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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2023-CP-10-01790

Appellate Case No.: 2024-000293

Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021,________ Respondent,

v.

Lawrence E. Miller, ____ Appellant.

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

June 14, 2024

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1001790

ELECTRONICALLY FILED - 2024 Feb 02 3:15 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

Jerome B Crites, Jr et al
PLAINTIFF(S)

Lawrence E Miller
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter came before the Court on February 1, 2024. After careful consideration, the Court granted the Plaintiff's Motion on Judgment on the Pleadings.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/02/2024.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption: Jerome B Crites Jr , plaintiff, et al VS Lawrence E Miller

Case Number: 2023CP1001790

Type: Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-02-02 14:51:59

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1001790

Jerome B Crites, Jr et al
PLAINTIFF(S)

Lawrence E Miller
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter came before the Court on February 1, 2024. The Court granted the Plaintiff's Motion for Judgment on the Pleadings. On February 13, the Defendant petitioned the Court to reconsider the Court's February 2, 2024, Order granting the Plaintiff's Motion for Judgment on the Pleadings. After careful consideration, the Defendant's Motion is respectfully, denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/20/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption: Jerome B Crites Jr , plaintiff, et al VS Lawrence E Miller

Case Number: 2023CP1001790

Type: Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

Electronically signed on 2024-02-20 14:04:05

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
JEROME B. CRITES JR., TRUSTEE OF THE BAC TRUST U/A DATED APRIL 9, 2021,	)	CASE NO.: ____________
Plaintiff,	)	**COMPLAINT**
v.	)	**(JURY TRIAL DEMANDED)**
LAWRENCE E. MILLER,	)	
Defendant.	)	

Plaintiff Jerome B. Crites Jr., Trustee of the BAC Trust U/A Dated April 9, 2021, through his undersigned counsel, brings this complaint against Defendant Lawrence E. Miller based on the allegations set forth below.

PARTIES, JURISDICTION, & VENUE

1. Plaintiff Jerome Crites Jr., Trustee of the BAC Trust (hereinafter, "Crites" or "Plaintiff") is a citizen and resident of Charleston County, South Carolina. Plaintiff owns the real property located at 1642 Clyde Street, Charleston, South Carolina bearing Tax Map No. 352-14-00-166 (hereinafter referred to as the "Property").

2. Upon information and belief, Defendant Lawrence E. Miller (hereinafter, "Miller" or "Defendant") is a citizen and resident of Dorchester County, South Carolina, currently residing at 704 Central Avenue, Apt. 207, Summerville, South Carolina 29483.

3. This Court has jurisdiction over the parties to and subject matter of this Complaint because Defendant is or was a resident of Charleston County, South Carolina

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and it arises out of and relates to the sale of real property located in Charleston County and substantial all of the alleged acts or omissions occurred in Charleston County.

4. Venue is proper in Charleston County under S.C. Code Ann. § 15-7-10 *et seq.*, in that all or substantially all of the alleged acts or omissions giving rise to the cause of action occurred in Charleston County. Venue is further proper because it arises out of actions from a parcel of real property located in Charleston County, South Carolina.

STATEMENT OF FACTS

5. Plaintiff hereby incorporates paragraphs 1 through 4 as though fully set forth herein.

6. Plaintiff and Defendant entered into a purchased contract for the purchase and sale of the Property on March 12, 2021, for a purchase price of $335,000.00 (the "Purchase Contract").

7. Prior to entering into the Purchase Contract, Defendant as seller filled out, signed, and delivered to Plaintiff the State of South Carolina Residential Property Condition Disclosure Statement with respect to the condition of the Property (the "Disclosure Statement"). A true and correct copy of this Disclosure Statement is attached hereto as **Exhibit 1**.

8. On the Disclosure Statement, Defendant checked the "No" column in Section II relating to the Chimney, indicating that he had no knowledge of any problems, defects, malfunctions, damages, conditions, or characteristics in connection with the same.

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9. Pursuant to the Disclosure Statement, any question answered with a response of "No" represented that the owner, here the Defendant, had no actual knowledge of any problem(s) concerning the specific Property item. Problems include present defects, malfunctions, damages, conditions, or characteristics.

10. The Purchase Contract ultimately closed, and title of the Property was conveyed from Defendant to Plaintiff on May 7, 2021. The Deed conveying title is recorded in the Charleston County Register of Deeds Office in Deed Book 0988 at Page 340.

11. Plaintiff relied on the representations made by Defendant in the Disclosure Statement in making the ultimate decision to purchase the Property.

12. On or around August of 2021 the Plaintiff, for the first time, discovered that Defendant had the Property's chimney (the "Chimney") inspected by Ashbusters Chimney Service Inc. (hereinafter, "Ashbusters") prior to entering into the Purchase Contract, signing the Disclosure Statement, and selling the Property to Plaintiff.

13. Ashbusters issued Defendant an invoice proposal after the inspection with respect to the condition of the Chimney (hereinafter, the "Invoice") on or around January 25, 2021. A true and correct copy of the Invoice is attached hereto as **Exhibit 2**.

14. The Invoice detailed numerous defects and/or problems with the Chimney including, but not limited to: missing joints; flue tiles; other substantial damage to the chimney; a recommendation of discontinued use until repairs had been made; and an estimated cost of repairs in the amount of Seven Thousand Five Hundred Twenty-Six and 01/100 Dollars ($7,526.01).

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15. On January 26, 2021, Defendant sent an email to his son Andrew Miller stating, "Looks like pretty extensive repair work needed" with respect to the Invoice and the chimney inspection results that were attached to the email. A true and correct copy of this email is attached hereto as **Exhibit 3**.

16. Plaintiff discovered the Invoice and some of the related email communication only after he had purchased and been conveyed the Property from Defendant.

17. Despite real and actual knowledge of the Invoice and the problems and defects with the Chimney as specifically outlined by Ashbusters in the Invoice and related communication, Defendant knowingly and fraudulently misrepresented on his Disclosure Statement that he had no knowledge of any problems associated with the Chimney and purposefully omitted the Invoice and its findings on the Disclosure Statement.

18. Defendant knowingly, intentionally, and with reckless disregard, made false representations of material fact related to the condition of the Chimney, fireplace, and surrounding areas, without excluding any other potential misrepresentations made by Defendant to Plaintiff with respect to the Property.

19. Defendant's misrepresentations were made knowingly and intentionally, and with the intent to conceal the damage, problems, defects, and repairs needed to the Property's Chimney, fireplace, and surrounding areas, and such action amounts to actual fraud.

20. Defendant knew that the Property's condition, including its Chimney, fireplace, and all related defects and need for repairs was material to the sale of the Property, and the sale of the Property for the price agreed to.

21. Plaintiff had no reason not to rely upon the specific representations made by Defendant in the statutorily required Disclosure Statement at the time the time Defendant made them.

22. As a result of Defendant's willful and wanton misrepresentations in the Disclosure Statement, Plaintiff has been damaged and continues to be damaged by the actual amount of repair costs to fix the problems and defects knowingly withheld and misrepresented by the Defendant, as well as, its affect on the value of the Property, without excluding other loss or damage.

23. Upon learning of the Invoice and related documentation, Plaintiff, through the undersigned counsel, notified Defendant of the misrepresentations through correspondence including, but not limited to, a letter dated September 13, 2021 served to the Defendant in an attempt to resolve this matter prior to filing this Complaint.

24. On or around October 27, 2021, Plaintiff received an offer from Defendant to resolve this dispute in a letter dated October 24, 2021 (the "Offer"). A true and correct copy of the Offer is attached as **Exhibit 4**.

25. The terms of the settlement offer from the Defendant contained in the October 24, 2021 letter were that the Defendant offered to pay Plaintiff Eight Thousand and 00/100 Dollars ($8,000.00) in exchange for final resolution and a release of claims related to this matter by the Plaintiff.

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26. In a letter dated November 12, 2021, and before Defendant's Offer had expired or been withdrawn, Plaintiff accepted the terms of the Offer and the parties had agreed on settlement terms regarding Plaintiff's claims (the "Settlement Agreement"). A true and correct copy of the correspondence accepting the Offer is attached hereto as **Exhibit 5**.

27. Defendant acknowledged receipt of the Settlement Agreement acceptance by email prior to withdrawing it's Offer or the Offer expiring.

28. Despite Defendant's Offer being duly accepted by the Plaintiff, Defendant refuses to perform and has repeatedly communicated by email to Plaintiff's counsel that he will not perform his obligations under the Settlement Agreement, namely tendering the Eight Thousand and 00/100 Dollars ($8,000.00) settlement payment amount to Plaintiff in exchange for Plaintiff's release of claims.

29. As a result of Defendant's breach and failure to perform under the Settlement Agreement, Plaintiff has been damaged and continues to be damaged in an amount not less than Eight Thousand and 00/100 Dollars ($8,000.00).

30. By reason of Defendant's willful conduct and his subsequent breach of the Settlement Agreement, Plaintiff has been damaged and continues to be damaged in an amount not less than $8,000.00, plus attorney's fees, actual and consequential damages arising from payment of repairs to the Property that were knowingly and fraudulently misrepresented and withheld by Defendant, punitive or statutory damages, and other remedies deemed appropriate by the Court.

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FOR A FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance – Settlement Agreement)

31. Plaintiff hereby incorporates by reference paragraphs 1 through 30 as though fully set forth herein.

32. In a letter dated October 24, 2021, Defendant sent Plaintiff his Offer to resolve the subject matter of this dispute related to the Disclosure Statement, Chimney, and this Property for the payment of Eight Thousand and 00/100 Dollars ($8,000.00) in exchange for a release and resolution of Plaintiff's claims.

33. On November 12, 2021 Plaintiff accepted the terms of Defendant's Offer to resolve the dispute and confirmed the Settlement Agreement between the parties.

34. Defendant's Offer did not expire and was not withdrawn by the Defendant prior to Plaintiff accepting the terms of the Defendant's Offer.

35. The Settlement Agreement is a valid and enforceable legal contract between the Parties.

36. Defendant has breached the Settlement Agreement by refusing to perform his obligations under the Settlement Agreement as agreed to between the parties, specifically by failing and refusing to make payment in the amount of $8,000.00 to Plaintiff, in breach of his contractual obligations under the Settlement Agreement.

37. As a direct result of Defendant's breach of the terms of the Settlement Agreement, Plaintiff is damaged and continues to be damaged in the amount of $8,000.00.

38. Pursuant to Defendant's breach of the Settlement Agreement, Plaintiff seeks and is entitled to an Order of specific performance from the Court, ordering Defendant to comply and perform his obligations under the Settlement Agreement.

39. In the alternative, if the Court does not wish to order specific performance, Plaintiff is entitled to judgment against the Defendant in the amount of $8,000.00 for Defendant's breach of the terms of Settlement Agreement, plus attorney's fees and costs as ordered by the Court, prejudgment interest at the statutory rate thought the date judgement is entered, in addition to any other fees and costs as the Court may deem appropriate.

FOR A SECOND CAUSE OF ACTION
(Violation of S.C. Code Ann. § 27-50-10, *et. seq.*; § 27-50-40; & § 27-50-65)
(Knowing Disclosure of False or Misleading Information)

40. Plaintiff reincorporates paragraphs 1 through 39 above as though fully set forth herein.

41. Defendant entered into the Purchase Agreement whereby he agreed to sell the Property to Plaintiff pursuant to the terms and conditions of the Purchase Contract.

42. Unbeknownst to Plaintiff, and prior to entering into the Purchase Contract or filling out the Disclosure Statement, Defendant had the Property's Chimney, fireplace, and surrounding areas inspected on January 25, 2021 and Defendant received and Invoice from Ashbusters detailing the poor condition of the Chimney, fireplace, and surrounding, that certain repairs needed to be made, and other problems and defects with the condition Property's Chimney as detailed therein.

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43. South Carolina law requires that the owner of real property furnish to a purchaser, such as Plaintiff, a written disclosure statement consistent with S.C. Code Ann § 27-50-40.

44. Despite knowledge of the Invoice and its contents, Defendant knowingly and intentionally tendered a Disclosure Statement to Plaintiff that contained materially false, incomplete, and misleading information including, but not limited to, the condition of the Chimney on the Property.

45. Specifically, Defendant knowingly and intentionally checked or affirmed "No" in Section II of the Disclosure Statement, asserting that Defendant did not have knowledge of any problems associated with the Chimney on the Property.

46. Defendant signed the Disclosure Statement and sent it, or had his agent or representative send it to the Plaintiff or its representatives to be relied on in purchasing the Property pursuant to the Purchase Agreement and South Carolina law.

47. In addition to making intentionally false and misleading statements in the Disclosure Statement, Defendant intentionally and willfully failed to disclose to Plaintiff the existence of the Invoice and other related information from Ashbusters regarding the condition of the Property's Chimney and its problems and needed repairs.

48. Due to the Defendant's knowing, willful and intentionally misleading and false material representations on the Disclosure Statement, Plaintiff was unaware of and did not discover the repairs needed for the Chimney until after he closed the purchase of the Property and took title.

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49. The condition of the Chimney and the repairs needed to fix the defects and problems with the Chimney and its surrounding area was material to the Property and to Plaintiff's ultimate decision to purchase the Property from Defendant pursuant to the terms of the Purchase Contract and at the price contained therein.

50. As a result of Defendant's knowing, intentional, and willful violation of S.C. Code Ann. § 27-50-10, *et seq.*, specifically S.C. Code Ann. § 27-50-40 and S.C. Code Ann. § 27-50-65, Plaintiff has been actually damaged in an amount not less than Thirteen Thousand Nine Hundred Forty-Seven and 26/100 Dollars ($13,947.26), representing the costs of repairing the Chimney and related structural damage to the Property that Plaintiff was unaware of, Defendant had full knowledge of, and Defendant knowingly and intentionally materially misrepresented did not exist to the Plaintiff in the Disclosure Statement.

