THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Edgar W. Dickson

Civil Action No.: 2020-CP-32-00005

Appellate Case No. 2021-000597

R. Kent Porth and Panorama Point, LLC……Appellants,

v.

Robert P. Wilkins, Jr., RPW Development, Inc.,
Southern Visions Realty, Inc., and
Consolidated Multiple Listing Service,
Inc.,.……..…Respondents.

REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT

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I. Waldo v. Cousins, No. 28201 Appellate Case No. 2022-000134 (May 1, 2024)

The Appellants' April 8, 2024 Petition for Certiorari (the "Petition") set forth multiple special and important reasons for this Court to grant the Petition under Rule 242(b). The importance of granting the Petition has now been confirmed and amplified by this Court's decision in Waldo v. Cousins, No. 28201 Appellate Case No. 2022-000134 (May 1, 2024).

The Respondents' May 8, 2024 Return (the "Return"), the Court of Appeals' February 14, 2024 opinion (the "Opinion"), and the Circuit Court's February 16, 2021 order granting the pre-answer motion to dismiss all rely on pre-1998 common law theories which were superseded by the enactment of Act 24 (H.B. 3169) and Act 218 (S.B. 949), thereby amending the provisions of Title 40, Chapter 57 of the S.C. Code governing real estate brokerage activities in South Carolina (the "Act"). The Court of Appeals' Opinion ignored the Act's stated purposes which were "to establish the parameters, duties, and responsibilities for agency relationships in real estate." Waldo at 3. The Court of Appeals imposed its own policy determination and unequivocally **negated the entirety of the fiduciary client protections** set forth in the "well-defined, explicit, and clearly controlling" provisions of the Act by holding that **the Act does not provide for private causes of action for breach of fiduciary duties**. Opinion at 5. This Court should grant the Petition and reverse the Court of Appeals decision in its entirety thereby "ensuring the legal end [to this legal process] is not a lawless one." Waldo at 6. The Return ignored this Court's decision in Waldo, and the Return and the Court of Appeals' Opinion **directly contradicts** the specific reasoning and holdings of Waldo as more fully discussed throughout this Reply. The Court of Appeals, like the arbitrator in Waldo, "cannot revive what has been repealed." Waldo at 6. Under this Court's decision in Waldo, real estate licensees may bring an action to enforce the Act. Under the Court

of Appeals' Opinion, **the fiduciary clients of those real estate licensees may not**, which is in error. Opinion at 5.

In a factual context far more compelling than Waldo, and as explicitly alleged in the Complaint, the Respondents' (i) violations of the Act, (ii) violations of the rules of the Consolidated Multiple Listing Service (the "CMLS"), (iii) intentional acts of fraud and concealment (including the creation of fraudulent "agency agreements" discussed in Petition at 22-23), and (iv) pattern of deceptive and unfair trade practices all **occurred in and during a fiduciary relationship** under S.C. Code Ann. §40-57-137(A) and under common law. Darby v. Furman, 334 S.C. 343, 347-348, 513 S.E.2d 848 (1999). In the Respondents' Appeal Brief at 16, fn. 7, and in their prior briefs to the circuit court the Respondents' relied on the superseded decision in United Farm Agency v. Malanuk, 284 S.C. 382, 384, 325 S.E.2d 544, 545 (1985). See Waldo at 5 (stating that "§40-57-139(G) had rendered oral and implied contracts for real estate commissions unenforceable").

