn't disclose these
5 transaction fees in his Broker-Salesperson
6 Agreement. He doesn't disclose it in his policy
7 manual. He doesn't disclose it in his commission
8 schedule. And the first time an agent hears about
9 it is whenever they are handed a form that says fill
10 this out. I'm taking \$50 of your money. So that's
11 actual repetition.

12 Your Honor, another unfair act that we believe
13 we have demonstrated is that Mr. King retaliated
14 towards Ms. Clarkson and he did not care who got
15 hurt in the process. I believe you heard Ms. Judy
16 up here on the witness stand say, you know, I just
17 wanted to, I just wanted to sell a house. You know,
18 I didn't want to get in the middle of all this.
19 Then Ms. Miller, she had -- because of his
20 incompetence and his, you know, insistence on
21 interjecting, caused her to get out of her house,
22 spend \$2,000 on an Airbnb, move back in, sleep on
23 the floor because he couldn't just leave well enough
24 alone. So those are -- that's kind of the factual
25 background.

1 Something else in this. You know, Mr. King
2 submitted an affidavit in this case where he says
3 that he charged these transaction fees for legal
4 work. He is not a lawyer. That's the unauthorized
5 practice of law. That's unfair. Now with regard to
6 --

7 THE COURT: Is that affidavit, is that in the
8 notebook?

9 MR. BLAKE: Absolutely not. That's not
10 evidence in this case. It wasn't elicited out in
11 plaintiff's case.

12 THE COURT: Okay. I can't, I can't consider
13 that if it's not part of your case-in-chief.

14 MR. STUDEMEYER: All right. I'd like to
15 address the standard for directed verdict, and I'm
16 referring to Estate of Carr ex rel. Bolton versus
17 Circle S. Enterprises, Inc, 664 S.E. 2nd, Page 83.
18 This is a 2008 Supreme Court case, South Carolina
19 Supreme Court.

20 I know whenever Justice (unintelligible) was on
21 the Circuit Court bench he could care less what the
22 Court of Appeals had to say. He would always say,
23 show me a South Carolina Supreme Court case or US
24 Supreme Court case. Otherwise I'm not interested.

25 But in this South Carolina Supreme Court case

1 the Supreme Court says, in ruling on a motion for
2 directed verdict the trial court is required to view
3 the evidence and the inferences that reasonably can
4 be drawn therefrom in the light most favorable to
5 the party opposing the motion, and to deny the
6 motion when either the evidence yields more than one
7 inference, or its inference is in doubt. In essence
8 the Court must determine whether a verdict for the
9 opposing party would be reasonably possible under
10 the facts as liberally construed in his or her
11 favor.

12 Your Honor, we also submitted a pretrial brief
13 where we addressed the Unfair Trade Practices Act in
14 great detail, and I believe what we've already
15 established is that Mr. King and his company are
16 engaged in trade and commerce. On my direct
17 examination of him he admitted that he sells real
18 estate to businesses and consumers, that he lists
19 property, he sells property. He's a real estate
20 investor. This is what he does.

21 MR. BLAKE: I will stipulate that he's engaged
22 in the trade of commerce.

23 MR. STUDEMAYER: All right, thank you. All
24 right. Now, one of the things that the
25 South Carolina Supreme Court has addressed is what's

1 unfair. And one of the things that has been
2 addressed in the deBondt v Carlton Motorcars, Inc.
3 536 S.E. 2nd 399 is this. An unfair trade practice
4 has been defined as a practice which is offensive to
5 public policy, or which is immoral, unethical, or
6 oppressive. Your Honor, I believe we have
7 demonstrated oppression in this case on three
8 occasions where Ms. Clarkson was entitled to a 100
9 percent commission, and Mr. King decided to withhold
10 that from her in an effort to coerce her into taking
11 70 percent. So I believe we addressed the
12 unfairness there.

13 I think we've also addressed some unfairness
14 with regard to these transaction fees. I believe
15 that it's completely unfair to hand somebody a
16 three-page employment contract, and an eight-page
17 policy and procedures manual, and a commission
18 schedule when they sign up, and then whenever they
19 have their first closing four or five weeks later
20 jump out with this, this agent commission worksheet.
21 Oh, I want fifty more dollars of your money. That's
22 not fair.

23 The other thing I want to point out from the
24 deBondt case is this, the deBondt Court said the
25 UTPA should not be construed to increase a

1 plaintiff's burden of proving liability since its
2 purpose is to give additional protection to victims
3 of unfair trade practices, not to make a case harder
4 to prove than it would be under the common law.
5 That's unfair, what we talked about.

6 Now we're at the third prong. And I understand
7 the public impact argument. And everything that
8 Mr. Blake had to say about the Unfair Trade
9 Practices Act was great law in 1986. I'd been out
10 of law school for four years at the time. It's now
11 been 40. The law changes, you know. What might
12 have been the law in 1986 is no longer the law. And
13 what I would suggest to you is -- for instance, we
14 cited a case in our pretrial brief, Wright versus
15 Craft. You know what that case is about, Judge?
16 That was about the sale of a used pickup truck on
17 Broad River Road in Columbia. One truck, one
18 customer, one dealer.

19 The guy failed to disclose that this truck had
20 been wrecked before. The plaintiff thought that was
21 unfair, sued him under the UTPA and several other
22 causes of action. That case was tried in front of
23 Judge -- I can't remember her name right -- one of
24 the female judges in Richland County. The case went
25 to the jury. The jury found for the plaintiff on

1 every cause of action. And at the conclusion of
2 that she required the plaintiff to elect his remedy
3 and he did.

4 What the, what the UTPA -- the issue of public
5 impact has been addressed in -- well, let me just
6 cite it. It's in my pretrial brief on Page 10, the
7 bottom paragraph. The potential for repetition --
8 excuse me, let me back up. What this case says to
9 be actionable under the UTPA the unfair or deceptive
10 act or practice must have an impact upon the public
11 interest. We're all in agreement on that. Okay, so
12 how do you do that?

13 An unfair or deceptive act or practice has an
14 impact upon the public interest if the act or
15 practice has the potential for repetition. We've
16 already shown actual repetition and potential
17 repetition based upon the defendant's practice and
18 procedures. What the Court says in that case, in
19 the Wright case -- and the Judge I couldn't remember
20 now, Judge Allison Lee. The potential for
21 repetition may be demonstrated in either of two
22 ways. By showing the same kind of actions occurred
23 in the past thus making it likely they will continue
24 to occur absent deterrence. Or 2. by showing the
25 companies procedures wherein a potential for

1 repetition of the unfair and deceptive acts.

2 Yesterday the last question I asked Mr. King
3 was: If you had it to do all over again, you
4 wouldn't change a thing, would you? And his answer
5 was, no. Your Honor, I suggest that the deterrence
6 applies in this case.

7 I'd also like to point out two other cases and,
8 again, these are all South Carolina Supreme Court
9 cases. There's a case called Singleton versus
10 Stokes Motors, Inc. And the cite is 595 S.E. 2nd
11 461. That's a 2004 South Carolina Supreme Court
12 case.

13 THE COURT: Is that not in your brief?

14 MR. STUDEMEYER: It's not in my brief, Your
15 Honor.

16 THE COURT: What's the cite again?

17 MR. STUDEMEYER: 595 S.E. 2nd 461. This is a
18 case that came out of Beaufort County, as I recall.
19 This case was tried by former professor
20 Tom Kemmerlin when he was a master-in-equity
21 there -- down there. But in this case what the
22 Supreme Court -- I'll tell you what the case was
23 about. The -- this, again, was a case between a
24 single plaintiff and a single business. When
25 somebody wanted to buy a used car from Stokes

1 Motors -- I think they had a Chevrolet or GM
2 dealership down there in the early 2000s. And what
3 happened was when the customer came in to buy he was
4 presented with conflicting documents. On the one
5 hand he was asked to sign a retail installment
6 contract that was unconditional, and at the same
7 time he was asked to sign a bailment agreement which
8 was conditional. Which basically said if we can't
9 get you financed, we don't have a deal.

10 Well, what, what ended up happening was that
11 whole deal blew up because this guy lost his job.
12 And he was not, he was not qualified for financing
13 under those circumstances. So the car dealership
14 repo-ed his truck and left him walking. And this
15 guy filed suit under several theories, UCC causes of
16 action and UTPA causes of action, and the -- what
17 the South Carolina Supreme Court, actually what
18 Judge Toal had to say about that was, Stokes'
19 practice of having customers sign two contradictory
20 documents is an essential part of conducting what is
21 commonly referred to as a yo-yo sale. And she went
22 on to say --the way she concluded this was as
23 follows: Therefore we hold, 1. outright deception
24 concerning credit approval and, 2. the practice of
25 having customers sign both an unconditional sales

1 contract and a conditional bailment agreement
2 constitute Unfair Trade Practice Act violations.

3 In this case we've got a broker-salesperson
4 agreement and a commission schedule that says she
5 gets 70 percent until she puts \$20,000 in his
6 pocket. At the same time we've got this
7 agent-commission worksheet that says, oh, well, in
8 addition to that, we want another \$50. Those are
9 conflicting documents.

10 Another case that I believe supports our
11 position, Your Honor, is Barnes -- and it's not in
12 my brief. It's Barnes versus Jones Chevrolet
13 Company. 358 S.E. 2nd 156. That's a 1987
14 South Carolina Supreme Court case. And what this
15 case was about was a customer took their car to
16 Jones Chevrolet in Sumter to get -- have some kind
17 of repair performed. And what Jones Chevrolet did,
18 and what lawyers used to accuse other lawyers of
19 doing from time to time was, this customer claimed
20 that Jones Chevrolet was padding their bill. They
21 were charging for time they didn't spend.

22 In this case -- and the Supreme Court in this
23 case said, and they even refer to this Noack case
24 from 1984 or '86, whenever that was. What the
25 Supreme Court had to say in the Barnes case was

1 this. Padding bills for auto repairs is an unfair
2 trade practice, is an unfair trade practice and we
3 so hold.

4 Noack holds that it was the legislature's
5 intent to limit the application of the UTPA to only
6 those unfair or deceptive acts or practices in the
7 conduct of trade or commerce which affect the public
8 interest. Noack also stated, however, that unfair
9 or deceptive acts with the potential for repetition
10 have an impact on the public interest. We also hold
11 that padding auto repair bills affects the public
12 interest because of its potential for repetition.

13 That's what we have here. We have both actual
14 repetition on three transactions with regard to the
15 oppression in trying to negotiate a 70
16 percent commission. We have actual repetition for
17 25 agents who've been charged these undisclosed
18 transaction fees.

19 I know I'm wearing -- I'm using up more time
20 than I should, but I just want to close with this.
21 The final case law I ask the Court to consider, it's
22 not in my pretrial brief, is Daisy Outdoor
23 Advertising Company, Inc. versus Abbott. 473 S.E.
24 2nd 47. This is a 1996 South Carolina Supreme Court
25 case. This is one of the billboard cases. There

1 were -- it seems like there was a slew of them that
2 came out all at one time where one billboard company
3 would have up a sign and then another billboard
4 company would come by and put up another sign and
5 cover up that guy's advertising. And so that's how
6 that unfair trade practice came about.

7 One thing that the -- one of the -- the most
8 important language in the Daisy case was this. It
9 says, one of the things they do is they referred to
10 some other cases where unfair trade practices were
11 established. And one of the ones they talked about
12 was the Barnes case. But here's what, here's what
13 the Supreme Court had to say about the Court of
14 Appeals.

15 It says, the Court of Appeals opinion appears
16 to hold out that a UTPA plaintiff must allege and
17 prove at least two separate torts. One against the
18 plaintiff and one against a third party in order to
19 show an adverse impact on the public interest. This
20 analysis misconstrues South Carolina law in two
21 respects. Prior case law makes very clear that
22 evidence of a potential for repetition generally
23 speaking in and of itself establishes the required
24 public impact. The Court of Appeals erred in
25 requiring more.

1 In fact, if evidence of adverse public impact
2 beyond evidence of potential for repetition were
3 required then Haley Nursery, that's one case, Dowd,
4 another case, and Jones Chevrolet would have been
5 decided differently. In each of those cases the
6 only evidence of public impact was the evidence of
7 the potential for repetition. Moreover, we have
8 never required proof of torts against third parties
9 in addition to proof of a tort against the plaintiff
10 as an element of a cause of action under that UTPA,
11 and we decline to do so now.

12 Your Honor, I believe that this is -- this case
13 giving the defendants every benefit of the doubt is
14 a jury question. I believe the jury should be
15 allowed to determine if what they've heard is fair
16 or not, if it's oppressive or not, if it has a
17 potential in addition to actual repetition, if
18 there's a potential repetition, and to make that
19 decision themselves.

20 THE COURT: Thank you.

21 MR. STUDEMAYER: Thank you.

22 THE COURT: Anything in brief response?

23 MR. BLAKE: Brief response, Your Honor. Yeah,
24 because I am aware we are talking past each other.
25 I am not talking about a case where there is --

1 where the public is buying a vehicle, or billboards.
2 You're talking about a commercial contract and
3 commercial contracts are treated differently under
4 our case law than any of the cases cited by Counsel.

5 This is not a case involving, like Wright
6 versus Craft, where there's a deceptive act involved
7 in the sale of a vehicle to somebody. This is not a
8 yo-yo transaction involving trapping a buyer to a
9 car to lock them in on the transaction and then
10 having a hidden adverse impact that was deceptively
11 disclosed from them in the past. These are
12 contracting parties. One alleges the other didn't
13 pay what they were due to the contract. That is a
14 separate line of cases.

15 Noack is still good law. Noack is being cited.
16 If, Your Honor, check in Westlaw it's been relied on
17 by the South Carolina Court of Appeals in 2022.
18 It's been relied on repeatedly by our District Court
19 in 2023 in recorded decisions. Contracts are
20 fundamentally different. And private contracts are
21 not that ambit of the UTPA unless there is some
22 actions that arise to more than a breach of
23 contract.

