

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**Mar 29 2024**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Bentley Price, Circuit Court Judge

Case No. 2020-CP-10-04076

Appellate Case No. 2023-001575

Atlantic International, Inc. d/b/a Coldwell Banker Commercial Atlantic, John W. True, and Aaron B. Rowley  
.....Appellants

v.

IBYDIT, LLC, 1537 Ben Sawyer Blvd., LLC, Curt Nesbitt, Richard M. McColl, East Islands Real Estate, Inc., and  
Ashley Haynes, Individually and as an Agent of East Islands Real Estate,  
Inc.,.....Respondents

**RECORD ON APPEAL**

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**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

**COURT OF COMMON PLEAS  
CASE No. 2020 CP 10 04076**

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

**PLAINTIFFS,**

**V.**

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

**DEFENDANTS.**

**ORDER GRANTING  
SUMMARY JUDGMENT IN  
FAVOR OF DEFENDANTS**

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

### **BACKGROUND**

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

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

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

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

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

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

### **LEGAL STANDARD**

A trial court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005). To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE, IT IS

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

AND IT IS SO ORDERED.

***JUDGE SIGNATURE PAGE TO FOLLOW***



Charleston Common Pleas

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

IT IS SO ORDERED!

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

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 ATLANTIC INTERNATIONAL, INC. )  
 d/b/a COLDWELL BANKER )  
 COMMERCIAL ATLANTIC, JOHN W. )  
 TRUE, and AARON B. ROWLEY, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 IBYDIT, LLC, 1537 BEN SAWYER )  
 BLVD., LLC, CURT NESBITT, and )  
 RICHARD M. MCCOLL )  
 )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-\_\_\_\_\_

**SUMMONS**

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 222 West Coleman Boulevard, Mount Pleasant, South Carolina, 29464 and with this Court within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

YOU ARE HEREBY GIVEN NOTICE FURTHER, that if you fail to appear and defend to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,  
 COBB DILL & HAMMETT, LLC

s/Stefanie L. Huffer, Esq.  
 Hal E. Cobb, Esq. (S.C. Bar No. 100575)  
 Stefanie Huffer, Esq. (S.C. Bar No. 100645)  
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***Attorneys for Plaintiffs***

Dated: September 15, 2020  
 Mount Pleasant, South Carolina

|                               |   |                                |
|-------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS   |
|                               | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON          | ) |                                |
|                               | ) | CASE NO.: 2020-CP-10-_____     |
| ATLANTIC INTERNATIONAL, INC.  | ) |                                |
| d/b/a COLDWELL BANKER         | ) |                                |
| COMMERCIAL ATLANTIC, JOHN W.  | ) |                                |
| TRUE, and AARON B. ROWLEY,    | ) | <b>COMPLAINT</b>               |
|                               | ) |                                |
| Plaintiffs,                   | ) |                                |
|                               | ) |                                |
| v.                            | ) |                                |
|                               | ) |                                |
| IBYDIT, LLC, 1537 BEN SAWYER  | ) |                                |
| BLVD., LLC, CURT NESBITT, and | ) |                                |
| RICHARD M. MCCOLL             | ) |                                |
| _____                         | ) |                                |

The Plaintiffs, complaining of the Defendants, alleges and says as follows:

### **PARTIES AND JURISDICTION**

1. Plaintiff, Atlantic International, Inc. d/b/a Coldwell Banker Commercial Atlantic (“CBC”), is a corporation organized and existing under the laws of South Carolina.
2. Plaintiff, John W. True (“True”), is a citizen and resident of Charleston County, South Carolina and a sales associate for CBC.
3. Plaintiff, Aaron B. Rowley (“Rowley”), is a citizen and resident of Charleston County, South Carolina and sales associate for CBC.
4. Upon information and belief, Defendant, IBYDIT, LLC (“Buyer”) is a South Carolina limited liability company organized and existing under the laws of South Carolina with its primary place of business being in Charleston County.
5. Upon information and belief, Defendant, 1537 Ben Sawyer Blvd., LLC (“Seller”) is a South Carolina limited liability company organized and existing under the laws of South Carolina with its primary place of business being in Charleston County.

6. Upon information and belief, Defendant Curt Nesbitt (“Nesbitt”) is a citizen and resident of Charleston County, South Carolina and agent acting on behalf of Buyer.
7. Upon information and belief, Defendant, Richard M. McColl (“McColl”) is a citizen and resident of Charleston County, South Carolina and agent acting on behalf of Seller.
8. This action stems from the purchase and sale of real estate located at 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina located in Charleston County (the “Property”).
9. This Court has personal jurisdiction over the matter and venue is appropriate in Charleston County, South Carolina.
10. This Court has subject matter jurisdiction over this matter and venue is appropriate in Charleston County, South Carolina.

#### **STATEMENT OF THE FACTS**

11. On or about January 11, 2020, Defendant McColl and Plaintiff Rowley, acting as a real estate agent for CBC, exchanged text messages regarding the sale of the Property and the possibility personal purchase for Defendant Nesbitt.
12. On or about January 13, 2020, Defendant McColl and Plaintiff Rowley met at the Property.
13. On or about January 17, 2020, Plaintiff Rowley emailed Defendant McColl a listing agreement for the Property along with the MLS listings on four (4) residential properties.
14. The listing agreement provided for a commission of five (5%) percent to be paid to Plaintiff Rowley and split with any buyer’s agent.
15. On or about January 20, 2020 Plaintiff Rowley provided information to Plaintiff True regarding the Property.
16. On or about January 21, 2020, Plaintiff True then provided information regarding the Property to Defendant Nesbitt and Matt Walsh.

17. On or about January 21, 2020, Defendant Nesbitt requested Plaintiff True get an offer on the table that day.
18. On or about January 22, 2020, Plaintiff True received an email from Matt Walsh, acting on behalf of Defendant Nesbit and Buyer made an offer on the Property for a purchase price of One Million and no/100 (\$1,000,000.00) Dollars.
19. On or about January 22, 2020, Plaintiff True forwarded the offer to Plaintiff Rowley.
20. On or about January 22, 2020, Plaintiff Rowley forward the offer to Defendant McColl.
21. Along with the offer, Plaintiff Rowley recommended a counteroffer One Million One Hundred Thousand and no/100 (\$1,100,000.00) Dollars, provided information relating to comparable property in the area, and information on the possibility of doing a 1031 Exchange.
22. On or about January 22, 2020, Plaintiff True looked into zoning requirements, square footage allowances for the property per Defendant Nesbitt's request.
23. On or about January 23, 2020, Plaintiff Rowley and Defendant McColl exchanged text messages and emails regarding leases on the Property.
24. On or about January 23, 2020, Plaintiff Rowley emailed Defendant McColl with an offer from Buyer on a lease buy-out.
25. On or about January 29, 2020, Plaintiff Rowley texted Defendant McColl following up on lease buy options and response from tenant.
26. On or about January 30, 2020, Defendant McColl responded to Plaintiff Rowley via email regarding the lease and tenant relations.
27. On or about February 11, 2020, all communication ceased between Plaintiff True and Plaintiff Nesbitt

28. All communications from Defendant McColl ceased after January 30, 2020 until March 2020.
29. Defendant McColl via the Seller and Defendant Nesbitt via the Buyer entered into a contract for One Million Two Hundred Thousand and no/100 (\$1,200,000.00) Dollars.
30. Upon information and belief, the Property was transferred from the Seller to the Buyer on or about July 13, 2020 via deed recorded in the Charleston County Register of Deeds Office in Deed Book 0897 at Page 251.
31. Upon information and belief, the sale price was One Million One Hundred Thousand and no/100 (\$1,100,000.00) Dollars.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract/ Breach of Good Faith and Fair Dealing**  
**as to 1537 Ben Sawyer Blvd, LLC and Richard M. McColl)**

32. Each and every allegation contained in Paragraphs 1 through 31 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
33. To recover for breach of contract the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damages suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962).
34. Additionally, under South Carolina law, "There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G.J. Creel & Sons, Inc.* 274 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

35. Plaintiff Rowley and Plaintiff CBC entered into a binding agreement with Defendant McColl and Seller to pay Plaintiff Rowley and CBC a commission upon the finding of a buyer who is ready, willing, and able to buy the Property.
36. There is presently due and owing to the Plaintiffs by Defendants a commission in a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, together with all costs of bringing this action and reasonable attorneys' fees.
37. Defendant McColl and Seller's willful failure to pay the amount due, constitutes a breach of contract.
38. Defendant McColl and Seller's actions destroyed and injured the rights of Plaintiff's to receive the benefits of the contract, breaching the covenant of good faith and fair dealing.
39. By Defendant McColl and Seller's willful failure to pay Plaintiffs the commission due, and Defendant McColl and Seller's willful breach of the contract, Plaintiffs are entitled to recover a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract/Breach of Good Faith and Fair Dealing**  
**as to IBYDIT, LLC and Curt Nesbitt)**

40. Each and every allegation contained in Paragraphs 1 through 39 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
41. To recover for breach of contract the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and

(3) damages suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962).

42. Additionally, under South Carolina law, “There exists in every contract an implied covenant of good faith and fair dealing.” *Adams v. G.J. Creel & Sons, Inc.* 274 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

43. Plaintiff True and Plaintiff CBC entered into a binding agreement with Defendant Nesbitt and Buyer to provide a fee upon the finding of a property suitable for their needs.

44. Defendant Nesbitt and Buyer failed to enter into a contract for the purchase of the Property that required payment be made to Plaintiff True and Plaintiff CBC.

45. Defendant Nesbitt and Buyer’s willful failure comply with the terms of contract to ensure payment to Plaintiff True and Plaintiff CBC, constitutes a breach of contract.

46. Defendant Nesbitt and Buyer’s actions destroyed and injured the rights of Plaintiff’s to receive the benefits of the contract, breaching the covenant of good faith and fair dealing.

47. By Defendant Nesbitt’s and Buyer’s willful failure to provide payment to Plaintiffs and Defendant Nesbitt and Buyer’s willful breach of the contract, Plaintiffs are entitled to recover a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys’ fees and costs of having to bring this action.

**FOR A THIRD CAUSE OF ACTION**

**(Quasi Contract/Quantum Meruit**

**as to 1537 Ben Sawyer Blvd, LLC and Richard M. McColl)**

48. Each and every allegation contained in Paragraphs 1 through 47 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.

49. The court has previously adopted a three part test requiring a plaintiff show: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994).
50. There existed between Plaintiff Rowley, Plaintiff CBC and Defendants 1537 Ben Sawyer Blvd, LLC and McColl an implied agreement for the provision of services and payment, therefore.
51. Plaintiff Rowley and Plaintiff CBC are informed and believed that Defendants 1537 Ben Sawyer Blvd, LLC and McColl have received the value of the Plaintiff Rowley and Plaintiff CBC services under said implied agreement in a variety of ways, including but not limited to, Plaintiff Rowley and Plaintiff CBC being the procuring cause of the transaction.
52. Such value conferred to the Defendants 1537 Ben Sawyer Blvd, LLC and McColl is partly based on the actions and efforts of the Plaintiff Rowley and Plaintiff CBC in acting as the agents for Defendants 1537 Ben Sawyer Blvd, LLC and McColl. The failure of Defendants 1537 Ben Sawyer Blvd, LLC and McColl to pay the agreed upon commission would result in unjust enrichment to Defendants 1537 Ben Sawyer Blvd, LLC and McColl, jointly and severally.
53. Plaintiff Rowley and Plaintiff CBC conferred a benefit upon the Defendants 1537 Ben Sawyer Blvd, LLC and McColl through providing the opportunity of the Buyer to purchase and the Seller to sell the Property. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl realized that benefit as evidenced by the closing on the Property.

54. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl have retained the benefits of the transaction without compensating Plaintiff Rowley and Plaintiff CBC for the value of their services. Under the circumstances, the retention of the benefit by the Defendants 1537 Ben Sawyer Blvd, LLC and McColl would be inequitable.
55. Therefore, Plaintiff Rowley and Plaintiff CBC believe they are entitled to judgment against the Defendants 1537 Ben Sawyer Blvd, LLC and McColl in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A FORTH CAUSE OF ACTION**  
**(Quasi Contract/Quantum Meruit**  
**as to IBYDIT, LLC and Curt Nesbitt)**

56. Each and every allegation contained in Paragraphs 1 through 56 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
57. The court has previously adopted a three part test requiring a plaintiff show: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994).
58. There existed between Plaintiff True, Plaintiff CBC and Defendants IBYDIT, LLC and Nesbitt an implied agreement for the provision of services and payment, therefore.
59. Plaintiff True and Plaintiff CBC are informed and believed that Defendants IBYDIT, LLC and Nesbitt have received the value of the Plaintiff True and Plaintiff CBC services under

said implied agreement in a variety of ways, including but not limited to, Plaintiff True and Plaintiff CBC being the procuring cause of the transaction.

60. Such value conferred to the Defendants IBYDIT, LLC and Nesbitt is partly based on the actions and efforts of the Plaintiff True and Plaintiff CBC in acting as the agents for Defendants IBYDIT, LLC and Nesbitt. The failure of Defendants IBYDIT, LLC and Nesbitt to pay the agreed upon commission would result in unjust enrichment to Defendants IBYDIT, LLC and Nesbitt, jointly and severally.
61. Plaintiff True and Plaintiff CBC conferred a benefit upon the Defendants IBYDIT, LLC and Nesbitt through providing the opportunity of the IBYDIT, LLC and Nesbitt realized that benefit as evidenced by the closing on the Property.
62. The Defendants IBYDIT, LLC and Nesbit have retained the benefits of the transaction without compensating Plaintiff True and Plaintiff CBC for the value of their services. Under the circumstances, the retention of the benefit by the Defendants IBYDIT, LLC and Nesbit would be inequitable.
63. Therefore, Plaintiff True and Plaintiff CBC believe they are entitled to judgment against the Defendants IBYDIT, LLC and Nesbit in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A FIFTH CAUSE OF ACTION**  
**(Civil Conspiracy)**

64. Each and every allegation contained in Paragraphs 1 through 63 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.

65. Civil Conspiracy requires: 1) a combination of two or more persons; 2) for the purpose of injuring the plaintiff; 3) which causes special damages *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988).
66. Defendants conspired with one another to close the real estate transaction without the Plaintiffs, injuring the Plaintiffs.
67. Plaintiffs suffered special noneconomic damages of inconvenience and injury to reputation as outlined in the South Carolina Noneconomic Damage Awards Act of 2005.
68. Therefore, Plaintiffs believe they are entitled to judgment against the Defendants in an amount to be determined by this Court as fair, just, and equitable, plus prejudgment interest, post-judgment interest, punitive damages, attorneys' fees and costs of having to bring this action.

**FOR A SIXTH CAUSE OF ACTION**  
**(Fraud and Misrepresentation)**

69. Each and every allegation contained in Paragraphs 1 through 68 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
70. To establish a cause of action for fraud and deceit based upon misrepresentation, the following elements must be shown by clear, cogent, and convincing evidence: 1) a representation; 2) its falsity; 3) its materiality; 4) either knowledge of its falsity or a reckless disregard of its truth or falsity; 5) intent that the representations be acted upon; 6) the hearer's ignorance of its falsity; 7) the hearer's reliance on the truth; 8) the hearer's right to rely thereon; and 9) the hearer's consequent and proximate injury. *Kahn Construction Co., v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

71. The Defendants represented that the Seller wanted to sell, and Buyer wanted to buy the Property via the Plaintiffs.
72. The Defendants failed to consummate the transaction with the Plaintiffs.
73. The Defendants knew that they would not consummate the transaction with the Plaintiffs.
74. The Defendants intended the Plaintiffs would act on their representations and proceed as if the Property was going to be transferred via assistance of the Plaintiffs.
75. The Plaintiffs have no reason to believe the Defendants intended to transfer the Property without Plaintiffs' assistance and therefore the Plaintiffs relied on the representations of the Defendants.
76. Due to the Plaintiffs' reliance, Plaintiffs were damaged.
77. Therefore, Plaintiffs believe they are entitled to judgment against the Defendants in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, punitive damages, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Promissory Estoppel)**

78. Each and every allegation contained in Paragraphs 1 through 77 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein where not inconsistent.
79. A plaintiff must plead and produce evidence of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom it is made; (3) the reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on

the promise. *Powers Construction Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984).

80. Defendants promised to pay Plaintiffs for their services as Realtors. This promise is unambiguous on its terms.

81. Plaintiffs relied on said promise by Defendants. Further, Defendants intended Plaintiffs rely on said promise.

82. Despite said promise, Defendants had no intention to pay Plaintiffs for the value of their services. Consequently, Plaintiffs relied to their detriment on Defendants' promise.

83. Plaintiffs are entitled to recover from Defendants an amount not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**WHEREFORE** Plaintiffs prays for Judgment against Defendants for compensatory damages, punitive damages, any other damages this Court deems proper, but not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

RESPECTFULLY SUBMITTED,  
COBB DILL & HAMMETT, LLC

s/Stefanie L. Huffer, Esq.  
Hal E. Cobb, Esq. (S.C. Bar No. 100575)  
Stefanie Huffer, Esq. (S.C. Bar No. 100645)  
222 W Coleman Blvd., Bldg. 2  
Mt. Pleasant S.C. 29464  
Phone: (843) 936-6680  
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*Attorneys for Plaintiffs*

Dated: September 15, 2020  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

ATLANTIC INTERNATIONAL, INC. )  
d/b/a COLDWELL BANKER )  
COMMERCIAL ATLANTIC, JOHN W. )  
TRUE, and AARON B. ROWLEY, )

Plaintiffs, )

v. )

IBYDIT, LLC, 1537 BEN SAWYER )  
BLVD., LLC, CURT NESBITT, )  
RICHARD M. MCCOLL, EAST ISLANDS )  
REAL ESTATE, INC., AND ASHLEY )  
HAYNES, individually and as an agent of )  
EAST ISLANDS REAL ESTATE, INC. )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-10-04076

**AMENDED  
SUMMONS**

TO: DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 222 West Coleman Boulevard, Mount Pleasant, South Carolina, 29464 and with this Court within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

YOU ARE HEREBY GIVEN NOTICE FURTHER, that if you fail to appear and defend to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

*Signature Page to Follow*

RESPECTFULLY SUBMITTED,  
COBB DILL & HAMMETT, LLC

s/Stefanie L. Huffer, Esq.

Dated: October 5, 2020  
Mount Pleasant, South Carolina

Hal E. Cobb, Esq. (S.C. Bar No. 100575)  
Stefanie Huffer, Esq. (S.C. Bar No. 100645)  
222 W Coleman Blvd., Bldg. 2  
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hcobb@cdhlawfirm.com  
shuffer@cdhlawfirm.com  
***Attorneys for Plaintiffs***

|                                         |   |                                |
|-----------------------------------------|---|--------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS   |
|                                         | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON                    | ) |                                |
|                                         | ) | CASE NO.: 2020-CP-10-_____     |
| ATLANTIC INTERNATIONAL, INC.            | ) |                                |
| d/b/a COLDWELL BANKER                   | ) |                                |
| COMMERCIAL ATLANTIC, JOHN W.            | ) |                                |
| TRUE, and AARON B. ROWLEY,              | ) |                                |
|                                         | ) | <b>AMENDED</b>                 |
| Plaintiffs,                             | ) | <b>COMPLAINT</b>               |
|                                         | ) |                                |
| v.                                      | ) |                                |
|                                         | ) |                                |
| IBYDIT, LLC, 1537 BEN SAWYER            | ) |                                |
| BLVD., LLC, CURT NESBITT,               | ) |                                |
| RICHARD M. MCCOLL, EAST ISLANDS         | ) |                                |
| REAL ESTATE, INC., AND ASHLEY           | ) |                                |
| HAYNES, individually and as an agent of | ) |                                |
| EAST ISLANDS REAL ESTATE, INC.          | ) |                                |
|                                         | ) |                                |
| Defendants.                             | ) |                                |

The Plaintiffs, complaining of the Defendants, alleges and says as follows:

#### **PARTIES AND JURISDICTION**

1. Plaintiff, Atlantic International, Inc. d/b/a Coldwell Banker Commercial Atlantic (“CBC”), is a corporation organized and existing under the laws of South Carolina.
2. Plaintiff, John W. True (“True”), is a citizen and resident of Charleston County, South Carolina and a sales associate for CBC.
3. Plaintiff, Aaron B. Rowley (“Rowley”), is a citizen and resident of Charleston County, South Carolina and sales associate for CBC.
4. Upon information and belief, Defendant, IBYDIT, LLC (“Buyer”) is a South Carolina limited liability company organized and existing under the laws of South Carolina with its primary place of business being in Charleston County.

5. Upon information and belief, Defendant, 1537 Ben Sawyer Blvd., LLC (“Seller”) is a South Carolina limited liability company organized and existing under the laws of South Carolina with its primary place of business being in Charleston County.
6. Upon information and belief, Defendant Curt Nesbitt (“Nesbitt”) is a citizen and resident of Charleston County, South Carolina and agent acting on behalf of Buyer.
7. Upon information and belief, Defendant, Richard M. McColl (“McColl”) is a citizen and resident of Charleston County, South Carolina and agent acting on behalf of Seller.
8. Defendant, East Islands Real Estate, Inc. (“East Islands”) is a South Carolina corporation organized and existing under the laws of South Carolina with its primary place of business being in Charleston County.
9. Upon information and belief, Ashley Haynes, (“Haynes”) is a citizen and resident of Charleston County, South Carolina and an agent acting on behalf of East Islands.
10. This action stems from the purchase and sale of real estate located at 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina located in Charleston County (the “Property”).
11. This Court has personal jurisdiction over the matter and venue is appropriate in Charleston County, South Carolina.
12. This Court has subject matter jurisdiction over this matter and venue is appropriate in Charleston County, South Carolina.

#### **STATEMENT OF THE FACTS**

13. On or about January 11, 2020, Defendant McColl and Plaintiff Rowley, acting as a real estate agent for CBC, exchanged text messages regarding the sale of the Property and the possibility personal purchase for Defendant Nesbitt.
14. On or about January 13, 2020, Defendant McColl and Plaintiff Rowley met at the Property.

15. On or about January 17, 2020, Plaintiff Rowley emailed Defendant McColl a listing agreement for the Property along with the MLS listings on four (4) residential properties.
16. The listing agreement provided for a commission of five (5%) percent to be paid to Plaintiff Rowley and split with any buyer's agent.
17. On or about January 20, 2020 Plaintiff Rowley provided information to Plaintiff True regarding the Property.
18. On or about January 21, 2020, Plaintiff True then provided information regarding the Property to Defendant Nesbitt and Matt Walsh.
19. On or about January 21, 2020, Defendant Nesbitt requested Plaintiff True get an offer on the table that day.
20. On or about January 22, 2020, Plaintiff True received an email from Matt Walsh, acting on behalf of Defendant Nesbit and Buyer made an offer on the Property for a purchase price of One Million and no/100 (\$1,000,000.00) Dollars.
21. On or about January 22, 2020, Plaintiff True forwarded the offer to Plaintiff Rowley.
22. On or about January 22, 2020, Plaintiff Rowley forward the offer to Defendant McColl.
23. Along with the offer, Plaintiff Rowley recommended a counteroffer One Million One Hundred Thousand and no/100 (\$1,100,000.00) Dollars, provided information relating to comparable property in the area, and information on the possibility of doing a 1031 Exchange.
24. On or about January 22, 2020, Plaintiff True looked into zoning requirements, square footage allowances for the property per Defendant Nesbitt's request.
25. On or about January 23, 2020, Plaintiff Rowley and Defendant McColl exchanged text messages and emails regarding leases on the Property.

26. On or about January 23, 2020, Plaintiff Rowley emailed Defendant McColl with an offer from Buyer on a lease buy-out.
27. On or about January 29, 2020, Plaintiff Rowley texted Defendant McColl following up on lease buy options and response from tenant.
28. On or about January 30, 2020, Defendant McColl responded to Plaintiff Rowley via email regarding the lease and tenant relations.
29. On or about February 11, 2020, all communication ceased between Plaintiff True and Plaintiff Nesbitt
30. All communications from Defendant McColl ceased after January 30, 2020 until March 2020.
31. Defendant McColl via the Seller and Defendant Nesbitt via the Buyer entered into a contract for One Million Two Hundred Thousand and no/100 (\$1,200,000.00) Dollars.
32. Upon information and belief East Islands and Haynes assisted Buyer and Seller in consummating this transaction.
33. Upon information and belief, the Property was transferred from the Seller to the Buyer on or about July 13, 2020 via deed recorded in the Charleston County Register of Deeds Office in Deed Book 0897 at Page 251.
34. Upon information and belief, the sale price was One Million One Hundred Thousand and no/100 (\$1,100,000.00) Dollars.
35. Upon information and belief, East Islands and Haynes received a commission due to the Plaintiffs upon transfer of the Property.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Contract/ Breach of Good Faith and Fair Dealing**  
**as to 1537 Ben Sawyer Blvd, LLC and Richard M. McColl)**

36. Each and every allegation contained in Paragraphs 1 through 31 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
37. To recover for breach of contract the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damages suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962).
38. Additionally, under South Carolina law, "There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G.J. Creel & Sons, Inc.* 274 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).
39. Plaintiff Rowley and Plaintiff CBC entered into a binding agreement with Defendant McColl and Seller to pay Plaintiff Rowley and CBC a commission upon the finding of a buyer who is ready, willing, and able to buy the Property.
40. There is presently due and owing to the Plaintiffs by Defendants a commission in a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, together with all costs of bringing this action and reasonable attorneys' fees.
41. Defendant McColl and Seller's willful failure to pay the amount due, constitutes a breach of contract.
42. Defendant McColl and Seller's actions destroyed and injured the rights of Plaintiff's to receive the benefits of the contract, breaching the covenant of good faith and fair dealing.

43. By Defendant McColl and Seller's willful failure to pay Plaintiffs the commission due, and Defendant McColl and Seller's willful breach of the contract, Plaintiffs are entitled to recover a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract/Breach of Good Faith and Fair Dealing**  
**as to IBYDIT, LLC and Curt Nesbitt)**

44. Each and every allegation contained in Paragraphs 1 through 43 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
45. To recover for breach of contract the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damages suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962).
46. Additionally, under South Carolina law, "There exists in every contract an implied covenant of good faith and fair dealing." *Adams v. G.J. Creel & Sons, Inc.* 274 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).
47. Plaintiff True and Plaintiff CBC entered into a binding agreement with Defendant Nesbitt and Buyer to provide a fee upon the finding of a property suitable for their needs.
48. Defendant Nesbitt and Buyer failed to enter into a contract for the purchase of the Property that required payment be made to Plaintiff True and Plaintiff CBC.
49. Defendant Nesbitt and Buyer's willful failure comply with the terms of contract to ensure payment to Plaintiff True and Plaintiff CBC, constitutes a breach of contract.

50. Defendant Nesbitt and Buyer's actions destroyed and injured the rights of Plaintiff's to receive the benefits of the contract, breaching the covenant of good faith and fair dealing.
51. By Defendant Nesbitt's and Buyer's willful failure to provide payment to Plaintiffs and Defendant Nesbitt and Buyer's willful breach of the contract, Plaintiffs are entitled to recover a sum not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A THIRD CAUSE OF ACTION**  
**(Quasi Contract/Quantum Meruit**  
**as to 1537 Ben Sawyer Blvd, LLC and Richard M. McColl)**

52. Each and every allegation contained in Paragraphs 1 through 51 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
53. The court has previously adopted a three part test requiring a plaintiff show: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994).
54. There existed between Plaintiff Rowley, Plaintiff CBC and Defendants 1537 Ben Sawyer Blvd, LLC and McColl an implied agreement for the provision of services and payment, therefore.
55. Plaintiff Rowley and Plaintiff CBC are informed and believed that Defendants 1537 Ben Sawyer Blvd, LLC and McColl have received the value of the Plaintiff Rowley and Plaintiff CBC services under said implied agreement in a variety of ways, including but

not limited to, Plaintiff Rowley and Plaintiff CBC being the procuring cause of the transaction.

