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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable T.W. McGee III, Circuit Court Judge

Appellate Case No.: 2025-000104
Civil Action No.: 2024-CP-38-00733

Great Deal Investing LLC, of Wyoming,……..Appellant,

v.

Jared Burnett, Brett Buras, Damian Bergamaschi, Steve Decker, J&B Holdings Group, LLC, and Hatchery Hill MHC, LLC, ……...Respondents.

INITIAL BRIEF OF RESPONDENTS

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I. Whether the Trial Court erred in determining that the "Finder's Fee Contract" of Appellant is an illegal contract under South Carolina law.

II. Whether the Trial Court erred in determining that Appellant or its principal were practicing as a real estate broker without being duly licensed with the South Carolina Real Estate Commission.

III. Whether South Carolina may constitutionally regulate out-of-state real estate brokers who seek a commission on the sale of South Carolina real estate.

STATEMENT OF THE CASE

This matter comes before this Court pursuant to a Notice of Appeal filed by the Appellant, Great Deal Investing LLC, of Wyoming ("Appellant" or "Great Deal") on January 15, 2025. Appellant initiated this case by filing a Complaint naming defendants Jared Burnett, Brett Buras, Damian Bergamashi, Steve Decker, J&B Holdings Group, LLC, and Hatchery Hill MHC, LLC (collectively, "Respondents") on June 6, 2024. On June 21, 2024, Respondents filed a motion to dismiss under Rule 12(b)(6), SCRCP. On July 2, 2024, Appellant amended its complaint. Respondents filed a motion to dismiss the amended complaint under Rule 12(b)(6), SCRCP, on July 3, 2024. Thereafter, the parties filed cross motions for summary judgment. Appellants and Respondents were given opportunities by the Trial Court to argue and extensively brief the issues presented by the cross motions. On December 9, 2024, the Honorable Thomas W. McGee III granted summary judgment to Respondents on the basis that Appellants is illegally seeking to enforce a contractual sales commission on real estate when Appellant was not duly licensed. Appellant filed a motion to alter or amend, which was denied by Judge McGee on January 13, 2025.

This appeal followed.

STANDARD OF REVIEW

This appeal concerns orders granting summary judgment to Respondents. Thus, the applicable standard of review for the appellate court derives from Rule 56(c), SCRCP. *See Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 593 (2024) (citing *Knight v. Austin*, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012)). Rule 56(c), SCRCP, provides that summary judgment "is proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* (multiple citations omitted). In 2023, the South Carolina Supreme Court clarified that for matters of fact of under a summary judgment standard, the "genuine issue of material fact" standard is correct, rather than one requiring only a "mere scintilla" of evidence. *See Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). However, when "cross motions for summary judgment are filed, the issue is decided as a matter of law." *Neumayer v. Phila. Indem. Ins. Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citing *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

STATEMENT OF THE FACTS

For purposes of analyzing the legal issues arising in this case under a cross-motion standard, the following facts are not in dispute. Great Deal is a Wyoming limited liability company. [Am. Complaint, ¶ 3; Aff. of Johns, ¶ 4.] Great Deal's member, Nathan Johns, states that he operates out of his home office in Indiana. [Aff. of Johns, ¶ 1–2.] Mr. Johns, using the trade name "Great Deal Investing," is in the business of arranging the sale and purchase of mobile home parks across the country. [Am. Complaint, ¶ 12; Ex. B to Am. Complaint; Aff. of Johns, ¶ 5.]

Appellant asserts that, under a contract, it "agreed to identify [mobile home park] property and sellers" to J&B Holdings Group, LLC ("J&B") "in exchange for a fee of seven percent (7%) of the final purchase price" of the property. [Am. Complaint, ¶ 28.] The alleged contract is attached to the amended complaint and entitled, "Finder's Fee Contract." [Ex. C to Am. Complaint, p. 1.] Appellant avers that it identified a mobile home park in Cordova, South Carolina and alerted J&B's managing member. [Am. Complaint, ¶ 32.] Appellant avers that it introduced the potential real estate purchaser to the potential real estate seller. [*See* Am. Complaint, ¶ 33–34.] Thereafter, J&B entered into a contract for the purchase of the real property. [Am. Complaint, ¶ 36.] When the transaction closed, the property was deeded to Hatchery Hill MHC, LLC. [Ex. F to Am. Complaint.] Appellant sued on the basis that it should have been paid a seven percent finder's fee of $37,800.00 as part of the transaction. [Am. Complaint, ¶ 55.]

Appellant admits that it is not licensed to practice real estate in South Carolina. [Aff. of Johns, ¶ 8; Ex. C to Am. Complaint, p. 2.] The South Carolina Real Estate Commission Executive has provided a sworn statement that neither Great Deal, nor Nathan Johns, has a record of being licensed with the Commission. [Aff. of Wade.] Appellant admits that the fee it seeks arises from the sale of South Carolina real property located in Orangeburg County. [Am. Complaint, ¶ 43 (noting deed recorded in Orangeburg County).] Appellant submitted itself to the personal jurisdiction of the South Carolina Court of Common Pleas for Orangeburg County by choosing to file suit in that forum. [Am. Complaint, ¶ 10 (Appellant's assertion that the court has jurisdiction under the Long-Arm Statute).] Despite electing to avail itself of the South Carolina court system, Appellant and its member maintain that they are not subject to the licensing laws of South Carolina but may collect commission on the sale of South Carolina real property with impunity, so as long as it is done from an armchair in Indiana.

ARGUMENT

Appellant and its member were providing regulated real estate services without complying with South Carolina licensing laws. As a result, the Trial Court correctly concluded that Appellant's contract for a commission on a real estate transaction, *i.e.* its "Finder's Fee," is illegal and unenforceable.

I. The Trial Court correctly determined that Appellant and its member must comply with South Carolina real estate licensing law.