24 And so really where the rubber meets the road
25 is, is this term, this idea of unfairness, right?

1 .Because the three examples counsel gave, it was
2 unfair to hold payments, it was unfair to charge a
3 transaction fee, it was unfair to, quote/unquote,
4 retaliate by not letting her perform these
5 transactions after she terminated the contract.
6 Each one of those issues, Your Honor, is a
7 contractual dispute between the parties.

8 Whether or not she's entitled to a payment is a
9 contractual issue. Whether or not he's entitled to
10 charge that transaction fee, whether or not their
11 agreement was modified by the 44 agent commission
12 sheets where she wrote owed and then cashed a check
13 based on it, is a contractual issue. Because
14 certainly I'm going to ask for a charge on
15 modification to the jury about that very contractual
16 issue, and whether or not there can be this, even,
17 concept of retaliation for letting her perform acts
18 that as a matter of law the legislature says she
19 shall not perform when she is no longer licensed
20 under J. King Real Estate.

21 And, again, Your Honor, I don't want to waste
22 your time going through the agency law if you've got
23 a good understanding from that earlier, but she
24 could not service those clients the moment she sent
25 that license over to Dan Lang. The legislature

1 couldn't be more clear on it. And we've got
2 statutes that say a licensee shall not work out of
3 more than one location at one time. A licensee
4 shall not work for a broker other than the one who
5 she's licensed with.

6 And so the idea of retaliation is fundamentally
7 based on a misconstruction of what the
8 South Carolina legislature has said a real estate
9 agent can even do. And so, again, none of those are
10 what unfair is under the law.

11 Mr. Studemeyer did describe the definition of
12 unfair correctly. We're not passing each other
13 there. It has to rise to something that is
14 offensive to the public policy where it has to be
15 immoral, unethical or oppressive. Noack and it's
16 progeny stand for the principal, including Ardis
17 versus Cox, where this case is stamped with the
18 principle that a breach of contract is not that. It
19 is not a violation of public policy and it is
20 neither immoral, unethical or oppressive to breach
21 of contract.

22 And because that is all that has been even
23 pointed out by Counsel here today, the holding of
24 contractual payments, whether or not it was proper
25 to charge a transaction fee, which is just another

1 way of saying the holding of contractual payments,
2 and this concept of retaliation all tie into one
3 question, is what was the agreement between the
4 parties that wasn't followed. Because that's the
5 only issue.

6 The only evidence that they presented in front
7 of the jury elevating that to a SCUTPA action does
8 exactly what the Court of Appeals said should never
9 be allowed to happen, which is all of a sudden every
10 commercial party, every time they have a
11 disagreement with another contracting party we're in
12 Court. And the Attorney General's office is getting
13 a phone call from the clerk of court, time to do
14 some investigation. Because every commercial
15 contract is now subject to SCUTPA. And that's just
16 not the legislative intent. Thank you, Your Honor.

17 THE COURT: All right. The other cause of
18 action, let's see if we can kind of cut through this
19 a little bit. The intentional unfairness with
20 contractual relationships, let's assume just for
21 the sake of argument that the elements of that cause
22 of action have been established. Assume that.
23 Would the recovery not be the same recovery as what
24 the plaintiff is seeking in the breach of contract
25 cause of action?

1 And assuming that is correct, would that not
2 require some sort of election of remedy? And,
3 again, I'm assuming that the elements of this cause
4 of action are met. The recovery is going to be the
5 same. So would there not be -- typically you like
6 for election of remedies to take place after the
7 jury verdict. However, if it is clear to the Court
8 that you are seeking a double recovery then the
9 Court can deal with the election of remedies before
10 it goes to the jury. I know you want to argue
11 directed verdict, but I might can get around that.

12 MR. BLAKE: I think we have a point of
13 clarification that's really important though, Judge.
14 The cause of action is not tortious interference
15 with contract. It's tortious interference with
16 prospective contract. It's a completely different
17 cause of action.

18 THE COURT: I went through the complaint.
19 Maybe I just wrote it down wrong.

20 MR. BLAKE: Yes, sir. I can throw it up on the
21 board, Your Honor. I've got it.

22 THE COURT: No. You're right. I wrote it down
23 incorrectly. Now prospective contractual relations

24 --

25 MR. BLAKE: Ms. Clarkson had to put on --

1 THE COURT: Is that a cause of action? I know
2 tortious interference with contractual relations --
3 you've got a contract that is in place and then
4 someone comes and interferes to try to undo that
5 relationship. I think that's a recognized cause of
6 action. Is it also recognized that the same thing
7 can apply to prospective contractual relations?

8 MR. BLAKE: Yes, Your Honor. I don't want to
9 mislead you. There is a cause of action in
10 South Carolina --

11 THE COURT: For prospective as well.

12 MR. BLAKE: -- for prospective as well. But
13 the elements are critical and the elements have not
14 been established.

15 THE COURT: Which -- what has been shown as far
16 as what prospective contractual relations that
17 Plaintiff claims that Defendant interfered with? I
18 know we've got three transactions which the
19 plaintiff is requesting the full 100 percent
20 commissions. But I'm trying to -- what evidence was
21 presented that there was one contract, two
22 contracts, three contracts that the plaintiff was
23 trying to put together that the defendant interfered
24 with? Can you help me out on that, Mr. Studemeyer?

25 MR. STUDEMEYER: Yes. I think I -- I believe

1 our pretrial brief deals with that. In these causes
2 --

3 THE COURT: I know what your pretrial brief
4 says and I'm not trying to cut you off but what was
5 presented in the plaintiff's case-in-chief that
6 there were some potential contracts that the
7 plaintiff was trying to firm up with whoever and
8 that he did something to prevent that?

9 MR. STUDEMAYER: That's correct. That's
10 correct.

11 THE COURT: So what difference was there?

12 MR. STUDEMAYER: A lot, Your Honor. All we're
13 required to prove under this United Education
14 Distributors case is that she had an expectation of
15 benefits. And she expected to get a hundred percent
16 of the commission on those three transactions. And
17 because of his interference she got zero.

18 THE COURT: All right. But then that goes back
19 to my original statement that assuming what you are
20 saying is correct, the recovery is the same as in
21 the breach of contract.

22 MR. STUDEMAYER: I wholeheartedly agree.

23 THE COURT: Am I not -- apart from whatever
24 directed verdict that Mr. Blake wants to raise on
25 that cause of action, would I not be in a position,

1 because the recovery is the same, to go ahead and
2 make a ruling that -- since it's the same recovery,
3 that you can't go -- both causes of action can't go
4 to the jury?

5 MR. STUDEMEYER: Well, Your Honor, what I would
6 ask you to do is to take a look at Wright versus
7 Craft. The case that Judge Lee decided in Richland
8 County?

9 THE COURT: Is that in your pretrial?

10 MR. STUDEMEYER: I don't believe -- yes, sir,
11 it is. It is. It's cited. But in that case, that
12 case went to the jury on multiple causes of action
13 including negligent misrepresentation, fraudulent
14 nondisclosure, violation of the UTPA. All of that.
15 And after the jury made a decision on each cause of
16 action, Judge Lee required Steve Moskos from
17 Charleston to elect his remedy. And the Supreme
18 Court said that was the way it should have been
19 done.

20 THE COURT: Okay. What are the elements? Do
21 you guys agree on what the elements of this cause of
22 action are?

23 MR. BLAKE: Your Honor, I'll read straight from
24 Anderson's request to charge.

25 THE COURT: Listen, Mr. Studemeyer, and see if

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--

MR. STUDEMAYER: Yes, sir.

THE COURT: -- you agree. I'm just asking for the elements.

MR. BLAKE: Certainly. To recover for intentional interference with prospective contractual relations the plaintiffs must prove, 1. the defendant intentionally interfered with the plaintiff's potential contractual relations for improper purpose or by improper methods causing injury to the plaintiff.

THE COURT: Okay. Let me ask you this. Her -- there was already -- and I know she had already left Mr. King's real estate firm, but that was not a prospective contractual relation. That contract with those clients were already in place. So how can we consider those three to be prospective contractual relations? Those relations were firmly in place. Now I know there's an issue of, you know, she leaves and all that stuff. But how can we consider that to be prospective?

MR. STUDEMAYER: Well, the contract -- these contracts between these clients -- the contract was with the brokerage. I mean there's no doubt about that. That was the contract.

1 THE COURT: Yeah.

2 MR. STUDEMAYER: But what Ms. Clarkson had
3 was -- let me just say this. This language here
4 helps flush out what we are talking about in terms
5 of what the elements are. But, again, Ms. Clarkson
6 had a reasonable expectation of benefits and this is
7 what the -- these causes of action are strange. We
8 haven't recognized them for more than about 25 or
9 30 years, as I recall. I think the first case that
10 recognized those causes of actions was the Navistar
11 case.

12 But this case that was decided in 2002 says
13 this, it says the torts of intentional interference
14 with contractual relations with lawful business and
15 with prospective business advantage are closely
16 related. A general wrong involved in each tort
17 consists of intentional and improper methods of
18 diverting or taking away ongoing or prospective
19 business or contractual rights from another.

20 That's what we have here. She had an
21 expectation of benefits that she has lawful business
22 she was conducting with these customers, these
23 clients, and he stuck his nose in it. And caused
24 her to lose commissions totaling about \$20,000. I
25 believe that the facts of this case fit neatly

1 within these elements of this cause of action.

2 MR. BLAKE: Your Honor, that -- what was just
3 read was the discussion of three separate torts and
4 how they are related to each other. That was not a
5 recitation of the elements. What I read to you a
6 moment ago is the recitation of the elements. And
7 the first thing that must be proved is a prospective
8 contract.

9 When someone says I have an expectation of
10 payment under an existing contract, that
11 conclusively establishes that it's not a prospective
12 contract because it's an existing contract. That
13 expectation of payment arises only because there's
14 an existing contract, otherwise she had no
15 expectation of payment. The tort -- the tortious
16 interference with prospective contracts requires
17 there to be a reasonably certain -- I'm happy to
18 give Your Honor all the case law on this. But
19 requires there to be a reasonably certain contract
20 not yet entered into that the plaintiff has the
21 opportunity to receive but for the wrongful and
22 improper intervention of a third party to that
23 arrangement.

24 What we have here is the plaintiff complaining
25 of not getting her contract expectations that were

1 currently existing. She bore the burden of proof to
2 come into this court to demonstrate future contracts
3 that were reasonably certain, reasonably
4 ascertainable, specific that the jury could say,
5 aha, she lost this closing on a contract that she
6 was about to sign. But she never got to sign that
7 person up because Mr. King did something improper
8 and illegal to intervene. He was not already a
9 party.

10 Not only do we not have a prospective contract
11 but that law is very clear, a party to a contract
12 cannot be liable for interfering with that contract.
13 Jason King is the broker-in-charge. And just so you
14 know, to be clear, Your Honor, he's the only one
15 sued under this particular cause of action.
16 Because, of course, it would be absurd to sue J.
17 King Real Estate for tortiously interfering with
18 it's own contract that it's a party to. And we've
19 got black letter case law in the state that says
20 that an owner, or an officer, or an agent of a
21 company that's a party to the contract also cannot
22 be personally liable for interfering with that
23 company's contract when they are acting on behalf of
24 that company. And so, but, again, that case law is
25 talking about current, current contractual relations

1 being interfered with.

2 Here the only cause of action pled is
3 prospective contracts. And because we received zero
4 evidence of any contract not yet made that was
5 readily ascertainable that Ms. Clarkson lost due to
6 some type of improper or illegal conduct by
7 Mr. King, he's entitled to directed verdict on that
8 cause of action.

9 THE COURT: Okay. I'm going to take this under
10 advisement. I will read your pretrial briefs again
11 this evening. Let me just -- one other question,
12 and I think, Mr. Blake, this was raised in your last
13 answer. We've got two defendants. We've got the
14 company, the corporation and we've got Mr. King
15 individually. And I think you raise in your answer
16 that Mr. King individually should not be a
17 defendant, and if there is a judgment against the
18 corporation then the plaintiff would have the right,
19 if she so chooses, to try to pierce the corporate
20 veil and try to attach that judgment against the
21 corporation against him individually.

22 I tend to agree with that. You're shaking your
23 head, Mr. Studemeyer. You know it's clear that
24 actions of agents of a corporation or owners or
25 members of a corporation can bind the corporation

1 and then if for some reason you think the
2 corporation is not good for any verdict or judgment
3 that is reached, then you can try to go after him
4 individually. Is that not --

5 MR. STUDEMEYER: Yes, sir.

6 THE COURT: -- usually how it's done?

7 MR. STUDEMEYER: Yes, sir. Under the common
8 law. We are not seeking to pierce the corporate
9 veil. We are seeking controlling person liability
10 by statute under the UTPA. And there's a case
11 directly on point. This is the case that
12 Judge Keasley based his ruling on when he allowed us
13 to add Mr. King individually. This case is Plowman
14 versus Bagnal. And it basically says, when an
15 officer of an entity like that personally
16 participates, authorizes, or you know, if he's
17 involved, he can be held liable. And in this case
18 everything this jury's heard has been at his hands.

19 THE COURT: All right. Well, so, what you're
20 telling me then after this case -- when this case
21 was initially filed it was filed just against the,
22 the corporation.

23 MR. STUDEMEYER: Correct.

24 THE COURT: And then per Judge Keasley's
25 ruling, at some point in time after that, he allowed

1 for Mr. King individually to be brought in as a
2 party defendant.