The Appellants incorporate by reference all of their consistent and unwavering prior arguments **set forth in their nine (9) prior briefs and petitions** to the Circuit Court, the Court of Appeals and this Court (in the Petition).[1] In the interest of brevity, Appellants call this Court's attention to the fact that this appeal arises from the Circuit Court's grant of a **pre-answer** motion to dismiss under Rule 12(b)(6). In all prior briefs filed with the Circuit Court and the Court of Appeals, the Appellants have objected to the consideration of more than what can be ascertained from the face of the Complaint by (i) invoking **unpleaded** affirmative **fact-based** defenses, (ii) making **factual determinations** which were not supported by and were contrary to the allegations

[1] **The arguments and issues contained in the Petition and this Reply have been consistently and forcefully argued by the Appellants since their first brief to the Circuit Court on September 18, 2020**. The legal analysis of the Act set forth by this Court in Waldo was argued **almost verbatim** by the Appellants to both the Circuit Court and the Court of Appeals; however, both courts inexplicably rejected this legal analysis and reasoning as unpersuasive.

of the Complaint, and (iii) drawing **negative inferences** against the Appellants. When reviewing the separate issues raised in the Petition and discussed herein, the Appellants respectfully request this Court to remember these procedural objections founded on the standards set forth in Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (S.C. 2019) and Spence v. Spence, 368 S.C. 106, 116-117, 628 S.E.2d 869 (S.C. 2006).

II. The Return's Introduction Materially Misstates the Claims of the Appellants

The Return trivializes this case by asserting that "[e]ach cause of action, however, relies upon the same allegation – that the [Respondents] did not present a document specifically entitled 'listing agreement', which the [Appellants] allege is a **technical violation** of the statute governing real estate agents in South Carolina" (emphasis added). Return at 5. This false statement of the case, although acknowledging "technical violations" of the Act, intentionally misrepresents the multitude of separate and distinct allegations of the Complaint.

III. Arguments

1. The opinion of the Court of Appeals violated the appropriate standard of review for a pre-answer Rule 12(b)(6) motion to dismiss by going beyond testing the sufficiency of the Complaint.

The Respondents' Return at 5-6 simply restates the general standard of review for a Rule 12(b)(6) motion to dismiss and does not address the fact that the Court of Appeals' and the Circuit Court's review of the motion went far beyond testing the sufficiency of the Complaint. See Skydive at 180; Spence at 116-117. For example, the Court of Appeals improperly applied the unpleaded, affirmative defenses of laches and the statute of limitations which "were not apparent from the face of the complaint." Brown v. Leverette, 291 S.C. 364, 367, 353 S.E.2d 697 (1987).

a. The opinion of the Court of Appeals violated the appropriate standard of review for a pre-answer Rule 12(b)(6) motion to dismiss by drawing negative inferences from the allegations of the Complaint.

The Return did not substantively dispute the Appellants' assertion that the Circuit Court and the Court of Appeals relied on **unfounded factual determinations based on negative inferences** contrary to the allegations of the Complaint when interpreted in the light most favorable to the Appellants as required. In response to the Return's material misrepresentations of the Complaint, **Section V** below contains a topical summary of some, but not all, of the pertinent factual allegations of the Complaint **which must be taken as true** (the "Complaint Summary").

As a representative example of the Court of Appeals' unsupported factual findings based on negative inferences, the Opinion states that the **"efforts" of the Respondents gained the Appellants "over $6 million in profit**"(emphasis added). Opinion at 4. This false factual determination by the Court of Appeals has **no foundation in the Complaint**. Appellant Porth's family had owned the subject property for over 50 years and the property was **worth several million dollars in its undeveloped state**. The Appellants then **expended almost $2 million** in the planning, permitting, development, construction and sale process (e.g. infrastructure costs, development fees and sales commissions, development loan costs and interest, accounting and other professional fees, etc.) The Complaint alleges **gross** sales proceeds from the 23 sales transactions (from which the almost $2 million of costs and expenses were paid) of approximately $6,179,000. The allegations of the Complaint are that **the Respondents' unlawful, fraudulent and deceptive acts of self-dealing resulted in below fair market sales prices**. See Complaint ¶¶ 387, 390, 397, 400, 411, 417, 444, 464, 465, 467, 472, 473. The Court of Appeals' "factual determination" therefore **overstates the "profit" of the Appellants by at least $4 million!**

b. The Opinion of the Court of Appeals violated the appropriate standard of review for a pre-answer Rule 12(b)(6) motion to dismiss by making factual determinations on quintessential fact issues such as the date of discovery of each of the separate and distinct causes of action.

