

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 GREAT DEAL INVESTING LLC, OF)
 WYOMING,)
)
 Plaintiff,)
)
 v.)
)
 JARED BURNETT, BRETT BURAS,)
 DAMIAN BERGAMASCHI, STEVE)
 DECKER, J & B HOLDINGS GROUP, LLC,)
 AND HATCHERY HILL MHC, LLC,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2024-CP-38-00733

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

RECEIVED
Jan 17 2025
 SC Court of Appeals

PROCEDURAL BACKGROUND

This matter came before the Court on September 5, 2024, 2:00 p.m. for a hearing on several motions: (1) Defendants' Motion to Dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6), SCRCF; (2) Defendants' Motion to Quash several Subpoenas to Third Parties;¹ (3) Plaintiff's Motion for Summary Judgment and (4) Defendants' Motion for Summary Judgment. Counsel for the Defendants, Joey R. Floyd, and Counsel for the Plaintiff, Greg Studemeyer, both appeared and argued all of the pending motions in this civil action. This Court also provided the Plaintiff with an opportunity to provide a Supplemental Memorandum and Counsel for the Defendants provided its Reply Memorandum. Thereafter, Counsel for Plaintiff filed a Reply Memorandum.

¹ By virtue of this Order granting the Defendants' Motion for Summary Judgment, a ruling on the Defendants' Motion to Quash the Subpoenas is not necessary since this Order renders the Motion to Quash moot. To the extent that a ruling is necessary, the Defendants' Motion to Quash the Subpoenas is hereby granted and the Third Parties do not have to respond to the Subpoenas, to the extent that any of the third parties have not already responded. This Order also renders Defendants' Motion to Dismiss moot.

The Plaintiff has filed this civil action asserting four causes of action against the Defendants: (1) Breach of Contract, (2) Breach of Contract accompanied by a Fraudulent Act, (3) Civil Conspiracy and (4) Unfair Trade Practices Act. In terms of the Motions for Summary Judgment, the Plaintiff has moved for Summary Judgment on all causes of Action and the Defendants have moved for Summary Judgment on the basis that the Plaintiff and/or the Plaintiff's Member's activities require a Real Estate License issued by the South Carolina Real Estate Commission. The Defendants maintain that some individual must be licensed by the Real Estate Commission based on the allegations of the Amended Complaint, along with the admitted actions and activities of Plaintiff and/or Plaintiff's Member. The Plaintiff contends that since it is a limited liability company, it is "not required" to have a license.

FACTUAL BACKGROUND

This civil action is based entirely on an alleged "Finder's Fee Contract" entered into between Plaintiff and Defendant J&B Holdings Group, LLC on October 30, 2023. See Plaintiff's Amended Complaint, ¶ 22, 27, 28 and 29. A copy of the Finder's Fee Contract is attached to the Amended Complaint as Exhibit C.² The Plaintiff is a Wyoming limited liability company. See Plaintiff's Amended Complaint, ¶ 3. The member of the Wyoming limited liability company, Nathan Johns, resides in and allegedly conducts business out of his home in Indiana. See Affidavit of Nathan Johns, ¶ 2.

Plaintiff alleges that it is owed a "Finder's Fee" of seven percent (7%) of the final purchase price of a real estate transaction, the sale of certain real property in Cordova, South Carolina (the real property is located in Orangeburg County, South Carolina). See Amended Complaint ¶¶ 28, 32 and 36. Notably, the Plaintiff has filed this lawsuit in Orangeburg County, South Carolina

² Documents attached to pleadings as exhibits are pleadings. Rule 10(c), SCRPC.

seeking a remedy based on South Carolina law, in connection with a real estate transaction that involves South Carolina real property. And, at the same time, Plaintiff maintains that it is not subject to the Real Estate licensing laws of South Carolina.

It is undisputed that Plaintiff and its Member, Nathan Johns, are not licensed by the South Carolina Real Estate Commission (the South Carolina Department of Labor, Licensing and Regulation). See Finder's Fee Contract, Affidavit of Nathan Johns and Affidavit from the South Carolina LLR. For the reasons set forth herein, the Finder's Fee Contract is an illegal contract, which cannot be enforced by the Plaintiff in this civil action. All of Plaintiff's causes of action fail, as a matter of law; the Defendants' Motion for Summary Judgment is hereby GRANTED and the Plaintiff's Motion for Summary Judgment is DENIED.