3 MR. STUDEMAYER: Yes, sir.

4 THE COURT: Well, then that, that answers my
5 question.

6 MR. BLAKE: Yeah. And, Your Honor, I want to
7 be clear for the record, too. We're not suggesting
8 that the corporate shield shields him on the UTPA
9 claim. That defense is for the tort claim. Because
10 I agree with Counsel there is clear case law in
11 South Carolina that a controlling person who is
12 personally participating -- again, not to suggest we
13 agree this rises to a UTPA. But that corporate
14 shield claim is just for that second cause of action
15 on the tort, and I'm really relying on the
16 Threckhold -- Threllkeld -- that's a messed up name.
17 Threlkeld versus Christoph decision, 280 S.C. 225,
18 312 S.E. 2nd 14. That's not in my brief, your
19 Honor, the pretrial brief, but that is a directly on
20 all fours case where the Court talks about look,
21 when we're talking about tortious interference with
22 contract torts you don't get to sue the agents of
23 the company who's participating in this.

24 And you can either call it corporate shield,
25 corporate veil, which is why I put the LLC statute

1 in as its own defense. Or you can just say that
2 it's the common law of this state that an agent
3 acting by and on behalf of the party to a contract
4 cannot interfere with it. In either sense the
5 result is the same. Mr. King cannot individually be
6 liable for what his corporation did in its
7 contractual dealings with the plaintiff. And
8 certainly can't be individually liable for
9 interfering with prospective contracts that
10 (inaudible).

11 THE COURT: Right. Judge Keasley -- just so
12 I'm clear. Judge Keasley allowed you to name him as
13 a, Mr. King, as a codefendant as a result of which
14 cause of action?

15 MR. STUDEMEYER: The Unfair Trade Practices
16 cause.

17 THE COURT: Unfair Trade Practices. That's
18 what I -- I just wanted to make sure I was clear.

19 MR. STUDEMEYER: Okay.

20 THE COURT: Okay. Like I said, I will take
21 this under advisement. I'll let you guys know
22 something first thing in the morning. Let me talk
23 with the lawyers back in, back in my little office
24 back here for just a minute.

25 (WHEREUPON, the Court recessed until July

1 26, 2023.)

2 (Continuation of trial on July 26, 2023.)

3 THE COURT: We are back on the record.
4 Mr. Studemeyer, you indicated a while ago that at
5 the outset you wanted to put something on the
6 record. I'll be glad to hear from you.

7 MR. STUDEMEYER: Thank you, Your Honor. Your
8 Honor, yesterday whenever we -- by the way I got
9 here a little bit early, and I asked the Judge to
10 allow me to put something on the record once you got
11 here.

12 MR. BLAKE: (unintelligible.)

13 MR. STUDEMEYER: All right. Yesterday whenever
14 we were arguing the directed verdict motions, I
15 mentioned, with regard to the intentional
16 interference action, I mentioned something along the
17 lines of Ms. Clarkson had a reasonable expectation
18 of benefits. And at the time I didn't have all my
19 notes in front of me, but then I was reminded when I
20 left here yesterday that we've argued this two times
21 already.

22 The first time was in a motion to dismiss and
23 for sanctions which Judge McCaslin declined --
24 denied, and then a second time a motion for summary
25 judgment that Judge DeBerry denied. So we've been

1 through all this before.

2 All of it sounded really familiar to me and
3 then I realized that the -- Ms. Clarkson -- I think
4 the facts of this case demonstrate at the very least
5 she was a third-party beneficiary of the contracts,
6 contracts between those clients and the brokerage.
7 That's what gave rise to her reasonable expectation
8 of benefits was her position as a third-party
9 beneficiary.

10 And one of the things I noticed when I went
11 back and looked at the summary judgment arguments
12 that we made, I realized that I had taken a shortcut
13 in my pretrial brief, and I only quoted a part of
14 United Educational Distributors versus Educational
15 Testing Service. That was in the pretrial brief.
16 The part that I left out was the part where the
17 Supreme Court adopted some law from New Jersey. And
18 here is what that part says.

19 In New Jersey what is actionable is the luring
20 away by devious, improper, and unrighteous means of
21 a customer of another. A complaint based on
22 tortious interference must allege facts that show
23 some protectable right, a prospective, economical,
24 contractual relationship. Although the right need
25 not equate with that found in an enforceable

1 contract, there must be allegations of fact giving
2 rise to some reasonable expectation of economic
3 advantage.

4 In order to survive a motion to dismiss on a
5 claim of intentional interference with respect of
6 economic advantage, a client must allege business
7 expectancies not grounded on present contractual
8 relationships, but which are commercially reasonable
9 to anticipate.

10 Now I understand we are talking about a motion
11 for directed verdict rather than a motion to dismiss
12 or motion for summary judgment, but I would suggest
13 to the Court that the law in this state is scant in
14 this area. And this is the best we have. And
15 that's why I referred to what -- in the same case,
16 the United Educational Distributors case, what the
17 Court said was, the general wrong involved in those
18 three related actions consists of intentional and
19 improper methods of diverting or taking away ongoing
20 prospective contractual rights from another, which
21 methods are not within the privilege of fair
22 competition. So I will stop at that point and move
23 on to my other argument.

24 With regard to the UTPA claim, I wanted to
25 point out to the Court, and I believe this is

1 demonstrated by the facts in this case in Exhibit
2 Number 1. And that is that Ms. Clarkson was
3 presented with an adhesion contract of employment by
4 the defendant. The defendant decided that -- and as
5 you heard from Ms. Clarkson yesterday, this was
6 nonnegotiable. The defendant decided that
7 Ms. Clarkson was an independent contractor rather
8 than an employee.

9 And what I think is important to point out to
10 the Court that had Ms. Clarkson been an employee
11 rather than an independent contractor, there's no
12 question that she would have been entitled to
13 recover under the Payment of Wages Act, which is
14 41-10-10 et seq, which authorizes an award of treble
15 damages and attorney's fees for employees whose
16 wages have been wrongfully withheld.

17 I can't think of a good reason why, why a real
18 estate agent who was told what to do by her boss
19 should be treated any differently than any other
20 employee. Thank you.

21 THE COURT: Thank you, Mr. Studemeyer.

22 MR. STUDEMEYER: Yes, sir.

23 THE COURT: Mr. Blake, anything in addition to
24 what you argued on the record yesterday afternoon?

25 MR. BLAKE: Yeah, I -- three -- I need to

1 correct the record in one respect, and then I need
2 to address the new argument raised with Your Honor.
3 The cause of action, the second cause of action in
4 the second amended complaint was added on October of
5 2022. Okay? The motion to dismiss and the motion
6 for summary judgment was on a cause of action
7 against a different defendant. There has been no
8 motion to dismiss or summary judgment filed by
9 Mr. King.

10 The second cause of action that was added in
11 October of '22 is directed at Mr. King. Mr. King
12 has never filed any dispositive motions in this
13 case. There has been no orders against Mr. King on
14 this cause of action. That cause of action as it
15 was amended and repled in the third version of the
16 complaint is not pointed at the party that moved to
17 dismiss or that moved for summary judgment.

18 And so the second thing I would like to say --
19 that's just to correct the record in case there's
20 any concerns about that. But secondly, the case law
21 that was read just now, the additional part, said it
22 cannot be founded on a contract currently existing.
23 That is the difference between tortious interference
24 with contract, which has not been pled and has not
25 been tried in this case, versus prospective

1 interference -- tortious interference with a
2 prospective contract. And there has been zero
3 evidence of any future contracts reasonably
4 ascertainable that Ms. Clarkson was not provided
5 access to.

6 Third, this case has not been tried nor has
7 there been any evidence put on that there is any
8 type of actual employment relationship by Mr. King
9 to Ms. Clarkson. Ms. Clarkson's only testimony is
10 that Mr. King did nothing to act like an employer,
11 provided her no support, gave her no direction. Her
12 direct testimony was only that he left a piece of
13 paper in a folder for her to fill out and nothing
14 more. That was all the guidance, all the direction
15 she ever received from her broker-in-charge.

16 And so the case has not been tried, as well,
17 like an employment action. So any reference to the
18 South Carolina Payment of Wages Act has literally no
19 bearing on the elements of this case. The UTPA case
20 must stand on its own. And the legislative history,
21 I will not go back into because I don't want to
22 cover that ground, behind the UTPA is fundamentally
23 different than the legislative history behind
24 South Carolina Payment of Wages Act. And it does
25 not alter the burden of proof. The fact that she's

1 an independent contractor and not an employee, that
2 doesn't alter the burden of proof that the plaintiff
3 bears under this UTPA action.

4 And I just believe that, again, when we are
5 looking at both these causes of action, Your Honor,
6 anything outside the context of what's happened in
7 this trial, any reference to past judicial
8 determinations have no bearing on Your Honor's
9 weighing of the evidence presented here. Thank you.

10 THE COURT: Thank you. Concerning the motions
11 for directed verdict that were made yesterday by the
12 defense as to the Unfair Trade Practices Act, and
13 the interference with prospective contract.

14 Reviewing the evidence as I must do, and all
15 inferences therefrom in the light most favorable to
16 the plaintiff, still most -- and as I indicated
17 yesterday back in the hallway, or back in one of the
18 rooms, I was leaning towards granting the motion for
19 directed verdict. And that's what I'm going to do.

20 Under the Unfair Trade Practices Act, the Act
21 is not available to redress a private wrong where
22 public interest is not involved. This is clearly a
23 dispute between a realtor seeking commissions from
24 her broker, and not one that the public would be
25 interested in. The facts of this case are not

1 similar to the facts of the cases the plaintiff has
2 relied on.

3 Concerning the interference with prospective
4 contracts, I found a case which says this. It has
5 best been said that a prospective contract is less
6 than a contractual right, but more than a mere hope.
7 And we have three cases where there is a contract in
8 place between a realtor and a client.

9 Now, let me say this. I take motions for
10 directed verdict very seriously. And quite candidly
11 I don't grant them very often. I spent a lot of
12 time last night reviewing your briefs, looking at
13 the cases that both sides have argued, and I gave it
14 a lot of consideration.

15 I'm the type of judge that feels like a jury is
16 best to determine the outcomes of cases as opposed
17 to the judge. But in this case I felt like a
18 directed verdict, quite to the disappointment of the
19 plaintiff and her fine attorneys, felt like the
20 motion for directed verdict should be granted as to
21 those two causes of action. Therefore, the breach
22 of contract will be the only cause of action that
23 will go to the, to the jury.

24 Do we have all members of the jury now?
25 Anything else we need to place on the record before

1 we bring the jury out and hear from, I think --
2 Mr. Blake you've got Mr. King that you are going to
3 put up. And then Mr. -- is it Lane or Lang?

4 MR. BLAKE: Lang, sir.

5 THE COURT: Okay. And those are the two
6 witnesses, and certainly if there's any rebuttal
7 case that the plaintiff needs to put up, okay? All
8 right. Let's bring the jury out, please.

9 Is Ryan (unintelligible) today?

10 MR. STUDEMAYER: Your Honor, that's Jay
11 Bradley.

12 THE COURT: Oh.

13 MR. STUDEMAYER: Ryan is his older brother.

14 THE COURT: Oh, okay.

15 MR. STUDEMAYER: I got two of them to work with
16 me.

17 THE COURT: I got you, okay. I just was
18 looking at the roster and along with you was Ryan's
19 name, and I just assumed that was who that was.

20 MR. STUDEMAYER: Yes, sir.

21 THE COURT: Well, you apologize to him because
22 I probably have called him a couple of times Ryan.

23 MR. STUDEMAYER: I'm sure he understood.

24 (WHEREUPON, the jury entered the courtroom
25 at 10:13 a.m.)

1 THE COURT: Let the record reflect the jury is
2 back in. Good morning, ladies and gentlemen.

3 THE JURY: Good morning.

4 THE COURT: I hope you are doing well. Let me
5 just -- y'all can have a seat. Let me just, kind
6 of, give you the game plan, if you will. The
7 plaintiff has rested. The defendant will put up
8 their case. Mr. King is going to testify and the
9 gentleman back here will testify. Then the
10 plaintiff has the right to put what we call a reply
11 case if he so chooses.

12 And then after that is done we will take a
13 lunch break. It will be a little longer lunch break
14 because I need to spend some time with the lawyers
15 concerning my jury charge.

16 Then we'll get you back at some point in time
17 this afternoon. The lawyers will make their closing
18 arguments to you. I will charge you the law that
19 you are to apply to this case. And then you will
20 begin your deliberations.

21 So that's, kind of, the game plan of where we,
22 where we are today. So with that said, Mr. Blake,
23 you ready, sir?

24 MR. BLAKE: Yes. May it please the Court?
25 Thank you, Your Honor. I'd like to call Jason King

1 to the stand.

2 THE COURT: All right. Come around please,
3 sir.

4 THE CLERK: Raise your right and place your
5 left, please. Do you swear or affirm the testimony
6 you give will be the truth, the whole truth and
7 nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: All right. Have a seat and state
10 your name for the record, please, sir.

11 THE WITNESS: Jason Ernest King.

12 JASON ERNEST KING, being first duly sworn, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BLAKE

16 Q. Good morning, Jason.

17 A. Good morning.

18 Q. I won't go too much into your background. The
19 jury got to hear from you earlier in this trial.
20 Can you briefly describe for them --

21 MADAM COURT REPORTER: It's just behind you
22 this thing --

23 MR. BLAKE: Will this one pick me up too?

24 MADAM COURT REPORTER: Yes.

25 MR. BLAKE: Thank you.

1 BY MR. BLAKE

2 Q. Will you please describe to the jury your
3 process of becoming a real estate professional?

4 A. So in 2007 I was investing in real estate, and
5 I got my license as an associated licensee or
6 salesperson with Real Estate Advocates. From there
7 I worked as a salesperson for about five years. And
8 it took some time, but I think the longer you work
9 the trade, the better. You can take your broker's
10 exam after three years but I chose to wait until
11 five years.

12 Then I became a broker. And I think it was
13 around 2015 is when I split off to start my own
14 brokerage, but before that I had years of experience
15 under another broker.

16 Q. Okay. And at that brokerage, it was how many
17 years were you working underneath another broker?

18 A. From 2007 to, I think, 2015.

19 Q. Were you paying a commission split as an agent
20 up to the brokerage as part of that opportunity to
21 work underneath them?

