RECEIVED
Mar 12 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2025-002538

MTS CLT, LLC, ...Appellant,

v.

Jane M. Pettus, Trustee of the Joseph A. Pettus
and Jane M. Pettus Revocable Living Trust
u/i/d April 12, 2005, and Rob Bilbro, ...Respondents.

APPELLANT'S INITIAL BRIEF

J. Kemper Patton (SC Bar No. 105202)
James C. Adams, II (*Pro hac Vice,* NC Bar No. 18063)
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420
(336) 271-3117
(919) 882-2518
jadams@brookspierce.com
kpatton@brookspierce.com
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

1. **Did the Circuit Court erroneously overrule Judge Gibbons's denial of Ms. Pettus's first summary judgment motion?**

2. **Did the Circuit Court erroneously misinterpret the unambiguous language of the Contract by finding that the closing had to occur, if at all, by September 28, 2023?**

3. **Did the Circuit Court err by determining that the language of the Contract was not ambiguous with respect to whether the Contract provided for a drop-dead closing date of September 28, 2023?**

4. **Did the Circuit Court err in finding that Mr. Bilbro's actions as Ms. Pettus's purported agent were privileged and non-actionable with regard to a claim for tortious interference with contractual relations?**

5. **Did the Circuit Court err in finding that MTS did not prove the elements necessary for a tortious interference with contract claim against Mr. Bilbro?**

6. **Did the Circuit Court err in finding that MTS did not meet the elements of a claim under the UTPA against Mr. Bilbro?**

STATEMENT OF THE CASE

This is a dispute between Appellant MTS CLT, LLC ("MTS"), on the one hand, and Respondents Jane M. Pettus, Trustee of the Joseph A. Pettus and Jane M. Pettus Revocable Living Trust u/i/d April 12, 2005 ("Ms. Pettus") and Rob Bilbro ("Mr. Bilbro"), on the other.

In November 2020, MTS and Ms. Pettus entered into a contract (the "Contract") for Ms. Pettus to sell her property located at PINS 0003-00-052.00 and PINS 0003-00-052.06 (the "Pettus Property") to MTS. (Compl., Ex. A, ("Contract")). MTS planned to develop the Pettus Property into single-family residential lots (the "Development"). (First Affidavit of Brandon Pridemore, ¶ 6 ("First Pridemore Aff."); Affidavit of Allen Nason, ¶ 5 ("Nason Aff.")). Ms. Pettus retained Mr. Bilbro to serve as her real estate broker for the sale of the Pettus Property. (Affidavit of Rob Bilbro, ¶¶ 4–6 ("Bilbro Aff.")). The Parties needed various governmental approvals and permits (the "Required Approvals") to complete the Development. (First Pridemore Aff., ¶ 7; Nason Aff., ¶ 5). As a result, the Contract provided that MTS "shall use commercially reasonable efforts to obtain [Required Approvals]" and Ms. Pettus must "cooperate with [MTS] in obtaining such approvals at no cost to [Ms. Pettus]." (Contract, § 13(c)).

MTS initiated this action after Ms. Pettus purported to terminate the Contract and, through Mr. Bilbro, re-listed the Pettus Property for sale at an asking price almost double the tentative purchase price of the Contract. MTS filed a lis pendens on November 3, 2023 (Lis Pendens), and MTS filed the Complaint on November 22, 2023, alleging: (1) Ms. Pettus breached the Contract by purporting to terminate the Contract and repudiating her obligation to obtain Required Approvals (Compl., ¶¶ 49–54); (2) MTS is entitled to an award of specific performance of the Contract (Compl., ¶¶ 55–59); (3) Mr. Bilbro tortiously interfered with the Contract (Compl., ¶¶ 60–66); and (4) Mr. Bilbro committed unfair trade practices in violation of the South Carolina

Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.* ("UTPA"). (Compl., ¶¶ 67–71). Ms. Pettus filed Counterclaims alleging MTS breached the Contract by failing to close on or before September 28, 2023, and seeking declaratory judgment regarding the parties' rights and obligations under the Contract. (Counterclaims, ¶¶ 68, 75–76).

On March 27, 2024, Ms. Pettus filed for summary judgment arguing that "the Contract required that [MTS] close on the purchase of the Property by no later than September 28, 2023." (First Pettus Summary Judgment Motion, p. 3). On July 9, 2024, the Honorable Circuit Court Judge Brian M. Gibbons denied that motion. (Order denying First Pettus Summary Judgment Motion). Thereafter, on August 27, 2024, Judge Gibbons heard Ms. Pettus and Mr. Bilbro's joint motion for protective order concerning whether communications involving Mr. Bilbro and Ms. Pettus's attorneys were protected from disclosure on various privilege grounds. (Defendants' Joint Motion for Protective Order, pp. 1–2). On September 19, 2024, Judge Gibbons granted that motion. (Order Granting Defendants' Joint Motion for Protection).

On July 28, 2025, Ms. Pettus filed a second summary judgment motion seeking the same relief as her first motion on the same theory as her first summary judgment motion. (Second Pettus Summary Judgment Motion, p. 2). MTS filed its own summary judgment motion based on both the unambiguous language of the Contract, as well as the Parties' intentions when entering the Contract. (MTS Summary Judgment Motion, p. 5). Mr. Bilbro also filed a summary judgment motion, arguing that MTS's claims for tortious interference with contractual relations claim and violation of the UTPA failed. (Bilbro Summary Judgment Motion, pp. 1–2).

The Circuit Court held a hearing on the summary judgment motions on September 23, 2025. With respect to Ms. Pettus, MTS argued the Circuit Court should rule in its favor because: (1) Ms. Pettus was already denied summary judgment on the same issue, argument, and evidence;

(2) the unambiguous language of the Contract provides that the Contract remains in effect because a condition precedent to MTS's obligation to close—receipt of Required Approvals—had not been satisfied by September 28, 2023; and (3) if the Contract was ambiguous, the only available evidence of the parties' intentions supports the interpretation that receipt of Required Approvals was a precondition to closing, and therefore, September 28, 2023 was not a drop-dead closing date. (*See* MTS Br. in Support of its Summary Judgment Motion and in Opposition to Ms. Pettus's Second Summary Judgment Motion, p. 13; Transcript of Second Summary Judgment Hearing, 3:9–4:3). With respect to Mr. Bilbro's summary judgment motion, MTS argued there was sufficient evidence to create a genuine issue of material fact concerning whether Mr. Bilbro tortiously interfered with the Contract and violated the UTPA. (*See* MTS Br. in Opposition to Bilbro Summary Judgment Motion, p. 13).

On December 4, 2025, the Circuit Court issued two orders: one granting Ms. Pettus's second summary judgment motion and denying MTS's summary judgment motion (Order on Second Pettus Summary Judgment Motion, p. 1), and another granting Mr. Bilbro's summary judgment motion (Order on Bilbro Summary Judgment Motion, p. 9). MTS moved the Circuit Court to reconsider both orders, and on December 18, 2025, MTS's reconsideration motions were denied. (MTS Motion to Reconsider Order on Second Pettus Summary Judgment Motion, p. 1; MTS Motion to Reconsider Order on Bilbro Summary Judgment Motion, p. 1; Order on MTS Reconsideration Motions, pp. 1–2). MTS timely filed and served its notice of appeal as to both orders on December 19, 2025. (MTS Notice of Appeal, p. 1).

On appeal, MTS argues with respect to Ms. Pettus that Judge Gibbons's July 2024 order left the Circuit Court with only two options regarding MTS's obligations to close on the Contract: (1) the Contract language is unambiguous, and MTS did not have to close by September 28, 2023;

or (2) the Contract language is, at best, ambiguous with respect to whether September 28, 2023 was the drop-dead closing date under the Contract. The Circuit Court erroneously overruled Judge Gibbons's order by ruling that the Contract unambiguously provided a drop-dead closing date of September 28, 2023. If, however, this Court finds the Circuit Court did not overrule Judge Gibbons, the Circuit Court still erred by misinterpreting the unambiguous language of the Contract in favor of Ms. Pettus, or alternatively, by finding that the Contract was not ambiguous regarding whether there was a drop-dead closing date of September 28, 2023. With respect to Mr. Bilbro, MTS argues that the Circuit Court erroneously ruled that MTS did not submit evidence supporting its tortious interference with contractual relations and UTPA claims.