STANDARD

Our Courts have recently reaffirmed the "genuine issue of material fact" standard for Summary Judgment. In particular, the South Carolina Supreme Court has set forth the following standard for Summary Judgment:

We now clarify that the "mere scintilla" standard does not apply under Rule 56(c). Rather, the proper standard is the "genuine issue of material fact" standard set forth in the text of the Rule. As we stated in *Town of Hollywood v. Floyd*, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." 403 S.C. at 477, 744 S.E.2d at 166. To the extent what we said in *Hancock* is inconsistent with our decision today, *Hancock* is overruled. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463–64, 892 S.E.2d 297, 301 (2023).

In the case at hand, there is no "genuine issue of material fact" because Plaintiff does not have the necessary licensure / qualifications to serve as a Real Estate Brokerage Firm nor does its Member hold a license. This failure to hold the necessary licensure bars Plaintiff from maintaining

this civil action. The unlawful acts of Plaintiff, and its Member, operate as a complete bar to recovery for Plaintiff.

FINDINGS / HOLDING

- I. The Plaintiff's causes of action fail because: (a) the alleged "Finder's Fee Contract" is an illegal contract and (b) Plaintiff and/or its member/agent were practicing real estate without a license from the South Carolina Real Estate Commission (the South Carolina Department of Labor, Licensing & Regulation.)**

The Plaintiff's basis for this lawsuit is the "Finder's Fee Contract" dated/signed on October 30, 2023, attached to the Plaintiff's Complaint as Exhibit C.³ The Plaintiff in this case is seeking compensation, a 7% fee, in connection with property purchased by Hatchery Hill MHC, LLC in Orangeburg County, South Carolina. The "Finder's Fee Contract" expressly states that Plaintiff "is not a real estate agent / broker / Realtor and [Plaintiff] holds no professional licenses." See Exhibit C attached to Plaintiff's Amended Complaint at p. 2 (emphasis added). Nathan Johns signed the "Finder's Fee Contract" as "Member" of Plaintiff. An Affidavit from the South Carolina Department of Labor, Licensing and Regulation ("the LLR"), was filed with this Court August 19, 2024, attesting that neither the Plaintiff, nor its Member, Nathan Johns, are licensed by the South Carolina Real Estate Commission / the LLR.

Plaintiff makes the following allegations in the Amended Complaint:

- "Under the terms of the contract, Plaintiff agreed to identify property and sellers to J & B in exchange for a fee of seven percent (7%) of the final purchase price." Plaintiff's Amended Complaint ¶ 28.
- "Thereafter, the Plaintiff introduced [Defendants] to several properties..." Plaintiff's Amended Complaint ¶ 31.
- "On or about February 20, 2024, the Plaintiff identified Buras to Trishann Couvillion ("Couvillion") of Pecan Grove Digs LLC ("Pecan Grove") in Asheville, North Carolina as a **potential**

³ The "Finder's Fee Contract" includes the signatures of Plaintiff (Nathan Johns, identified as "Member") and J&B Holdings Group, LLC (Brett Buras, identified as a "Managing Member").

seller of a mobile home park located in Cordova, South Carolina and notified Buras by email on February 21, 2024.”⁴ Plaintiff’s Amended Complaint ¶ 32 (emphasis added).

- “On February 22, 2024, at Buras’ request, the Plaintiff scheduled a telephone call with Couvillion **to introduce her to Buras and Bergamaschi.**” See ¶ 33 of Amended Complaint (emphasis added).

As an aside, Exhibit B (email) attached to the Plaintiff’s Amended Complaint provides additional evidence that Plaintiff and Nathan Johns (Member of the Plaintiff) were serving as a Real Estate Brokerage Firm and a real estate Broker, respectively, without a license. Exhibit B to Plaintiff’s Amended Complaint relays information identifying properties, asking price, various pricing issues, terms of financing available, ability to introduce various sellers, etc... In summary, the email has all of the telltale signs of being a communication from a real estate broker to a potential buyer based on the information being relayed in the email.