22 A. Yes, sir. Back then it was a little bit
23 different. You payed a higher split. One closer to
24 50/50. Our brokerage was more of a Fathom style.
25 It was all fee based.

1 So we had transaction fees. We had desk fees.
2 We had fees for everything. We had to buy our own
3 signs. And then we also had the commission split on
4 every deal because the brokerage took on the
5 liability and the training and advice.

6 Q. Are transaction fees customary in your
7 industry?

8 A. Yes, sir. Absolutely.

9 Q. Okay. And whenever you formed a brokerage,
10 tell us about what it cost you. What went into
11 forming a real estate brokerage?

12 A. I had to first set everything with LLR, make
13 sure I had a policy manual, the right paperwork.
14 And they reviewed it and made sure it was correct.
15 Set up a trust account to show that I could properly
16 manage the agents. That I had advanced training as
17 far as being a broker to become a broker-in-charge.
18 And it took quite a bit of financial because you had
19 to have an office place. You had to be where the
20 public can find you. Setting up my files, joining
21 MLS as a brokerage. So it -- financial obligation
22 and a lot of time.

23 But I try to encourage my agents, if you want
24 to start your own brokerage I can guide them in that
25 direction, but don't rush into it. Because there's

1 a lot to learn in real estate, and it changes every
2 day. You don't need to do it as soon as possible.

3 Q. Okay. Sounds like you took on some expenses
4 and some risks. What are some of the liabilities as
5 a broker-in-charge that you assume?

6 A. Since the clients and all the liability stands
7 with the brokerage, if there is a lawsuit that goes
8 against the brokerage with anything that our agents
9 do, or the brokerage does, you know, we have to
10 carry E & O insurance. Well, excuse me. We don't
11 have to anymore. I still carry a million-dollar
12 policy because I think these are serious
13 transactions. It's probably the biggest financial
14 transactions most people make in their life. And we
15 carry the burden of all that liability. And I have
16 to manage all my agents and make sure they are doing
17 a proper job by our clients.

18 Q. And are these expenses and liabilities the
19 reason why agents who work underneath you pay a
20 portion of commissions and a transaction fee to your
21 brokerage firm?

22 A. That's a portion of it. The transaction fee is
23 really for every file that comes across my desk, I
24 need to review it. There are some brokerages where
25 you can just automatically upload it to a software

1 program, and they can confirm that's correct. But I
2 personally review every file to make sure all of the
3 legal requirements are met, not to advise as an
4 attorney. That's really what the transaction fee is
5 for.

6 The commission split is more for the advice, to
7 carry that liability, the training and education,
8 the guidance portion of it. But it is also the
9 liability that we carry.

10 Q. Okay. And did you provide that for
11 Ms. Clarkson during the two or so years that she was
12 contracted to work for J. King Real Estate?

13 A. Yes. We meet annually to review their process,
14 just like I do with all my agents. When we sat
15 down, like she said we -- she interviewed multiple
16 brokerages and we discussed the differences
17 including our annual fee, our transaction fee, our
18 commission split. That's pretty much it. We're
19 very streamlined as a brokerage versus other
20 brokerages that have a lot of hidden fees for
21 internet fee, or for paperwork more for -- we
22 provide all the paperwork. Once a year we sit down.

23 We do have contests where I usually do not
24 compete, because I don't want to win the prize. I'm
25 trying to motivate those agents to go out there and

1 produce. And it seemed to work really well for
2 newer agents.

3 When Brandi first started she was amazing.
4 Most agents, I tell them your first year you get
5 your feet wet, and you should double that income for
6 the next two years. Brandi had a set goal in mind
7 so that she could leave the school district. And
8 she reached that in six months. She was a
9 go-getter. She went out there and did it. And then
10 the next year she doubled that.

11 So it started out really great. And we provide
12 a lot of training to our agents, and education, and
13 advice.

14 Q. Okay. And Ms. Clarkson testified about
15 capping, and the jury has seen an Exhibit Number 4
16 that says cap (unintelligible) with two exclamation
17 points. Can you explain to the jury just briefly
18 what you mean by when you said the word cap?

19 A. So all of our agents, we -- it's motivating for
20 them to reach a certain sales amount. Once they
21 bring in 20,000 to the brokerage, then they keep 100
22 percent for the remainder of the year. The next
23 year it starts over again. So we call it capping.
24 You no longer have to pay any more commission.

25 I think if I have five agents like that, that's

1 great and it's motivating for them to perform each
2 year. And that goal is set at an obtainable but
3 lofty goal for all of them. And other agents have
4 obtained it. But it's, it's meant to be motivating.
5 And it's a reward to them to get to 100 percent for
6 the remainder of the year.

7 Q. And 2020 was not the first year Ms. Clarkson
8 had capped, was it?

9 A. I'm not sure. If she didn't cap the year
10 before she came really close.

11 Q. Okay. Did you have a reason to want an agent
12 to leave after they capped?

13 A. No. Absolutely not. Because if they cap that
14 year, hopefully they cap the next year and the next
15 year. And as they progress it's just like -- every
16 new agent takes a lot more time and energy to train.

17 As they get more experienced, the hope is that
18 you have more experienced agents that are capping
19 and take less management time. It doesn't mean I
20 ignore them because they're top producers, but it
21 gives me time to spend with the newer agents.

22 Q. Okay. We have had the opportunity to look at
23 some of the agent commission worksheets. A lot have
24 been put into evidence in that notebook in front of
25 you. That form shows a transaction fee on some

1 versions of it. It's blank on others. Did you
2 create the form?

3 A. I did create it. And Brandi did help quite a
4 bit with some of our forms. And a big thing that
5 she did was help us with Google Drive. The school
6 districts use Google Drive. My kids use Google
7 Drive, but I wasn't as familiar with it. But it's
8 become a great resource for our agents to go into
9 that Google Drive and grab the forms they need
10 instead of me e-mailing it to them, them saving them
11 in a certain spot then when they change, and Brandi
12 really helped set that up.

13 Q. And so, who put the form in the format that
14 it's been used in the Google Drive?

15 A. I think Brandi did.

16 Q. Okay. And does the agent complete the total
17 owed to agent line, or is that something that you
18 do?

19 A. That's something they fill out.

20 Q. Okay. And then Ms. Clarkson filled out the
21 total owed to agent on every single agent worksheet
22 that's in that notebook?

23 A. Except for the ones that closed after she quit
24 J. King Real Estate.

25 Q. Thank you for that clarification. And did you

1 pay her a check for every amount owed that she
2 presented you during the term of the contract?

3 A. Yes, sir.

4 Q. Okay. And at some point did she ever say
5 anything to you along the effect of, I don't believe
6 I should be paying this \$50 or \$25 transaction fee?

7 A. Not until right before she quit. There was a
8 meeting, probably, a week before with another agent
9 and her. It was an agent meeting where she asked me
10 what the transaction fee was for and stated that she
11 didn't think she should have to pay it.

12 Q. Okay. And what did you say that transaction
13 fee was for?

14 A. The transaction fee is for me to review every
15 file that comes across my desk. Every buyer, every
16 listing has a file. When they list the property,
17 they sign a listing agreement. And when it goes
18 under contract, we have a contract. Then any
19 repairs that are negotiated. And then when it
20 closes, by law, LLR governs us on those files. And
21 we have to have them, we have to have all the
22 elements of it. Make sure that everything is
23 correct on it because they can come back and audit
24 us at any time.

25 So it is my responsibility as the

1 broker-in-charge to make sure that those files are
2 legal and everything is the way it's supposed to be
3 for LLR.

4 Q. Understood. On July 2nd, the jury has been
5 presented an email that you wrote to Ms. Clarkson.
6 Are you familiar with that document?

7 A. July 2nd?

8 Q. It's in the notebook. I can, I can help direct
9 you if that will help. It went into evidence as
10 Exhibit 5.

11 A. Yes, sir.

12 Q. Do you recall sending this email?

13 A. I do.

14 Q. Why did you send it?

15 A. When we had the mix up with the commission
16 check, the attorney didn't take out the earnest
17 money which is kind of common for real estate
18 closings. When Brandi deposited it she didn't check
19 it over first and there was a mixup on it. So on
20 that sheet, her commission sheet that she turned in,
21 it wasn't correct. I had asked her to come into the
22 office so we could discuss it and figure out exactly
23 what went wrong and where the math was off. Because
24 I was off by the pennies.

25 I don't know if we have that commission sheet

1 but it took me a while to figure out exactly why I
2 was off from what the closing statement said, and
3 what she said she had deposited, and then after
4 correcting it.

5 I, when I had asked her to come in and review
6 this with me, personally, I thought that she was
7 going to do that within the next day or two, but she
8 didn't. So I was a little upset with that that she
9 wasn't willing to assist me in figuring out where it
10 was mixed up.

11 It's not -- I don't usually fill out these
12 commission sheets. I have the agent send them into
13 me but it wasn't accurate. And I didn't want to
14 just change it without discussing it with her.

15 So I was a little frustrated and that was the,
16 that was the actual closing where she capped. So
17 that should be a great time. That's motivating to
18 continue having a great year for the rest of the
19 year, but instead it was a little bittersweet
20 because it was, it was an aggravating deal.

21 Q. Were you, were you attempting to get her to
22 resign or terminate her contract with J. King Real
23 Estate when you sent this email?

24 A. Absolutely not. I wanted Brandi to continue to
25 grow as an agent. We had some discussions about her

1 professionalism, but I felt like that was something
2 that she could change and become a better agent.
3 She was always great by our clients. Our clients
4 came first.

5 We had numerous discussions about the rest of
6 the people in the transaction, the lender, the
7 seller, the other agent on the other side. I felt
8 like that was fine-tuning to make her a better
9 agent, and that she would have a long career in real
10 estate, and for me as an agent, one, a brokerage
11 looks bigger. We have a veteran-performing agent.
12 I have one that's bringing in \$20,000 to the
13 brokerage a year. And hopefully a good agent. I
14 felt like we could, we could get better together.

15 Q. As the agency agreement provides, if somebody
16 terminates their agreement with you or vice versa,
17 that they're supposed to return the keys to the
18 office.

19 A. Yes.

20 Q. And did you remind Ms. Clarkson of that when
21 she came and terminated her contract?

22 A. Yes. One of the things we provide to all of
23 our agents is office space. And it is shared office
24 space so it's not -- we don't charge for it. A lot
25 of agencies charge a desk -- what's called a desk

1 fee. We don't. That was just one of the benefits
2 of working with J. King Real Estate.

3 And they each have a key. But when an agent
4 leaves a brokerage we can't just have that key
5 floating out there. So Brandi knew that she had to
6 turn back in that key. We discussed it the first
7 day. When she came back in the second day to clear
8 out her stuff from the office, I said that was fine.
9 And I was to create a form stating that she would
10 get paid 70/30 split that we agreed to verbally.
11 And then she didn't want to sign the form, and she
12 didn't want to give me the keys.

13 And she said that she would be back. And I
14 told her there was nothing more to discuss. It was
15 time for her to leave.

16 Q. Okay. And did she give you the key whenever
17 she left the second time?

18 A. She did not.

19 Q. Okay. Did she tell you she was coming back --

20 A. Yes.

21 Q. -- to give you the key?

22 A. No.

23 Q. What did she tell you she was coming back for?

24 A. She said that she would be back later that
25 evening around six or seven.

1 Q. Okay. Okay. And did she tell you why she
2 would be coming back?

3 A. No. She was very furious. I mean she left the
4 office. She didn't talk to anybody else when after
5 the point I told her it was time for her to leave.
6 She was getting heated and very upset. And I did
7 not feel comfortable with her having that key, and
8 the rest of my agents. And I didn't know what she
9 was going to do as far as, maybe not personal
10 safety, but more my files are in there. She knows
11 how the office is. Who knows what could have
12 happened.

13 Q. Okay. So what did you do in response to her
14 not giving you the key that day?

15 A. I changed the locks on the door, and I texted
16 her and said that she did not need to come back, and
17 that she could not come back unless she made an
18 appointment first.

19 Q. Okay. And when you say you changed the locks,
20 did you hire somebody to do that?

21 A. I did.

22 Q. And who was that person's name?

23 A. Brandon Poe.

24 Q. And we put into evidence Exhibit 60. If you
25 will flip to that in the folder, please.

1 Mr. Bailiff, would you mind dimming a couple of
2 those lights? Just that one that's shining right
3 down. Thank you.

4 BY MR. BLAKE

5 Q. You said Brandon Poe?

6 A. Yes.

7 Q. Okay. And is this the check that you wrote to
8 Mr. Poe on July 10th for changing the locks?

9 A. Correct.

10 Q. And then did you have to make -- did you have
11 to go purchase the supplies to change the locks?

12 A. I asked him to go do it because I had other
13 transactions I had to deal with.

14 Q. And is this the receipt, although it's turned
15 sideways?

16 A. Yes, that is it.

17 Q. And it's \$279.68 in addition to the \$100 fee to
18 Mr. Poe?

19 A. Correct.

20 Q. Okay. And then tell me what happened next in
21 your discussion. Where did you turn your attention
22 to once you secured the building?

23 A. Of course, like all agents I had my -- well I'm
24 a competing broker so I also have transactions going
25 on at the same time. And it's a busy time of the

1 year. But my first thought was I need to get up to
2 speed with all of the transactions. So I called
3 each of the lenders that were involved, each of the
4 attorneys, each of the other clients, and each of
5 the other agents.

6 Q. Okay. And you said -- did you have a
7 conversation with Ms. Clarkson about the fact that
8 you were doing that on the 11th?

9 A. No, I do not believe so.

10 Q. Did you send an email on July 11th about it?

11 A. I did. I did. I sent an email to her that --
12 I'm not sure which one it is.

13 Q. Well, I can tell you it's Exhibit 80. Just
14 flip through it to refresh your recollection. Does
15 this email summarize the work that you did after she
16 left on July 10th to get up to speed on the
17 outstanding transactions?

