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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Lower Court Case No. 2023-CP-10-05598

DSH Holdings, LLC, Respondent,

v.

318 Royal St, LLC, and William Irvin, Appellants.

Appellate Case No. 2024-001937

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in granting summary judgment in favor of Plaintiff?

STATEMENT OF THE CASE

This is an appeal from an order granting Plaintiff's motion for summary judgment as to its breach of contract and conversion causes of action against Defendants.

DSH Holdings, LLC (Plaintiff) filed a summons and complaint pleading causes of action for breach of contract, misrepresentation, and conversion, against 318 Royal St., LLC and William Irvin (Defendants). Defendants filed a motion to dismiss the lawsuit pursuant to Rules 12(b)(3) & (6) of the South Carolina Rules of Civil Procedure. Plaintiff moved for summary judgment on its breach of contract and conversion causes of action.

A hearing was held on August 20, 2024, before the Honorable Roger Young Sr. Plaintiff was represented by James Bruorton, IV, and Defendants were represented by G. Hamlin O'Kelley, III. Tr. 1. The circuit court granted Plaintiff's motion for summary judgment and denied Defendants' motion to reconsider.

STANDARD OF REVIEW

“Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment.” *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)). “Summary judgment is appropriate 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.” *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

“When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)). “On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.” *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (citing *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)).

Summary judgment is not proper “where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Middleborough Horizontal Prop. Regime Council of Co.-Owners v. Montedison S.p.A.*, 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App. 1995) (citing *Baugus v. Wessinger*, 303 S.C. 412, 401 S.E.2d 169 (1991)). “Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” *Nelson v. Charleston Cty. Parks & Rec. Comm’n*, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004).

STATEMENT OF FACTS

318 Royal St, LLC owned Carrington Townhomes which is an apartment complex in Orangeburg. Plaintiff entered a contract (the PSA) with 318 Royal to purchase the Carrington Townhomes. PSA 1. The purchase price as agreed to in the contract was \$4.1 million. PSA 2.1. Earnest money of \$125,000 was required as part of the contract and was refundable only if Plaintiff provided a valid notice of termination prior to the expiration of the due diligence period. PSA 2.2. The PSA further provided that it was to be “governed by the laws of the State of South Carolina.” PSA 15.3. The PSA was signed by William Irvin on behalf of 318 Royal, and by Derek Hogarty on behalf of Plaintiff on August 14, 2023. PSA, 20.

After the PSA was signed, Plaintiff initiated three wire transfers to satisfy the earnest money requirement. The first wire was for \$10,000 which was sent directly to Defendant, 318 Royal. The second wire sent by Plaintiff was in the amount of \$40,000. Plaintiff claimed this wire was sent to Defendant, 318 Royal by mistake. Plaintiff intended to send this wire to the escrow agent, Continental Land Title Company, LLC. The third wire of \$75,000 was then sent to Plaintiff’s closing attorney for deposit with the escrow agent. Final Order, 1.

The due diligence period was set to expire at 3:00 pm on September 15, 2023. PSA 3.1. The PSA provided that “at any time prior to the expiration of the Due Diligence Period, [Plaintiff] shall have the right to terminate this Agreement by delivering written notice of its election to terminate to [318 Royal] at any time Prior to 3:00 pm eastern time on the Due Diligence Expiration Date.” PSA 3.1. It further provided that “in the event of such termination by [Plaintiff], the Earnest Deposit shall be refunded to [Plaintiff], less \$10,000.00 already paid to [318 Royal]. If [Plaintiff] does not timely provide the Notice of Termination prior to the expiration of the Due Diligence Period, the entire Earnest Deposit shall become nonrefundable to [Plaintiff].” PSA 3.1. The PSA

provided that any notices, like the notice of termination, were required to be in writing and “signed by the party giving the [notice] or by its attorneys.” Finally, notices that were sent by Defendants to Plaintiff were required to be directed to Derek Hogarty and were further required to be copied to its “closing attorney,” Todd Robinson. PSA 14.1.