Companies, corporations and/or limited liability companies can only act, or take action, by and through individuals (i.e. individual members, individual officers, individual employees, individual agents, etc...). In other words, some natural person has to act on behalf of the limited liability company for the limited liability company to take action. In the case at hand, as it relates to the illegal “Finder’s Fee Contract,” a person/individual would have to actually locate, or “find,” real property owned by potential sellers to present to potential buyers in order to earn a “Fee.” A limited liability company cannot “schedule a call” or “introduce people to one another” – those actions can only be taken by an individual person who completes the specific task. As a practical matter, limited liability companies cannot “take licensing exam tests” – an individual is required to take professional licensing tests. In turn, the LLR is able to discipline the licensee, when necessary, for professional licensure violations (as the license holder is the professional who must

⁴ Pecan Grove Digs, LLC is a South Carolina limited liability company.

answer to the LLR regarding licensure issues). A similar structure is illustrated by the legal profession – it is the individual lawyer who sits for the bar exam and answers to the Supreme Court for their license, not the law firm as a corporate entity.

The Affidavit of Nathan Johns also notes that Nathan Johns admits to taking certain actions / conducting certain activities relating to real estate located in South Carolina:

- "...I sent Buras a list of properties to consider as shown in Exhibit 1." Affidavit of Nathan Johns, ¶ 22.
- "I identified Trishann Couvillion ("Couvillion") of Pecan Grove Digs LLC ("Pecan Grove") in Asheville, North Carolina as a potential seller of a mobile home park located in Cordova, South Carolina, and notified Buras by email on February 21, 2024. Affidavit of Nathan Johns, ¶ 24.
- "...I scheduled a telephone call with Couvillion to introduce her to Buras." Affidavit of Nathan Johns, ¶ 25.
- "On February 26, 2024, Buras requested and I provided Couvillion's email address." Affidavit of Nathan Johns, ¶ 26.

South Carolina Code § 40-57-30(3)(a)-(f) defines the practice of a real estate broker as:

"Broker" means an associated licensee who has met the experience and education requirements and has passed the examination for a broker license and who, for a fee, salary, **commission, referral fee, or other valuable consideration**, or who, with the intent or expectation of receiving compensation:

- (a) **negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements to the real estate;**
- (b) auctions or offers to auction real estate in accordance with Section 40-6-250;
- (c) **for a fee or valuable consideration solicits a referral;**
- (d) **offers services as a real estate consultant, counselor, or transaction manager;**
- (e) offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or
- (f) **advertises or otherwise represents to the public as being engaged in any of the foregoing activities.**

(emphasis added).

Based on the admissions and allegations of Plaintiff and Nathan Johns (i.e. the allegations of the Amended Complaint and the Affidavit of Nathan Johns), Nathan Johns' actions and activities fit squarely in the definition of a Broker.⁵

A Real Estate Brokerage Firm “means a real estate company engaged in the business of real estate brokerage.” S.C. Code § 40-57-30(24). Real Estate Brokerage is defined as “the aspect of the real estate business that involves activities relative to property management or a real estate sale, exchange, purchase, lease.” S.C. Code § 40-57-30(23), emphasis added. Plaintiff acknowledges, in its Amended Complaint, that Plaintiff was involved in activities related to a real estate sale because Plaintiff alleges that he/it introduced the sellers and buyers of real estate. As the Plaintiff's action fits squarely within the definition of a South Carolina Real Estate Brokerage Firm based on its alleged activities relating to the property located in South Carolina. A Real Estate Brokerage Firm must have a licensed Broker in Charge at every Real Estate Brokerage Firm. See S.C. Code § 40-57-135(C)(2). In reviewing the obligations of a licensed Broker in Charge, this Court notes that there are a number of significant statutory duties and obligations for which a Broker In Charge is responsible. See S.C. Code § 40-57-135. Some of those statutory duties of a licensed broker in charge include:

- supervising employees, S.C. Code § 40-57-135(A)(1)
- supervising licensees, S.C. Code § 40-57-135(A)(1)
- approval of documents, S.C. Code § 40-57-135(A)(2)
- be available to the public during business hours, S.C. Code § 40-57-135(A)(4)

⁵ The Finder's Fee Contract clearly demonstrates that the Plaintiff represents to the public as being engaged in activities of a broker as contemplated in SC Code § 40-57-30(3)(f).

