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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2022-CP-10-01312
EMMALISSA HUFF and DOROTHY HUFF,	)	
Plaintiffs,	)	**ORDER**
vs.	)	
CAROLINA ONE REAL ESTATE,	)	
Defendant.	)	

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SC Court of Appeals

This matter is before the Court upon Defendant Carolina One's ("Carolina One") Motion for Judgment Notwithstanding the Verdict and Motion for New Trial Absolute, or in the alternative, New Trial *Nisi Remittitur*. For the reasons set forth below, the Court denies both motions.

I. BACKGROUND

This case involves Plaintiffs' purchase of their home at 473 Mercantile Rd., McClellanville, SC. Plaintiffs' buyer's agent was Keven Beach of Carolina One. Shortly after closing on the property, Plaintiffs learned that Charleston County had placed a stop work order on the home due to an unpermitted renovation and addition done by the seller prior to Plaintiffs' purchase. Charleston County required Plaintiffs to lift the house to meet current flood zone requirements as well as a myriad of other changes to the home before Plaintiffs could reside in it, all at great expense.

Plaintiffs filed suit on March 18, 2022 against their buyer's agent (Carolina One) and the sellers' agents (Four and One, LLC and the Hunter Reynolds Group) alleging the following causes of action: (1) negligence; (2) negligent misrepresentation; (3) fraud; and (4) violations of the South

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Carolina Unfair Trade Practices Act ("SCUTPA"). Plaintiffs resolved their claims against the settling defendants for $150,000 following a second mediation on February 4, 2025. Plaintiffs and Carolina One could not reach a resolution, and the case proceeded to trial on November 17, 2026. The jury returned a verdict of $297,679.00 against Carolina One on the negligence and negligent misrepresentation causes action on November 20, 2025.[1] The jury also awarded $300,000 in punitive damages. On November 30, 2024, Carolina One timely filed post-trial motions, including the instant motions for judgment notwithstanding the verdict and for a new trial. The Court heard arguments on these motions on February 18, 2026.

II. STANDARD

When ruling on a motion for JNOV, the court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 27–28, 602 S.E.2d 772, 782 (2004). The court must deny a motion JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, the court has no authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (2000). Further, when considering a JNOV motion, "the trial judge is concerned with the existence of evidence, not its weight." *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003).

"The grant or denial of new trial motions rests within the discretion of the circuit court." *Brinkley v. S.C. Dep't of Corr.*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). South

[1] Plaintiffs have since elected the negligent misrepresentation action as their remedy.

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Carolina's thirteenth juror doctrine is well established as the standard for granting a new trial. *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 477, 567 S.E.2d 851, 854 (2002); *Folkens v. Hunt*, 300 S.C. 251, 387 S.E.2d 265 (1990); *Sorin Equipment Co., Inc. v. The Firm, Inc.*, 323 S.C. 359, 474 S.E.2d 819 (Ct. App. 1996). South Carolina's thirteenth juror doctrine entitles the trial judge to sit, in essence, as the thirteenth juror when finding "the evidence does not justify the verdict," and then to grant a new trial based solely "upon the facts." *Folkens*, 300 S.C. at 254, 387 S.E.2d at 267 (citing *South Carolina State Highway Dep't v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975)). The Supreme Court explained in *Folkens*,

> The effect is the same as if the jury failed to reach a verdict.... When a jury fails to reach a verdict, a new trial is ordered. Neither judge nor the jury is required to give reasons for this outcome. Similarly, because the result of the 'thirteenth juror' vote by the judge is a new trial rather than an adjustment to the verdict, no purpose would be served by requiring the trial judge to make factual findings.

