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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

T.W. McGee, III, Circuit Court Judge

Appellate Case No. 2025-000104

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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. SOUTH CAROLINA'S RULES OF CONSTRUCTION PROVIDE THAT STATUTES MUST NOT BE READ TO OPERATE OUTSIDE THE STATE'S BORDERS. DID THE LOWER COURT DISREGARD SOUTH CAROLINA'S RULES OF CONSTRUCTION AND VIOLATE THE COMMERCE CLAUSE BY APPLYING SOUTH CAROLINA'S REAL ESTATE LICENSING SCHEME TO AN ENTITY WHICH CONDUCTED ALL OF ITS BUSINESS IN INDIANA?
2. THE PLAIN LANGUAGE OF S.C. CODE ANN. §40-57-10 ET SEQ. DOES NOT SUBJECT LIMITED LIABILITY COMPANIES TO LICENSING REQUIREMENTS. DID THE LOWER COURT ERR IN REFUSING TO INTERPRET THE TERMS OF THE STATUTE ACCORDING TO THEIR PLAIN MEANING?

STATEMENT OF THE CASE

This action was initiated by the filing of a summons and complaint on June 6, 2024. Therein, Great Deal Investing LLC, of Wyoming ("GDI"), a Wyoming limited liability company with its sole place of business in Indiana, alleged that it had entered into a three (3) page finder's fee contract ("contract") with J&B Holdings Group, LLC ("J&B"), a limited liability company based in Florida that is engaged in the acquisition and management of mobile home parks. GDI alleged that under the terms of the contract, in exchange for introducing J&B to a seller who ultimately closed on a contract of sale for property, GDI was entitled to seven percent (7%) of the sale price as a finder's fee.

GDI further alleged that it identified a North Carolina resident ("the seller") who owned and operated a mobile home park in Orangeburg County; introduced J&B to the seller; that the seller & J&B entered into a contract of sale for property; that J&B created Hatchery Hill MHC, LLC ("Hatchery Hill"), a new South Carolina limited liability company; that Hatchery Hill and the seller ultimately closed on the transaction; and that J&B failed and refused to pay GDI's fee following closing.

GDI named J&B, its members, and Hatchery Hill (collectively, "J&B") as defendants and set forth claims for breach of contract, breach of contract accompanied by a fraudulent act, and violation of the South Carolina Unfair Trade Practices Act. Copies of the pleadings were served upon J&B as shown by the affidavits of service on file with the court.

On June 21, 2024, J&B filed a motion to dismiss. Therein, J&B asserted that the Plaintiff had engaged in the practice of real estate in South Carolina without a license and argued that the contract was illegal on its face.

On the same day, J&B filed a motion for protective order and to quash nonparty subpoenas. Therein, J&B again asserted that the contract was illegal and unenforceable, that GDI had failed to comply with the notice requirements of Rule 45(a)(D)(4), SCRCP, and that the subpoenas were overly broad and unduly burdensome.

On July 2, 2024, GDI filed an amended complaint providing further details and including a cause of action for civil conspiracy. Several exhibits were attached, including the contract.

On July 3, 2024, J&B filed a motion to dismiss and for judgment on the pleadings. Again, J&B asserted that GDI had engaged in the practice of real estate in South Carolina without a license and therefore the contract was illegal and unenforceable.

On July 8, 2024, GDI filed a motion for summary judgment with a supporting affidavit. On August 19, 2024, J&B filed a motion for summary judgment with supporting affidavits.[1] On

[1] The affidavits included hearsay and "legal opinions" of J&B's lay members, but did not state "that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true" as required by Rule 11(c), SCRCP.

August 27, GDI filed a memorandum in support of its motion for summary judgment and on August 28, 2024, J&B filed a memorandum in support of its motion for summary judgment.

On August 30, 2024, GDI filed a memorandum in opposition to J&B's motion for summary judgment and on September 4, 2024, filed a supplemental memorandum in opposition.[2] This matter came before the lower court on September 5, 2024, via virtual courtroom for a hearing on J&B's motion for protective order and to quash, J&B's motion to dismiss and for judgment on the pleadings, GDI's motion for summary judgment, and J&B's motion for summary judgment. At that time, the lower court determined that the threshold matter to be decided was whether South Carolina's real estate licensing laws applied to GDI.

On October 4, 2024, the lower court advised counsel by email that it had concluded that South Carolina's real estate laws did apply. Thereafter, the court scheduled a WebEx meeting with counsel to discuss the necessity of further rulings.