- Ensure that all associated licensees have an active real estate license (i.e. ensure compliance with the licensing law), S.C. Code § 40-57-135(A)(6)
- establish and maintain trust accounts, S.C. Code § 40-57-135(A)(7)
- establish a specific office location to be accessible to the public, investigators and inspectors during reasonable business hours, S.C. Code § 40-57-135(C)(1)
- record keeping obligations for five years, S.C. Code § 40-57-135(D)(1)
- various duties owed to buyers and sellers, S.C. Code § 40-57-135(H)
- ensure that unlicensed employees do not take actions that require a real estate license, etc...). S.C. Code § 40-57-135(K)

While the Real Estate Brokerage Firm may not “hold the license,” a Real Estate Brokerage firm is required to have a licensed Broker in Charge and any individual taking actions that fall within the definition of a Broker must be licensed. In fact, it is the Broker In Charge’s obligation to ensure that unlicensed employees do not take actions that require a real estate license. See S.C. Code § 40-57-135(K)(1-10). To be more specific, as it relates to this civil action, S.C. Code § 40-57-135(K)(9) expressly states that an unlicensed employee working under the supervision of a Broker In Charge “**may not ... negotiate or agree to compensation or commission including, but not limited to, a percentage of commission or an amount based on the listing or sales compensation or commission.**” (emphasis added) In other words, even if Nathan Johns had been working under the supervision of a Broker In Charge, Nathan Johns (who does not hold a license) would have been acting unlawfully and in violation of the licensing statute by agreeing to and entering into the “Finder’s Fee Contract” because there is an express statutory prohibition forbidding Nathan Johns from taking the very actions upon which this entire case is based, i.e. the Finder’s Fee Contract.

Plaintiff effectively argues that there is some statutory loophole that would enable Plaintiff to conduct real estate activities relating to real property in South Carolina without complying with South Carolina's Real Estate licensing law. Plaintiff suggests that since the activities of Nathan Johns took place in Indiana, Nathan Johns is not subject to this State's Real Estate licensing laws. Our legislature has made a clear statutory provision for "Nonresident licensees." See S.C. Code § 40-57-120. The South Carolina Legislature has given authority to the South Carolina Real Estate Commission to allow Nonresident licensees under very strict parameters and controls. Notably, the nonresident licensee has to comply with the licensing law (S.C. Code § 40-57-120(D)) and notify the commission if the nonresident licensee changes his/her residency (S.C. Code § 40-57-120(C)(2)). In other words, it does not matter where a person lives, or conducts business ... If the individual is taking action involving real estate in South Carolina that fall within the licensing statute, that particular person must be licensed and the Real Estate Brokerage Firm must have a licensed Broker In Charge.

To reach any other conclusion would be an offense to all of the properly licensed Brokers, Brokers In Charge and Nonresident Licensees. Under the Plaintiff's theory, any limited liability company or corporation could avoid the real estate licensure requirements in South Carolina by simply setting up an office in Charlotte, North Carolina, conduct business "remotely" and never step foot in South Carolina. There is no "loophole" for a limited liability company, as suggested by Plaintiff. The licensing statute makes it clear to all that **it is unlawful to practice real estate as a broker, agent, salesperson, or property manager without obtaining the proper license from the South Carolina Real Estate Commission.** See S.C. Code § 40-57-20. Based on this Court's analysis of the licensing statute, S.C. Code § 40-57-5, et.al., someone (an individual) must have a real estate license in order to receive a commission in connection with the sale of real

property in South Carolina. The South Carolina legislature enacted S.C. Code § 40-57-5 through § 40-57-810 to “regulate the real estate industry so as to protect the public’s interest when involved in real estate transactions.” S.C. Code § 40-57-10.