Plaintiff claimed that during the due diligence period it discovered what it believed was a “material misrepresentation of key financial information related to the property” which resulted in an inflated market value of the Carrington Townhomes. Comp. pars. 11-12. Plaintiff tried, but failed, to negotiate a lower purchase price. Comp. pars. 13-14. As such, Plaintiff claimed it had “no choice” other than to terminate the PSA. Comp. par. 14.

Six minutes before the expiration of the due diligence period, someone named Ryan Lipomi, who appears to have been employed by the commercial real estate company Marcus & Millichap, sent an email to William Irvin that stated: “see attached termination of contract for Carrington Townhomes.” Pl.’s MISO SJ filed on August 16, 2024, Exhibit C. This email had a letter from Todd Robinson attached to it. Mr. Robinson was supposedly serving as Plaintiff’s closing attorney even though he was not licensed to practice law in South Carolina. The letter was on Mr. Robinson’s law firm letter head and contained in the reference line the following language: “NOTICE OF TERMINATION, concerning Purchase and Sale Agreement dated August 14, 2023 (the ‘Agreement’) between 318 Royal St, LLC (‘Seller’) and DSH Holdings, LLC (‘Purchaser’) for the purchase and sale of certain real property and related assets located in Orangeburg, South Carolina, as more particularly described in the Agreement (the ‘Property’).” Pl.’s MISO SJ filed on August 16, 2024, Corrected Exhibit B.

Despite not being licensed to practice law in South Carolina, Mr. Robinson stated in the letter that “[t]his law firm represents the Purchaser in regards to the above-referenced matter. In

accordance with terms of the Agreement, Purchaser hereby exercises its right to terminate the Agreement and receive a refund of the Earnest Money.” (emphasis added). Finally, Mr. Robinson’s letter requested a refund of the earnest money to be wired in accordance with wiring instructions that he would provide to the escrow agent, Continental Land Title Company, LLC.¹ Pl.’s MISO SJ filed on August 16, 2024, Corrected Exhibit B. This letter appears to have been drafted at least in part by an associate with Mr. Robinson’s firm named Marc Dubuc. Pl.’s MISO SJ filed on August 16, 2024, Exhibit D.

Mr. Irvin responded to the email indicating that the notice of termination did not comply with the terms of the PSA because it was not signed by the party or its attorney and was therefore invalid. As such, Mr. Irvin requested the escrow agent to hold the earnest money. Pl.’s MISO SJ filed on August 16, 2024, Exhibit C. The disputed funds were not in the possession of Mr. Irvin. Instead, \$75,000 was in the possession of the escrow agent, Continental Land Title Company, LLC, and \$40,000 was in the possession of Defendant 318 Royal.²

Plaintiff claimed that it sent the duplicate notice of termination as required under section 14.1 of the PSA on September 18, 2023. Pl.’s Reply Memo filed on August 28, 2024, Exhibit 1. This second letter also bore the typed name of Todd Robinson. Just as in the letter from September 15, Mr. Robinson stated that “[t]his Firm and the undersigned represent the Purchaser in regard to the purchase of Carrington Townhomes.” This was at least the second time Mr. Robinson claimed

¹ Todd Robinson and his law partner, Carl Franzman, are both named as “Principal and Title Counsel” to Continental Land Title Company and this Title Company shares the same address as their law firm. <https://cltitlecompany.com/meet-the-team/> and <https://www.rfillplaw.com/people> (last visited May 5, 2025).

² After the circuit court granted Plaintiff’s motion for summary judgment but before granting Defendants’ motion to stay execution of the judgment pending resolution of this appeal, Continental Land Title Company released the \$75,000 being held in escrow to Plaintiff. Partial satisfaction of judgment.

to represent Plaintiff in conjunction with a contract that took place entirely within South Carolina. Pl.'s Reply Memo filed on August 28, 2024, Exhibit 1.