56. Such value conferred to the Defendants 1537 Ben Sawyer Blvd, LLC and McColl is partly based on the actions and efforts of the Plaintiff Rowley and Plaintiff CBC in acting as the agents for Defendants 1537 Ben Sawyer Blvd, LLC and McColl. The failure of Defendants 1537 Ben Sawyer Blvd, LLC and McColl to pay the agreed upon commission would result in unjust enrichment to Defendants 1537 Ben Sawyer Blvd, LLC and McColl, jointly and severally.
57. Plaintiff Rowley and Plaintiff CBC conferred a benefit upon the Defendants 1537 Ben Sawyer Blvd, LLC and McColl through providing the opportunity of the Buyer to purchase and the Seller to sell the Property. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl realized that benefit as evidenced by the closing on the Property.
58. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl have retained the benefits of the transaction without compensating Plaintiff Rowley and Plaintiff CBC for the value of their services. Under the circumstances, the retention of the benefit by the Defendants 1537 Ben Sawyer Blvd, LLC and McColl would be inequitable.
59. Therefore, Plaintiff Rowley and Plaintiff CBC believe they are entitled to judgment against the Defendants 1537 Ben Sawyer Blvd, LLC and McColl in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A FORTH CAUSE OF ACTION**  
**(Quasi Contract/Quantum Meruit**  
**as to IBYDIT, LLC and Curt Nesbitt)**

60. Each and every allegation contained in Paragraphs 1 through 59 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
61. The court has previously adopted a three part test requiring a plaintiff show: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust to retain it without paying. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994).
62. There existed between Plaintiff True, Plaintiff CBC and Defendants IBYDIT, LLC and Nesbitt an implied agreement for the provision of services and payment, therefore.
63. Plaintiff True and Plaintiff CBC are informed and believed that Defendants IBYDIT, LLC and Nesbitt have received the value of the Plaintiff True and Plaintiff CBC services under said implied agreement in a variety of ways, including but not limited to, Plaintiff True and Plaintiff CBC being the procuring cause of the transaction.
64. Such value conferred to the Defendants IBYDIT, LLC and Nesbitt is partly based on the actions and efforts of the Plaintiff True and Plaintiff CBC in acting as the agents for Defendants IBYDIT, LLC and Nesbitt. The failure of Defendants IBYDIT, LLC and Nesbitt to pay the agreed upon commission would result in unjust enrichment to Defendants IBYDIT, LLC and Nesbitt, jointly and severally.

65. Plaintiff True and Plaintiff CBC conferred a benefit upon the Defendants IBYDIT, LLC and Nesbitt through providing the opportunity of the IBYDIT, LLC and Nesbitt realized that benefit as evidenced by the closing on the Property.
66. The Defendants IBYDIT, LLC and Nesbit have retained the benefits of the transaction without compensating Plaintiff True and Plaintiff CBC for the value of their services. Under the circumstances, the retention of the benefit by the Defendants IBYDIT, LLC and Nesbit would be inequitable.
67. Therefore, Plaintiff True and Plaintiff CBC believe they are entitled to judgment against the Defendants IBYDIT, LLC and Nesbit in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A FIFTH CAUSE OF ACTION**  
**(Civil Conspiracy)**

68. Each and every allegation contained in Paragraphs 1 through 67 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.
69. Civil Conspiracy requires: 1) a combination of two or more persons; 2) for the purpose of injuring the plaintiff; 3) which causes special damages *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988).
70. Defendants conspired with one another to close the real estate transaction without the Plaintiffs, injuring the Plaintiffs.
71. Plaintiffs suffered special noneconomic damages of inconvenience and injury to reputation as outlined in the South Carolina Noneconomic Damage Awards Act of 2005.

72. Therefore, Plaintiffs believe they are entitled to judgment against the Defendants in an amount to be determined by this Court as fair, just, and equitable, plus prejudgment interest, post-judgment interest, punitive damages, attorneys' fees and costs of having to bring this action.

**FOR A SIXTH CAUSE OF ACTION**  
**(Fraud and Misrepresentation)**

73. Each and every allegation contained in Paragraphs 1 through 72 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein.

74. To establish a cause of action for fraud and deceit based upon misrepresentation, the following elements must be shown by clear, cogent, and convincing evidence: 1) a representation; 2) its falsity; 3) its materiality; 4) either knowledge of its falsity or a reckless disregard of its truth or falsity; 5) intent that the representations be acted upon; 6) the hearer's ignorance of its falsity; 7) the hearer's reliance on the truth; 8) the hearer's right to rely thereon; and 9) the hearer's consequent and proximate injury. *Kahn Construction Co., v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

75. The Defendants represented that the Seller wanted to sell, and Buyer wanted to buy the Property via the Plaintiffs.

76. The Defendants failed to consummate the transaction with the Plaintiffs.

77. The Defendants knew that they would not consummate the transaction with the Plaintiffs.

78. The Defendants intended the Plaintiffs would act on their representations and proceed as if the Property was going to be transferred via assistance of the Plaintiffs.

79. The Plaintiffs have no reason to believe the Defendants intended to transfer the Property without Plaintiffs' assistance and therefore the Plaintiffs relied on the representations of the Defendants.
80. Due to the Plaintiffs' reliance, Plaintiffs were damaged.
81. Therefore, Plaintiffs believe they are entitled to judgment against the Defendants in an amount to be determined by this Court as fair, just, and equitable, but in any event, not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, punitive damages, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Promissory Estoppel)**

82. Each and every allegation contained in Paragraphs 1 through 81 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein where not inconsistent.
83. A plaintiff must plead and produce evidence of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom is it made; (3) the reliance is expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *Powers Construction Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984).
84. Defendants promised to pay Plaintiffs for their services as Realtors. This promise is unambiguous on its terms.
85. Plaintiffs relied on said promise by Defendants. Further, Defendants intended Plaintiffs rely on said promise.

86. Despite said promise, Defendants had no intention to pay Plaintiffs for the value of their services. Consequently, Plaintiffs relied to their detriment on Defendants' promise.

87. Plaintiffs are entitled to recover from Defendants an amount not less than Fifty-Five Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

**FOR AN EIGHTH CAUSE OF ACTION**  
**(Interference with a Contractual Relationship as to East Islands and Haynes)**

88. Each and every allegation contained in Paragraphs 1 through 87 are alleged, reiterated, and repeated in the same manner and to the same extent as if said allegations were enumerated herein where not inconsistent.

89. A contract existed between the Seller and Rowley whereby Rowley would find a buyer for the Property.

90. A contract existed between Buyer and True whereby True would find a suitable property for the Buyer and/or Buyer's business.

91. Plaintiffs were the procuring cause of the contract being entered into between the Buyer and the Seller.

92. East Islands and Haynes knew or should have known of the contracts above.

93. East Island and Haynes disregarded the contracts between the Seller and Rowley and the Buyer and True and interfered with said contracts.

94. The interference by East Island and Haynes was not justifiable.

95. The Plaintiffs were damaged due to the interference with the contract and East Island and Haynes were the direct and proximate cause of the Plaintiffs' injuries.

**WHEREFORE** Plaintiffs prays for Judgment against Defendants for compensatory damages, punitive damages, any other damages this Court deems proper, but not less than Fifty-Five

Thousand and no/100 (\$55,000.00) Dollars, plus prejudgment interest, post-judgment interest, attorneys' fees and costs of having to bring this action.

RESPECTFULLY SUBMITTED,  
COBB DILL & HAMMETT, LLC

*s/Stefanie L. Huffer, Esq.*

Hal E. Cobb, Esq. (S.C. Bar No. 100575)  
Stefanie Huffer, Esq. (S.C. Bar No. 100645)  
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***Attorneys for Plaintiffs***

Dated: October 5, 2020  
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

ATLANTIC INTERNATIONAL, INC. d/b/a )  
 COLDWELL BANKER COMMERCIAL )  
 ATLANTIC, JOHN W. TRUE, and AARON )  
 B. ROWLEY, )

Case No.: 2020-CP-10-4076

Plaintiffs, )

vs. )

**AFFIDAVIT OF CURTIS B. NESBITT**

IBYDIT, LLC, 1537 BEN SAWYER BLVD., )  
 LLC, CURT NESBITT, RICHARD M. )  
 MCCOLL, EAST ISLANDS REAL ESTATE, )  
 INC., AND ASHLEY HAYNES, individually )  
 and as an agent of EAST ISLANDS REAL )  
 ESTATE, INC., )

Defendants. )

PERSONALLY APPEARED BEFORE ME, Curtis B. Nesbitt, who being first duly sworn  
 deposes and states as follows based on his own personal knowledge:

1. My name is Curtis B. Nesbitt. I am over the age of 18 years. I have personal  
 knowledge of the facts and matters below.

2. I am the president of IBYDIT, LLC, a Defendant in this action.

3. IBYDIT, LLC purchased the subject property located at 1537 Ben Sawyer Blvd.,  
 Mt. Pleasant, South Carolina (the "Property").

4. Prior to purchasing the Property, I had been looking for properties to purchase for  
 my business. Matt Walsh, CFO of Blue Sky Specialty Pharmacy, was involved in the process. Mr.  
 Walsh and I had looked at several properties for more than a year.

5. In January 2020, John W. True, a Plaintiff in this action, reached out to Mr. Walsh to see if we had purchased a property for our business. At that time, we were under contract on another property and were in the process of gathering information to determine the feasibility of purchasing the building. Mr. True voluntarily informed Mr. Walsh of a site where House of Brews was located, which was zoned Areawide Business.

6. On January 20, 2020, I asked Mr. True about the zoning for the Property, as well as the square footage, lot size and parking space requirements. I informed Mr. True that I was under contract on another property and that time was of the essence. Mr. True indicated that he was working on gathering more information regarding the Property. He further stated that the Property was not on the market.

7. The next day, on January 21, 2020, I told Mr. True that we would like to get an offer on the table. Mr. True asked Mr. Walsh to draft an email with our offer on the Property for a purchase price of \$1,000,000, 90-day due diligence, two 45-day extensions, and a 30-day close. Mr. Walsh drafted the email to Mr. True who then forwarded it to Aaron Rowley, a Plaintiff in this action.

8. At no time was a buyer representation agreement presented to me relating to the Property. Neither I nor anyone else acting on behalf of IBYDIT have entered into a buyer's representation agreement with Mr. True relating to the Property.

9. Mr. True and I did not discuss a scope of services to be provided.

10. Mr. True and I never discussed compensation, commission, or a method of calculating compensation for services. Mr. True never indicated to me that he expected to receive a commission, a fee, or payment for any services.

11. Mr. True and I never discussed any terms that would indicate that we had entered into a contract. We never discussed or agreed to the duration of any contractual relationship or when any such relationship would end.

12. On Monday, January 27, 2020, Matt Walsh asked Mr. True for an update and reiterated that we were on a deadline with another deal and needed a response on our offer by the following day.

13. On January 29, 2020, Mr. True indicated that the “seller has gone dark.” On February 4, 2020, Mr. True stated that “seller still won’t respond.”

14. Having received no further information or updates, I sent a text message to Mr. True on February 11, 2020, asking him to provide an update on our offer. Mr. True and I discontinued all communication as of February 11, 2020.

15. I did not believe, nor did I have any reason to believe, that Mr. True was acting as an agent on my behalf.

16. On March 2, 2020, the seller of the Property entered into a One Time Agreement to Show with Ashley Haynes, a Defendant in this action. Haynes and the seller agreed that if I, or any entity of which I am a member, purchased the Property, then the owner would pay East Island Real Estate a four percent (4%) commission at closing based on the sale price.

17. There were several issues that needed to be resolved in order to close on the Property. The biggest issue involved negotiating an early termination of the then-existing leases with House of Brews and Olive Massage. Reaching an agreement for the early termination of the tenants required extensive negotiation with the tenants and their counsel. These negotiations resulted in a settlement with the tenants. Plaintiffs True and CBC did not participate in the negotiation of the terms or any aspect in finalizing the deal.

18. IBYDIT purchased the Property on July 13, 2020, for \$1,100,000.00. A commission payment in the amount of \$44,000.00 was paid to East Island Real Estate at closing.

19. Mr. True never indicated to me through his actions or words that he expected payment in the form of commission or as a fee for services rendered. I have been required to defend against Plaintiffs' claims for payment to which they are not entitled.

FURTHER AFFIANT SAYETH NOT.

  
Curtis B. Nesbitt

SWORN to and subscribed before me  
this 24 day of May, 2023

  
Notary Public for the State of South Carolina  
My commission expires: 5/21/30

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

}

COURT OF COMMON PLEAS  
CASE No. 2020-CP-10-4076

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

PLAINTIFFS,

V.

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

DEFENDANTS.

**DEFENDANTS'  
NOTICE AND MOTION  
TO DISMISS COMPLAINT**

TO: STEFANIE L. HUFFER, ATTORNEY FOR PLAINTIFFS:

Defendants, 1537 Ben Sawyer Blvd, LLC and Richard M. McColl, ("Defendants") hereby move to dismiss the lawsuit filed by ATLANTIC INTERNATIONAL, INC., D/B/A COLDWELL BANKER COMMERCIAL ATLANTIC, JOHN W. TRUE AND AARON B. ROWLEY ("Plaintiffs") pursuant to Rule 12(b) on the grounds the claimed actions and inactions of Plaintiffs violate S.C. Code Anno. §40-57-5 et. seq. thereby precluding any such claim and for such other relief as the Court may deem just and proper against Plaintiffs.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that consultation with opposing counsel for the purpose of resolving the matter contained herein would serve no useful purpose of resolving the matter contained herein would serve no useful purpose /or could not be timely held.

**PLEASE BE PRESENT TO DEFEND IF SO MINDED.**

**MARY LEIGH ARNOLD, PA**  
S/MARY LEIGH ARNOLD [#419]  
749 JOHNNIE DODDS BLVD., SUITE B  
MT. PLEASANT, SC 29464  
PHONE: 843-971-6053  
SAMMIE@MARYARNOLDLAW.COM  
**ATTORNEY FOR DEFENDANT S**  
**1537 BEN SAWYER BLVD., LLC, AND**  
**RICHARD M. McCOLL**

November 2, 2020

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

**COURT OF COMMON PLEAS  
CASE No. 2020 CP 10 4076**

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

**PLAINTIFFS,**

**v.**

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

**DEFENDANTS.**

**DEFENDANTS 1537 BEN SAWYER  
BLVD., LLC AND RICHARD M.  
McCOOL'S ANSWER  
AND  
COUNTERCLAIM**

**JURY TRIAL DEMANDED**

**TO: PLAINTIFFS ABOVE NAMED:**

Defendants 1537 Ben Sawyer Blvd., LLC and Richard M. McColl (collectively "Defendants") by and through their undersigned counsel hereby answer the Amended Complaint filed by Atlantic International Inc., d/b/a Coldwell Banker Commercial Atlantic ("Plaintiff") and further assert these counterclaims.

1. Each and every allegation of the Amended Complaint not specifically admitted or explained herein is denied.
2. Defendants deny the allegations of Paragraphs 1, 2 and 3.
3. Defendants admit upon information and belief the allegations of Paragraph 4.
4. Defendants admit the allegations of Paragraph 5.
5. Defendants admit upon information and belief so much of the allegations of Paragraph 6 as alleges Curt Nesbitt is a resident of Charleston County but deny the remaining allegations of said Paragraph.

6. Defendants admit so much of the allegations of Paragraph 7 as allege Richard McColl is a resident of Charleston County but deny the remaining allegations of said Paragraph.

7. Defendants admit upon information and belief the allegations of Paragraphs 8 and 9.

8. The allegations of Paragraphs 10, 11 and 12 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

9. Defendants deny the allegations of Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.

10. Defendants in responding to the allegations of Paragraph 33 deny any allegations contained therein that are inconsistent with the public records of Charleston County.

11. Defendants deny the allegations of Paragraphs 34 and 35.

12. In response to the allegations of Paragraph 36, Defendants repeat and reallege each and every paragraph set forth herein.

13. The allegations of Paragraphs 37 and 38 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

14. Defendants deny the allegations of Paragraphs 39, 40, 41, 42 and 43.

15. In response to the allegations of Paragraph 44 Defendants repeat and reallege each and every paragraph set forth herein.

16. The allegations of Paragraphs 45, 46, 47, 48, 49, 50 and 51 are not directed at these Defendants therefore no response is required. To the extent they are directed to these Defendants then the allegations are denied.

17. In response to the allegations of Paragraph 52 Defendants repeat and reallege each and every paragraph set forth herein.

18. The allegations of Paragraph 53 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

19. Defendants deny the allegations of Paragraphs 54, 55, 56, 57, 58 and 59.

20. In response to the allegations of Paragraph 60 Defendants repeat and reallege each and every paragraph set forth herein.

21. The allegations of Paragraphs 61, 62, 63, 64, 65, 66 and 67 are not directed at these Defendants therefore no response is required. To the extent they are directed to these Defendants then the allegations are denied.

22. In response to the allegations of Paragraph 68 Defendants repeat and reallege each and every paragraph set forth herein.

23. The allegations of Paragraph 69 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

24. Defendants deny the allegations of Paragraphs 70, 71 and 72.

25. In response to the allegations of Paragraph 73 Defendants repeat and reallege each and every paragraph set forth herein.

26. The allegations of Paragraph 74 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

27. Defendants deny the allegations of Paragraphs 75, 76, 77, 78, 79, 80 and 81.

28. In response to the allegations of Paragraph 82 Defendants repeat and reallege each and every paragraph set forth herein.

29. The allegations of Paragraph 83 are legal conclusions to which these Defendants are required to neither admit nor deny. To the extent they are not legal conclusions then the allegations are denied.

30. Defendants deny the allegations of Paragraphs 84, 85, 86 and 87.

31. In response to the allegations of Paragraph 88 Defendants repeat and reallege each and every paragraph set forth herein.

32. The allegations of Paragraphs 89, 90, 91, 92, 93, 94 and 95 are not directed at these Defendants therefore no response is required. To the extent they are directed to these Defendants then the allegations are denied.

**FOR AND AS A FIRST DEFENSE  
(Failure to State Claim)**

33. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint fails to set forth a sufficient cause of action.

**FOR AND AS A SECOND DEFENSE  
(Waiver/Release/Estoppel)**

34. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint is barred by the doctrines of waiver, release and estoppel.

**FOR AND AS A THIRD DEFENSE  
(Unclean Hands)**

35. Further answering the Complaint and as and for a further defense thereto, the Defendants allege the Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining any equitable action.

**FOR AND AS A FIFTH DEFENSE  
(Lack of Contract)**

36. Further answering the Complaint and as and for a further defense thereto, the Defendants allege Plaintiffs' claims are barred because there was no contractual privity between Defendants and Plaintiffs.

**FOR AND AS A SIXTH DEFENSE  
(Non-Existence)**

37. Further answering the Complaint and as and for a further defense thereto, the Defendants allege the Plaintiffs' Complaint is barred because no entity exists by the name "Coldwel Banker Commercial Atlantic".

**FOR AND AS A SEVENTH DEFENSE**

**(Violations of the Title 40 - Professions and Occupations)**

38. Further answering the Complaint and as and for a further defense thereto, the Defendants allege Plaintiffs have failed to adhere to the Title 40 of the South Carolina Ann. Of Laws, therefore, Plaintiffs' Complaint should be dismissed

**FOR AND AS A EIGHTH DEFENSE  
(Affirmative Defenses)**

39. Further answer said Complaint and for a further defense thereto Defendants specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, negligence, duress, statute of frauds, fraud, illegality, statute of limitations, misrepresentation, mistake, release, waiver, standing, lack of consideration, lack privity, lack of judgment against certain named Defendants, failure to mitigate, unclean hands, or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this action progresses.

**FOR AND AS A NINTH DEFENSE  
(Reservation and Non-Waiver)**

40. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

**FOR AND AS AN TENTH DEFENSE AND BY WAY OF COUNTERCLAIM  
(S.C. UNFAIR TRADE PRACTICES ACT)**

41. Defendants incorporate all preceding paragraphs as though fully set forth herein.

42. The named Plaintiff, Atlantic International Inc., is not a licensed real estate office as required under South Carolina law.

43. The fictitious entity alleging doing business as Coldwell Banker Commercial Atlantic is not a license real estate office as required under South Carolina law.

44. On or about January 20, 2020, Aaron Rowley solicited Richard McColl to enter into an “Exclusive Right to Sell Listing Agreement (Commercial)” with regard to real property located at 1537 Ben Sawyer Blvd, Mount Pleasant, South Carolina (the “Property”).

45. At no time was Richard McColl the owner of the Property.

46. The solicitation made by Plaintiff, Aaron Rowley was rejected and no listing agreement was signed.

47. The Plaintiffs’ knew no listing agreement was signed.

48. Plaintiffs’ conduct which constitutes unfair and deceptive trade practices and is a violation of the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10, *et seq.* (SCUTPA), includes but is not limited to the following: broker in charge failing to properly supervise licensees; engaging in the business of real estate under the name of an unlicensed entity; engaging in the business of real estate under a fictitious name; seeking a commission under the name of an unlicensed agency; seeking a commission by agent under an entity name that s/he is not licensed; claiming to offer real property for sale without first obtaining a written listing agreement with the owner of the property; failing to properly identify the real estate brokerage firm with which the real estate licensee was associated; failure to identify the holder of an alleged tradename; failure to submit an alleged offer in writing; and claiming to act in the capacity of a dual agent but failing to make the required disclosures.

49. Plaintiffs’ conduct was intentional and willful, in that Plaintiffs unfairly and/or deceptively and repeatedly took unfair and/or deceptive actions and attempted to engage in real estate activities in violation of S.C. Code Ann. §40-57-5 *et. seq.*

50. Plaintiffs’ conduct is capable of repetition and has been repeated.

51. Plaintiffs’ conduct affects the public interest.

52. As a direct result of Plaintiffs’ unfair and deceptive trade practices in violation of SCUTPA, Defendants have suffered damage and are entitled to damages, including treble

damages and reasonable attorneys' fees and costs pursuant to SCUTPA and S.C. Code § 39-5-140.

**FOR AND AS AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM  
(Abuse of Process)**

53. Defendants incorporate all preceding paragraphs as though fully set forth herein.

54. Plaintiffs have improperly used the process of the legal system to attempt to collect alleged debts by filing suits for the objective of obtaining judgments on those alleged debts when Plaintiffs either knew or should have known they could not legitimately file said claims for amounts no one is not obligated to pay and in violation of S.C. Code Ann. §40-57-5 et. seq.

55. Plaintiffs' acts in filing said suit and claims is and was a willful overt act improperly using the legal process because Plaintiffs have no legal basis to assert such a claim and which such action is aimed at the illegitimate collateral objective of obtaining commissions and judgments which Plaintiffs are precluded by law from receiving.

56. As a direct and proximate result of Plaintiffs, Defendants have sustained actual, statutory, consequential, incidental, compensatory and special damages in an amount to be determined by the trier of fact at a trial of this case.

57. In addition to the actual, statutory consequential, compensatory and incidental damages suffered, Defendants are informed and believe that Plaintiffs' willful, reckless, and wanton, conduct as specified in certain causes of action in this Complaint entitle Defendants to an award of punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants pray for a dismissal of the Complaint in this matter and for judgement against Plaintiffs as to all of Defendants' Counterclaims, for all actual damages, statutory damages, consequential damages, special damages, and incidental damages, all declaratory relief requested and all in an amount to be more specifically proven at trial, and for an award of attorney's fees and costs of this action, and for such other and further relief as this Honorable Court may deem just and proper.

MARY LEIGH ARNOLD, PA  
S/MARY LEIGH ARNOLD [ #419 ]  
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PHONE: 843-971-6053  
SAMMIE@MARYARNOLDLAW.COM

**ATTORNEYS FOR DEFENDANTS**

November 2, 2020

|                                       |   |                                        |
|---------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS           |
|                                       | ) | FOR THE NINTH JUDICIAL CIRCUIT         |
| COUNTY OF CHARLESTON                  | ) |                                        |
| ATLANTIC INTERNATIONAL, INC. d/b/a    | ) |                                        |
| COLDWELL BANKER COMMERCIAL            | ) | Case No.: 2020-CP-10-4076              |
| ATLANTIC, JOHN W. TRUE, and AARON     | ) |                                        |
| B. ROWLEY,                            | ) |                                        |
|                                       | ) |                                        |
| Plaintiffs,                           | ) | <b>DEFENDANTS IBYDIT, LLC AND CURT</b> |
|                                       | ) | <b>NESBITT'S ANSWER TO AMENDED</b>     |
| vs.                                   | ) | <b>COMPLAINT</b>                       |
|                                       | ) |                                        |
| IBYDIT, LLC, 1537 BEN SAWYER BLVD.,   | ) |                                        |
| LLC, CURT NESBITT, RICHARD M.         | ) |                                        |
| MCCOLL, EAST ISLANDS REAL ESTATE,     | ) |                                        |
| INC., AND ASHLEY HAYNES, individually | ) |                                        |
| and as an agent of EAST ISLANDS REAL  | ) |                                        |
| ESTATE, INC.,                         | ) |                                        |
|                                       | ) |                                        |
| Defendants.                           | ) |                                        |

COME NOW Defendants IBYDIT, LLC ("IBYDIT") and Curt Nesbitt ("Nesbitt") (collectively referred to as "Defendants"), by and through their undersigned counsel, hereby answer the Amended Complaint of Plaintiffs Atlantic International, Inc., d/b/a Coldwell Banker Commercial Atlantic, John W. True, and Aaron B. Rowley (collectively, "Plaintiffs") as follows:

**FOR A FIRST DEFENSE**

Defendants hereby deny each and every allegation in the Amended Complaint that is not expressly admitted herein.

**FOR A SECOND DEFENSE**

1. Defendants admit the allegations contained in Paragraph 1 of the Amended Complaint.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Complaint and therefore, deny the same.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Amended Complaint and therefore, deny the same.

4. Defendants admit the allegations contained in Paragraph 4 of the Amended Complaint.

5. Defendants admit the allegations contained in Paragraph 5 of the Amended Complaint.

6. Defendants admit that Nesbitt is a resident of Charleston County, South Carolina. Defendants deny the remaining allegations contained in Paragraph 6 of the Amended Complaint.

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Amended Complaint and therefore, deny the same.

8. Defendants admit the allegations contained in Paragraph 8 of the Amended Complaint.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Amended Complaint and therefore, deny the same.

10. Defendants deny the allegations contained in Paragraph 10 of the Amended Complaint.

11. Defendants admit the allegations contained in Paragraph 11 of the Amended Complaint.

12. Defendants admit the allegations contained in Paragraph 12 of the Amended Complaint.

13. Defendants deny the allegations contained in Paragraph 13 of the Amended Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Amended Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of the Amended Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of the Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Amended Complaint.

19. Defendants deny the allegations contained in Paragraph 19 of the Amended Complaint.

20. In response to the allegations contained in Paragraph 20 of the Amended Complaint, Defendants admit that IBYDIT made an offer to purchase of the Property. Defendants deny the remaining allegations contained in Paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Amended Complaint and therefore, deny the same.

22. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Amended Complaint and therefore, deny the same.

23. Defendants deny the allegations contained in Paragraph 23 of the Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of the Amended Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of the Amended Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of the Amended Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Amended Complaint.

28. Defendants deny the allegations contained in Paragraph 28 of the Amended Complaint.

29. Defendants admit the allegations contained in Paragraph 29 of the Amended Complaint.

30. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Amended Complaint and therefore, deny the same.

31. Defendants deny the allegations contained in Paragraph 31 of the Amended Complaint and crave reference to the language of the contract.

32. Defendants admit the allegations contained in Paragraph 32 of the Amended Complaint.

33. Defendants admit the allegations contained in Paragraph 33 of the Amended Complaint.

34. Defendants admit the allegations contained in Paragraph 34 of the Amended Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of the Amended Complaint.