To further solidify this Court’s understanding of the licensing statute, the South Carolina Court of Appeals has opined on what actions rise to the level of serving as a Real Estate Broker in South Carolina. In *Roberts v. Gaskins*, 327 SC 478, 486 S.E.2d 771 (Ct. App. 1997), the South Carolina Court of Appeals stated that:

It is generally recognized that a broker ‘negotiates’ within the meaning of the licensing statutes just as much when he brings the parties together in such a frame of mind that they can by themselves evolve a plan of procedure as when he carries on the discussion and personally induces an agreement to accept a specific provision. *Roberts* at 488.

The *Roberts* Court went on to add that:

We, therefore, conclude that a business broker unlicensed as a real estate broker may enforce a commission contractually earned on the sale of the personal property of a business, irrespective of the form of sale, even though the sale may include real estate; provided, of course, no commission can be based either directly or indirectly on the value of the real property involved. *Roberts* at 490.

Because Plaintiff has alleged in its Amended Complaint that it introduced the potential buyer and the potential seller, i.e. bringing the parties together in a frame of mind that they could themselves evolve a plan, Nathan Johns and the Plaintiff were engaged in and/or involved in activities that trigger the licensure requirements set forth in S.C. Code § 40-57-5, et.al.

S.C. Code § 40-57-20 provides:

It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission. (emphasis added)

S.C. Code § 40-57-780, notes that the penalty for the unlicensed practice of real estate is considered a misdemeanor:

A real estate broker, salesperson, or property manager who fails to *renew or register a license and continues to engage in the business permitted pursuant to the license* is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both. (emphasis added)

To further drive home the point of the unlawful practice of real estate, S.C. Code § 40-57-710(A)(1)-(29) states in, relevant part, that the Real Estate Commission can deny a license to an applicant licensure if the applicant takes certain actions without a license:

(A) In addition to Section 40-1-110, the commission may deny issuance of a license to an applicant or may take disciplinary action against a licensee who:

(12) pays a commission or compensation to an unlicensed individual for activities requiring a license under this chapter. Notwithstanding this section, a licensee may not pay or offer to pay a referral fee or finder's fee to an unlicensed individual who is not a party in the real estate sales or rental transaction;

(21) violates a provision of this chapter or a regulation promulgated under this chapter;

(22) violates a rule or order of the commission.

S.C. Code § 40-57-710(A)(12), (21) and (22) (emphasis added).

The only exception to the licensure requirements relating to a “Finder’s Fee” can be found in S.C. Code § 27-32-115, which relates to a vacation time sharing plan. This exception does not apply in this case because the property at issue in this case was a mobile home park, not a vacation time sharing plan.

The South Carolina Supreme Court has held that “when determining the effect of statutory language, the cannon of construction *expressio unius exclusio alterius*. . . holds that to express or include one thing implies the exclusion of another.” *City of Rock Hill v. Harris*, 391 S.C. 149, 154 (S.C. 2011) (internal quotations omitted). In the present case, the licensing statute (S.C. Code §

57-40-5, et.seq.) clearly prohibits a “finder’s fee” to an unlicensed broker since the only exception for a Finder’s Fee is in connection with an owner of a vacation time sharing plan.

Furthermore, the actions of Nathan Johns are one in the same with Plaintiff since Nathan Johns is the Member of Plaintiff and Nathan Johns was the individual taking action on behalf of the Plaintiff. South Carolina has a long-standing principle that a party cannot recover damages by virtue of unlawful acts or participation in unlawful acts. **“[I]t is a well founded principle of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequences of that act. This rule applies at both law and in equity and whether the cause of action is in contract or tort.”** *Jackson v. Bi-Lo Stores*, 313 S.C. 272, 276 (Ct. App. 1993) (citations, including internal citations, omitted). Emphasis added by Defendants. By virtue of the Plaintiff’s violation of the licensing statute (i.e. failing to have a licensed Broker In Charge) and/or Plaintiff’s participation in the unlawful acts of Nathan Johns (i.e. acting as a Broker), the Plaintiff is barred from any recovery in this civil action, at law and in equity, in contract and tort.

II. South Carolina has a clear policy position for not enforcing finder’s fees for unlicensed brokers.

a. Attorney General Opinions.