On October 17, 2024, the lower court and counsel participated in the WebEx meeting. At that time, counsel for GDI advised the lower court that he had a motion to alter or amend ready for filing upon the issuance of an order. At counsel's suggestion, the lower court agreed to consider counsel's arguments submitted in the form of a memorandum. GDI's Second Supplemental Memorandum In Opposition To Defendants' Motion For Summary Judgment was filed on October 17, 2024.

J&B filed Defendants' Supplemental Memorandum In Response To Plaintiff's Second Supplemental Memorandum on October 21, 2024. On October 25, 2024, GDI filed Plaintiff's

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[2] GDI relied upon the language of S.C. Code Ann.§ 40-57-30(7) limiting the application of South Carolina's real estate licensing laws to the practice of real estate *in the State of South Carolina* and case law for the proposition that South Carolina statutes have no extraterritorial effect.

Reply To Defendants' Supplemental Memorandum In Response To Plaintiff's Second Supplemental Response. Thereafter, counsel for both parties submitted emails to the lower court in support of their respective positions. On December 9, 2024, the lower court issued an Order Granting Defendants' Motion For Summary Judgment.

On the same date, GDI filed a motion to alter or amend. On January 13, 2025, the lower court issued a Form 4 order denying GDI's motion. The amount involved on appeal is $37,800.00.

Notice of appeal was timely served on January 15, 2025.

STANDARD OF REVIEW

When parties file cross-motions for summary judgment, the issue is decided as a matter of law. *United States Automobile Association v. Pickens*, 434 S.C. 60, 64, 862 S.E.2d 442, 444 (2021) (internal citations omitted). Further, the interpretation of a statute is a question of law, which the appellate court reviews de novo. *See Id.*

FACTS

GDI is a limited liability company organized and existing under the laws of the State of Wyoming, transacting business solely in the State of Indiana. (R. p. 140, par. 4 and p. 142, par. 27). GDI has never transacted business in South Carolina. (R. p. 140, par. 6).

Jared Burnett ("Burnett") is a member of J&B. (R. p. 251, par. 1). Brett Buras ("Buras") is a member of J&B and a resident of the State of Florida. (R. p. 246, par. 1 and R. pp. 113-117). Damian Bergamaschi ("Bergamaschi") is a member of a limited liability company that is a member of Hatchery Hill MHC, LLC ("Hatchery Hill") and is a resident of the State of South

Carolina.[3] (R. p. 254, par. 2 and p. 197). Steve Decker ("Decker") is employed as an accountant by a company owned by one of the members of J&B. (R. p. 256, par. 2).

J&B is a limited liability company organized and existing under the laws of the State of Texas. (R. p. 158, par. 1 and 2). J&B has never had a certificate of authority to transact business in South Carolina and denies that it transacts business in South Carolina. (R. pp. 158-159. par. 3, 4, 6, and 7). Hatchery Hill is a limited liability company organized and existing under the laws of the State of South Carolina. (R. pp. 55-57).

GDI is engaged in the business of finding mobile home park sellers across the country for mobile home park buyers. (R. p. 140, par. 5). GDI does not hold a license to practice real estate in South Carolina. (R. pp. 258-259, par. 3).

J&B is in the business of acquiring and managing mobile home parks in Tampa, Florida; New Orleans, Louisiana; Columbia and Sumter, South Carolina; and Southeast Michigan. (R. p. 238, par. 3 and R. pp. 218-223). J&B does not hold a license to practice real estate in South Carolina. (R. p. 159, par. 8).

On October 16, 2023, GDI emailed a proposed finder's fee contract ("contract") to Buras. (R. p. 141, par. 15). On October 23, 2023, Buras replied in an email, "I don't think we've met. I'd be delighted to sign this agreement and see if this park is a good fit for our capital. Please make the agreement specific to the subject property so that I can sign it. I don't need an address, you can just say 'a mobile home park in 'city'. I won't sign a blanket agreement as *we*

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[3] On May 4, 2023, Bergamaschi filed a "Notice of Change of Designated Office, Agent or Address of Registered Agent" for Dalzell Village, LLC as member with the South Carolina Secretary of State. (R. p. 33, par. 21 and pp. 39-40). Dalzell is located in Sumter County.

have deals coming to us from many people [sic] this can often get confusing. Again, happy to sign a property specific agreement and take a look to see if this is a good fit for our capital." (R. pp. 141, par.16 and p. 148). (emphasis added).