In addition to expressly stating that he legally represented Plaintiff in the demand letter dated September 18, 2023, Mr. Robinson stated Plaintiff would be seeking “attorney’s fees incurred by [Plaintiff] during the transaction” and attached as “Exhibit A” to the letter the summary of the legal fees he charged Plaintiff for his purported representation. Mr. Robinson listed \$1,600.00 for “[t]itle exam and commitment preparation to Continental Land Title Company, LLC;” \$3,500.00 for “[l]egal fees to Robinson Franzman, LLP;” and \$589.00 for “[o]ut-of-pocket due diligence expenses.” Pl.'s Reply Memo filed on August 28, 2024, Exhibit 1. Furthermore, Mr. Robinson accepted \$75,000 of the earnest money for “deposit with the escrow agent,” a company which Mr. Robinson appears to partially own. Comp. par. 6.

ARGUMENT

The circuit court erred in granting summary judgment in favor of the Plaintiff.

Relevant Facts

In its motion for summary judgment, Plaintiff argued that Mr. Robinson's typed name constituted a signature. Plaintiff further argued that the PSA's requirement that any notice of termination be signed by the party's attorney did not mean that the attorney had to be an attorney licensed in South Carolina. Pl.'s MISO SJ filed on August 16, 2024, 8-10. Plaintiff further argued that it was entitled to summary judgment on its conversion cause of action against both 318 Royal and Mr. Irvin because "[d]espite the PSA's clear terms requiring the return of earnest money upon Plaintiff's termination, Defendants have refused to return these funds." *Id.*, 11. Plaintiff erroneously asserted that Mr. Irvin has retained the "misguided" \$40,000 even though this money was not wired to Mr. Irvin, but was in fact wired to 318 Royal. *Id.*

At the hearing before the circuit court on the motion for summary judgment, Defendants argued that Mr. Robinson's letter purporting to terminate the PSA was ineffective because Mr. Robinson could not have been the Plaintiff's attorney for purposes of the PSA because he is not licensed to practice law in South Carolina. As such, Mr. Robinson's assertion that he represented Plaintiff in this contract, and his attempt to cancel this contract on Plaintiff's behalf constituted the unauthorized practice of law. Defendants further pointed out that the purported notice of termination letter was not signed by any party to the PSA. Tr. 6, l. 20 – 7, l. 10. Defendants cited to *Edisto Island Historical Preservation Society, Inc. v. Gregory*, 354 S.C. 198, 580 S.E.2d 141 (2003) in support of its position that the PSA was not properly terminated because the notice of termination did not comply with the plain terms of the contract. Tr. 7, l. 11 – 8, l. 7.

Plaintiff maintained its position that because the PSA provided for termination by giving written notice “signed by the party or his attorney,” and did not say that the attorney had to be licensed in South Carolina, that having an unlicensed attorney sign the letter complied with the terms of the PSA. Tr. 13, ll. 15 – 23. Plaintiff further maintained that Mr. Robinson’s typed name at the bottom of the letter was sufficient to constitute his signature. Tr. 14, l. 15 – 15, l. 6.

Defendants responded by pointing out that Mr. Robinson could not act as the “party’s attorney” for a real estate transaction that was taking place entirely within South Carolina and governed exclusively by South Carolina laws. Tr. 16, l. 8 – 17, l. 10. Plaintiff suggested that signing the purported notice of termination letter from Mr. Robinson did not constitute the practice of law because it was not a closing but merely a cancellation of the PSA. Tr. 17, ll. 11 – 18. As such, Plaintiff argued that the only issue was whether a typed name constitutes a signature under the terms of the contract. Tr. 17, ll. 19 – 24. The circuit court asked Defendants to submit a written brief within five days of the hearing and gave the Plaintiff an opportunity to submit a reply brief as well. Tr. 19, l. 4 – 20, l. 4.

The circuit court ultimately granted Plaintiff’s motion for summary judgment. Specifically, the court concluded that Mr. Robinson’s typed name constituted a signature and that Mr. Lipomi’s typed name also constituted the signature of Plaintiff. Therefore, the court found that the notice of termination letter was signed by both the party—through Mr. Lipomi—and the party’s attorney—Mr. Robinson. Order Granting SJ, 5-6. The court further found that the PSA did not require the notice of termination to be signed by a lawyer who was licensed in South Carolina because the PSA merely said “the party’s attorney” and did not specify that the party’s attorney must be licensed in South Carolina. *Id.*, 6-7. Finally, the circuit court found that the retention of the disputed earnest money by the Defendants was “an attempt to remove the Plaintiff’s contractual right of

termination” and that “Defendant Irvin’s actions deprive Plaintiff of its rightful ownership and use of the earnest money deposit.” As such, the court granted summary judgment in favor of Plaintiff on its conversion cause of action against both 318 Royal and William Irvin. *Id.*, 8-9.