The South Carolina Attorney General has addressed the question of payment of ‘finder’s fees’ twice in connection with this licensing issue of practicing real estate. In its first Opinion, from 1972, the South Carolina Attorney General’s Office stated that:

[Title 40, Chapter 57] defines “broker” in broad comprehensive language and . . . includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate . . . or for referral of information concerning such real estate to brokers. . . .It appears to be clear that the applicable State Law . . . includes a “finder” within the category

of one who charges a fee for referral of information concerning real estate to brokers, *and makes this practice unlawful if conducted by an unlicensed person.* 1972 WL 20472 (S.C.A.G.) (emphasis added).

Almost 34 years later, the office of the South Carolina Attorney General was again asked to analyze a “finder’s fee.” In 2006, the Attorney General’s office was asked the following question: “the legality of a developer of a residential community providing a nominal token gift to homebuyers upon their referral of new homebuyers who end up purchasing from that developer.” The Attorney General’s office concluded that a “nominal token gift” in the context of “bringing the prospective buyer and developer together” brought the actions within the licensing statute definition of a broker. The opinion states that:

[H]aving determined the referring homebuyer, as described in your letter, meets the statutory definition of a broker *by bringing the prospective buyer and developer together in exchange for valuable consideration*, we arrive at the same conclusion reached in our 1972 opinion. 2006 WL 1207279 (S.C.A.G.) (emphasis added).

In other words, if a developer cannot give a homeowner a token gift, a “finder’s fee,” for referring a potential homebuyer (i.e. bringing developer and potential homebuyer together to negotiate their own deal), because those actions fit within the definition of a broker, the payment of 7% commission of a purchase price of real property to an unlicensed person, or entity, certainly fits within the statutory definition of a Broker and a license is required. Therefore, the Plaintiff’s actions in this case are unlawful rendering the “Finder’s Fee Contract” an illegal and unenforceable contract.

In 2023, the Attorney General’s office addressed “online travel agencies,” to which the Plaintiff points to as being authoritative. The 2023 Attorney General opinion did not involve the question of “Finder Fees” and the opinion provides no summary of what actions, if any, the online travel agencies were taking in connection with real property. Instead, the opinion attempts to

analyze whether online travel agencies are required to have a license from the South Carolina Real Estate Commission. The 2023 opinion does not have any discussion about what actions, if any, were being conducted by individuals. From this Court’s perspective, the most important language can be found towards the end of the opinion. In particular, the closing paragraph of the opinion states that:

“OTAs, while not required to be licensed, may be engaging in activities **if performed by an individual** may subject them to the licensing requirements in Chapter 57.” (emphasis by Defendants)

In other words, if there are individuals involved, the licensing statute would require licensure. In addition, footnote 1 of the 2023 opinion notes that:

We are concerned about the role OTAs play, especially if the OTA is processing the transaction. But, as we stated previously, that role should be examined by a court that can hear all the evidence in support and against this assertion.

It is important to also recognize that the Attorney General’s opinion did not examine, or address, the enforceability of the underlying transactions between those actually involved in the transaction. The 2023 opinion was essentially given from the perspective of observing online travel agencies. The 2023 Attorney General opinion is simply not relevant to the facts in this case since the 2023 opinion did not involve the purchase / sale of real property. 2023 WL 2358256 (S.C.A.G.).

In the case at hand, Plaintiff has admitted to practicing real estate as a Real Estate Brokerage Firm and Nathan Johns has admitted to taking actions that rise to the level of a Broker ... both of which require a South Carolina Real Estate license from the South Carolina Real Estate Commission. All of the actions of Nathan Johns are attributable to Plaintiff and Plaintiff participated in the unlawful acts of Nathan Johns (i.e. Nathan Johns was practicing real estate without a license). Therefore, the “Finder’s Fee Contract” is an illegal and unenforceable contract.

b. Statutory Interpretation.

Statutes are to be construed to effectuate the intent of the General Assembly. *Hodges v. Rainey*, 341 S.C. 79, 85 (2000). Further, the South Carolina Supreme Court stated that “[i]n the end however, we will reject any interpretation that would lead to a result so absurd that the General Assembly could not have intended it.” *16 Jade St., LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 343 (2012).