On October 23, 2023, GDI replied, "The reason we don't list the city is obvious. We have several properties we are working on. That is why the FFC is written the way it is. If you read it, you see: signing it creates zero obligation unless we bring you a property, and you close on it." (R. pp. 45 and 148). On the same day, Buras responded, "I will check with legal. Our PE Funds have rules ... some of them are weird." (R. pp. 45, 141, and 148).

On October 30, Buras emailed an executed copy of the contract to GDI. (R. p. 141, par. 17). On the same day, GDI emailed an updated contract to Buras and Buras signed it as managing member of J&B and emailed it back to GDI. (R. p. 141, par. 18).

Under the terms of the contract, GDI agreed to identify property and introduce sellers to J&B in exchange for a fee of seven percent (7%) of the final purchase price. (R. pp. 141-142, par. 19 and pp. 150-152). The contract contained an integration clause and a provision that any amendments would require a written agreement signed by both parties. (R. p. 151). The contract also included a non-circumvention clause in which J&B agreed not to circumvent, avoid, or bypass the fee arrangement. (R. p. 151).

The contract also included a provision obligating J&B to provide regular updates and to include GDI in any communications with sellers. (R. p. 151). Finally, the contract included an acknowledgement that GDI was not a real estate agent/ broker/realtor and held no professional licenses. (R. p. 151).

Immediately thereafter, GDI provided information to Buras on several properties in Ohio, Indiana, and Illinois. (R. p. 142, par. 22 and pp. 144-147). On February 1, 2024, Buras emailed a document to GDI describing J&B's business and providing biographical information about Buras, Bergamaschi, Burnett, and Decker. The document indicated that J&B was a mobile home park investor but that neither the company nor its affiliates were licensed security dealers or brokers. The document stated:

What We Do:

Asset Class

J&B Holdings Group is focused on the acquisition, optimization and management of Mobile Home Parks.

Increase Value

Through hands on management and deep operational experience, The J&B Holdings Group executes our proprietary MHP Playbook focusing on increasing value and high returns.

Markets

Market focus is driven by a significant operational advantage: We only buy in markets where we have:

-Existing, thriving assets.

-Experienced, proven management.

-Dependable, proven tradesmen.

Capital is available for acquisition, partial ownership and improvements.

(R. pp. 153-157, 219-223, and 238, par. 3).

On two pages entitled, "Where We Do It," circles were drawn on maps around Tampa, Florida; New Orleans, Louisiana; Columbia/Sumter, South Carolina; and Southeast Michigan. On another page, the areas of focus for Buras, Bergamaschi, Burnett, and Decker were listed as follows:

Buras - Growing the MHP portfolio.

Bergamaschi - Forcing appreciation on sub-institutional grade Mobile Home Parks.

Burnett - Raising capital.

Decker - Financial due diligence on all prospective real estate and business acquisitions.

(R. pp. 153-157, 219-223, and 238, par. 3).

On or about February 20, 2024, GDI identified Trishann Couvillion ("Couvillion") of Pecan Grove Digs LLC ("Pecan Grove") in Asheville, North Carolina, as a potential seller of a mobile home park in Cordova, South Carolina, and notified Buras by email on February 21, 2024. (R. p. 142, par. 24). On February 22, 2024, at Buras' request, GDI scheduled a telephone call with Couvillion to introduce her to Buras and Bergamaschi. (R. p. 142, par. 25).

On February 26, 2024, Buras requested, and GDI provided, Couvillion's email address. (R. p. 142, par. 26). All of GDI's emails, telephone calls, and text messages with Buras and Couvillion originated from GDI's office in Indiana. (R. p. 142, par. 27). No emails or text

messages were sent by GDI to anyone in South Carolina and no calls were placed to anyone in South Carolina.

Thereafter, Buras and Bergamaschi communicated directly with Couvillion about the transaction without including GDI in those communications. (R. p. 162, par. 2, pp. 177-201 and 203-211). On March 4, 2024, J&B entered into a contract of sale to purchase the property from Pecan Grove for the sum of $540,000.00. (R. p. 214, par. 4 and pp. 224-232).