The Return makes no attempt to refute the Appellants' assertion that the dates of discovery of any applicable statute of limitations, to the extent not equitably barred or tolled, **are questions of fact**. The Return simply lists various unpleaded statutes of limitations and then asserts that all transactions closed more than 3 years prior to the filing date of the Complaint. The Return's assertions in this regard are all based on the superseded pre-Act common law theory of Appellants being charged with knowledge of the Act addressed at Issue 8 below. The Return does not address the multitude of separate causes of action which were not founded on violations of the Act.

2. The opinion of the Court of Appeals failed to identify a "discovery date" for each and every one of the separate and distinct causes of action which are legal in nature.

While effectively ignoring the Appellants' arguments on tolling, estoppel, and "unclean hands", the Return, like the prior court opinions, **fails to identify the specific factual allegations which would trigger the start of a statute of limitations applicable to a single one of the separate and distinct causes of action** set forth in the Complaint. The Return asserts that there were no questions of fact as to the factual dates of discovery even though the Respondents have not filed an answer denying the allegations of the Complaint.

In light of their statutory fiduciary duties under the Act, it is **intellectually dishonest** for the Respondents to suggest that the closing dates of the 23 transactions are the dates of "discovery" of their multitude of separate and distinct breaches of fiduciary duty, **violations of the Act**, violations of the CMLS rules, unfair and deceptive trade practices, **acts of fraud**, and other alleged wrongful conduct. As an example, neither the Return, the Circuit Court nor the Court of Appeals identified a single allegation in the Complaint which would prove as a matter of law that the Appellants were on notice of the CMLS rule violations which cheated thousands of competing CMLS members. The Appellants **were not CMLS members and had no access to the CMLS**

database, its membership agreement or the CMLS rules until access was arranged during the Appellants' post January 10, 2017 due diligence efforts.[2]

In Poly-Med, Inc. v. Novus Sci. Pte., 437 S.C. 343, 878 S.E.2d 896 (2022), this Court addressed how South Carolina courts should approach the application of a "discovery" statute of limitations involving separate and distinct causes of action and separate and distinct violations of controlling obligations and requirements against a **single** defendant.[3] Violations of "two entirely different – indeed separate – contractual duties and requirements" would each be governed by separate statute of limitations unless the contract indicated otherwise.[4] Poly-Med at 352. The Complaint in this case alleges a substantial number of "entirely different – indeed separate" violations of fiduciary and statutory duties by **three "entirely different – indeed separate" Respondents**. See Complaint ¶¶ 377-473. The use of a single unidentified trigger date by the Court of Appeals and the Circuit Court was an error of law. The start date of any applicable "discovery" statute of limitations **is a factual question for the trier of fact**. Poly-Med at 354.

The Return **outrageously** asserts that "not a single fact is alleged to have been unknown by [Appellants] at the time of the sales transactions" and falsely asserts that the amount of the commissions paid, the identity of the purchasers, and the identity of the licensed real estate professionals at the closings are the only facts underlying **all of** the Appellants' claims. Return at 11. The Appellants direct this Court's attention to the Complaint Summary at **Section V** which highlights allegations in the Complaint which prove the falsity of the Return's representation.

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[2] The CMLS database is not publicly accessible. It is accessible only by members who have signed a membership agreement and who have paid the required dues.

[3] This case involves wrongful conduct by **three separate and distinct** entities and individuals.

