

3. Bilbro served as an agent of Pettus throughout the negotiation of the contract and after the transaction's failure to close. [Order dated September 19, 2024] [Bilbro Aff. ¶ 6]
4. On November 30, 2020, Plaintiff and Pettus entered into a contract for the purchase and sale of the Property which was subsequently amended on July 18, 2022 by that certain First Amendment to Contract and Option to Purchase Real Estate (the "Contract").
5. The Contract, as amended, provided for closing as follows (Para. 3):

Provided that all conditions of closing have been either satisfied or waived, the closing of the sale and purchase of the Property (the "Closing") shall take place on or before the date (the "Closing Date") that is the earlier of (i) thirty (30) days after the receipt of the Required Approvals¹, or (ii) September 28, 2023.
6. The transaction has never closed.
7. Plaintiff alleged several actions by Bilbro in support of its claims. At the hearing, Plaintiff limited its positions on this issue, only arguing that the conduct of Bilbro that occurred prior to September 28, 2023 (the time period where both Plaintiff and Pettus agree that the Property was under contract) supported its claims:¹
 - a. While the Property was undisputably under contract, Bilbro advised Pettus concerning the terms of the contract and what would occur if closing did not occur by September 28, 2023. Plaintiff argued that an expiration or termination of the Contract was to Bilbro's benefit because he could list the Property for a higher amount, resulting in a higher commission earned.

¹ Plaintiff had previously asserted the following arguments for actions by Bilbro that took place after September 28, 2023 in support of its claims: (a) after the failure to close, Bilbro informed contractors that the Property was no longer under contract with Plaintiff [Complaint ¶ 41]; (b) after the failure to close, Bilbro asked Lancaster County Sewer and Water District to halt its approval process [Complaint ¶ 42]; (c) Bilbro interfered with approvals from Lancaster County government approvals throughout the course of the contract [Complaint ¶ 43]; and (d) after the failure to close, Bilbro procured the breach of the contract by relisting the Property for sale [Complaint ¶ 63]. If Plaintiff had included these alleged actions as a part of its argument, the Court's ruling on this motion would not have been altered.

- b. While the Property was undisputably under contract, Bilbro communicated with third parties concerning the Contract's status and the potential availability of the Property.
8. When the purchase failed to close by September 28, 2023, Bilbro had the belief that the Contract for the purchase of the Property "did not exist anymore" because Pettus's attorney Heath Myers had informed Bilbro that there was no longer a contract and based on his own independent beliefs. [Bilbro Depo. p. 161 l. 1-5, 12-14]
9. Bilbro never spoke with anyone concerning placing the Property back on the market prior to the expiration of the Contract. [Bilbro Depo. p. 163 l. 24 – p. 164 l. 2] The first of any such discussions with the Pettus family occurred in October 2023. [Deposition of S. Pettus, November 1, 2024, p. 111 l. 11 – p. 113 l. 13]
10. Bilbro activated the listing for the Property per instructions from Pettus (or her children) on October 20, 2023. [Bilbro Aff. ¶ 11]
11. While Bilbro did receive letters of intent from third-party potential purchasers following September 28, 2023, no negotiation of contract terms or entry into any purchase agreement ever occurred. Instead, the offers were received, and the offerors were told that a lawsuit had been filed and that no response would be made until after the lawsuit's conclusion. [Bilbro Depo. p. 173 l. 5 – p. 175 l. 4]

STANDARD OF REVIEW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by

‘showing’—that is, pointing out to the trial court—that there is an absence of evidence to support the nonmoving party’s case.” *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party “must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*.” *Id.* (emphasis in original); *Midland Mutual Life Ins. co. v. Darrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts showing that a true issue for fact finder determination exists. *See* Rule 56(e), SCRPC. “[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