51. Plaintiff is further entitled to its reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 27-50-65 due to Defendant's knowing and intentional failures and materially misleading statements contained in the Disclosure Statement that was relied upon by Plaintiff.

52. Accordingly, Plaintiff is entitled to judgment against the Defendant in an amount to be determined at trial for repairs to the Chimney, fireplace, and surrounding areas that were defective and/or damaged not to be less than Thirteen Thousand Nine Hundred Forty-Seven and 26/100 Dollars ($13,947.26), plus statutorily permitted reasonable attorney's fees and costs, and punitive damages in an amount to be

determined by the Court to impress upon Defendant the seriousness of his actions and to deter similar conduct by the Defendant in the future.

FOR A THIRD CAUSE OF ACTION
(Fraudulent Misrepresentation)

53. Plaintiff reincorporates paragraphs 1 through 52 above as though fully set forth herein.

54. Defendant, through the Disclosure Statement, made a clear and express representation to the Plaintiff that he had no knowledge of any problems, defects, or issues with the condition of the Chimney on the Property.

55. Specifically, Defendant checked "No" in Section II of the Disclosure Statement with respect to the Property's Chimney, certifying and representing to Plaintiff that he had no knowledge of any problems, defects, needed repairs, or other conditions with the Chimney on the Property.

56. The condition of the Chimney and the repairs needed to fix the Chimney was material to the Property and to Plaintiff's ultimate decision to purchase the Property from Defendant pursuant to the Purchase Contract and at the price contained therein.

57. At the time Defendant made the representation contained in the Disclosure Statement that he had no knowledge of any problems with the Chimney on the Property, Defendant had full knowledge of the Invoice and the detailed problems with the Chimney and its need for immediate repairs.

58. Defendant knew his representations with respect to the Chimney on the Property were materially false and misleading when he made them to the Plaintiff in the

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Disclosure Statement, and despite Defendant's knowledge of their falsity, he made the false and material misrepresentations willfully and in wanton disregard to the harm it would and did cause the Plaintiff.

59. Defendant recklessly disregarded the truth of his representations to Plaintiff in the Disclosure Statement.

60. Defendant misrepresented the condition of the Chimney with the intent that Plaintiff rely upon the same.

61. Plaintiff reasonably and justifiably relied upon Defendant's representations in the Disclosure Statement, which is required by South Carolina statute.

62. As a direct and proximate result of Defendant's knowingly false and fraudulent misrepresentations to the Plaintiff, Plaintiff is damaged and continues to be damaged in an amount not less than Thirteen Thousand Nine Hundred Forty-Seven and 26/100 Dollars ($13,947.26), or the actual costs for repairs to fix the Chimney and related foundational issues that Defendant knowingly and intentionally misrepresented to Plaintiff.

63. Defendant's intentional misrepresentations and willful disregard for the harm caused to the Plaintiff warrants punitive damages.

64. Plaintiff is entitled to a judgment against Defendant in an amount to be determined at trial not to be less than Thirteen Thousand Nine Hundred Forty-Seven and 26/100 Dollars ($13,947.26), plus punitive damages, reasonable attorney's fees and costs, and further relief as determined by the Court.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court enter judgment against the Defendant on all causes of action, and the Plaintiff be awarded:

A. An Order of Specific Performance, ordering the Defendant to comply with and perform his obligations pursuant to the terms of the Settlement Agreement including, but not limited to, payment of the $8,000.00 amount, plus Plaintiff's attorney's fees and costs and pre and post judgment interest.

B. In the alternative of an Order for Specific Performance of the Settlement Agreement, entry of judgment against the Defendant for the actual damages suffered by Plaintiff in an amount not less than $13,947.26, plus reasonable attorney's fees and costs as permitted by S.C. Code Ann. § 27-50-65 and any other relevant statute or law;

C. Punitive damages as permitted by law and in an amount sufficient to impress upon the Defendant the seriousness of his conduct and actions and to deter similar actions or conduct in the future;

D. Reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 27-50-65 or any other applicable statute or law; and

E. Such other and further relief as this Court deems just and appropriate under the circumstances.

///

///

Respectfully submitted,

LAW OFFICES OF L.W. COOPER JR., LLC

/s/ Nicholas P. Tierney
Nicholas P. Tierney (SC Bar 102381)
Lindsey W. Cooper Jr. (SC Bar 75712)
Dustin J. Pitts (SC Bar 102591)
Tyler M. Vaccarella (SC Bar 105874)
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nick@lwcooper.com
djp@lwcooper.com
tyler@lwcooper.com

Counsel to Plaintiff

Dated: April 12, 2023
Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS FOR THE
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
JEROME B. CRITES, JR., TRUSTEE OF THE BAC TRUST U/A DATED APRIL 9, 2021,	)	CASE NO.: ______________
Plaintiff,	)	
v.	)	**SUMMONS**
LAWRENCE E. MILLER,	)	
Defendant.	)	

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action served upon you. A copy of your Answer to the Complaint must be served on Plaintiff's lawyers at their offices located at 36 Broad Street, Charleston, South Carolina 29401, within thirty (30) days of your receipt of this Summons and Complaint. If you fail to answer this Complaint within the prescribed time, a judgment by default will be rendered against you for the relief demanded within this Complaint.

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///

Respectfully Submitted,

LAW OFFICES OF L.W. COOPER JR., LLC

/s/ Nicholas P. Tierney.
Lindsey W. Cooper Jr. (SC Bar 75712)
Nicholas P. Tierney (SC Bar 102381)
Dustin J. Pitts (SC Bar 102591)
36 Broad Street
Charleston, SC 29401
Tel: 843.375.6622
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nick@lwcooper.com
djp@lwcooper.com

Counsel for Plaintiff Jerome B. Crites, Trustee of the BAC Trust U/A Dated April 9, 2021

Charleston, South Carolina
Dated: April 12, 2023

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<u>EXHIBIT 4</u>

Settlement Offer

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October 24, 2021

Lawrence E. Miller
704 Central Ave, Apt 207
Summerville, SC 29483

Nicholas P. Tierney
36 Broad St.
Charleston, SC 29401

RE: 1642 Clyde St., Charleston, SC 29407

Sir,

Chapter 59 of South Carolina Code of Laws, in order to do masonry work in the State of South Carolina one must, at a minimum, have a masonry specialty contractor's license.

Per Title 40, Chapter 106 a masonry specialty contractor is defined as someone who engages in "the installation, alteration and repair of poured-in-place concrete foundations (e.g. footings or reinforced slabs), brick, concrete block and products to the masonry industry…"

The South Carolina Department of Labor, Licensing and Regulation (SCDLLR) website has been searched. A contractor's license for Ashbusters or for the three people listed on their website as owners: Kim Pinder, John Perdue and Chris Young could not be located. If they are unlicensed as it appears that they are, it is illegal for them and their company to solicit work repairing masonry. I did not ask for them to perform any masonry inspections, nor did I solicit any information from them. They simply submitted an unsolicited repair estimate to me. If you look at their estimate, every item on the estimate is listed as a masonry repair. Moreover, if you look closely at their repair estimate, nearly every item on there is some sort of minor cosmetic repair to mortar joints, etc. They even offered to waterproof the brick even though there is no evidence of water intrusion. Further if you look at their inspection report, even they say many items are simply recommended. There is no mention of any potential structural issues. However, since they appear to not be licensed to perform most of the work they offered to do, I consider their estimate illegal and illegitimate.

I will file the necessary complaint with SCDLLR to officially document that they illegally solicited work they are not licensed to do.

That being said, in order to put this situation to bed and to avoid significant legal costs, I previously made the very fair offer of paying the entire bill of $7,526, just what you initially asked for. Your subsequent rejection of that offer, and substitution of another demand for more money based on another inspection that is simply not applicable to the situation is most interesting.

As to this Mt. Valley invoice, when I purchased the house, the seller I purchased it from made over $10,000 in repairs to the floor/foundation to repair all known structural issues before I

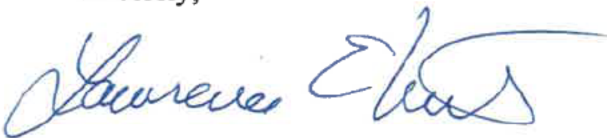
agreed to purchase it. The person who purchased the home from me had their own home inspector evaluate the crawlspace and he made no mention of any floor or foundation deficiencies. The two official, for-the-record inspections by licensed inspectors are the only reliable pieces of information that I have regarding the condition of the house. Based on that, I have every reason to believe that the entire house is in sound, acceptable condition. I have and had no knowledge regarding the floor structure, the foundation, or the chimney that the buyer did not have when he purchased the house. As such, I cannot be held accountable for whatever the after-the-closing Mount Valley inspection report may have said. In my very experienced opinion, they are most likely trying to perpetrate a scam.

Further, even though I believe their estimate is illegal and illegitimate, Ashbusters' estimate was almost entirely cosmetic repairs and made no mention of any potential structural issues. I simply paid Ashbusters to sweep the chimney. I regarded their report and repair estimate as a scam and disregarded it. I fail to see how you merge the Ashbusters cosmetic repair estimate with whatever Mount Valley as the first has nothing to do with the other. The Mt. Valley inspection is also not independent since they are proposing work for which they profit.

One last piece of pertinent information is that the very small gap between the fireplace and chimney and the wall (noted in the Ashbusters report and the buyer's home inspection report) was known to the buyer. This very small gap actually appears to be nothing more than normal settling for a 50 year old house. In fact, I believe the noting of this tiny gap by the buyer's inspector attests to the thoroughness of his inspection. During negotiations over how to address the gap at the chimney, it was determined that it was too difficult to determine what a proper fix would be that everyone could agree on so I agreed to take $1500 off the price of the house and the buyer agreed to deal with addressing it themselves. The buyer agreed to that. That is documented. If this Mount Valley estimate is related to the gap at the chimney, then the buyer has already accepted compensation to address it themselves. If it cost more than $1500 to fix, that is not my responsibility. In any case, the Mt. Valley estimate does not apply to this claim by your client.

In conclusion, in one last effort to fairly resolve this situation short of expensive litigation, I'm offering $8,000 to cover the Ashbusters estimate and half of the lawyer fee. I will pay nothing for the Mount Valley invoice as there is no evidence whatsoever that I had any knowledge of any alleged structural issues they bring up, because obviously I didn't. I suggest you ask the buyer's home inspector why he did not find any structural deficiencies. The fact of this offer does not admit to nor imply any wrongdoing on my part. Your theatrical allegations of fraudulent misconduct and your demand for punitive penalties are not supported by any facts.

Sincerely,



Lawrence E, Miller

ELECTRONICALLY FILED - 2023 Apr 12 3:35 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

EXHIBIT 5

Acceptance of Offer

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ELECTRONICALLY FILED - 2023 Apr 12 3:35 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

NICHOLAS P. TIERNEY

NICK@LWCOOPER.COM

November 12, 2021

VIA CERTIFIED MAIL, RETURN RECEIPT & ELECTRONIC MAIL

Lawrence E. Miller
704 Central Avenue, Apt. 207
Summerville, SC 29483
Email: lemillerla@aol.com

Re: *Resolution of 1642 Clyde Street Chimney Dispute.*

Dear Mr. Miller:

I am in receipt of your letter dated October 24, 2021, containing your counter-offer of an $8,000.00 settlement payment to Mr. Crites in exchange for a complete resolution of this matter. I've discussed this offer with my client, and although we disagree with most of the assertions contained in your letter, Mr. Crites has elected to accept your offer to resolve and release all claims between the parties regarding this chimney dispute matter completely and entirely for a settlement payment in the amount of **$8,000.00.**

Accordingly, please make payment in the amount of $8,000.00 to our Office within fourteen (14) days of the date of this letter. Please make payment in one of 2 ways, either:

(1) By wire transfer to our Office's Trust Account, a true and correct copy of which is attached hereto as **Exhibit 1**; or
(2) By sending a check to our Office at 36 Broad Street, Charleston, SC 29401 made payable to "The Law Offices of L.W. Cooper Jr., LLC Trust Account"

Should you have any questions, or wish to call and confirm our Office's wiring instructions, please don't hesitate to contact our Office at 843.375.6622.

Many thanks.

Sincerely,

Nicholas P. Tierney

Enclosures: As stated.

36 BROAD STREET
CHARLESTON, SC 29401

THE LAW OFFICES OF L.W. COOPER JR., LLC

TELEPHONE: 843.375.6622
WWW.LWCOOPER.COM

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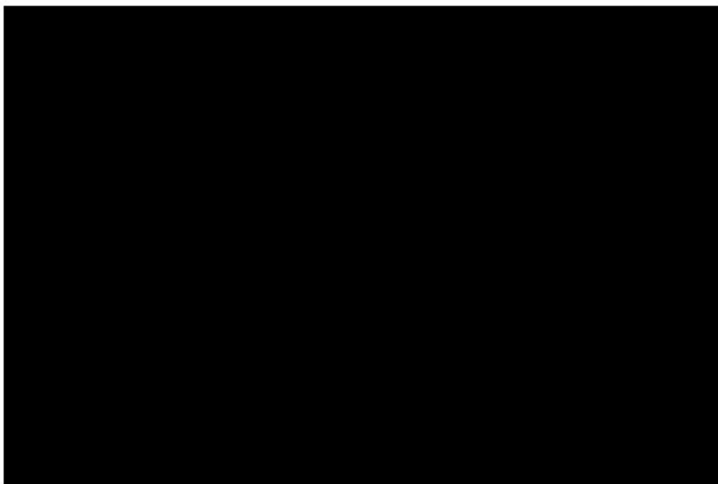
LINDSEY W. COOPER JR. LWC@LWCOOPER.COM

WIRING INSTRUCTIONS- TRUST ACCOUNT



36 BROAD STREET
CHARLESTON, SC 29401

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ELECTRONICALLY FILED - 2023 May 19 2:31 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	) IN THE COURT OF COMMON PLEAS) IN THE NINTH JUDICIAL CIRCUIT
	Case No. 2023-CP-10-01790
Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021, Plaintiff, v. Lawrence E. Miller Defendant.	**DEFENDANT'S ANSWER**

COMES NOW, Lawrence E. Miller, Defendant in the above styled action (hereinafter "Defendant") and hereby files this Answer in response to Plaintiff's Complaint and shows the Court as follows:

FOR A FIRST DEFENSE

Defendant denies each and every allegation of the Complaint not specifically admitted herein. As for the Complaint's numbered paragraphs, Defendant answers as follows:

PARTIES & JURISDICTION

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies the same and demands strict proof therof.
2. Upon information and belief, Defendant admits the allegations of Paragraphs 2, 3, and 4.