[4] Poly-Med involved breaches of an executory contract as opposed to the multitude of separate and distinct statutory violations and fiduciary breaches in the present case **with no valid contract.**

The 2013 incidents relied on by the Respondents (Return at 8, 10, 20-21) and the Court of Appeals involved **only** Respondent RPW Development and **did not involve Respondent SVR** or the conduct of any SVR licensee (including Wilkins as a licensed broker-in-charge) under the Act or the CMLS rules. Complaint ¶¶ 339-345. The 2013 incidents with RPW Development **were not governed by the provisions of the Act** or by the rules of the CMLS, and therefore could not put the Appellants on inquiry notice of the claims in this case.[5] The Return falsely states that the Appellants knew of the undisclosed business relationship with the purchaser of Lot 15 **on** December 31, 2013. Return at 10. The Appellants specifically allege they first learned of this undisclosed conflict of interest **after** the closing on September 26, 2013, and **during their due diligence efforts after January 10, 2017**. Complaint ¶¶ 225, 261, 262, 265.

3. The opinion of the Court of Appeals failed to consider the issue of "fiduciary reliance" when determining the date of "discovery" for purposes of applying any applicable statute of limitations.

The Return fails to respond to the allegations of the Complaint that the Appellants' reliance on the fiduciary status of the Respondents **as licensees under the Act**[6] was **factually and legally** reasonable for purposes of applying any discovery statute of limitations. The Court of Appeals and the Circuit Court manifestly disregarded the fiduciary status of the Respondents **under the Act**, and **only** addressed the fiduciary status of Wilkins **as an attorney**. Opinion at 2.

4. The opinion of the Court of Appeals held that violations of a licensed real estate broker or agent's statutory and common law fiduciary duties, including in part the specific duties of loyalty and disclosure as expressly set forth in S.C. Code Ann. §§40-57-135, 137 and 139, do not support a private cause of action by a damaged client.

[5] The incidents involving RPW were fully resolved without the need for litigation or other remedial action. Complaint at ¶¶ 231, 233, 344.

[6] The Appellants additionally alleged fiduciary reliance on Respondent Wilkins status as a licensed attorney **and alleged that Wilkins actually provided legal services**. Complaint ¶¶ 44, 51, 396.

The Return erroneously asserts that "**the statute does not allow private actions to punish alleged technical violations**" of the Act and that "nothing in §40-57-135(C)(4) suggests that a realtor who markets and sells property for the benefit of a seller (such as the [Appellants]) is not entitled to a commission simply because the realtor and seller do not execute a specific document entitled 'listing agreement' "(emphasis added). Return at 16-17. When a licensed real estate professional, acting in a fiduciary capacity, receives and retains unlawful compensation in **manifest disregard of the Act**, the fiduciary duty provisions of Act must be interpreted to support a private cause of action as the Legislature clearly set forth in S.C. Code Ann. §40-57-137(Q)[7] which states "[e]xcept as otherwise stated, nothing in this section precludes an injured party from bringing a cause of action against licensees, their companies, or their brokers-in-charge." The Return fails to address this Court's prior holding in Darby that "[a]n agent's breach of fiduciary duty is a basis on which the agent may be required to forfeit commissions and other compensation **paid or payable** to the agent during the period of the agent's disloyalty"(emphasis added).[8] Darby at 348. Disgorgement is an appropriate remedy "in this circumstance" and is mandated under South Carolina law as discussed at Issue 5 following.

5. The opinion of the Court of Appeals failed to determine which of the various and distinct claims of the Appellants were equitable in nature and therefore not subject to any statute of limitations under the Supreme Court's holding in Thomerson v. Devito, 430 S.C. 246, 844 S.E.2d 378 (S.C. 2020).

The Return falsely asserts the Appellants failed to plead any equitable claims in the Complaint, and that every claim is legal in nature. Return at 11-13. The Complaint contains claims for the **equitable** return of the unlawful commissions in at least four causes of action. Complaint ¶¶ 388, 418-434, 446-448. In Howard Foster Co. v. Citizens Nat'l Bank. 133 S.C. 202, 211, 130

[7] As, it was in effect at the relevant times (renumbered as §40-57-350(M) effective January 1, 2017).
[8] The fiduciary breach at issue in Darby was statutorily enumerated at §40-57-135(D) and the cause of action in Darby would now be barred under the reasoning of the Court of Appeals' Opinion.