This Court has jurisdiction to hear this appeal pursuant to S.C. Code Ann. § 14-3-330. *See Thornton v. S.C. Elec. & Gas Corp.,* 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011) ("An order 'involves the merits' when it finally determines a substantial matter forming the whole or a part of some cause of action or defense.").

FACTUAL BACKGROUND

MTS is involved in the land acquisition and development industry in South Carolina and North Carolina. (*See* Nason Aff., ¶¶ 3–5). Mr. Bilbro has been a licensed South Carolina real estate broker since approximately 2015, and he is currently affiliated with eXp Realty. (Deposition of Rob Bilbro, 14:15–15:6 ("Bilbro Dep.")). Mr. Bilbro has sold real estate in Lancaster County, South Carolina to property developers, although he does not represent developers of real property. (*Id.* at 15:21–17:7). In June 2019, Ms. Pettus retained Mr. Bilbro to sell the Pettus Property, and Mr. Bilbro began marketing the Pettus Property. (*Id.* at 21:20–22:17, 27:13–14, Ex. 1, Listing Agreement, BILBRO_000478). Ms. Pettus has always maintained a listing agreement with Mr. Bilbro since retaining him. (*Id.* at 22:14–22, Ex. 1, Listing Agreement, BILBRO_000478 to

BILBRO_000482). Mr. Bilbro will also receive a commission on the sale of the Pettus Property. (*Id.* at 24:3–11; Ex. 1, Listing Agreement, BILBRO_000478 to BILBRO_000482).

I. MTS and Ms. Pettus contract for MTS to purchase the Pettus Property.

In October 2020, MTS expressed interest in purchasing the Pettus Property to develop it and an adjoining property into single-family residential lots. (First Pridemore Aff., ¶ 6; Nason Aff., ¶ 5; Bilbro Dep., Ex. 3, Letter of Intent, BILBRO_000348). On October 13, 2020, MTS and Ms. Pettus (collectively, the "Parties") executed a letter of intent ("LOI") setting forth the terms for MTS to purchase the Pettus Property. (Bilbro Dep., Ex. 3, Letter of Intent, BILBRO_000348). The Parties understood that they needed to obtain the Required Approvals before MTS could begin and complete the Development. (Nason Aff., ¶ 5; *see* First Pridemore Aff., ¶ 7). Accordingly, the LOI provided that:

> The Purchase Price shall be paid so long as the preconditions of [MTS] being able to obtain all government authorizations and permits to construct detached residential dwellings are satisfied. This necessarily includes active cooperation of [Ms. Pettus] with [MTS] to make whatever applications are necessary to obtain entitlement to include obtaining all approvals for municipal water and sewer services, zoning, and Construction Drawings ("CDs") for single-family product.

(Bilbro Dep., Ex. 3., Letter of Intent, p. BILBRO_000347). Thus, the Parties knew when executing the LOI that receipt of Required Approvals was a condition precedent to MTS's obligation to close, and Ms. Pettus was required to assist MTS to obtain the Required Approvals. (*Id.*).

Thereafter, in November 2020, the Parties entered the Contract for MTS to purchase the Pettus Property. (Contract, pp. 1, 13). The Contract required MTS to pay a "Purchase Price" at the closing. (Nason Aff., ¶¶ 14–15; Contract, §§ 2, 14(c)). The "Purchase Price" was tentatively set at $3,350,000.00. (Contract, § 2). However, the "Purchase Price" could not be determined with finality until all Required Approvals were obtained because it could change depending on the number of lots Lancaster County approved in the final plat. (Nason Aff., ¶¶ 14–15; Contract, §§

2, 14(c)). Accordingly, the Parties drafted the Contract to provide that MTS's obligation to close was conditioned upon the Parties obtaining all Required Approvals:

> ***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 Approvals, or (ii) Five Hundred Forty (540) days after the Effective Date. The Closing shall take place at an acceptable location mutually agreed upon by the parties. ***Seller shall, as a precondition to closing, deliver exclusive possession of the Property to Buyer on the Closing Date, including all declarant, entitlement, final development plan approvals, final construction plan approvals, permit, and all other development authorities or other Property ownership rights of Seller, including those achieved by any jointly filed zoning and entitlement applications or requests.***

(Contract, § 8 (emphasis added); Nason Aff., ¶¶ 6–8).

MTS needed Ms. Pettus's authorization to seek many of the Required Approvals in her name, including applying to the Lancaster County Planning Commission ("Lancaster County Planning") for approval of a preliminary plat application and construction drawings. (First Pridemore Aff., ¶¶ 7–8, 23). Consequently, the Contract provided that Ms. Pettus "agrees to cooperate with [MTS] in obtaining such approvals at no cost to [Ms. Pettus]." (Contract, §§ 5(a), 13(c)). MTS was responsible for obtaining all approvals at its sole cost; Ms. Pettus's obligation as owner of the property was simply to sign applications for Required Approvals when requested by MTS. (*Id.*). These obligations would run until Required Approvals were obtained, and MTS could close on the purchase of the Pettus Property or elected to terminate the Contract. (*Id.* at §§ 5(a), 8, & 13(a)–(c)).

II. MTS and Ms. Pettus seek Required Approvals.

In or around December 2020, MTS's parental affiliate, Eastwood Construction Partners, LLC, retained R. Joe Harris & Associates ("R.J. Harris") to provide civil engineering and land surveying services to MTS for the Development. (First Pridemore Aff., ¶ 4). After obtaining

rezoning approval for the Haltom Property in late August 2021, the Parties sought approval of a preliminary plat application for the combined development of the Pettus Property and the Haltom Property. (*See* First Pridemore Aff., ¶¶ 7–8). Preliminary plat approval was integral to the Development—it could only be submitted to Lancaster County Planning with Ms. Pettus's authorization, and the Contract required Ms. Pettus to authorize the submittal. (*Id.* at ¶¶ 8–9; Contract, § 13(c)). On September 29, 2021, the Parties finalized a preliminary plat application for submission to Lancaster County Planning. (*Id.* at ¶¶ 8–9, Ex. 2, Preliminary Plat Application, MTS-0000614; *See* Bilbro Dep. 59:1–11).

Prior to submitting the preliminary plat application, however, Lancaster County Planning also required submittal of a Sketch Plan, both for itself and for the Lancaster County Water and Sewer District ("LCWSD"). (First Pridemore Aff., ¶¶ 9–10). In or around November 2021, MTS and R.J. Harris learned that the LCWSD had begun rejecting plans that depended on downstream, unfinished sewer systems. (*Id.* at ¶ 10). Consequently, the LCWSD informed R.J. Harris and MTS that it was rejecting their Sketch Plan because the Development relied on the completion of a downstream sewer system at a project that was still in development known as the "Suncrest Project." (*Id.*).

In or around December 2021, Lancaster County Planning informed R.J. Harris and MTS that it was likewise refusing to approve the preliminary plat application due to LCWSD's rejection of the Sketch Plan. (*Id.* at ¶ 11). Mr. Bilbro was notified of this development, and Mr. Bilbro confirmed this with representatives of both Lancaster County Planning and the LCWSD. (Bilbro Dep. 73:5–75:3). Mr. Bilbro understood that the preliminary plat application would be delayed indefinitely, and he communicated this development to Ms. Pettus and her son, Scott Pettus. (*Id.* at 77:22–78:1, 84:11–20). Thereafter, the Parties agreed to await the completion of the Suncrest

Project before resubmitting the preliminary plat application because the Development could not proceed until the Suncrest Project was completed. (First Pridemore Aff., ¶¶ 11–12).