FACTS COMMON TO ALL CAUSES OF ACTION

3. With respect to Paragraph 5, Defendant realleges and repeats the foregoing paragraphs as if fully set forth herein.
4. Upon information and belief, Defendant admits the allegations of Paragraphs 6 and 7.

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5. With respect to Paragraph 8, Defendant admits he checked "No" in Section II of the Disclosure Statement. The remaining allegations in Paragraph 8 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.
6. Paragraph 9 states conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.
7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 10 and 11 and therefore denies the same and demands strict proof therof.
8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies the same and demands strict proof therof.
9. With respect to Paragraph 13, Defendant admits that Ashbusters, an entity unlicensed and not permitted to provide services to Defendant's residence, nonetheless provided Defendant with a proposal and estimate to receive Defendant's business, which has been attached as Exhibit 2 to Plaintiff's Complaint. Defendant denies the remaining allegations contained within Paragraph 13.
10. With respect to Paragraph 14, Defendant admits that Ashbusters provided Defendant with a proposal, attached as Exhibit 2 to Plaintiff's Complaint, which contained an estimate totaling $7,526.01. Defendant denies the remaining allegations contained within Paragraph 14.
11. Defendant admits the allegations of Paragraph 15 to the extent it asserts Defendant emailed his son, a certified home inspector, on January 26, 2021 to discuss with him his thoughts

on the proposal Defendant received from Ashbusters and the price and necessity of the same. Defendant denies the remaining allegations contained in Paragraph 15.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and therefore denies the same and demands strict proof therof.
13. Defendant denies the allegations contained in Paragraphs 17, 18, 19, 20, 21, 22 and demands strict proof thereof.
14. With respect to Paragraph 23, upon information and belief, Defendant admits receiving a letter from Plaintiff's counsel dated September 13, 2021. Defendant denies the remaining allegations contained in Paragraph 23 and demands strict proof thereof.
15. Defendant denies the allegations contained in paragraph 24, as written. Defendant admits, however, sending a *pro se* letter to Plaintiff's counsel, dated October 24, 2021, regarding possible negotiations to resolve Plaintiff's alleged claim.
16. Defendant denies the allegations contained in paragraphs 25, 26, 27.
17. Defendant denies the allegation of Paragraph 28, in that there was no Settlement Agreement between the parties. To the contrary, Defendant's *pro se* communications to Plaintiff's counsel, made within 24-hours after Plaintiff's purported acceptance letter, made unequivocally clear that Defendant did not agree to Plaintiff's proposed settlement terms. Further answering, Defendant's *pro se* communications to Plaintiff's counsel, made within 24-hours after Plaintiff's purported acceptance letter, confirmed that any alleged offer that was made by the Defendant had been unequivocally withdrawn.

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18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and therefore denies the same and demands strict proof therof.
19. Defendant denies the allegations contained in Paragraph 30 and demands strict proof thereof.

ANSWERING THE FIRST CAUSE OF ACTION
(Breach of Contract/Specific Performance-Settlement Agreement)

20. With respect to Paragraph 31, Defendant realleges and repeats the foregoing paragraphs as if fully set forth herein.
21. Defendant denies the allegations contained in paragraph 24 as written. Defendant admits, however, sending a *pro se* letter to Plaintiff's counsel, dated October 24, 2021, regarding possible negotiations to resolve Plaintiff's alleged claim.
22. Defendant denies the allegations contained in Paragraphs 33, 34, 35, 36, 37, 38, and 39 of Plaintiff's Complaint. Further answering, Paragraphs 33 through 39 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.

ANSWERING THE SECOND CAUSE OF ACTION
(Violation of S.C. Code § 27-50-10, et seq.; § 27-50-40; & §27-50-65) (Knowing Disclosure of False or Misleading Information)

23. With respect to Paragraph 40, Defendant realleges and repeats the foregoing paragraphs as if fully set forth herein.
24. Upon information and belief, Defendant admits that he entered into a purchase agreement to sell the subject property. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 41 and therefore denies the same and demands strict proof therof.

25. With respect to Paragraph 42, Defendant admits that prior to entering into the purchase contract that Ashbusters came to the subject property. Further answering, Defendant admits that Ashbusters, an entity unlicensed and not permitted to provide services to Defendant's residence, nonetheless provided Defendant with a proposal and estimate to receive Defendant's business, which has been attached as Exhibit 2 to Plaintiff's Complaint. Defendant denies the remaining allegations of Paragraph 42.

26. Paragraph 43 states conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.

27. Defendant denies the allegations of Paragraphs 44 and 45.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and therefore denies the same and demands strict proof therof.

29. Defendant denies the allegations of Paragraphs 47, 48, 49, 50, 51, and 52, and demands strict proof thereof. Further answering, Paragraphs 47 through 52 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.

ANSWERING THE THIRD CAUSE OF ACTION
(Fraudulent Misrepresentation)

30. With respect to Paragraph 53, Defendant realleges and repeats the foregoing paragraphs as if fully set forth herein.

31. Paragraph 54 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.

32. With respect to Paragraph 55, Defendant admits he checked "No" in Section II of the Disclosure Statement. The remaining allegations in paragraph 55 state conclusions of law

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and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies the same and demands strict proof therof. Further answering, Paragraph 56 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.
34. Defendant admits the allegation in Paragraph 57 where it is alleged that Defendant had knowledge that Ashbusters, an entity unlicensed and not permitted to provide services to Defendant's residence, nonetheless provided Defendant with a proposal and estimate to receive Defendant's business, which has been attached as Exhibit 2 to Plaintiff's Complaint, which contained an estimate totaling $7,526.01 for Ashbuser's proposed services. Defendant denies the remaining allegations contained within Paragraph 57.
35. Defendant denies the allegations of Paragraphs 58, 59, 60, 61, 62, 63, and 64 and demands strict proof thereof. Further answering, Paragraphs 58 through 64 state conclusions of law and, accordingly, an answer is not required. To the extent an allegation of fact is made, Defendant denies it.
36. Defendant denies the allegations referenced and included in the prayer for relief contained in subsections (a) through (e).

FOR A SECOND DEFENSE
(Failure to State a Claim)

37. The Plaintiff's Complaint fails to state facts sufficient to constitute any cause of action or any claim upon which relief may be granted against this Defendant.

FOR A THIRD DEFENSE
(Statute of Limitations and/or Repose)

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38. Defendant would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's causes of action against Defendant are barred by the applicable statute of limitations and/or statute of repose and, therefore, the Plaintiff is barred from any recovery against Defendant.

FOR A FOURTH DEFENSE
(Statute of Frauds)

39. Defendant would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the Statute of Frauds.

FOR A FIFTH DEFENSE
(Parol Evidence Rule)

40. Defendant would further show, upon information and belief, that with regard to some or all of the causes of action appearing in the Complaint, the Plaintiff's claims are barred, in whole or in part, by the parol evidence rule.

FOR A SIXTH DEFENSE
(Meeting of the Minds)

41. This Defendant would further show, upon information and belief, that to the extent there was a contract between the Plaintiff and this Defendant, it did not include those terms allegedly breached by this Defendant, nor did the duties require this Defendant to take any action that has not been taken, or to abstain from any action that has been taken, because there was no meeting of the minds with regard to those alleged contract terms or duties.

FOR A SEVENTH DEFENSE
(Breach of Contract)

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42. The Defendant alleges that, to the extent the Plaintiff seeks to recover under contract, the Plaintiff materially breached the terms and conditions of the subject agreement and are entitled to no relief thereon.

FOR AN EIGHTH DEFENSE
(Offset)

43. Any recovery for damages allegedly incurred by the Plaintiff is subject to offset for disbursements, profits, contributions, and/or other money actually received by Plaintiff.

FOR A NINTH DEFENSE
(Failure to Mitigate & Unjust Enrichment)

44. The Defendant asserts that the Plaintiff failed to mitigate its damages and all claims asserted by Plaintiff should be either barred or reduced to the extent that the Plaintiff could have taken prompt and reasonable action to avoid the occurrence of the damages alleged. Further, to award Plaintiff any judgment on any alleged outstanding balance, plus fess and penalties, would be unfair and unjust enrichment.

FOR A TENTH DEFENSE
(Mistake)

45. This Defendant would further show, upon information and belief, that with regard to some or all causes of action appearing in the Complaint, the Plaintiff's claims are barred by the doctrines of mutual mistake or unilateral mistake.

FOR AN ELEVENTH DEFENSE
(Waiver, Laches, Estoppel, Unclean Hands)

46. Defendant would show that some or all of the Plaintiff's claims are or may be barred by the doctrines of waiver, laches, and estoppel and/or unclean hands.

FOR A TWELTH DEFENSE
(Election of Remedies)

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47. Defendant would further show, upon information and belief, that the Plaintiff will be subject to an election of remedies should he prevail on some or all of his causes of action.

FOR A THIRTEENTH DEFENSE
(Good Faith & Fair Dealing)

48. Defendant acted in good faith and did not directly or indirectly control or induce any wrongful acts or omissions and did no unlawful act or thing directly or indirectly through or by means of any other person.

FOR A FOURTEENTH DEFENSE
(Lack of Standing)

49. Plaintiff lacks standing to bring some or all of the causes of actions asserted against Defendant.

FOR A FIFTEENTH DEFENSE
(Failure to Include Indispensable and/or Necessary Parties)

50. The Complaint fails to include an indispensable and/or necessary party.

FOR A SIXTEENTH DEFENSE
(Accord & Satisfaction)

51. Defendant would further show, upon information and belief, that the Plaintiff's Complaint lacks standing and merit by offering and accepting alternate agreements and performance in lieu of any alleged preexisting contractual duties between the parties.

FOR A SEVENTEETH DEFENSE
(Proximate Cause)

52. The conduct of the Defendant was not the proximate cause of any alleged injuries and damages under any theory advanced for which relief is requested by Plaintiff.

FOR AN EIGHTEENTH DEFENSE
(Intervening Causes)

53. This Defendant would further show, upon information and belief, that some or all of the damages allegedly sustained by the Plaintiff (the existence of such damages being denied)

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were a proximate result of one or more independent, efficient, intervening causes, which this Defendant pleads as a bar to this action.

FOR A NINETEENTH DEFENSE
(Unconscionability)

54. Defendant would further show, upon information and belief, that the Plaintiff utilized deceptive techniques and Plaintiff's contract contains such terms unreasonably favorable to the Plaintiff such that the terms are so one-sided as to be oppressive and included terms within the agreement that were unfair, unreasonable, and outrageous.

FOR A TWENTIETH DEFENSE
(Lack of Misrepresentations)

55. At no time did Defendant make any misrepresentation or omission of material fact.

FOR A TWENTY-FIRST DEFENSE
(Lack of Scienter and/or Intent)

56. The complaint fails to allege adequately that the defendants acted with scienter and/or intent.

FOR AN TWENTY-SECOND DEFENSE
(Lack of Reliance)

57. Plaintiffs did not rely upon any alleged misrepresentations or omissions made by any of the defendants, and, in any event, any such reliance would have been unreasonable in view of public information available and readily accessible.

FOR AN TWENTY-THIRD DEFENSE
(Additional Defenses and Reservation)

58. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the facts and circumstances associated with the Plaintiff's allegations. Defendant intends to act diligently and in a timely manner to inform himself

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of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to the Plaintiff as alleged in the Complaint, and, hereby gives notice of his intent to assert any additional affirmative defenses that such information-gathering process may indicate by fact and law. Defendant thus reserves the right to amend this Answer and assert such defenses.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays the Court for the following relief: to dismiss the Plaintiff's Complaint with prejudice and to enter judgment for the Defendant and award him damages for his actual, consequential, special, and incidental damages, together with costs and attorney's fees, and any other relief as the Court may deems just and proper.

THEOS LAW FIRM, LLC

s/John H. Guerry
John H. Guerry, Esq., Bar Number: 101219
Jerry N. Theos, Esq., Bar Number: 5518
E. Gordon Hay, Esq. Bar Number 103641
11 State Street
Charleston, South Carolina 29401
(843) 577-7046 P; (843) 203-4985 F
john@theoslaw.com
jerry@theoslaw.com
gordon@theoslaw.com
ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
May 19, 2023

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ELECTRONICALLY FILED - 2023 Jun 02 3:13 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
JEROME B. CRITES JR., TRUSTEE OF THE BAC TRUST U/A DATED APRIL 9, 2021,	)	CASE NO.: 2023-CP-10-01790
Plaintiff,	)	**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS**
v.	)	
LAWRENCE E. MILLER,	)	
Defendant.	)	

TO: JOHN H. GUERRY, ESQ., JERRY N. THEOS, ESQ., AND E. GORDON HAY, ESQ., ATTORNEYS FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure, the undersigned counsel for Plaintiff Jerome B. Crites Jr., Trustee of the BAC Trust U/A Dated April 9, 2021 hereby moves for judgment on the pleadings. This motion is based upon the pleadings in the case and the exhibits attached thereto, the laws of the State of South Carolina, and any affidavits, declarations, and other materials as may be submitted to the Court, including but not limited to a Memorandum of Law in Support of this Motion, submitted prior to the hearing on this motion.