**AS TO THE FIRST CAUSE OF ACTION**

***(Breach of Contract/Breach of Good Faith and Fair Dealing – Defendants  
1537 Ben Sawyer Blvd, LLC and McColl)***

36. In response to the allegations contained in Paragraph 36 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

37. Defendants deny the allegations contained in Paragraph 37 of the Amended Complaint.

38. Defendants deny the allegations contained in Paragraph 38 of the Amended Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Amended Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Amended Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Amended Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Amended Complaint.

43. Defendants deny the allegations contained in Paragraph 43 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 43 or otherwise.

**AS TO THE SECOND CAUSE OF ACTION**  
***(Breach of Contract/Breach of Good Faith and Fair Dealing – Defendants***  
***IBYDIT and Nesbitt)***

44. In response to the allegations contained in Paragraph 44 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

45. Defendants deny the allegations contained in Paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations contained in Paragraph 46 of the Amended Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Amended Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Amended Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Amended Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Amended Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 51 or otherwise.

**AS TO THE THIRD CAUSE OF ACTION**  
***(Quasi Contract/Quantum Meruit – Defendants 1537 Ben Sawyer Blvd, LLC and McColl)***

52. In response to the allegations contained in Paragraph 52 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

53. The allegations contained in Paragraph 53 of the Amended Complaint are legal conclusions to which no response is required. However, to the extent a response is required, Defendants deny the allegations contained in Paragraph 53.

54. Defendants deny the allegations contained in Paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Amended Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Amended Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Amended Complaint.

58. Defendants deny the allegations contained in Paragraph 58 of the Amended Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 59 or otherwise.

**AS TO THE FOURTH CAUSE OF ACTION**  
***(Quasi Contract/Quantum Meruit – Defendants IBYDIT and Nesbitt)***

60. In response to the allegations contained in Paragraph 60 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

61. The allegations contained in Paragraph 61 of the Amended Complaint are legal conclusions to which no response is required. However, to the extent a response is required, Defendants deny the allegations contained in Paragraph 61.

62. Defendants deny the allegations contained in Paragraph 62 of the Amended Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Amended Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Amended Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Amended Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Amended Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 67 or otherwise.

**AS TO THE FIFTH CAUSE OF ACTION**  
***(Civil Conspiracy)***

68. In response to the allegations contained in Paragraph 68 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

69. The allegations contained in Paragraph 69 of the Amended Complaint are legal conclusions to which no response is required. However, to the extent a response is required, Defendants deny the allegations contained in Paragraph 69.

70. Defendants deny the allegations contained in Paragraph 70 of the Amended Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Amended Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 72 or otherwise.

**AS TO THE SIXTH CAUSE OF ACTION**  
***(Fraud and Misrepresentation)***

73. In response to the allegations contained in Paragraph 73 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

74. The allegations contained in Paragraph 74 of the Amended Complaint are legal conclusions to which no response is required. However, to the extent a response is required, Defendants deny the allegations contained in Paragraph 74.

75. Defendants deny the allegations contained in Paragraph 75 of the Amended Complaint.

76. Defendants deny the allegations contained in Paragraph 76 of the Amended Complaint.

77. Defendants deny the allegations contained in Paragraph 77 of the Amended Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of the Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Amended Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Amended Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 81 or otherwise.

**AS TO THE SEVENTH CAUSE OF ACTION**  
***(Promissory Estoppel)***

82. In response to the allegations contained in Paragraph 82 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

83. The allegations contained in Paragraph 83 of the Amended Complaint are legal conclusions to which no response is required. However, to the extent a response is required, Defendants deny the allegations contained in Paragraph 83.

84. Defendants deny the allegations contained in Paragraph 84 of the Amended Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Amended Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in Paragraph 87 or otherwise.

**AS TO THE EIGHTH CAUSE OF ACTION**  
***(Interference with a Contractual Relationship – Defendants East Islands  
and Haynes)***

88. In response to the allegations contained in Paragraph 88 of the Amended Complaint, Defendants restate and re-allege each of their prior responses as if fully set forth herein.

89. Defendants deny the allegations contained in Paragraph 89 of the Amended Complaint.

90. Defendants deny the allegations contained in Paragraph 90 of the Amended Complaint.

91. Defendants deny the allegations contained in Paragraph 91 of the Amended Complaint.

92. Defendants deny the allegations contained in Paragraph 92 of the Amended Complaint.

93. Defendants deny the allegations contained in Paragraph 93 of the Amended Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of the Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Amended Complaint.

96. Defendants deny the allegations contained in the “WHEREFORE” clause of the Amended Complaint and state that Plaintiffs are not entitled to the relief requested in the “WHEREFORE” clause or otherwise.

**FOR A THIRD DEFENSE**  
***(Failure to State a Claim)***

97. Plaintiffs’ Amended Complaint fails to state a claim for which relief can be granted and therefore, should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FOR A FOURTH DEFENSE**  
***(Sanctions/Attorney Fees – South Carolina Frivolous Civil Proceedings Sanctions Act)***

98. Some or all of Plaintiffs’ claims against Defendants IBYDIT and Nesbitt are frivolous as defined by §15-36-10 *et seq.*, of the South Carolina Frivolous Civil Proceedings Sanctions Act.

**FOR A FIFTH DEFENSE**  
***(Statute of Frauds)***

99. Plaintiffs’ claims are barred by the statute of frauds.

**FOR A SIXTH DEFENSE**  
***(Failure to Properly Plead Fraud)***

100. Plaintiffs have failed to plead fraud with specificity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure and therefore, the fraud claim must be dismissed.

**FOR AN EIGHTH DEFENSE**  
***(Failure of Consideration)***

101. Some or all of the alleged contracts are unenforceable due to a lack of consideration or a subsequent failure of consideration.

**FOR A NINTH DEFENSE**  
***(Duplicative Allegations; Absence of Special Damages)***

102. Plaintiffs fail to state a claim for civil conspiracy by making merely duplicative allegations and by failing to plead special damages with particularity.

**FOR A TENTH DEFENSE**  
***(No Purpose of Injuring Plaintiff)***

103. Plaintiffs fail to state a claim for civil conspiracy by failing to allege or show that Defendants combined for the specific purpose of injuring Plaintiffs.

**FOR AN ELEVENTH DEFENSE**  
***(Estoppel)***

104. Plaintiffs' claims are barred by estoppel.

**FOR A TWELFTH DEFENSE**  
***(Waiver)***

105. Plaintiffs' claims are barred by waiver.

**FOR A THIRTEENTH DEFENSE**  
***(Laches)***

106. Plaintiffs' claims are barred by the doctrine of laches.

**FOR A FOURTEENTH DEFENSE**  
***(Reservation of Additional Defenses)***

107. Defendants reserve the right to assert all additional affirmative defenses that may be revealed during the course of discovery in this action.

**WHEREFORE**, having fully answered Plaintiffs' Amended Complaint, Defendants IBYDIT, LLC and Curt Nesbitt respectfully request that the Court dismiss the Amended Complaint with prejudice and grant such other and further relief to Defendants as the Court may deem just and proper.

Respectfully submitted,

By: s/Ellis R. Lesemann

Ellis R. Lesemann (S.C. Bar No. 15315)

[erl@lalawsc.com](mailto:erl@lalawsc.com)

Michelle A. Matthews (S.C. Bar No. 100685)

[mam@lalawsc.com](mailto:mam@lalawsc.com)

LESEMANN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

(843) 724-5155

***Attorneys for Defendants IBYDIT, LLC and Curt Nesbitt***

November 13, 2020

Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Atlantic International, Inc. d/b/a  
Coldwell Banker Commercial Atlantic,  
John W. True, and Aaron B. Rowley,

Plaintiffs,

vs.

IBYDIT, LLC, 1537 Ben Sawyer  
Blvd., LLC, Curt Nesbitt, Richard M,  
McColl, East Islands Real Estate,  
Inc., and Ashley Haynes, Individually  
and as Agent of East Islands Real  
Estate, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2020-CP-10-04076

**DEFENDANT EAST ISLANDS REAL  
ESTATE, INC. AND ASHLEY HAYNES,  
INDIVIDUALLY AND AS AGENT OF EAST  
ISLANDS REAL ESTATE, INC.'S MOTION  
TO DISMISS**

TO: STEPHANIE L. HUFFER AND HAL E. COBB, COUNSEL FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that Defendants East Islands Real Estate, Inc. and Ashley Haynes, by and through their undersigned counsel, will move before the presiding Judge in the Court of Common Pleas for an Order dismissing the Amended Complaint in the above-captioned case. This Motion is brought pursuant to Rule 12(b), SCRCF, and upon such other law and argument as is appropriate, including a supporting memorandum which will be duly supplemented. This Motion is based on the pleadings and one or more of the following grounds:

1. Plaintiffs' Amended Complaint fails to allege any cognizable special damages, and therefore, their civil conspiracy cause of action must be dismissed.
2. Plaintiffs' claims against these Defendants fail as a matter of law, as all causes of action are conditioned on an alleged agency relationship between Plaintiffs and the seller Defendants. However, as is evidenced by the allegations of the Amended Complaint, no such agency

agreement existed as mandated by S.C. Code §40-57-370. Therefore, Plaintiffs' Amended Complaint is incurably defective as a matter of law.

3. Plaintiffs' Fraud and Misrepresentation cause of action against these Defendants contains no allegations specific to these Defendants, and therefore, does not comply with Rule 8(c), SCRPC.
4. Plaintiffs' Promissory Estoppel cause of action contains no allegations specific to these Defendants. To the extent that this cause of action is asserted against these Defendants, such cause of action fails as it does not allege any of the elements of Promissory Estoppel as it relates to these Defendants.
5. Plaintiffs' "Interference with a Contractual Relationship" claim against these Defendants fails, as Plaintiffs had no written agency agreement with the sellers, as mandated by S.C. Code §40-57-370, and therefore, no contract existed.

This 17<sup>th</sup> day of November, 2020.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/ Steven R. Kropski  
DAVID W. OVERSTREET  
State Bar No.: 16965

STEVE R. KROPSKI  
State Bar No.: 101441

Attorneys for Defendants East Islands Real  
Estate, Inc. and Ashely Haynes.

P.O. Box 22528  
Charleston, SC 29413  
843-972-9400

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Atlantic International, Inc. d/b/a  
Coldwell Banker Commercial Atlantic,  
John W. True, and Aaron B. Rowley,

Plaintiffs,

vs.

IBYDIT, LLC, 1537 Ben Sawyer Blvd.,  
LLC, Curt Nesbitt, Richard M. McColl,  
East Islands Real Estate, Inc., and Ashley  
Haynes, Individually and as Agent of East  
Islands Real Estate, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2020CP104076

**DEFENDANTS EAST ISLANDS REAL  
ESTATE, INC., AND ASHLEY HAYNES,  
INDIVIDUALLY AND AS AGENT OF EAST  
ISLANDS REAL ESTATE, INC.'S ANSWER  
TO PLAINTIFFS' AMENDED COMPLAINT**

Defendants East Islands Real Estate, Inc. and Ashley Haynes, individually and as an agent of East Islands Real Estate, Inc. ("Defendants"), by and through undersigned counsel, hereby answer the Amended Complaint of the Plaintiffs as follows:

1. These Defendants deny each and every allegation not specifically admitted herein.
2. These Defendants are without sufficient knowledge and information at this time to form a belief as to the veracity of Paragraphs 1 through 7 of Plaintiffs' Amended Complaint, and therefore, deny the same.
3. These Defendants admit the allegations in Paragraph 8 of Plaintiffs' Amended Complaint.
4. Responding to Paragraph 9 of Plaintiffs' Amended Complaint, these Defendant admit that Haynes is a citizen and resident of Charleston County, and admit that he is a licensed salesperson associated with East Islands and deny the remainder of the allegations in Paragraph 9.

5. These Defendants are without sufficient knowledge and information at this time to form a belief as to the veracity of Paragraph 10 of Plaintiffs' Amended Complaint, and therefore, deny the same.

6. The allegations of Paragraphs 11, and 12 are legal conclusions to which these Defendants are not required to admit nor deny. To the extent the allegations in Paragraphs 11 and 12 may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

7. These Defendants are without sufficient knowledge and information at this time to form a belief as to the veracity of Paragraphs 13 through 30 of Plaintiffs' Amended Complaint, and therefore, deny the same.

8. The allegations in Paragraphs 31 through 34 of Plaintiffs' Amended Complaint purport to recite and/or characterize the contents of a certain document. These Defendants refer the parties and the Court to the referenced document for a true and accurate reading of the same. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

9. These Defendants deny the allegations of Paragraph 35 of Plaintiffs' Amended Complaint.

10. In response to the allegations of Paragraph 36, these Defendants repeat and reallege each and every paragraph set forth herein.

11. The allegations of Paragraphs 37 through 43 are not directed at these Defendants therefore no response is required. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

12. In response to the allegations of Paragraph 44, these Defendants repeat and reallege each and every paragraph set forth herein

13. The allegations of Paragraphs 45 through 51 are not directed at these Defendants therefore no response is required. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

14. In response to the allegations of Paragraph 52 these Defendants repeat and reallege each and every paragraph set forth herein

15. The allegations of Paragraphs 53, through 59 are not directed at these Defendants therefore no response is required. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

16. In response to the allegations of Paragraph 60, these Defendants repeat and reallege each and every paragraph set forth herein

17. The allegations of Paragraphs 61 through 67 are not directed at these Defendants therefore no response is required. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

18. In response to the allegations of Paragraph 68, these Defendants repeat and realleges each and every paragraph set forth herein.

19. The allegations of Paragraph 69 are legal conclusions to which these Defendants are not required to admit or deny. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

20. These Defendants deny the allegations of Paragraphs 70 through 72.

21. In response to the allegations of Paragraph 73, these Defendants repeat and reallege each and every paragraph set forth herein.

22. The allegations of Paragraph 74 are legal conclusions to which these Defendants are not required to admit or deny. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

23. These Defendants deny the allegations of Paragraphs 75 through 81.

24. In response to the allegations of Paragraph 82, these Defendants repeat and reallege each and every paragraph set forth herein.

25. The allegations of Paragraph 83 are legal conclusions to which these Defendants are not required to admit nor deny. To the extent the allegations in these Paragraphs may suggest or imply liability on behalf of these Defendants, those allegations are expressly denied.

26. These Defendants deny the allegations of Paragraphs 84, through 87.

27. In response to the allegations of Paragraph 88, these Defendants repeat and reallege each and every paragraph set forth herein.

28. These Defendants deny the allegations of Paragraphs 89 through 95.

**FURTHER RESPONDING AND AS  
A FIRST AFFIRMATIVE DEFENSE**

29. The allegations of the Plaintiffs' Amended Complaint fail to state grounds upon which relief can be granted.

**FURTHER RESPONDING AND AS  
A SECOND AFFIRMATIVE DEFENSE**

30. Plaintiffs cause of action fails as it is barred by S.C. Code §40-57-370.

**FURTHER RESPONDING AND AS  
A THIRD AFFIRMATIVE DEFENSE**

31. Plaintiffs' claims are barred in whole or in part by the statute of frauds.

**FURTHER RESPONDING AND AS  
A FOURTH AFFIRMATIVE DEFENSE**

32. The damages, if any, sustained by Plaintiffs were caused by a person or persons not associated with these Defendants and not under the control of these Defendants.

**FURTHER RESPONDING AND AS  
A FIFTH AFFIRMATIVE DEFENSE**

33. Plaintiffs' claims for civil conspiracy are barred as it does not plead cognizable special damages.

**FURTHER RESPONDING AND AS  
A SIXTH AFFIRMATIVE DEFENSE**

34. The Plaintiffs' Amended Complaint may be barred in whole or in part by the doctrines of estoppel, waiver, laches or unclean hands.

**FURTHER RESPONDING AND AS  
A SEVENTH AFFIRMATIVE DEFENSE**

35. The injuries and damages sustained by Plaintiffs, if any, may have been due to and caused by and may have been the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of Plaintiffs, and recovery should be barred or reduced in proportion to Plaintiffs' negligence as provided by law.

**FURTHER RESPONDING AND AS  
AN EIGHTH AFFIRMATIVE DEFENSE**

36. To the extent applicable, these Defendants raise all affirmative defenses required by Rule 8(c) SCRCP.

**FURTHER RESPONDING AND AS  
A NINTH AFFIRMATIVE DEFENSE**

37. Any award of punitive damages to the Plaintiffs would violate the constitutional safeguards provided to these Defendants by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the

South Carolina Constitution. The determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded to the Plaintiffs.

**FURTHER RESPONDING AND AS  
A TENTH AFFIRMATIVE DEFENSE**

38. Any claims for punitive damages are limited in amount under the laws of South Carolina, including but not limited to S.C. Code §15-32-530. Further, the Amended Complaint fails to state a claim for such damages under which recovery may be permitted under law.

**FURTHER RESPONDING AND AS  
A ELEVENTH AFFIRMATIVE DEFENSE**

39. To the extent applicable, these Defendants request bifurcation of the trial of this case pursuant to S.C. Code 15-32-520.

**FURTHER RESPONDING AND AS  
A TWELFTH AFFIRMATIVE DEFENSE**

40. Plaintiffs have failed to comply with the pleading requirements of SCRPC Rule 9.

**FURTHER RESPONDING AND AS  
A THIRTEENTH AFFIRMATIVE DEFENSE**

41. These Defendants have not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of the Plaintiffs' allegations. These Defendants intend to act as best they can to inform themselves of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiffs as alleged in the Plaintiffs' Amended Complaint, and give notice of their intent to assert any further affirmative defenses that their information gathering process may indicate is supported by fact and law. These Defendants thus reserve the right to amend their Answer and assert such defenses.

WHEREFORE, having fully answered the allegations of Plaintiffs' Amended Complaint, These Defendants prays that Plaintiffs' Amended Complaint be dismissed with prejudice, for all costs of the

action to be cast upon Plaintiffs, and for such other and further relief as this Court may deem just and proper.

This 17<sup>th</sup> day of November, 2020.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski  
DAVID W. OVERSTREET  
State Bar No.: 16965

STEVE R. KROPSKI  
State Bar No.: 101441

Attorneys for Defendants East Islands Real Estate, Inc., and Ashley Haynes, individually and as an agent of East Islands Real Estate, Inc.

P.O. Box 22528  
Charleston, SC 29413  
843-972-9400

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-10-\_\_\_\_\_

ATLANTIC INTERNATIONAL, INC.  
d/b/a COLDWELL BANKER  
COMMERCIAL ATLANTIC, JOHN W.  
TRUE, and AARON B. ROWLEY

PLAINTIFFS,

V.

IBYDIT, LLC, 1537 BEN SAWYER  
BLVD., LLC, CURT NESBITT, and  
RICHARD M. MCCOLL

**PLAINTIFFS' RESPONSE TO  
COUNTERCLAIMS OF DEFENDANTS  
1537 BEN SAWYER BLVD, LLC AND  
RICHARD MCCOLL**

DEFENDANTS.

The Plaintiffs by and through their undersigned counsel does hereby file their Response to Defendants 1537 Ben Sawyer Blvd., LLC and Richard McColl's Answer and Counterclaim to Plaintiff's Complaint. The Answer and Counterclaim was dated November 2, 2020 and served on the Plaintiff's attorney by electronic means on November 2, 2020.

**FOR A FIRST DEFENSE, BY WAY OF MOTION TO DISMISS**

1. The Plaintiff hereby alleges that the Defendants' Answer and Counterclaim fails to state facts sufficient to state a cause of action and he is therefore entitled to a dismissal of Counterclaims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**FOR A SECOND DEFENSE AND BY WAY OF ANSWER**

2. Each allegation in the Answer and Counterclaim not hereinafter expressly admitted is denied.

3. As to Paragraphs 1-32, which are responses to the initial Complaint, the Plaintiffs are not required to admit or deny. Inasmuch as a response is required, the Plaintiffs deny each and every one of these allegations.
4. Paragraphs 33-40 of the Answer and Counterclaim contain the Defendants' responses and affirmative defenses to Plaintiffs' Complaint. As such, no response is required. To the extent a response may be required, Plaintiffs deny any allegations in Paragraphs 33-40 of the Answer and Counterclaim or the relief sought therein. Plaintiff specifically denies the factual basis underlying each of the Defendants' affirmative defenses and demands strict proof thereof.
5. No response is required as to Paragraph 41.
6. Plaintiffs deny the allegations of Paragraphs 42 through 57.

**WHEREFORE** having answered fully the Defendants 1537 Ben Sawyer Blvd, LLC and Richard McColl's Counterclaims, Plaintiff prays this court enter an Order and Judgment against the Defendants 1537 Ben Sawyer Blvd, LLC and Richard McColl's Counterclaims dismissing the counterclaim against the Plaintiff with prejudice, actual and compensatory damages, and the costs and disbursements of this action and for other and further relief as this Court deems just and proper.

Respectfully Submitted,

**Cobb Dill & Hammett, LLC**

/s/ Stefanie L. Huffer

Stefanie L. Huffer, S.C. Bar No.: 100645

Hal E. Cobb, S.C. Bar No.: 100575

Cobb Dill & Hammett, LLC

222 W. Coleman Blvd.

Mt. Pleasant, SC 29464

(843) 936-6680 (p)

(843) 353-2583 (f)

shuffer@cdhlawfirm.com

**ATTORNEYS FOR THE PLAINTIFFS**

November 30, 2020  
Mt. Pleasant, SC

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) FOR THE NINTH JUDICIAL CIRCUIT  
)

) CASE NO. 2020-CP-10-04076  
)

ATLANTIC INTERNATIONAL, INC.  
d/b/a COLDWELL BANKER  
COMMERCIAL ATLANTIC, JOHN W.  
TRUE, and AARON B. ROWLEY

)  
)  
)  
)  
)

**MOTION TO COMPEL**

PLAINTIFFS,

)  
)

V.

)  
)

IBYDIT, LLC, 1537 BEN SAWYER  
BLVD., LLC, CURT NESBITT, and  
RICHARD M. MCCOLL

)  
)  
)  
)  
)

DEFENDANTS.

)  
)  
)  
)  
)  
)

TO: MARY LEIGH ARNOLD, ESQ., COUNSEL FOR DEFENDANTS 1537 BEN SAWYER  
BLVD, LLC AND RICHARD M. MCCOLL:

PLEASE TAKE NOTICE that the Plaintiffs Atlantic International, Inc. d/b/a Coldwell Banker Commerical Atlantic, John W. True, and Aaron B. Rowley (hereby referred to as "Plaintiffs") by and through its undersigned attorney, will move before the Presiding Judge in the Court of Common Pleas in Charleston County on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court, for an Order requiring Defendants 1537 Ben Sawyer Blvd , LLC and Richard M. McColl (herein referred to as "1537 Defendants") to serve upon Plaintiff's Counsel responses to discovery. In support of this Motion, Plaintiff shows the Court as follows:

FACTS

1. That on or about November 30, 2020 Plaintiffs' first set of Set of Interrogatories and Requests for Production (the "Discovery Requests") were served upon the 1537 Defendants.

2. These Discovery Requests were sent via email. Exhibit A.
3. That on or about November 3, 2020, 1537 Defendants' counsel had filed a Motion to Dismiss.
4. 1537 Defendants' Motion to Dismiss was denied on or about April 22, 2021.
5. On or about June 16, 2021, Plaintiffs' counsel emailed 1537 Defendants' counsel inquiring about the Discovery Requests. Exhibit B.
6. On or about August 8, 2021, Plaintiffs' counsel emailed 1537 Defendants' counsel inquiring about the Discovery Requests. Exhibit C.
7. As of the date of this filing, no Plaintiff has not received a response to the Discovery Requests, making these responses overdue.

#### LAW

8. SCRCP 33(a) states in pertinent part, "[t]he party upon whom interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, . . ." *Emphasis added.*
9. SCRCP 34(b) states in pertinent part, "[t]he party upon whom the request is served shall serve a written response within 30 days after the service of the request. . ." *Emphasis added.*
10. SCRCP 37(a)(2) states in pertinent part, "[i]f a deponent fails to . . . answer an interrogatory submitted under Rule 33, . . . the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request."
11. SCRCP 37(a)(4) states in pertinent part, "[i]f the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct

necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees . . . .”

Based on the aforementioned facts, Plaintiffs respectfully requests of this Court grant it an order requiring Defendant 1537 Ben Sawyer Blvd., LLC and Defendant Richard M. McColl to provide accurate and complete responses to the Plaintiffs’ Discovery Requests as well as reimbursement for the costs and fees incurred as a result of having to file this motion.

RESPECTFULLY SUBMITTED,

/s/ Stefanie L. Huffer

Stefanie L. Huffer, SC Bar #: 100645

Hal E. Cobb, SC Bar # 100575

Cobb Dill & Hammett, LLC

222 West Coleman Boulevard

Mt. Pleasant, SC 29464

Telephone: (843) 936-6680

Facsimile: (843) 353-2583

Email: shuffer@cdhlawfirm.com

ATTORNEY FOR THE PLAINTIFFS

Dated: August 16, 2021  
Mount Pleasant, South Carolina

## EXHIBIT A

8/16/2021

Mail - Stefanie L. Huffer - Outlook

**Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer**

Stefanie L. Huffer &lt;shuffer@cdhlawfirm.com&gt;

Mon 11/30/2020 3:37 PM

To: sammie maryarnoldlaw.com &lt;sammie@maryarnoldlaw.com&gt;

Cc: David Overstreet &lt;david.overstreet@earhartoverstreet.com&gt;; Ellis Lesemann &lt;eri@lalawsc.com&gt;; Michelle Matthews &lt;mam@lalawsc.com&gt;; Steve Kropski &lt;steve.kropski@earhartoverstreet.com&gt;

📎 3 attachments (510 KB)

2020.11.30 - Plaintiff's First Interrogatories and Request for Production to 1537.pdf; 2020.11.30 - Plaintiff's First Interrogatories and Request for Production to McColl.pdf; 2020.11.30 - Cover Letter with ROGS to Seller.pdf;

Ms. Arnold,

Please see the attached discovery requests.

Thanks,  
Stefanie**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)

## EXHIBIT B

8/16/2021

Mail - Stefanie L. Huffer - Outlook

**Fw: Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer**

Stefanie L. Huffer &lt;shuffer@cdhlawfirm.com&gt;

Thu 6/17/2021 3:45 PM

To: sammie maryarnoldlaw.com &lt;sammie@maryarnoldlaw.com&gt;

3 attachments (510 KB)

2020.11.30 - Plaintiff's First Interrogatories and Request for Production to 1537.pdf; 2020.11.30 - Plaintiff's First Interrogatories and Request for Production to McColl.pdf; 2020.11.30 - Cover Letter with ROGS to Seller.pdf;

Sammie,

I could be going crazy but I don't see/can't find your responses to this set of Discovery Requests. Can you forward?

Thanks,  
Stefanie

**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)**From:** Stefanie L. Huffer**Sent:** Monday, November 30, 2020 3:37 PM**To:** sammie maryarnoldlaw.com <sammie@maryarnoldlaw.com>**Cc:** David Overstreet <david.overstreet@earhartoverstreet.com>; Ellis Lesemann <erl@lalawsc.com>; Michelle Matthews <mam@lalawsc.com>; Steve Kropski <steve.kropski@earhartoverstreet.com>**Subject:** Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer

Ms. Arnold,

Please see the attached discovery requests.

Thanks,  
Stefanie

**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)

## EXHIBIT C

8/16/2021

Mail - Stefanie L. Huffer - Outlook

**Re: Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer**

Stefanie L. Huffer &lt;shuffer@cdhlawfirm.com&gt;

Mon 8/9/2021 10:39 AM

To: sammie maryarnoldlaw.com &lt;sammie@maryarnoldlaw.com&gt;

Can we get some discovery responses for this matter and perhaps discuss mediation, please?