The purpose of professional licensing laws is to protect the public. *See* S.C. Code Ann. § 40-1-10(B) (stating that exclusive purpose licensing laws is to protect the public interest); *see also Hous. Auth. v. Key*, 352 S.C. 26, 28, 572 S.E.2d 284, 285 (2002) (regulation of the legal profession is to protect the public). The South Carolina Department of Labor, Licensing and Regulation ("LLR") was established for the specific purpose of protecting the public by regulating numerous professions. *See* S.C. Code Ann. § 40-1-40(A)–(B). The South Carolina Real Estate Commission (the "Commission") was established under the umbrella of LLR specifically to "regulate the real estate industry so as to protect the public's interest when involved in real estate transactions." S.C. Code Ann. § 40-57-10. The Commission is "charged by law" with the responsibility of regulating the practice of real estate in South Carolina through licensing. S.C. Code Ann. § 40-57-30(7) (Supp. 2023).[1]

a. Appellant is an unsanctioned real estate brokerage firm.

[1] Certain code sections cited herein were amended by 2024 S.C. Act 204, with an effective date of May 21, 2024. When this issue arises, this brief will apply and construe the versions of the statutes in the 2023 Cumulative Supplement (Vol. 14), since the pre-2024 law would have applied to the facts of this case. However, Respondents have not noted any changes which would have a substantive effect on this case. For purposes of Section 40-57-30, certain subsections were renumbered in the 2024 version. "Broker" was changed from (3) to (6). "Broker-in-charge" changed from (4) to (7). "Commission" changed from subsection (7) to (11). "Real estate brokerage" changed from (23) to (32). "Real estate brokerage firm" changed from (24) to (33).

Under South Carolina law, a "real estate brokerage firm" is a "real estate company engaged in the business of real estate brokerage. S.C. Code Ann. § 40-57-30(24) (Supp. 2023). "Real estate brokerage" means "the aspect of the real estate business that involves **activities relative to** property management or **a real estate sale, exchange, purchase**, lease. *Id.* at § 40-57-30(23) (emphasis added; conjunction missing in original).

In this case, Appellant pleaded that Appellant was involved in activities related to a real estate sale. [Am. Complaint, ¶¶ 32–34.] Appellant is seeking a commission because it introduced the buyer of real estate to the seller of the real estate and a purchase was completed. This is, at clear and obvious face value, the business of real estate brokerage. Indeed, the contract itself states that its purpose is to connect real estate buyers with real estate sellers for the purpose of achieving a "successful real estate transaction." [Ex. C to Am. Complaint, p. 1.] This transaction can be by any type of purchasing, leasing, or rental arrangement. [*Id.*] Therefore, Appellant is engaged in the "aspect of the real estate business that involves activities" relative to "a sale, exchange, purchase, [or] lease." *See* S.C. Code Ann. § 40-57-30(23). Because Appellant is a company engaged in such business, Appellant is a real estate brokerage firm.

b. Appellant and its member violated South Carolina licensing law.

As with most professions in South Carolina, it is not the company that is licensed, but the individuals—*i.e.*, the members of the profession. A real estate brokerage firm acts through its constituent professionals, including the broker-in-charge. In this case, it is undisputed that the only person performing the contract at issue for Appellant is Mr. Johns. [Aff. of Johns, ¶ 22–25.] It is also undisputed that Mr. Johns has no real estate license in South Carolina. [Aff. of Wade, ¶¶ 4–5.]

South Carolina law provides that it "is unlawful for an individual to act as a real estate broker, real estate associate, or real estate property manager or to advertise or provide services as

such without an active, valid license issued by the commission." S.C. Code Ann. § 40-57-20. Section 40-57-30, which contains the definitions for its chapter, outlines what constitutes a real estate "broker." In the 2023 version of the statute, "broker" is defined as follows.

> "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**.

S.C. Code Ann. § 40-57-30(3) (Supp. 2023) (emphases added).

Mr. Johns was indisputably performing as a broker under this definition. Based on the admissions and pleadings of Appellant, Mr. Johns, under Appellant's name, was negotiating or attempting to negotiate the purchase of real estate with the intent of receiving compensation. Because he was not licensed to practice real estate, Mr. Johns' actions violated Section 40-57-20. The fact that Mr. Johns was located out of the state makes no difference. The licensing laws contain specific provisions to account for non-resident licenses. *See, e.g.*, S.C. Code Ann. §§ 40-57-120 and 40-57-320(B)(6) (Supp. 2023).

Moreover, Appellant and its member also violated the requirement that a brokerage firm have a designated broker-in-charge. A "broker-in-charge" is the broker designated to have responsibility over the actions of all associated licensees," as well as the real estate trust account.

S.C. Code Ann. § 40-57-30(4) (Supp. 2023). A broker-in-charge has numerous responsibilities. *See* S.C. Code Ann. § 40-57-135 (Supp. 2023). The duties include supervising licensees, approving form contracts, being available to mediate disputes, establishing office policy, handing the brokerage trust account, and keeping records of transactions. *Id.* Mr. Johns is not a licensed broker and he was not a broker-in-charge of Appellant, as required by law. Indeed, even if Appellant had a broker-in-charge, Mr. Johns status as an unlicensed employee would prevent him from discussing any contract or other real estate document and from negotiating compensation or a commission. *Id.* at § 40-57-135(K)(1) and (10).

The violation of the law is spelled out clearly in the "Finder's Fee Contract." The contract itself provides that its purpose is as follows.

> The purpose of this Contract is **to establish the terms and conditions under which the Finder shall be entitled to receive a Finder's Fee** for introducing the Buyer to real Property (the "Property") and/or the Property Seller or agent(s) / representative(s) of the Seller (the "Seller") in relation to potential real estate transactions.

[Ex. C to Am. Complaint (emphasis added).] The law prohibits Appellant and its member from negotiating a contract for the purpose spelled out in the contract.[2] This is a clear violation of the law and, notwithstanding that Appellant was located out of state, Appellant admits that its actions were a violation of the law. [Transcript, p. 27, ll. 4–6 (Appellant's counsel acknowledging that if the facts changed to his client being in Columbia, Appellant would lose).]

II. The Trial Court correctly determined the "Finder's Fee Contract" is illegal and unenforceable.

The law provides that no person or entity who enters into a contract in violation of licensing law may then use that contract as the basis for any cause of action, whether sounding in contract

[2] The contract has no other purpose than to provide for a real estate commission. The brokering of a real estate transaction is the service for which consideration was allegedly to be provided.

or in tort, because the contract is illegal. As established above, Appellant violated licensing law and seeks to obtain a real estate commission without being licensed to practice real estate. The Trial Court correctly found that Appellant cannot collect upon the illegal contract as a matter of law.

a. Violation of the licensing laws of South Carolina renders the contract illegal and unenforceable.