/ / /

/ / /

/ / /

/ / /

Respectfully submitted,

LAW OFFICES OF L.W. COOPER JR., LLC

/s/ Nicholas P. Tierney
Nicholas P. Tierney (SC Bar 102381)
Lindsey W. Cooper Jr. (SC Bar 75712)
M. Linsay Boyce (SC Bar 100532)
Tyler M. Vaccarella (SC Bar 105874)
36 Broad Street
Charleston, SC 29401
Tel: 843.375.6622
Fax: 843.375.6623
lwc@lwcooper.com
nick@lwcooper.com
linsay@lwcooper.com
tyler@lwcooper.com

Counsel to Plaintiff

Dated: June 2, 2023
Charleston, South Carolina

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ELECTRONICALLY FILED - 2024 Jan 25 2:04 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
JEROME B. CRITES JR., TRUSTEE OF THE BAC TRUST U/A DATED APRIL 9, 2021,	)	CASE NO.: 2023-CP-10-01790
	)	
Plaintiff,	)	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF HIS MOTION FOR JUDGMENT ON THE PLEADINGS**
v.	)	
	)	
LAWRENCE E. MILLER,	)	
	)	
Defendant.	)	

PLEASE TAKE NOTICE THAT Plaintiff Jerome B. Crites Jr., Trustee of the BAC Trust U/A dated April 9, 2021 ("Crites" or "Plaintiff"), by and through his undersigned counsel, hereby submits this Memorandum in Support of his Motion for Judgment ("Motion") on the Pleadings, pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure ("S.C.R.C.P."), for the reasons set forth below.

BACKGROUND

On March 12, 2021, Miller and Crites entered into a certain Agreement to Buy and Sell Real Estate ("Purchase Contract"), wherein Plaintiff agreed to purchase the real property located at 1642 Clyde Street, Charleston 29407 bearing TMS No.: 352-14-00-166 (the "Property") for the purchase price of $335,000.00. (Complaint (hereinafter, "Compl.") ¶ 6.) On February 24, 2021, prior to entering into the Purchase Contract, Defendant as seller of the Property filled out, signed, and delivered to Plaintiff the State of South Carolina Residential Property Condition Disclosure Statement with respect to the condition of the Property (the "Disclosure Statement") , which was attached as Exhibit 1

to the Complaint. (Compl. ¶¶ 6-7; Compl. Ex. 1, Disclosure Statement; see also Defendant's Answer ¶ 4.) On the Disclosure Statement, Defendant checked the "No" column in Section II relating to the chimney, fireplace, and surrounding foundation (collectively, the "Chimney"), indicating that he had no knowledge of any problems, defects, malfunctions, damages, conditions, or characteristics in connection with the Chimney on the Property. (Compl. Ex. 1, Disclosure Statement, p. 2.; Answer ¶ 5.)

Notwithstanding this, at the time Defendant completed the Disclosure Statement, the Defendant did have actual knowledge of existing problems and/or defects regarding the Property's Chimney and surrounding area as identified by an estimate from Ashbusters Chimney Services, Inc. ("Ashbusters"). (Compl. Ex. 3, Ashbusters Invoice.) Ashbusters conducted an inspection of the Property's Chimney on or around January 25, 2021, and issued an invoice for the estimated cost of repair (the "Invoice"). Contained in the Invoice was notations that there were missing mortar joints and broken flue tiles. (Id., p. 1.). Ashbusters recommended discontinuing use of the Chimney until repairs were completed. (Id., p. 1.) Defendant's actual knowledge of the Invoice and Chimney problems prior to signing the Disclosure Statement and selling the Property is evidenced by an email he sent to his son Andrew Miller on January 26, 2021 stating, "Looks like pretty extensive repair work needed." (Compl. Ex. 3, January Email.) This email was sent with respect to the Ashbusters Invoice. (Id.) Plaintiff relied on the representations made by Defendant in the Disclosure Statement and ultimately closed on the Purchase Contract and transferred title from Defendant to Plaintiff on May 7, 2021. (Compl. ¶ 11.)

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In or around August of 2021, Plaintiff first discovered that Defendant had the Chimney inspected by Ashbusters prior to entering into the Purchase Contract, signing the Disclosure Statement, and selling the Property to Plaintiff. (Id., ¶ 12.) Upon learning of the Invoice, email to Andrew Miller, and related documentation, Plaintiff, through undersigned counsel, provided written notice to Defendant of the misrepresentations including by a letter dated September 13, 2021.

Defendant sent Plaintiff a written settlement offer by letter dated October 24, 2021 (the "Settlement Offer"). Plaintiff received the Settlement Offer on or around October 27, 2021. In the Settlement Offer, Defendant offered to pay Plaintiff $8,000.00 in one last effort to fairly resolve this situation short of expensive litigation. (Compl. Ex. 4, Settlement Offer, p.2.) In a letter dated November 12, 2021, and before Defendant's Settlement Offer had expired or been withdrawn, Plaintiff accepted the terms of the Settlement Offer and the parties had agreed on settlement terms regarding Plaintiff's claims (the "Acceptance Letter"). (Compl. Ex. 5, Acceptance Letter.) The Acceptance Letter states, in pertinent part, that "Mr. Crites has elected to accept your offer to resolve and release all claims between the parties regarding this chimney dispute matter completely and entirely for a settlement payment in the amount of $8,000.00." (Id.)

Plaintiff's counsel informed Defendant of Plaintiff's acceptance of the Settlement Offer resulting in a final Settlement Agreement via email on November 12, 2021. (**Ex 1**.

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November Emails.[1]) In reply to Plaintiff's unequivocal acceptance of the Settlement Offer, Defendant stated that "The tone and content of your letter is unprofessional and unacceptable. I am now seriously considering withdrawal of my offer and meeting you in court." (Id.)

Despite Defendant's Settlement Offer being fully accepted by the Plaintiff, Defendant refuses to perform his obligations under the Settlement Agreement, namely tendering the $8,000.00 settlement payment amount to Plaintiff in exchange for Plaintiff's release of claims. Plaintiff has suffered actual damages by way of paying $6,241.25 to a contractor for work related to the Chimney and surrounding area, attorney's fees and costs for necessitating this action, and has suffered further damages by way of Defendant's intentional misrepresentations detrimentally affecting the condition and value of his Property.

LEGAL STANDARD

When considering a motion for judgment on the pleadings, the court must regard all properly pleaded factual allegations as admitted and may not consider matters outside the pleadings. Falk v. Sadler, 341 S.C. 281, 286 (Ct. App. 2000). However, "in resolving a motion for judgment on the pleadings, the court may consider the pleadings and exhibits attached thereto, relevant facts obtained from the public record, and exhibits to the motion that are 'integral to the complaint and authentic.'" United States v. Mashni, 547

[1] Defendant's November 13, 2021 email was directly incorporated by reference in Plaintiff's Complaint in Paragraph 27. See Carolina First Corp. v. Whittle, 343 S.C. 176, 190 n.7 ("Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference.").

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F.Supp.3d 496, 503 (D.S.C. 2021) (interpreting FED. R. CIV. P. 12(c), which is nearly identical to the first sentence of S.C. R. CIV. P. 12(c)); Carolina First Corp. v. Whittle, 343 S.C. 176, 190 n.7 ("Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference."). "A motion for judgment on the pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue." Rosenthal v. Unarco Industries, Inc., 278 S.C. 420, 422 (1982). A motion for judgment on the pleadings will be granted "when, under the admitted facts, the moving party would be entitled to judgment on the merits, without regard to what the findings might be on the facts on which issue is joined." Brown v. United Ins. Co. of America, 268 S.C. 254, 257 (1977). (quoting Wooten v. Standard Life & Casualty Ins. Co., 239 S.C. 243, 248 (1961)).

ARGUMENT

I. Plaintiff and Defendant Entered into a Binding Settlement Agreement and Defendant Failed and Refused to Perform His Obligations Under the Settlement Agreement.

By a review of the pleadings in this matter to date, there is no genuine issue of material fact that Plaintiff and Defendant entered into a valid and binding agreement prior to Defendant's attempted revocation of the Settlement Agreement.

A settlement agreement is considered to be a contract. See United States v. ITT Continental Baking Co., 420 U.S. 223, 238, 95 S. Ct. 926 (1975). Under South Carolina contract law, "[a] contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct." Roberts v. Gaskins, 327 S.C.

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478, 483 (Ct. App. 1997). Therefore, "[i]n deciding whether a settlement agreement has been reached, the Court looks to objectively manifested intentions of the parties." Sadigi v. Daghighfekr, 66 F.Supp.2d 752, 759 (D.S.C. 1999) (citing Moore v. Beaufort County, North Carolina, 936 F.2d 159, 162 (4th Cir. 1991). To establish that the exchange of letters constituted a contract, plaintiffs must prove that there was an offer, an acceptance, and valuable consideration. Id. citing Roberts, 486 S.E.2d at 773; Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co., 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993)). Lastly, a plaintiff must prove there was a meeting of the minds, a mutual assent to be bound to the essential and material terms of the contract. See Vessell v. DPS Assocs. Of Charleston, Inc., 148 F.3d 407, 410 (4th Cir.1998) (applying South Carolina law); Player v. Chandler, 299 S.C. 101, 105 (1989).

Here, the pleadings and integral exhibits reveal that all elements of contract formation are met. First, the Defendant extended a valid offer to Plaintiff when he sent the Settlement Offer to Plaintiff's counsel in a letter dated October 24, 2021. (Compl. ¶¶ 24-25; Answer ¶¶ 15, 17 (wherein Defendant admitted he sent the October 24, 2021 letter); Compl. Ex. 4, Settlement Offer.) "'An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it'." Carolina Amusement Co., 313 S.C. at 220 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 24 (1981)). Here, Defendant's Settlement Offer stated in pertinent part that: "In conclusion, in one last effort to fairly resolve this situation short of expensive litigation, I'm offering $8,000 to cover the Ashbusters estimate and half of the lawyer fee." (Compl. Ex. 4, Settlement Offer; see also

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Defendant's Answer ¶¶ 15, 17 (wherein Defendant admitted sending the Settlement Offer letter dated October 24, 2021 and receiving the Plaintiff's Acceptance Letter).) Indeed, the Defendant made an offer inviting the Plaintiff's acceptance of the terms set forth in the Settlement Offer.

Second, Plaintiff accepted the Defendant's Settlement Offer. On November 12, 2021, Plaintiff's counsel sent Defendant the Acceptance Letter via email prior to the Settlement Agreement being withdrawn or expired. (Compl. Ex. 5, Acceptance Letter.) The Acceptance Letter stated in pertinent part, that "Mr. Crites has elected to accept your offer to resolve and release all claims between the parties regarding this chimney dispute matter completely and entirely for a settlement payment in the amount of $8,000." Id. The Defendant acknowledged receipt of the Plaintiff's Acceptance Letter prior to withdrawing the Offer. (See Compl. ¶ 17; **Ex. 1**, November 13, 2021 Email; see also Answer ¶¶ 15, 17.)

Third, there was valuable consideration for the Settlement Agreement. Defendant agreed to pay $8,000.00 to Plaintiff in exchange for Plaintiff providing full and final resolution of the matter and resolving all claims related to Defendant's misrepresentations regarding the Property and the Chimney. Finally, there was a meeting of the minds. "A meeting of minds is based upon the intent and purposes as shown by all the circumstances." Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 303 (1996). Here, the written correspondence between the parties demonstrates by objective manifestation their mutual agreement to the terms offered in the Settlement Offer. Defendant admitted to sending the Settlement Offer, which was accepted by Plaintiff.

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(Compl. ¶¶ 24-25; Answer ¶¶ 15, 17 (wherein Defendant admitted he sent the October 24, 2021 letter); Compl. Exhibit 4, Settlement Offer.) Accordingly, the Settlement Agreement is enforceable under South Carolina law.

Only after Plaintiff had accepted the Settlement Offer, forming a final, enforceable, and binding contract, did the Defendant attempt to revoke his acceptance of the Settlement Offer and refuse to comply with the obligations of the Settlement Agreement. To date, Defendant has refused to perform his obligation under the Settlement Agreement: to pay the $8,000.00. (Compl. ¶ 28; Answer ¶ 17.) However, an offer may not be withdrawn after acceptance.

"An offer may be withdrawn at any time before its acceptance, by notice given to that effect to the other party." Masonic Temple v. Ebert, 199 S.C. 5, 12 (1942). Defendant did not inform Plaintiff of his revocation of the Settlement Agreement until after his receipt and acknowledgement of the Acceptance Letter. (**Ex. 1**, November 13, 2021 Email.) As Defendant was properly notified of Plaintiff's acceptance prior to Defendant's purported revocation, the Settlement Agreement is a binding and enforceable agreement between the parties.

In light of the foregoing, it is clear there is no genuine issue of material fact as admitted in the pleadings and shown in the clear documents incorporated therein, that the Settlement Agreement is enforceable and Defendant is in breach of his obligations therein.

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II. Defendant Knowingly Disclosed False, Incomplete, and Misleading Information in Violation of S.C. Code § 27-50-65.

The Defendant had actual knowledge of the Ashbuster's Invoice as of January 26, 2021, which disclosed to Defendant that the Chimney, fireplace, and surrounding area had problems and recommending discontinuing use of the Chimney and fireplace until repairs are completed. (Compl. ¶ 42; Answer, ¶ 25 (wherein Defendant admitted that prior to entering into the Purchase Contract, Ashbusters provided the proposal and estimate that was attached to Plaintiff's Complaint as Exhibit 2); Compl. Exhibit 2, Ashbusters Invoices; Compl. Ex. 3, Ashbusters Quote, p.1.) Despite Defendant's actual knowledge of the Ashbuster's Invoice and the problems disclosed therein, Defendant performed no repairs to the Chimney area on the Property after January 26, 2021. Further, the Defendant expressly represented to Plaintiff on the Disclosure Statement dated February 24, 2021 that he had no actual knowledge of any problem with respect to the Chimney on the Property[2]. (Compl. Ex. 1, Disclosure Statement, Section II.(7).)