Stefanie

**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)**From:** sammie maryarnoldlaw.com <sammie@maryarnoldlaw.com>**Sent:** Thursday, June 17, 2021 4:21 PM**To:** Stefanie L. Huffer <shuffer@cdhlawfirm.com>**Subject:** RE: Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer

[THIS MESSAGE IS FROM AN EXTERNAL SOURCE]

Okay other than thank god it is almost Friday ignore that last email. I got cases confused. I don't believe I've answered those yet. Sammie

Mary Leigh "Sammie" Arnold

Mary Leigh Arnold P.A.

749 Johnnie Dodds Blvd, Suite B

Mount Pleasant, South Carolina 29464

(843) 971-6053

[sammie@maryarnoldlaw.com](mailto:sammie@maryarnoldlaw.com)**CONFIDENTIAL & PRIVILEGED**

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**From:** Stefanie L. Huffer <shuffer@cdhlawfirm.com>**Sent:** Thursday, June 17, 2021 3:46 PM**To:** sammie maryarnoldlaw.com <sammie@maryarnoldlaw.com>**Subject:** Fw: Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer

Sammie,

8/16/2021

Mail - Stefanie L. Huffer - Outlook

I could be going crazy but I don't see/can't find your responses to this set of Discovery Requests. Can you forward?

Thanks,  
Stefanie

**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)

**From:** Stefanie L. Huffer

**Sent:** Monday, November 30, 2020 3:37 PM

**To:** sammie maryarnoldlaw.com <[sammie@maryarnoldlaw.com](mailto:sammie@maryarnoldlaw.com)>

**Cc:** David Overstreet <[david.overstreet@earhartoverstreet.com](mailto:david.overstreet@earhartoverstreet.com)>; Ellis Lesemann <[erl@lalawsc.com](mailto:erl@lalawsc.com)>; Michelle Matthews <[mam@lalawsc.com](mailto:mam@lalawsc.com)>; Steve Kropski <[steve.kropski@earhartoverstreet.com](mailto:steve.kropski@earhartoverstreet.com)>

**Subject:** Plaintiffs' Discovery Requests to McColl and 1537 Ben Sawyer

Ms. Arnold,

Please see the attached discovery requests.

Thanks,  
Stefanie

**Stefanie L. Huffer**

Attorney

**Cobb Dill & Hammett, LLC**

p: 843.936.6680

f: 843.353.2583

a: 222 W Coleman Blvd.

Mount Pleasant, SC 29464

w: [www.cdhlawfirm.com](http://www.cdhlawfirm.com) e: [shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)

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ELECTRONICALLY FILED - 2021 Aug 16 4:00 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004076

8/16/2021

Mail - Stefanie L. Huffer - Outlook

tax law, or (ii) promoting, marketing or recommending to another party any entity, investment, plan, transaction, arrangement, or other tax related matter.

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ELECTRONICALLY FILED - 2021 Aug 16 4:00 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1004076

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS  
CASE No. 2020-CP-10-4076

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

PLAINTIFFS,

v.

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

DEFENDANTS.

**DEFENDANT'S  
NOTICE AND MOTION  
FOR SUMMARY JUDGMENT**

TO: STEFANIE L. HUFFER, ATTORNEY FOR PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant, 1537 Ben Sawyer Blvd, LLC ("Defendant"), by and through its undersigned counsel, hereby moves, pursuant to Rule 56, SCRCF, for an Order granting summary judgment against Plaintiffs on their first, third, fifth, sixth and seventh causes of action and for Defendant on the grounds there are no issues of material fact and Defendant is entitled to judgment as a matter of law.

This motion will be supported by the attached Final Orders from the South Carolina Real Estate Commission (Exhibit A), Memorandum of Agreements signed by Plaintiffs (Exhibit B) and Responses to Requests for Admissions (Exhibit C) and such other pleadings as may be submitted and considered by the Court.

A concise statement of the basis for the motion is as follows:

1. Plaintiffs, real estate agents and brokerage companies, have admitted and a tribunal has held that Plaintiffs failed to obtain a listing agreement from Defendant for the sale of real property.

2. South Carolina law requires a real estate agent to obtain a listing agreement.
3. Plaintiffs' failures are direct violations of South Carolina law which bars Plaintiffs claims.

**PLEASE BE PRESENT TO DEFEND IF SO MINDED.**

**MARY LEIGH ARNOLD, PA**  
S/MARY LEIGH ARNOLD [#419]  
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SAMMIE@MARYARNOLDLAW.COM  
**ATTORNEY FOR DEFENDANT**  
**1537 BEN SAWYER BLVD., LLC**

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

**COURT OF COMMON PLEAS  
CASE No. 2020 CP 10 04076**

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

**PLAINTIFFS,**

**V.**

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

**DEFENDANTS.**

**DEFENDANTS'  
MEMORANDUM IN SUPPORT OF  
MOTION**

Defendant, 1537 Ben Sawyer Blvd LLC ("1537"), by and through its undersigned counsel submits this Memorandum in support of its Motion for Summary Judgment filed on October 5, 2022, pursuant to Rule 56, SCRPC.

**CONCISE SUMMARY OF CASE**

This case involves a real estate company and its agents seeking a recovery based on their illicit acts.

Undisputed is the fact that despite solicitations by Plaintiffs of Defendant in January 2020, no listing agreement was ever entered between Plaintiffs and Defendant, 1537, the owner of real property located at 1537 Ben Sawyer Blvd, Mount Pleasant, South Carolina (the "Property"). Undisputed is the fact that the South Carolina Real Estate Commission has found and concluded that Plaintiffs' conduct, and specifically their failure to obtain a listing agreement with regard to

the Property, by their own admission violates S.C. Code Ann. §40-57-135. (See Exhibits A, to Motion for Summary Judgment).

On September 15, 2020, Plaintiffs filed suit seeking to recover illicit and unearned real estate commissions against Defendant and others under causes of action for breach of contract, quantum meruit, civil conspiracy, fraud and misrepresentation, and promissory estoppel. Recovery by Plaintiffs, as to all defendants, is barred due to their violations of law.

### STANDARD

A trial court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *Gadson v. Hembree*, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005). To determine whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005).

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

### ARGUMENT

# **1. IN PARI DELICTO BARS RECOVERY BY PLAINTIFFS.**

The doctrine of *in pari delicto* is "[t]he principle that a plaintiff who has participated in wrongdoing may not recover damages resulting from the wrongdoing." Black's Law Dictionary 794 (7th ed. 1999); and, *Myatt v. Rhbt Financial Corp.*, 635 S.E.2d 545, 370 S.C. 391 (S.C. App. 2006). The doctrine of *in pari delicto* is grounded in the "general principle that a person cannot base a cause of action upon an illegal or immoral act, transaction or contract." 4 S.C. Jur. *Action* § 21 (1991 & Supp. 2015). "It has been succinctly stated that no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." *Id.*, and *Lauren Proctor & Trans-Union Nat'l Title Ins. Co. v. Whitlark & Whitlark, Inc.*, Op. No. 27580 (S.C. Oct. 7, 2015).

Plaintiffs' have been found by the agency/commission in which they are regulated to have violated the laws that they are required to follow. They have been found to violate the law by failing to adhere to the requirements of S.C. Code Ann. §40-57-135 and failing to obtain the necessary written agreements relating to the possible marketing and sale of the Property. All the causes of action asserted by Plaintiffs are based upon the concept they are entitled to a commission for the sale of the Property for which they had no agreements with the owner, 1537. All of the causes of action are based on the concept Plaintiffs are entitled to recovery although they violated the law. *In pari delicto*, precludes Plaintiffs from any recovery under any cause of action.

# **2. THE UNCLEAN HANDS OF PLAINTIFFS PRECLUDES ANY RECOVERY.**

It seems well established in this State, that Courts will not lend aid to either the enforcement of contracts that are in violation of law, *Grant v. Butt*, 198 S.C. 298, 17 S.E.2d 689 (S.C. 1941), and will refuse to provide a remedy when the party has failed to act equitably in the

transaction. *See, Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 714 S.E. 2d 532 (S.C. 2011). The equitable principle of unclean hands bars Plaintiffs from seeking equitable relief. “A party cannot violate the law and expect not to bear the consequences of its actions.” *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 714 S.E. 2d 532 (S.C. 2011). A Court should not grant an equitable remedy to a party who refused to follow the laws of this state. *Id.* All of Plaintiffs’ causes, including the equitable cause of quantum merit, are barred by Plaintiffs refusal to follow the laws of the State of South Carolina.

### CONCLUSION

It is undisputed Plaintiffs violated South Carolina law which entitles Defendants to summary judgment on all claims asserted by Plaintiffs.

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SAMMIE@MARYARNOLDLAW.COM  
**ATTORNEY FOR DEFENDANTS 1537 AND**  
**McCOLL**

## Exhibit A

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License No. REL.5659**

**Case No.: 2020-562**

**Respondent**

**FINAL ORDER**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022 for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-563 and 2020-564,<sup>1</sup> all three cases were heard together, as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-710(A)(1) and (5) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-563 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 13, 2022

<sup>1</sup> The respondents for Case Nos. 2020-563 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.
4. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with regard to steps he has taken at the brokerage to ensure associated licensees are appropriately supervised and this conduct is not repeated in the future. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.

2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of the following:

- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter.
- b. S.C. Code Ann. § 40-57-135(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.
2. Respondent is publicly reprimanded.
3. Respondent shall take the four-hour BIC Duties and Responsibilities course within six months from the date the Final Order is issued.
4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**

  
**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License No. REL.29284**

**Case No.: 2020-563**

**FINAL ORDER**

**Respondent**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022, for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-564,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and Rowley.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property and presented a buyer for the Subject Property without a representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with respect to the circumstances leading to the lack of an executed representation agreement. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:**

1. The MOA is accepted.

2. Respondent is publicly reprimanded.

3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.

4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**



**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License No. REL.42519**

**Case No.: 2020-564**

**Respondent**

**FINAL ORDER**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022 for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-563,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-563 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-563 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and True.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property without an executed listing agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions. Respondent testified and provided more background on the circumstances surrounding this situation. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed listing agreement as required.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:**

1. The MOA is accepted.

2. Respondent is publicly reprimanded.

3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.

4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**

  
**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

## Exhibit B

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License Number: REL.5659 (BIC)**

**Respondent.**

**Case No.: 2020-562**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate broker-in-charge in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: REO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.

3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

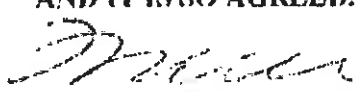
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provisions of the practice act:

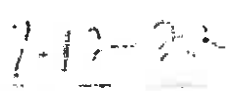
- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter; and
- b. S.C. Code Ann. § 40-57-710(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

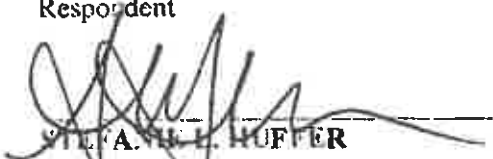
Respondent waives any further conclusions of law with respect to this matter

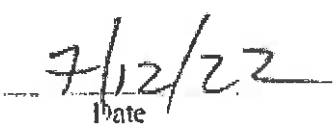
**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.*

**AND IT IS SO AGREED.**

  
**BRENT A. CASE**  
 Respondent

  
 Date

  
**STEPHEN L. HUFFER**  
 Respondent Counsel

  
 Date



**ROWLAND P. ALSTON III**  
Assistant Disciplinary Counsel, SCDLLR

7/13/22  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License Number: REL.29284 (S)**

**Respondent.**

**MEMORANDUM OF AGREEMENT**

**Case No.: 2020-563**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB

Commercial Atlantic International (License No.: R.E.O. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.

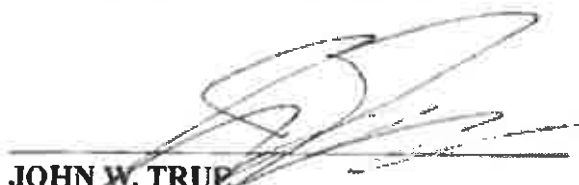
2. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
3. The same broker-in-charge supervised Respondent and Rowley.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property, and presented a buyer for the Subject Property without a representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

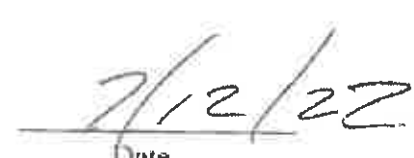
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

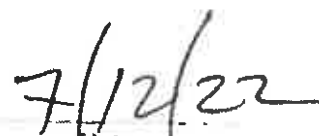
**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that **the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.***

**AND IT IS SO AGREED.**

  
**JOHN W. TRUE**  
RESPONDENT

  
Date

  
STEFANIE L. HUFFER  
Respondent Counsel

  
Date

  
ROWLAND P. ALSTON III  
Assistant Disciplinary Counsel

  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License Number: REL.42519 (S)**

**Respondent.**

**Case No.: 2020-564**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter.

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.

3. The same broker-in-charge supervised Respondent and True.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property, without an executed listing agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

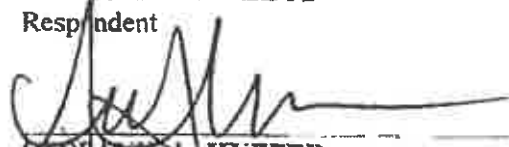
1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed listing agreement as required.

**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.*

**AND IT IS SO AGREED.**

  
**AARON B. ROWLEY**  
 Respondent

5/25/22  
 Date

  
**STEPHANIE L. HUFFER**  
 Respondent Counsel

7/10/22  
 Date

  
**ROWLAND P. ALSTON III**  
 Assistant Disciplinary Counsel, SCDLLR

7/12/22  
 Date

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON**

**COURT OF COMMON PLEAS  
CASE NO. 2020-CP-10-4076**

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

PLAINTIFFS,

v.

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

DEFENDANTS.

**1537 BEN SAWYER BLVD LLC'S  
REQUEST TO ADMIT TO  
PLAINTIFFS**

**TO: PLAINTIFF'S AND THEIR ATTORNEY;**

Defendant, 1537 Ben Sawyer Blvd, LLC (hereinafter "Defendant"), by and through counsel and pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, respectfully requests that the Plaintiffs answer the following requests for admission separately and fully in writing under oath within thirty (30) days of the date of service hereof.

**REQUESTS TO ADMIT**

1. Admit that Plaintiffs do not have a signed Listing Agreement with 1537 Ben Sawyer Blvd LLC to sell real property located at 1537 Ben Sawyer Blvd, Mount Pleasant, South Carolina.
2. Admit that "Coldwel Banker Commercial Atlantic" identified in Exhibit A attached hereto as "Broker" is not a licensed broker with the South Carolina Real Estate Commission.
3. Admit that Atlantic International Inc., is not an entity licensed through the South Carolina Real Estate Commission.
4. Admit that neither John W. True and Aaron B. Rowley are licensed salespersons with Atlantic International Inc.
5. Admit that S.C. Code Anno. §40-57-135(E)(1) provides: "A licensee 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."
6. Admit that S.C. Code Anno. §40-57-370(E) provides: "For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a real estate brokerage firm and its

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

MARY LEIGH ARNOLD, PA  
S/MARY LEIGH ARNOLD [#419]  
 749 JOHNNIE DODDS BLVD., SUITE B  
 MT. PLEASANT, SC 29464  
 PHONE: 843-971-6053  
 SAMMIE@MARYARNOLDLAW.COM

**ATTORNEYS FOR DEFENDANTS**

January 21, 2021

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of Defendant 1537 Ben Sawyer Blvd. LLC's Request to Admit to Plaintiff upon all parties to this matter addressed to counsel of record via email as follows:

Stefanie L. Huffer  
 Cobb Dill & Hammett, LLC  
 222 W. Coleman Blvd.  
 Mount Pleasant, SC 29464  
[shuffer@cdhlawfirm.com](mailto:shuffer@cdhlawfirm.com)  
**Counsel for Plaintiffs**

Steven R. Kropski  
 EARHART OVERSTREET LLC  
 P.O. BOX 22528  
 Charleston, SC 29413  
[Steve@earhartoverstreet.com](mailto:Steve@earhartoverstreet.com)  
**Counsel for East Island Real Estate Inc and Ashley Haynes**

Ellis R. Lesemann  
 Lesemann & Associates, LLC  
 418 King Street, Suite 301  
 Charleston, SC 29403  
[erl@lalawsc.com](mailto:erl@lalawsc.com)  
**Counsel for Defendants IBYDIT, LLC and Curt Nesbitt**

January 21, 2022

s/Mary Leigh Arnold

**NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT**

4. Plaintiffs, by their own admission in connection with public reprimands issued to both Rowley and True and broker in charge Brent Case arising out of this lawsuit, had no contract with the purported parties to the transaction, and thus, cannot maintain a cause of action for Interference with a Contractual Relationship.

This Motion is supported by applicable statutory law and case law, the pleadings and discovery in this case, and any and all affidavits, memoranda and supporting material as may be filed with the Court prior to the hearing of this Motion or presented during oral arguments of the same.

This 23<sup>rd</sup> day of January, 2023.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/Steven R. Kropski  
STEVEN R. KROPSKI  
State Bar No.: 101441  
steve@earhartvoerstreet.com

Attorney for Defendants East Islands Real Estate, Inc., and Ashley Haynes.

P.O. Box 22528  
Charleston, SC 29413  
843-972-9400

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Atlantic International, Inc. d/b/a  
Coldwell Banker Commercial Atlantic,  
John W. True, and Aaron B. Rowley,

Plaintiffs,

vs.

IBYDIT, LLC, 1537 Ben Sawyer  
Blvd., LLC, Curt Nesbitt, Richard M,  
McColl, East Islands Real Estate,  
Inc., and Ashley Haynes, Individually  
and as Agent of East Islands Real  
Estate, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2020-CP-10-04076

**DEFENDANTS EAST ISLANDS REAL  
ESTATE, INC. AND ASHLEY HAYNES'  
MEMORANDUM IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT**

Defendants East Islands Real Estate, Inc. ("East Islands") and Ashley Haynes ("Haynes"), by and through their undersigned counsel, submit this memorandum of law in support of their Motion For Summary Judgment.

**Preliminary Statement**

This matter arises out of a real property transaction in Mt. Pleasant, South Carolina. Plaintiffs are a real estate brokerage and two of its agents who allege they should have received a commission for the sale of the property located at 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina (the "Property"). Defendants, East Islands and Haynes, are the brokerage and agent who handled the ultimate sale and received a 4% commission (\$44,000).

In this action, Plaintiffs allege that they were the "procuring cause" of the transaction, and seek from East Islands and Haynes \$55,000, the amount Plaintiffs allege they would have received.

However, Plaintiffs' claims have no merit as a matter of law, as they had no agency, or any other, relationship with the buyer or seller of the Property.

As a result of their attempt to litigate a commission to which they are not entitled, Plaintiffs were referred to the South Carolina Real Estate Commission. In their own stipulation of facts submitted to the South Carolina Real Estate Commission, Plaintiffs expressly admit that they violated S.C. Code §§ 40-57-135(A)(1) and 40-57-710(A)(5) by claiming to act as realtors for both the buyer and seller without any representation agreement. (Exhibit 1). Simply put, Plaintiffs were not hired by either the buyer or seller and had no realtor-client or customer relationship with either the buyer or seller. Yet, Plaintiffs publicly claimed to be the agents for the buyer and seller in an attempt to obtain an unlawful commission. This attempt led the Plaintiffs to receive public reprimands from the South Carolina Real Estate Commission for their unlawful acts. (Exhibit 2).

As an agency relationship is a prerequisite to a claim for procuring cause, and Plaintiffs expressly acknowledge they had no agency relationship with either the buyer or the seller, Plaintiffs have no viable cause of action.

Moreover, even if a "procuring cause" claim was valid despite no agency relationship with the buyer or seller (which it is not), Plaintiffs have no standing to seek recovery against another realtor who actually performed real estate sales services under a valid written agreement and received a commission upon closing. South Carolina does not recognize a claim for disgorgement of a real estate commission to another realtor from a different brokerage.

With respect to the remaining causes of action alleged against East Islands and Haynes for Civil Conspiracy, Fraud and Misrepresentation, Promissory Estoppel and Interference with Contractual Relationship, those claims fail as Plaintiffs have presented no facts necessary to maintain such claims against East Islands and Haynes.

In sum and substance, East Islands and Haynes performed services as a real estate broker and agent in ratifying a contract and closing the transaction. They were compensated for that work. Plaintiffs do not have standing to disgorge this compensation *and* seek additional damages from East Islands and Haynes simply because East Islands and Haynes performed the standard acts of a realtor in securing a contract and closing a transaction. Accordingly, East Islands and Haynes are entitled to summary judgment.

### **Factual Background**

On or about January 11, 2020, Plaintiff Rowley and the Seller exchanged text messages regarding the sale of the Property to the buyer, Nesbitt. (Am. Compl. ¶13). On January 13, 2020, Rowley allegedly met with the seller at the Property and emailed a listing agreement (i.e., an agency agreement) for the Property. (Am. Compl. ¶¶14-15). Plaintiffs admit that they were never hired by the seller, and in fact, the seller rejected Rowley's attempt to act as seller's agent. (See, Exhibits 1 & 2).

Thereafter, on January 20, 2020, Plaintiffs allege that Rowley told another agent in his office, True, about the Property, who then passed the Property along to Curt Nesbitt. (Am. Compl. ¶¶17-18). Plaintiffs allege that on January 22, 2020, True communicated to Rowley that he believed Nesbitt would purchase the Property for \$1,000,000. (Am. Compl. ¶20-22).

Plaintiffs allege that along with True's communication to Rowley, Rowley then suggested a counteroffer of \$1,100,000. (Am. Compl. ¶23). No response to the "offer" was ever made, and no communication between Rowley and McColl occurred after January 30, 2020. (Am. Compl. ¶30). Likewise, no communication between True and Nesbitt occurred after February 11, 2020. (Am. Compl. ¶29).

Plaintiffs allege that they then discovered that Nesbitt purchased the Property from McColl on July 13, 2020 for \$1,100,000. (Am. Compl. ¶¶33-34). East Islands and Haynes acted as the broker and

agent for the transaction according to a valid written agreement. (Exhibit 3). They received a total of \$44,000.00 in commission for the transaction.

Despite having no agency relationship with the buyer or seller, nor a written agreement demonstrating an agency relationship, this litigation followed.

### **Legal Standard**

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Rule 56(c), SCRCPP; *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 629 S.E.2d 375 (S.C.App. 2006); *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (S.C. 2003); *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (S.C.App. 1993); *Hunt v. Happy Valley Ltd. Partnership*, 315 S.C. 428, 434 S.E.2d 285 (S.C.App. 1993). “When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Moore v. Barony House Restaurant, LLC*, (S.C.App. 2009); *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 661 S.E.2d 791 (S.C. 2008). Summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. *M & M Group, Inc. v. Holmes*, 379 S.C. 468, 666 S.E.2d 262 (S.C.App. 2008).

### **Argument**

#### **A. Plaintiffs’ claim for “procuring cause” fails as a matter of law and cannot be maintained against another realtor.**

Plaintiffs claim that since they allegedly introduced the property to the *buyer*, they are somehow entitled to a commission from both the buyer and seller under a procuring cause theory. This claim fails for multiple reasons.

Under South Carolina law, a “broker is entitled to his commissions, if, *during the continuance of his agency*, he is the efficient or procuring cause of the sale, though the actual

agreement for the sale is made by the owner without the aid of the broker; and the broker will be regarded the procuring cause if his intervention is the foundation upon which the negotiation resulting in the sale is begun.” *Hobbs v. Hudgens*, 223 S.C. 88, 94, 74 S.E.2d 425, 427 (1953)(quoting *Goldsmith v. Coxe*, 80 S.C. 341, 61 S.E. 555, 557 (1908).

As an initial matter, to the extent a claim for procuring cause did exist in this case (which it does not), there is no legal basis to assert such a claim against a separate real estate broker. A claim for procuring cause is necessarily brought *only* against the parties to the transaction, i.e. those who would be paying the commission. Based upon this fact alone, the summary judgment should be granted as to East Islands and Haynes.

Moreover, The *Hobbs* court explained the rationale for “procuring cause” as “to prevent an owner from taking advantage of the efforts of a broker, *whom he has engaged as selling agent*, and yet defeat his right to commissions by dealing directly with the prospective purchaser produced by him. *Hobbs*, 80 S.C. at 94, 74 S.E.2d at 427.

Accordingly, in order for a broker to claim to be a “procuring cause,” that broker must already have an agency relationship with the owner. *Id.*

Moreover, the *Hobbs* court held that actions by an owner to cut a valid agent out of a transaction must occur before the broker’s agency terminates. *Id.* (“It is conceded that whatever agency was created by the request that plaintiff contact Graham had terminated prior to February 6, 1950, the date of Kimbrell's telephone call. Therefore, any inference from the allegations of the complaint that the defendant Hudgens employed plaintiff to sell the property or obtain a purchaser goes out of the case.”).

Here, it is indisputable as a matter of law that an agency relationship never existed between the seller and Plaintiffs or the buyer and Plaintiffs, as there was no written agency agreement

signed as required by S.C. Code §40-57-370. Plaintiffs admitted as much to the South Carolina Real Estate Commission, and the South Carolina Real Estate Commission held that no such agreement was in place. (See, Exhibits 1 & 2). Not only was there no activity engaged in by the seller prior to termination of the broker's agency (as required by *Hobbs*), but there was never any agency agreement at all.

In the absence of a valid agency between the seller or buyer and Plaintiffs, Plaintiffs have no ability to claim to be the procuring cause of the transaction.

Lastly, assuming, *arguendo*, that a procuring cause of action would be viable against the buyer or seller, the passage of time between Plaintiffs' last communications with the buyer and seller and the consummation of the transaction defeats the procuring cause claim.

Plaintiffs allege that they attempted to consummate a transaction (January 22, 2020 (Am. Compl. ¶22). The Property actually closed, July 13, 2020 (A. Compl. ¶34). It is well established that a significant passage of time precludes a claim of procuring cause. *Stone v. Moloney-Bennett Belting Co.*, 159 Ill.App. 366, 370 (Ill.App.Ct.1911) (holding that even though the broker first showed the property to the ultimate lessee, the broker's complete inactivity for four months demonstrated abandonment and the ultimate transaction resulted from entirely new and independent negotiations); *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 563 A.2d 31, 38-39 (N.J.1989) ("[A] broker does not earn his commission by the mere introduction of a buyer to the owner, but he must be the efficient procuring cause of the contract between seller and purchaser." (internal quotation marks and citations omitted)); *Cantell v. Hill Holliday Connors Cosmopolos, Inc.*, 772 N.E.2d 1078, 1083 (Mass.App.Ct.2002) ("Mere introduction of a prospect to a property does not earn a broker's commission.").

Accordingly, as a matter of law, Plaintiffs cannot assert a procuring cause claim against East Islands and Haynes.

**B. Plaintiffs do not allege or identify any facts supporting a claim for civil conspiracy.**

Under South Carolina law, "a plaintiff asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct.App.1986).

Here, Plaintiffs cite no evidence or facts suggesting any attempt by East Islands or Haynes to injure the Plaintiffs, nor any facts suggesting that East Islands or Haynes committed any unlawful act. Indeed, the evidence presented in this case demonstrates no action by East Islands or Haynes beyond simply carrying out their duties as real estate professionals. These facts do not support a claim for civil conspiracy.

**C. Plaintiff's Fraud, Misrepresentation and Promissory Estoppel claims fail as there was never any communication between Plaintiffs and East Islands or Haynes.**

To establish fraud, a plaintiff must prove the following elements by clear, cogent, and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Moseley v. All Things*

*Possible, Inc.*, 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010). "Failure to prove any element of fraud is fatal to the action." *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002).

Similar to Fraud is Negligent Misrepresentation is predicated upon the transmission of a negligently made false statement. *See Armstrong v. Collins*, 366 S.C. 204, 220, 621 S.E.2d 368, 376 (Ct. App. 2005); *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 407, 581 S.E.2d 161, 166 (2003); *Robertson v. First Union Nat'l Bank*, 350 S.C. 339, 349, 565 S.E.2d 309, 315 (Ct. App. 2002); *Brown v. Stewart*, 348 S.C. 33, 42, 557 S.E.2d 676, 680-81 (Ct. App. 2001); *West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000).