Dating from well before 1913, it has been the law that a plaintiff who is party to an illegal contract may not appeal to the court system for a remedy based upon that contract. *See Rountree v. Ingle*, 94 S.C. 231, 234–35, 77 S.E. 931, 932 (1913) (no court will lend its aid to a man who founds his cause of action on an illegal act). This principle is perhaps one of the few bedrocks of the law that has remained unchanged over centuries. *See Jackson v. Bi-Lo Stores*, 313 S.C. 272, 276, 437 S.E.2d 168, 170 (Ct. App. 1993) (quoting *McMullen v. Hoffman*, 174 U.S. 639, 654, 19 S. Ct. 839, 845 (1899)) (citing United States Supreme Court finding the principle consistently upheld from "the earliest time to the present"). In 1993, discussing a contract predicated upon bribery, the Court of Appeals summarized the rule.

> It is a well founded policy 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 consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort.

Id. (multiple citations omitted) (emphasis added).

The application of this doctrine to licensing-related matters is well established in South Carolina law. For instance, in one 2010 case, a bank attempted to foreclose on a mortgage, which had not been prepared or reviewed by an attorney. The Court found that the bank had processed the loan without the supervision of a lawyer and that constituted the unauthorized practice of law by the bank employees. *See Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 76, 698 S.E.2d 244, 248 (Ct. App. 2010). To protect the public from precisely the sort of harm engendered by the loan,

which was recorded against the home without the owner's consent, the Court found that the bank's claim must fail. *Id.* Specifically, the court found that because of the unlicensed conduct of its employees the bank came to the court with unclean hands. *Id.*

Because Appellant is seeking the court's assistance in enforcing an illegal contract, stemming from the unlicensed conduct of itself and its member, Appellant's claims are barred, just as the Trial Court concluded.

b. The law still applies to Appellant, even though it may be a limited liability company.

Appellant contends that because it is (a) an out-of-state company and (b) operates from Indiana, it may flout South Carolina's licensing laws with impunity. Appellant's contention is that because it is an out-of-state limited liability company, South Carolina cannot dictate whether it may practice real estate in relation to South Carolina real property. Indeed, Appellant put the matter quite baldly to the Trial Court.

> [Counsel for Appellant:] The Real Estate Commission has no right to regulate the conduct of a guy in Indiana doing exactly what we're doing.
>
> The Court: So if I move across from York County to Charlotte, I can do the same thing without having to subject myself to the same requirements, the same statutory requirement, that everybody else does? I can do the same thing across the border and that's okay?
>
> [Counsel for Appellant:] **That's exactly right and, you know, a good example.** My son asked me not to use it, but I thought it was a good example.

[Transcript, p. 23, ll. 13–22 (emphasis added).]

Appellant's contention is based on two potential arguments. Respondents first address the argument that there is a statutory loophole that allows limited liability companies to do whatever they want because they are not individuals for purposes of licensing.

c. Mr. Johns' illegal conduct is sufficient to bar Appellant's claims.

The first reason that this argument fails is that Appellant's member's conduct as an unregistered broker is imputed to it for purposes of analyzing this transaction. As established, Mr. Johns negotiated an illegal contract by which he sought to obtain a commission for brokering a real estate transaction. This violates state law to the point of being a crime.

> **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.

S.C. Code Ann. § 40-57-780 (Supp. 2023); *see also* S.C. Code Ann. § 40-57-20 (Supp. 2023).

Indeed, no window dressing can assist Mr. Johns in evading the illegal nature of the commission Appellant seeks because it is predicated on the value of the real property. In a 1997 case, the Court of Appeals examined the contention that a "business broker" could negotiate a business sale that included real property and collect a commission without being licensed to practice real estate. After examining the law of various jurisdictions, the Court of Appeals concluded that a business broker can collect a commission on 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 v. Gaskins*, 327 S.C. 478, 490, 486 S.E.2d 771, 777 (Ct. App. 1997) (emphasis added). Mr. Johns and his company violated this law.

The contract at issue provides for a commission of "seven percent (7%) of the final purchase price of the Property" if a "successful real estate transaction is completed . . . ." [Ex. C to Am. Complaint, p. 1.] The contract defines "the Property" as "real Property." [*Id.*] Appellant pleads that "the Plaintiff agreed to identify property and sellers to J&B in exchange for a fee of seven percent (7%) of the final purchase price." [Am. Complaint, ¶ 28.] Appellant pleads that

such a real estate transaction occurred for the price of $540,000.00. [*Id.* at ¶ 36.] Appellant thus alleges that it is entitled to a fee of $37,800.00. [*Id.* at ¶ 55.] The amount sought by Appellant amounts to exactly 7% of the alleged purchase price of the real property at issue. Thus, even if Appellant and Mr. Johns could allege he was providing any service other than real estate broker, which they cannot, the simple fact is that the commission violates the holding of the *Roberts* case. Appellant's member has violated licensing statutes, a criminal statute, and case law in one fell swoop. He apparently believes this does not matter to him because he committed all these offenses from his armchair in Indiana under the banner of a Wyoming company. He is wrong.

As with the *Coffey* case cited discussed above, Mr. Johns' conduct in engaging in the unlicensed practice of real estate is imputed to Appellant. *See Coffey*, at 76, 698 S.E.2d at 248 (relying on the "misconduct of Wachovia's employees" in engaging in the unauthorized practice of law while processing a loan as the basis for refusing to enforce the loan).[3] As such, Mr. Johns' unlicensed practice as a broker in relation to the transaction at issue is in and of itself sufficient to bar Appellant from asserting any claims.

d. Being a limited liability company does not absolve Appellant.

Appellant seeks to evade responsibility for its illegal activity through a tortured interpretation of the licensing statutes. This argument, which belies the law and common sense, is based on the idea that as long as something is done in the name of a corporate entity, the entity does not have to follow the same rules that individual natural persons do. This argument rejects

[3] Indeed, criminal law on this issue is in accord: "when a person causes a corporation to commit a crime, he cannot invoke the existence of the corporation to shield him from prosecution." *State v. Hill*, 286 S.C. 283, 284, 333 S.E.2d 789, 790 (Ct. App. 1985). Appellant cannot use its corporate status to somehow cleanse its employee of his illegal acts for purposes of proceeding on a contract claim.

the statutory scheme, case law, and public policy. If being a corporate entity is all it takes to avoid compliance with licensing laws, the laws would be pointless and no one would obtain an individual license.