In order to recover damages for the breach of this statutory duty of disclosure, a plaintiff must prove more than negligence on the part of the seller. Such a plaintiff must prove the seller knew of the problem or defect and knowingly failed to disclose it. See S.C. Code Ann. § 27-50-65 (2007) ("An owner who *knowingly violates or fails to perform any duty* prescribed by any provision of this article or who discloses any material information

[2] Page 1 of the Residential Property Disclosure Statement states expressly that "If a question is answered 'no' for any question, the owner is stating that owner has no actual knowledge of any problem." (See Compl. Ex. 1, p.1.)

on the disclosure statement that he *knows to be false, incomplete, or misleading* is liable for actual damages proximately caused to the purchaser and court costs." (emphasis added)).

Here, Defendant admits that he filled out, signed, and delivered to the Plaintiff the Disclosure Statement. (Compl. ¶ 7; Answer ¶ 4.) Defendant further admits that he checked "No" in Section II(7) of the Disclosure Statement with respect to the foundation, slab, chimney, and fireplace of the Property, representing to the Plaintiff that he had no actual knowledge of any problem regarding those items on the Property. (Compl. ¶ 8; Answer ¶ 5.) Defendant further admits that he was aware of the Ashbuster's Invoice and its contents, and emailed it to his son on January 26, 2021, to discuss its contents. (Compl. ¶¶ 13-15; Answer ¶¶ 9-11.; see also Compl. Ex. 3.) Plaintiff later closed and purchased the Property on and around April 7, 2021, without any knowledge of the Ashbusters Invoice and the problems with respect to the chimney, fireplace, and related foundation. (Compl. ¶ 16; see also Answer ¶ 12.)

After closing, Plaintiff discovered the Ashbusters Invoice and email correspondence between the Defendant and his son dated January 26, 2021. (Compl. ¶¶ 15-16; see also Answer ¶ 11 (admitting he sent the January 26, 2021 correspondence to his son).) Since this discovery, Plaintiff has paid costs and expenses not less than $6,241.25 in actual damages paid for work on or related to the chimney and fireplace problems, has suffered a loss in value of Property due to the concealed defects and problems with the Chimney, and has expended attorney's fees and costs for the pursuit of this lawsuit against Defendant.

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Accordingly, Plaintiff is entitled to judgment on the pleadings with respect to Defendant's violation of S.C. Code Ann. § 27-50-65, and should be entitled to recover his actual damages and attorney's costs and fees by statute.

III. Defendant Made Fraudulent Misrepresentations on the Disclosure Statement.

In addition to violating South Carolina statute, Defendant's misrepresentations on the Disclosure Statement amount to clear fraudulent misrepresentations. To maintain a claim for fraudulent misrepresentation, a plaintiff must show by clear and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (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. Hendricks v. Hicks, 374 S.C. 616, 620 (Ct. App. 2007). Here, all elements are clearly met in the pleadings in this case.

First, Defendant admits he made the representation on the Disclosure Statement. (Compl. ¶ 8; Answer ¶ 5.) Second, it was clearly false based upon the estimate and Invoice from Ashbusters. (Compl. Ex. 2, Ashbusters Invoice; Compl. Ex. 3, Email to Son with Ashbusters Quote.) Third, the fireplace was material to the use of the Property and the Plaintiff purchasing at the price they purchased it at. (Compl. ¶ 11; see also Answer ¶ 7.) Fourth, Defendant had actual knowledge that his representation on the Disclosure Statement was false. (Compl. Ex. 3, Email to Son with Ashbusters Quote.) Fifth, the Residential Disclosure Statement is required to be submitted by the seller and

acknowledged by the buyer in all residential real estate contract sales, for purposes of being relied on. (See Compl. Ex. 1, Disclosure Statement.) Sixth, Plaintiff was not aware that the Chimney misrepresentations were false, or the existence of the Ashbusters Invoice until after buying the Property. (Compl. ¶ 12; see also Answer ¶ 8.) Seventh, Plaintiff relied on the Disclosure Statement. (Compl. ¶ 11; see also Answer ¶ 7.) Eighth, Plaintiff had a right to rely on the required South Carolian Residential Disclosure Statement tendered by Defendant as it is required to be completed and acknowledged by the buyer for each residential sale in South Carolina. (Compl. ¶¶ 7, 43; Answer ¶¶ 4, 26.) Ninth, Plaintiff has been damaged due to his reliance on the misrepresentations in the Disclosure Statement including, but not limited to: (i) $6,241.25 paid to contractors for work on and around the Chimney; (ii) attorney's fees and costs to be verified by affidavit of Plaintiff's counsel; and (iii) other such damages as continue to be incurred related to the Chimney defects and condition.

Because the pleadings in this matter reveal no genuine issues of fact and Plaintiff's entitlement to judgment as a matter of law, Plaintiff is entitled to judgment on the pleadings with respect to its Fraudulent Misrepresentation cause of action.

CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests this Court enter judgment on the pleadings in favor of all of Plaintiff's causes of action, award Plaintiff its actual damages, and reimbursement of its attorney's fees and costs by way of statute, award punitive damages, and other relief as the Court deems just and proper.

///

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Respectfully submitted,

LAW OFFICES OF L.W. COOPER JR., LLC

/s/ Nicholas P. Tierney
Nicholas P. Tierney (SC Bar 102381)
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Counsel to Plaintiff

Dated: January 25, 2023
Charleston, South Carolina

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EXHIBIT 1

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On Sat, Nov 13, 2021 at 7:32 PM LAWRENCE MILLER <lemillerla@aol.com> wrote:

The tone and content of your letter is unprofessional and unacceptable. I am now seriously considering withdrawal of my offer and meeting you in court. Written letter will follow.

For starters, your client does not have the option of disagreeing with State Law. You should know that.

Lawrence Miller

Sent from my iPhone

> On Nov 12, 2021, at 4:06 PM, Nick Tierney <nick@lwcooper.com> wrote:
>
> Mr. Miller,
>
> Please see attached correspondence regarding the revolution of 1642 Clyde Fireplace dispute. The hard copy is being sent to you in the mail.
>
> Best regards,
>
> Nick Tierney
>
> --
>
> Best regards,

Nick Tierney
The Law Offices of L.W. Cooper Jr.
36 Broad Street
Charleston, SC 29401
Telephone: 843.375.6622 ext. 103
Mobile: 540.748.0990
Facsimile: 843.375.6623
www.lwcooper.com
<EXECUTED LT L. Miller re Resolution (2021.11.12).pdf>

--
Best regards,

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
	)	Case No. 2023-CP-10-01790
Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021, Plaintiff,	)	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS
v. Lawrence E. Miller	)	
Defendant.	)	

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY:

COMES NOW Defendant Lawrence E Miller by and through his undersigned counsel files this Memorandum in Opposition to Plaintiff's Motion For Judgment on the Pleadings. For the following reasons, Defendants respectfully requests that the Court deny Plaintiff's Motion.

I. BACKGROUND

Mr. Miller is an 80-year-old retired Navy Veteran, who resides in Summerville, South Carolina. On April 12, 2023, Plaintiff filed the instant action against Mr. Miller, raising claims for 1) "Breach of Contract/Specific Performance- Settlement Agreement"; 2) "Violation of S.C. Code Ann. § 27-50-10, et. seq.; § 27-50-40; & § 27-50-65 -Knowing Disclosure of False or Misleading Information"; 3) "Fraudulent Misrepresentation." Defendant timely filed an Answer on May 19, 2023, denying the allegations raised in the complaint. On June 2, 2023, Plaintiff filed a blanket motion for Judgment on the Pleadings pursuant to Rule 12(c), SCRCP.

For the reasons set forth below and for those that will be presented at the haring on this matter, the Court should deny Plaintiff's motion.

II. LEGAL STANDARD

Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. A motion to dismiss under Rule 12(c) is designed to "dispos[e] of cases in which there is no substantive dispute that warrants the litigants and the court proceeding further...." Lewis v. Excel Mech., LLC, No. 2:13-CV-281-PMD, 2013 WL 4585873, at *1 (D.S.C. Aug. 28, 2013) (citing 5C Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1368 (3d ed.2010)). Upon review of a motion for judgment on the pleadings, the court may not consider matters outside the pleadings. *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). Furthermore, the Court must "regard all properly pleaded allegations" in the non-moving party's pleadings as admitted and must construe the facts and inferences in the light most favorable to the non-moving party. *See Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); *Lewis*, 2013 WL 4585873, at *1 ("The court must accept all well pleaded factual allegations in the non-moving party's pleadings as true and reject all contravening assertions in the moving party's pleadings as false."). In other words, judgment on the pleadings is only warranted if "the moving party has clearly established that no material issue of fact remains to be resolved and the [moving] party is entitled to judgment as a matter of law." *Lewis*, 2013 WL 4585873, at *1; see also Home *Builders Ass'n of South Carolina v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). Notably, a motion for judgment on the pleadings is "drastic procedure" which should only be used in limited circumstances. *See Russell*, 305 S.C. at 89; Lewis, 2013 WL 4585873, at *2 (recognizing that such motions are subject to a restrictive standard in light of the fact that "hasty or imprudent use of this summary procedure by the courts violates the policy in favor of ensuring to each litigant a full and fair hearing on the merits of his or her claim or defense.")

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If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *See Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.,* 361 S.C. 544, 552, 606 S.E.2d 752, 756 (2004). Summary judgment is "drastic remedy" that is only appropriate when there are no genuine issues of material fact and when the moving party is entitled to judgment as a matter of law. Rule 56, SCRCP; *Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (recognizing that summary judgment must "be cautiously invoked to ensure that a litigant is not improperly deprived of a trial."). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party," *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329, 673 S.E.2d 801, 802 (2009), and "[a]ll ambiguities, conclusions and inferences arising in and from the evidence must be construed most strongly against the movant for summary judgment." *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976). In cases where the preponderance of evidence standard applies, a nonmovant need only present a "mere scintilla of evidence" in order to defeat summary judgment. *Hancock*, 381 S.C. at 330, 673 S.E.2d at 803. Moreover, summary judgment is not warranted "where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lanham v. Blue Cross & Blue Shield of S.C., Inc.,* 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). It is also inappropriate even when the evidentiary facts are not in dispute "if there is disagreement concerning the conclusion to be drawn from those facts." *Id.*

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ARGUMENT

Plaintiff has not specified whether it is moving for judgment on the pleadings as to all or one of the causes of action raised in its complaint. In any event, the motion must be denied, in that Plaintiff is not entitled to "drastic" remedy of judgment on the pleadings as to any of his claims for relief. *See Russell,* 305 S.C. at 89.

1. PLAINTIFF HAS FAILED TO MEET HIS BURDEN OF PROVING THAT HE IS ENTITLED TO JUDGMENT ON THE PLEADINGS AS TO HIS BREACH OF CONTRACT CLAIM.

As an initial matter, Plaintiff is not entitled to Judgment on the Pleadings as to his claim for "Breach of Contract/Specific Performance- Settlement Agreement." In order to prevail on a cause of action for a breach of contract, a plaintiff has the burden to prove: 1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage as a direct and proximate result of the breach. *Bank v. How Mad, Inc.*, 2013 WL 5566038, *3 (D.S.C.2013) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962)). For there to be a contract there must be an offer, acceptance, and consideration. *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 368, 593 S.E.2d 170, 173 (Ct. App. 2004). Notably, "a contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound." *See id.* at 368. Moreover, as it relates to settlement agreements specifically, settlement agreements must either be (1) reduced to the form of a consent order or written stipulation, (2) made in open court and noted upon the record, or (3) reduced to writing and signed by the parties and their counsel. *See e.g., S.C. Hum. Affs. Comm'n v. Zeyi Chen,* 430 S.C. 509, 519–21, 846 S.E.2d 861, 865–67 (2020) (citing Rule 43(k), SCRCP.)

Here, accepting the allegations of Defendant's Answer as true and construing all inferences in the light most favorable to Defendant as the non-moving party, Plaintiff cannot meet his burden

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of showing that he is entitled to judgment on the pleadings as to his breach of contract claim. *See Lewis*, 2013 WL 4585873, at *1; *see also Home Builders Ass'n of South Carolina v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). In his Answer, Defendant, while acknowledging that he engaged in *pro se* settlement negotiations with Plaintiff's counsel before he retained counsel, Defendant specifically denied that any settlement agreement was entered into between the parties or that the proposed settlement terms were agreed upon by the parties and he has specifically raising the lack of mutual assent/meeting of the minds as a defense. *See* Defendant's Answer at Ps 17; 40; *see also Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (providing that mutual assent as requirement to proving an enforceable contract). Moreover, Plaintiff has alleged numerous other contract-related defenses, including unconscionability, mistake, and waiver, laches, estoppel, unclean hands, that should be resolved on the merits following appropriate discovery. *See Lewis*, 2013 WL 4585873, at *1. Furthermore and notably, and as Plaintiff **conveniently failed to reference** in its Complaint, Defendant has further alleged in his Answer that:

> [W]ithin 24-hours after Plaintiff's purported acceptance letter, made unequivocally clear that Defendant did not agree to Plaintiff's proposed settlement terms. Further answering, Defendant's *pro se* communications to Plaintiff's counsel, made within 24-hours after Plaintiff's purported acceptance letter, confirmed that any alleged offer that was made by the Defendant had been unequivocally withdrawn."

See Defendant's Answer at P 17. As such, Furthermore, and as specifically relevant here, Plaintiff failed to allege any facts to show that any purported settlement agreement with agreed-upon terms was ever signed and ratified by the parties, reduced to an appropriate consent order or stipulations, or in open court. *See S.C. Hum. Affs. Comm'n*, 430 S.C. at 519–21. As such, at this early stage of the proceeding and accepting Defendant's allegations as true and construing all inferences in the light most favorable to Defendant as the non-moving party, Plaintiff cannot meet his burden of

providing that he is entitled to the "drastic" remedy of judgment on the pleadings as to his breach of contract claim. *See Russell*, 305 S.C. at 89; *Falk*, 341 S.C. at 290 (finding a "grant of a judgment on the pleadings, before discovery has been fully completed, [to be] premature").