To highlight the unusual nature of the Plaintiff’s argument, i.e. that there is some statutory loophole for a limited liability company to conduct real estate activities, it is helpful to sample a few other chapters of Title 40 relating to the licensure of other professionals regulated by the LLR. As to Architects, S.C. Code 40-3-20 defines “Architect” as “an individual.” As to dentists, S. C. Code 40-15-70 defines the practice of dentistry as “any *person* who...” As to pharmacists, S.C. Code 40-43-20 states that “it is unlawful for *an individual* to engage in the practice of pharmacy unless currently licensed pursuant to this chapter.” (emphasis added). In other words, an individual is the person who holds the license to practice because the LLR must have the ability to regulate and discipline the individual license holder to hold individuals responsible. Under the real estate licensing law, the LLR holds a broker in charge responsible if a Real Estate Brokerage Firm fails to adhere to the licensing statute. Under the Plaintiff’s analysis, a foreign limited liability company law firm could keep an office in Indiana, prepare legal documents / filings to be used in South Carolina and avoid the licensing laws related to South Carolina attorneys by using this same argument: “it is a limited liability company and no license is required under the attorney licensing requirements.”

Plaintiff seeks protection from the licensing statute by attempting to hide behind a foreign limited liability company to avoid the licensure requirements of S.C. Code 40-57-5 et seq., while simultaneously asking this Court to enforce a contract in South Carolina relating to a real property

transaction in South Carolina. It is not logical to believe that a foreign limited liability company can engage in the practice of real estate, architecture, dentistry, pharmacy, law, etc... by arguing that the licensing statutes apply to "individuals" or "persons," and do not apply to foreign limited liability companies. Plaintiff's argument leads to such an absurd conclusion that the General Assembly could not possibly have intended to allow a foreign limited liability company to completely avoid licensure requirements and practice real estate in South Carolina. *See 16 Jade St., LLC* at 343. There is no loophole in the Real Estate Licensing statute for a limited liability company. A limited liability company would be a Real Estate Brokerage Firm and is required to have a broker in charge supervise and be responsible to answer to the Real Estate Commission. Additionally, the Real Estate Commission has made provision for nonresident licensees. Nathan Johns' unlawful conduct, and the unlawful conduct of Plaintiff's failure to have a licensed Broker in Charge, precludes the Plaintiff from any recovery, in contract or tort, as a result of Plaintiff's participation in the unlawful activities of Nathan Johns.

Conclusion

Plaintiff, and its Member, Nathan Johns, have admitted to conduct requiring licensure under S.C. Code § 40-57-5 *et seq.* Nathan Johns' actions, as admitted in his Affidavit, require licensure. The Plaintiff's activities rise to the level of a Real Estate Brokerage Firm, which requires the supervision of a Broker In Charge. In this case, Nathan Johns does not have a real estate (Broker) license and the Plaintiff has admitted that it does not hold a real estate license and no evidence was presented to this Court to show that the Plaintiff's activities were supervised by a licensed Broker In Charge. In other words, the Plaintiff was, at all times relevant hereto, conducting unlawful activities and/or participating in unlawful activities as a result of its failure to

comply with the South Carolina Real Estate licensing law. The real estate licensing law of South Carolina (both statutory and case law) clearly state that Plaintiff's conduct was unlawful / illegal.

As a result of the Plaintiff's unlawful / illegal practice of real estate activities and/or Nathan Johns' unlawful / illegal practice of real estate activities without a South Carolina license, specifically including Plaintiff's participation in the illegal practice of real estate with Nathan Johns (the member of the Plaintiff), all of Plaintiff's causes of action fail, as a matter of law. For the reasons set forth herein, the Defendants' Motion for Summary Judgment as to all of Plaintiff's causes of action, is GRANTED. For those same reasons, the Plaintiff's Motion for Summary Judgment is hereby denied.

IT IS SO ORDERED.

- Signature of Judge follows on the next page -



Orangeburg Common Pleas

Case Caption: Great Deal Investing Llc, Of Wyoming VS Jared Burnett , defendant,
et al
Case Number: 2024CP3800733
Type: Order/Summary Judgment

So Ordered

s/ Thomas W. McGee III, Judge Code 2786