Appellant's argument commences with a citation to Section 40-1-20(8), which defines the word "person" for Title 40 as an "individual, partnership, or corporation." Notably, the precatory language states that these general Title 40 definitions are used to mean the listed definition "unless the context requires a different meaning." S.C. Code Ann. § 40-1-20.[4] Appellant contends that by choosing to use the word "individuals" in the Chapter 57 schema, as opposed to "person," the Legislature was choosing not to regulate corporation entities or partnerships under an "*expressio unius est exclusio alterius*" theory. Interestingly, Appellant discusses this theory as a "plain language" argument, despite applying this rule of construction. The theory is supported by a single Attorney General Opinion letter.

In 2023, Assistant Attorney General Milling responded to a request for analysis of the issue of whether "online travel agencies" were violating real estate licensing law. S.C.A.G. Op. "addressing the licensing of online travel agencies" (Feb. 23, 2023), https://www.scag.gov/media/fpnifqew/03230198.pdf (hereinafter, "2023 A.G. Op."). The online agencies at issue facilitate online bookings between short term vacation renters and rental property owners.[5] The letter relies upon Black's Law Dictionary to conclude that individual means natural person. *Id.* at

[4] To the extent there is any conflict, Section 40-57-30, containing the definitions for the chapter rather than the title, would control as more specific. S.C. Code Ann. § 40-57-5 ("The provisions of this chapter control when they conflict with the provisions of Article 1, Chapter 1.").

[5] The examples given in the letter are VRBO, Homeaway, and Airbnb. The letter assumes without analysis that these entities are practicing real estate. However, it acknowledges that these platforms essentially allow the owners of properties to solicit and negotiate their own transactions, potentially making them exempt under Section 40-57-240(1). This section allows for "sale by owner" type transactions without a license.

3. The letter further acknowledges that the licensing schema anticipates real estate brokerage firms and places "certain duties" upon them in relation to clients. *Id.* at 3–4. The letter states that the interlocutor has presented "compelling reasons why [online travel agencies] should be required to be licensed under South Carolina law," but ultimately concludes that "while individuals acting as real estate brokers, salespersons, and property manages are subject to the licensing requirements, as the law stands today, corporations are not." *Id.* at 5. Respondents would submit that this opinion's fixation on the meaning of "individual" is so myopic as to miss the point.[6]

It is undisputed that the Commission only issues licenses to individuals and that those individuals are grouped into three primary categories. S.C. Code Ann. § 40-57-110 ("The commission shall issue licenses in the classifications of broker, broker-in-charge, or salesperson, to individuals who qualify under and comply with the requirements of this chapter . . . ."). Yet it is also an immutable fact that no corporate entity can act without the assistance of an individual, or natural, person. *See Harmon v. Columbia & Greenville R.R. Co*., 28 S.C. 401, 404, 5 S.E. 835, 835 (1888) ("A corporation must, of necessity, always act through individuals, and whether such individuals are called its officers or agents . . . ."); *Hypes v. S. R. Co.*, 82 S.C. 315, 317, 64 S.E. 395, 396 (1909) ("While a corporation is non-personal in its formal legal entity, it represents natural persons and must necessarily perform its duties through natural persons as agents . . . .").

This simple fact is illustrated by the law on the unauthorized practice of law as it pertains to corporate entities appearing in Circuit Court.

[6] Indeed, the letter misses the very next statute, which says, "It is unlawful for a **person** to engage in a profession or occupation regulated by a board or commission administered by the Department of Labor, Licensing and Regulation without holding a valid authorization to practice as required by statute or regulation." S.C. Code Ann. § 40-1-30 (emphasis added). Because LLR regulates the profession of real estate, it is *ipso facto* illegal for a **person** to practice it without a license or authorization.

> "A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. **It must act in all its affairs through agents or representatives.** In legal matters, it must act, if at all, through licensed attorneys."

Travelers Ins. Co. (NC) v. Roof Doctor, 325 S.C. 614, 615–16, 481 S.E.2d 451, 452 (Ct. App. 1997) (quoting *State v. Wells*, 191 S.C. 468, 480, 5 S.E.2d 181, 186 (1939)) (emphasis added).[7] "[B]ecause an LLC is a fictional person it can only operate through its agents, who oftentimes are its members. Accordingly, any debt, obligation, or liability the LLC incurs can only arise from the actions of an agent." *16 Jade St., LLC v. R. Design Constr. Co., LLC*, 398 S.C. 338, 345, 728 S.E.2d 448, 452 (2012). The *R. Design* case stands for the principle that while LLC status may shield non-tortfeasor members from liability, there is still direct liability for member tortfeasors as to their own actions. Notably, Appellant did not submit affidavit evidence in this case; Mr. Johns did. Mr. Johns is not shielded from being licensed because he is a member of an LLC.

Statutes are not read one word at a time because words, phrases, or even whole sections do not exist in a vacuum. *See Synovus Bank v. S.C. Dep't of Revenue*, 444 S.C. 30, 37, 906 S.E.2d 85, 89 (Ct. App. 2024) (citing *In re Hosp. Pricing Litig., King v. AnMed Health*, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008)). "When multiple sections belong to the 'same general statutory scheme,' those sections 'must be construed together and each given effect if it can be done by any reasonable construction.'" *Id.* (quoting *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004)). Focusing on the meaning of the word

[7] Indeed, it is worth noting that corporate entities must be represented by individually-licensed attorneys. Were Appellant to follow its two arguments through to their natural conclusion, a law firm could "practice law" law regardless of whether its individual attorneys were licensed. Moreover, under Appellant's theories, any unlicensed individual or company located out of state could appear and "practice law" in South Carolina so long as they did not cross the state line and always appeared virtually. If Appellant was in fact convinced by its own argument, it would not have needed to retain a South Carolina-licensed attorney to pursue this case. [*See* Ex. H to Am. Complaint (text message from Appellant's member indicating that it had retained South Carolina attorney Greg Studemeyer to represent it in connection to this alleged claim).]