Id. Upon review, a trial judge's order granting or denying a new trial will be upheld unless the order is "wholly unsupported by the evidence, or the conclusion reached was controlled by an error of law." *Id.*

III. DISCUSSION

A. Judgment Notwithstanding the Verdict

1. Negligent Misrepresentation

To prove a claim for negligent misrepresentation, one must establish: "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation." *West v. Gladney*, 341 S.C. 127,

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134, 533 S.E.2d 334, 337 (Ct. App. 2000). Viewing the evidence and all reasonable inferences in the light most favorable to Plaintiffs, the record contains sufficient evidence presented at trial to establish that:

(1) Carolina One (through its agent Keven Beach) made a false representation to Plaintiffs that the home had been "grandfathered in;"[2]

(2) Carolina One (through its agent Keven Beach) had a pecuniary interest in making the statement, namely to push Plaintiffs towards making an offer and ultimately purchasing the home resulting in the payment of a commission;

(3) Carolina One (through its agent Keven Beach) owed a duty of care to communicate truthful information to his principals as clearly established by statute and the common law;

(4) Carolina One (through its agent Keven Beach) breached that duty of care by not advising Plaintiffs to contact Charleston County regarding their elevation concerns, as well as failing to look into the matter beyond looking at the seller's disclosure and surmising that, because the seller's agent mentioned the home had been inspected, it had been "grandfathered in" and therefore would not need to be raised;

(5) Plaintiffs justifiably relied on the representation of their fiduciary agent, who never told them their elevation concerns were outside of his expertise as a real estate professional and they should consult an expert, i.e. Charleston County; and

(6) Plaintiffs suffered pecuniary loss associated with elevating the home, bringing all of its systems up to current code, and their loss of use, all of which were proximately caused by Carolina One's failure to direct them to Charleston County which would have revealed the permitting issues.

Plaintiffs presented Carolina One's admission that, when its principal asked about the elevation of 473 Mercantile Rd., its agent should have directed Plaintiffs to Charleston County, but he did not. Instead, Plaintiffs offered evidence that Carolina One misrepresented that the elevation of the

[2] Beach incorrectly which, unbeknownst to Plaintiffs, was meaningless as to their questions and concerns. (Ex. 48 at 83-85, 117 ll. 14-23 [Carolina One]).

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home had been grandfathered in and attempted to bolster that representation by referencing an expired elevation certificate. Plaintiffs also offered evidence that if Carolina One had reviewed the immediate prior listing by Daniel Bates (which was not available to Plaintiffs), it would have discovered the permitting issue.

a. **Justifiable Reliance**

Despite the presentation of the evidence outlined above (and its very existence), Carolina One argues that Plaintiffs failed to present evidence and prove facts sufficient to establish that Plaintiffs justifiably relied on *any* representation of Carolina One. Based on that sole pillar, Carolina asserts that Plaintiffs' negligent misrepresentation claim fails as a matter of law. The Court disagrees.

(1) Carolina One's Statutory Fiduciary Duty to Plaintiffs

At each turn, Carolina One's reliance arguments are unavailing because Carolina One owed statutorily required fiduciary duties to Plaintiffs who offered sufficient evidence to support the jury's conclusion that Carolina One's acts and omissions breached those duties. In doing so, Carolina One not only failed to properly advise Plaintiffs to make the inquiries it now contends render their reliance unjustifiable but also induced Plaintiffs not to do so.

As an initial matter, South Carolina law provides that one may rely on representations without making further inquiry when a fiduciary or confidential relationship exists between the parties. *Epstein v. Howell*, 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992). Further, the relationship between the parties is a key factor when determining justifiable reliance, and when a fiduciary relationship exists, the inquiry ends and reliance is deemed justifiable. *Epstein*, 308 S.C. at 530-31, 419 S.E.2d at 380-82; *Harrington v. Mikell*, 321 S.C. 518, 522 (Ct. App. 1996) (finding the inverse to be true where a fiduciary relationship did *not* exist between the purchaser

of the property and the seller's agent). Real estate brokers (and their agents) owe fiduciary duties to their clients, and Carolina One admitted this at trial. *See* (Ex. 48 at 21 ll. 11-18, 30 ll. 11-16 [Carolina One]); S.C. Code Ann. § 40-57-350(A) ("A real estate brokerage firm that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting . . . ."); *Darby*, 334 S.C. at 346-47, 513 S.E.2d at 849 ("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."); F. Patrick Hubbard and Robert L. Felix, The South Carolina Law of Torts, 66 (2d. ed. 1997) ("A fiduciary duty exists when a person places *special* trust or confidence in another."). As such, the inquiry can end and Plaintiffs' reliance on Carolina One was reasonable and justified based on their special relationship. *See Epstein*, 308 S.C. at 530-31, 419 S.E.2d at 380-82.