J&B wired a $5,000.00 earnest money deposit to Smith Howell & Associates LLC ("Smith Howell") at 117 W. Luke Avenue, Summerville, South Carolina 29483. (R. p. 214, par. 5 - 6 and p. 162, par. 2, and pp. 198-200). On March 7, 2024, Buras sent an email to Couvillion with copies to Bergamaschi and Doug Laflin of Smith Howell to advise, "We will be at the park Wednesday, March 13 in the AM." (R. p. 162, par. 2, and 198). Decker sent an email to Buras and Bergamaschi dated March 7, 2024, from sdecker@burnettglobal.com, requesting that his other email address be used for J&B correspondence. (R. p. 162, par. 2, and p. 184). Thereafter, Buras and Couvillion exchanged emails with copies to Bergamaschi and Smith Howell, without including GDI, to prepare for a closing. (R. p. 162, par. 2 and pp. 176 - 207).

On March 12, 2024, GDI sent a text message to Buras inquiring about the status of the transaction. Buras responded, "Hang tight. Spring break teenager beach duties today." (R. p. 35, par. 38). Buras ceased communicating with GDI after March 12, 2024. (R. p. 142, par. 28). On April 2, 2024, GDI again attempted to reach Buras about the status of the transaction. Buras did not respond. (R. p. 35, par. 39).

On April 2, 2024, articles of organization for Hatchery Hill were filed with the South Carolina Secretary of State. (R. p. 35, par. 40 and p. 55). The initial designated office listed for

Hatchery Hill was 2875 Stamey Livestock Road in Dalzell, South Carolina, the same address listed for Dalzell Village. (R. p. 35, par. 41, p. 39, and p. 55).

On April 10, 2024, in response to an email from Rae McArthur at Smith Howell inquiring about J&B's representation, Buras replied, "We are not being represented, but our attorney reviews title work as we do." (R. p. 162, par. 2 and p. 186). In the same email, Buras provided copies of an order confirmation for Hatchery Hill as the purchasing entity, an EIN for Hatchery Hill, J&B's articles, Active Real Estate, LLC's ("Active") articles and identified Couvillion, J&B, and Active as the members of Hatchery Hill. Id.

Jared Smith conducted the closing on May 1, 2024, at Smith Howell's office at 1185 Sunset Boulevard, Suite B, West Columbia, SC 29169. (R. p. 35, pp. 63 - 76 and p. 167, par. 17). A Warranty Deed from Pecan Grove to Hatchery Hill was prepared by Smith Howell, signed by Couvillion, notarized in Buncombe County, North Carolina, and filed with the Orangeburg County Register of Deeds on May 20, 2024. (R. pp. 233-236 and p. 239, par. 7 - 8).

On the same day, Pecan Grove recorded a mortgage from Hatchery Hill bearing Buras' signature as managing member of Hatchery Hill. (R. p. 35, par. 44 and pp. 63 -76). On the same day, J and H Burnett, LLC recorded a second mortgage on the property bearing Buras' signature as managing member of Hatchery Hill. (R. p. 35, par. 45).

Thereafter, Couvillion exchanged emails with Buras, Bergamaschi, and Decker, who identified himself as Hatchery Hill's Financial Controller, about the transfer of utilities. (R. 161, par. 2 and pp. 170 - 176).

GDI was never notified that a closing had been scheduled or completed by Buras, Bergamaschi, anyone else on behalf of J&B, or Hatchery Hill. (R. p. 35, par. 46). Neither Buras,

nor J&B, nor any of its members, nor Hatchery Hill paid the Plaintiff's fee of $37,800.00. (R. p. 35, par. 47).

On May 28, 2024, GDI made a formal demand for payment. (R. p. 36, par. 48). On June 4, 2024, Bergamaschi sent GDI a text message suggesting, "There was definitely a misunderstanding. Brett had a heart attack." (R. p. 162, par. 2 and p. 202). On June 5, 2024, Buras threatened to report GDI to the attorneys general in all 50 states. (R. p. 36, par. 50).

ARGUMENT

I. SOUTH CAROLINA'S RULES OF CONSTRUCTION PROVIDE THAT STATUTES MUST NOT BE READ TO OPERATE OUTSIDE THE STATE'S BORDERS. DID THE LOWER COURT DISREGARD SOUTH CAROLINA'S RULES OF CONSTRUCTION AND VIOLATE THE COMMERCE CLAUSE BY APPLYING SOUTH CAROLINA'S REAL ESTATE LICENSING SCHEME TO AN ENTITY WHICH CONDUCTED ALL OF ITS BUSINESS IN INDIANA?

a. South Carolina statutes have no extraterritorial effect.

S.C. Code Ann. § 1-1-10 provides, in pertinent part,

> The sovereignty and jurisdiction of this State extends to all places within its bounds ...