Finally, the party asserting promissory estoppel must demonstrate: (1) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee's reliance; and (4) injury sustained in relying on the promise because of the promisor's inconsistent disposition. *Higgins Constr. Co. v. S. Bell Tel. & Tel. Co.*, 276 S.C. 663, 665-66, 281 S.E.2d 469, 470 (1981).

Here, there is no evidence of any communication between Haynes and True or Rowland with respect to the Property or the transaction. Thus, there is no evidence of any false statement made by Haynes to True or Rowland upon which they relied. Plaintiffs confirmed this in their responses to Interrogatories. (Exhibit 4).

Likewise, there is no evidence of a promise made by Haynes to True or Rowland upon which they relied. Thus, the Fraud, Negligent Misrepresentation, and Promissory Estoppel claims must fail against East Islands and Haynes. (See, Exhibit 4).

Accordingly, summary judgment should be granted on Plaintiffs' Fraud, Misrepresentation, and Promissory Estoppel claims.

**D. Plaintiffs do not identify any contract upon which Haynes interfered.**

To succeed on a claim of tortious interference with contract, a plaintiff must prove five elements: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012).

As discussed in Section A., the failure to obtain a written agency agreement with the buyer or Seller renders Plaintiffs’ claims that a valid contract between Plaintiffs and the buyer or seller existed for the sale of the Property wholly defective. Thus, without a valid contract, no contract was breached. *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007) (“Where there is no breach of the contract, there can be no recovery [for interference with a contractual relationship].”).

Furthermore, while the allegations in Plaintiffs “interference with a contractual relationship” cause of action allege no more than conclusory and speculative statements that “East Islands and Haynes knew or should have known of the contracts above.” (Am. Compl. ¶92), Plaintiffs conceded that there is no evidence of knowledge by East Islands and Haynes of an alleged contract between buyer, seller and Plaintiffs. (Exhibit 4). Of course, there could be no knowledge of a contract, as it is undisputed and admitted by Plaintiffs that no contract existed between Plaintiffs and the buyer or Plaintiffs and the seller.

Without evidence of a contract, and knowledge of a contract by East Islands or Haynes of a contract between Plaintiffs and the buyer and the seller, the cause of action for intentional interference with a contractual relationship cannot be maintained. Accordingly, summary judgment should be granted as to the Intentional Interference with Contract claim.

**Conclusion**

For the reasons stated herein, summary judgment should be entered in favor of East Islands Real Estate, Inc. and Ashley Haynes on all of Plaintiffs' causes of action.

This 26th day of May, 2023.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/ Steven R. Kropski

STEVEN R. KROPSKI  
State Bar No.: 101441

*Attorney for Defendants East Islands Real  
Estate, Inc. and Ashley Haynes.*

P.O. Box 22528  
Charleston, SC 29413  
843-972-9400

# Exhibit 1

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License Number: REL.5659 (BIC)**

**Respondent.**

**Case No.: 2020-562**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate broker-in-charge in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: REO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.

3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

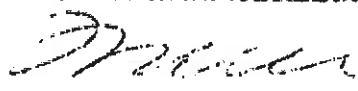
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provisions of the practice act:

- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter; and
- b. S.C. Code Ann. § 40-57-710(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

Respondent waives any further conclusions of law with respect to this matter

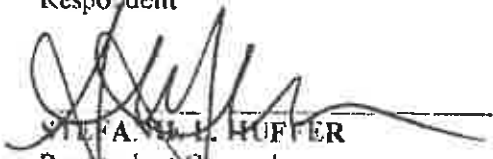
**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.*

**AND IT IS SO AGREED.**

  
BRENT A. CASE

Respondent

  
Date

  
STEPHEN L. HUFFER

Respondent Counsel

  
Date



**ROWLAND P. ALSTON III**  
Assistant Disciplinary Counsel, SCDLLR

7/13/22  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License Number: REL.29284 (S)**

**Respondent.**

**Case No.: 2020-563**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB

Commercial Atlantic International (License No.: R.E.O. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.

2. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
3. The same broker-in-charge supervised Respondent and Rowley.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property, and presented a buyer for the Subject Property without a representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

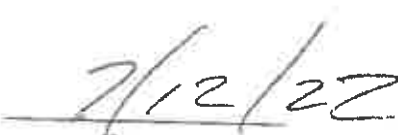
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that **the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 et seq. and § 40-1-10 et seq.**

**AND IT IS SO AGREED.**

  
JOHN W. TRUE  
RESPONDENT

  
Date

  
**STEFANIE L. HUFFER**  
Respondent Counsel

7/12/22  
Date

  
**ROWLAND P. ALSTON III**  
Assistant Disciplinary Counsel

7/12/22  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License Number: REL.42519 (S)**

**Respondent.**

**Case No.: 2020-564**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter.

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.

3. The same broker-in-charge supervised Respondent and True.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property, without an executed listing agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed listing agreement as required.

**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.*

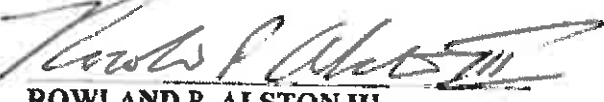
**AND IT IS SO AGREED.**

  
**AARON B. ROWLEY**  
 Respondent

5/25/22  
 Date

  
**STEPHANIE L. HUFFER**  
 Respondent Counsel

7/10/22  
 Date

  
**ROWLAND P. ALSTON III**  
 Assistant Disciplinary Counsel, SCDLLR

7/12/22  
 Date

# Exhibit 2

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License No. REL.5659**

**Case No.: 2020-562**

**FINAL ORDER**

**Respondent**

This matter came before the South Carolina Real Estate Commission (“Commission”) on July 13, 2022 for a hearing to consider the Memorandum of Agreement (“MOA”) signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-563 and 2020-564,<sup>1</sup> all three cases were heard together, as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-710(A)(1) and (5) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-563 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State’s Exhibit 1

MOA dated July 13, 2022

<sup>1</sup> The respondents for Case Nos. 2020-563 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission’s consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.
4. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with regard to steps he has taken at the brokerage to ensure associated licensees are appropriately supervised and this conduct is not repeated in the future. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.

2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of the following:

- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter.
- b. S.C. Code Ann. § 40-57-135(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.
2. Respondent is publicly reprimanded.
3. Respondent shall take the four-hour BIC Duties and Responsibilities course within six months from the date the Final Order is issued.
4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**

  
**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License No. REL.29284**

**Case No.: 2020-563**

**FINAL ORDER**

**Respondent**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022, for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-564,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and Rowley.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property and presented a buyer for the Subject Property without a representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with respect to the circumstances leading to the lack of an executed representation agreement. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.

2. Respondent is publicly reprimanded.

3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.

4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**



**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License No. REL.42519**

**Case No.: 2020-564**

**Respondent**

**FINAL ORDER**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022 for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-563,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-563 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-563 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and True.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property without an executed listing agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions. Respondent testified and provided more background on the circumstances surrounding this situation. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed listing agreement as required.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.
2. Respondent is publicly reprimanded.
3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.
4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**



**WILLIAM ANDERSON "Andy" LEE**  
Chair

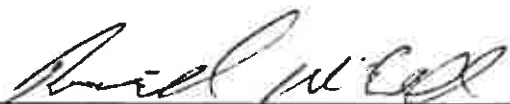
July 18, 2022

# Exhibit 3

ONE TIME AGREEMENT TO SHOW

The undersigned owner of 1537 Ben Sawyer Blvd., Mt. Pleasant, SC, 29464, hereby gives Ashley Haynes with East Islands Real Estate, Inc. a ONE TIME AGREEMENT TO SHOW the property located at 1537 Ben Sawyer Blvd., Mt. Pleasant, SC 29464.

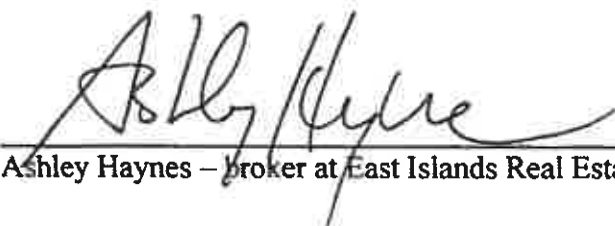
If the prospective buyer, Curtis B. Nesbitt (or an entity including the prospective buyer) should purchase 1537 Ben Sawyer Blvd. from the owner, 1537 Ben Sawyer Blvd., LLC, then the owner hereby agrees to pay East Islands Real Estate, Inc. a 4% commission at closing based on the sales price.



Member of 1537 Ben Sawyer Blvd, LLC

3/2/20

Date



Ashley Haynes – broker at East Islands Real Estate

3/2/2020

Date

# Exhibit 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-10-04076

ATLANTIC INTERNATIONAL, INC.  
d/b/a COLDWELL BANKER  
COMMERCIAL ATLANTIC, JOHN W.  
TRUE, and AARON B. ROWLEY

PLAINTIFFS,

V.

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

**PLAINTIFF'S RESPONSES TO  
DEFENDANTS EAST ISLANDS REAL  
ESTATE, INC AND ASHLEY HAYNES,  
INDIVIDUALLY AND AS AGENT OF  
EAST ISLAND'S REAL ESTATE INC.'S  
FIRST SET OF INTERROGATORIES**

DEFENDANTS.

TO: STEVEN R. KROPSKI, ESQ. AND DAVID W. OVERSTREET, ESQ., ATTORNEYS FOR  
THE DEFENDANTS EAST ISLAND REAL ESTATE, INC. AND ASHLEY HAYNES,  
INDIVIDUALLY AND AS AGENT OF EAST ISLANDS REAL ESTATE, INC. (hereinafter  
referred to as "East Island Defendants"):

The Plaintiffs, Atlantic International Inc., d/b/a Coldwell Banker Commercial Atlantic, John W.  
True, and Aaron Rowley (hereinafter collectively referred to as the "Plaintiffs"), by and through  
its undersigned counsel, pursuant to Rule 33 of the *South Carolina Rules of Civil Procedure*,  
herewith answer East Island Defendants' first set of Interrogatories:

### INTRODUCTION

Plaintiffs' have not completed the investigation of the facts, have not completed discovery,  
and have not completed preparation for trial. These responses are based only upon such  
information and documents, which are presently available to and specifically known to Plaintiffs,  
and disclose only those contentions, which presently occur to Plaintiffs and their attorney. Further

investigation, discovery, research, and analysis may reveal additional facts and documents, and may supply additional contentions. Plaintiffs reserve the right to make contentions and submit evidence at trial in this action, which supersedes the contentions or evidence set forth in these responses. The following responses are given without prejudice to Plaintiffs; rights to produce or rely upon facts or documents which it may later discover or recall, or contentions, which it may later formulate.

### **GENERAL OBJECTIONS**

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories seek information regarding matters about which East Island Defendants already have knowledge.

Plaintiffs object to the East Island Defendants' first set of Interrogatories to the extent the interrogatories seek to discover attorney work product, including discovery of conclusions, opinions, and/or legal theories of attorney for Plaintiffs which is not discoverable under *South Carolina Rule of Civil Procedure 26(b)(3)*.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories seek information protected by attorney-client privilege, or any other applicable privilege. No responses by the Plaintiffs are intended to or shall waive such applicable privilege.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories seek information that is equally available to East Island Defendants and the burden on Plaintiffs to obtain the requested information is no greater than the burden on East Island Defendants.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories do not, on their face, restrict themselves either to an identifiable time or reasonable, rationally based time.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories are oppressive and were designed to place an unreasonable burden on Plaintiffs.

Plaintiffs object to East Island Defendants' first set of Interrogatories where the burden is not commensurate with the value of the information sought and outweighs the likely benefit of the proposed discovery.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories are overly broad, unduly burdensome, vague, cumulative, duplicative, expensive to respond, and to the extent they seek information that is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs object to East Island Defendants' first set of Interrogatories to the extent the interrogatories seek information that is not relevant to the subject matter of this litigation and are not reasonably calculated to lead to discovery of admissible evidence.

Plaintiffs object to East Island Defendants' first set of Interrogatories insofar as East Island Defendants attempt to deem them continuing or seeks to impose a duty to supplement these responses, except as required by law. Plaintiffs reserve the right to not supplement these responses except as required by law.

Each of the general objections applies to each and every discovery request. Any repetition of these general objections in any of the following specific objections and responses is for emphasis only and is not to be construed as a waiver of the objection for any other discovery request.

1. Give the names and address of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

**Response:**

| <b>Witness</b>       | <b>Address</b>                                                         | <b>Statement Status</b>                         |
|----------------------|------------------------------------------------------------------------|-------------------------------------------------|
| <b>Brent Case</b>    | <b>3506 West Montague Ave., Ste 200<br/>North Charleston, SC 29418</b> | <b>No statement has been taken at this time</b> |
| <b>Aaron Rowley</b>  | <b>3506 West Montague Ave., Ste 200<br/>North Charleston, SC 29418</b> | <b>No statement has been taken at this time</b> |
| <b>John True</b>     | <b>164 Market St., Ste 177<br/>Charleston, SC 29401</b>                | <b>No statement has been taken at this time</b> |
| <b>Curt Nesbitt</b>  | <b>3312 Jasper Blvd.<br/>Sullivans Island, SC 29482</b>                | <b>No statement has been taken at this time</b> |
| <b>Rick McColl</b>   | <b>1435 Heather Drive<br/>Mt. Pleasant, SC 29464</b>                   | <b>No statement has been taken at this time</b> |
| <b>Matt Walsh</b>    | <b>Unknown address</b>                                                 | <b>No statement has been taken at this time</b> |
| <b>Ashley Haynes</b> | <b>2720 Goldbug Ave.<br/>Sullivans Island, SC 29483</b>                | <b>No statement has been taken at this time</b> |

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set for either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

**Response: See Response to Interrogatory #1.**

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

**Response:**

**- Documents Produced by Plaintiff True:**

- **Text Messages between Plaintiff True and Matt Walsh**
- **Text Messages between Plaintiff True and Kurt Nesbitt**

- **Emails between Plaintiff True and Kurt Nesbitt, Matt Walsh and Aaron Rowley.**
- **Documents Produced by Aaron Rowley**
  - **Text Messages between Plaintiff Rowley and Rick McColl.**
  - **Emails between Plaintiff Rowley and**
- 4. State whether Plaintiffs have ever been involved in any other legal action (criminal or civil), either as a defendant or as a plaintiff?  
**Response: Plaintiff objects to this interrogatory as the information would be public record obtainable by East Islands and is irrelevant to this matter.**
- 5. Set forth an itemized statement of all damages, exclusive of pain and suffering claimed to have been sustained by the Plaintiffs.  
**Response:**
  - **Loss of Commission: \$55,000.00**
  - **Pre and Post judgment interest to be calculated based on statutory guidelines.**
  -
- 6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.  
**Response: No experts have been retained or consulted at this time.**
- 7. Identify each communication between Plaintiffs, or any person acting on their behalf, and East Islands Real Estate or Ashley Haynes. For each communication, state (a) the date of the communication; (b) the medium used to make the communication; (c) each participant in the communication; and (d) a detailed recitation of subject matter and content of the communication.

**Response: See response to Interrogatory #3 and responses to East Island's request for production.**

8. Identify with specificity all special damages you allege to have incurred as a result of an allege civil conspiracy as alleged in Paragraphs 68-72 of the Amended Complaint.

**Response: Special damages include damage to reputation, decreased status within Coldwell Banker, and lost opportunity.**

9. Identify with specificity the alleged false representations made to you by Haynes or East Islands as alleged in Paragraphs 73-81 of the Amended Complaint. If any such representation exists, state the date, place, and medium of such statement, and identify the specific individual who made the alleged statement and to whom.

**Response: Real Estate agents represent to one another by the Realtor® Standards of Practice that they will make reasonable efforts to determine whether the prospect is subject to a current, valid, exclusive agreement to provide the same type of real estate service.**

10. Identify the alleged "promise" made by Haynes or East Islands as alleged in Paragraphs 82-87 of the Amended Complaint. If any such promise exists, state the date, place, and medium that such promise was made, and identify the specific individual who made the alleged statement and to whom.

**Response: Real Estate agents represent to one another by the Realtor® Standards of Practice that they will make reasonable efforts to determine whether the prospect is subject to a current, valid, exclusive agreement to provide the same type of real estate service.**

11. Identify the specific detail each and every fact of evidentiary matter supporting your allegation that an agency agreement existed between you and the Sellers. In particular identify each and every document that supports your allegation that a legally permissible agency agreement was entered into by you and the Sellers.

**Response: A listing agreement was provided to the Seller(s). Seller(s) proceeded using the services of the agent the listing agreement was accepted by the conduct of the Seller.**

12. Identify in specific detail, including but not limited to identification of each and every document as alleged in or communication, the factual and evidentiary support for your allegation that Haynes and East Islands had knowledge of any agency agreement between you and the Sellers as alleged in Paragraphs 88-89 of the Amended Complaint.

**Response: No documents exist at this time, however, Plaintiffs' may supplement when discovery responses are provided by Defendants.**

COBB DILL & HAMMETT, LLC

/s/Stefanie L. Huffer

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Stefanie L. Huffer (SC Bar No.: 100645)  
shuffer@cdhlawfirm.com  
222 W. Coleman Blvd.  
Mt. Pleasant, SC 29464  
(843)936-2302

*Attorney for the Plaintiffs*

January 4, 2021  
Mt. Pleasant, SC

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-10-4076

VS.

**DEFENDANTS IBYDIT, LLC AND CURT  
NESBITT'S MOTION  
FOR SUMMARY JUDGMENT**

**Defendants.**

Through this case, Plaintiffs brazenly seek payment of a commission relating to a transaction for which they not only do not have a written commission agreement but also were publicly reprimanded by the South Carolina Real Estate Commission due to their misconduct. Under such circumstances, a commission is clearly not owed. In order to bring an end to this improper proceeding, Defendants IBYDIT, LLC (“IBYDIT”), and its principal, and Curt Nesbitt (“Nesbitt”) (collectively, the “Defendants”) move for an order granting Summary Judgment against Plaintiffs Atlantic International, Inc., d/b/a Coldwell Banker Commercial Atlantic (“CBC”), John W. True (“True”), and Aaron B. Rowley (“Rowley”) on all claims pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. There are no issues of material fact and Defendants are entitled to judgment as a matter of law, as confirmed by the following grounds for summary judgment to be granted:

1. It is undisputed that there was no written listing agreement between Plaintiffs and the property owner and no agency agreement between Plaintiffs and the property buyer. In fact, the record indicates that True never presented a buyer's representation agreement to the buyer or even mentioned entering into any such agreement. Plaintiffs and the buyer never discussed any terms that would indicate an agreement relating to a scope of services, compensation, or expiration of an agreement. On this basis, it is not possible to show that an agency relationship existed.

2. Plaintiffs mishandled the circumstances to such an extent that they received a public reprimand. In July 2022, the South Carolina Real Estate Commission (the "Commission") of the South Carolina Department of Labor, Licensing and Regulation (the "LLR") determined that:

- (i) Plaintiffs Rowley and True violated S.C. Code § 40-57-135(I)(2) requiring a real estate licensee to have written agreements with specific provisions in place for any representation of a seller or buyer;
- (ii) CBC's broker-in-charge, Brent A. Case, violated S.C. Code § 40-57-135(A)(1) and (5) for failing to adequately supervise Rowley and True; and
- (iii) Case also "demonstrated incompetency in a manner as to endanger the interest of the public.

The Commission issued public reprimand to each of the individual Plaintiffs for their misconduct.

3. Having not secured a written listing agreement or buyer's representation agreement, having failed to define any terms of any agency relationship, and having been reprimanded for committing misconduct, Plaintiffs cannot demonstrate the evidence necessary to be entitled to commission as the "procuring cause" of the sale.

4. Under South Carolina law, a buyer's representation agreement must be in writing and must clearly state, if applicable, that it is either an "exclusive agency" or "exclusive right to represent." *See* S.C. Code § 40-57-135(I)(2). In addition, Plaintiffs fail to create a genuine issue of material fact that their efforts were the cause of a series of unbroken, continuous events

culminating in the sale of the Property, as is required in order to claim that Plaintiffs were the “procuring cause” of the sale. During the 5-month period prior to the closing of the Property, True did nothing to put Defendants on notice that he considered himself to be a broker in the transaction.

5. Plaintiffs’ claims for breach of contract and breach of the implied covenant of good faith and fair dealing fail as a matter of law because Plaintiffs did not enter into a written agreement with Defendants, and additionally, Plaintiffs cannot demonstrate that there was a meeting of the minds as to any essential terms of a contract. Specifically, there was no agreement as to minds as to Plaintiffs’ duties or services to be performed on behalf of Defendants, the duration of the agency relationship, the date on which the alleged agreement would expire, or how and when compensation would be earned. In short, there was no meeting of the minds of the parties as to any of the essential and material terms to a real estate transaction. Furthermore, Defendants are entitled to summary judgment on the claim for breach of good faith and fair dealing because this claim cannot be pursued as a stand-alone cause of action independent from a breach of contract claim and is precluded when it is Plaintiffs themselves that have been publicly reprimanded for misconduct.

6. Plaintiffs fail to carry their burden to establish a genuine issue of material fact as to the elements of quasi contract/quantum meruit against IBYDIT or Nesbitt, who have not retained any unjust “benefit.” In connection with the closing of the property, a real estate commission payment was paid to Defendant East Islands Real Estate, Inc. in the amount of \$44,000.00. Defendants are not required to pay commission twice for the same transaction, particularly when the parties claiming a second commission violated the law and received public censure from the relevant licensing agency. Additionally, Plaintiffs cannot establish that, under the circumstances,

Defendants were reasonably notified that Plaintiffs expected to be paid a commission for their unlawful and unsuccessful involvement in the transaction.

7. Defendants are entitled to summary judgment as to Plaintiffs' claim for fraud and misrepresentation because Plaintiffs fail to present a question of fact as to multiple required elements of this claim, including but not limited to the failure to demonstrate any misrepresentation as to a presently existing fact and that Plaintiffs would have no right to rely upon statements made by IBYDIT or Nesbitt based on Plaintiffs' unlawful conduct, among other things. The damages alleged by Plaintiff stem solely from their own misconduct, the absence of a legal relationship with the seller or the buyer, and failure to comply with applicable law.

8. There is no genuine issue of material fact as to Plaintiffs' civil conspiracy claim for failure to present a question of fact as to multiple required elements of this claim, as well as the duplicative nature of the claim. There is no evidence to create a question of fact that two or more defendants joined together for the specific purpose of injuring Plaintiffs, nor is there any evidence as to special damages. Although it is alleged that Plaintiffs suffered damage to reputation, this damage was self-inflicted, as opposed to the intended result of a conspiracy.

9. Finally, Plaintiffs fail to create a genuine issue of material fact regarding their claim for promissory estoppel due to the failure to create a question of fact as to each element of this claim. Defendants did not agree as to True's duties or services to be performed, the duration of the agency relationship, the date on which the agreement would expire, or how and when compensation would be earned. IBYDIT and Nesbit did not make any unambiguous promise to Plaintiffs, who therefore are unable to show a question of fact that they engaged in "reasonable reliance" upon an unambiguous promise.

For these reasons, Defendants IBYDIT, LLC and Curt Nesbitt are entitled to summary judgment on all claims alleged by Plaintiffs. Prior to the hearing of this motion, IBYDIT and Nesbitt will file a memorandum, an affidavit of Curtis B. Nesbitt, and exhibits in support of this motion.

Respectfully submitted,

By: s/Ellis R. Lesemann

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*Attorneys for Defendants IBYDIT, LLC and Curt Nesbitt*

May 19, 2023  
Charleston, South Carolina

|                                       |   |                                        |
|---------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS           |
|                                       | ) | FOR THE NINTH JUDICIAL CIRCUIT         |
| COUNTY OF CHARLESTON                  | ) |                                        |
| ATLANTIC INTERNATIONAL, INC. d/b/a    | ) |                                        |
| COLDWELL BANKER COMMERCIAL            | ) | Case No.: 2020-CP-10-4076              |
| ATLANTIC, JOHN W. TRUE, and AARON     | ) |                                        |
| B. ROWLEY,                            | ) |                                        |
|                                       | ) |                                        |
| Plaintiffs,                           | ) | <b>DEFENDANTS IBYDIT, LLC AND CURT</b> |
|                                       | ) | <b>NESBITT'S MEMORANDUM IN</b>         |
| vs.                                   | ) | <b>SUPPORT OF MOTION</b>               |
|                                       | ) | <b>FOR SUMMARY JUDGMENT</b>            |
| IBYDIT, LLC, 1537 BEN SAWYER BLVD.,   | ) |                                        |
| LLC, CURT NESBITT, RICHARD M.         | ) |                                        |
| MCCOLL, EAST ISLANDS REAL ESTATE,     | ) |                                        |
| INC., AND ASHLEY HAYNES, individually | ) |                                        |
| and as an agent of EAST ISLANDS REAL  | ) |                                        |
| ESTATE, INC.,                         | ) |                                        |
|                                       | ) |                                        |
| Defendants.                           | ) |                                        |

Defendants IBYDIT, LLC ("IBYDIT") and Curt Nesbitt ("Nesbitt") (collectively, "Defendants") hereby submit this this Memorandum in Support of Defendants' Motion for Summary Judgment along with the Declaration of Curtis B. Nesbitt<sup>1</sup> attached hereto as Exhibit A and the other exhibits referenced herein.

### **FACTUAL BACKGROUND**

This action arises out of Defendants' purchase of property located at 1537 Ben Sawyer Blvd., Mount Pleasant, South Carolina (the "Property") in July 2020. At the time of the negotiations for and purchase of the Property, Plaintiffs John W. True ("True"), and Aaron B. Rowley ("Rowley") were licensed real estate agents in South Carolina and licensed with Plaintiff

<sup>1</sup> The Declaration of Curtis B. Nesbitt is being submitted temporarily in lieu of the Affidavit of Curtis B. Nesbitt. Mr. Nesbitt's Affidavit was not delivered to the under-signed counsel by the deadline for filing supporting memoranda in advance of the May 30, 2023 hearing. Defendants will supplement this Memorandum with the Affidavit of Curtis B. Nesbitt upon receipt of same.

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON )

Atlantic International, Inc., D/B/A  
Coldwell Banker Commercial  
Atlantic, John W. True and Aaron B.  
Rowley,

Case No.: 2020-CP-10-04076

Plaintiff,

vs. )

**Plaintiff's Memorandum in Opposition to  
Defendant's 1537 Ben Sawyer Motion for  
Summary Judgment**IBYDIT, LLC, 1537 Ben Sawyer  
Blvd., LLC, Curt Nesbitt, Richard M.  
McColl, East Islands Real Estate, Inc.,  
And Ashley Haynes, Individually and as  
Agent of East Island Real Estate, Inc.,

Defendants.

Plaintiff Atlantic International, Inc., D/B/A Coldwell Banker Commercial Atlantic, John W. True and Aaron B. Rowley ("Plaintiffs"), by and through their undersigned counsel hereby submit this memorandum of law in opposition to Defendant's 1537 Ben Sawyer Blvd., LLC ("Defendant") Motion for Summary Judgment.

**PROCEDURAL HISTORY**

The Plaintiffs filed their Summons and Complaint on September 15, 2020. Plaintiffs then filed their Amended Summons and Complaint on October 5, 2020. Curt Nesbitt accepted the service of Amended Summons and Complaint on behalf of the Defendant IBYDIT, LLC on October 13, 2020. Paul Boehm accepted the service of Amended Summons and Complaint on behalf of the Defendant East Islands Real Estate, Inc. on October 20, 2020. Ashley Haynes accepted the service of Amended Summons and Complaint on October 26, 2020.