III. MTS and Ms. Pettus negotiate the Amendment to the Contract.

On July 18, 2022, while awaiting the completion of the Suncrest Project, the Parties executed an amendment to the Contract (the "Amendment"). (Compl., Ex. B ("Amendment")). MTS agreed to the Amendment to maintain a strong and cooperative relationship with Ms. Pettus. (30(b)(6) Deposition of MTS, 146:22–147:4 ("Nason Dep.")). When negotiating the Amendment, MTS's General Counsel, Allen Nason, and Ms. Pettus's new counsel, Heath Myers, understood that the Amendment would not alter the original intent and conditions for the closing of the Contract—that MTS's obligation to close was still conditioned on all Required Approvals being obtained and delivered to MTS. (Nason Aff., ¶¶ 11–13).

The Amendment made two changes. First, it revised Section 4 of the Contract to increase both the "Deposits" and the Purchase Price by $250,000, requiring MTS to pay the additional deposit upon execution of the Amendment. (Amendment, § 2). Second, it revised Section 8 of the Contract concerning the "Closing" by deleting the phrase "Five Hundred Forty (540) days after the Effective Date" and replacing it with "September 28, 2023." (Amendment, § 3). Accordingly, the amended "Closing" section stated:

> ***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 Approvals, or (ii) September 28, 2023. The Closing shall take place at an acceptable location mutually agreed upon by the parties. ***Seller shall, as a precondition to closing, deliver exclusive possession of the Property to Buyer on the Closing Date, including all declarant, entitlement, final development plan approvals, final construction plan approvals, permit, and all other development authorities or other Property ownership rights of Seller, including those achieved by any jointly filed zoning and entitlement applications or requests***.

(Amendment, § 3 (emphasis added)). Crucially, the clauses describing the preconditions to closing in the first sentence and the last sentence were not altered; Ms. Pettus's obligation to deliver Required Approvals was always a precondition to closing in the Parties' agreement. (Contract, § 8; Amendment, § 3; Nason Aff., ¶¶ 7–8, 13, 20–21).

IV. The Parties renew their efforts to obtain approval of the preliminary plat application.

On or around February 10, 2023, Ms. Pettus authorized MTS to resubmit the preliminary plat application after R.J. Harris learned that the Suncrest Project was nearing completion. (First Pridemore Aff., ¶ 14). On or around March 9, 2023, Lancaster County Planning disapproved the submission because the Suncrest Project was not yet finished. (*Id.* at ¶¶ 14–15). In response, the Parties jointly presented the preliminary plat application to Lancaster County Planning for approval during an in-person hearing held on April 18, 2023. (*Id.* at ¶¶ 15–16). R.J. Harris's representative, Brandon Pridemore, attended the hearing alongside Mr. Bilbro and Scott Pettus. (*Id*.; Bilbro Dep. 127:17–22). The preliminary plat application was granted conditional approval at the hearing; thereafter, it was granted final approval on or around July 13, 2023. (First Pridemore Aff., ¶¶ 17–18). R.J. Harris began working towards the next Required Approval—construction drawings. (*Id.*).

In early July 2023, Mr. Bilbro suggested that the Parties negotiate a second amendment to the Contract. (Bilbro Dep. 132:4–19). Mr. Bilbro purportedly believed that the Parties were coming to the end of a "drop-dead period" whereby they were required to close no later than September 28, 2023. (*Id*.; *see* Bilbro Aff., ¶¶ 9, 14). This was Mr. Bilbro's own interpretation of the Contract, without input from any third-party. (Bilbro Dep. 200:18–201–2). Mr. Bilbro advised Ms. Pettus of this interpretation, telling her "that the period was coming to an end." (*Id.* at 132:2–133:1).[1] Mr.

[1] At this time, Mr. Bilbro also began discussing re-listing the Pettus Property on the market, despite that the Parties were under Contract. (Bilbro Interrogatory Resp., ¶ 15).

Bilbro's advice to Ms. Pettus was deceptive because MTS's obligation to close was conditioned on receipt of all Required Approvals. (*See* Contract, § 8; Amendment, § 3). While a second amendment was not necessary given that Required Approvals had not been obtained, MTS, still wanting to maintain a strong and cooperative relationship with Ms. Pettus, agreed to negotiate a second amendment. (*See* Nason Dep. 146:22–147:4).

Importantly, during the negotiation on the second amendment, Ms. Pettus sought to amend Section 8 to alter the condition precedent to MTS's obligation to close and create a drop-dead closing date. (Deposition of Heath Myers, Ex. 45, MTS-0005438 ("Myers Dep."). Moreover, during these negotiations, Mr. Bilbro informed a third-party developer, without solicitation, that the Pettus Property may soon become available. (Bilbro Dep. 167:6–168:19, Ex. 12, Bilbro August 2023 email with developer, BILBRO_001210).[2] Mr. Bilbro did so despite that the Parties were undisputedly under contract, and the Parties were negotiating a second amendment to the Contract. Ultimately, the Parties' negotiations on a second amendment to the Contract were unsuccessful.

V. Ms. Pettus and Mr. Bilbro unlawfully sabotage the Contract.

On or around August 25, 2023, Mr. Pridemore informed the Parties and Mr. Bilbro that he projected they would obtain the last of the Required Approvals in June-July 2024. (First Pridemore Aff., ¶ 19, Ex. 7, Pridemore August 2023 email to Parties, MTS-0001410). Accordingly, the Parties and Mr. Bilbro understood that the event triggering MTS's obligation to close would not arise until June-July 2024, at the earliest. (*See id.*). Despite this, just prior to September 28, 2023, Mr. Bilbro inquired with a representative of Lancaster County Planning regarding whether another

[2] Exhibit 12 to Mr. Bilbro's deposition was originally marked "Attorneys' Eyes Only." It has been redacted for filing, upon agreeance of counsel.

party (i.e., other than MTS) could modify and proceed with MTS's preliminary plat approval seeing as it was owned by Ms. Pettus. (Bilbro Dep. 46:22–47:17).

Thereafter, on September 28, 2023, Ms. Pettus purportedly sought to close on the Contract, despite knowing the Required Approvals had not yet been obtained. (First Affidavit of Ms. Pettus., ¶¶ 10–16 ("First Pettus Aff."); Bilbro Dep. 160:9–20). Ms. Pettus could not, and did not, deliver possession of all Required Approvals necessary for the Development, because many Required Approvals did not yet exist. (First Pridemore Aff., ¶¶ 22, 34–36; Nason Aff., ¶¶ 23–24). Indeed, Mr. Bilbro testified that, to his knowledge, Lancaster County Planning had not issued "final development plan approvals" or "final construction plan approvals" by September 28, 2023. (Bilbro Dep. 160:9–20). Since a precondition to MTS's obligation to close was not satisfied, the Parties could not, and did not, close on the Contract, and the Contract remained in effect thereafter. (Nason Aff., ¶ 23; First Pridemore Aff., ¶ 36; Contract, § 8, Amendment, § 3).

In her affidavit submitted to the Court on March 27, 2024, Ms. Pettus claimed MTS breached the Contract by failing to close on or before September 28, 2023, and therefore, she purported to terminate the Contract due to the breach. (First Pettus Aff., ¶¶ 17, 19). Ms. Pettus claimed she was "ready, willing and able" to close by September 28, 2023. (*Id.* at ¶ 11). She further testified that all of the "Seller Closing Documents" were executed by her and are attached to her Affidavit as Exhibit C. (*Id.* at ¶¶ 13–14, Ex. C, Seller Closing Documents). Notably absent from Ms. Pettus's Affidavit, in addition to the Required Approvals, was the closing statement required by Section 14(b) of the Contract. (*See id.* at Ex. C, Seller Closing Documents, Seller Closing Documents; Contract, § 14(b)). The clear reason for this failure is that the Purchase Price, as defined in Section 2 of the Contract, was not determinable as of September 28, 2023, a fact confirmed by the Code Section 12-24-70 Affidavit executed by Ms. Pettus that was blank as to the

purchase price. (First Pettus Aff., Ex. C, Seller Closing Documents, p. 00008; Contract, § 2). The Contract's Purchase Price can only be determined after the Required Approvals establish the number of lots in the Development. (Nason Aff., ¶¶ 14–15; Contract, § 2). Ms. Pettus's attorney for the negotiation of the Amendment, Mr. Myers, agreed, testifying as follows:

> Q. The language in the contract requires that the gross anticipated – or the anticipated gross purchase price is based on a minimum of 113 approved lots, correct?
>
> A. Correct.
>
> Q. So it requires knowing how many lots are approved to know the purchase price, correct?
>
> A. Correct.