S.E. 758 (1926), this Court held "[t]he right to recovery of the property transferred **under an illegal contract** is founded upon the implied promise to return or make compensation for it" (emphasis added)(citing Pullman's Palace Car Co. v. Central Transportation, 171 U.S. 138, 18 S.Ct. 808, 43 L.Ed. 108 (1898). In Complaint ¶ 388 the Appellants explicitly pleaded this equitable claim in its primary breach of fiduciary duty cause of action as the Respondents had a fiduciary duty to account for and return the unlawful compensation. Under Waldo and the "well-defined, explicit, and clearly controlling" provisions of the Act, there was no lawful contract - written, oral or implied - which would make the specific claims for disgorgement of the commissions legal in nature. The equitable claims for disgorgement and restitution are not subject to a statute of limitations.

6. The opinion of the Court of Appeals failed to abide by the prior decisions of the Supreme Court on the application of the equitable defense of laches.

The Return simply restates the elements of laches. Return at 13-15. If the allegations of the Complaint with respect to the flagrant violations of the Act are taken as true as required under Skydive and Spence, the 5 year document retention rule of S.C. Code Ann. §40-57-135(C)(7) could not be factually relevant **since the Respondents could not retain documents which never existed**. This statutory provision was the sole basis for the Court of Appeals' adverse factual determination of prejudice. Opinion at 4. A **factual** finding of prejudice **adverse to the Appellants was not ascertainable from the face of the Complaint.** The Complaint alleges facts which suggest that the Respondents had retained **all** documents.[9] Complaint ¶¶ 291, 292.

The Return failed to address the argument that the Respondents cannot be prejudiced for purposes of applying the equitable defense of laches law by the **success** of their **own intentional**

[9] In the August 28, 2018 production of the requested documents, **the Respondents produced transaction files for each of the 23 transactions going back to 2006** which contained no written agency agreements and no written dual agency agreements but contained all **other** transaction documents required under S.C. Code Ann. §40-57-135(C)(7)**.**

and knowing violations of the Act and the rules of the CMLS, and the **success** of their **intentional acts of fraud and concealment**. Such a finding of prejudice would constitute the Court lending its assistance to illegal conduct in violation of public policy, and in violation of the equitable principles established by this Court in White v. Bank, 66 S.C. 491, 511-512, 45 S.E. 94 (1903). With no factual foundation apparent from the face of the Complaint, the Court of Appeals' judicially transformed the 5 year document retention provision of S.C. Code Ann. §40-57-135(C)(7) into a defacto statute of repose. The Legislature has not enacted a statute of repose under the Act nor does one exist elsewhere in the law applicable to this case.

7. This case presents the novel question of law as to whether the equitable doctrine of "unclean hands" can be a bar to the statute of limitations defense or to the equitable defense of laches.

The Return falsely claims "there is no South Carolina case ever applying unclean hands to an affirmative defense" and Appellants "cite no legal authority supporting their contention". Return at 19. The Appellants cited Vicary v. Town of Awendaw, 427 S.C. 48, 828 S.E.2d 229 (S.C.Ct.App. 2019). Petition at 19. Also see Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598 (S.C.Ct.App. 2004) ("[I]n any event Smith [the defendant] is precluded from asserting laches due to his own unclean hands. **Laches is a defense in equity, and one who comes to the court seeking equity must come with clean hands**" (emphasis added)). A contract or agreement which is unlawful and void (i.e. in violation of the Act) does not, by being carried into execution, become lawful and valid. Howard Foster at 212. The Return does not deny that the Respondents had "unclean hands" and simply argues that their "unclean hands" are irrelevant under the Act.