Discussion

The central issue in this case is what is meant by the phrase “party’s attorney” as used in the PSA. The circuit court erred in finding that because the PSA did not say that the party’s attorney had to be licensed in South Carolina that a non-licensed individual could serve as the “party’s attorney.” Respectfully, this conclusion defies common sense. An individual who is not licensed to practice law in South Carolina is not an attorney here. An individual who is not licensed in South Carolina cannot serve as an attorney for a party in a South Carolina legal matter. *See* S.C. Code § 40-5-310 (providing that it is a felony punishable by up to five years imprisonment to “practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina”).

The cardinal rule of contract interpretation is to “ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language in the contract.” *First South Bank v. Rosenberg*, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016) (quoting *Watson v. Underwood*, 407 S.C. 443, 454-55, 756 S.E.2d 155, 161 (Ct. App. 2014)). “Where the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.” *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009).

Here, the PSA was a contract for a commercial real estate transaction which was entirely within the State of South Carolina. The PSA provided that it was to be governed exclusively by the laws of South Carolina. The word “attorney” in this context must mean a person licensed to

practice law in South Carolina. That is because any person who is not licensed to practice law in South Carolina cannot be a “party’s attorney” for any legal matter in South Carolina. A person who is not licensed to practice law in South Carolina is legally prohibited from being an attorney for a party in South Carolina.

Our Supreme Court has the authority and the duty to regulate the practice of law in South Carolina and to determine what constitutes the unauthorized practice of law. *See* S.C. Const. Art. V, § 4; S.C. Code § 40-5-10; *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 307, 422 S.E.2d 123, 125 (1992).³ The Supreme Court in *In re Duncan*, 83 S.C. 186, 189, 65 S.E. 210, 211 (1909), considered whether Duncan, who had been disbarred in South Carolina, engaged in the unauthorized practice of law by contracting with a woman whose husband was incarcerated for the purpose of attempting to obtain his release. The Supreme Court provided the following guidance as to what it means to practice law:

It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, *the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law.*

Id. (emphasis added). It is clear from the record in this case that Mr. Robison was advising Plaintiff as to its contract with 318 Royal. Mr. Robison accepted a \$75,000 wire transfer from Plaintiff as part of its earnest money and deposited that \$75,000 with the escrow agent—a company that Mr. Robison appears to partially own. Furthermore, Mr. Robison prepared both the purported notice

³ Because this case involves a novel issue regarding what constitutes the unauthorized practice of law, undersigned has filed a motion to certify this case to the Supreme Court pursuant to Rule 204(b), SCACR contemporaneously with this initial brief.

of termination letter, and the purported duplicate notice of termination letter on Plaintiff's behalf. Mr. Robinson even billed legal fees to Plaintiff for his services in conjunction with this matter and threatened to seek reimbursement from Defendants for those legal fees if the earnest money was not returned. Pl.'s Reply Memo filed on August 28, 2024, Exhibit 1.

Our Supreme Court has considered what constitutes practicing law in the scope of real estate transactions on several occasions, expanding the scope each time. In *State v. Byers Service Co.*, the Supreme Court found several distinct actions taken by a corporation in conjunction with residential real estate transactions constituted the unauthorized practice of law. 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987).