(Myers Dep. 53:5–12).

When the parties did not close on September 28, 2023, Ms. Pettus claimed that MTS "defaulted under the [Contract] for failure to close on the purchase of the Pettus Property by the Closing Date." (First Pettus Aff., Ex. D, Pettus Default Letter, p. 2). Thereafter, Ms. Pettus purported to terminate the Contract, and Mr. Bilbro re-listed the Pettus Property for $6,000,000—nearly double the tentative purchase price of the Contract—despite the fact that the Contract was still in effect. (*Id.* at Ex. E, Pettus Termination Letter, pp. 1–2; Bilbro Aff., ¶ 11; Contract, §§ 2, 8; Amendment, § 3; First Pridemore Aff., ¶ 47). Ms. Pettus's actions constituted a breach of the Contract—MTS had not defaulted on its obligations, and accordingly, and Ms. Pettus had no right to unilaterally terminate the Contract and market the Pettus Property while the Contract was in effect. (*See* Contract, §§ 2–3, 8; Amendment, § 3).

MTS continued complying with its obligations and sought Required Approvals notwithstanding Ms. Pettus's attempt to purportedly close on the Contract. (*See* First Pridemore Aff., ¶ 23). On or around November 3, 2023, R.J. Harris submitted the construction drawings to

Lancaster County Planning. (*Id.*). The Development could not proceed without Lancaster County Planning's approval of the construction drawings, and Lancaster County Planning would not review the construction drawings without Ms. Pettus's authorization. (*Id*.). Ms. Pettus refused to authorize the submission of the construction drawings, in breach of her contractual obligations to cooperate with MTS to obtain Required Approvals and purported to terminate the Contract. (*See id.*; Nason Aff., ¶ 23; First Pettus Aff., Ex. E, Pettus Termination Letter, pp. 1–2; Contract, § 13(c)). On or around November 9, 2023, Lancaster County Planning informed R.J. Harris and MTS that it would not review construction drawings because Ms. Pettus had not provided the required authorization. (First Pridemore Aff., ¶ 24, Ex. 9, Pridemore December 2023 email from Lancaster County Planning, MTS-0001448).

Since November 2023, Ms. Pettus has continued to refuse her authorization for Lancaster County Planning to review the construction drawings, in ongoing breach of the Contract. (First Pridemore Aff., ¶¶ 23, 25; Nason Aff., ¶ 23; Contract, §§ 5(a), 13(c)). Ms. Pettus's refusal is a breach of her obligations to cooperate with MTS in accordance with Sections 5(a) and 13(c) of the Contract. (Contract, §§ 5(a), 13(c)). Moreover, Mr. Bilbro's actions constitute unlawful interference with the Contract, as well as a violation of the UTPA.

STANDARD OF REVIEW

"Appellate courts review summary judgment determinations using the same standard as the circuit court." *Braden's Folly, LLC v. City of Folly Beach*, 439 S.C. 171, 190, 886 S.E.2d 674, 684 (2023). "Rule 56(c) of the South Carolina Rules of Civil Procedure provides that the moving party is entitled to summary judgment 'if the evidence before the court shows 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.'" *Isaac v. Onions*, 445 S.C. 525, 532–33, 915 S.E.2d 492, 496 (2025) (quoting Rule 56,

SCRCP). "In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party." *Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997).

ARGUMENT

The Circuit Court's orders granting Ms. Pettus summary judgment, denying MTS summary judgment, and granting Mr. Bilbro summary judgment were erroneous. As a threshold issue, Judge Gibbons's July 2024 order denying Ms. Pettus's first summary judgment motion left the Circuit Court only two options regarding the Parties' closing obligations: (1) the Contract language is unambiguous, and MTS did not have to close by September 28, 2023; or (2) the Contract language is, at best, ambiguous concerning whether the Contract provided a drop-dead closing date of September 28, 2023. Nevertheless, the Circuit Court erroneously overruled Judge Gibbons's order and found that the Contract language unambiguously created a drop-dead closing date of September 28, 2023. Additionally, the Circuit Court erred by misinterpreting the unambiguous Contract language in Ms. Pettus's favor, or alternatively, by finding that the Contract was not ambiguous regarding whether there was a drop-dead closing date of September 28, 2023.

With respect to Mr. Bilbro, the Circuit Court erroneously ruled that Mr. Bilbro was shielded from liability for tortiously interfering with the Contract due to Judge Gibbons's September 2024 order finding him to be Ms. Pettus's agent with respect to communications with Ms. Pettus's attorneys. Moreover, the Circuit Court erred by finding that MTS did not submit evidence supporting its tortious interference with contractual relations and UTPA claims.

I. The Circuit Court erred by overruling Judge Gibbons's denial of Ms. Pettus's first summary judgment motion.

"It is axiomatic ... a Circuit Judge does not have the power to reverse the ruling of another Circuit Judge." *Tisdale v. Am. Life Ins. Co.*, 216 S.C. 10, 13, 56 S.E.2d 580, 581 (S.C. 1949). "If

any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." Rule 43(l), SCRCP.

These principles are consistent with South Carolina case law regarding renewed summary judgment motions. A party can renew a summary judgment motion, but only if they present new evidence in support of that motion. *See e.g., Crosswell Enters., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) ("The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment ***based on matters not involved in the decision on the first motion***. (emphasis added)); *Dorrell v. S.C. Dep't of Transp.*, 361 S.C. 312, 325, 605 S.E.2d 12, 18 (2004) ("That a different trial judge previously denied the motion did not preclude APAC from renewing its motion ***once new evidence came to light.***" (emphasis added)); *Baber v. Greenville Cnty.*, 327 S.C. 31, 40, 488 S.E.2d 314, 319 (1997) ("Thus, the trial judge retained jurisdiction to rule, ***after the presentation of the evidence***, on the same issue previously the subject of a pre-trial summary judgment motion." (emphasis added)). *Dreier v. Advanced Flooring & Design Div. of ISI, LLC*, No. 2022-000016, 2024 WL 5415792, at *4 (S.C. Ct. App. Feb. 19, 2025) (unpublished) ("Second, we hold ***Judge Price could not grant a second motion for summary judgment on the issue of the enforceability of the indemnity provisions because Judge DeBerry had denied summary judgment on the same issue based on the same arguments and the Subcontractors presented no new evidence to support the second motion***." (emphasis added)). Without new evidence, the moving party is asking one circuit judge to overrule the other.

The Circuit Court erroneously overruled Judge Gibbons's July 2024 order by granting Ms. Pettus summary judgment and finding the Contract unambiguously required the Parties to close by no later than September 28, 2023.

A. Ms. Pettus's first summary judgment motion was premised on the argument that the Contract required MTS to close on the purchase of the Pettus Property by no later than September 28, 2023.

Ms. Pettus filed her first summary judgment motion on March 27, 2024 (the "First Motion") asking the court to award her summary judgment on all claims existing between her and MTS, arguing the Contract unambiguously required MTS to close on the purchase of her property by no later than September 28, 2023:

> The determinative issues in this case are exclusively matters of law and do not involve any questions of material fact. ***The determinative issues turn on the language of the Contract***.
>
> Ms. Pettus is entitled to summary judgment as to Developer's claims and Ms. Pettus' counterclaims because (a) the Contract does not require that Ms. Pettus apply for, seek, or obtain any governmental approvals, permits, or other entitlements relating to Developer's intended development and use of the Property and (b) ***the Contract required that Developer close on the purchase of the Property by no later than September 28, 2023***.