"individual" misses the forest for a single tree. That is, the Legislature could choose to have a separate registration process for brokerage firms, like its does for the construction firms of residential contractors,[8] but it does not need to because all of the practice of real estate is done by individuals. One hundred percent of the professional practitioners of real estate are natural persons, just like one hundred percent of the professional practitioners of the law are natural persons. The entirety of the issue is addressed by the statutory scheme as a whole because a corporate entity or LLC can only act through two classes of individuals: licensed ones and unlicensed ones. This is laid out quite clearly throughout Chapter 57 of Title 40, but is most specifically illustrated in Section 40-57-135.

Section 40-57-135 outlines the responsibilities of brokers-in-charge (or property managers-in-charge), associated licensees,[9] and unlicensed employees. Mr. Johns, the member and agent of Appellant, is not a licensed broker-in-charge, broker, or salesperson. Thus, he falls into the category of the unlicensed employees discussed in subsection (K) and his actions in negotiating a contract for a real estate commission violated the law. Appellant, as a real estate brokerage firm, violated the licensing law by letting an unlicensed employee do what Mr. Johns did. The law need not law out a separate license category to establish that, because it is already clear from the plain language of the statutory scheme that exists.

The simple fact is that Mr. Johns violated the law together with his real estate brokerage firm by negotiating a commission based on the sale of real property. This simple issue has been clear for decades. *See* S.C.A.G. Op. "on whether or not the South Carolina Law pertaining to real estate brokers, counsellors, salesmen, appraisers, auctioneers and property managers permits the

[8] *See* S.C. Code Ann. § 40-59-410.
[9] Under the 2024 amendments, these are now "supervised licensees."

payment of 'finder's fees' to unlicensed persons" (Jun. 27, 1972), https://www.scag.gov/media/tlao30bw/03074729.pdf (hereinafter, "1972 A.G. Op."). In that opinion, the Assistant Attorney General wrote that it is illegal for an unlicensed person to collect a finder's fee based on the statutory definition of broker. *Id.* at 1 ("It is therefore the opinion of this office that a 'finder' is included within the statutory definition of a broker, and to act as such without being licensed constitutes a violation of the law.").

In 2006, the question was considered again, in light of the *Roberts* case discussed *supra*. Again, the conclusion reached was that a referral or finder's fee could bring an unlicensed person under the scope of a broker. Specifically, even if a homebuyer refers a new purchaser to a developer as a possible customer, a finder's fee for that homebuyer could be illegal because it falls under the definition of "broker" in the statutory scheme. *See* S.C.A.G. Op. "concerning the legality of a developer of a residential community providing a nominal token gift to home buyers upon their referral of new home buyers who end up purchasing from that developer" (Apr. 28, 2006), https://www.scag.gov/wp-content/uploads/2011/03/06apr28-Rankin.pdf (hereinafter, "2006 A.G. Op."). The letter concludes, "having 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." *Id.* at 4. Notably, the opinion did <u>not</u> say, "if the homebuyer forms an LLC to accept the finder's fee, it may avoid the illegal aspect of the transaction." Such an assertion is simply absurd.

If all real estate agents and brokers could avoid licensing laws simply by forming companies, there would be no point to having any licensing statutes at all—literally everyone would simply form a company. The language of a statute must be read in a sense that harmonizes

with its subject-matter and accords with its general purpose. *Gordon v. Busbee*, 367 S.C. 116, 119, 623 S.E.2d 857, 858–59 (Ct. App. 2005) (quoting *Mun. Ass'n of South Carolina v. AT&T Communications of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004)). In this case the stated purpose is to "regulate the real estate industry so as to protect the public's interest . . . ." S.C. Code Ann. § 40-57-20. Appellant's interpretation deregulates the industry. A statute must be read in a practical, reasonable, and fair manner consistent with the purpose, design, and policy of the lawmakers. *Gordon*, at 119, 623 S.E.2d at 859 (citing *Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund*, 363 S.C. 612, 622, 611 S.E.2d 297, 302 (Ct. App. 2005)). It is unreasonable to suggest that mere corporate formation completely negates the entire regulatory schema and its stated purposes. "The court will reject a statutory interpretation that would 'lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.'" *Id.* (quoting *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000)). Appellant's argument makes the entirety of Chapter 57 pointless. This is not and cannot be the intent of the Legislature because it leaves the public with no protection.

e. Protection of the public is the paramount concern.

Appellant may argue that it disclosed its status as unlicensed in the contract in support of an argument about estoppel or some similar doctrine. This is misguided: it makes no difference to the application of the law what Respondents knew or did not know. Indeed, Respondents are irrelevant to the question of whether Appellant acted illegally and thus are barred from pursuing its purported claims. In considering such an argument on the basis that a homeowner knew that a contractor was unlicensed and should therefore be prevented from applying the statute by estoppel, the Court of Appeals found that the law could not countenance an agreement by private parties to avoid the statute. *See Wagner v. Graham*, 296 S.C. 1, 3, 370 S.E.2d 95, 96 (Ct. App. 1988) ("If one might avoid the impact of the statute by applying the law of estoppel, one could, by a similar

reasoning, avoid the act by agreement between the Contractor and Homeowner. Clearly this would not be allowed."). The logic behind this holding is that the public interest as the basis for regulation of the profession is the overriding concern of the Legislature, as well as the courts. This was also addressed in the *Coffey* case, discussed *supra*. The court in that case reached the conclusion that it must prevent Wachovia from being able to pursue a loan foreclosure against Mrs. Coffey, despite expressly not condoning the conduct of Mrs. Coffey or her late husband. *Coffey*, at 77, 698 S.E.2d at 248. That is because the analysis turns totally on whether the misconduct of the plaintiff—who is seeking the aid of the court—goes against the public interest as a whole. The analysis does not take into consideration whether the defendants knew that the plaintiff was violating the law and proceeded anyway. As the *Wagner* opinion points out—parties cannot contract around the licensing laws of the state.

There is no question that the laws violated by Appellant exist to protect the public interest. Section 40-1-10 sets forth the guidelines for regulation of the various professions. The statute mandates that any law passed to regulate a profession must be for the exclusive purpose of protecting the public interest. S.C. Code Ann. § 40-1-10(B). The purpose of the Commission over real estate is "to regulate the real estate industry so as to protect the public's interest when involved in real estate transactions." *Id.* at § 40-57-10. Here, even if the unlicensed nature of Appellant was disclosed to Respondents, this would not matter as to whether the Courts must apply licensing laws designed to protect the public interest as a whole. This is the reason that Appellant's argument in Section II.a of its brief is misdirected. The courts are to protect the public by enforcing the law as to all who come before it, rather than picking and choosing which parties deserve to have the law applied and which do not—such a rubric would fundamentally undermine the point of licensing enforcement. At every turn Appellant seeks evade the law while still taking advantage

of the court system to the detriment of the people of South Carolina. However, Appellant's arguments are all unavailing. The same is true for Appellant's assertions about the Commerce Clause.