First, the Court found that the preparation of "deeds, notes and other instruments related to mortgage loans and transfers of real property" constituted practicing law. *Id.* The Court acknowledged that the line between practicing law and permissible business activities by non-attorneys is often unclear, but that "[t]he practice of law is not confined to litigation, but extends to activities in other fields which entail specialized legal knowledge and ability." *Id.* The Court in *Byers Service* cited to *Pioneer Title Ins. & Tr. Co. v. State Bar*, 74 Nev. 186, 188, 326 P.2d 408, 409 (1958) in which the Supreme Court of Nevada found that escrow agents engaged in the unauthorized practice of law by preparing "instruments necessary to effectuate real estate transactions" because "the agents pass upon the legal sufficiency of the instruments to accomplish the contractual agreement of the parties." *Byers Service Co.*, 292 S.C. at 430, 357 S.E.2d at 17 (citing *Pioneer Title Ins. & Tr. Co. v. State Bar*, 74 Nev. 186, 188, 326 P.2d 408, 409 (1958)).

Second, the Court in *Buyer's Service* found that the "preparation of title abstracts for persons other than attorneys constitutes the unauthorized practice of law." 292 S.C. at 432, 357 S.E.2d at 18. Third, the *Buyer's Service* Court also held that closing a real estate transaction

constituted the practice of law. *Id.* at 433, 357 S.E.2d at 19. And finally, the Court held that delivering the instruments to the court for recording also constituted the practice of law when done in conjunction with a real estate deal. *Id.* at 434, 357 S.E.2d at 19.

The Supreme Court later publicly reprimanded a real estate attorney in South Carolina for allowing his paralegal to appear at closings in his stead. *In re Lester*, 353 S.C. 246, 578 S.E.2d 7 (2003). Not long after *In re Lester*, our Supreme Court again considered the scope of what constitutes practicing law in connection with real estate transactions in *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003). The Court in *Doe* noted that in *Buyers Service* it had “divided the purchase of residential real estate into four steps: 1) title search; 2) preparation of loan documents; 3) closing; and 4) recording title and mortgage.” *Doe*, 355 S.C. at 312, 585 S.E.2d at 776. The Court rejected *Doe*’s argument that refinancing a loan was not practicing law, noting “that refinancing affects identical legal rights of the buyer and Lender as initial financing and protection of these rights is the crux of the practice of law.” *Id.* The *Doe* Court also rejected *Doe*’s argument that a corporation could complete real estate loan documents pro se: “The right of a corporation to practice law by completing real estate loan documents is not co-extensive with an individual’s right.” *Id.*, at 314, 585 S.E.2d at 777.

In *Ex parte Watson*, a county attorney in Greenwood asked the Supreme Court to decide “whether nonlawyer title abstractors engage in the unauthorized practice of law when they conduct a title search and report the title status in connection with a tax foreclosure sale.” 356 S.C. 432, 433, 589 S.E.2d 760, 760 (2003). The Supreme Court expanded the scope of what constitutes practicing law in connection with a real estate transaction again, holding that “such activities constitute the unauthorized practice of law and must either be conducted or supervised by an

attorney.” *Id.* The Court relied on its previous decisions in *Buyers Service, In re Lester*, and *Doe*, in reaching its conclusion.

Then, in *Doe Law Firm v. Richardson*, the Supreme Court considered “whether the disbursement of loan proceeds in conjunction with a residential refinancing or credit line transaction is the practice of law.” 371 S.C. 14, 15, 636 S.E.2d 866, 867 (2006). The Court in *Richardson* held that such disbursements do constitute the practice of law and must be conducted under the supervision of an attorney. *Id.* In *Richardson*, the entire real estate transaction took place under the supervision of attorneys licensed to practice in South Carolina except for the final disbursements of funds. The disbursements were handled by the out-of-state lender. *Id.* at 16-17, 636 S.E.2d at 867-68.