18 A. Yes.

19 Q. Okay. And there were six outstanding ones,
20 correct?

21 A. Yes. Concord Place was a dual-sided
22 transaction.

23 Q. Understood.

24 A. The buyer and seller, two separate clients.

25 Q. Got it. And you kind of enumerated the status

1 on each here in this email that's now admitted as an
2 exhibit, correct?

3 A. Right.

4 Q. This was a Saturday, right?

5 A. Yes, I believe so.

6 Q. Okay. And had you received notice at this
7 point that her salesperson's license had been
8 transferred outside of your brokerage?

9 A. I believe I received it in my email, but I
10 hadn't looked at it yet. I was too busy juggling
11 all the transactions on my plate and making sure
12 that everything was going to go smooth with these
13 since I had a legal responsibility on them.

14 Q. Okay. When did you first learn that her
15 license had actually been officially transferred
16 outside of J. King Real Estate to another brokerage
17 firm?

18 A. I believe that Monday when I sent an email
19 to -- I believe it was the Monday afterwards. I
20 received a letter from Greg. I realized I got an
21 email that she had transferred her license, and this
22 had become a legal issue that I needed to really
23 seek advice on. So I seeked (sic) advice from an
24 attorney. It became very clear to me that if she's
25 not with my brokerage, she can have no part of the

1 transactions.

2 Q. Okay. And is that the reason for the
3 difference in that tone between the January 11th
4 email and the January 14th email that's
5 Exhibit 10?

6 A. Yes.

7 Q. Okay.

8 A. Yes.

9 Q. And what was the concern you had at this point
10 in time on January 14th -- I'm sorry, July 14?

11 A. That she would interfere with our clients and
12 make it difficult to close those transactions. Or
13 that legally, if I allowed her to remain in those
14 transactions while working with another brokerage,
15 that I could be sued. Or -- because I'm to manage
16 my agents and us where she was no longer under my
17 purview.

18 Q. Okay. At this point you had already been
19 threatened with a lawsuit.

20 A. Yes.

21 Q. Okay. July 14th is that the same day the
22 Green Street transaction closed?

23 A. Green Street. Yes. Yes, sir.

24 Q. And did a licensed attorney conduct that
25 closing?

1 A. Yes, sir.

2 Q. And then did you turn your attention to the
3 other three transactions that were still
4 outstanding?

5 A. Yes.

6 Q. Tell me about the two that you novated.

7 A. So Green Street closed a couple of days after
8 this. I believe it was on a Tuesday. It was on the
9 14th. Everything was pretty solid on that. I spoke
10 with Ms. Levine. She did ask me where the attorney
11 was located, and I didn't have the exact address. I
12 said I would get back to her on that.

13 The three transactions, Trinity Three, Old
14 Town, and Concord Place were set to close within,
15 like, two or three days -- or two or three weeks. I
16 believe two weeks. So they were right in the midst
17 of everything. The last two, I can't remember the
18 exact addresses, Sawgrass and Sweetwater.

19 Q. Are those the ones from Ms. Sato and the
20 Whitakers?

21 A. Right. Those two clients were set to close a
22 couple of months in the future where we had done
23 very little work on those files except negotiate the
24 contract. To novate a file -- I had never done this
25 before. I've never heard of it being done. I had

1 to seek legal advice on how to do that. But to pass
2 off my liability, or J. King Real Estate's
3 liability, from those deals on Green Street, Trinity
4 Three, Old Hall (sic), and Concord Place, when is it
5 right ethically? Because I can't just give that to
6 a new brokerage and say you take on all the
7 liability for the things that we did. But also
8 it -- legally we can't do that.

9 If something happened because of something I
10 did, who is representing the client at that time?
11 I'm not an attorney so I did not know how that
12 worked.

13 But with the other two deals that were a couple
14 of months out, I felt good that whoever the new
15 brokerage, in this case Fathom, Dan Lang, it would
16 be comfortable for them to take on that liability
17 from the contract moving forward.

18 Q. Okay. Okay. So did you, in fact, execute
19 those novation agreements that have been put into
20 evidence?

21 A. Yes, I felt like that was in the best, the best
22 interest of our clients.

23 Q. Okay. Did you receive a silver dollar of
24 commission payments, or any other type of recovery
25 at all at J. King Real Estate for either one of the

1 deals?

2 A. I did not.

3 Q. Okay. And did you have any say in whether or
4 not Ms. Clarkson, Mr. Lang agreed to a transaction
5 fee as between them?

6 A. No. It was his discretion who the agent would
7 be that's assigned to that. It went to Fathom Real
8 Estate.

9 Q. Okay. So once it went over there it was up to
10 Mr. Lang as to who was going to be the agent that
11 got to continue on working with that client?

12 A. Correct. And how they have their splits and
13 their fees and what they negotiate.

14 Q. Thank you for clarifying. Move, if you would
15 please, to just let them know the work that you did
16 after Ms. Clarkson terminated to bring the Concord
17 Place transaction to closing.

18 A. Concord Place was pretty good except for
19 Mr. Christian. He had some reservations about the
20 deal. And understandably so with my involvement
21 because it was new to him. I assured him that
22 everything would be smooth, and that J. King Real
23 Estate would still be representing him.

24 And he had asked about Brandi's situation. At
25 first I said, look, she will be there for you to

1 maintain those friendships and those personal
2 relationships. But once I seeked legal advice it
3 became very clear that if she is not with my
4 brokerage, that she cannot be involved.

5 Mr. Christian was not too happy about that. But I
6 tried to explain to him that this was a legal
7 matter, and J. King Real Estate represented him, and
8 that she could not be involved in it.

9 Q. Okay. And then did you have to do any actual
10 work outside of what a broker-in-charge normally
11 does to ultimately have that deal close and J. King
12 Real Estate recover its commission?

13 A. Yes. We did have an extension because the
14 seller from Concord place, her house was not ready
15 yet. And we had to push back closing. It was a new
16 construction deal so we, we did sign an extension
17 that Brandi had already written up. Mr. Christian
18 was not happy to sign at first, and the deal looked
19 like it was going to fall through. He eventually
20 did sign it and I did just about beg him because
21 otherwise Ms. Collins, Crystal Collins was going to
22 lose the deal on her new property, if we did not
23 extend and close on it.

24 Q. Was it somehow your fault that the extension
25 was required?

1 A. No. It was an extension from the, from the
2 builder because they weren't ready yet. I believe
3 it was because the water had not been turned on yet.

4 Q. Understood. And tell us about Exhibit 64.
5 Just flip, if you would, to Exhibit 64 there in the
6 notebook.

7 A. The novation?

8 Q. (inaudible).

9 A. Maybe I'm looking at the wrong one. Oh, my
10 time schedule?

11 Q. Is that what this is? Is this a time schedule?

12 A. Yes.

13 Q. Does it summarize the work, at least some of
14 the work that you put in to bring these three
15 transactions to closing?

16 A. It does. It's not typical for us to break down
17 how we get paid by the hour. I know attorneys do
18 that and a lot of other industries do, but most of
19 ours is broken down on a percentage basis. But due
20 to the legal nature of this and the language in the
21 salesperson agreement, which I did write up, it said
22 it had to be broken down by our services. So I
23 wanted to keep track of exactly what I did separate
24 from my broker-in-charge duties.

25 Q. Okay. And does this summarize what you kept

1 track of?

2 A. Yes, sir.

3 Q. And so on Concord Place you put in almost
4 15 hours of additional work for the clients to get
5 these deals to closing?

6 A. That was the dual-sided deal, and it ended up
7 taking the least amount of time, and everybody
8 seemed very happy afterwards.

9 Q. Okay. And what about the Old Town Road
10 transaction there?

11 A. Yes. That one took a little bit more time
12 because of the communication with the builder and
13 lenders and making sure everything stayed on track
14 there.

15 Q. Okay. And it's stated here you have the number
16 of emails you sent, text messages you sent or
17 received, phone calls you had. Is this accurate?

18 A. Yes.

19 Q. Okay. And is that a fair reflection of the
20 amount of time that you spent after Ms. Clarkson
21 terminated her agreement?

22 A. If not more. It put me in a bind when she
23 left. I always care about my clients and what's
24 going on with them. But I had transactions going
25 on. I had other agents that had transactions going

1 on. And now to make sure that I handle all of this,
2 I'm sure there's text messages and emails and phone
3 conversations that I missed. I just did not keep
4 track of.

5 Q. Okay. And then on Trinity Three, that was a
6 more complicated transaction is what I heard.

7 A. Absolutely.

8 Q. And why?

9 A. It was set to close right after everything
10 transpired with Ms. Clarkson. But when I dug into
11 the file they had not agreed to their repair
12 addendum yet. When I requested from the other side
13 why they have not signed it yet he said he was
14 working on it. Whenever he sent it back to me it
15 did not have anything about a roof repair, and he
16 said that the two clients were taking care of it
17 outside of closing. I said, well, we can't have
18 that. We need everything on the books, in writing,
19 what we're going to do. So it took a little while
20 to renegotiate that repair addendum.

21 Q. Okay. And there's been some suggestion about
22 you providing imaginary closing dates to the client.
23 Is that accurate?

24 A. No. I believe the first one was a delay from
25 the buyers of Trinity Three. The next delay was

1 because Ms. Miller was purchasing a new property
2 that wasn't ready yet. And then the delays after
3 that were probably more with paperwork. But each
4 time I emailed or texted Ms. Miller. I would copy
5 Mr. Miller on it and I always told them this is the
6 date I have from the attorney, but it is not set
7 yet. The attorney constantly told me that this is
8 the date we have scheduled but we are not prepared
9 yet.

10 Q. Right. And are you personally capable of
11 conducting a real estate closing --

12 A. No.

13 Q. -- in South Carolina?

14 A. MGC closed that transaction. I believe the
15 next transaction also for Ms. Miller, but --

16 Q. What do you mean by MGC? Tell the jury who you
17 are referring to.

18 A. McAngus, Goudelock, and Courie. It's a real
19 estate attorney downtown. In South Carolina all
20 closings have to be conducted with a real estate
21 attorney, which I like. But no, I did not close it.

22 Q. Okay. And, again, you put down eighty one and
23 a half hours of time, after Ms. Clarkson terminated
24 her agreement, on the Trinity Three Road
25 transaction. Is that an accurate number?

1 A. Yeah, absolutely.

2 Q. Okay. And, again, you had to come up with some
3 way to value your time. What does that \$173 an hour
4 represent?

5 A. That was what -- that's how much my time was
6 worth. I tried to divide it up between managing as
7 a broker and my production. And when I broke it
8 down by the hour, that's the number I came up with.

9 Q. Okay. Is that reflective of your average
10 hourly rate whenever you're working?

11 A. It is based on how much, how much I make in a
12 year, and broken down by the hour.

13 Q. Understood. Thank you for that clarification.
14 And so if you had applied it strictly, just doing
15 the math, time worked times a rate, on Trinity Three
16 Road what would have been the actual deduction from
17 the commission?

18 A. On Trinity Three Road Brandi would have
19 actually owed me money, which isn't reasonable
20 because she hadn't received any funds yet. And I
21 felt like it was better to just do 50/50 because
22 that's the way -- a real estate brokerage works on
23 percentages. And she had done what I felt was
24 50percent of the work at that point.

25 Q. Okay. And your agency agreement says you are

1 able to do that at your discretion, correct?

2 A. Correct. Based on the amount of work that I
3 had to do to the file.

4 Q. And then, going down then to the Concord Place
5 Road transaction, if we had just simply, you had
6 just simply applied \$173 an hour times the hours
7 worked, what would the charge have been against the
8 commission?

9 A. They would have been much higher. The numbers
10 that are shown here were higher -- I'm sorry, were
11 higher to deduct from the full commission than what
12 I actually sent to her because I felt like it was
13 fair.

14 Q. Okay. So again did you, did you make a
15 compromise on this \$2,551 of time you put in to get
16 that deal to closing?

17 A. Yes. If we stuck to the letter of my agreement
18 then she would have received a lot less.

19 Q. Okay. And then the last one is 2 -- 25 hours
20 or so that you spent on Old Town Road. Again, if we
21 had multiplied that by the \$173 an hour rate by the
22 actual time that you spent, or estimated, what would
23 that charge have been?

24 A. It would have been the \$4,400 deduction from
25 the 95 -- I'm sorry \$9,400 that I received. So that

1 would have been roughly 50percent.

2 Q. And, again, you didn't deduct 50percent out.
3 You deducted a couple of thousand dollars instead,
4 correct?

5 A. Correct. Correct. Because I wanted to do the
6 right thing by Ms. Clarkson.

7 Q. Okay. And, ultimately, when you sent her the
8 payments for these transactions, did those checks
9 ever clear?

10 A. No. I felt like I was paying her what was
11 deserved on it, and if we had a dispute over it we
12 could handle the difference. But, no, they were
13 never cashed or deposited.

14 Q. Okay.

15 A. I had no idea it would go this far.

16 MR. BLAKE: Thank you. I have no further
17 questions.

18 THE COURT: Mr. Studemeyer, do you have any
19 cross-examination?

20 MR. STUDEMEYER: Oh, yes. (inaudible), Your
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. STUDEMEYER

24 Q. All right. Do you have any idea how many times
25 you used the word legal or legally in your

1 testimony?

2 A. I do not.

3 Q. You just got through telling this jury that
4 closings are conducted by licensed real estate
5 attorneys. Correct?

6 A. I believe, yes, sir. Attorneys, yes.

7 Q. But you also told them that you charged Brandi
8 transaction fees to ensure that a lawyer had done it
9 correctly.

10 A. No, sir.

11 Q. Well, what does legal compliance mean?

12 A. We are licensed through LLR, labor -- I'm not
13 even sure what that stands for. Labor licensing
14 regulation? We have to study the portion of real
15 estate law whenever we go to school. We are not, we
16 are not attorneys, but I have to follow that portion
17 of the law so I have to make sure that all of our
18 contracts meet LLR's guidelines.