The Court of Appeals' failure to consider the "unclean hands" doctrine when prematurely applying the fact based defenses of the statute of limitations and laches to material violations of the Act violates public policy. "The principle of public policy is this: *ex dolo malo non oritur*

action. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act." Pullman's Palace Car at 151 (citing Holman v. Johnson, 1 Cowper, 341 (1775)); White v. Bank at 511-512. Allowing the Respondents to keep economic benefits obtained through intentional and **fraudulent** conduct in violation of the Act converts the statute of limitations into an instrument of fraud. When applying statutes of limitation **at law or in equity** "[t]o hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." Bailey v. Glover, 88 U.S. 342, 349 (1874); Epstein v. Howell, 308 S.C. 528, 531, 419 S.E.2d 379 (S.C.Ct.App. 1992) (holding **one in a fiduciary position** cannot "practice fraud" and then successfully defend on the ground that the victim of the fraud is "charged with knowledge" of the misrepresented facts).

The Return erroneously states that Appellants base their equitable tolling arguments on "extraordinary circumstances" (Return at 20) when Appellants clearly base their argument for tolling on "unclean hands" arising from unlawful conduct, fraud and breaches of fiduciary duty. American Legion v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (Ct.App. 2009) relied on by Respondents in their Return actually infers that "fraud and misrepresentation" are appropriate grounds for equitable tolling. American Legion at 583 ("the equitable tolling doctrine does not require wrongful conduct on the part of the defendant, such as fraud or misrepresentation").

8. This case presents a novel question of law as to whether a plaintiff will be charged with "knowledge of the law" applicable to licensed real estate brokers and agents when the Respondents, in their fiduciary roles, were statutorily required to disclose and explain the relevant law pursuant to S.C. Code §40-57-139 and failed to do so.

The Return relies on superseded common law in arguing that Appellants are charged with knowledge of the provisions of the Act which, pursuant to S.C. Code Ann. §40-57-5, apply only

to "real estate brokers, salesmen, and property managers". Satisfaction of the "agency disclosure" requirements of S.C. Code Ann. §40-57-139(A),(B) and (E) is one of several prerequisites for a licensed real estate professional to lawfully receive a commission; and the provisions of S.C. Code Ann. §40-57-137(Q) superseded any and all common law concepts **which are contrary** to the provisions of Act. Waldo at 4-5. The Return does not address this argument.

IV. Failure to Rule

The Return fails to substantively address all of the remaining arguments of the Appellants upon which the Court of Appeals declined to rule set forth at Petition pp. 22-24. For example, the validity of the Appellants' equitable causes of action for conversion, quantum meruit and restitution (the "Equitable Recovery Claims") set forth at Complaint ¶¶ 418-434, 446-448 (Issue XII raised at page 23 of the Petition) was confirmed by this Court's holding in Waldo. This Court previously held that an action to recover compensation paid under an unlawful contract arises from the implied obligation to return or restore what was received under the unlawful agreement. Howard Foster at 208-218. An appropriate equitable action would be in the "nature of quantum meruit, or otherwise". Id. at 214, 216.

V. Summary of Complaint Allegations

Appellants were unaware of subject conduct prior to January 10, 2017 (¶¶ 128, 142, 156, 157, 158, 441); **Appellants relied on Respondents' licensed status under the Act** (¶¶ 55, 58, 128, 137, 396, 436, 439, 440, 442); Appellants relied on Wilkins status as an attorney (¶¶ 44, 396); Wilkins actually provided legal services (¶ 51); **Appellants' reliance on the Respondents' fiduciary status as licensed real estate professionals was reasonable** (¶¶137, 396, 436, 439, 440, 443); Allegations of Appellants' immediate due diligence efforts (¶¶ 159, 227, 279, 280, 284); Wilkins agrees to produce all documentation (¶¶ 279, 284); **Wilkins threatens to "lawyer up"**