III. South Carolina licensing law does not violate the Commerce Clause or the Dormant Commerce Clause.

Appellant next argues that because it is a foreign company and its member lives in another state, they are not subject to South Carolina's licensing laws when practicing real estate in relation to South Carolina real property. This is an attack on the constitutionality of state statutes. Appellant's argument first fails because it is not properly before the Court.

a. Appellant's constitutional challenge is not properly before the Court.

Rule 4(d)(4)(B) of the South Carolina Rules of Civil Procedure provides that in "any action attacking the Constitutionality of a State statute when the State, officer or agency is not made a party, a copy of the summons and complaint shall be sent by registered or certified mail to the Attorney General." This requirement has been in place since well before the enactment of the 1976 Code. *See Lee v. Clark*, 224 S.C. 138, 144, 77 S.E.2d 485, 487 (1953) (allowing a challenge to an election law to proceed based on evidence of compliance with Section 10-2008 of the 1952 Code shown by a filing from the Attorney General). There is no evidence in the record that Appellant has provided the attorney general the opportunity to appear and defend the state laws Appellant is attacking on a constitutional basis. Appellant cannot be absolved of this failure because neither the State, nor any agency or officer of the State is a party to the case, such that the State would have been served pursuant to Rule 4(d)(4)(A) or (d)(5), SCRCP.

Presumably the Attorney General's office was not notified of Appellant's challenge because the issue was not raised by Appellant in the original briefing on the cross-motions for summary judgment. *Compare* [Pl. Memo. in Support of Motion for Summary Judgment filed Aug.

27, 2024] (Plaintiff's memo in support of its motion); [Pl. Memo. in Opp. To Def's.' Motions to Dismiss and for Judgment on the Pleadings filed Aug. 27, 2024] (Plaintiff's memo in opposition to Defendants' motion); [Pl. Memo. in Opp. To Def's.' Motion for Summary Judgment filed Aug. 30, 2024] (Plaintiff's second memo in opposition to Defendants' motion); *and* [Pl. Supp. Memo. in Opp. To Def's.' Motion for Summary Judgment filed Sep. 4, 2024] (Plaintiff's supplemental memo in opposition to Defendants' motion) (all containing no constitutional argument) *with* [Pl. Second Supp. Memo in Opp. To Def's.' Motion for Summary Judgment filed Oct. 17, 2024] (briefing constitutional argument for the first time after the motion hearing, learning of the Trial Court's ruling on licensing issues, and a virtual conference with the Trial Court). In other words, Appellant's argument is a "hail Mary." As a result of Appellant's failure to serve the Attorney General, Appellant has failed to properly present this argument for the Court's review.

b. The Commerce Clause does not prevent the enforcement of South Carolina law.

South Carolina courts have "'long recognized that legislative acts are to be construed in favor of constitutionality and will be presumed constitutional absent a showing to the contrary.'" *State v. McGrier*, 378 S.C. 320, 328, 663 S.E.2d 15, 19 (2008) (quoting *Bailey v. State*, 309 S.C. 455, 464, 424 S.E.2d 503, 508 (1992)). "'It is always to be presumed that the Legislature acted in good faith and within constitutional limits; and this declaration of the Legislature is a conclusive finding of fact and imports a verity upon its face which cannot be impugned by litigants, counsel, or the courts, but is absolutely binding upon all.'" *Id.*, at, 328–29, 663 S.E.2d at 19 (quoting *Scroggie v. Scarborough*, 162 S.C. 218, 231, 160 S.E. 596, 601 (1931)). "'Constitutional constructions of statutes are not only judicially preferred, they are mandated; a possible constitutional construction must prevail over an unconstitutional interpretation.'" *Id.* at 329, 663 S.E.2d at 19 (quoting *Henderson v. Evans*, 268 S.C. 127, 132, 232 S.E.2d 331, 333–34 (1977)).

The Commerce Clause of the United States Constitution is contained in Article I, Section 8, Clause 3. The Commerce Clause providing Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Thus, an analysis under the Commerce Clause generally concerns Congress' powers. That is, such a case would consider whether the United States Congress has the power to regulate whichever subject-matter it sought to address in legislation. For instance, one well-known area of tension on this point concerns firearms. *See, e.g.*, *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995) (pivotal case determining that Congress did not have authority under the Commerce Clause to regulate firearms in schools).

Notably missing from Appellant's Commerce Clause argument is any discussion of a federal law enacted under the auspices of the Commerce Clause that regulates the practice of real estate transactions such that it would preempt South Carolina's licensing laws. Presumably this is because regulation of the professions has long been the province of the states. *See In re White*, 391 S.C. 581, 590, 707 S.E.2d 411, 415 (2011) (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 625, 115 S. Ct. 2371, 2376 (1995)) (states have a compelling interest in the practice of professions within their boundaries as part of their power to protect the public health, safety, and other valid interests). States have "broad power to establish standards for licensing practitioners and regulating the practice of professions." *Id.*

The South Carolina General Assembly is well-within the bounds of its power to regulate the practice of real estate in South Carolina. The United States Supreme Court has long held that "[i]t is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law." *See Ferguson v.*

Skrupa, 372 U.S. 726, 730–31, 83 S. Ct. 1028, 1031 (1963). Appellant has pointed to no valid federal law that prevents South Carolina from regulating the practice of real estate in South Carolina—whether it involves out-of-state brokers or not.