The extent to which the jurisdiction of the State may extend beyond its borders is subject both to the state's rules of construction and constitutional limits. In *Carolina Trucks & Equipment, Inc. v. Volvo Trucks Of North America, Incorporated*, 492 F.3d 484, 489-490 (4th Cir. 2007), the Fourth Circuit Court of Appeals summarized South Carolina's rules of construction on extraterritoriality, as well as those applicable to all states, observing:

In construing a state law, we look to the rules of construction applied by the enacting state's highest court. *See Liberty Mut. Ins. Co. v. Triangle Indus., Inc.*, 957 F.2d 1153, 1156 (4th Cir. 1992). South Carolina rules of construction provide that statutes must not be read to operate outside the state's borders. The South Carolina Supreme Court has written repeatedly that South Carolina statutes "have no extraterritorial effect," *First Pa. Banking & Trust Co.*, 247 S.C. 506, 148 S.E.2d 373,374 (1966) (internal citation omitted); *see also Robertson v. Bumper Man Franchising Co., Inc.*, 364 S.C. 155, 612 S.E.2d 451,452 (2005), because "the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction," *First Pa. Banking & Trust Co.*, 148 S.E.2d at 374 (internal citation omitted).

* * *

In assessing whether a statute is extraterritorial, "The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State." *Healy v. Beer Inst.*, 491 U.S. 324, 336, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989).

* * *

The principle that state laws may not generally operate extraterritorially is one of constitutional magnitude. One state may not "project its legislation" into another, *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521, 55 S.Ct. 497, 79 L.Ed 1032 (1935), as the Commerce Clause "precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not

> the commerce has effects within the State," *Healy*, 491 U.S. at 335, 109 S.Ct. 2491 (*quoting Edgar v. MITE Corp.*, 457 U.S. 624, 642 - 643, I 02 S.Ct. 2629, 73 L.Ed.2d 269 (1982) (plurality opinion)); *see also Bigelow v. Virginia*, 421 U.S. 809, 822- 23, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975).

[emphasis added].

In *Robertson v. Bumper Man Franchising Co., Inc.*, 364 S.C. 155, 157, 612 S.E.2d 451, 452 (2005), the South Carolina Supreme Court was asked to determine if the South Carolina Business Opportunity Sales Act (S.C. Code Ann. §§ 39-57-10 *et seq.*) applied to a contract between a business located in Texas and a Texas resident, and performed in Texas and Washington, after the Texas resident moved to South Carolina. In giving the matter short shrift, the Supreme Court stated:

> The first question asks whether the Act applies to the Texas Agreement, entered into in that state and wholly performed outside South Carolina. It is unnecessary to conduct any in-depth analysis in order to conclude that the answer to this question is "no." E.g., *Ex parte First Pennsylvania Banking and Trust Co.*, 247 S.C. 506, 148 S.E.2d 373 (1966) (state statutes have no extraterritorial effect).

Id.

Likewise, in *Doctors Hosp. of Augusta, L.L.C. v. CompTrustAGC Workers' Compensation Trust Fund*, 371 S.C. 5, 8, 636 S.E.2d 862, 863 (2006), the South Carolina Supreme Court was asked to determine if the South Carolina Workers' Compensation Commission had jurisdiction to review a fee dispute between a South Carolina insurance carrier and an out of state medical provider who performed medical services outside of South Carolina relating to a workplace

injury that occurred in South Carolina. In answering "no," the Court relied upon its prior holding in *Ex parte First Pa. Banking & Trust Co., supra*, holding that "[w]ith such exceptions which are without significance here, the jurisdiction of a state is restricted to its own territorial limits."

b. The dormant Commerce Clause further limits the authority of states to enact legislation affecting interstate commerce.

Further, South Carolina has no statute prohibiting the payment of a finder's fee by an out-of-state purchaser to an out-of-state finder who performs all of its activities out-of-state. Even if such a statute existed, it would violate the Commerce Clause.

The Commerce Clause states: "The Congress shall have Power . . . To regulate Commerce ... among the several States ... " U.S. Const., Art. I, § 8, cl. 3. Courts have long has recognized that this affirmative grant of authority to Congress also encompasses an implicit or "dormant" limitation on the authority of the States to enact legislation affecting interstate commerce. *Healy*, 491 U.S. at 349, n.1.