The *Richardson* Court noted that whether the loan disbursements constituted practicing law in South Carolina had not yet been answered but cited to several attorney disciplinary matters that suggested it was. *Id.* at 18, 636 S.E.2d at 868 (citing *In re Boulware*, 366 S.C. 561, 623 S.E.2d 652 (2005); *In re Fortson*, 361 S.C. 561, 606 S.E.2d 461 (2004); *In re McMillian*, 359 S.C. 52, 596 S.E.2d 494 (2004); *In re Arsi*, 357 S.C. 8, 591 S.E.2d 627 (2004); *In re Pstrak*, 357 S.C. 1, 591 S.E.2d 623 (2004); and *In re Boyce*, 364 S.C. 353, 613 S.E.2d 538 (2005)). In finding that the disbursement of funds did constitute the practice of law, the *Richardson* Court noted that while the process did not necessarily entail specialized legal knowledge, the disbursements could not be separated from the real estate transaction as a whole. *Id.*

Each of the foregoing precedents support a finding in this case that Mr. Robinson engaged in the unauthorized practice of law. These precedents further illustrate that the word “attorney,” and more pointedly the phrase “party’s attorney,” must mean an attorney licensed to practice in South Carolina. The cases cited above typically only used the word “attorney” when explaining

that certain activities must be supervised or performed by “an attorney” in conjunction with real estate transactions. The Court rarely further specified that the attorney must be licensed in South Carolina. That is because it goes without saying. As stated earlier, a person who is not licensed to practice law in South Carolina is not an attorney here. The language in the PSA which allows a party’s attorney to sign a notice of termination letter need not further specify that the attorney must be licensed in South Carolina. If the person isn’t licensed here, they aren’t the “party’s attorney.”

Mr. Robinson was not Plaintiff’s attorney under the PSA. Mr. Robinson is not permitted to practice law in South Carolina and Plaintiff has freely admitted this. However, Mr. Robinson’s purported notice of termination letter that was emailed to Mr. Irvin, and the follow up letter he sent, both claimed that Mr. Robinson represented Plaintiff *in this matter*. Pl.’s MISO SJ filed on August 16, 2024, Corrected Exhibit B; Pl.’s Reply Memo filed on August 28, 2024, Exhibit 1. Thus, on at least two occasions in this case, Mr. Robinson claimed to be doing something he was legally prohibited from doing, practicing law in South Carolina. *See* S.C. Code § 40-5-310.

Plaintiff suggested to the circuit court that Mr. Robinson wasn’t required to be licensed to practice law here because canceling the PSA did not constitute “practicing law.” Tr. 17, ll. 11 – 18. Plaintiff admits that handling real estate closings is the practice of law and requires an attorney licensed to practice law in South Carolina. And although the sale of Carrington Townhomes did not close, Todd Robinson was retained by Plaintiff to be its closing attorney. It is odd, to say the least, that a company would hire a person who is not an attorney in South Carolina to close a real estate transaction in South Carolina. Presumably, had Mr. Robinson not attempted to terminate the PSA and instead served as the closing attorney, Plaintiff would admit it was the unauthorized practice of law. Furthermore, Mr. Robinson’s letter from September 18, to which he attached a list of fees and costs, included \$1,600 for “Title Exam and Commitment Preparation,” and \$3,500 for

“Legal Fees to Robinson Franzman.” Our Supreme Court in both *Buyers Service* and *Doe* found that the title exam and preparation of loan documents constituted practicing law—both things Mr. Robinson appears to have billed Plaintiff for in this case. *Buyers Service Co.*, 292 S.C. at 430, 357 S.E.2d at 17; *Doe*, 355 S.C. at 312, 585 S.E.2d at 776.

Here, Mr. Robinson engaged in the unauthorized practice of law by passing on the legal sufficiency of the PSA, the termination notice, the duplicate termination notice, representing to the Defendants that he was acting as Plaintiff’s attorney in this case, purporting to serve as the “closing attorney,” and by advising Plaintiff regarding its rights and obligations under the terms of the PSA, a contract governed exclusively by the laws of South Carolina, a jurisdiction in which Mr. Robinson is not licensed. Furthermore, unlike each of the cases cited above, the matter in dispute here was a commercial real estate transaction between two corporate entities. This was not a residential real estate transaction where individuals might be able to contract and negotiate on behalf of themselves.