Defendant 1537 Ben Sawyer Blvd, LLC and Richard M. McColl filed Motion to Dismiss on November 2, 2020. Defendant 1537 Ben Sawyer Blvd, LLC and Richard M. McColl then filed Answer and Counterclaims (JTD) on Plaintiffs' Amended Complaint on November 2, 2020.

Defendant IBYDIT, LLC and Curt Nesbitt filed the Answer on Plaintiffs' Amended Complaint on November 13, 2020.

Defendant East Islands Real Estate, Inc. and Ashley Haynes, individually and as Agent of East Islands Real Estate, Inc. filed a Motion to Dismiss on November 17, 2020. Defendant East Islands Real Estate, Inc. and Ashley Haynes, individually and as Agent of East Islands Real Estate, Inc. then filed an Answer on Plaintiffs' Amended Complaint on November 17, 2020.

Plaintiffs filed an Answer to Counterclaims of Defendants 1537 Ben Sawyer Blvd, LLC and Richard McColl on November 30, 2020.

For the week of February 1, 2021, the case was on Motions Roster Publication.

Defendants East Islands Real Estate, Inc. and Ashley Haynes filed a Memorandum in support of Motion to Dismiss on January 29, 2021. Plaintiffs filed a Memorandum in Opposition of Defendants 1537 Ben Sawyer Blvd., LLC and Richard M. McColl's Motion to Dismiss on January 29, 2021. Plaintiffs then filed a Memorandum in Opposition of Defendant East Islands Real Estate, Inc.'s Motion to Dismiss on January 29, 2021.

Defendants 1537 Ben Sawyer Blvd, LLC and Richard M. McColl filed a Memorandum in Support of Motion to Dismiss and in Reply to Plaintiffs' Opposition on February 2, 2021. The Court denied Defendants 1537 Ben Sawyer Blvd., LLC and Richard M. McColl's Motion to Dismiss on April 22, 2021. Plaintiffs filed a Motion to Compel on Defendants 1537 Ben Sawyer Blvd., LLC and Richard M. McColl to serve upon Plaintiffs' counsel responses to discovery on August 16, 2021.

For the week of March 31, 2022, the case was on Motions Roster Publication.

Defendant 1537 Ben Sawyer Blvd., LLC filed a Motion for Summary Judgment on October 5, 2022.

Defendant East Islands Real Estate, Inc., filed a Motion for Summary Judgment on January 23, 2023.

### **FACTUAL BACKGROUND**

Plaintiff initiated this action against East Island Real Estate, Inc. Defendants based upon a breach of contract which was committed by IBYDIT, LLC, 1537 Ben Sawyer Blvd., LLC, Curt Nesbitt, and Richard McColl and the subsequent conspiracy and interference with the contract by East Island Real Estate, Inc. Defendants.

Plaintiffs John True and Aaron Rowley are real estate agents with Atlantic International, Inc. d/b/a Coldwell Bank Commercial Atlantic. Mr. Rowley was approached by Richard McColl ("Defendant McColl") regarding selling property located at 1537 Ben Sawyer Blvd, Mt. Pleasant, SC (the "Property") and owned by 1537 Ben Sawyer Blvd., LLC. In January 2020, Mr. Rowley and Defendant McColl exchanged various text messages and emails regarding selling the property, terminating tenant leases at the Property, and a sale price of the property based on comparable recent sales in the area.

Mr. Rowley provided the information to agents within his brokerage to see if there was any pre-listing interest. Mr. True's clients IBYDIT, LLC and Curt Nesbitt expressed interest in the property. Defendant Nesbitt on behalf of IBYDIT, LLC authorized Mr. True to make an offer to purchase the property for One Million and No/100 (\$1,000,000.00) Dollars. Mr. True forwarded the offer to Mr. Rowley. Correspondence was exchanged recommending a counteroffer of One

Million One Hundred Thousand and No/100 (\$1,100,000.00) Dollars and possibilities of doing a 1031 exchange.

Mr. True assisted Defendant Nesbitt in verifying zoning requirements, and square footage allowances for the Property along with other items to ensure the Property would suit Defendant Nesbitt for his commercial purposes. On Friday January 17, 2022, Plaintiff Rowley sent a listing agreement (hereinafter "Agreement") to Defendant McColl. On Monday January 20, 2022, Plaintiff Rowley inquired if Defendant McColl had reviewed the Agreement and if Defendant McColl had any questions regarding the Agreement. Defendant McColl led Plaintiff Rowley to believe the Agreement would be signed.

Prior to the return of a signed Agreement, Defendant Nesbitt and Defendant McColl ceased all communication with Mr. Rowley and Mr. True. Upon information and belief, East Island Defendants then improperly facilitated the transfer of the property in July 2020 under the same terms and conditions negotiated by Mr. Rowley and Mr. True, thereby receiving the commission on the sale that was rightfully due to Mr. Rowley and Mr. True. Upon information and belief, Defendants conspired to keep Mr. True and Mr. Rowley from receiving a signed Agreement and instead used Mr. True and Mr. Rowley's efforts to their own benefit.

Upon information and belief, East Islands and Haynes received a commission that was due to the Plaintiffs upon transfer of the Property.

1537 Ben Sawyer Blvd., LLC, and Richard McColl have filed a Motion to Dismiss Complaint. Then Plaintiffs have filed a Memorandum in Opposition to Defendants 1537 Ben Sawyer Blvd., LLC, and Richard McColl's Motion to Dismiss.

After careful consideration of the parties' submissions and arguments, the Court denied Defendants 1537 Ben Sawyer Blvd., LLC and Richard McColl's motion pursuant to Rule 12(b)(6), SCRCP.

Plaintiffs Atlantic International, Inc. Inc. d/b/a Coldwell Banker Commercial Atlantic, John W. True, and Aaron B. Rowley have filed a Motion to Compel, for an Order requiring Defendants 1537 Ben Sawyer Blvd, LLC and Richard M. McColl to serve upon Plaintiff's Counsel responses to discovery.

### **STANDARD OF REVIEW**

Summary judgment is an "extreme remedy to be cautiously invoked." *Holloman v. McAllister*, 289 S.C. 183, 186 (1986). Since Summary judgment is adjudication on the merits of the case, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563 (2002); *Shealy v. Doe*, 370 S.C. 194 (Ct. App. 2006). Summary judgment is only appropriate when there is no genuine issue of material fact, *and* the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRCP (emphasis added). The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact. *Id.* In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493 (1994). Further, even "when there is no dispute as to evidentiary facts, but only as to conclusions or inferences to be drawn from them, summary judgment should be denied." S.C. Rules Civ. Proc., Rule 56(c); *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493 (1994) (citing *Hamilton v. Miller*, 301 S.C. 45, 47 (1990)). "Where the evidentiary matter in support of [Summary Judgment] does not establish the absence of a genuine issue [of material

fact], Summary Judgment must be denied, even if no opposing evidentiary matter is presented.” *Title Ins. Co. of Minnesota v. Christian*, 267 S.C. 71, 76 (1976); Rule 56(c), SCRPC. When the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 (2009). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220 (S.C. Ct. App. 2005). Because Plaintiff Jonathan Short, as the non-moving party, has presented at minimum a scintilla of evidence creating a genuine issue of material fact, the Court should deny Defendants’ Motion for Summary Judgment.

### **LEGAL ARGUMENT**

1. Breach of Contract/Breach of Good Faith and Fair Dealing as to 1537 Ben Sawyer Blvd. LLC and Richard M. McColl.

To recover for breach of contract the plaintiff must allege and prove: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damages suffered by the plaintiff as a direct and proximate result of the breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). Additionally, under South Carolina law, “There exists in every contract an implied covenant of good faith and fair dealing.” *Adams v. G.J. Creel & Sons, Inc.* 274 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). Plaintiff Rowley and Plaintiff CBC entered into a binding agreement with Defendant McColl and Seller to pay Plaintiff Rowley and CBC a commission upon the finding of a buyer who is ready, willing and able to buy the Property. Defendant McColl and Seller’s willful failure to pay the amount due, constitutes a breach of contract. Defendant McColl and Seller’s actions destroyed and injured the

rights of Plaintiffs to receive the benefits of the contract, breaching the covenant of good faith and fair dealing.

2. Quasi Contract/Quantum Meruit

The Court has previously adopted a three-part test requiring a plaintiff to show: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit under conditions that make it unjust to retain it without paying. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994). There existed between Plaintiff Rowley, Plaintiff CBC and Defendants 1537 Ben Sawyer Blvd, LLC and McColl an implied agreement for the provision of services and payment, therefore. Defendants 1537 Ben Sawyer Blvd, LLC and McColl have received the value of the Plaintiff Rowley and Plaintiff CBC services under the implied agreement in a number of ways, including but not limited to, Plaintiff Rowley and Plaintiff CBC being the procuring cause of the transaction. The value conferred to the Defendants 1537 Ben Sawyer Blvd, LLC and McColl is partly based on the actions and efforts of the Plaintiff Rowley and Plaintiff CBC in acting as the agents for Defendants 1537 Ben Sawyer Blvd, LLC and McColl. The failure of Defendants 1537 Ben Sawyer Blvd, LLC and McColl to pay the agreed upon commission would result in unjust enrichment to Defendants 1537 Ben Sawyer Blvd, LLC and McColl, jointly and severally.

Plaintiff Rowley and Plaintiff CBC conferred a benefit upon Defendants 1537 Ben Sawyer Blvd, LLC and McColl through providing the opportunity of the Buyer to purchase and the Seller to sell the Property. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl realized that benefit as evidenced by the closing of the Property. The Defendants 1537 Ben Sawyer Blvd, LLC and McColl have retained the benefits of the transaction without compensating Plaintiff Rowley and

Plaintiff CBC for the value of their services. Under the circumstances, the retention of the benefit by the Defendants 1537 Ben Sawyer Blvd, LLC and McColl would be inequitable.

### 3. Civil Conspiracy

Civil Conspiracy requires: 1) a combination of two or more persons; 2) for the purpose of injuring the plaintiff; 3) which causes special damages *LaMotte v. Punchline of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988). Defendants conspired with one another to close the real estate transaction without the Plaintiffs, thus injuring the Plaintiffs. Defendants conspired with one another to ensure Plaintiffs did not receive a signed Agreement. Defendants knew or had reason to know of the efforts expended by Plaintiffs to ensure this transaction occurred. Plaintiffs suffered special noneconomic damages of inconvenience and injury to reputation as outlined in the South Carolina Noneconomic Damage Awards Act of 2005.

### 4. Fraud and Misrepresentation

To establish a cause of action for fraud and deceit based upon misrepresentation, the following elements must be shown by clear, cogent, and convincing evidence: 1) a representation; 2) its falsity; 3) its materiality; 4) either knowledge of its falsity or a reckless disregard of its truth or falsity; 5) intent that the representations be acted upon; 6) the hearer's ignorance of its falsity; 7) the hearer's reliance on the truth; 8) the hearer's right to rely thereon; and 9) the hearer's consequent and proximate injury. *Kahn Construction Co., v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980). The Defendants represented that the Seller wanted to sell, and the Buyer wanted to buy the Property via the Plaintiffs. The Defendants failed to consummate the transaction with the Plaintiffs. Plaintiffs delivered an Agreement to Defendant McColl. The Defendants knew that they would not consummate the transaction with the Plaintiffs. The Defendants intended the Plaintiffs would act on their representations and proceed as if the

Property was going to be transferred via assistance of the Plaintiffs. Defendants McColl, 1537 Ben Sawyer Blvd, LLC, IBYDIT, LLC and Nesbitt led the Plaintiffs to believe they would deliver to Plaintiffs a signed Agreement. The Plaintiffs have no reason to believe the Defendants intended to transfer the Property without Plaintiffs' assistance and therefore the Plaintiffs relied on the representations of the Defendants. Due to Plaintiffs' reliance, Plaintiffs were damaged.

5. Promissory Estoppel

A plaintiff must plead and produce evidence of: (1) a promise unambiguous in its terms; (2) reasonable reliance on the promise by the party to whom is it made; (3) the reliance in expected and foreseeable by the party who made the promise; and (4) injury in reliance on the promise. *Powers Construction Co., Inc. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30 (Ct. App. 1984). Defendants promised to pay Plaintiffs for their services as Realtors. This promise is unambiguous on its terms. Plaintiffs relied on said promise by Defendants. Further, Defendants intended Plaintiffs to rely on said promise. Despite Defendants' promise, Defendants had no intention to pay Plaintiffs for the value of their services. Consequently, Plaintiffs relied to their detriment on Defendants' promise.

6. Plaintiffs' Claims Are Not Barred

Plaintiffs delivered an Agreement to Defendants *1537 Ben Sawyer Blvd, LLC and Richard McColl* on January 17, 2022. Defendants *1537 Ben Sawyer Blvd, LLC and Richard McColl* misrepresented to Plaintiffs that the Agreement would be executed by Defendants. Defendants used Plaintiffs' work product and effort for their own benefit. Defendants led Plaintiffs to believe the Agreement would be signed and returned to Plaintiffs. Instead, the Defendants conspired with one another to keep a signed Agreement from being delivered to Plaintiffs. Defendants Ashley Haynes and East Island Real Estate, Inc. acted with knowledge of Plaintiffs' work and efforts for Defendants

McColl, 1537 Ben Sawyer Blvd, LLC, IBYDIT, LLC and Nesbitt with the goal of taking the benefit from Plaintiffs and retaining it for themselves. But for Defendants Ashley Haynes and East Island Real Estate, Inc. Plaintiffs would have received a signed Agreement and realized the fruits of their labors.

### **CONCLUSION**

As demonstrated above, Plaintiffs' complaint satisfied the basic elements of each cause of action to survive this Motion and the Plaintiffs' requests the court deny the Defendant's Motion for Summary Judgment.

Respectfully submitted,

s/Hal E. Cobb, Esq.

Hal E. Cobb, Esq.

*Cobb Dill & Hammett, LLC*

S.C. Bar No. 100575

222 W Coleman Blvd., Bldg. 2

Mt. Pleasant S.C. 29464

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***Attorney for Plaintiff***

Dated: May 25, 2023  
Mount Pleasant, South Carolina

Atlantic International, Inc., d/b/a Coldwell Banker Commercial Atlantic (“CBC”). Plaintiffs seek a real estate commission payment from Defendants in connection with the Defendants’ purchase of the Property. In that regard, Plaintiffs filed an Amended Complaint in October 2020 alleging the following causes of action against Defendants: (i) breach of contract/breach of good faith and fair dealing; (ii) quasi contract/quantum meruit; (iii) civil conspiracy; (iv) fraud and misrepresentation; and (v) promissory estoppel.

The undisputed facts in this case demonstrate that there is no genuine issue of material fact as to each of Plaintiffs’ claims, which are barred as a matter of law. As the eventual buyer of the property, IBYDIT and Nesbitt have been sued by Plaintiffs even though: (i) there was no written listing agreement between Plaintiffs and the property owner; (ii) there was no agency agreement between Plaintiffs and the buyer; and (iii) the buyer paid a full commission for the transaction to Defendant East Islands Real Estate, Inc., when the closing occurred.

For over a year, Nesbitt and Matt Walsh, CFO of Blue Sky Specialty Pharmacy, had been looking for properties to purchase for their business. In January 2020, Mr. True passed along information for several properties to Walsh and Nesbitt, including the Property. True and Nesbitt discussed presenting an offer on the Property. True asked Matt Walsh In messages exchanged with McColl, Rowley indicated that he had contacted an “interested party” to let them know that McColl was “not ready” to proceed and “did not know what he wanted to do.” At that time, the Property had not been listed for sale. Over the next few days, True indicated that the “seller has gone dark” and “still won’t respond.” Thereafter, all communication between True and Nesbitt ceased.

True never presented a buyer’s representation agreement to Defendants or even mentioned entering any such agreement. The parties never discussed any terms that would indicate an

agreement relating to a scope of services, compensation, or expiration of an agreement. To the extent True believed he was acting as Defendants' agent, he did not make his intentions known.

On March 2, 2020, McColl and Defendants East Island Real Estate, Inc., and Ashley Haynes entered into a One Time Agreement to Show, in which the parties agreed that if Nesbitt or IBYDIT purchased the Property, 1537 Ben Sawyer Blvd, LLC would pay EIRE a four percent (4%) commission at closing. A copy of the One Time Agreement to Show is attached as Exhibit B. There were several issues that needed to be resolved in order to close on the Property. The biggest issue involved negotiating an early termination of the then-existing leases with House of Brews and Olive Massage. Reaching an agreement for the early termination of the tenants required extensive negotiation with the tenants and their counsel. After months of negotiation, a settlement with the tenants were accomplished in order to finalize the deal and close on the Property. Plaintiffs did not participate in any of these negotiations. A commission payment in the amount of \$44,000.00 was paid upon closing the Property. A copy of the Seller's Settlement Statement showing the commission payment is attached as Exhibit C.

The pertinent facts relating to Plaintiffs' involvement have been established in proceedings before the South Carolina Department of Labor, Licensing and Regulation (the "LLR") before the South Carolina Real Estate Commission (the "Commission") in which Plaintiffs Aaron B. Rowley ("Rowley"), John W. True ("True"), and the broker-in-charge for Plaintiff Atlantic International, Inc. d/b/a Coldwell Banker Commercial Atlantic ("CBC") were named respondents in three separate matters relating to the Property. A public reprimand was issued to each of the individual Plaintiffs for misconduct. *See Final Order in the Matter of Brent A. Case*, Case No.: 2020-562 attached as Exhibit D; *Final Order in the Matter of John W. True*, Case No.: 2020-563, attached as Exhibit E; and *Final Order in the Matter of Aaron B. Rowley*, Case No.: 2020-564, attached as

Exhibit F. The findings in the Final Orders were based upon admissions on the part of Plaintiffs set forth in a signed “Memorandum of Agreement” or confirmed through Plaintiffs’ sworn testimony during the disciplinary hearings.

At all relevant times, True and Rowley were licensed in South Carolina and licensed with CBC. *See Case Final Order*, p. 2 at ¶ 4. On or about January 11, 2020, Rowley communicated with the owner of the Property. *Id.*, ¶ 5. Although a listing agreement was prepared, a listing agreement was never executed. *Id.* Rowley then acted as an agent for the sale of the Property without an executed listing agreement in place. *Id.*, ¶ 6. Thereafter, True presented a buyer without a buyer representation agreement in place. *Id.* It is undisputed that Plaintiffs never entered into an agreement with Defendants. *See Memorandum of Agreement in the Matters of Case, True, and Rowley* attached hereto as Exhibit G.

All three cases were heard together. Based upon the evidence before the Commission, including Plaintiffs’ admissions and testimony at the hearing, the Commission determined that Plaintiffs Rowley and True had each violated S.C. Code § 40-57-135(I)(2), which requires a real estate licensee to have written agreements with specific provisions in place for any representation of a seller or buyer. The Commission determined that the broker-in-charge for CBC, Brent A. Case, had violated S.C. Code § 40-57-135(A)(1) and (5) for failing to adequately supervise Plaintiffs Rowley and True, and had “demonstrated incompetency in a manner as to endanger the interest of the public.” *See Case Final Order*, p. 3 at ¶ 2.

Since the time of filing this action against Defendants, Plaintiffs have admitted to engaging in conduct that violates South Carolina law for which they received public reprimands by the South Carolina Real Estate Commission. The Commission’s findings of Plaintiffs’ misconduct should have prompted a voluntary dismissal with prejudice. Surprisingly, Plaintiffs have continued to

pursue legal and equitable claims even though they have admitted violating South Carolina law and do not have a written agreement with either the prior owner or the buyer of the property.

### **LEGAL STANDARD**

A trial court should grant a motion for summary judgment when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP; *see also RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 470, 597 S.E.2d 881, 882 (Ct. App. 2004). “The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” *Gauld v. O’Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008); *see also* Rule 56(e), SCRCP (requiring the party opposing a summary judgment motion to “set forth specific facts showing there is a genuine issue for trial”).

### **ARGUMENT**

The evidence in the record demonstrates that there is no question of material fact as to any of Plaintiffs’ claims. In the absence of a written agency agreement, no agency relationship was created. Plaintiffs fail to create a question of material fact as to their claim for compensation as the procuring cause of the sale of the Property. The record demonstrates that there was no meeting of the minds as to the agent’s duties or services to be performed, the duration of the agency relationship, the date on which the agreement would expire, or how and when compensation is earned. Furthermore, Plaintiffs fail to create a question of material fact to proceed with the claims for civil conspiracy and fraud and misrepresentation.

For the reasons set forth below, Plaintiffs are barred from recovering either damages or equitable relief and summary judgment is appropriate as to each claim.

**I. PLAINTIFF CANNOT ESTABLISH THAT THEY WERE THE PROCURING CAUSE OF THE SALE**

South Carolina law recognizes that “a broker is entitled to commission, if during the *continuance of his agency*, he is the efficient or procuring cause of the sale, though the actual agreement for the sale is made by the owner without the aid of the broker.” *Goldsmith v. Coxe*, 80 S.C. 341, 346–47, 61 S.E. 555, 557 (1908) (emphasis added). “[T]he broker must not only show that his efforts were the procuring cause of the sale but must further show that his intervention was during the *continuance of an agency* to sell or find a purchaser.” *Hobbs v. Hudgens*, 223 S.C. 88, 96, 74 S.E.2d 425, 427–28 (1953) (emphasis added). Plaintiffs cannot demonstrate the requisite agency relationship to be entitled to commission as the “procuring cause.”

Although a prospective buyer may use the services of a real estate licensee without a written agency agreement with the licensee’s real estate brokerage firm, the buyer is a “customer.” *See* S.C. Code § 40-57-30(9) (defining “customer” as “a buyer, seller, landlord, or tenant who uses the services of a real estate licensee but does not establish an agency relationship through a written agency agreement with the licensee’s real estate brokerage firm). Under South Carolina law, prospective buyers who use the services of a real estate brokerage firm as a “customer” do not have an agency relationship with the firm. *See* S.C. Code § 40-57-350(L)(3).

It is an undisputed fact that Plaintiffs and Defendants did not enter into a written agreement establishing an exclusive agency relationship. A buyer’s representation agreement must be in writing and must clearly state, if applicable, that it is either an “exclusive agency” or “exclusive right to represent.” *See* S.C. Code § 40-57-135(I)(2). Because the customer relationship was not “exclusive,” only one commission is to be paid on the purchase and sale of the Property and that

commission has been paid in full to the broker who succeeded as the procuring cause of the transaction. *See Hutson v. Stone*, 119 S.C. 259, 112 S.E. 39, 41 (1922) (holding that where a broker undertakes to sell real estate in competition with others, an implied condition of his employment was that a prior sale by any other broke would revoke his authority and terminate his agency). True stated that the seller had “gone silent” and all communications between True and Nesbitt ceased in February 2020. Defendants EIRE and Haynes were able to negotiate a deal and finalize the purchase and sale of the Property. There is no question of material fact that a \$44,000.00 commission was paid to the broker who procured the transaction.

In addition, Plaintiffs fail to create a genuine issue of material fact to demonstrate that their efforts were the “cause of a series of unbroken, continuous events,” which culminate in the sale of the Property. *See Huffines Co. v. Lockhart*, 365 S.C. 178, 190, 617 S.E.2d 125, 131 (Ct. App. 2005) (defining the term “procurement” as “consisting of the broker’s efforts that are the efficient cause, but not necessarily the sole cause, of a series of unbroken, continuous events, which culminate in the accomplishment of the objective of the employment). The record demonstrates that all communication between Defendants and True ceased as of February 11, 2020. During the 5-month period from February 11, 2020, through the closing of the Property on July 13, 2020, True did nothing to put Defendants on notice that he considered himself to be a broker in the transaction. *See Hobbs v. Hudgens*, 223 S.C. 88, 74 S.E.2d 425 (1953) (no implied contract established where vendor not put on notice that real estate agent considered himself employed as broker).

Furthermore, at the time that Defendants made an offer on the Property, Rowley lacked authority to sell the Property on behalf of the owner. A broker’s authority to sell a property exists only where the intention of the principal to give such authority is manifest. As the South Carolina Supreme Court has held, “[a] sale of real estate involves the adjustment of many matters besides

fixing the price all of which require conference and time for their completion” and they are for the “determination of the owner, and do not pertain to the duties, and are not within the authority, of a real-estate agent.” *See Gallant v. Todd*, 235 S.C. 428, 431, 111 S.E.2d 779, 781 (1960). Plaintiffs are not entitled to commission as the procuring cause of the sale of the Property for the additional reason that Rowley lacked the authority to bind the seller to a contract of sale.

**II. BECAUSE THERE WAS NO MEETING OF THE MINDS AS TO ANY OF THE ESSENTIAL ELEMENTS, PLAINTIFFS’ BREACH OF CONTRACT AND QUASI CONTRACT CLAIMS FAIL**

Defendants are entitled to summary judgment as to Plaintiffs’ claims for breach of contract and quantum meruit/unjust enrichment. Plaintiffs’ own admissions establish that there is no genuine issue of material fact as to whether an enforceable contract exists. No written agreement was entered. In addition, the record demonstrates that Plaintiffs cannot prevail on an equitable theory of an implied contract where there was no meeting of the minds of the parties as to any of the essential and material terms to a real estate transaction. Plaintiffs cannot unilaterally bind Defendants to an implied agreement for an infinite duration where there is no offer and acceptance, sufficient consideration for the employment, or the existence of definite and certain terms.

There is no dispute as to any material fact that would preclude summary judgment in favor of Defendant as to each of Plaintiffs’ contract and quasi contract claims.

***A. Plaintiffs’ Breach of Contract Claim Fails as a Matter of Law***

Summary judgment is appropriate as to Plaintiffs’ claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

A valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement. *See Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014) (finding no meeting of the

minds where memorandum of understanding left open material terms relating to scope of work and duties and the parties' compensation). For a contract to be binding, material terms cannot be left for future agreement. *Id.* In a contract for services two essential terms are the scope of the work to be performed and the amount of compensation. *Id.* Regardless of intent, an agreement which leaves open material terms is unenforceable. *Id.* at 579, 762 S.E.2d at 701.

The evidence in the record, including Plaintiffs' own admissions, precludes a claim for breach of contract. It is undisputed that Plaintiffs did not enter into a written agreement with Defendants. Plaintiffs concede that no listing or buyer's representation agreement was entered between any of the parties relating to the purchase and sale of the Property. *See Memorandum of Agreement*. Furthermore, Plaintiffs cannot demonstrate that there was a meeting of the minds as to any essential terms of a contract. There is no agreement as to a fixed time of employment or for a definite period. There was no agreement as to the scope of services or duties of Plaintiffs. There was no agreement as to the brokerage relationship in connection with the transaction. The undisputed facts in the record establish that Plaintiffs' claim for breach of contract fails as a matter of law. *See Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (holding that the burden is on the plaintiff to prove the existence of a binding contract, its breach, and damages suffered by the plaintiff a result of such breach).

Defendants are also entitled to summary judgment on the claim for breach of good faith and fair dealing, as this claim cannot be pursued as a stand-alone cause of action independent from a breach of contract claim. *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 471, 597 S.E.2d 881, 883 (Ct. App. 2004) (concluding that an implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract).

Accordingly, Defendants are entitled to summary judgment as to Plaintiffs' second cause of action.

***B. Plaintiffs' Quantum Meruit Claim Fails as a Matter of Law***

Plaintiffs have failed to carry their burden to establish a genuine issue of material fact as to the elements of quantum meruit. Quantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy. *See QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004). "To prevail on a quantum meruit claim, a plaintiff must establish (1) he conferred a benefit upon the defendant; (2) the defendant realized that benefit; and (3) retention of the benefit by the defendant under the circumstances make it inequitable for the defendant to retain it without paying its value." *See Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012).