"The Commerce Clause ... precludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State." *Id* at 336. (*quoting Edgar v. MITE Corp.*, 457 U.S. 624, 642-643, 102 S.Ct. 2629, 2640-2641, 73 L.Ed.2d 269 (1982) (plurality opinion). Pursuant to the Commerce Clause, state legislation is unconstitutional where the projection of extraterritorial practical effects, regardless of the statute's intention, exceeds the inherent limits of the State's power. *Id.* at 349, n. 9 (*quoting Shaffer v. Heitner*, 433 U.S. 186, 197, 97 S.Ct. 2569, 2576, 53 L.Ed.2d 683 (1977).

In the present case, GDI did not perform any acts related to its contract with J&B within the borders of South Carolina. Neither the negotiations leading to the formation of the contract

nor the formation of the contract took place in South Carolina. None of the parties to the contract are South Carolina citizens – and none of the parties to the transaction giving rise to GDI's claim for a finder's fee are South Carolina citizens, either. GDI's sole member never travelled to South Carolina in connection with the contract; instead, its contacts with the seller, located in North Carolina, and J&B, located in Florida, were entirely electronic. By the express terms of the contract between GDI and J&B, GDI's performance was complete when it introduced J&B to the seller from its office in Indiana. Given these facts, the extraterritorial application of the South Carolina Real Estate Code to GDI disregards South Carolina's own rules of construction and violates the dormant Commerce Clause.

c. Neighboring jurisdictions recognize that isolated real estate transactions are not subject to real estate licensing requirements.

In *Keenan Co. v. Pamlico, Inc.*, 245 Ga. 842, 268 S.E.2d 334 (1980), the Keenan Company and Bob Russell Realty, Inc. ("the South Carolina plaintiffs"), both South Carolina business entities, filed suit in Georgia against Pamlico, Inc. ("Pamlico"), a Georgia corporation, seeking recovery of a $1,110,000.00 real estate commission upon a sale involving some 22,000 acres of Pamlico's land located in North Carolina. Pamlico asserted that the South Carolina plaintiffs were barred from filing suit in a Georgia court because they did not have Georgia real estate licenses. *Id.* The trial court granted Pamlico 's motion for summary judgment and the Court of Appeals affirmed. *Id.*

The Supreme Court of Georgia reversed. *Id.* at 843, 268 S.E.2d at 336. In holding that the South Carolina plaintiffs were not barred from access to the courts of Georgia for failure to obtain Georgia real estate licenses, the Court noted that the plaintiffs' sole contacts with the state of Georgia had been in furtherance of an isolated interstate real estate sales transaction, and no

public interest of the state was served by regulating such activities. *Id.* For the same reason, the lower court erred in barring GDI from access to the courts of South Carolina for lack of a South Carolina real estate license when it sought only to recover its fee in connection with an isolated real estate transaction.

In *Consul Limited v. Solide Enterprises, Inc.*, 802 F.2d 1143 (1986), an unlicensed North Carolina broker and its president brought an action against an Algerian citizen domiciled in California for certain real estate consulting and brokerage services rendered in connection with the sale of resorts in the Bahamas and in California. In reversing the trial court's order granting the Defendants' motion to dismiss for failure to state a cause of action because the plaintiffs had no California broker's licenses, the Ninth Circuit Court of Appeals observed:

> Whenever possible, courts interpret contractual language to uphold the validity of a contract. *See Walsh v. Schlecht*, 429 U.S. 401,408, 97 S.Ct. 679, 685, 50 L.Ed.2d 641 (1977) (citations omitted); *see also McArver v. Gerukos*, 265 N.C. 413, 144 S.E.2d 277, 282 (1965) (construing brokerage contract to make it legal despite participation of unlicensed party).
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> * * *
>
> There is nothing in the complaint to indicate that Wilson performed any regulated acts in California... The statutes refer to acts ***within the state***, and we hesitate to ignore this plain language.
>
> * * *
>
> All relevant authority suggests that licensing schemes like California's do not apply to out-of-state activities regarding in-state land. Many courts have found

real estate licensing statutes inapplicable to transactions in which brokers performed all of the regulated functions outside the state in which they were not licensed. Some of these courts rely on choice-of-law principles and refuse to apply the law of the state where the broker has no license, but has done little or no work. *E.g. Coldwell Banker & Co. v. Karlock*, 686 F.2d 596, 599 - 602 (7th Cir. 1982); *James v. Hiller*, 85 Ariz. 40, 330 P.2d 999, 1002 (1958); *Cochran v. Ellsworth*, 126 Cal. App.2d 429, 272 P.2d 804, 907 - 08 (1954). Others rely on the substantive ground that licensing statutes do not apply to out-of-state activities...This is true even if the land is located in the forum state. *See, e.g. Paulson* [*v. Shapiro*], 490 F.2d [1, 2 (7th Cir. 1973)].