(First Pettus Summary Judgment Motion, p. 3). Ms. Pettus did not rely on any facts or evidence in support of the First Motion other than the language of the Contract, and she could not, because courts do not look beyond the four corners of a contract to discern the parties' intentions when that contract is unambiguous. *See Silver v. Aabstract Pools & Spas, Inc.,* 376 S.C. 585, 592, 658 S.E.2d 539, 543 (Ct. App. 2008) ("Because we find this contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions."). Ms. Pettus's own memorandum in support of the First Motion argued that "[t]his case does not present any disputed issue of material fact and its disposition turns entirely on the clear and unambiguous terms of the [Contract]." (Memorandum in Support of First Pettus Motion, p. 2). Ms. Pettus also confirmed this during oral argument:

> That's really what they're trying to say. So just because there might be some lack of clarity in portions of the contract, does not impact the issue before the Court. ***There is no ambiguity***. There's no language which does what they're -- they're the ones

> alleging that this does something other than what it says and they have no support for that. ***And all I'm basing it on is the fact that, as it reads and as the flow of the timeline works into this, that's the only logical interpretation based on the language is what we're setting forth. And so that's why I truly believe this is not ambiguous***. And I would encourage -- I know it's easy to get overwhelmed by a lot of things being thrown, but hopefully the briefs will help. That's where we stand.

(Transcript on First Summary Judgment Hearing, pp. 53:23–54:13).

On July 9, 2024, Judge Gibbons denied the First Motion. (Order denying First Pettus Summary Judgment Motion). Judge Gibbons did not specify the basis for denying the First Motion, but the basis could only be that either: (1) the Contract was unambiguous, but Ms. Pettus was not entitled to judgment as a matter of law (i.e., MTS should prevail); or (2) the Contract was ambiguous, and accordingly, there was a genuine issue of material fact regarding the parties' closing obligations.[3] Either way, Judge Gibbons found that the Contract did not contain unambiguous language entitling Ms. Pettus to summary judgment on all claims.

B. Ms. Pettus seeks summary judgment a second time based on the same argument, without offering new evidence.

On July 28, 2025, Ms. Pettus filed her second summary judgment motion (the "Second Motion") seeking the same relief on the same grounds as the First Motion—the Contract unambiguously required MTS to close on the purchase of the Pettus Property by no later than September 28, 2023. (Second Pettus Summary Judgment Motion, pp. 2–3). Indeed, in her memorandum in support of the Second Motion, Pettus argued:

> The dispositive issue presented is as simple and straightforward as it appears. ***This case does not present any disputed issue of material fact and its disposition turns entirely on the clear and unambiguous terms of the written contract between the parties***. ***The express language of the Contract establishes that closing shall occur by no later than September 28, 2023*** and that time was of the essence. Developer did not close by September 28, 2023 (or during the additional 30 day grace period

[3] In the hearing on Defendants' joint motion for protective order, Judge Gibbons stated that he denied the First Motion because he found there was a genuine issue of material fact. (Transcript on Joint Motion for Protective Order Hearing, pp. 5:12–6:10).

> extended by Pettus thereafter), and the Contract has been terminated. Based on the foregoing, Pettus is entitled to summary judgment as a matter of law.

(Memorandum in Support of Second Pettus Summary Judgment Motion., pp. 2–3 (emphasis added)). Pettus did not rely on any new evidence in support of the Second Motion, and she could not. *See Silver,* 376 S.C. at 592, 658 S.E.2d at 543. Consequently, the Second Motion asked this Court to overrule Judge Gibbons's decision and find, without new evidence, that Pettus was entitled to judgment as a matter of law.

C. The Circuit Court erroneously overruled Judge Gibbons's order.

On December 4, 2025, the Court granted the Second Motion and awarded Pettus summary judgment, finding that, "[t]he plain and unambiguous language of the Contract establishes that if [MTS] was going to close on the Property, [MTS] was required to close by September 28, 2023." (Order on Second Pettus Summary Judgment Motion, p. 7). In particular, the Circuit Court found that:

> [MTS]'s breach of contract claim against Pettus distills down to the single issue of whether the Contract language includes a material term (a time window for performance—the Closing Date) such that [MTS] was required to close on the purchase of the Property, if at all, by September 28, 2023. The Court finds that it does and that [MTS] was required to close, if at all, by September 28, 2023. Accordingly, Pettus is entitled to summary judgment as a matter of law.

(*Id*. at pp. 5–6). In short, Ms. Pettus presented the same motion, argument, and evidence to the Circuit Court that Judge Gibbons previously denied, yet the Circuit Court granted the motion. This was error—one circuit judge cannot overrule another.

The Circuit Court's order addressed these concerns on two grounds, but neither remedy this error. First, the Circuit Court cited *Ballenger v. Bowen* for the proposition that, "[t]he denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment

motion or by a motion for a directed verdict." (Order on Second Pettus Summary Judgment Motion, pp. 9–10); 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994). *Ballenger* is inapposite because Ms. Pettus did not file a motion to reconsider the First Motion (which would have to be heard by Judge Gibbons per Rule 59(g), SCRCP) or a motion for directed verdict.

Second, the Circuit Court cited *Smith v. Breedlove* and *Brown v. Pearson* for the proposition that it could hear the Second Motion because considerable discovery had taken place, and the Second Motion was "before the Court with a fully-developed record." (Order on Second Pettus Summary Judgment Motion, pp. 9–10); 377 S.C. 415, 421, 661 S.E.2d 67, 70 (2008); 326 S.C. 409, 417, 483 S.E.2d 477, 481 (Ct. App. 1997). However, the mere existence of considerable discovery and a fully-developed record is irrelevant. Indeed the Circuit Court relied only on the unambiguous Contract language, and accordingly, it did not (and could not) rely on any additional evidence discovered since the denial of the First Motion. (Order on Second Pettus Summary Judgment Motion, p. 7).[4] The discovery must have impacted the rationale and reasoning of the second court. *See e.g., Crosswell*, 309 S.C. at 279, 422 S.E.2d at 159 (Ct. App. 1992). This did not happen here.

*****

For the reasons stated here, the Circuit Court's order overruled Judge Gibbons's July 2024 order. The Court of Appeals should reverse the Circuit Court and remand for consideration consistent with Judge Gibbons's July 2024 order.

[4] If the Circuit Court did consider such discovery and a fully-developed record, it was error to conclude the Contract was unambiguous. *See e.g., Silver,* 376 S.C. at 592, 658 S.E.2d at 543.

II. The Circuit Court erred by misinterpreting the unambiguous language of the Contract and finding that the closing had to occur, if at all, by September 28, 2023.

If this Court finds that the Circuit Court did not overrule Judge Gibbons, this Court must still reverse the Circuit Court's order because the Circuit Court erroneously found that the Contract unambiguously establishes that the closing had to occur, if at all, by September 28, 2023.

The court is not authorized to "alter an unambiguous contract by construction or to make new contracts for the parties. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 397 (2014) (quotations omitted). "The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof." *See Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007); *see also J.T.M. Co. v. Vane*, 283 S.C. 512, 516, 323 S.E.2d 794, 796 (Ct. App. 1984) ("In determining the intent and purport of a contract, a court should not look solely to one clause read in isolation from the rest of the document; rather, it should consider the contents of the whole instrument."). Here, the Circuit Court erred by altering the unambiguous language of the Contract and doing away with the condition precedent to MTS's obligation to close.

A. The Contract unambiguously provides that receipt of all Required Approvals is a condition precedent to MTS's obligation to close.

The Contract, as amended, clearly provides in two separate sentences that, as a condition precedent to MTS's obligation to close, the Required Approvals must be obtained:

> ***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 Approvals, or (ii) September 28, 2023. The Closing shall take place at an acceptable location mutually agreed upon by the parties. ***Seller shall, as a precondition to closing, deliver exclusive possession of the Property to***

> ***Buyer on the Closing Date, including all declarant, entitlement, final development plan approvals, final construction plan approvals, permit, and all other development authorities or other Property ownership rights of Seller, including those achieved by any jointly filed zoning and entitlement applications or requests***.