While Defendant's Answer alone warrants denial of Plaintiff's motion for judgment on the pleadings, to the extent the Court may consider facts or allegations outside of the pleadings and construe this motion as one for summary judgment, it must likewise be denied, in that there is a clear issue of material fact concerning whether there was any enforceable settlement agreement and is otherwise wholly premature. *See Lanham*, 349 S.C. at 362. Notably, Plaintiff in his answer and Memorandum has purposely failed to provide the court with the full email correspondence between the parties, wherein the pro se Defendant unequivocally rejected the terms of the potential settlement agreement, which was not finalized, ratified, signed, executed, or mutually agreed upon. *See* Exhibit A (Email Correspondence Between Parties). In any event, this only proves that summary deposition of this matter, through either a Rule 12(c) motion or motion for summary judgment, is wholly premature in this matter and that the parties should be given an opportunity to complete the discovery process so that this matter can be appropriately resolved on the merits. *See Lanham*, 349 S.C. at 362; *Falk*, 341 S.C. at 290.

2. PLAINTIFF HAS FAILED TO MEET HIS BURDEN OF PROVING THAT HE IS ENTITLED TO JUDGMENT ON THE PLEADINGS AS TO THE CAUSES OF ACTION FOR DISCLOSURE OF FALSE OR MISLEADING INFORMATION AND "FRAUDULENT MISREPRESENTATION.

Next, Plaintiff is not entitled to Judgment on the Pleadings as to his claim for "Violation of S.C. Code Ann. § 27-50-10, et. seq.; § 27-50-40; & § 27-50-65 -Knowing Disclosure of False or Misleading Information." or his cause of action for "Fraudulent Misrepresentation." .In relevant part. Section 27-50-65 provides that "[a]n owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the

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disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs." S.C. Code Ann. § 27-50-65. The statute further provides that "[t]his article does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements that are the subject of a contract covered by this article.". S.C. Code Ann. § 27–50–80 (2007). In order to prove fraudulent misrepresentation, the Plaintiff has the burden to prove, by clear and convincing evidence, the following elements: "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 injuries." M. B. Kahn Const. Co. v. S.C. Nat. Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980).

Here, accepting the allegations of Defendant's Answer as true and construing all inferences in the light most favorable to Defendant as the non-moving party, Plaintiff fails woefully short of meeting his burden of showing that he is entitled to judgment on the pleadings as to the causes of action for non-disclosure and fraudulent misrepresentation. *See Lewis*, 2013 WL 4585873, at *1; see also *Home Builders Ass'n of South Carolina v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). In his Answer, Defendant adamantly and specifically denied that he knowingly failed to disclose any pertinent and material property conditions as required under the applicable statutes; that he knew at, any time, that any disclosures he made were in anyway false, incomplete, or otherwise misleading; or that he otherwise made material misrepresentations regarding the property. *See* Defendant's Answer at PP 23-36. Furthermore, Defendant has specifically raised numerous defenses relevant to both causes of actions, including but not limited to lack of Scienter/Intent, lack of misrepresentation, lack of reliance, proximate

cause, and Waiver, Laches, Estoppel, Unclean Hands. *See* Defendant's Answer at PP 37-58. The above referenced matters and defenses–which go to Defendant's state of mind, the information he was aware at the pertinent times regarding the actual condition of property, the accuracy and credibility of Ash Buster's report and assessment, and Plaintiff's own inspection report and punch list from Plaintiff's Realtor, which specifically recommended to Plaintiff prior to closing that he have an independent valuation of the chimney– should more appropriately be resolved on the merits following appropriate discovery. *See Lewis*, 2013 WL 4585873, at *1. As such, at this early stage of the proceedings and when properly accepting Defendant's allegations as true and construing all inferences in the light most favorable to Defendant as the non-moving party, Plaintiff cannot meet his burden of providing that he is entitled to the "drastic" remedy of judgment on the pleadings as to his claims for failure to disclose and fraudulent misrepresentation. *See Russell*, 305 S.C. at 89; Falk, 341 S.C. at 290 (finding a "grant of a judgment on the pleadings, before discovery has been fully completed, [to be] premature").

While Defendant's Answer alone warrants denial of Plaintiff's motion for judgment on the pleadings, to the extent the Court may consider facts or allegations outside of the pleadings and construe this motion as one for summary judgment, it must likewise be denied, in that there is a clear issue of material fact concerning whether there was any enforceable settlement agreement and is otherwise wholly premature. *See Lanham*, 349 S.C. at 362. Notably, Plaintiff in his answer and Memorandum failed to provide pertinent record directly relevant to the claims and defenses at issue in this litigation, including specifically Plaintiff's own inspection report and punch list from his realtor advising and recommending have the chimney evaluated structurally or cosmetically. *See* Exhibit B (Buyer's Inspection Report); Exhibit C (Buyer's Realtor's Punchlist). In any event, this only proves that summary deposition of this matter, through either a Rule 12(c) motion or

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motion for summary judgment, is wholly premature in this matter and that the parties should be given an opportunity to complete the discovery process so that this matter can be appropriately resolved on the merits. *See Lanham*, 349 S.C. at 362; *Falk*, 341 S.C. at 290.

CONCLUSION

Based on the foregoing and for the reasons that may be provided at the hearing on this matter, the Defendant respectfully requests that Plaintiff's Motion for Judgment on the Pleadings be **DENIED.**

s /John H. Guerry
John H. Guerry Esq.; SC Bar #101219
E. Gordon Hay, Esq.; SC Bar #103641
Jerry N. Theos, Esq.; SC Bar # 5518
Theos Law Firm, LLC
11 State Street
Charleston, SC 29401
john@theoslaw.com
(843) 577-7046
FAX (843)-203-4985
ATTORNEYS FOR DEFENDANT

January 25, 2023

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ELECTRONICALLY FILED - 2024 Jan 25 4:56 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

Re: 1642 Clyde Resolution

From: LAWRENCE MILLER (lemillerla@aol.com)

To: nick@lwcooper.com

Date: Monday, November 15, 2021 at 04:54 PM CST

2nd reply.

Sir,

I am withdrawing my offer of $8,000 because you refused to accept my conditions. I am well trained enough in SC law to believe that ends that. I am in process of engaging a competent lawyer to engage you.

Ashbusters has been reported to SC Department of Labor, Licensing, and Regulation for soliciting contractor work without a license. I am told that they will most likely receive an order to cease and desist and possibly a fine. In short it appears your entire case is most probably gone, but I understand we have to wait until we see what SCDLLR actually has to say.

I am now willing to pay much more than $8,000 to beat you in court.

Lawrence E Miller.

Sent from my iPhone

On Nov 14, 2021, at 11:07 PM, LAWRENCE MILLER <lemillerla@aol.com> wrote:

Sir,

You are not a judge, and so you dictate nothing to me. You are not empowered to issue court orders.

If I choose to pay the $8,000, it will be when I choose to pay it. Meanwhile there is much to be considered before I proceed.

As far as "unprofessional" goes, making the statement that your client does not agree with any aspect of my letter is nonsensical. You are saying he disagrees with State Law. Further, you are saying he disagrees with his acceptance of $1,500 for the very minor settling crack by chimney, which is on the record. How absurd. I have you cold on trying to use an illegal estimate by an unlicensed, wanna be contractor, who is being reported to the state.

My motive so far has been only trying to avoid the cost of taking you to court, which would probably cost me significantly more than $8,000. Under civil law, I can withdraw my offer based on new information. Spending big legal fees to beat you in court is getting very tempting. I have discussed this with 3 lawyers, none of whom I retained, but who all said I would most likely prevail in court. I am now getting convinced I should pay the extra legal freight.

Summarizing, I strongly believe the tone and content of your letter, which was full of evasions, dishonestly, and disrespect for me, arguably more than justifies withdrawal of my offer. I do believe that would stand up in court.

I plan to contact one of Charleston's leading and most respected lawyers for advice. I retained him in the past in civil matters and believe he has a lot of respect for me and will offer good advice. I don't think he will, but if he should agree to represent me again, I honestly believe that you are in trouble.

In summary, I strongly believe you appear to have no case based on numerous professional assessments I have sought.

Lawrence E. Miller

Sent from my iPhone

On Nov 14, 2021, at 10:54 AM, Nick Tierney <nick@lwcooper.com> wrote:

Mr. Miller,

I'm not sure what specifically in the letter you consider to be unprofessional. I simply informed you that we disagree with the assertions in your letter but are accepting your offer. If you have a specific unprofessional statement, please point it out to me.

In any event, because we have accepted your offer before any withdrawal of it from you, the settlement agreement has been agreed to and ratified. If you need more than 14 days to tender the settlement funds to our Office on behalf of my client, we are happy to oblige. Please let us know if you need a couple more weeks to tender payment, or what other reasonable time frame works for you.

Happy to discuss further at your convenience at 843.375.6622.

Best regards,

Nick Tierney

On Sat, Nov 13, 2021 at 7:32 PM LAWRENCE MILLER <lemillerla@aol.com> wrote:

The tone and content of your letter is unprofessional and unacceptable. I am now seriously considering withdrawal of my offer and meeting you in court. Written letter will follow.

For starters, your client does not have the option of disagreeing with State Law. You should know that.

Lawrence Miller

Sent from my iPhone

On Nov 12, 2021, at 4:06 PM, Nick Tierney <nick@lwcooper.com> wrote:

Mr. Miller,

Please see attached correspondence regarding the revolution of 1642 Clyde Fireplace dispute. The hard copy is being sent to you in the mail.

Best regards,

Nick Tierney

--
Best regards,

Nick Tierney
The Law Offices of L.W. Cooper Jr.
36 Broad Street
Charleston, SC 29401
Telephone: 843.375.6622 ext. 103
Mobile: 540.748.0990
Facsimile: 843.375.6623
www.lwcooper.com

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<EXECUTED LT L. Miller re Resolution (2021.11.12).pdf>

--
Best regards,

Nick Tierney
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ELECTRONICALLY FILED - 2024 Feb 12 4:58 PM - CHARLESTON - COMMON PLEAS - CASE#2023CP1001790

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT
	)	Case No. 2023-CP-10-01790
Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021, Plaintiff,	)	**DEFENDANTS' NOTICE OF MOTION AND MOTION TO RECONSIDER, ALTER, OR AMEND THE ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGEMENT ON THE PLEADINGS**
v. Lawrence E. Miller Defendant.	)	

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY:

PLEASE TAKE NOTICE that the undersigned counsel for Defendant Lawrence E. Miller, hereby moves this Honorable Court to reconsider, alter, and amend its ruling set forth in the Order filed February, granting Plaintiff's Motion for Judgment on the Pleadings (the "Order") pursuant to Rule 59 (e), SCRCP.

BACKGROUND

Mr. Miller is an elderly retired Navy Veteran, who resides in Summerville, South Carolina. On April 12, 2023, Plaintiff filed the instant action against Mr. Miller, raising claims for 1) "Breach of Contract/Specific Performance- Settlement Agreement"; 2) "Violation of S.C. Code Ann. § 27-50-10, *et. seq.*; § 27-50-40; & § 27-50-65 -Knowing Disclosure of False or Misleading Information"; 3) "Fraudulent Misrepresentation." *See* Exhibit A (Plaintiff's Complaint and Exhibits). Defendant timely filed an Answer on May 19, 2023, denying the allegations raised in the complaint. *See* Exhibit B (Answer). On June 2, 2023, Plaintiff filed a blanket motion for Judgment on the Pleadings pursuant to Rule 12(c), SCRCP. *See* Exhibit C (Plaintiff's Motion for

Judgment on the Pleadings). On January 25, 2024, Plaintiff filed a Memorandum in Support of his Motion for Judgment on the Pleadings. Exhibit D (Plaintiff's Memorandum in Support of Motion and Exhibits). On the same date, Defendant filed a Memorandum in Opposition to Plaintiff's Motion for Judgment on the Pleadings. Exhibit E (Defendant's Memorandum in Opposition of Plaintiff's Motion and Exhibits).

On February 1, 2024, the Court held a hearing on Plaintiff's Motion. Present at the hearing were attorneys John H. Guerry and E. Gordon Hay of the Theos Law Firm, LLC for the Defendant and attorney Nicholas Paul Tierney from the Law Offices of L.W. Cooper, Jr., LLC. At the hearing, Plaintiff counsel argued that the Court should first address his Motion as his claim for "Breach of Contract/Specific Performance- Settlement Agreement" and submitted that a favorable ruling on that cause of action would resolve the case in its entirety. The Court agreed and, after consideration of the parties' arguments, found that Plaintiff was entitled to Judgment on the Pleadings as to Plaintiff's Claim for "Breach of Contract/Specific Performance- Settlement Agreement" after specifically concluding that Defendant's *pro se* communications with Plaintiff's counsel constituted a valid and enforceable settlement agreement in the amount of $8,000.00. On February 2, 2024, the Court entered a written Order granting Plaintiff's Motion for Judgment on the Pleadings and providing that the Order ended the case. *See* Exhibit 1 (Order Granting Plaintiff's Motion for Judgment on the Pleadings).

For the reasons set forth below and for those that may be presented at the hearing on this matter, Defendants' request the Court reconsider, alter, and amend the Order as the Motion was improperly granted.

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I. LEGAL STANDARD

Rule 59(e) provides that "[a] motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP. "It is proper to view a Rule 59(e) motion as not only as a vehicle to request the trial court 'alter or amend the judgment,' but also as a vehicle to seek 'reconsideration' of issues and arguments." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). "A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision..." *Id.* (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument... It is inherently unfair to disallow such an opportunity." *Id.* Motions for reconsideration can afford a court the opportunity to consider implications of an order not fully examined in the prior motion's briefing and argument. *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998).