The latter group of cases find no interference with the public policy of the state in which the broker is not licensed in allowing recovery for services performed out of state. *Coldwell Banker*, 686 F.2d at 60; *Sun Sales* [*Corp. v. Block Land, Inc.*], 456 F2d. [857, 863 (3d Cir. 1972)]; *Richland Development* [*Co. v. Staples*], 295 F.2d [122, 129 (5th Cir. 1961)], and have noted that the language "**in this state**" demonstrates that licensing statutes were "not intended to reach persons who render brokerage services outside" the state in question. *Lucas* [*v. Gulf & Western Industries*], 666 F.2d [800, 803 (3d Cir. 1981)]; *see Paulson*, 490 F.2d at 4; *Maas* [*v. Merrell Associates*], 682 S.W.2d [669, 771 (1985)].

Id. at 1149-50. [emphasis in original].

S.C. Code Ann. § 40-57-30(7) provides

"Commission" means the South Carolina Real Estate Commission and its members, who are charged by law with the responsibility of licensing or otherwise regulating the practice of real estate in the State of South Carolina.

Like the California statute in *Consul Ltd.,* then, S.C. Code Ann. § 40-57-30(7) restricts the South Carolina Real Estate Commission to licensing or otherwise regulating the practice of real estate in ***one*** state only.

In *Bennett v. MV Investors*, 799 S.W.2d 221 (1990), the Tennessee Court of Appeals, citing cases from Arizona, New Mexico, Florida, and Georgia, reversed the entry of summary judgment against a South Carolina plaintiff not in possession of a Tennessee real estate license on the basis that he was not barred from maintaining an action for a commission where all of his activities took place in the state of South Carolina.

In 2022, the United States District Court for the Eastern District of California recognized the defendants' "unlicensed broker" defense for what it was - an "attempt to skirt its payment obligation under the Agreement." *AFC Realty Capital, Inc. v. Dale*, 2022 WL 2193377. The Court granted summary judgment in favor of a New York citizen against two California citizens and their businesses for a commission on a real estate transaction involving property in California, notwithstanding the fact that the Plaintiff was not licensed as a real estate broker in California. *Id.* The Court in *AFC Realty* relied upon *Consul Ltd.* for the proposition that "all relevant authority suggests that licensing schemes like California's do not apply to out-of-state activities regarding in-state land." *Id.*

In an even more recent case, the United States District Court for the District of Colorado determined in *Freedom Factory, LLC v. Smee Homes, Inc.*, 2024 WL 3252153 (2024) that the

long arm of California's real estate regulatory scheme does not extend to activities conducted solely outside of the state, "particularly to void otherwise valid contracts."

It is undisputed that all of GDI's activities were conducted in the State of Indiana. Like the plaintiffs in *Keenan*, *Bennett*, *AFC Realty*, *Consul Ltd.*, and *Freedom Factory*, GDI's contacts with the state serving as the forum for the subject lawsuit were insufficient to subject it to any real estate licensing requirements. Like the defendant in *AFC Realty*, J&B's arguments on licensing are merely attempts to skirt payment obligations after GDI fully performed.

Having never engaged in the real estate business in South Carolina, the long arm of the South Carolina Real Estate Commission did not extend to GDI in the State of Indiana.

II. THE PLAIN LANGUAGE OF S.C. CODE ANN. § 40-57-10 ET SEQ. DOES NOT SUBJECT LIMITED LIABILITY COMPANIES TO LICENSING REQUIREMENTS. DID THE LOWER COURT ERR IN REFUSING TO INTERPRET THE TERMS OF THE STATUTE ACCORDING TO THEIR PLAIN MEANING?

a. Where a statute's language is unambiguous, a Court has no right to look for or impose another meaning.

The plain language of S.C. Code Ann. § 40-57-10 *et seq.* precludes the application of the Real Estate Code to GDI.

The cardinal rule of statutory interpretation is to ascertain the intent of the legislature. *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). The legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct.App.2004). If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and the Court has no right to look for or

impose another meaning. *Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund,* 363 S.C. 612, 623, 611 S.E.2d 297, 302 (Ct. App. 2005). When the terms of a statute are clear, the court must apply those terms according to their literal meaning. *Patterson v. State*, 359 S.C. 115, 119, 597 S.E.2d 150, 152 (2004).