Indeed, Appellant fails to cite a Fourth Circuit case directly addressing the power of states to regulate professions. *See generally Goldfarb v. Supreme Court of Virginia*, 766 F.2d 859 (4th Cir. 1985). In *Goldfarb*, an attorney challenged the Virgina Bar Association's requirement that the attorney must either take the Bar examination for Virgina or be admitted *pro hac vice* before the attorney could represent Virginia clients. *Id*. at 860–61. The attorney challenged this requirement arguing that the rule set forth by the Virginia Bar violated the commerce clause as the requirements mentioned above were an "unreasonable burden on interstate commerce." *Id*. at 861. The Fourth Circuit applied the rule that the state law or rule "'will be upheld unless the burden on such commerce is clearly excessive in relation to the putative local benefits.'" *Id.*, at 862 (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142, 90 S. Ct. 844, 847 (1969)). The court even points out that states have "broad power to establish standards for licensing practitioners and regulating the practice of professions." *Id.* (quoting *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792, 95 S. Ct. 2004, 2016 (1975) (emphasis added)).

Appellant's argument mirrors the plaintiff's argument in *Goldfarb* by asserting that the mere requirement of licensure by the Commission prior to brokering real estate deals in South Carolina is a violation of the commerce clause. Years of existing precedent supporting state power over professional licensing repudiates this argument. *See Semler v. Or. State Bd. of Dental Exam'rs*, 294 U.S. 608, 611, 55 S. Ct. 570, 571–72 (1935) (state may regulate professions to protect against "ignorance, incapacity, and imposition"); *Bradley v. Richmond*, 227 U.S. 477, 482, 33 S. Ct. 318, 319 (1913) (Supreme Court will not interfere in local licensing of trades or

occupations, which is within the power reserved to the state); *N.Y. ex rel. Lieberman v. Van De Carr*, 199 U.S. 552, 558, 26 S. Ct. 144, 145 (1905) (right of the states to use police power to protect public health and safety through regulation repeatedly sustained by the Court).

Indeed, South Carolina also has the right to regulate activities pertaining to real property in the State. Appellant has not provided any authority suggesting that the federal government has preempted South Carolina's right to regulate the sale of land within the State of South Carolina. In fact, the federal courts have recognized that matters pertaining to South Carolina real estate constitute an important state interest where the federal courts should be reticent to invoke any jurisdiction. *See Dennis v. HSBC Mortg. Servs., Inc.*, Case No. 0:10-2693-MJP-PJG, 2011 WL 3876916 at *3, 2011 U.S. Dist. LEXIS 98616 at *7 (D.S.C. Aug. 11, 2011), *report and recommendation adopted*, 2011 WL 3876909, 2011 U.S. Dist. LEXIS 98619 (D.S.C. Aug. 31, 2011) (citing *Shaffer v. Heitner*, 433 U.S. 186, 207–208, 97 S.Ct. 2569 (1977)) (recognizing that states have a strong interest in being the forum for adjudicating disputes related to property within the borders of the state).[10] Appellant's Commerce Clause argument fails to invoke any preemptive

[10] Appellant cites to *Shaffer* on page [14] of its brief, but wholly misses the point of the case, which does not mention the commerce clause a single time. In *Shaffer*, Delaware tried to assert jurisdiction over out-of-state matters through *quasi in rem* jurisdiction over a single share in a corporation. The Supreme Court found that this was insufficient to meet the due process requirements that pertain to an *in personam* analysis for personal jurisdiction under *International Shoe* and related precedent. The analysis in *Shaffer* is irrelevant to the case at hand because the Plaintiff surrendered the issue of personal jurisdiction when it elected to file suit in a South Carolina Court, seeking a remedy in South Carolina. Moreover, in assessing whether *in rem* jurisdiction may arise, the court cited prior precedent which states, "'in virtue of the State's jurisdiction over the property of the non-resident situated within its limits,' the state courts 'can inquire into that non-resident's obligations to its own citizens . . . to the extent necessary to control the disposition of the property.'" *Shaffer*, at 197, 97 S. Ct. at 2576. Further, the Court opined, "For example, when claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction." *Id.* at 207–08, The Court's recognition of a State's rights in relation to its own land is the very reason it was cited by the District of South Carolina in declining jurisdiction over state real estate matters, thus establishing the exact opposite of what Appellant is arguing—

federal law and seeks to override the State's longstanding and traditional purview of regulation both the professions and the sale of its own real property. Appellant's Dormant Commerce Clause argument also fails.

c. The Dormant Commerce Clause does not prevent the enforcement of South Carolina law.

The "Dormant Commerce Clause" is the name given to the concept that Congress still has the right to regulate commerce even if in some areas Congress has chosen not to do so. *See Orthofix, Inc. v. S.C. Dep't of Revenue*, 443 S.C. 138, 144, 903 S.E.2d 496, 500 (2024) (citing *Fulton Corp. v. Faulkner*, 516 U.S. 325, 330–31, 116 S. Ct. 848, 853 (1996)) (The "implied 'negative' aspect of the Commerce Clause limiting the states' ability to regulate interstate commerce is commonly referred to as the dormant Commerce Clause."). The purpose of this doctrine is to prevent states from unduly maintaining a protectionist economic approach that places more burdens on interstate commerce than intrastate commerce. *Fulton Corp.* at 330–31, 116 S. Ct. at 853. Recently, the South Carolina Supreme Court struck a tax law down because it explicitly created a greater tax burden for those outside South Carolina. *See Orthofix*, *supra*. That is absolutely not the fact pattern with which this case is concerned.

In this case, Appellant is complaining about being treated the same as a broker in South Carolina would be. Rather than seeking to level the playing field, Appellant is seeking to gain an advantage over real estate agents and brokers inside the state's borders. [*See* Transcript, p. 23, ll. 15–20 (Appellant asserting that a Charlotte broker could be unlicensed with impunity while a York County one could not); p. 27, ll. 4–6 (Appellant acknowledging it would lose its motion if it was located in Columbia).] The Dormant Commerce Clause in no way mandates that foreign citizens

i.e., the federal government does not use the Commerce Clause to regulate land transactions and intentionally treats land transactions as State law matters.

be treated better than domestic ones by allowing them to evade the same regulatory scheme that applies to everyone else. *See South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 173, 138 S. Ct. 2080, 2091 (2018) (stating that a Commerce Clause analysis of a state regulation is concerned with discrimination against interstate commerce and undue burdens on interstate commerce). Treating all persons the same cannot be considered any sort of discrimination against interstate commerce. After all, state laws that even-handedly regulate to effectuate a legitimate local public interest will be upheld unless the "burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *Id.* (citations and punctation omitted).