and "drag this thing out" for a long time (¶¶ 280, 385); **Allegations of intentional delay by Respondents and their attorneys** (¶¶ 289, 290, 294, 301, 304, 307, 308, 309, 310, 312, 313, 319, 320, 325, 326, 384, 385, 416); **Allegations of intentional concealment by Respondents** (¶¶ 132, 133, 136, 271, 272, 275, 305, 315, 316, 317, 378, 379, 384, 385, 402, 416, 437, 438); **Respondents purged the requested files** delivered on August 28, 2018[10] (¶¶ 315, 316, 317); **Admissions of no agency agreements during the 5 year document retention period** (¶¶ 82, 295, 296, 362); **No destruction of documents under the 5 year document retention provision** (¶¶ 291, 292); SVR was **not** a party to the Development Agreement (¶¶ 87, 88); **Allegations that the Development Agreement was illegal and void** (¶¶ 11, 100, 101, 102, 103, 107, 108, 402); **Allegations of S.C. Code §40-57-135 violations (no written agency agreement)** (¶¶ 77, 78, 79, 80, 81, 82, 124, 321, 379, 380, 403, 412, 451); **Allegations of S.C. Code §40-57-137 violations (no written dual agency agreements)** (¶¶ 124, 142, 380, 407, 451); **Allegation of S.C. Code §40-57-139 violations (no written agency disclosures)**(¶ 408); Allegations of S.C. Code §40-57-20 violations **(RPW Development engaged in unlicensed real estate brokerage activities)**(¶¶ 11, 100, 101, 102, 103, 110, 111, 355, 404, 455); **Allegations of CMLS rule violations** (¶¶ 36, 37, 83, 84, 85, 86, 104, 105, 130, 131, 132, 133, 134, 135, 138, 386, 387); Allegations of non-disclosure of CMLS rules (¶¶ 132, 133, 134, 136); **Allegations of CMLS rule violations by hiding listings** (¶¶ 83, 84, 85, 106, 130, 131, 135, 141, 330, 353, 354, 359, 386, 409, 411, 452); **Allegations of self-dealing in breach of fiduciary duty of loyalty** (¶¶ 86, 106); **Allegations of intentional unfair and deceptive competition against CMLS members** (¶¶ 86, 106, 298, 330, 359, 409, 410, 452, 454, 464, 465, 466); Allegations of undisclosed conflict of interest (¶ 381); **Wilkins admits he**

[10] The two **fraudulent "listing agreements"** discussed in the Petition at p. 22-23 **(dated 2011 and 2012) were purged from the files delivered on August 28, 2018 and not provided until November 21, 2019** (42 days prior to the filing of the Complaint)**.**

failed to disclose material facts (¶¶271, 272, 275): Allegation of breach of duty with respect to legal services by Wilkins (¶ 383); **Allegations of below fair market value sales prices** (¶¶ 387, 390, 397, 400, 411, 417, 444, 464, 465, 467, 472, 473); Allegations of numerous violations of the Act by the Respondents **in other real estate developments** (¶ 354) (alleged in support of the Appellants' Unfair Trade Practice cause of action).

VI. Conclusion

As set forth in the Petition and this Reply, the Court of Appeals placed a far greater burden on the Appellants to police, discover and prevent the unlawful and fraudulent fiduciary breaches by the Respondents than the Court placed on the Respondents to fulfill their fiduciary duties, their obligations under the Act, and their obligations under the CMLS rules. The Court of Appeals also eliminated the right of injured fiduciary clients of real estate licensees under the Act to address those breaches of fiduciary duties which are explicitly set forth in the Act. This result is legal error, it is unjust, and it is against public policy. This Court should grant certiorari on all issues in order to remedy this erroneous and unjust result; to preserve the integrity of this Court's prior decisions on the issues raised in this Petition; and to preserve the fiduciary protections set forth in the Act for clients of licensed real estate professionals in South Carolina.

Respectfully submitted,

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