CONCLUSIONS OF LAW

I. The Claim for Tortious Interference with Contractual Relations Fails

With a claim for tortious interference with contractual relations, the actions of Bilbro as an agent of Pettus are privileged and therefore non-actionable. “An action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties. Therefore, it does not protect a party to a contract from actions of the other party.” *Threlkeld v. Christoph*, 280 S.C. 225, 227 (Ct. App. 1984). In other words, a party to a contract, like Pettus, cannot tortiously interfere with her own contract. Like a party to the contract, an owner’s agent, acting on behalf of his principal, cannot tortiously interfere with his principal’s contract, as a matter of law. “[T]he actions of a principal’s agent are afforded a qualified privilege from liability for tortious interference with the principal’s contract.” *Dutch Fork Dev. Group II, LLC v. Sel Props., LLC*, 406 S.C. 596, 605 (2012). If an agent induces a breach of a contract by acting on behalf of the principal and within the scope of his employment or agency, then the inducement is privileged and not actionable. *Bradburn v. Colonial Stores, Inc.*, 273 S.C. 186, 188 (1979).

Based on the Order entered in this matter on September 19, 2024, it is the law of the case that Bilbro served as an agent of Pettus throughout the negotiation of the Contract and after its failure to close. *See* Order dated September 19, 2024. It was also undisputed at the hearing that Bilbro acted as Pettus's agent throughout the time periods involved, from the negotiations concerning the purchase of the Property, while the Property was under contract, and thereafter. Furthermore, this Court holds that Bilbro was acting within his scope as an agent during all of the alleged activities presented to the Court. The alleged actions of advising his principal concerning the transaction and informing third parties about the status of and potential availability of the Property are clearly within the scope of his agency.² As there is no evidence before this Court providing that Bilbro's actions were anything but at the direction of and in support of his principal, and with it already decided that Bilbro acted as Pettus's agent, this Court holds that Bilbro's actions are privileged and not actionable. Therefore, the cause of action for tortious interference with contractual relations fails.

Even if this privilege did not apply, the claim for tortious interference with contractual relations also fails because all elements to prove the claim are not met. "The elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3); his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193 (1985). A failure of proof of any single element means that the claim fails.

Bilbro did not procure a breach of contract, intentional or otherwise. In this action, the Court has ruled that Pettus did not breach the Contract with Plaintiff. Given that Pettus did not breach the Contract, the record does not support a finding that Bilbro procured a breach of the

² In addition, other alleged actions that took place before and/or after September 28, 2023, such as contacting builders as potential buyers of the property, contacting county authorities concerning approvals and permits, and the listing of the property are all actions within the normal scope of what a realtor does for his seller.

Contract. Furthermore, even if the Court did not rule in favor of Pettus, the Court finds, as a matter of law, that the actions of a real estate broker advising his client of the terms of a contract and informing third parties of the status of the Property and the potential availability of the Property does not equate to an intentional procurement of the breach of the contract.

Additionally, many of the purported tortious acts alleged by Plaintiff occurred after the expiration of the Contract. In dismissing Plaintiff's claims for breach of contract, this Court found that the Contract expired per its terms by no later than September 28, 2023. The order entered granting Pettus's motion provides the findings of this Court for the expiration of the contract, and the findings of said Order are incorporated herein. Therefore, no acts of Bilbro after September 28, 2023 support this claim, and thus the claim fails.

For the reasons set forth herein, summary judgment as to Plaintiff's claim for tortious interference with contractual relations is dismissed.

II. The Claim for Violation of the South Carolina Unfair Trade Practices Act Fails.

Plaintiff asserts a cause of action for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") based on the same actions by Bilbro that were alleged to support the claim for tortious interference with contractual relations.

The transaction at issue is for the purchase of a tract of land for development of a residential neighborhood. There is no contractual relationship between Bilbro and Plaintiff. Bilbro is the realtor for the seller. Plaintiff, the buyer, had its own real estate agent. In essence, this is a dispute concerning a breach of contract and whether the contract had expired.