19 Q. Okay. Well, you, you like to talk about what
20 the law is with your agents and other agents, don't
21 you?

22 A. I believe we do have discussions about what the
23 legal requirements are of a real estate agent.

24 Q. Okay. And, in fact, in one of these
25 transactions, I believe it was the Trinity Three

1 Road transaction, you sent an email to Josh Jackson
2 didn't you?

3 A. Say that again.

4 Q. Josh Jackson. Does that name ring a bell?

5 A. Yes. Yes, sir. That is the other agent for
6 the buyers on Trinity Three.

7 Q. Okay. And you sent him an email suggesting
8 that his clients could be subject to suit for
9 breaching a contract.

10 A. Could be?

11 Q. Yes.

12 A. I -- maybe.

13 Q. Maybe you did?

14 A. Yes, sir.

15 Q. Okay. All right. This fee, this transaction
16 fee that you charge not only Brandi, but every other
17 agent, right?

18 A. Yes, sir.

19 Q. Okay. It's never mentioned in your employment
20 contract is it?

21 A. Correct.

22 Q. And it's never mentioned in your policy and
23 procedures manual, is it?

24 A. Correct.

25 Q. And it's never mentioned in that commission

1 schedule, is it?
2 A. Correct.
3 Q. And you have been using those documents since
4 2015.
5 A. Correct.
6 Q. And you have handed those same documents to at
7 least 25 agents and said, sign here.
8 A. Yes, sir.
9 Q. And each one of those agencies who sold a piece
10 of property got charged for legal compliance in a
11 transaction fee.
12 A. No, sir.
13 Q. You are saying some of them didn't?
14 A. That is not what they got charged for.
15 Q. They get charged a transaction fee?
16 A. They get charged a transaction fee for me to
17 review the paperwork.
18 Q. Oh. Well, what was the other 70 percent for?
19 A. That is for the management, the guidance, the
20 liability for the rest of the -- for holding their
21 license with J. King Real Estate. I could probably
22 go on, but yes, sir.
23 Q. Okay. Well, that realtor -- that employment
24 agreement that you drafted and have used since 2015
25 says that Brandi and all of your other agents are

1 not liable to you for office help.

2 A. Correct.

3 Q. Or clerical work.

4 A. Correct.

5 Q. Okay. All right, but you got 70 percent of all
6 those commissions anyway.

7 A. Correct.

8 Q. Okay.

9 MR. BLAKE: Judge, I think he misspoke. I
10 think he meant 30 percent.

11 THE COURT: Is it 70 percent or 30 percent that
12 you get.

13 THE WITNESS: I receive 30 percent. The real
14 estate agent receives, I would say the lion's share,
15 the majority of it because they are handling that
16 and we are getting paid for the management and
17 advice.

18 BY MR. STUDEMEYER

19 Q. All right. I stand corrected. I meant 30
20 percent. Brandi put \$20,000 in your pocket by the
21 end of June of 2020, didn't she?

22 A. To J. King Real Estate.

23 Q. Okay. And you still have \$20,000 that she
24 earned in your company's bank account.

25 A. That J. King Real Estate earned. Yes, sir.

- 1 Q. Who earned it?
- 2 A. J. King Real Estate.
- 3 Q. Well, who --
- 4 A. The associated licensee of J. King Real Estate.
- 5 Q. -- who did the work?
- 6 A. J. King Real Estate did.
- 7 Q. Who met with Darlene Miller and sold her a
- 8 house?
- 9 A. Brandi did.
- 10 Q. Okay. And who met with Zachary Christian and
- 11 sold his house?
- 12 A. Brandi did.
- 13 Q. Okay. And who met with Ms. Collins and sold
- 14 her house and helped her buy another house?
- 15 A. Brandi did. And that's why she would normally
- 16 receive 70 percent of the commission.
- 17 Q. Well, whoa, whoa, whoa. Wait a minute. You
- 18 just got through pointing out up here on this screen
- 19 that she capped.
- 20 A. Right. And she would have received a hundred
- 21 percent if she had stayed --
- 22 Q. Thank you.
- 23 A. -- at J. King Real Estate.
- 24 Q. Thank you. All right. The way your -- you
- 25 have everything set up, you make all the decisions.

1 You have this preprinted employment contract and you
2 say take it or leave it. That's how you hire
3 people, right?

4 A. No, sir.

5 Q. It's negotiable?

6 A. Yes, sir.

7 Q. Is that why it's preprinted?

8 A. Just like a listing agreement or a buyer's
9 agency agreement, we may agree to list a property
10 for 6percent but that is negotiable. To work with
11 J. King Real Estate most agents start out at 70/30
12 where they get a majority of the commission and J.
13 King Real Estate gets 30, but it's negotiable.

14 Q. Okay. Let me ask you about the employment
15 agreement. What part of that agreement was
16 negotiated with Ms. King -- with Ms. Clarkson?

17 THE COURT: We've got an objection.

18 MR. STUDEMEYER: Yeah, Your Honor. This term
19 employment agreement keeps being used. I just want
20 to be clear for the record. Are we talking about
21 the Broker-Salesperson Agreement that's Exhibit
22 Number 1, or is there some new employment agreement
23 we're talking about?

24 THE COURT: Mr. Studemeyer, are you referring
25 to Number 1?

1 MR. STUDEMEYER: Yes, Your Honor.

2 THE COURT: Okay.

3 BY MR. STUDEMEYER

4 Q. All right. Jason, you have referred to it
5 before as an employment agreement, haven't you?

6 A. I don't believe so. Maybe, but.

7 Q. Do you remember talking about that an
8 independent contractor was also an employee for you?

9 A. No, sir.

10 Q. You don't remember saying that?

11 A. And as far as I understand, I'm not an
12 attorney, but an independent contractor is different
13 than an employee. An employee signs a W-2. An
14 independent contractor is a 1099.

15 Q. Okay.

16 A. I'm not an attorney.

17 Q. All right. Have you in the past referred to
18 Brandi or your other agents as your employees?

19 A. I do not believe so.

20 Q. Okay. All right. So you just always say she's
21 my agent?

22 A. She is an agent of J. King Real Estate.

23 Q. Okay. She's my independent contractor.

24 A. Say that again.

25 Q. Is that what you tell people is Brandi is my

- 1 independent contractor?
- 2 A. No, sir.
- 3 Q. You've never said that, have you?
- 4 A. No, sir.
- 5 Q. Okay.
- 6 A. I don't think so.
- 7 Q. All right. Now the way you have all this set
8 up with the preprinted forms and all of that, you
9 sell about \$6 million worth of real estate a year,
10 right?
- 11 A. Correct.
- 12 Q. That's how you got to that \$173 an hour that
13 you want to charge Brandi.
- 14 A. Correct.
- 15 Q. And so what that means is -- and you get
16 3percent on that 6 million?
- 17 A. Typically.
- 18 Q. Okay. So that means you get \$180,000 a year
19 based upon what you do.
- 20 A. Correct.
- 21 Q. At then you get at least \$20,000 a year extra
22 on people like Brandi who are out there selling with
23 your name.
- 24 A. Correct.
- 25 Q. Okay. And you -- how many agents do you have?

- 1 A. Currently?
- 2 Q. Yeah.
- 3 A. Eleven.
- 4 Q. Okay. Well, if all 11 of those cap, that's
- 5 \$220,000.
- 6 A. Yes, sir.
- 7 Q. Plus 180.
- 8 A. Correct.
- 9 Q. That's 400,000.
- 10 A. Correct.
- 11 Q. And you weren't willing to pay Brandi \$20,000.
- 12 A. Correct.
- 13 Q. Okay. You talked about what you think is fair,
- 14 right?
- 15 A. Yes, sir.
- 16 Q. I believe you said that you wanted to charge
- 17 Brandi back \$173 an hour for the emails and the
- 18 phone calls you made on these three transactions.
- 19 A. Correct.
- 20 Q. You think that's fair.
- 21 A. That is not what I charged her. I gave her a
- 22 bigger portion than the time I actually spent on the
- 23 files.
- 24 Q. So that's what you think is fair.
- 25 A. Yes, sir.

1 Q. And do you think it's fair to withhold \$20,000
2 from Brandi when you are making \$400,000?

3 MR. BLAKE: Object to form. That
4 mischaracterizes what he said he's making. That was
5 an answer in response to a hypothetical, if all 11
6 employees or agents capped. And there's no
7 foundation that that's ever happened.

8 THE COURT: Do you want to rephrase your
9 question?

10 MR. STUDEMEYER: I'll withdraw it.

11 THE COURT: Okay.

12 BY MR. STUDEMEYER

13 Q. Now, this agent commission worksheet that we
14 talked -- and I can't wait to turn that binder over
15 to this jury to see what we've been talking about.
16 I know they can't see that screen.

17 But that form that you prepared in 2015, an
18 agent can't get paid a dollar without filling out
19 your form, can they?

20 A. Correct.

21 Q. And that form is not negotiable.

22 A. It is. It's an agreement between the two of us
23 that that is the portion of the commission that they
24 should get paid.

25 Q. Okay.

- 1 A. And we have negotiated it in the past.
- 2 Q. Okay. So on these smaller transactions where
- 3 there's \$300 involved you negotiated that down to
- 4 \$25 or zero, right?
- 5 A. Correct.
- 6 Q. But most of these transactions are way more
- 7 than \$300, weren't they?
- 8 A. Correct.
- 9 Q. Now, whenever you said you didn't want Brandi
- 10 to leave -- is that right?
- 11 A. Yes, sir.
- 12 Q. Would you tell someone you wanted to keep that
- 13 they are a liability?
- 14 A. Excuse me? What are you asking?
- 15 Q. I'm talking -- do you talk down to the people
- 16 you want to stay?
- 17 A. No, sir.
- 18 Q. Now you talked about the office space that you
- 19 have. You've got two offices?
- 20 A. I have one office that has individual offices
- 21 in it.
- 22 Q. Okay.
- 23 A. Is that what you mean?
- 24 Q. Yes. So there are two offices in that office.
- 25 A. There's more than two. But there are two

1 available for agents if they would like to use them.

2 Q. Okay. And so if you've got 11 agents, not
3 everybody can use those two offices at one time, can
4 they?

5 A. Yes, sir.

6 Q. They can?

7 A. I mean, you are correct, sir. Yes, sir.

8 Q. Okay. Now, your offices are located on Irmo
9 Drive, correct?

10 A. Yes, sir.

11 Q. It's an office complex there, right?

12 A. Yes, sir.

13 Q. And how many offices are there altogether in
14 that complex?

15 A. Seven.

16 Q. Seven, okay. You own that office complex.

17 A. Yes, sir.

18 Q. Because you're a real estate investor.

19 A. Yes, sir.

20 Q. Okay. You get rent from all those offices.

21 A. Yes, sir.

22 Q. Okay. Now, you changed the locks on your --
23 one of those offices because you were afraid Brandi
24 was going to come back?

25 A. Yes, sir.

- 1 Q. But then after you changed those locks you sent
2 her an email asking her to keep the wheels on the
3 bus.
- 4 A. Yes, sir.
- 5 Q. And then you sued her for the cost of those
6 keys and changing, changing the locks?
- 7 A. It was part of a countersuit to this claim.
8 Yes, sir.
- 9 Q. All right.
- 10 A. Or is a part. Excuse me.
- 11 Q. The truth of the matter is, you were going to
12 change those locks anyway.
- 13 A. At what point?
- 14 Q. After Brandi left. Let us suppose instead of
15 it being an uncomfortable or an unpleasant parting
16 of the ways, even if you had kissed her on the cheek
17 and wished her well and said goodbye, you would have
18 still changed the locks.
- 19 A. No, sir. If she had turned in her key I
20 probably would not have.
- 21 Q. You weren't concerned enough about your
22 security or securing those client files to change
23 the locks even though Brandi had left?
- 24 A. Not until our first and second meeting.
- 25 Q. Everybody, every agent gets charged the

1 transaction fee, right?

2 A. Yes, sir.

3 Q. And you're a producer as well as the broker.

4 A. Yes, sir.

5 Q. Do you charge yourself a transaction fee?

6 A. No, sir. Maybe I should clarify that it has
7 been waived with other agents in the past.

8 Q. Well, that doesn't really answer my question,
9 does it?

10 A. Well, you said has it been charged to every
11 agent for every transaction. I'm sure I can find
12 some case where it has been waived in instances
13 where it's a lower commission --

14 Q. Okay.

15 A. -- or something like that. I just want to make
16 sure that I'm saying it correctly.

17 Q. Okay. But the truth of the matter is that J.
18 King Real Estate has never charged Jason King a
19 transaction fee.

20 A. No, sir.

21 Q. Now, you -- this money that you wanted to
22 charge back to Brandi, the numbers are on your -- on
23 this Exhibit Number --

24 A. Sixty-four.

25 Q. -- this exhibit right here?

1 A. Yes, sir.

2 Q. This is why you justify charging Brandi back 30
3 percent after she capped.

4 A. Correct.

5 Q. And you, you don't keep up with your time, do
6 you?

7 A. Say that again.

8 Q. You don't keep up with your time.

9 A. No, sir.

10 Q. Okay.

11 A. Not until this point I hadn't.

12 Q. Okay. Because that's not how you get paid.

13 A. Correct. I do try to keep a schedule of my
14 time block, and I do have an idea of how much time I
15 spend even though I do not pay myself that way.

16 Q. And you don't record your time.

17 A. No, sir.

18 Q. So what you're asking this jury to believe is
19 that the 30 percent that you want to deduct from
20 Brandi just happened to equate to the amount of time
21 you came up with.