(Amendment, § 3 (emphasis added)); *See McGill v. Moore*, 381 S.C. 179, 184–86, 672 S.E.2d 571, 573–75 (2009) (finding that a land sale contract contained a condition precedent by stating that the closing of the contract would occur "on or before thirty (30) days from the date the last contract is signed . . . ."). The remaining provisions of the Contract are consistent with the proposition that the Contract remained pending until this condition was satisfied:

- Section 13(a) provides that MTS's obligation to purchase the Pettus Property is conditioned upon conditions precedent being satisfied, including Ms. Pettus's compliance with her own obligations:

  > In addition to the other conditions set forth herein, the obligations and liabilities of Buyer hereunder shall in all respects be conditioned upon the satisfaction of each of the following conditions precedent prior to or simultaneously with the Closing, any of which may be waived by written notice from Buyer to Seller … Seller has complied with and otherwise performed each of the covenants and obligations of Seller set forth in this Contract and Seller is not in default of its obligations and covenants under this Contract.

- Section 13(c) provides that Ms. Pettus must cooperate with MTS to obtain Required Approvals at no cost to her.

- Section 14(b) requires MTS to pay the Contract's "Purchase Price" at the closing. However, Section 2 of the Contract undisputedly dictates that "Purchase Price" cannot be determined until the final development plans are approved by Lancaster County authorities for the Development:

  > Should the municipal entitlement (as determined by the applicable governing authorities) determine that less than 113 approved Lots will occur, then Buyer and Seller agree to adjust the purchase price

> by an amount equal to 113 Lots divided into the Gross Purchase Price for each Lot below 113, but should the approved Lots fall below 110 (which sales price shall not fall below $3,261,061.95, the "Minimum Purchase Price"), Buyer shall be authorized to either close at the "Minimum Purchase Price" or terminate the Contract and receive a return of all Deposits.

- Section 5(b) of the Contract provided that MTS must receive Required Approvals to its "sole satisfaction prior to the closing" of the purchase of the Pettus Property.
- Section 5(d) provided that obtaining the Required Approvals before the tentative September 28, 2023 closing date provided for in Section 8 of the Contract, as amended, is merely aspirational, but not required:

> The Seller also understands that the rezoning and entitlement process will be driven by municipal agenda and process, ***which may not coincide directly with the Contract's terms*****.** Accordingly, the Parties have agreed to communicate with each other about the due diligence and subsequent rezoning and entitlement process, ***to endeavor to complete rezoning and entitlement prior to the Closing Date***.

(emphasis added).

In sum, when reviewing the terms of the Contract in harmony, the Contract remains in effect until all Required Approvals were obtained. *See Ecclesiastes*, 374 S.C. at 498, 649 S.E.2d at 502; *J.T.M.*, 283 S.C. at 516, 323 S.E.2d at 796. Only then was MTS obligated to close, and only then would a failure to close constitute a breach of the Contract. Until then, however, MTS was only required to use commercially reasonable efforts to obtain Required Approvals, with Ms. Pettus's cooperation. (Contract, § 13(c)).

B. Nothing in the Contract requires MTS to waive the condition precedent or terminate the Contract if the condition precedent was not met by September 28, 2023.

The Circuit Court erroneously disregarded the condition precedent and determined that MTS had no choice but to close by September 28, 2023:

> If [MTS] had ever obtained the Required Approvals, then the closing was required to take place within 30 days thereafter. Otherwise, the closing was required to take place by September 28, 2023. Even though the first trigger for the Closing Date never occurred, the second trigger did occur. September 28, 2023 approached, arrived and ended, and Plaintiff elected not to close on the Property. Under South Carolina law and the Contract, the closing, if ever to occur, ***was required to take place on or before September 28, 2023.***

(Order on Second Pettus Summary Judgment Motion, pp. 7–8 (emphasis added)). The Court effectively inserted a new provision into the Contract providing that, if the Parties reached September 28, 2023, and MTS's condition precedent had not been satisfied, MTS had one of two options: (1) waive its condition precedent and close; or (2) terminate the Contract.

Nothing in the actual language of the Contract compels MTS to waive a condition precedent in any circumstances, and nothing in the Contract states that the Contract automatically terminates if MTS's condition precedent had not been satisfied by September 28, 2023. Rather, the Contract states the exact opposite. Indeed, Section 13(a) of the Contract specifically dictates that MTS has the authority to choose whether to waive a condition precedent. Moreover, the Contract clearly provided for very select circumstances where the Contract may be terminated, all of which give MTS, and only MTS, the power to do so:

(1) MTS has the option to terminate if the number of lots approved on the Pettus property falls below 110 (Contract, § 2);

(2) MTS had the option to terminate at will between the Effective Date and the end of the Inspection Period (Contract, at § 4; Amendment, § 2);

(3) MTS had the option to terminate if the parties did not obtain Required Approvals to MTS's satisfaction by the end of the Entitlement Period (Contract, § 5(b));

(4) MTS has the option to terminate if Ms. Pettus doesn't cure defects relating to the title commitment on her property (Contract, § 6);

(5) MTS has the option to terminate if Ms. Pettus's property is taken by eminent domain (Contract, § 11);

(6) MTS has the option to terminate if condemnation proceedings are commenced (Contract, at § 11);

(7) MTS has the option to terminate if Ms. Pettus defaulted (Contract, § 15(a));

(8) The Contract *automatically* terminates if MTS did not tender an Inspection/Due Diligence Notice to Proceed by the end of the Inspection Period. (Contract, § 5)

The Circuit Court's interpretation of the Contract erroneously strikes the condition precedent to MTS's obligation to close set out in Section 8 of the Contract, as amended, and replaces the *conditional* September 28, 2023 closing date with a *hard* closing date by inserting a new provision where the Contract automatically terminates on September 28, 2023. (Amendment, § 3). The Circuit Court had no authority to alter or otherwise re-write the Contract, but it did just that.

C. The "time is of the essence" provision does not support the Circuit Court's interpretation of the unambiguous language of the Contract.

The Circuit Court's order briefly references that the Contract contains a "time is of the essence" provision. (Order on Second Pettus Summary Judgment Motion, pp. 4, 7). This provision does not support the Circuit Court's interpretation of the unambiguous language of the Contract. Indeed, the "time is of the essence" provision is contained in Section 18(k) and states, "[t]ime is of the essence ***with respect to the parties obligations hereunder***." (Contract, § 18(k) (emphasis added)). Come September 28, 2023, the condition precedent to MTS's obligation to close had not yet been satisfied. Accordingly, time was not of the essence with respect to MTS's obligation to close because that obligation had not arisen. Rather, time was of the essence only with respect to the same obligations the Parties were subject to since the Contract's inception—MTS had to "use commercially reasonable efforts to obtain [Required Approvals]" and Ms. Pettus had to "cooperate with [MTS] in obtaining such approvals at no cost to [Ms. Pettus]." (Contract, § 13(c)). The "time is of the essence" provision cannot create a new obligation that does not yet

exist. The Circuit Court's reliance on this provision is another example of the Circuit Court erroneously altering the Contract language.

*****

The Circuit Court erred by misinterpreting the unambiguous Contract language. The only reasonable interpretation of the unambiguous Contract is that it remained in effect while the Parties sought the remaining Required Approvals. This Court should reverse the Circuit Court and remand for consideration consistent with this interpretation—namely, that MTS, not Ms. Pettus, is entitled to judgment as a matter of law based on the unambiguous language of the Contract.

III. In the alternative, the Court erred by finding that the Contract was not ambiguous regarding whether there was a drop-dead closing date of September 28, 2023.

If this Court determines that the Contract does not unambiguously dictate that the Parties remain under Contract until the Required Approvals are obtained, this Court must reverse the Circuit Court because the only other alternative consistent with Judge Gibbons's July 2024 order is that the Contract is ambiguous with respect to whether September 28, 2023 was a drop-dead closing date.

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ecclesiastes*, 374 S.C. at 499, 649 S.E.2d at 502. Put differently, "[a] contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014). "Summary judgment is not appropriate if a contract is ambiguous." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009).