A commission payment for this transaction was received and retained by Defendants EIRE and Haynes in the amount of \$44,000.00. Defendants are not required to pay commission twice for the same transaction. Defendants have not retained a benefit. Furthermore, there was no meeting of the minds as to a scope of services and compensation. Plaintiffs cannot establish that, under the circumstances, Defendants were reasonably notified that Plaintiffs were expecting to be paid. Plaintiffs cannot prevail on the claim for quantum meruit.

Accordingly, Defendants are entitled to summary judgment as to the cause of action for quasi contract/quantum meruit.

**III. THE PROMISSORY ESTOPPEL CLAIM FAILS AS A MATTER OF LAW**

There is no genuine issue of material fact relating to promissory estoppel claim. Because promissory estoppel applies without a contract, the promise to be enforced must be unambiguous with clearly articulated, definite terms. *See Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6,

11 (Ct. App. 2013) (“The party asserting promissory estoppel must demonstrate: (1) a promise with unambiguous terms; (2) reasonable reliance upon the unambiguous promise; (3) foreseeability of the promisee’s reliance; and (4) injury sustained in relying on the promise because of the promisor’s inconsistent disposition.”). The courts will not apply the doctrine of promissory estoppel where it risks imposing an inequity against the party sought to be estopped. *Id.*

In light of the evidence in the record, Plaintiffs fail to create a question of fact as to promissory estoppel’s requisite clarity, definiteness, and specificity. The parties did not as to the agent’s duties or services to be performed, the duration of the agency relationship, the date on which the agreement would expire, or how and when compensation is earned. Allowing Plaintiffs to proceed with a claim for promissory estoppel would result in an inequity against Defendants.

Plaintiffs cannot prove a “reasonable reliance” upon an unambiguous promise. True did nothing to put Nesbitt on notice that he would consider himself employed as a broker in the transaction even though it was incumbent on him to do so. *See Hobbs v. Hudgens*, 223 S.C. 88, 96, 74 S.E.2d 425, 428 (1953); *see also* S.C. Code § 40-57-350(E)(1) (“On reaching a written agency agreement to provide brokerage services to a potential buyer of real estate, a buyer’s agent shall: (a) perform the term of the written brokerage agreement made with the buyer”). True stated that the seller “had gone silent” and all communication between True and Nesbit ceased as of February 11, 2020.

Accordingly, Defendants are entitled to summary judgment as to promissory estoppel.

#### **IV. SUMMARY JUDGMENT IS APPROPRIATE AS TO THE CLAIM FOR CIVIL CONSPIRACY**

There is no genuine issue of material fact as to any element of Plaintiffs’ civil conspiracy claim. Under South Carolina law, a plaintiff asserting a civil conspiracy claim must establish: (1) the combination or agreement of two or more persons; (2) to commit an unlawful act or a lawful

act by unlawful means; (3) together with the commissions of an over act in furtherance of the agreement; and (4) damages proximately resulting to the plaintiff. *See Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021). It is essential that Plaintiffs prove all these elements in order to recover damages for civil conspiracy. *See Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006).

There is no genuine issue of material fact as to Plaintiffs' civil conspiracy claim. Plaintiffs allege that they suffered inconvenience and injury to reputation. As the record confirms, Plaintiffs received public reprimands by the Commission for their misconduct that violated South Carolina law. Plaintiffs fail to demonstrate the existence of damages that are the proximate and foreseeable consequences of any conduct by Defendants. *See Paradis* at 573, 861 S.E.2d at 780 (noting that general damages are the proximate and foreseeable consequences of the defendant's conduct). Plaintiffs cannot show that a genuine issue exists for trial.

The fifth cause of action for civil conspiracy fails as a matter of law and therefore, Defendants are entitled to summary judgment.

**V. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT AS TO THE CLAIM FOR FRAUD AND MISREPRESENTATION**

Defendants are entitled to summary judgment as to Plaintiffs' claim for fraud and misrepresentation.

In order to recover in an action for fraud and deceit, based upon misrepresentation, Plaintiffs must show by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. *M. B. Kahn Const. Co. v. S.C. Nat. Bank of Charleston*, 275 S.C. 381, 384, 271

S.E.2d 414, 415 (1980). Failure to prove any one of the foregoing elements is fatal to recovery. *Id.* Plaintiffs cannot establish the existence of a material fact as to any of the nine requisite elements of fraud. *See O'Shields v. Southern Fountain Mobile Homes, Inc.*, 262 S.C. 276, 281, 204 S.E.2d 50, 52 (1974) (holding that the failure to prove any one of the elements of fraud is fatal to recovery).

The alleged basis for the fraud and misrepresentation claim is that "Defendants knew that they would not consummate the transaction with Plaintiffs." (*Am. Comp.* ¶ 77.) To be actionable, the representation must be a statement which concerns an existing fact and cannot be based on statements as to future events. *See Emerson v. Powell*, 283 S.C. 293, 296, 321 S.E.2d 629, 631 (Ct. App. 1984) ("As a general rule and of particular relevance here, the fraudulent representation must relate to a present or preexisting fact and it cannot ordinarily be based on unfulfilled promises or statements as to future events.") An alleged representation by Defendants relating to the possibility of closing on the Property was not a preexisting fact. Plaintiffs fail to demonstrate the element of materiality where the record demonstrates that Plaintiffs took no action to enter into an agreement with Defendants as to any essential and material terms. Plaintiffs did not participate in the negotiations and did not finalize the deal relating to the Property.

Furthermore, Plaintiffs cannot show a genuine issue of fact as to the element of reliance where the law requires all material terms to the parties' agency relationship must be in writing. *See* S.C. Code § 40-57-135(E)(2). There is no right to rely in an arm's length transaction where the plaintiff should have used precaution and protection to safeguard his interests. *See Regions Bank v. Schmauch*, 354 S.C. 648, 672-73, 582 S.E.2d 432, 445, 51 (Ct. App. 2003). Plaintiffs cannot complain of fraud and misrepresentation when Plaintiffs failed to enter into a listing or buyer's representation agreement or otherwise reach an agreement as to the material terms of such relationship.

Viewing the evidence and inferences that can be drawn therefrom in the light most favorable to Plaintiffs, Defendants are entitled to summary judgment as to Plaintiffs' sixth cause of action for fraud and misrepresentation.

### **CONCLUSION**

For these reasons, Defendants IBYDIT, LLC and Curt Nesbitt are entitled to summary judgment as to each of Plaintiffs' claims.

Respectfully submitted,

By: s/Ellis R. Lesemann

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May 26, 2023  
Charleston, South Carolina

**EXHIBIT A**

*Declaration of Curtis B. Nesbitt*

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

ATLANTIC INTERNATIONAL, INC. d/b/a  
COLDWELL BANKER COMMERCIAL  
ATLANTIC, JOHN W. TRUE, and AARON  
B. ROWLEY,

Case No.: 2020-CP-10-4076

Plaintiffs,

vs.

IBYDIT, LLC, 1537 BEN SAWYER BLVD.,  
LLC, CURT NESBITT, RICHARD M.  
MCCOLL, EAST ISLANDS REAL ESTATE,  
INC., AND ASHLEY HAYNES, individually  
and as an agent of EAST ISLANDS REAL  
ESTATE, INC.,

**DECLARATION OF  
CURTIS B. NESBITT**

Defendants.

I, Curtis B. Nesbitt, declare under penalty of perjury the following statements to the Court:

1. My name is Curtis B. Nesbitt. I am over the age of 18 years. I have personal knowledge of the facts and matters below.
2. I am the president of IBYDIT, LLC, a Defendant in this action.
3. IBYDIT, LLC purchased the subject property located at 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina (the "Property").
4. Prior to purchasing the Property, I had been looking for properties to purchase for my business. Matt Walsh, CFO of Blue Sky Specialty Pharmacy, was involved in the process. Mr. Walsh and I had looked at several properties for more than a year.
5. In January 2020, John W. True, a Plaintiff in this action, reached out to Mr. Walsh to see if we had purchased a property for our business. At that time, we were under contract on

another property and were in the process of gathering information to determine the feasibility of purchasing the building. Mr. True voluntarily informed Mr. Walsh of a site where House of Brews was located, which was zoned Areawide Business.

6. On January 20, 2020, I asked Mr. True about the zoning for the Property, as well as the square footage, lot size and parking space requirements. I informed Mr. True that I was under contract on another property and that time was of the essence. Mr. True indicated that he was working on gathering more information regarding the Property. He further stated that the Property was not on the market.

7. The next day, on January 21, 2020, I told Mr. True that we would like to get an offer on the table. Mr. True asked Mr. Walsh to draft an email with our offer on the Property for a purchase price of \$1,000,000, 90-day due diligence, two 45-day extensions, and a 30-day close. Mr. Walsh drafted the email to Mr. True who then forwarded it to Aaron Rowley, a Plaintiff in this action.

8. At no time was a buyer representation agreement presented to me relating to the Property. Neither I nor anyone else acting on behalf of IBYDIT have entered into a buyer's representation agreement with Mr. True relating to the Property.

9. Mr. True and I did not discuss a scope of services to be provided.

10. Mr. True and I never discussed compensation, commission, or a method of calculating compensation for services. Mr. True never indicated to me that he expected to receive a commission, a fee, or payment for any services.

11. Mr. True and I never discussed any terms that would indicate that we had entered into a contract. We never discussed or agreed to the duration of any contractual relationship or when any such relationship would end.

12. On Monday, January 27, 2020, Matt Walsh asked Mr. True for an update and reiterated that we were on a deadline with another deal and needed a response on our offer by the following day.

13. On January 29, 2020, Mr. True indicated that the “seller has gone dark.” On February 4, 2020, Mr. True stated that “seller still won’t respond.”

14. Having received no further information or updates, I sent a text message to Mr. True on February 11, 2020, asking him to provide an update on our offer. Mr. True and I discontinued all communication as of February 11, 2020.

15. I did not believe, nor did I have any reason to believe, that Mr. True was acting as an agent on my behalf.

16. On March 2, 2020, the seller of the Property entered into a One Time Agreement to Show with Ashley Haynes, a Defendant in this action. Haynes and the seller agreed that if I, or any entity of which I am a member, purchased the Property, then the owner would pay East Island Real Estate a four percent (4%) commission at closing based on the sale price.

17. There were several issues that needed to be resolved in order to close on the Property. The biggest issue involved negotiating an early termination of the then-existing leases with House of Brews and Olive Massage. Reaching an agreement for the early termination of the tenants required extensive negotiation with the tenants and their counsel. These negotiations resulted in a settlement with the tenants. Plaintiffs True and CBC did not participate in the negotiation of the terms or any aspect in finalizing the deal.

18. IBYDIT purchased the Property on July 13, 2020, for \$1,100,000.00. A commission payment in the amount of \$44,000.00 was paid to East Island Real Estate at closing.

19. Mr. True never indicated to me through his actions or words that he expected payment in the form of commission or as a fee for services rendered. I have been required to defend against Plaintiffs' claims for payment to which they are not entitled.

20. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 26, 2023

DocuSigned by:



ATLANTA, GA 30301...

Curtis B. Nesbitt  
President of IBYDIT, LLC

**EXHIBIT B**

*One Time Agreement to Show*

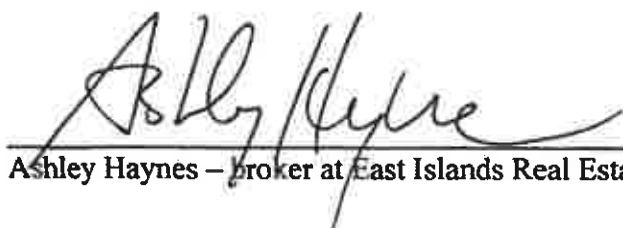
ONE TIME AGREEMENT TO SHOW

The undersigned owner of 1537 Ben Sawyer Blvd., Mt. Pleasant, SC, 29464, hereby gives Ashley Haynes with East Islands Real Estate, Inc. a ONE TIME AGREEMENT TO SHOW the property located at 1537 Ben Sawyer Blvd., Mt. Pleasant, SC 29464.

If the prospective buyer, Curtis B. Nesbitt (or an entity including the prospective buyer) should purchase 1537 Ben Sawyer Blvd. from the owner, 1537 Ben Sawyer Blvd., LLC, then the owner hereby agrees to pay East Islands Real Estate, Inc. a 4% commission at closing based on the sales price.

  
Member of 1537 Ben Sawyer Blvd, LLC

3/2/20  
Date

  
Ashley Haynes – broker at East Islands Real Estate

3/2/2020  
Date

**EXHIBIT C**

*Seller's Settlement Statement*

B U X T O N

Ben M. Co

**B U X T O N**  
— & —  
**COLLIE**  
ATTORNEYS AT LAW

July 14, 2020

**VIA U.S. Mail**

East Islands Real Estate  
Attn: A. Haines  
29 J. C. Long Blvd  
Isle of Palms, SC 29451

Re: Closing Documents for sale of 1537 Ben Sawyer Boulevard, Mount Pleasant, SC  
29464 by 1537 Ben Sawyer Blvd., LLC

**To Whom It May Concern:**

Enclosed please find check number 7386 in the amount of \$44,000.00 representing your portion of the sales commission, less any monies retained by your firm for the earnest money deposit for the property located at 1537 Ben Sawyer Boulevard, Mount Pleasant, SC 29464. Also enclosed please find the fully executed settlement statement and the executed CL-100 inspection report.

Should you have any questions of concerns please do not hesitate to contact me.

Thank you,



Christen Greene  
admin@buxtonandcollie.com

Enclosures (as stated)

# Seller's Settlement Statement



## Your Order Summary

|                     |                                                                    |                  |                                                       |             |                                                                    |
|---------------------|--------------------------------------------------------------------|------------------|-------------------------------------------------------|-------------|--------------------------------------------------------------------|
| FILE #              | 20-070                                                             | PROPERTY ADDRESS | 1537 Ben Sawyer Boulevard<br>Mount Pleasant, SC 29464 | LOAN #      |                                                                    |
| PREPARED            | 07/13/2020                                                         | BUYER            | IBYDIT, LLC                                           | TITLE BY    | Buxton & Collie, LLC                                               |
| SETTLEMENT          | 07/13/2020                                                         | SELLER           | 1537 Ben Sawyer Blvd., LLC                            | OUR ADDRESS | 940 Johnnie Dodds Boulevard<br>STE 205<br>Mount Pleasant, SC 29464 |
| DISBURSEMENT        | 07/13/2020                                                         | LENDER           | Aquesta Bank                                          | OUR PHONE # | (843) 606-2397                                                     |
| SETTLEMENT LOCATION | 940 Johnnie Dodds Boulevard<br>STE 205<br>Mount Pleasant, SC 29464 |                  |                                                       | ATTORNEY    | Brian M. Collie                                                    |

## Charges

### PRIMARY CHARGES & CREDITS

|                         | DEBIT | CREDIT         |
|-------------------------|-------|----------------|
| Sales Price of Property |       | \$1,100,000.00 |

### PRORATIONS/ADJUSTMENTS

|                                                                | DEBIT      | CREDIT |
|----------------------------------------------------------------|------------|--------|
| County Taxes 01/01/2020 to 07/13/2020                          | \$2,292.44 |        |
| January - July Rent Overage (Pass Through Costs)               | \$1,722.90 |        |
| Prorated Rent for House of Brews Rent 07/13/2020 to 07/31/2020 | \$1,169.60 |        |
| Prorated Rent for Olive Massage Rent 07/13/2020 to 07/31/2020  | \$569.30   |        |
| Security Deposit Credit (House of Brews)                       | \$1,400.00 |        |
| Security Deposit Credit (Olive Massage)                        | \$850.00   |        |

### GOVERNMENT RECORDING AND TRANSFER CHARGES

|                                                                                           | DEBIT      | CREDIT |
|-------------------------------------------------------------------------------------------|------------|--------|
| Deed \$ Mortgage \$ Release \$ to Charleston County Register of Deeds                     | \$15.00    |        |
| City/County tax/stamps Deed \$1,210.00 Mortgage \$ to Charleston County Register of Deeds | \$1,210.00 |        |
| State tax/stamps Deed \$2,860.00 Mortgage \$ to Charleston County Register of Deeds       | \$2,860.00 |        |
| -Deed to Charleston County Register of Deeds \$15.00                                      |            |        |

### COMMISSIONS

|                               | DEBIT       | CREDIT |
|-------------------------------|-------------|--------|
| --\$44,000.00                 |             |        |
| Commission paid at settlement | \$44,000.00 |        |

### MISCELLANEOUS CHARGES

|                                                | DEBIT      | CREDIT |
|------------------------------------------------|------------|--------|
| Seller Attorney Fee to Donaldson Law Firm, LLC | \$850.00   |        |
| Wire Fee to Buxton & Collie, LLC               | \$25.00    |        |
| Tax Proration Escrow to Buxton & Collie, LLC   | \$3,895.57 |        |

### TOTALS

| DEBIT       | CREDIT         |
|-------------|----------------|
| \$60,859.81 | \$1,100,000.00 |

**CASH TO SELLER \$1,039,140.19**

**EXHIBIT D**

*Final Order in the Matter of Brent A. Case*

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License No. REL.5659**

**Case No.: 2020-562**

**FINAL ORDER**

**Respondent**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022 for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-563 and 2020-564,<sup>1</sup> all three cases were heard together, as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-710(A)(1) and (5) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-563 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 13, 2022

<sup>1</sup> The respondents for Case Nos. 2020-563 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.
4. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with regard to steps he has taken at the brokerage to ensure associated licensees are appropriately supervised and this conduct is not repeated in the future. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.

2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of the following:

- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter.
- b. S.C. Code Ann. § 40-57-135(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that:

1. The MOA is accepted.
2. Respondent is publicly reprimanded.
3. Respondent shall take the four-hour BIC Duties and Responsibilities course within six months from the date the Final Order is issued.
4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**

  
**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**EXHIBIT E**

*Final Order in the Matter of John W. True*

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License No. REL.29284**

**Case No.: 2020-563**

**FINAL ORDER**

**Respondent**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022, for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-564,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-564 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-564 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and Rowley.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property and presented a buyer for the Subject Property without a representation agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions, particularly with respect to the circumstances leading to the lack of an executed representation agreement. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:**

1. The MOA is accepted.
2. Respondent is publicly reprimanded.
3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.
4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**



**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**EXHIBIT F**

*Final Order in the Matter of Aaron B. Rowley*

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License No. REL.42519**

**Case No.: 2020-564**

**Respondent**

**FINAL ORDER**

This matter came before the South Carolina Real Estate Commission ("Commission") on July 13, 2022 for a hearing to consider the Memorandum of Agreement ("MOA") signed by Respondent on July 12, 2022. In the MOA, Respondent waived the authorization and filing of a Formal Complaint as well as formal hearing procedures and elected to dispose of the matter pursuant to S.C. Ann. § 1-23-320(f) (1976, as amended.)

A quorum of Commission members was present. The Final Order hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6), 40-1-90, and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10 *et seq.* (1976, as amended). Rowland Alston, Assistant Disciplinary Counsel, represented the State. Respondent was present and was represented by Hal Cobb, Esquire. With the consent of all parties, including Respondent and the respondents for Case Nos. 2020-562 and 2020-563,<sup>1</sup> all three cases were heard together as they involved the same set of facts.

In the MOA, Respondent admitted that the facts presented in the MOA alleged grounds that constitute misconduct in violation of S.C. Code Ann. § 40-57-135(I)(2) (2017 Supp.). After consideration, the Commission voted to accept the MOA, with the sanctions specified in this Final Order.

**Witnesses**

Respondent and the respondents for Case Nos. 2020-562 and 2020-563 testified.

No witnesses testified on behalf of the State.

**Exhibits<sup>2</sup>**

State's Exhibit 1

MOA dated July 12, 2022

<sup>1</sup> The respondents for Case Nos. 2020-562 and 2020-563 also signed MOAs and were also represented by Mr. Cobb.

<sup>2</sup> Exhibits referenced herein were identified and admitted into evidence for the Commission's consideration during the final order hearing, but are not attached hereto.

## FINDINGS OF FACT

Based upon the preponderance of the evidence in the record before the Commission, including Respondent's admissions in the MOA and testimony at the hearing, the Commission makes the following findings of fact:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO.3270), located at 3506 W. Montague Avenue in North Charleston, South Carolina.
2. The Commission has jurisdiction over Respondent and the subject matter of this action.
3. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.
4. The same broker-in-charge supervised Respondent and True.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property without an executed listing agreement in place.
7. At the hearing, Respondent testified and answered the Commission's questions. Respondent testified and provided more background on the circumstances surrounding this situation. Respondent also apologized and took accountability for the above-described situation.

## CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter pursuant to S.C. Code Ann. §§ 40-1-115 and 40-57-60(2), and upon finding that a respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine, impose a public reprimand, and prescribe conditions to be met during probation, restriction, or suspension, including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs. S.C. Code Ann. § 40-1-120 and 40-57-720.
2. Respondent admits in the MOA, and the Commission concurs, that Respondent's conduct admitted in the MOA constitutes a violation of S.C. Code Ann. § 40-57-135(I)(2) (2017

Supp.) in that Respondent did not obtain an executed listing agreement as required.

3. The action by the Commission is consistent with the purpose of these proceedings, and has been made after weighing the public interest and the need for the continued services of qualified real estate licensees against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The action is designed to protect the welfare of the people at large.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:**

1. The MOA is accepted.

2. Respondent is publicly reprimanded.

3. Respondent shall take the four-hour Agency Law course within six months from the date the Final Order is issued.

4. This Final Order shall take effect on the date of this Order.

**AND IT IS SO ORDERED.**

**SOUTH CAROLINA  
REAL ESTATE COMMISSION**

  
**WILLIAM ANDERSON "Andy" LEE**  
Chair

July 18, 2022

**EXHIBIT G**

*Memorandum of Agreement in the Matters of Case, True, and Rowley*

## Exhibit B

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**BRENT A. CASE,  
License Number: REL.5659 (BIC)**

**Respondent.**

**Case No.: 2020-562**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate broker-in-charge in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a broker-in-charge in South Carolina. Respondent was first licensed on March 17, 1995. At all times relevant to this matter, Respondent supervised CB Commercial Atlantic International (License No.: RFO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. Respondent is required to supervise associated licensees to ensure their compliance with statutes regulating the profession.

3. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") and Salesperson John W. True ("True") were licensed with CB Commercial Atlantic International.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Rowley then acted as agent for the sale of the Subject Property without an executed listing agreement in place. True then presented a buyer without a buyer representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

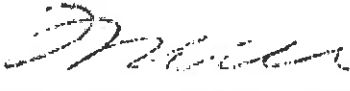
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provisions of the practice act:

- a. S.C. Code Ann. § 40-57-135(A)(1) (2017 Supp.) in that Respondent did not adequately supervise associated licensees to ensure compliance with this chapter; and
- b. S.C. Code Ann. § 40-57-710(A)(5) (2017 Supp.) in that Respondent, in the practice of real estate, demonstrated incompetency in a manner as to endanger the interest of the public.

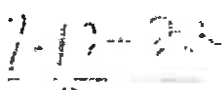
Respondent waives any further conclusions of law with respect to this matter

**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that **the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.***

**AND IT IS SO AGREED.**

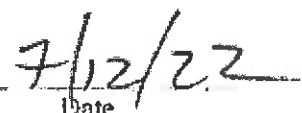
  
BRENT A. CASE

Respondent

  
Date

  
STEPHANIE L. HUFFER

Respondent Counsel

  
Date



**ROWLAND P. ALSTON III**  
Assistant Disciplinary Counsel, SCDLLR

7/13/22  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**JOHN W. TRUE,  
License Number: REL.29284 (S)**

**Respondent.**

**Case No.: 2020-563**

**MEMORANDUM OF AGREEMENT**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter:

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on October 2, 2001. At all times relevant to this matter, Respondent was licensed with CB

Commercial Atlantic International (License No.: R.E.O. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.

2. At all times relevant to this matter, Salesperson Aaron B. Rowley ("Rowley") was also licensed with CB Commercial Atlantic International.
3. The same broker-in-charge supervised Respondent and Rowley.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Rowley communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with Rowley in the sale of the Subject Property, and presented a buyer for the Subject Property without a representation agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

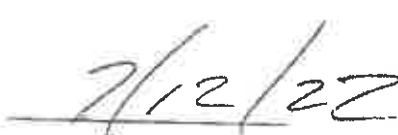
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed buyer's representation agreement before presenting a buyer.

**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that **the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.***

**AND IT IS SO AGREED.**

  
**JOHN W. TRUE**  
RESPONDENT

  
Date

  
**STEFANIE L. DUFFER**  
Respondent Counsel

7/12/22  
Date

  
**ROWLAND P. ALSTON III**  
Assistant Disciplinary Counsel

7/12/22  
Date

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION  
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

**In the Matter of:**

**AARON B. ROWLEY,  
License Number: REL.42519 (S)**

**Respondent.**

**MEMORANDUM OF AGREEMENT**

**Case No.: 2020-564**

**WHEREAS**, the South Carolina Real Estate Commission ("Commission") is charged with enforcing the South Carolina Real Estate Brokers, Salesmen, and Property Managers Act, S.C. Code Ann. § 40-57-10 *et seq.* (1976, as amended); and

**WHEREAS**, at all times relevant to this action, Respondent was licensed and is currently licensed as a real estate salesman in South Carolina; and

**WHEREAS**, the Commission has jurisdiction over Respondent and the subject matter herein; and

**WHEREAS**, sufficient evidence exists to bring formal charges against Respondent under Sections 40-57-10 *et seq.* and 40-1-10 *et seq.*; and

**WHEREAS**, Respondent waives his rights to a contested case hearing and the formal hearing procedures enumerated in S.C. Code Ann. § 1-23-320(f) (1976, as amended); and

**WHEREAS**, Respondent will participate in a hearing before the Commission pursuant to the authority granted to the Commission by S.C. Code Ann. §§ 40-1-70 and 40-1-90 (1976, as amended) for the purpose of determining an appropriate sanction. Respondent has been provided with statutory notice of this hearing; and

**WHEREAS**, the parties agree that the following stipulated facts will be considered by the Commission in its determination of the appropriate sanction against Respondent in this matter.

1. Respondent is licensed as a salesperson in South Carolina. Respondent was first licensed on August 28, 2003. At all times relevant to this matter, Respondent was licensed with CB Commercial Atlantic International (License No.: REO. 3270), located at 3506 W Montague Ave, North Charleston, South Carolina.
2. At all times relevant to this matter, Salesperson John W. True ("True") was also licensed with CB Commercial Atlantic International.

3. The same broker-in-charge supervised Respondent and True.
4. The Commission has jurisdiction over Respondent and the subject matter of this action.
5. On or about January 11, 2020, Respondent communicated with purported Owner about the sale of 1537 Ben Sawyer Blvd., Mt. Pleasant, South Carolina ("Subject Property"). A listing agreement was sent to Owner. However, a listing agreement was never executed.
6. Respondent then worked with True in the sale of the Subject Property, without an executed listing agreement in place.
7. Respondent waives any further findings of fact with respect to this matter.

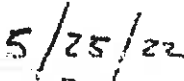
**BASED UPON THESE STIPULATED FACTS**, the parties agree and believe that Respondent is in violation of the following provision of the practice act:

1. S.C. Code Ann. § 40-57-135(1)(2) (2017 Supp.) in that Respondent did not obtain an executed listing agreement as required.