22 A. It's actually less than the amount of time I
23 came up with.

24 Q. Now, we've talked about these -- there are some
25 texts in here where -- well, first of all, I think

1 you made a claim that you didn't send that letter to
2 Brandi telling her that she could no longer talk to
3 your clients until you were threatened with a
4 lawsuit. Is that what you said?

5 A. Once I seeked legal counsel and I realized that
6 she had transferred her license. Yes, sir.

7 Q. Now, are you referring to what is marked as
8 Exhibit Number 9?

9 A. This was before that.

10 Q. Right. This was before you sent her the email
11 telling her that she was to have no further contact
12 with any of J. King clients.

13 A. Correct.

14 Q. Okay. And there's nothing in this letter about
15 a lawsuit is there?

16 A. No, sir.

17 Q. In fact all this letter says is Jason, just pay
18 her what you owe her when it's due.

19 A. We're looking at the wrong thing. I'm sorry.
20 I was looking at -- you said what number? 8?

21 Q. Number 9.

22 A. I'm sorry. That's my fault. I was looking at
23 an email. So you're discussing the letter that you
24 had sent to me?

25 Q. Okay.

1 A. Okay. I'm sorry.

2 Q. There is no threat of a lawsuit in that, is
3 there?

4 A. Well, when I received a letter from an attorney
5 and Brandi had left the office saying it was going
6 to get ugly and there would be lawsuits, that's the
7 first thing that came to mind. And I seeked legal
8 counsel.

9 Q. Okay. But what you testified to was you had
10 been threatened with a lawsuit.

11 A. Yes, sir. That's what I felt like this letter
12 was.

13 Q. Okay. But the letter says just pay her what
14 you owe her when it's due. Let me read it to you
15 just to make sure we're talking about the same thing
16 here. First paragraph, Dear Mr. King, I represent
17 Ms. Brandi Clarkson in connection with such claims
18 against you. These claims arise out of her
19 broker-salesperson agreement with you. I'm hopeful
20 that common sense will prevail and that this matter
21 will be resolved amicably.

22 A. I felt like you were saying that I do not have
23 common sense.

24 Q. The second, on the second page. Let me read
25 that to you.

1 A. Second page?

2 Q. Yes, sir. As suggested at the beginning of
3 this letter I'm hopeful that common sense will
4 prevail in that this matter can be resolved
5 amicably. All Ms. Clarkson wants is to complete the
6 transactions that she procured, be paid the
7 commissions that she has earned, and move on. It
8 will never get any cheaper than it is right now to
9 conclude your relationship with Ms. Clarkson in a
10 professional manner.

11 If this matter can be resolved amicably please
12 confirm that you will pay her 100 percent of the
13 commissions that she has earned in a timely manner
14 upon the closing of these transactions. Is that
15 correct?

16 A. That is what it says. Yes, sir.

17 Q. And that's all you were asked to do. Nothing
18 more. There was nothing more asked of you than to
19 pay her what you owed her when it became due.
20 Right?

21 A. No, sir. We did not receive \$36,000. I don't
22 know if we would have received \$36,000, and to state
23 that it was never going to get cheaper meant that it
24 was going to get worse.

25 And once she quit the brokerage it is not like

1 she would be able to handle them legally with
2 another brokerage. It was, it was very apparent
3 from this letter that based on her statements that
4 there was going to be lawsuits, and she was no
5 longer going to be a part of J. King Real Estate.

6 Q. This letter was written to you on July 13,
7 2020, correct?

8 A. That's what it says. Yes, sir.

9 Q. Actually it was e-mailed to you.

10 A. Yes, sir.

11 Q. So you've had over three years to do the right
12 thing.

13 A. And I tried.

14 MR. STUDEMAYER: I don't have anything further.

15 THE COURT: Thank you. Any redirect Mr. Blake?

16 MR. BLAKE: Just briefly, Your Honor. One
17 follow-up because I'd like to put this exhibit back
18 up for the jury. If I can get it (inaudible).

19 There it goes.

20 REDIRECT EXAMINATION

21 BY MR. BLAKE

22 Q. Mr. King, you were asked to read the first
23 paragraph and then skipped to the second page, okay.
24 That second paragraph, how much money was demanded
25 that you pay Ms. Clarkson?

1 A. \$36,927.50.

2 Q. Okay. Did the brokerage firm ever receive that
3 amount of money on these transactions that you have
4 been sued for?

5 A. No, sir.

6 Q. Okay. Going down to the bottom paragraph on
7 that page. Before we get to the bottom paragraph
8 read me the last sentence on that second to last
9 paragraph.

10 A. In addition, you should know that whatever you
11 put in writing will always come back to haunt you.

12 Q. Do you feel like you're being threatened with
13 that?

14 A. Yes, sir.

15 Q. And then going down to the next paragraph, read
16 that next paragraph.

17 A. If you don't already know, any competent lawyer
18 will tell you that South Carolina law prohibits
19 intentional interference with contractual
20 relationships and interference with prospective
21 economic advantage. Call it what you like, but
22 Ms. Clarkson was the procuring cause for all of
23 these transactions. Your interference with her
24 expectation of payment of services rendered exposes
25 you to both actual and punitive damages.

1 Q. Do you feel like you're being threatened with a
2 lawsuit?

3 A. Yes, sir.

4 Q. Okay. And, again, was Ms. Clarkson even a
5 party to those contracts?

6 A. No, sir.

7 MR. BLAKE: That's all the questions I have.
8 Thank you.

9 THE COURT: Any recross?

10 MR. STUDEMEYER: No, Your Honor.

11 THE COURT: You can step down, sir. Next
12 witness, Mr. Blake.

13 MR. BLAKE: Mr. Lang.

14 THE CLERK: Raise your right and place your
15 left.

16 Do you swear or affirm the testimony you give
17 is the truth, the whole truth, and nothing but the
18 truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Have a seat. State your full name
21 for the record.

22 THE WITNESS: I'm sorry, say it again. Spell
23 it? Daniel Lee Lang. Last name is spelled L-A-N-G.

24 MR. BLAKE: Just waiting to make sure the
25 microphone picks me up. Am I okay if I stand over

1 here?

2 DANIEL LEE LANG, being first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BLAKE

6 Q. Good morning, Mr. Lang.

7 A. Good morning.

8 Q. I appreciate your patience. Throughout this
9 trial you've had an opportunity to hear Mr. King and
10 Ms. Clarkson testify, correct?

11 A. Correct.

12 Q. And have you had an opportunity to see the
13 letter that's been marked here as Exhibit 9 that's
14 been testified about by both of the parties in this
15 case?

16 A. Excuse me, one second. I left my glasses back
17 there and I can't read this. Can someone bring
18 them?

19 THE COURT: Mr. Blake, if you can go get them
20 for him, please.

21 MR. BLAKE: Certainly, Your Honor.

22 THE WITNESS: Thank you. Could you repeat the
23 question, please?

24 BY MR. BLAKE

25 Q. Certainly. Have you had a chance to see and

1 read and heard about this letter that's been marked
2 as Exhibit Number 9?

3 A. I've seen it during the testimony. I haven't
4 seen any of these documents before.

5 Q. I'd like to draw your attention, if I can, to
6 the second paragraph.

7 MR. STUDEMEYER: Your Honor, I have a matter of
8 law to take up with the Court.

9 THE COURT: Okay. All right. Ladies and
10 gentlemen, let's take a morning break and then I can
11 deal with the legal issue that's being raised.
12 We'll get you back out shortly.

13 (WHEREUPON, the jury exited the courtroom
14 at 11:17 a.m.)

15 THE COURT: Okay, Mr. Studemeyer, you have an
16 objection or legal issue you want to raise?

17 MR. STUDEMEYER: Yes, sir. Your Honor, the way
18 this has begun here, Mr. Lang is being asked to
19 comment upon a letter that I wrote to Mr. King.
20 Mr. Lang is a real estate broker. I don't know what
21 he can possibly have to say that would enlighten
22 this jury about a letter I wrote to the defendant.

23 We talked about this yesterday some, I believe,
24 or the day before. Legal matters, those are things
25 that the judge is supposed to handle. And nobody on

1 the witness stand, whether it's a law professor, a
2 lawyer and, especially, laypeople, they don't have
3 that -- they are not in a position to talk to the
4 jury about the law. That's my (inaudible).

5 THE COURT: Okay. Well, let me ask Mr. Blake.
6 What was your plan, or let me ask it this way. What
7 were the question or questions you were going to ask
8 Mr. Lang concerning Mr. Studemeyer's letter?

9 MR. BLAKE: Can Mr. Lang be excused from the
10 courtroom, Your Honor? That way he is not given
11 additional time to respond to my question, my line
12 of questioning.

13 THE COURT: Mr. Lang, do you mind exiting the
14 courtroom for just a minute please, sir?

15 THE WITNESS: Yes, sir.

16 (WHEREUPON, the witness exited the
17 courtroom.)

18 THE COURT: Thank you. Okay. What were you
19 planning to ask Mr. Lang concerning this letter,
20 which is Number 9, I believe, exhibit.

21 MR. BLAKE: Your Honor, the second sentence of
22 the second paragraph of Exhibit Number 9 says she is
23 ready, willing and able to take all necessary
24 measures to complete these closings. That's a
25 factual contention that has been put into evidence.

1 And I intend to stick that language in front of the
2 witness and say, sir, on July 13th this is your
3 subagent. Her license is subordinated to you. My
4 first question to him is, are you, sir, ready,
5 willing, and able on July 13th to perform all
6 those necessary measures despite the fact that these
7 aren't your clients?

8 And then my next question is, are your
9 subagents ready, willing and able to take all
10 necessary measures to complete these closings
11 despite the fact these people are not your clients?

12 And I suspect the answer to both of those
13 questions is going to be absolutely not. Because as
14 a broker-in-charge Mr. Lang understands it would be
15 unlawful for him or his subagent to dare perform
16 services on behalf of a real estate client that's
17 not their client. He would be in front of LLR like
18 (snaps fingers) if he said anything else.

19 THE COURT: All right. If Mr. Blake is
20 permitted to ask those two questions without getting
21 into the reason it being unlawful, do you still have
22 an objection? Would that be asking for a legal
23 opinion if he's asked on July 13 of '20 would Fathom
24 Realty be prepared to complete the closings? On
25 July 13th would any of your agents have been able

1 to complete the closings and leave it at that? Do
2 you still have an objection?

3 MR. STUDEMAYER: I do, Your Honor. Because I
4 think -- again, I referred to this earlier as a
5 sideshow. This is an employment dispute so to speak
6 between Ms. Clarkson and Mr. King. And, you know,
7 whatever, however Mr. Lang goes about conducting his
8 business is his business. He's not in a position to
9 render opinions about what's appropriate or not
10 appropriate for a real estate agent because that
11 gets into this realm of legal testimony.

12 I, I know the argument has been made repeatedly
13 but, you know, I was led to believe that there's
14 some statute that says what I've heard. I have been
15 led to believe there's some statute that says you
16 can't work for two brokerages at the same time. Or
17 you can't, you can't, you cannot transition from one
18 broker to another. Which is all that was being done
19 here. Especially in light of the fact that it was
20 Mr. King who was asking her to keep the wheels on
21 the bus after it was clear they were going to be
22 changing their positions.

23 So I don't think it's appropriate to go into
24 that line of questioning.

25 THE COURT: So do you dispute that there are no

1 regulations and or statutory provisions in
2 existence, or in existence back in 2020, that would
3 have legally prevented Fathom Realty, Ms. Clarkson
4 from being involved in these closings?

5 MR. STUDEMEYER: I do. My position is they
6 don't exist.

7 THE COURT: Okay.

8 MR. STUDEMEYER: What I will say is this.
9 There are some definitions, there's a definition of
10 what a broker is. There's a definition of what an
11 agent is.

12 THE COURT: Yeah, we had charts that -- yeah.

13 MR. STUDEMEYER: Yeah. But what there isn't is
14 a statute incorporating those, those terms that says
15 an agent cannot transition from one broker to
16 another without suffering a penalty. There is no
17 such statute.

18 THE COURT: All right.

19 MR. BLAKE: Your Honor, the law is very clear
20 about what a licensee, an associated licensee can
21 do. There are definitions and then there's a whole
22 statute that was passed in 2016, took effect on
23 January 1st, 2017. SC Code 40-57-135.

24 THE COURT: Is that what you have got plastered
25 up there?

1 MR. BLAKE: That's what I have plastered up on
2 there.

3 THE COURT: Okay.

4 MR. BLAKE: These are quotes from the
5 post-charge I emailed you and Counsel yesterday,
6 Your Honor. And it says, and I quote, a licensee
7 may not advertise, market or offer to conduct a real
8 estate transaction involving real estate owned in
9 whole or part by another person without first
10 obtaining a written listing agreement between the
11 property owner and the real estate brokerage firm
12 with whom the licensee is associated.

13 She may not advertise. She may not market.
14 She may not offer to conduct any part of the real
15 estate transaction unless there is a written listing
16 agreement between the property owner and the real
17 estate brokerage firm for whom the licensee is
18 associated. On July 10th the only evidence in this
19 case is this licensee was associated with Fathom
20 Realty. And it is the absolute clear, black letter
21 law of this state that she is not permitted to
22 conduct one iota of a transaction unless Mr. Lang's
23 realty has a written signed agreement with that
24 client.

25 The law goes on to state, and I quote, a

1 licensee may not conduct a real estate business
2 under another name or at another address other than
3 the one for which his license is issued. And the
4 law continues to state, an associated licensee may
5 not receive compensation from an activity requiring
6 a real estate license from an entity or person other
7 than the one for which the license is issued.

8 We have an entire lawsuit over commission
9 payments from a realty who is not even prohibited
10 (sic) to pay those commission payments to her. The
11 law says her commissions, as of July 10th, must come
12 from her brokerage firm. Her practice is governed
13 by her brokerage firm. It has to be done at that
14 address, under his supervision, pursuant to a
15 written agreement between him and his clients.