The Circuit Court found that the "unambiguous language of the Contract establishes that if [MTS] was going to close on the Property, [MTS] was required to close by September 28, 2023." (Order on Second Pettus Summary Judgment Motion, p. 7). However, based on the Contract's provisions cited in Section II(a)–(b), *supra*, of MTS's Argument, the Contract language is reasonably susceptible to the interpretation that the Parties did not have to close on the Contract on or before September 28, 2023. Consequently, the Contract is ambiguous on this issue, and the Circuit Court erred in concluding the Contract unambiguously provided for a September 28, 2023 drop-dead closing date. The Court of Appeals should reverse the Circuit Court and remand for consideration accordingly.[5]

IV. The Court erred in finding that Mr. Bilbro's actions as Ms. Pettus's purported agent were non-actionable for a claim for tortious interference with contractual relations.

The Circuit Court found that Mr. Bilbro's actions were "privileged and non-actionable" as Ms. Pettus's purported agent for a tortious interference with contractual relations claim. (Order on Bilbro Summary Judgment Motion, pp. 4–5). "[A]n 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, 312 S.E.2d 14, 15 (Ct. App. 1984). An agent's actions are not privileged from a tortious interference with contractual relations claim if they were committed outside the scope of their agency. *See Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 605, 753 S.E.2d 840, 844 (2012). "The extent of such agent's authority is a question of fact for the factfinder." *Hiott v. Guar. Nat. Ins. Co.*, 329 S.C. 522, 530, 496 S.E.2d 417, 421 (Ct. App. 1997).

[5] As set out herein, MTS argued at summary judgment that the only admissible evidence of the Parties' intentions when entering into the Contract supports MTS's position that the Parties remain under Contract until Required Approvals are obtained. (MTS Summary Judgment Motion, p. 5). The Court of Appeals should remand to the Circuit Court to allow for consideration of this evidence on summary judgment.

The Circuit Court erred because: (1) Mr. Bilbro was not a party to the Contract; (2) Judge Gibbons's September 2024 order did not establish whether Mr. Bilbro was Ms. Pettus's agent with respect to the circumstances at issue here; and (3) MTS submitted evidence creating a genuine issue of material fact concerning whether Mr. Bilbro was acting within his purported agency relationship to Ms. Pettus.

A. Mr. Bilbro was not a party to the Contract.

Mr. Bilbro is Ms. Pettus's real estate agent for the purposes of selling the Pettus Property—a third-party to MTS and Ms. Pettus's relationship. Mr. Bilbro is not a party to the Contract between MTS and Ms. Pettus, he is not Ms. Pettus's employee, and he is not an officer of the trust that possesses the Pettus's Property. Indeed, as Mr. Bilbro argued, and the Court found, "[t]here is no relationship or transaction or contract between Bilbro and [MTS]." (Memorandum in Support of Bilbro Summary Judgment Motion, p. 7; *see* Order on Bilbro Summary Judgment Motion, p. 6). MTS is entitled to bring a claim against Mr. Bilbro for tortious interference of the Contract, just as it would be against any other third-party that induced Ms. Pettus's breach of the Contract.

B. Judge Gibbons's September 2024 order did not establish whether Mr. Bilbro was Ms. Pettus's agent with respect to the circumstances at issue here.

The Circuit Court found that, "[b]ased 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." (Order on Bilbro Summary Judgment Motion, p. 5). The Circuit Court relied on Judge Gibbons's September 2024 order concerning whether Mr. Bilbro's communications with Pettus's attorney were privileged from disclosure, which found that:

> The Court holds that Bilbro served as an agent of Pettus throughout the negotiation of the contract and after its failure to close. . . . Bilbro was acting exclusively in the interest of his client, his communications with the attorneys involved were intended to be confidential, and communications were made with the purpose of seeking legal advice. Thus, Bilbro served as an agent of Pettus throughout his involvement

> with the property. The attorney-client privilege is extended to cover communications involving a representative of the client. When a third-party is acting as an agent for the client, communications within their agency are entitled to attorney-client privilege.

(Order Granting Defendants' Joint Motion for Protection, p. 2).

Judge Gibbons's September 2024 order did not concern Mr. Bilbro's relation to Ms. Pettus for the purposes of concluding he was an insider or otherwise a party to the Contract, and therefore, acted as the principal with respect to the Contract. It concerned solely the issue of whether Mr. Bilbro's communications with Ms. Pettus's attorneys were privileged from disclosure. (*Id.*). The Circuit Court's order thus had the effect of improperly extending Judge Gibbons's order and shielding Mr. Bilbro from liability from MTS's tortious interference with contractual relationships claim. The Court erred in this regard.

C. MTS submitted evidence creating a genuine issue of material fact concerning whether Mr. Bilbro was acting within his purported agency relationship to Ms. Pettus.

The Court found that Mr. Bilbro was "acting within his scope as an agent during all of the alleged activities presented to the Court." (Order on Bilbro Summary Judgment Motion, p. 5). The Circuit Court's reasoned that:

> 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. 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.

(*Id.*). The Circuit Court erred because MTS submitted evidence creating a genuine issue of material fact regarding whether Mr. Bilbro was acting within the scope of his purported agency relationship with Pettus.

MTS submitted evidence concerning Mr. Bilbro's statements to Ms. Pettus regarding her rights under the Contract, as well as to third parties concerning the Pettus Property. (Bilbro Dep.

46:22–47:17, 132:2–133:1, 167:6–168:19, Ex. 12, Bilbro August 2023 email with developer, BILBRO_0001210). A reasonable jury viewing these statements could find that they were made for Mr. Bilbro's own personal gain and did not take Ms. Pettus's interest into account. *See Abdelgheny v. Moody*, 432 S.C. 346, 350, 852 S.E.2d 225, 227 (Ct. App. 2020) ("If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied."). Accordingly, the Circuit Court erred in finding that Mr. Bilbro was acting within the scope of his agency.

*****

The Circuit Court erred by finding that Mr. Bilbro's actions were privileged and non-actionable with respect to a tortious interference claim. The Court of Appeals should reverse the Circuit Court and remand accordingly.

V. The Circuit Court erred in finding that MTS did not prove the elements necessary for a tortious interference with contract claim.

The Circuit Court also granted Mr. Bilbro summary judgment with respect to MTS's tortious interference claim on the grounds that MTS did not prove the elements necessary for the claim—namely, that Mr. Bilbro did not procure a breach of the Contract.[6] (Order on Bilbro Summary Judgment Motion, pp. 5–6). "An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. . . . Where there is no breach of the contract, there can be no recovery." *Eldeco, Inc. v. Charleston Cnty. Sch. Dist*., 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007). "[I]t is not necessary that the interfering party intend such harm. Instead, it is only necessary that they intended to

[6] The Circuit Court also mentioned that Mr. Bilbro did not procure a breach of the Contract because it "has ruled that Pettus did not breach the Contract with Plaintiff." (Order on Bilbro Summary Judgment Motion, p. 5). MTS directs the Court to its arguments on Issues 1–3 in support of the proposition that there is, at minimum, a genuine issue of material fact concerning whether Ms. Pettus breached the Contract.

interfere with . . . an existing contract . . . ." *Broach v. Carter*, 399 S.C. 434, 442, 732 S.E.2d 185, 189 (Ct. App. 2012) (quoting *Eldeco*, 372 S.C. at 481, 642 S.E.2d at 732)). The Circuit Court erred because there is a genuine issue of material fact regarding whether Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract.

The Circuit Court distilled MTS's evidence down and found "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." (Order on Bilbro Summary Judgment Motion, at p. 6). The Circuit Court cited no authority for this legal conclusion. Nevertheless, MTS submitted evidence showing that Mr. Bilbro advised Ms. Pettus that she had rights under the Contract that she did not have. (Bilbro Dep. 132:2–133:1). MTS also submitted evidence showing Mr. Bilbro informed a third-party developer in August 2023 that the Pettus Property might soon be available. (Bilbro Dep. 167:6–168:19, Ex. 12, Bilbro August 2023 email with developer, BILBRO_001210). Additionally, MTS submitted evidence showing Mr. Bilbro conferred with the Pettus family about re-listing the Pettus Property as early as July 2023 (while the Contract was undisputedly in effect).[7] (Bilbro Interrogatory Resp., ¶ 15). Finally, MTS submitted evidence showing Mr. Bilbro communicated with a representative of Lancaster County Planning regarding whether a new buyer, other than MTS, could modify the preliminary plat approval. (Bilbro Dep. 46:22–47:17). When viewed in a light most favorable to MTS, this evidence creates, at minimum, a genuine issue of material fact concerning whether Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract.