ARGUMENT

Defendant respectfully requests that Court should reconsider, alter, and/or amend its February 2, 2024 Order granting Plaintiff's Motion for Judgment on the Pleadings pursuant to Rule 59(e) for the following reasons.[1]

As an initial matter, the Court should reconsider, alter, and/or amend its finding at this early stage of the proceedings, prior to any sufficient written discovery or the deposition testimony of any parties or witnesses, that Plaintiff was entitled to Judgment on the Pleadings as to his claim

[1] Defendant incorporates by the reference the legal standards, arguments, and supporting law cited in his Memorandum in Opposition to Defendant's Motion for Judgment on Pleadings, which is attached as Exhibit "E".

for "Breach of Contract/Specific Performance- Settlement Agreement". Specifically, Defendant respectfully submits that the Court prematurely found that there was a binding settlement agreement existed between the Defendant and the Plaintiff, based solely on a pre-suit email exchange between a *pro se* elderly Defendant and the Plaintiff's counsel of record. See Rule 59(e), SCRCP.

In order to prevail on a cause of action for a breach of contract, a plaintiff has the burden to prove: 1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage as a direct and proximate result of the breach. *Bank v. How Mad, Inc.*, 2013 WL 5566038, *3 (D.S.C.2013) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602 (1962)). For there to be a contract there must be an offer, acceptance, and consideration. *See Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 368, 593 S.E.2d 170, 173 (Ct. App. 2004). Notably, "a contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound." *See id.* at 368.

To the extent the Court granted Plaintiff's Motion for Judgment on the Pleadings under the Rule 12(c), SCRCP standard, it should reconsider, alter or amend its ruling because it failed to properly accept the allegations of Defendant's Answer as true and construe all inferences in the light most favorable to Defendant as the non-moving party as it must under the restrictive Rule 12(c) standard. *See Lewis v. Excel Mech., LLC,* No. 2:13-CV-281-PMD, 2013 WL 4585873, at *1 (D.S.C. Aug. 28, 2013) ("The court must accept all well pleaded factual allegations in the non-moving party's pleadings as true and reject all contravening assertions in the moving party's pleadings as false."); s*ee also Home Builders Ass'n of South Carolina v. Sch. Dist. No. 2 of Dorchester Cty.*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013). Notably, in his Answer,

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Defendant specifically denied that any settlement agreement was entered into between the parties or that the proposed settlement terms were agreed upon by the parties. Furthermore, Defendant specifically raised the lack of mutual assent/meeting of the minds as a defense. *See* Defendant's Answer at Ps 17; 40; *see also Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (providing that mutual assent as requirement to proving an enforceable contract). Moreover, Defendant has alleged numerous other contract-related defenses, including but not limited to unconscionability, mistake, and waiver, laches, estoppel, unclean hands, which should be resolved on the merits following appropriate discovery. *See Lewis*, 2013 WL 4585873, at *1; *see State Acc. Fund v. S.C. Second Inj. Fund*, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct. App. 2010) (providing that unilateral mistake can provide grounds for contract recission when the mistake is induced "by fraud, deceit, misrepresentation, concealment, or imposition ..., without negligence on the part of the party claiming rescission, <u>or</u> where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement."); *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 471 (2007) (Laches, Waiver, and Equitable Estoppel); *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107, 531 S.E.2d 287, 292 (2000) (Unclean Hands).

Furthermore and notably, Defendant has further alleged in his Answer that:

> [W]ithin 24-hours after Plaintiff's purported acceptance letter, made unequivocally clear that Defendant did not agree to Plaintiff's proposed settlement terms. Further answering, Defendant's *pro se* communications to Plaintiff's counsel, made within 24-hours after Plaintiff's purported acceptance letter, confirmed that any alleged offer that was made by the Defendant had been unequivocally withdrawn."

See Defendant's Answer at P 17. Such allegations, at the very least, go to the issue of mutual assent and an elderly *pro se* litigant's understanding and comprehension of the terms of the purported agreement, as well as his understanding as to finality of the settlement negotiations. See Electro-Lab of Aiken, Inc., 357 S.C. at 368 (discussing mutual assent); *see also State Acc. Fund*, 388 S.C.

at 77 (discussing defense of mistake). Such allegations, when properly considered as true and while construing all inferences in favor of the non-moving party pursuant to the Rule 12(c) restrictive standard, preclude the "drastic" remedy of a summary disposition of this matter at this early stage of the proceedings. *See Russell*, 305 S.C. at 89; *Falk*, 341 S.C. at 290 (finding a "grant of a judgment on the pleadings, before discovery has been fully completed, [to be] premature").

While it is not clear from the Court's ruling, the Court should likewise reconsider, alter, and/or amend its Order to the extent it construed the Plaintiff's motion as one for summary judgment, in that there is a clear issues of material fact concerning whether there was any enforceable settlement agreement and because any grant of summary judgment in this case was otherwise wholly premature. *See Hancock v. Mid-S. Mgmt. Co.,* 381 S.C. 326, 329, 673 S.E.2d 801, 802 (2009*) (providing* that when ruling on a motion for summary judgment the Court must construe "the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party" and recognizing that a nonmovant need only present a "mere scintilla of evidence" in order to defeat summary judgment); *Lanham*, 349 S.C. at 362 (holding that summary judgment is not warranted "where further inquiry into the facts of the case is desirable to clarify the application of the law" or when "if there is disagreement concerning the conclusion to be drawn from those facts."). Notably, as discussed above, there are clear material issues of fact as to whether there was mutual assent as to terms of the purported agreement and its terms and also as to the applicability of the affirmative defenses raised by Defendant, which should be developed through appropriate written and oral discovery. Specifically, given the nature of this *pro se* settlement negotiations and the clear issues of fact related to the parties' understanding as to the terms of the agreement, adequate discovery was necessary in order to determine the applicability of affirmative defenses raised by Defendant,

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which would have directly gone to the question of whether the purported agreement was valid and enforceable. See *Electro-Lab of Aiken, Inc.*, 357 S.C. at 368 (providing that mutual assent as requirement to proving an enforceable contract); *State Acc. Fund v. S.C. Second Inj. Fund*, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct. App. 2010) (providing that unilateral mistake can provide grounds for contract recission). Notably, at this point in the litigation, Plaintiff had not sent any written discovery requests to the Defendant and failed to produce responsive documentation to Plaintiff's Requests for Production. Moreover, there has been no deposition testimony taken to date, which would have directly addressed many of the issues of fact regarding the issue of mutual assent and the defenses raised by Defendant regarding the purported settlement agreement.

To conclude, the Court should reconsider its Order granting Plaintiff's motion for Judgment, in that there were clear issues of material fact and the summary resolution of this matter, was otherwise wholly premature in this matter where the parties were not given any an adequate opportunity to conduct sufficient discovery regarding the merits of this case. *See Lanham*, 349 S.C. at 362; *Falk*, 341 S.C. at 290.

CONCLUSION

For the reasons stated above, Defendant respectfully requests this Honorable Court reconsider, alter, and amend its February 2, 2024 Order Granting Plaintiff's Motion for Judgment on the Pleadings. This Motion is based on the attached exhibits, the previous filings in this case, the applicable law, and the arguments presented by counsel for Defendants at any hearing on this Motion.

Theos Law Firm, LLC
s /John H. Guerry
John H. Guerry Esq.; SC Bar #101219
E. Gordon Hay, Esq.; SC Bar #103641
Jerry N. Theos, Esq.; SC Bar # 5518
Theos Law Firm, LLC

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February 12, 2023

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1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
*
2 COUNTY OF CHARLESTON * TRANSCRIPT OF RECORD

3 -----------------------------x
JEROME B. CRITES, JR., *
4 Trustee of the BAC Trust U/A *
Dated April 9, 2021, *
5 *
Plaintiff, *
6 vs. * Case No. 2023-CP-10-01790
*
7 LAWRENCE E. MILLER, *
*
8 Defendant. *
-----------------------------x
9
February 1, 2024
10

11 B E F O R E:

12 The Honorable Robert J. Bonds, Presiding Judge

13 A P P E A R A N C E S:

14 Nicholas Tierney, Esq.
Attorney for the Plaintiff
15
John Guerry, Esq.
16 Attorney for the Defendant

17

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19

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21

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23 Recorded by: Webex Recording

24 Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III
25

1 I N D E X

2 DESCRIPTION PAGE

3 Proceedings 3

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10 E X H I B I T S

11 (None.)

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19 COURT REPORTER LEGEND

20 Dash (--) Indicates an interruption in speech

21 Ellipses (...) Indicates trailing off in speech

22 (ph) Indicates phonetic word

23 [Verbatim] Indicates the word is said as written

24 (Indiscernible) [Transcription] Indicates word(s) is not known due to audio recording

25 quality

1 P R O C E E D I N G S

2 THE COURT: All right. So whose motion?

3 MR. TIERNEY: Your Honor --

4 THE COURT: Happy to hear from you.

5 MR. TIERNEY: Nick Tierney on behalf of Mr. Crites,

6 the trustee of The BAC Trust. We're here on a motion for

7 judgment on the pleadings. I believe the complaint and

8 all the exhibits attached have been incorporated therein

9 and the answers of the defendant to the complaint are

10 [indiscernible] entitled to judgment on the pleadings.

11 This matter arises around some disclosure

12 [indiscernible] purchase of real property in 2021.

13 Specifically, as Your Honor, may be aware, a residential

14 disclosure statement is required for all residential sales

15 of real property in South Carolina. And in this

16 disclosure statement, a statement affirmatively no that

17 there's no problems with respect to the chimney or a

18 fireplace. It turns out that the defendant did have

19 knowledge of problems with respect to it. And so my

20 client was unaware, purchased the property, and then

21 became aware, Your Honor, in simple terms.

22 And so, after they became aware, there was some

23 exchange of demand letters and settlement discussions,

24 Your Honor, and what we're seeking here first is either to

25 enforce the settlement agreement, is what I'm seeking to

1 do, because there was an exchange of letters, in order to
2 form a settlement agreement that the defendant elected not
3 to follow through on but he agreed to.
4 And so, Your Honor, if I can share with you -- I
5 have got two exhibits or three exhibits that will reflect
6 the exchange of communication, which I believe represent
7 the offer of the acceptance, and then the final agreement.
8 THE COURT: All right. Yes, sir. Happy to look at
9 it.
10 MR. TIERNEY: Do you need a copy of it?
11 MR. GUERRY: No. It's [indiscernible]?
12 MR. TIERNEY: It's the complaint.
13 MR. GUERRY: Yeah.
14 THE COURT: Thank you.
15 MR. TIERNEY: So Exhibits 4 and 5, Your Honor, were
16 attached to the complaint, and then Exhibit 1 is
17 incorporated by reference in communication with the
18 complaint, which was the email exchange between myself and
19 the defendant regarding his receipt of the offer.
20 And this Exhibit 4, Your Honor, I have highlighted
21 on the second page, which is when the offer is extended,
22 Your Honor, which is, "In conclusion and one last step,
23 after failing to resolve this situation, short of
24 expensive litigation, I'm offering $8,000 to cover the
25 [indiscernible] estimate and half of the [indiscernible]."

1 And, Your Honor, this is a letter dated October
2 24th, 2021. I took this to my client, discussed it with
3 my client. And if you'll look to Exhibit 5, Your Honor,
4 wrote a letter on November 12th and 11th. It states, Your
5 Honor, "I am in receipt of your October 24th,
6 [indiscernible] letter containing your offer of $8,000
7 settlement payment in exchange for complete resolution of
8 the matter. Mr. Crites has elected to accept your offer
9 to resolve and release all claims between the parties
10 regarding the chimney dispute matter completely and
11 entirely for a settlement payment in the amount of
12 $8,000."
13 THE COURT: All right.
14 MR. TIERNEY: And then, Your Honor, Exhibit 1, which
15 is the third exhibit I handed to you, is an email exchange
16 where I submitted via email that November 12th letter we
17 just looked at, "Please see attached correspondence
18 regarding the 1642 [indiscernible] fireplace dispute."
19 Mr. Miller responds the following day on the 13th,
20 evidently did not like the tone [indiscernible] in my
21 letter and stated then he's seriously considering a
22 withdrawal of my offer, which neither one of them states
23 that he has not withdrawn his offer [indiscernible]
24 included because we have accepted the offer.
25 And I won't talk too much about the offer,

1 acceptance, and consideration, Your Honor, but an exchange
2 of letters between parties that expresses the intent can
3 be a binding contract in South Carolina, Your Honor. The
4 offer clearly is an invitation from Mr. Miller to accept a
5 resolution in the matter for $8,000. My client accepted
6 that before it was withdrawn. The consideration is
7 clearly that my client wouldn't have filed this lawsuit
8 with the other claims that are contained in exchange of
9 the $8,000 to resolve the matter and move on.
10 And I think the manifestation [indiscernible] is
11 clear, Your Honor. The parties have done what you can see
12 in this two-page offer letter from Mr. Miller, what's
13 going on, and has offered to resolve the claims related to
14 his misrepresentations in disclosure.
15 And I didn't want to have to file this suit to
16 enforce it, Your Honor, but my client was harmed by this
17 misrepresentation. I think we have a binding settlement
18 agreement. I would state I think I want to let you argue
19 this one but where I move to maybe the other claim just to
20 see if we have an enforceable agreement. But I saw some
21 argument from the defendant regarding a settlement
22 agreement needing to be signed and citing Rule 43(k).
23 That is not applicable if there's not a proceeding in
24 place or a lawsuit. There was no lawsuit in place, no
25 proceeding at the time this settlement agreement was

1 reached, so it's not subject to Rule 43(k) for either two
2 signatures or a, you know, submission from the Court of
3 [indiscernible] stipulating to the settlement.
4 So, Your Honor, I think there's a binding settlement
5 agreement. And I should have shared that both the
6 acceptance, the acknowledgeable and receipt of the letter,
7 the submission of the letter is all acknowledged and
8 admitted in the answer filed by the defendant in this
9 action, Your Honor, which is why I really don't
10 [indiscernible].
11 So I believe we're entitled to an order that the
12 settlement agreement is enforced.
13 THE COURT: All right. Counsel, yes, sir?
14 MR. GUERRY: Thanks, Judge. May it please the
15 Court? John Guerry with the Theos Law Firm.
16 Respectfully, Judge, an exchange of letters and
17 emails in South Carolina is not an enforceable settlement
18 agreement. We understand counsel's frustrations.
19 Mr. Miller was proceeding pro se. He happened to be an
20 80-year-old retired nuclear engineer from the Navy. He's
21 sophisticated enough to handle business on his own. He
22 thought it would be prudent to engage in some discussions
23 and try to resolve this prior to -- to avoid litigation.
24 So he did; he made some settlement discussions.
25 What is conveniently left out of the lawsuit is the

1 full email exchange between the parties.
2 And, Your Honor, may I approach?
3 THE COURT: Mm-hmm.
4 MR. GUERRY: And here is the full email exchange,
5 which we have filed and attached to our memorandum in
6 opposition where, in response to counsel's settlement
7 offer where he says in the letter -- I'll quote --
8 "Although we disagreed with most of the assertions
9 contained in your letter, Plaintiff, Mr. Crites, has
10 elected to accept the offer."
11 The very next day, while proceeding pro se, Mr. --
12 the defendant, Mr. Miller, says you don't -- he didn't
13 like the terms of this letter. And he said, "What do you
14 mean you don't agree with --
15 THE COURT: He didn't like the terms of what letter?
16 The [indiscernible] letter?
17 MR. GUERRY: The email exchange from my client, who
18 was proceeding pro se, to Plaintiff's counsel where he
19 engages in settlement discussions. He laid out a lengthy
20 detail of why this claim he believes has no merit "but
21 nonetheless, I'm willing to make a financial decision and
22 try to resolve this."
23 In response --
24 THE COURT: And what -- and is that the letter that
25 is dated November 12th, 2021? Is that this letter?