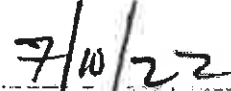
**THEREFORE**, the parties agree that the Commission, in its discretion, should determine the appropriate sanction for Respondent's actions as described herein. Respondent understands and agrees that the Commission may revoke, suspend, or otherwise restrict Respondent's license to practice real estate pursuant to § 40-57-10 *et seq.* and § 40-1-10 *et seq.*

**AND IT IS SO AGREED.**

  
**AARON B. ROWLEY**  
 Respondent

  
 Date

  
**STEPHANIE L. HUFFER**  
 Respondent Counsel

  
 Date

  
**ROWLAND P. ALSTON III**  
 Assistant Disciplinary Counsel, SCDLLR

  
 Date

1 STATE OF SOUTH CAROLINA \* COURT OF COMMON PLEAS  
2 COUNTY OF CHARLESTON \* TRANSCRIPT OF RECORD

3 -----X  
4 ATLANTIC INTERNATIONAL, \*  
5 INC., \*  
6 \*  
7 Plaintiff, \*  
8 vs. \* Case No. 2020-CP-10-04076  
9 \*  
10 IBYDIT, LLC, \*  
11 \*  
12 Defendant. \*  
13 -----X

14 May 30, 2023

15 B E F O R E:

16 The Honorable Bentley Price, Presiding Judge

17 A P P E A R A N C E S:

18 Hal Cobb, Esq.

19 Attorney for the Plaintiffs

20 Mary Arnold, Esq.

21 Attorney for Defendant 1537 Ben Sawyer Blvd. and  
22 Richard M. McColl

23 Steven Kropski, Esq.

24 Attorney for Defendant East Islands Real Estate,  
25 Inc., and Ashley Haynes

Ellis Lesemann, Esq.

Attorney for Defendant IBYDIT, LLC, and Curt  
Nesbitt

Recorded by: Digital Courtroom/OWL

Transcribed by: Bobbi Fisher, RPR  
SC Official Court Reporter III

## I N D E X

| DESCRIPTION | PAGE |
|-------------|------|
| Proceedings | 3    |

## E X H I B I T S

(None.)

## COURT REPORTER LEGEND

|                 |                                                                               |
|-----------------|-------------------------------------------------------------------------------|
| Dash (--)       | Indicates an interruption in speech                                           |
| Ellipses (...)  | Indicates trailing off in speech                                              |
| (ph)            | Indicates phonetic word                                                       |
| [Verbatim]      | Indicates the word is said as written                                         |
| (Indiscernible) | [Transcription] Indicates word(s) is not known due to audio recording quality |

## P R O C E E D I N G S

THE COURT: All right. This is the defense's motions for summary judgment.

MS. ARNOLD: Yes, Your Honor.

THE COURT: Yes, ma'am. Be happy to hear from you.

MS. ARNOLD: Yes, sir. Thank you, Your Honor. Mary Arnold on behalf of 1537 Ben Sawyer and Mr. Rick McColl.

Your Honor, this is over a piece of property that's located on Ben Sawyer Boulevard. It was owned by 1537 Ben Sawyer Boulevard. It's assumed under an LLC. That member is actually Ben McColl. Her son is Britt McColl, who was a named defendant. Since this case has been commenced Mr. McColl, unfortunately, is deceased. His estate has not been substituted as a party; therefore, he should be dismissed, and the time period for the claimed period in probate court has expired.

Your Honor, this has to do with a piece of property right there on Ben Sawyer Boulevard going out to the beach. It was a little house. You may have seen it a couple of times. Mrs. McColl ran her little beauty shop in there that she did it for elderly ladies.

The plaintiffs solicited Rick McColl, Betty's son, asking if she had any interest in selling this particular piece of property.

THE COURT: Now, Rick is the deceased?

1 MS. ARNOLD: Rick is the deceased, yes.

2 THE COURT: All right.

3 MS. ARNOLD: Yes, sir.

4 Rick ultimately responded, "No, we're not willing to  
5 sell or my mother is not willing to sell at this time."  
6 Subsequent to that, Rick, Mr. McColl, got another  
7 solicitation by one of the defendants, IBYDIT Realty, and  
8 said can we do a (indiscernible) on your property. It's  
9 about six months later. They entered a one-time showing  
10 listing agreement.

11 When they were initially solicited by the  
12 plaintiffs, there was a listing agreement that was  
13 submitted. It was rejected. It was never signed. There  
14 was no agency relationship created between the entity, the  
15 owner of the property, 1537, and these plaintiffs.  
16 Ultimately, there was a one-time listing. The property  
17 ultimately did sell months later -- eight or nine months  
18 later.

19 After this case initiated, Your Honor, these  
20 particular plaintiffs were subject to a complaint by LLR,  
21 the real estate commission. They reviewed this particular  
22 transaction. In our motion for summary judgment, we have  
23 attached those orders for the Court, and in those orders,  
24 what the LLR has found is that the real estate brokerage  
25 company and the real estate agents violated South Carolina

1 law. South Carolina law is very clear; it requires  
2 written listing agency agreements. The parties actually  
3 admitted during the process before LLR that there was no  
4 listing agreement. Everybody in this litigation has  
5 done -- either requested that -- whether that's undisputed  
6 fact, that that transaction where they were solicited to  
7 sell, no listing agreement was ever entered at all. And,  
8 again, that was a finding of fact by LLR. LLR found that  
9 they violated Title 40 and that reprimands were entered  
10 against these particular plaintiffs.

11 You have in front of you 1537's motion for summary  
12 judgment, and you have got two other motions for summary  
13 judgment from (indiscernible) defendant. There's a good  
14 bit of overlap, of course, in this case. The other  
15 defendants are the ultimate purchaser of the property that  
16 occurred eight months later, and the real estate agency  
17 company that did come to us asked us to -- for a one-time  
18 showing, which we signed, written. There is clearly an  
19 agency relationship between the parties at that point in  
20 time.

21 The defendants --

22 THE COURT: What are the causes of action against  
23 the agency and the real estate company?

24 MS. ARNOLD: The -- they're all basically the same.  
25 Breach of contract, civil conspiracy, unjust enrichment.

1 I think negligent misrepresentation of the  
2 (indiscernible).

3 MR. KROPSKI: Fraud and negligent interference.

4 THE COURT: Got it.

5 MS. ARNOLD: In dispute, (indiscernible) you have  
6 got undisputed facts, which I think is kind of unusual  
7 with motions. You file this motion for summary judgment,  
8 usually, there is something that's got a disputed fact.  
9 But here, it's not, Your Honor. There's no  
10 (indiscernible) that's been found by LLR. There was no  
11 agency relationship. There was no agreement signed as  
12 required by law between the plaintiffs and my clients, the  
13 owner of the ground, 1537, that (indiscernible).

14 The finding by LLR that they have violated the law  
15 precludes all of their causes of action that they asserted  
16 against the defendants. The breach of contract cannot  
17 come to the Court and -- after you have violated  
18 statute -- and said, "By the way, Court, give me a remedy.  
19 I violated the law, but please give me a remedy." The law  
20 doesn't allow that.

21 And then there is all the equitable events: Unjust  
22 enrichment, unclean hands. They are violating the law and  
23 then come to the Court to seek a remedy against somebody  
24 else.

25 So all of the causes of action -- civil conspiracy,

1 breach of contract -- every last one of them fail. The  
2 other reason they fail is their entire argument is based  
3 on the concept of (indiscernible) cause. There is case  
4 law out there, Your Honor, that says, when a real estate  
5 agent procures the buyer, that they could be entitled to a  
6 commission. Well, that theory, procurement  
7 (indiscernible), only comes into play again when you have  
8 remedy, contract, and signed listing agreement between the  
9 parties. You have got to have the agency relationship  
10 there, and it does not exist.

11 So their entire theory as to why they should be able  
12 to get a commission fails. It fails, first of all,  
13 because, again, they have violated the law as determined  
14 by LLR. They have come to the Court with unclean hands.  
15 They're asking for remedies as, "By the way, give me a  
16 remedy even though I'm not following the statute that  
17 South Carolina law says you clearly have to follow, real  
18 estate agent." But, yet, (indiscernible) I don't think  
19 the Court has to go back to that level to get to the level  
20 while we're arguing procuring costs. Procuring costs does  
21 not say a violation of statute. It does not say the  
22 concept of "I should be able to recover when there is no  
23 agency split."

24 Again, we have undisputed facts here (indiscernible)  
25 facts all the causes of action fail against the defendant

1 1537 Ben Sawyer Boulevard and of course Mr. McColl  
2 (indiscernible), his estate was never substituted.

3 Thank you, Your Honor.

4 THE COURT: All right. Are y'all sharing in the  
5 arguments?

6 MR. KROPSKI: Your Honor, Steve Kropski for East  
7 Islands Real Estate and Ashley Haynes.

8 Ms. Arnold went through some of the history, so I  
9 won't torture you with that. We'd reiterate the procuring  
10 costs. This is the Hobbs case that we cite in our brief.  
11 Procuring costs require that there actually be an agency  
12 (indiscernible). The point behind it is, you're the real  
13 estate agent for a seller. A buyer is brought, and then  
14 the seller tries to cut the agent out of the deal. That's  
15 the idea behind procuring costs.

16 What we have basically is Realtors calling shotgun,  
17 being mad that somebody else took the front seat. What  
18 happened here was they didn't produce something to the  
19 seller. Nothing happened. And then, later on down the  
20 road, about six months, another real estate company  
21 working with the buyer came through, did the right thing.  
22 (Indiscernible) signed listing agreement which  
23 (indiscernible), I believe, to our motion, and that they  
24 get a commission.

25 Afterward, they're sued by people (indiscernible),

1 and there's no basis for that against a real estate  
2 company.

3 Secondly, procuring costs is the cause of action.  
4 It's only against (indiscernible). So trying to make a  
5 claim of procuring costs against the other real estate  
6 agency, it's not (indiscernible). It's not recognized in  
7 any of the case law (indiscernible).

8 Finally, to include the remainder cause of action  
9 against East Islands Real Estate and against Ashley Haynes  
10 predicated on the contract in existence. And as  
11 Ms. Arnold stated and as Exhibit 1 and 2 to our  
12 memorandum, the plaintiffs confirmed to the real estate  
13 commission under oath that they did not have an agreement  
14 (indiscernible) seller and the buyer. So there can't be  
15 an interference (indiscernible) contract. There's no  
16 contract.

17 The fraud and misrepresentation causes of action, we  
18 asked those questions: "What correspondence did you have  
19 between East Islands and Ashley Haynes and the  
20 plaintiffs?" in response to the interrogatories, which are  
21 attached as Exhibit 4, they said no, there is no  
22 communication -- there was no communication between the  
23 plaintiffs and East Islands and Haynes, and so there  
24 couldn't be a misrepresentation, whether it's fraudulent  
25 or negligent.

1           And, finally, the same thing applies to civil  
2           conspiracy cause of action. There's no allegation.  
3           There's no evidence that's proved that East Islands or  
4           Haynes did anything other than what a real estate agent  
5           does. They brought money to a buyer and seller. That  
6           property closed. There was no other activity which  
7           would -- unlawful activity (indiscernible) under the civil  
8           conspiracy elements.

9           For that reason, based upon the admissions of the  
10          plaintiff and the documents we have put forth in the  
11          memorandum, including (indiscernible) interrogatories  
12          confirming the listing (indiscernible), we would ask that  
13          summary judgment be entered against -- in favor of East  
14          Islands and Haynes.

15          THE COURT: All right.

16          MR. LESEMANN: Your Honor, good morning. Ellis  
17          Lesemann on behalf of the buyer.

18          MR. COBB: Your Honor, I'm sorry. I want to object  
19          to Mr. Lesemann speaking. He has a separate motion for  
20          summary judgment on behalf of the buyers that are  
21          defendants, but that motion is not in front of the Court  
22          today. I just want to make sure that, if he's speaking  
23          about his motion, which he did file a memorandum in this  
24          court on Friday, that's not timely nor (indiscernible).

25          THE COURT: Why do you care? We're here. I'm here.

1 We're all here.

2 MR. COBB: Because I haven't -- I have not filed  
3 my -- I have not filed my memorandum in opposition. There  
4 is (indiscernible) between all three sets of defendants,  
5 Your Honor. So that's the main reason why we care.

6 THE COURT: All right. Well, let's hear what he has  
7 to say.

8 MR. LESEMANN: Thank you, Your Honor. Again,  
9 counsel has covered these issues well, and the case has  
10 been -- it's a (indiscernible) case that's been around for  
11 a long time. The motion was filed more than ten days ago.  
12 And I apologize that I didn't follow up with the clerk,  
13 perhaps, to make sure that it was listed, but the  
14 arguments are familiar. I included the ones that  
15 Ms. Arnold perhaps may have already made, but let me add a  
16 couple.

17 One of them was implied -- a commission was paid to  
18 Mr. Kropski's client. So the idea -- this is not  
19 something where the buyer and the seller essentially just  
20 exclude the real estate professional altogether. There  
21 was a real estate professional involved. That real estate  
22 professional did make a commission.

23 Again, also, the bulk of these plaintiffs not only  
24 got them publicly reprimanded but it didn't lead to a  
25 sale. The terms of the sale ultimately as entered were

1 different as than the initial offer that was presented by  
2 Mr. Cobb's clients. And then, secondly, there was a whole  
3 set of negotiations that had to occur. There were two  
4 tenants in the building. Those leases had to be  
5 negotiated to an early termination. There was a lot of  
6 extra work that never happened that the plaintiffs never  
7 did, again, because there was no agreement in place and  
8 they were rejected.

9 Beyond the violation of law, Your Honor, any time  
10 you're going to bring a quasi contract or a contract claim  
11 or a promissory estoppel claim, there has to be an  
12 unambiguous promise where there has to be a meeting of the  
13 minds. All of these claims (indiscernible). Even for the  
14 tort claims that plaintiffs tried to add, you still have  
15 to have a basis for damages.

16 Your Honor, if you look at the buyer, there's no  
17 agency relationship. There's no amount of commissions.  
18 Is it 4? 5? 6 percent? Is it 10 percent? Is it paid at  
19 closing? How long was this relationship going to be? Was  
20 this relationship exclusive? None of those questions are  
21 answered, which means there is no meeting of the minds.

22 With Ms. Arnold's claim, the seller, there's clearly  
23 no meeting of the minds because the contract was presented  
24 to her as an agency listing, and it was rejected.

25 With my client, the buyer, an offer was presented.

1 The offer was rejected. There was no buyer's agency  
2 agreement.

3 And, again, (indiscernible), there was no agreement  
4 as to any of those terms which defeats every single cause  
5 of action that they would try and assert because they  
6 can't point to any unambiguous promise, any meeting of the  
7 minds, or anything whatsoever to get them a commission of  
8 any specific amount or under any specific terms, even if  
9 Your Honor were willing to set aside the public reprimand  
10 that was issued to each of them for their misconduct  
11 related to this specific set of facts.

12 So those were really all I wanted to add. We're all  
13 defendants on the same causes of action, and that is, we  
14 join in the arguments that the other counsels have made.  
15 Thank you.

16 THE COURT: Thank you.

17 All right. Yes, sir?

18 MR. COBB: Your Honor, Hal Cobb representing the  
19 plaintiffs in this case, Atlantic International, Inc.,  
20 d/b/a Coldwell Banker Commercial, John True, and Aaron  
21 Rowley.

22 THE COURT: All right.

23 MR. COBB: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. COBB: Your Honor, I'm just going to -- I have

1 got three (indiscernible) and I'm going to try  
2 (indiscernible) actually extremely competent and good  
3 lawyers who I all like personally. But I do respectfully  
4 disagree with them for different reasons, and I want to  
5 try to give the Court a little bit more color in terms of  
6 the undisputed facts because I think that they're taken  
7 somewhat out of context.

8 But -- and before I begin, I want to let the Court  
9 know, depositions have not been completed in this case.  
10 Discovery is still outstanding. We currently have a  
11 motion that's currently outstanding against Mr. Rick  
12 McColl and Defendant 1537 Boulevard [sic] -- excuse me --  
13 Ben Sawyer Boulevard. And that's (indiscernible) because  
14 Mr. McColl has passed, so...

15 However, no notice of death has been filed in this  
16 case, Your Honor, and so we would argue against the fact  
17 that timely notice (indiscernible) estate (indiscernible)  
18 is problematic.

19 Your Honor, in terms of the seller -- and let me  
20 back up, because I think it's important. There are two  
21 real estate -- commercial real estate agents and they both  
22 work for the same brokerage company, Caldwell Banker  
23 Commercial. And one agent's name is John True and one  
24 agent's name is Aaron Rowley. And so -- so Mr. Rowley had  
25 been in discussions with Mr. McColl to list and sell this

1 property that was related to Mr. McColl's mom.

2 Mr. Rowley emailed a listing agreement to  
3 Mr. McColl. Mr. McColl said he would sign it and further  
4 instructed Mr. Rowley to move forward with  
5 (indiscernible). At the same time, which is not abnormal  
6 in a commercial real estate brokerage company,  
7 Mr. Rowley -- excuse me, Mr. Rowley talked to Mr. True,  
8 and Mr. True had been working with the buyers in looking  
9 at different potential properties for them to buy. It is  
10 true that no buying -- buyers agreement had been signed at  
11 that point in time, but they were communicating, they were  
12 talking, saying (indiscernible).

13 At that time, Mr. True was made aware of this  
14 property. Mr. True took it to the defendants IBYDIT, LLC  
15 and Mr. Nesbitt. And in that interaction, Mr. Nesbitt, by  
16 and through his partner or through his agent, a gentleman  
17 named Matt Walsh, instructed Mr. True to start making a  
18 counter-offer, start making -- you know, some research on  
19 signing, things of that nature.

20 So to say no work was being done is just not -- not  
21 accurate. All of this happened in January of 2020, and in  
22 the very beginning of February of 2020, the buyer and  
23 seller went dark and did not provide the signed listing  
24 agreement and didn't communicate to Mr. Rowley or  
25 Mr. True.

1           By July of -- in July of 2020, this property sold.  
2       The listing agreement that was signed by the defendants  
3       East Islands and the agent for East Islands, Mr. Haynes,  
4       was signed on March 20th, that one-time listing agreement  
5       (indiscernible).

6           So it wasn't six months, Your Honor. It was  
7       actually less than two months from the time that, you  
8       know, the defendants for the buyer and seller went dark on  
9       the agents in terms of when they entered this agreement.  
10      And we believe the evidence will show and also have shown  
11      that Ashley Haynes and East Islands was involved with the  
12      buyer and seller prior to the time of that agreement being  
13      signed.

14          Now, Your Honor, it is undisputed that LLR, after  
15      this case was filed, did cite that, "Hey, y'all messed up.  
16      You were supposed to have a written listing agreement and  
17      a written buyer agreement." But, Your Honor, I think that  
18      the defendants, all of them, overlooked the why on that.  
19      It's dispositive to this case. But the facts I'm going to  
20      reflect are clear, Your Honor. And that is, but for the  
21      interference and the actions of the parties, a listing  
22      agreement and a buyers agreement more than likely not  
23      would have been signed and done properly. The admission  
24      there's no written contract is the most (indiscernible),  
25      and that is the proper form for any Realtor and its

1 broker, who oversees these Realtors (indiscernible). And,  
2 therefore, those lawyers were placed in LLR.

3 However, also, what the facts will show is, as a  
4 result of the complaint being filed, East Islands by and  
5 through its broker in charge contacted Coldwell Banker  
6 broker in charge and stated that, if this lawsuit was not  
7 dismissed against them, they would then file the complaint  
8 with the LLR, which they did. So it was retaliatory to  
9 file with the LLR, but, nevertheless, we  
10 (indiscernible) --

11 THE COURT: (Indiscernible) the LLR (indiscernible)  
12 wrong. I can understand if they found out they were  
13 right.

14 MR. COBB: But, again, I think in terms of the  
15 questions of fact, there's no question of fact on how the  
16 buyer and seller initially came together. They were  
17 absolutely brought together by Mr. Rowley and Mr. True.  
18 There's no question of fact that the seller and buyer  
19 instructed Mr. Rowley and Mr. True to make an offer and  
20 counter-offer and enter into those agreements. There's no  
21 question of fact that Mr. Rowley sent Mr. McColl the  
22 listing agreement, and Mr. McColl, in an email, said that  
23 he would sign and get it back to Mr. Rowley.

24 There's no question of fact that Mr. McColl  
25 indicated that -- excuse me. There's no question of fact

1 that East Islands conversed with the buyer -- the buyer --  
2 excuse me -- the seller before the (indiscernible). But I  
3 think there are many questions that are important as to  
4 the question of fact that don't allow for motions for  
5 summary judgment to be (indiscernible) in this case. Did  
6 East Islands and Defendants intentionally work to  
7 circumvent the plaintiffs as alleged? If so, did that  
8 lead directly to no written contracts being signed by the  
9 buyer and seller as submitted, even after they were given  
10 instruction to work in an agency agreement?

11 You know, if so, did that lead to commissions not  
12 being paid to plaintiff? And, again, there's no question  
13 of fact that the closing did happen in July, which was  
14 just -- that's -- I believe that's what Mr. Lesemann was  
15 talking about, the six months, from the time that my  
16 clients introduced buyer and seller to the time of closing  
17 actually happened, which (indiscernible), Your Honor, were  
18 million-dollar deals (indiscernible) commercial  
19 transaction.

20 And there's no question of fact that East Islands  
21 did get a commission. But in just looking at the listing  
22 agreement that was provided by Mr. Rowley to Mr. McColl,  
23 it had a 5 percent commission in that listing agreement.  
24 And there's no question of fact that East Islands, as a  
25 broker and vis-à-vis by and through its agent, Mr. Haynes,

1 was paid 4 percent at that closing. The closing dollar  
2 amount mirrored that of the back and forth between  
3 Mr. Rowley and Mr. True based on the instructions.

4 So, you know, if any additional work was done, it  
5 might have been done based off of negotiations through the  
6 tenants, but not in terms of actual (indiscernible).

7 Now, going to the defendants that I'll just  
8 represent to you are the sellers -- that would be 1537 Ben  
9 Sawyer Boulevard and Mr. McColl -- again, we would notice  
10 that no notice of death was filed in this case. We would  
11 also say that the violations for the bad acts of the  
12 defendants based off the LLR is an overreach in terms of  
13 the way that they're trying to get this Court to interpret  
14 it. Just because they had a problem with the LLR, it was  
15 based off the actions or bad actions alleged of all the  
16 defendants in this case. But for that bad action, they  
17 would have had a written documentation and they would not  
18 have been in violation of the LLR standards.

19 Your Honor, segueing over to -- segueing over to  
20 East Islands' motion for summary judgment, we have already  
21 talked about -- we have already talked about the six  
22 months in terms of the listing agreement. (Indiscernible)  
23 they were suing.

24 We already talked about retaliation, and I  
25 appreciate your point on that, Your Honor.

1           We have already talked about, you know -- you know,  
2           the plaintiffs confirm they did have a written contract.  
3           But, again, Your Honor, in the pleadings, we do plead  
4           quasi contract against only the seller and buyer, not  
5           against East Islands.

6           The -- again, I would just say that the depositions aren't  
7           done, and I would say for East Islands, I do -- you know,  
8           I don't agree with everything, but I do agree for East  
9           Islands that there is insufficient justification to  
10          maintain the cause of action against East Islands Real  
11          Estate and Ashley Haynes at this point in time to comply  
12          with fraud and misrepresentation.

13          And so we could ask this Court to (indiscernible)  
14          dismissal of that cause of action against defendants East  
15          Islands Real Estate, Inc. and Ashley Haynes individually  
16          and as the agent of the company.

17          But, Your Honor, you asked earlier what the cause of  
18          action against the real estate broker and the real estate  
19          agent were, and that was a civil conspiracy. That would  
20          be the fraud and misrepresentation which we agree should  
21          come out, the promissory estoppel, and the tortious  
22          interference with contract that's only against the broker  
23          and broker's agent (indiscernible).

24          Your Honor, in terms of the seller, again, I just  
25          (indiscernible) argue that point today, but because you

1 are here, we are will talk about it. A commission was  
2 paid, but, again, the commission was (indiscernible) 5  
3 percent by the seller. Of course the seller would rather  
4 pay a 4 percent commission versus a 5 percent commission.  
5 And that's what happened in this case.

6 In terms of the quasi contract and meeting of the  
7 minds, again, I would just say that it doesn't -- it  
8 doesn't mean that there's not a meeting of the minds.  
9 When you instruct a real estate agent to go and make an  
10 offer and then you instruct, you know, another real estate  
11 agent to go and make a counter-offer and those two things  
12 happen, Your Honor, there was back and forth.

13 Now, that's meeting of the minds that there's an  
14 agency creation. How the conversation can be done could  
15 be looked at after the fact, but that doesn't mean that a  
16 meeting of the minds wasn't created. There was clear  
17 instruction by the seller and buyer defendants to these  
18 two agents to move forward to try to consummate a deal.

19 Your Honor, respectfully for those reasons, we would  
20 just ask this Court to deny and dismiss the summary  
21 judgment with the exception of the defendants East Island  
22 Real Estate and Ashley Haynes related only to the cause of  
23 action (indiscernible) today. Thank you.

24 THE COURT: All right. Anything as a rebuttal?

25 MS. ARNOLD: Yes. Quickly, Your Honor.

1           Your Honor, with all due respect to Mr. Cobb and as  
2 much as I'd like to come forward and testify, my testimony  
3 does not mean it's admissible in front of a motion for  
4 summary judgment. You have motions for summary judgment  
5 based upon public record and the LLR. You have  
6 attachments, for instance, requests to admit where there's  
7 an admission (indiscernible) respond that, yes, they were  
8 (indiscernible) agreement so that it's for -- between the  
9 parties (indiscernible).

10           Mr. Cobb has done a good job of testifying, but,  
11 again, his testimony is not (indiscernible), and I know I  
12 don't need to remind you of the standards of summary  
13 judgment because I'm sure you have heard it ad nauseam  
14 over your career, but...

15           So, Your Honor, again, there's nothing here but  
16 undisputed facts essential to these causes of action.  
17 Every single one of them is the need to comply with South  
18 Carolina law, the need to have a written listing  
19 agreement. Admitted by Mr. Cobb in his argument, there is  
20 no such agreement here between us and 1537.  
21 (Indiscernible) and (indiscernible) all the parties within  
22 reason. I feel sorry for the Court because you do, you  
23 have got a slew of briefs that have been submitted on the  
24 defense side. But, again, everything we're relying on are  
25 things that are admissible. That (indiscernible) summary

1 judgment, and the plaintiff has brought nothing forward  
2 that is an admissible challenge to any of the facts that  
3 we presented to you.

4 Thank you, Your Honor.

5 THE COURT: All right. I'll take it under  
6 advisement and let you know my answer by the end of the  
7 day.

8 MS. ARNOLD: Thank you, Your Honor.

9 THE COURT: All right.

10 (The above matter concluded.)  
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## 1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Atlantic International, Inc., vs.

3 IBYDIT, Inc., et al

4 2020-CP-10-04076

5 DATE OF HEARING: May 30, 2023

6 COURT REPORTER/MONITOR: DCRP/OWL

7 \*\*\*\*\*

8 I, Bobbi Fisher, do hereby certify that the  
9 foregoing transcript is a true and correct record of the  
10 recorded proceedings; that said proceedings were  
11 transcribed to the best of my ability from the audio  
12 recording and supporting information, and that I am  
13 neither counsel for, related to, nor employed by any of  
14 the parties to this case, and I have no interest,  
15 financial or otherwise, in its outcome.

16  
17 

18 \_/s/ Bobbi Fisher\_\_\_\_\_

19 Bobbi Fisher, RPR and Certified Transcriber

20 Date Submitted: 10/19/2023

21  
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23 REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR  
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### **BACKGROUND**

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

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

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

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

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

**CERTIFICATE OF COUNSEL IN RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Bentley Price, Circuit Court Judge

**RECEIVED**  
**Mar 29 2024**  
**SC Court of Appeals**

Appellate Case No. 2023-001575

Atlantic International, Inc. d/b/a Coldwell Banker Commercial Atlantic, John W. True, and Aaron B. Rowley .....Appellants

v.

IBYDIT, LLC, 1537 Ben Sawyer Blvd., LLC, Curt Nesbitt, Richard M. McColl, East Islands Real Estate, Inc., and Ashley Haynes, Individually and as an Agent of East Islands Real Estate, Inc.,.....Respondents

**CERTIFICATE OF COUNSEL**

The undersigned certified that this Record on Appeal complies with Rule 210 and 267, SCACR.

February 15th, 2024

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