S.C. Code Ann. § 40-57-10 provides that the purpose of the South Carolina Real Estate Commission is "to regulate the real estate industry so as to protect the public's interests when involved in real estate transactions." The term "the public" is not defined in either Chapter 1, "Professions and Occupations," or in Chapter 57, "Real Estate Brokers, Brokers-in-Charge, Associates, and Property Managers." It is plain, however, that the mandate of the Real Estate Commission is limited to those transactions involving "the public;" any real estate transaction not involving "the public" is outside of the Real Estate Commission's regulatory mandate.[4]

b. S.C. Code Ann. § 40-57-10 *et seq.* does not require business entities to obtain licensure to serve as real estate brokers in South Carolina.

Unlike "the public," "person" is defined in Title 40. S.C Code Ann. § 40-1-20(8) defines "person" to mean "an individual, partnership, or corporation." When used in Title 40, then, "person" is inclusive of a singular human being ("an individual"), an unincorporated business entity ("partnership"), *and* incorporated business entities ("corporation"). If the Legislature intends to permit or prohibit conduct for any and all possible arrangements of human persons engaged in business, it uses the term "person." However, where the Legislature chooses to use

[4] J&B, a Texas limited liability company which denies that it conducts business in South Carolina, thus requiring GDI to serve copies of the pleadings upon it through the Secretary of State pursuant to S.C. Code Ann. § 15-9-245, cannot claim to be a member of "the public" intended to be protected by S.C. Code Ann. § 40-57-10.

the terms "individual," "partnership," or "corporation" in Title 40, such usage must be construed to exclude other meanings (*expressio unius est exclusio alterius*).

S.C. Code Ann. § 40-57-20 provides:

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

[emphasis added].

The Legislature's use of "individual" in S.C. Code Ann. § 40-57-20 isn't a one-off choice or scrivener's error - in each definition in S.C. Code Ann.§ 40-57-30 connected with roles involved in the practice of real estate ("associate," "broker," "broker-in-charge," etc.), each such definition refers either directly to "an individual" or refers to the statutory definition for "licensee." "A licensee means ***an individual*** currently licensed under this chapter." S.C. Code Ann. § 40-57-30(23). [emphasis added].

Thus, given that an "individual" is distinct from a "person" in Title 40, and given further that S.C. Code Ann. § 40-57-20 explicitly addresses "an individual" rather than "a person," the plain language of the chapter obliges one to conclude that limited liability companies are exempt from the licensing requirements set forth in S.C. Code Ann. § 40-57-10 *et seq.*

This interpretation of S.C. Code Ann. § 40-57-10 *et seq.* was set forth in an attorney general's opinion published prior to the filing of this case. In Op. Att'y Gen. (S.C.A.G. Feb. 23, 2023), Assistant Attorney General Cydney Milling, with the approval of Solicitor General Robert D. Cook, concluded, "[G]iven the plain and ordinary meaning of the term ["corporations"] and reading it in conjunction with other provisions in chapter 57, we believe that while individuals

acting as real estate brokers, salespersons, and property managers are subject to the licensing requirements, as the law stands today, corporations are not."

GDI is a limited liability company rather than an individual contemplated by S.C. Code Ann. § 40-57-20. The statute is clear, and, therefore, the lower court was obliged to apply the terms of the statute according to their literal meaning. *Patterson,* 359 S.C. at 119, 597 S.E.2d at 152. The lower court refused to do so, and instead ruled that GDI was subject to the licensing requirements of S.C. Code Ann. § 40-57-10 *et seq*. Therefore, the lower court erred in refusing to apply the terms of S.C. Code Ann. § 40-57-10 *et seq*. according to their literal meaning.

CONCLUSION

Almost 150 years ago, the U.S. Supreme Court recognized a foundational constitutional principle: the laws of one State have no operation outside of its territory. *Pennoyer v. Neff*, 95 U.S. 714, 722, 24 L.Ed. 565 (1877). That principle has not changed. Likewise, it is a foundational principle of statutory interpretation that when a statute is unambiguous, a court must apply the statute as written.

Based upon the foregoing, GDI submits that the lower court should be reversed and this matter should be remanded for entry of summary judgment in favor of GDI.

Respectfully submitted,

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