1 MR. GUERRY: No.
2 THE COURT: All right. Let me see...
3 MR. TIERNEY: Your Honor, the letter has been
4 discussed in email exchanges in the November 12th letter.
5 If you're looking at Mr. Guerry's exhibit, at the bottom
6 when you see the November 12th email from myself, Your
7 Honor, Nick Tierney to Mr. Miller, that's the attached
8 correspondence. That's the letter, Your Honor, that I
9 submitted.
10 So the letter that these emails that Mr. Guerry has
11 submitted that are two or three days past the submission,
12 those are with respect to the November 12th letter.
13 MR. GUERRY: Judge --
14 THE COURT: Go ahead.
15 MR. GUERRY: -- regardless, we're here on a motion
16 for judgment on the pleadings.
17 THE COURT: I'm with you.
18 MR. GUERRY: And extremely astringent standard. And
19 based on our answer alone, this motion should be denied.
20 In our answer, we specifically pled -- which I as the
21 non-moving party on a motion for judgment on the pleadings
22 should be considered as true -- we pled in our answer --
23 and I'll quote: "Within 24 hours after Plaintiff's
24 purported acceptance letter, we made it unequivocally
25 clear that the defendant did not agree to Plaintiff's

1 proposed settlement terms, further answering Defendant's
2 pro se communications that Plaintiff's counsel made within
3 24 hours after the purported acceptance letter, confirmed
4 that any alleged offer that was made by the defendant was
5 unequivocally withdrawn." That's our pleading. It was
6 withdrawn. The email is in front of you.
7 The case law in South Carolina for a settlement, as
8 it relates to settlement agreements specifically, they
9 need to be reduced to the form of a consent order or
10 written stipulation made in open court and noted on the
11 record or reduced in writing and signed by the parties and
12 their counsel.
13 There's no signed settlement agreement here. There
14 was --
15 THE COURT: Doesn't that apply to litigation?
16 MR. GUERRY: Your Honor --
17 THE COURT: I mean, that's the Rule -- not the Rule
18 40 -- is that 41?
19 MR. GUERRY: 43, but you're also citing --
20 THE COURT: Well, hold on. Rules of Civil
21 Procedure. See, I would think that those apply -- that
22 applies to litigation. Hold on. Let me look through it
23 and see. I haven't read it specifically.
24 All right. What is that? Is that 41? Let's see.
25 MR. GUERRY: I have some case law --

1 THE COURT: Hold on. What rule -- what rule are you
2 quoting from, sir? 41 what?
3 MR. TIERNEY: It's 43(k).
4 THE COURT: 43. All right. Well, you're actually
5 quoting -- are you quoting 43(k)?
6 MR. GUERRY: I'm quoting the case of -- the case
7 S.C. Home Association [verbatim] vs. Zeyi Chen, 43 S.C.
8 509 [verbatim].
9 THE COURT: Okay. And does it, like, reference the
10 43(k)?
11 MR. GUERRY: It does. It cites 43(k).
12 THE COURT: Right. Well, see, 43(k), first of all,
13 is an agreement of counsel, and obviously --
14 MR. GUERRY: He was proceeding pro se.
15 THE COURT: All right. But if we go back to the
16 caption, it's under 43, Conduct at Trial. And so, I mean,
17 when we look at it as a whole, to me, I'll be honest,
18 there's different issues here, but I mean, I just think
19 that -- I think deals with litigation.
20 MR. GUERRY: And I understand that position, Judge.
21 And taking that as true --
22 THE COURT: But assuming that --
23 MR. GUERRY: We still contest that there was ever
24 even a settlement agreement in place. It's an obvious
25 question. We have an email that will withdraw my client

1 [indiscernible] without [indiscernible] didn't like the
2 terms of his letter. He withdrew it.
3 And we're here on a motion for judgment on the
4 pleading standard, and we have pled in our answer that
5 there was no settlement agreement, and there's sufficient
6 evidence in the record to fully support that. You know,
7 there must be a mutual meeting of the minds, a mutual
8 agreement. There was no mutual agreement. My client
9 exchanged some figures. He put in his letter that we
10 disagreed with your terms but we'll take the money.
11 And he said, "Wait a second, you don't -- you don't
12 agree with my term? Well, I'm withdrawing it."
13 So that's a classic -- that's a classic question of
14 fact that this jury needs to decide or that we need to go
15 through discovery and handle this as the Rule 56 stage.
16 You know, I don't think we're getting to the other causes
17 of action. I think we're still on this specific
18 performance cause of action standard which I'm going
19 through here, but...
20 We specifically pled mutual defenses, affirmative
21 defenses to this. We have denied there was ever an
22 agreement. There's sufficient factual dispute that this
23 is truly an enforceable agreement that considered my
24 client withdrew it. He disagreed with the terms of their
25 letter. He was proceeding pro se.

1 Taking that at this stage of the game, it certainly
2 warrants a denial of a motion for judgment on the
3 pleadings on this cause of action. I'm happy to discuss
4 the other two.
5 The big point here is our client didn't agree to the
6 terms so he withdrew it. There was no settlement
7 agreement executed between the parties, no money
8 exchanged. There were simply negotiations.
9 It almost got there, but it didn't. And I
10 understand their frustration and their right to sue, but
11 we certainly need to see this through the discovery phase
12 and certainly from the exhibits that have been attached by
13 both parties, this is a factual dispute.
14 THE COURT: Well, I guess the question I see is
15 honestly what's got him upset is, "I have discussed this
16 offer with my client and although we disagree with most of
17 the assertions contained in your letter," that's what he
18 thinks is -- and I guess the question is, is that really a
19 term?
20 MR. GUERRY: Right.
21 THE COURT: Honestly, I don't think it's a term.
22 That ain't a term. That's just throwing something in
23 there. The problem is, I think your client thinks that's
24 the term. Your client thinks that's a term. I don't
25 think legally it's a term, but that's kind of what I

1 see -- where I see this going.
2 MR. GUERRY: And I totally agree, Judge. Mr. Miller
3 is adamant that he has done nothing wrong in this matter.
4 He is extremely frustrated that he's been accused of not
5 disclosing issues with this fireplace. He is -- he
6 extremely -- he's still upset about it. And rather than
7 retaining a lawyer and go through those expenses, he, as
8 you can tell, considered resolving this.
9 THE COURT: Well, he's well-trained enough and
10 [indiscernible] on the law to believe that
11 [indiscernible] -- he's well-trained in South Carolina
12 law.
13 MR. GUERRY: According to his --
14 THE COURT: Yeah, I know.
15 MR. GUERRY: Exactly, right.
16 THE COURT: He's well-trained in South Carolina law.
17 MR. GUERRY: Exactly. And he -- and, clearly, his
18 intentions were for them to acknowledge to not -- to agree
19 with him in his email to them that there was nothing -- no
20 real issues here but, regardless, we can resolve this.
21 That never came to fruition. And I think it's a classic
22 jury question.
23 THE COURT: Let me hear from you.
24 MR. TIERNEY: Your Honor, first of all, I do want to
25 clarify. South Carolina is clear; you can have an

1 agreement on exchange of letters. You can have an oral
2 agreement [indiscernible] consideration. And anything
3 that happens after the acceptance of the offer that was
4 submitted is not a fact about whether or not the
5 [indiscernible] agreed to [indiscernible].
6 My letter, while I might say, which I think happens
7 a lot [indiscernible] is "I don't agree with everything
8 you said, but we're accepting your offer." And this is
9 what I say, "He has elected to accept your offer."
10 THE COURT: Yeah, but a lot of this has meeting of
11 the minds. And so the question is here is was there
12 really a meeting of the minds. And he -- and I'm not
13 saying anything wrong with your letter, but if he was a
14 lawyer, I mean, he would have thought this was a term. No
15 lawyer is going to think this is a term. He thinks this
16 is a term.
17 I'm just wondering if it's a meeting of the minds.
18 MR. TIERNEY: Well, Your Honor, I guess
19 [indiscernible] me not agreeing with your approach to
20 something is a term of an agreement because all it's
21 offering is 8,000 bucks and we're done. That's what the
22 term was.
23 THE COURT: Well, I think it's a question -- I'm
24 sorry. I think there's a question as to whether that was
25 a term to him.

1 MR. TIERNEY: [Indiscernible] is it a term. The
2 reason we're here, Your Honor, because I don't think you
3 need to be a lawyer to say I offered him to settle, we got
4 a deal, I shook your hand, let's go do it. We're here
5 trying to enforce it, Your Honor, because he won't follow
6 through with what he says. So, as a matter of law of why
7 we're here, the facts are in front of you, Your Honor.
8 There's nothing else except the communication that was
9 conveyed between the parties that are clear. He goes into
10 great detail about the issue and his concern, and he
11 offers to resolve the whole thing for 8,000 bucks, and my
12 person says, "Okay, yeah."
13 And people that didn't do something wrong or think
14 they did something wrong [indiscernible] offer for 8,000
15 bucks and get out of -- and resolve the matter, Your
16 Honor. And I can get into the fact that he did knowingly
17 mis[indiscernible] --
18 THE COURT: Right, but this is -- that's not here
19 today. That's an issue that you may very well succeed on.
20 MR. TIERNEY: What it is, I didn't move on all
21 counts. I just -- and we had [indiscernible] an
22 enforceable settlement agreement, there's no -- there's
23 nothing else to discuss, Your Honor. I mean, the matter
24 is done because we have agreed --
25 THE COURT: Correct. I mean, if I say there's not,

1 then this matter continues, I'm assuming.
2 MR. TIERNEY: And I don't want to waste lawyer fees,
3 and, from my standpoint, going through to enforce what is
4 a clear agreement, Your Honor, an exchange of
5 understanding. I don't know how there's a
6 misunderstanding about what someone says 8,000 bucks and
7 we're done, and my guy says, "Okay. Give me the 8,000
8 bucks and we're done." And now we're sitting here, Your
9 Honor, a year and some change later.
10 I do think Your Honor [indiscernible].
11 THE COURT: I'm going to grant your motion.
12 MR. TIERNEY: The plaintiff's motion?
13 THE COURT: Yep.
14 MR. TIERNEY: For [indiscernible] on the pleadings?
15 THE COURT: Yep. I will tell you, I believe that
16 there's an offer and I believe there's an acceptance. I
17 have got an offer on the 24th. I have got the letter
18 where he writes back and accepts. Then on the -- then on
19 the 13th, at that point, he still acknowledges that the
20 offer is outstanding. He's seriously considering
21 withdrawing it. I mean, he's not the withdrawing it. On
22 the 13th, he didn't reject that offer. On the 13th, he
23 knew this offer was still pending. And he had already
24 accepted the offer. Here's the offer, here's the
25 acceptance. And what the gentleman did is the gentleman

1 still says on the 13th that he was going to go and he was
2 going to accept the offer. He says, "I'm considering
3 withdrawing the offer." And then he goes in and says that
4 he's a professional and he's going to go and withdraw it,
5 and then he says he's going to pay it on his choosing a
6 time. No. He knew exactly what he was doing. He knew
7 exactly what was going on. If he had gone and -- I submit
8 that if he had gone and said, "I reject your offer" or
9 "I'm rejecting this" on the 13th, but he's teasing the
10 man, he's bringing him along, I just think -- no, sir, I
11 think he knows exactly what's going on, and he says, "I'm
12 seriously considering withdrawing my offer." That means
13 to me he knows the offer is still in place. He doesn't
14 say "I'm going to withdraw my offer unless you agree to
15 take out these terms that I deem are unacceptable."
16 So that's going to be my ruling.
17 All right. What else we got?
18 MR. TIERNEY: Well, Your Honor, that concludes the
19 matter.
20 THE COURT: All right. Great. Thank y'all.
21 (The above matter concluded.)
22
23
24
25

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3 2023-CP-10-1790

4 DATE OF HEARING: 2/1/24

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16 Bobbi Fisher

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2023-CP-10-01790

Appellate Case No.: 2024-000293

Jerome B. Crites Jr., Trustee of The BAC Trust U/A Dated April 9, 2021,________ Respondent,

v.

Lawrence E. Miller, ____ Appellant.

CERTIFICATE OF COUNSEL FOR THE RECORD ON APPEAL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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