[7] The Order also erroneously found that the first time such discussions took place was October 2023. (Order on Mr. Bilbro's Summary Judgment Motion, p. 3).

The Circuit Court believed that Mr. Bilbro was only "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" and that his actions were "within the normal scope of what a realtor does for his seller." (Order on Bilbro Summary Judgment Motion, pp. 5–6). However, this is only one interpretation of the evidence—one that improperly weighs the evidence in Bilbro's favor. *See John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424, 435, 904 S.E.2d 889, 895 (Ct. App. 2024), *reh'g denied* (Aug. 12, 2024), *cert. denied* (Feb. 12, 2025) ("At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact."). A reasonable jury could find, contrary to the Circuit Court's interpretation, that Mr. Bilbro's actions were not harmless steps taken within the normal scope of a realtor's duties. Rather, they evidenced a substantial, premeditated effort to unlawfully rid Ms. Pettus of her contractual obligations. Accordingly, MTS has raised a genuine issue of material fact concerning whether Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract.

*****

For the reasons set out herein, the Circuit Court erred in dismissing MTS's tortious interference claim against Mr. Bilbro. The Court of Appeals should reverse the Circuit Court and remand accordingly.

VI. The Circuit Court erred in finding that MTS did not meet the elements of a claim under the UTPA.

To bring a claim 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). The Circuit Court granted Mr. Bilbro summary judgment on MTS's UTPA claim

on the grounds that Mr. Bilbro's acts were not unfair or deceptive, and Bilbro's actions did not affect the public interest. (Order on Bilbro Summary Judgment Motion, pp. 7–8). This was error because: (1) MTS has presented evidence creating a genuine issue of material fact concerning whether Mr. Bilbro's actions were either unfair or deceptive; and (2) MTS has presented evidence creating a genuine issue of material fact concerning whether Mr. Bilbro's actions affected the public interest.

A. MTS has presented evidence creating a genuine issue of material fact concerning whether Mr. Bilbro's actions were either unfair or deceptive.

"An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive. An act is 'deceptive' when it has a tendency to deceive." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013). "[T]here is no need to show that a claim or representation was intended to deceive but only that it had the capacity, effect, or tendency to deceive." *Young v. Century Lincoln-Mercury, Inc.*, 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989), *aff'd in part, rev'd in part*, 309 S.C. 263, 422 S.E.2d 103 (1992). "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." *Wright*, 372 S.C. at 26, 640 S.E.2d at 500.

The Court interpreted Mr. Bilbro's actions as nothing more than "[t]he actions of a realtor advising his client and informing third parties of the availability of the Property" and found that they were not deceptive.[8] (Order on Bilbro Summary Judgment Motion, p. 7). However, a reasonable jury could find that Mr. Bilbro's actions referenced herein were either unfair or deceptive, or both. Mr. Bilbro advised Ms. Pettus that, based on his own interpretation, the Contract had a hard closing date entitling Ms. Pettus to terminate the Contract if MTS did not

[8] The Order mentioned that Mr. Bilbro's actions were not unfair, but it did not provide any explanation for why they were not unfair. (Order on Bilbro Summary Judgment Motion, p. 7).

close. (Bilbro Dep. 132:2–133:1, 200:18–201–2). Mr. Bilbro similarly told a third-party developer that Pettus's property might soon return to the market, despite that Ms. Pettus had no authority under the Contract to make that happen. (Bilbro Dep. 167:6–168:19, Ex. 12, Bilbro August 2023 email with developer, BILBRO_001210). As is set out in detail above, Ms. Pettus did not have that authority to terminate the Contract if the Parties did not close on or before September 28, 2023. These statements are, by their very nature, deceptive.

These statements were also unfair. Mr. Bilbro owed Ms. Pettus a fiduciary duty as her real estate agent. *See Darby v. Furman Co., Inc.*, 334 S.C. 343, 346–47, 513 S.E.2d 848, 849–50 (S.C. 1999). He was obligated to serve her interests and disclose material facts relevant to his representation of her. *See id.* ("Real estate agents occupy a fiduciary relationship with their clients and are under a legal obligation as well as a high moral duty to give loyal service to the principal . . . The duty of an agent to make full disclosure to his principal of all material facts relevant to the agency is fundamental to the fiduciary relationship of principal and agent."). However, Mr. Bilbro also stands to receive nearly double his commission if the Pettus Property is sold at its re-listed price. (*See* Bilbro Dep. Ex. 1, Listing Agreement, BILBRO_000478; First Pridemore Aff., ¶ 47). A reasonable jury could find that Mr. Bilbro made false statements to Ms. Pettus and third-parties for his own gain rather than for Ms. Pettus's benefit, in violation of his obligations to her. The Circuit Court erroneously took that decision out of the jury's hands by finding that they were nothing more than "actions within the normal scope of what a realtor does for his seller." (Order on Bilbro Summary Judgment Motion pp. 5, 7).

B. MTS has presented evidence creating a genuine issue of material fact concerning whether Mr. Bilbro's actions affected the public interest.

"[A] plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition. *Wright*, 372 S.C. at 30, 640 S.E.2d at 502. "The potential for repetition

may be shown . . . (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 created a potential for repetition of the unfair and deceptive acts." *Singleton v. Stokes Motors, Inc*., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). "[E]ach case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA." *Wright*, 372 S.C. at 30, 640 S.E.2d at 502.

The Circuit Court found that Mr. Bilbro's actions did not affect the public interest on the grounds that MTS had not met the public interest element. (Order on Bilbro Summary Judgment Motion, p. 8). The applicable language is as follows:

> 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.

(*Id.*). This was error because MTS submitted evidence creating a genuine issue of material fact regarding whether Bilbro's actions affected the public interest.

MTS submitted to the Circuit Court every instance from January 2015 through June 2025 where Mr. Bilbro served as a real estate broker for a property seller in Lancaster County, and the seller entered a contract to sell their property to a real estate developer. (Bilbro Second Interrogatory Resp., ¶ 1). There were only four cases, and of those four, three failed to closed. (*Id.* at ¶¶ 3–4). Moreover, contrary to the Circuit Court's order, MTS did submit facts as to why those contracts did not close. (*Id.*; Order on Bilbro Summary Judgment Motion, p. 8). Indeed, all three failed to close because they could not get zoning approval. (Bilbro Interrogatory Resp., ¶ 4). The Contract is another in a long line of instances where Mr. Bilbro represented a property owner as

they tried to sell their property to a property developer, but the parties had difficulties getting governmental approvals needed to proceed with the contract. Such evidence creates a genuine issue of material fact concerning not only whether Mr. Bilbro's actions referenced herein occurred in the past, but also whether Mr. Bilbro enforces procedures that create a potential for repetition of his acts.

*****

For these reasons, MTS has presented evidence showing there is a genuine issue of material fact with respect to its claim against Bilbro under the UTPA. The Court of Appeals should reverse the Circuit Court and remand accordingly.

CONCLUSION

For the reasons set forth herein, MTS respectfully asks this Court to reverse the Circuit Court's orders dated December 4, 2025, granting summary judgment to Ms. Pettus, denying MTS summary judgment, and granting Mr. Bilbro, and order any and all other relief as the Court deems just and proper.

Respectfully submitted this the 12th day of March, 2026.

BROOKS, PIERCE, McLENDON
HUMPHREY & LEONARD, LLP

BY: /s/ J. Kemper Patton
J. KEMPER PATTON
SC State Bar No. 105202
JAMES C. ADAMS, II, pro hac vice
NC State Bar No. 18063
P.O. Box 1800
Raleigh, NC 27602
Telephone: (919) 882-2518
Facsimile: (336) 232-9103
Email: kpatton@brookspierce.com
jadams@brookspierce.com
Attorneys for Appellant