16 These cases involving Concord, Old Town Road
17 and Trinity Three were never novated over, and she
18 was not permitted to be involved in those
19 transactions as a real estate professional under SC
20 Code 40-57-135 (C) (3) (B) and (E) (1).

21 THE COURT: Here's what I'm going to do. I'm
22 going to allow the two questions asked of Mr. Lang.
23 And I just don't want him to state anything whether
24 it's legal or not legal. So you can ask him was
25 Fathom Realty prepared on July 13th to complete

1 those closings. Was Fathom Realty's agents
2 prepared, whatever you were going -- but don't say
3 why is that. Oh, that's illegal. I'm not going to
4 allow that.

5 MR. BLAKE: That's fair enough, Your Honor.
6 Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. BLAKE: I'll go let the witness in?

9 THE COURT: Yeah. Let's go ahead and take a
10 quick break, okay.

11 MR. BLAKE: Thank you.

12 (WHEREUPON, the Court took a brief recess.)

13 THE COURT: All right. Can you hold the jury
14 for just one second, please, if you don't mind?
15 Yeah. Just put them back in the jury room, if you
16 would. Thank you.

17 The ruling that I made, Mr. Lang, was that I
18 indicated Mr. Blake, he could ask you to the effect
19 of on July 13th of 2020, if Fathom Realty would be
20 in a position to complete these closings. Or if any
21 of the agents of Fathom Realty would be in a
22 position to complete these closings. I'm permitting
23 that. I'm just not allowing you to comment on the
24 legality or illegality of that. Okay. Is that
25 clear?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. In other words, I'm not
3 going to allow you to say, well, and the reason why
4 is because, and commenting on the law. You just
5 can't do that. If that makes any sense. Because
6 Mr. Blake indicates that he anticipates your answer
7 to be --

8 MR. BLAKE: I anticipate the answer to be no.

9 THE COURT: -- no. And you just cannot give
10 any of the reasons why your answer is no, okay?

11 THE WITNESS: Understood.

12 THE COURT: Understood. Very good. Thank you.
13 All right. Now bring them back.

14 (WHEREUPON, the jury entered the courtroom at
15 11:36 a.m.)

16 THE COURT: Let the record reflect the jury is
17 back in. You may proceed, Mr. Blake.

18 MR. BLAKE: Thank you, Your Honor.

19 BY MR. BLAKE

20 Q. Mr. Lang, I was asking you to flip to Exhibit
21 Number 9.

22 A. Yes, sir.

23 Q. And if you would, look at that second
24 paragraph. This letter, Mr. Studemeyer read a
25 relevant part here. She is ready, willing, and able

1 to take all necessary measures to complete these
2 closings. Did I read that correctly?

3 A. Yes, sir.

4 Q. On July 13th, did Fathom Realty have a signed
5 agreement with the owner of the Concord Place
6 property?

7 A. We did not have a brokerage relationship with
8 the owner of that property.

9 Q. How about the parties in the transaction of the
10 Green Street property?

11 A. We did not have a brokerage relationship.

12 Q. Did you have a brokerage relationship with
13 anyone on the Old Town Road property on July 13th?

14 A. No, sir. Not that I know.

15 Q. Did you have a brokerage relationship with
16 anyone on the Trinity Three Road transaction?

17 A. Not at that time. No, sir.

18 Q. Not at that time. And on July 13th,
19 Ms. Clarkson was a subagent of Fathom Realty,
20 correct?

21 A. On July 13th her license was with Fathom
22 Realty.

23 Q. And at that point you were her
24 broker-in-charge, correct?

25 A. That is correct.

1 Q. And on July 13th, was Fathom Realty ready,
2 willing, and able to take all the necessary measures
3 to complete the closings on any of those four
4 transactions?

5 A. We would have been ready, willing, and able if
6 there would have been a transfer of some sort of
7 agency relationship, but that didn't happen for
8 those transactions.

9 Q. So you were not able to conduct those
10 transactions on July 13th, correct?

11 A. Correct.

12 Q. And was Ms. Clarkson able to conduct those
13 transactions on July 13th?

14 A. She could not provide services that a real
15 estate brokerage -- I'll put it this way. She could
16 not conduct real estate services for anyone outside
17 of her current brokerage.

18 Q. Which was Fathom Realty.

19 A. Correct.

20 Q. Right. And therefore she could not take all
21 necessary measures to complete closings, correct?

22 A. That's, that's a difficult question, if I may.
23 So the -- all agreements are with the brokerage.

24 All of the licensees or brokers or even the
25 broker-in-charge is a licensee, an associated

1 licensee with the brokerage. The brokerage is who
2 has to compensate those associate licensees.

3 According to the listing agreements and by our
4 agency agreements, the commission is earned at the
5 time it goes under contract. Anything after
6 negotiations and all that stuff, and it has taken
7 place -- the meeting of the minds and any of the
8 negotiations has taken place. At that point the
9 commission was earned. It's just that it's not paid
10 until the closing attorney disperses the funds at
11 the closing.

12 Q. I wasn't referring to the earning of
13 commission. I was referring to providing the real
14 estate services necessary to complete these
15 closings. Was she able to perform those with Fathom
16 Realty on July 13th?

17 A. There would have been no -- on July 13th
18 anything she would have been doing would have been
19 on behalf of Fathom Realty. She can't, she can't
20 work for J. King Real Estate at that time.

21 Q. She can't work with J. King Real Estate's
22 clients at the time either, correct?

23 A. That's correct.

24 Q. Okay. Two of these transactions we have talked
25 about were novated over to you, is the term I

1 believe was used.

2 A. Yes, sir.

3 Q. Have you ever been a party to a novation prior
4 to the two that you did with J. King Real Estate in
5 July of 2020?

6 A. I have not. Not prior.

7 Q. Okay. Have you since then?

8 A. Yes, sir.

9 Q. Okay. But the Sato novation and the Whitaker
10 novations, those were the first two you had ever
11 been a part of?

12 A. Yes, sir.

13 Q. Okay. And I just want to confirm. That is
14 your electronic signature on the bottom of Exhibit
15 Number 44, correct?

16 A. That is correct.

17 Q. And I said 44. I think I misspoke.

18 A. It says 44 on the bottom.

19 Q. It does. But that's an old number. It's
20 actually, the one in your notebook, just so we don't
21 have an unclear record, is 63.

22 A. It's my signature either way.

23 Q. (unintelligible) and then the same thing for
24 62. The Whitaker novation. That's your signature
25 on the bottom, isn't it? Correct?

1 A. Yes, sir.

2 Q. And then ultimately those two transactions
3 closed.

4 A. Yes, they did.

5 Q. Do you know when?

6 A. Been roughly 3,000 transactions we've closed
7 since 2020, so.

8 Q. No way?

9 A. Yeah.

10 Q. Okay. And what about the commissions on these
11 two transactions? What happened with the commission
12 that Fathom Realty received on the Sato and Whitaker
13 novations?

14 A. Our -- at that time in 2020 we would have
15 charged a \$450 transaction fee. That's all we
16 charge. And then Brandi would have kept the rest.

17 Q. Okay. So when you say charged out of the
18 commission, \$450 would have gone to Fathom Realty
19 for each, is that right?

20 A. Correct.

21 Q. And then Ms. Clarkson would have kept the rest?

22 A. That's correct.

23 Q. Okay. And that's what you believe occurred?

24 A. Yes.

25 Q. Okay. Did any fee or -- sorry.

1 A. If either it -- if either one of those two were
2 her first closings for the year, there may have been
3 a \$500 annual fee for the first one. Because we
4 charged a \$500 annual fee at that time for the first
5 closing. And then every one of our transactions at
6 that time for the first 12 would have been a \$450
7 transaction fee.

8 Q. Thank you for that clarification. I appreciate
9 that. The -- what I was trying to ask is whether or
10 not J. King Real Estate, not Mr. King individually,
11 did either of the defendants in this case receive
12 any payment from Fathom Realty out of those
13 commissions?

14 A. No, it was not part of the novation agreement.

15 Q. Okay.

16 MR. BLAKE: That's all I have for you. I sure
17 appreciate the patience with us.

18 THE WITNESS: Yes, sir.

19 THE COURT: Mr. Studemeyer, any
20 cross-examination?

21 MR. STUDEMEYER: Can I ask her --

22 THE COURT: Yeah.

23 MR. STUDEMEYER: Your Honor, I don't have any
24 questions for Mr. Lang. I would ask that he be
25 excused.

1 THE COURT: You may step down, Mr. Lang. You
2 are free to leave the courthouse, or you are more
3 than welcome to remain with us.

4 THE WITNESS: Thank you.

5 THE COURT: Any further witnesses for the
6 defense?

7 MR. BLAKE: No, Your Honor. The defense rests.

8 THE COURT: Okay. And does the plaintiff have
9 any rebuttal case?

10 MR. STUDEMAYER: No, Your Honor.

11 THE WITNESS: Okay. All right. The
12 evidentiary record in this case is now closed.

13 Ladies and gentlemen, as I mentioned to you
14 earlier this morning the plan is to go and take a
15 break for lunch. It will be a little longer lunch
16 break than maybe we normally take just to give me an
17 opportunity to discuss the jury charge with the
18 lawyers. So my watch says a quarter to 12. I want
19 you back at 2:00. So that's two hours and
20 15 minutes. Again, remember all my instructions
21 that I have given you. Have a good lunch and we'll
22 see you back at 2:00.

23 (WHEREUPON, the jury exited the courtroom at
24 11:46 a.m.)

25 THE COURT: Okay, anything we need to put on

1 the record now before we take our break, from the
2 plaintiff?

3 MR. STUDEMEYER: No. Thank you, Your Honor.

4 THE COURT: The defense?

5 MR. BLAKE: No, Your Honor.

6 THE COURT: Okay. We'll go off the record.

7 (WHEREUPON, the Court took a recess at
8 11:47 a.m.)

9 THE COURT: Mr. Studemeyer, you had indicated
10 when we were back in chambers talking about the
11 charge that you needed to put something on the
12 record at this time?

13 MR. STUDEMEYER: Yes, sir, Your Honor.

14 THE COURT: Okay, you may proceed.

15 MR. STUDEMEYER: Thank you, Your Honor. Your
16 Honor, I -- it's not my intention to violate any of
17 the rules we go by in terms of arguing after a judge
18 has ruled. At the same time I'm familiar with rule
19 59 which gives a lawyer the right to ask a judge to
20 reconsider his decision. And since that rule
21 exists, rather than wait ten days or so when this
22 case may be way down the list of priorities with the
23 other matters the Court has to deal with, I would
24 just ask the Court that in light of the additional
25 testimony given by Mr. King this morning that he was

1 charging these \$50 transaction fees to as many as 11
2 agents at one time, and some of that was for legal
3 review of documents, that that is the unauthorized
4 practice of law in and of itself and would support a
5 UTPA claim.

6 THE COURT: Okay. And as I indicated to you in
7 chambers I had no problem whatsoever with you
8 putting that request for reconsideration on the
9 record. I didn't, did not and do not consider it
10 you arguing with the Court concerning my ruling. I
11 expect lawyers to protect the record with respect to
12 their respective cases. So I have no problem with
13 you doing that.

14 Taking that into consideration, I'm still going
15 to be consistent with my earlier ruling and still
16 uphold my ruling concerning directed verdict on both
17 causes of action.

18 MR. STUDEMEYER: I understand.

19 THE COURT: All right. And, but, once again,
20 however this case turns out, which we don't know,
21 and however it turns out, you know, either side, if
22 they feel compelled to file some sort of post-trial
23 motion once again within ten days. I have even
24 extended that at times when necessary. So just keep
25 that in mind if a post-trial motion or motions need

1 to be made. I'll certainly give you the ten days in
2 order to do that. Okay?

3 MR. STUDEMEYER: Thank you, sir.

4 MR. BLAKE: Thank you, Your Honor.

5 THE COURT: All right. And, of course, I don't
6 have to tell you guys, the plaintiff opens in full,
7 then the defense opens in full. Then the plaintiff
8 can come back and respond specifically to any new
9 matters raised by the defense in their closing.

10 All right. Let's bring the jury out.

11 I assume y'all are ready for closing and didn't
12 need any more time.

13 MR. STUDEMEYER: We're good.

14 MR. BLAKE: We're good, Your Honor.

15 (WHEREUPON, the jury entered the courtroom at
16 2:10 p.m.)

17 THE COURT: Let the record reflect the jury is
18 back in.

19 Ladies and gentlemen, I hope you had a good
20 lunch and are ready to get back to work. Just to
21 remind you what we have left to do. Y'all can have
22 a seat. Thank you.

23 What we have left to do is the lawyers make
24 their closing arguments to you. The procedure is
25 the plaintiff, Mr. Studemeyer, will make his closing

1 (WHEREUPON, the jury entered the courtroom at
2 5:11 p.m.)

3 THE COURT: Let the record reflect the jury is
4 back in. Madam Forelady, without telling me what
5 the verdict is, have you reached a verdict in this
6 case? Is that verdict unanimous among the 12 of
7 you? Okay. Would you hand the verdict form to the
8 bailiff, and he will hand it to me. All right.
9 Madam Clerk, if you will, publish the verdict,
10 please.

11 THE CLERK: 2020 CP 32 02477, Brandi Clarkson
12 versus J. King Real Estate, LLC. We the jury
13 unanimously find for the plaintiff on the breach of
14 contract claim and award her \$16,338.22 actual
15 damages. We the jury unanimously find for the
16 defendant on the breach of contract claim and award
17 him \$379.68 actual damages. It is signed and dated
18 by the foreperson of the jury.

19 THE COURT: Thank you, ma'am. If this is your
20 verdict and still is your verdict indicate by
21 raising your right hands, please. Let the record
22 reflect 12 right hands have been raised. Does
23 either side wish for individual polling of the jury?
24 Plaintiff?

25 MR. STUDEMEYER: No, Your Honor.