The Commerce Clause allows the courts to vitiate laws that make commercial activity for out-of-state actors unreasonably unfair. Typically, this includes laws that either attempt to control the price of goods coming from other states or impose higher taxes on goods coming from other states. That is, laws that put out-of-state goods at a disadvantage in the marketplace. For instance, Appellant cites to *Healy v. The Beer Institute*, 491 U.S. 324, 109 S. Ct. 2491 (1989), which describes in detail the reason one state cannot manipulate prices to put out-of-state beer imports at a disadvantage. Notably, the case does not say that a state cannot, for instance, require those who sell alcohol in the state to be licensed. Presumably, this is because such a law would not attempt to directly control "commerce occurring wholly outside the boundaries of a State." *Id.* at 336, 109 S. Ct. 2499. Appellant's arguments wholly misapprehend the function of the Dormant Commerce Clause and the nature of extraterritorial jurisdiction issues. South Carolina is regulating land transactions happening in South Carolina. This is not an extraterritorial jurisdiction issue.

d. Appellant misapprehends the concept of extraterritorial jurisdiction.

Appellant begins its "commerce clause" argument with a reference to a Fourth Circuit opinion concerning exactly inverse facts from those in this case. In the case at bar, a foreign citizen and company are reaching into South Carolina in an attempt to make a profit off the sale of real

estate in South Carolina, while yet arguing they are not subject to the State's laws. Meanwhile, the case cited by Appellant concerned an attempt by South Carolina to reach out of the state to regulate sales in Georgia involving South Carolina citizens. *See Carolina Trucks & Equip., Inc. v. Volvo Trucks of N. Am., Inc.*, 492 F.3d 484, 487 (4th Cir. 2007) (reciting that subject-matter of case involved Atlanta-located truck dealership selling to South Carolina residents). The *Volvo* case did involve an extraterritorial issue. The same is true for the workers compensation case cited by Appellant. *See Doctors Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 636 S.E.2d 862 (2006) (discussing a contract entered into and performed wholly outside South Carolina). But here, Appellant is attempting to flout what is essentially intra-territorial jurisdiction. That is, Appellant misapprehends the nature of extraterritorial jurisdiction issues. South Carolina, like any state, has limitations on its authority outside its bounds. But in this case, the external entity has come to South Carolina and interfered with the practice of real estate in this state. And in such case, South Carolina has the full right to regulate practices affecting its territory. It is not Indiana property or an Indiana sale at issue.

Appellant's argument that it is essentially unrestrained by law because it conducts business on the internet is unavailing. In the *Wayfair* case cited *supra*, South Dakota sought to require Wayfair to pay sales taxes on goods that Wayfair sold in South Dakota. Wayfair argued that they were merely an online commerce store with no physical presence in South Dakota, and as such, South Dakota's statute requiring Wayfair to remit sales tax to South Dakota violated the Commerce Clause. *Wayfair*, at 170, 138 S. Ct. at 2089. The Court pointed out that "[a]ll agree that South Dakota has the authority to tax these transactions" because it has been long settled that the sales of goods or services with a "sufficient nexus" to the state in question are transactions taxable by that state. *Id.* at 176–77, 138 S. Ct. at 2092–93 (multiple citations omitted). The only

question in the case was whether South Dakota could enforce compliance. That issue, resolved in favor of South Dakota, need not even be reached in this case. The only issue here is whether, after voluntarily choosing to appear in South Carolina court, Appellant can then ignore South Carolina law in attempting to collect a commission on a South Carolina real property sale. The Commerce Clause gives Appellant no such permission.

> [I]t is not the purpose of the Commerce Clause to relieve those engaged in interstate commerce from their just share of state tax burden. And it is certainly not the purpose of the Commerce Clause to permit the Judiciary to create market distortions. **If the Commerce Clause was intended to put businesses on an even playing field, the physical presence rule is hardly a way to achieve that goal.**

Id., at 178–79, 138 S. Ct. at 2094 (internal punctuation and citations omitted) (emphasis added).

Appellant's extraterritorial jurisdiction arguments are both wrong and completely at odds with the actual purpose of Dormant Commerce Clause precedent. The Constitution and related law establish a goal of market parity; Appellant seeks to create an imbalance that favors those out of state and allows them to exploit South Carolia real estate transactions with no regulation.

Appellant's interpretation of the jurisdiction of the State of South Carolina to regulate activity ostensibly occurring outside its borders, but still affecting citizens or property within its borders, is simply absurd and would lead to the following scenarios being somehow constitutionally mandated:

- Any insurance company located outside South Carolina could write any policy and carry on any practice it wanted so long as the policy was purchased and transmitted to the insured online. Any attempt to regulate the foreign insurance company and the policies it issued to South Carolina insureds would be unconstitutional.
- Any person could offer to conduct robotic surgery on a South Carolina patient so long as they controlled the robot from a computer located outside the state. Any attempt to

regulate the person or determine whether they were qualified would be unconstitutional even though physical alterations would be made to a person in South Carolina.

- Any person could offer legal services to South Carolina citizens without any regulation, so long as these services were offered solely through email or virtual meetings. Indeed, even an attempt to prevent the person acting counsel from appearing in South Carolina court by virtual meeting software and arguing would be unconstitutional.
- As Appellant explained to the Trial Court in this case, any person outside South Carolina could broker any real estate transaction in South Carolina and obtain a commission, so long as they did it from Charlotte, North Carolina. Any attempt to regulate this broker would be unconstitutional.

To Appellant, the issue of territorial jurisdiction is as clear as the Great Wall of China—you are either on one side or the other. But that has never been how the Commerce Clause functions—even before the invention of the internet—as precedent fully establishes.

CONCLUSION

Appellant's arguments are a misguided attempt to undermine basic jurisprudence enacted to protect the public interest in the hope that Appellant may continue to try and obtain real estate commissions without following any of the rules that licensed brokers must follow. Appellant wishes to obtain an unfair commercial advantage by twisting the principles of the Commerce Clause. The fact of the matter is, Appellant is attempting to enforce an illegal contract to collect money from the sale of South Carolina real property with the aid of the South Carolina courts through the agency of a South Carolina lawyer while yet refusing to follow South Carolina's laws. The public interest dictates that this cannot stand. Wherefore, based upon the foregoing arguments

and the record in this matter, Respondents would respectfully pray that this Court affirm the Trial Court's Orders.

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