As a final note, the email from Ryan Lipomi must be addressed. The circuit court erroneously found that Mr. Lipomi’s typed name on the email which attached Mr. Robinson’s letter constituted the signature of Plaintiff—DSH Holdings. This conclusion is not supported by the record. The PSA names Derek Hogarty as “authorized signatory” for Plaintiff and Derek Hogarty is the person who signed the PSA on behalf of Plaintiff. PSA, 20. Additionally, the section of the PSA providing for notices requires that any notices given to Plaintiffs must be sent to Derek Hogarty and Todd Robinson. PSA 14.1. Ryan Lipomi’s name appears nowhere in the PSA and his email signature block indicates that he worked for a commercial real estate company called Marcus & Millichap. Mr. Lipomi is not a party to the PSA, is not a signatory to the PSA, and his signature

cannot serve as “the party’s signature.” As such, the circuit court erred in finding that Mr. Lipomi’s typed name in an email to Mr. Irvin was the signature of Plaintiff.

Because the Plaintiff did not comply with the plain terms of the PSA in its attempted termination of the contract, the PSA was not properly terminated. Notice was not signed by Plaintiff, i.e., Derek Hogarty, nor was it signed by Plaintiff’s attorney. Instead, it was signed by Todd Robinson, who claimed to be Plaintiff’s attorney in conjunction with this commercial real estate contract which took place entirely within South Carolina and was governed exclusively by the laws of South Carolina even though he is not licensed to practice law in South Carolina. *See Edisto Island Historical Pres. Soc’y, Inc. v. Gregory*, 354 S.C. 198, 202, 580 S.E.2d 141, 143 (2003) (holding that an attempted termination letter was ineffective where it did not reference marketability of title and marketability of title was the only basis for which the contract allowed termination to occur); *Retailer’s Serv. Bureau v. Smith*, 165 S.C. 238, 245, 163 S.E. 649, 652 (1932) (“Notice of termination must be given in accordance with the terms of the contract”). The circuit court erred in granting summary judgment in favor of Plaintiff on its breach of contract claim and this Court should reverse.

Conversion

The circuit court also erred in granting summary judgment in favor of Plaintiff on its conversion causes of action against both 318 Royal and Mr. Irvin. Because the Plaintiff did not properly terminate the PSA, it had no legal right to a refund of the earnest money.

“[C]onversion, . . . has been defined as ‘an unauthorized assumption and exercise of the right of ownership over goods or personal chattels *belonging to another*, to the alteration of their condition or the exclusion of the owner’s rights.’” *Ray v. Pilgrim Health & Life Ins. Co.*, 206 S.C. 344, 347, 34 S.E.2d 218, 219 (1945) (emphasis added). “Conversion is a wrongful act and cannot

arise from the exercise of a legal right.” *Owens v. Zippy Mart of S.C., Inc.*, 268 S.C. 383, 386, 234 S.E.2d 217, 218 (1977) (citing *Castell v. Stephenson Fin. Co.*, 244 S.C. 45, 51, 135 S.E.2d 311, 313 (1964)). Furthermore, “[t]o establish the tort of conversion, the plaintiff must establish either title to or right to the possession of the personal property.” *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 465, 684 S.E.2d 756, 763 (2009) (quoting *Moseley v. Oswald*, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008)). “A plaintiff’s claim for conversion fails where the defendant proves a legal right to the property.” *Mackela v. Bentley*, 365 S.C. 44, 48, 614 S.E.2d 648, 650 (Ct. App. 2005) (citing *Kirby v. Horne Motor Co.*, 295 S.C. 7, 11, 366 S.E.2d 259, 261 (Ct. App. 1988)).

Throughout this case, Defendants have disputed Plaintiff’s purported notice of termination letter and sought to exercise their legal right to the disputed earnest money. Such conduct cannot form the basis of an action for conversion. Plaintiff failed to comply with the plain terms of the PSA in its attempt at termination by not giving notice signed by it or its attorney. Accordingly, Plaintiff had no right to the return of the earnest money. Instead, under the plain terms of the PSA, the earnest money was nonrefundable. PSA 2.2. The circuit court erred in granting summary judgment in favor of Plaintiff on its conversion cause of action against Defendants and this Court should reverse.

CONCLUSION

By reason of the foregoing argument, this Court should reverse the circuit court's order granting Plaintiff's motion for summary judgment as to both its breach of contract and conversion causes of action and remand this case for further proceedings.



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