SCUTPA declares "unfair or deceptive acts or practices in the conduct of any trade or commerce . . . unlawful." S.C. CODE ANN. § 39-5-20(a). "To recover in an action under the UTPA, the plaintiff must show (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff

suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

A deceptive act is any act which has a tendency to deceive. *DeBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). The actions of a realtor advising his client and informing third parties of the availability of the Property are not, as a matter of law, deceptive practices. Such actions do not cause the danger SCUTPA is intended to protect – misleading a consumer for the purposes of financial gain for the alleged wrongdoer. Likewise, activating a listing and taking offers do not rise to the level of deceptive acts; rather, activating a listing is a publicly open act. While it is clear that Plaintiff did not like that Pettus sought to move on from the failed closing, disliking the actions of others does not mean that such actions are unfair or deceptive.

Furthermore, conduct which only affects the parties to the transaction does not affect a public interest and provides no basis for a claim for violation of SCUTPA. *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994); *see also LaMotte v. The Punch Line of Columbia, Inc.*, 296 S.C. 66, 71, 370 S.E.2d 711, 713 (1988); *Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993) *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014) (SCUTPA is not available to address a private wrong because an unfair or deceptive act that only affected the parties to the transaction is beyond the scope of the statutory scheme); *Columbia E. Assoc. v. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259, 263 (Ct. App. 1989) (restating a deliberate or intentional breach of a valid contract, without more, does not constitute a violation of SCUTPA). "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace." *Noack Enters., Inc. v. Country Corner Interiors, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 349-50 (Ct. App. 1986).

This Court holds that the instant litigation is about a failed transaction for the purchase of a tract of real estate. This only affects the parties to this transaction, not the public at large.

The "public interest" element "may be satisfied by proof of facts demonstrating the potential for repetition of the defendant's actions...plaintiffs generally have shown repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence...or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47 (1996); *see also Skywaves I Corporation v. Branch Banking and Trust Company*, 423 S.C. 432 (2018) (holding that plaintiff could not maintain an action under SCUTPA absent evidence that defendant had engaged in violations in the past or that defendant's institutional procedures created a potential for repetition of unfair and deceptive acts).

Plaintiff attempted to show that the repetition element was satisfied because Bilbro had other transactions for tracts of undeveloped land that did not close. No facts were provided as to why said transactions did not close. That Bilbro represented other sellers in South Carolina and had transactions that failed to close does not establish that the transaction that is before the Court on the Pettus contract occurred in the past. Furthermore, no procedures of Bilbro's of any kind were presented to the Court. Bilbro is an individual realtor, not a company with procedures. For these reasons, the public interest element fails as well.

Advising a client concerning events related to their transaction and discussing the Property with third parties does not rise to the level of a deceptive act. This was a private commercial transaction that is beyond the statutory scheme of SCUTPA.

For these reasons, the claim of unfair trade practices fails as a matter of law and is dismissed.

CONCLUSION

For the reasons stated above, Bilbro's motion for summary judgment is hereby granted. Plaintiff's claims against Bilbro are hereby dismissed with prejudice, as a matter of law.

IT IS SO ORDERED.



Lancaster Common Pleas

Case Caption: Mts Clt, Llc VS Jane M. Pettus , defendant, et al

Case Number: 2023CP2901534

Type: Order/Summary Judgment

It is so ordered

Eugene C. Griffith, Jr. 2154

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Case Caption: Mts Clt, Llc VS Jane M. Pettus , defendant, et al

Document(s) Submitted: Order/Summary Judgment Order/Summary Judgment

Filed by or on behalf of: Eugene Griffith

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The following people were served electronically:

Daniel Joseph Ballou for Heath Myers

Lawrence Michael Hershon for Rob Bilbro

Jeremy Daniel Melville for Jane M. Pettus

James Kemper Patton for Mts Clt, Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Daniel Joseph Ballou for Jane M. Pettus