Plaintiffs offered evidence which reasonably supported the jury's determination that Plaintiffs reasonably relied on Carolina One's representations, such as that home's elevation had been "grandfathered in." *See Coake v. Burt* 391 S.C. 201, 207, 705 S.E.2d 453 (Ct. App. 2010) (holding reliance and reasonableness of the buyer's examination of the property is a factual question for the jury); *Unlimited Serv., Inc. v. Macklen Enter., Inc.*, 303 S.C. 384, 387, 401S.E.2d 153, 155 (1991) (holding questions concerning reliance and its reasonableness are factual questions for the jury): *Starkey v. Bell*, 281 S.C. 308, 313, 315 S.E.2d 153, 156 (Ct. App. 1984) ("Issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts."). Throughout trial, Carolina One presented evidence and argument that the contractual provisions discussed below rendered any reliance unjustifiable because Missy Huff is

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a licensed lawyer. Carolina One elicited testimony and argued that nothing prevented Huff (or Mr. Smiley) from calling Charleston County regarding their elevation concerns.

To the contrary, Plaintiffs presented evidence regarding the fiduciary nature of the relationship between the parties as well as Missy Huff's expectations and reliance on the duties owed to her because of that relationship. Plaintiffs also presented testimony that Huff and Smiley did not know where to independently seek the answers to their elevation concerns, and when they asked their real estate agent, he provided the affirmative and distinct answer that the home's elevation had been grandfathered in. Despite making that representation, Beach testified that Plaintiffs' elevation concerns were beyond his real estate expertise, and he knew that he should direct clients with such questions to Charleston County. However, Beach admitted that he did not and offered no explanation as to why.[3] Furthermore, Huff and Smiley both testified that when Beach explicitly told them the home had been grandfathered in, they were induced to make no further inquiry. Thus, Plaintiffs clearly presented evidence related to these issues. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) ("In considering a JNOV, the trial judge is concerned with the existence of evidence, not its weight.")

(2) Evidence in the Record Supports the Inference that Plaintiffs Did Not Know the "Truth of the Matter" Regarding the Permitting and Elevation Issues.

Carolina One argues Plaintiffs knew the "truth of the matter" considering information available to them before closing, and therefore they could not reasonably rely on any admitted misstatement by Carolina One. Carolina One elicited testimony regarding this very issue; the Court charged the jury, as requested by Carolina One, on this issue; and Carolina One also presented

[3] Michael Scarafiles, CEO and President of Carolina One, testified multiple times that he "wished" Beach had advised Missy Huff to contact Charleston County regarding her elevation questions.

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argument to the jury regarding the same. Nevertheless, Carolina One argues, relying on *McLaughlin v. Williams*, that "if the undisputed evidence clearly shows the party asserting reliance has knowledge of the truth of the matter, there is no genuine issue of fact." 379 S.C. 451, 457-58, 665 S.E.2d 667, 671 (Ct. App. 2008). However, Carolina One did not offer any evidence that Plaintiffs knew the truth of the matter as to the unpermitted addition or that the home had *not* been "grandfathered in" regarding its elevation as represented by Beach. In *McLaughlin*, the court found the plaintiff could not rely on a seller's disclosure statement where "both the Home Inspection Report and the CL-100 clearly show [the plaintiff] had information that directly contradicted the Disclosure Statement." 379 S.C. at 459, 665 S.E.2d at 672.[4] Carolina One did not offer into evidence any such documents in this case.

Instead, Carolina One seeks to impute knowledge to Plaintiffs by arguing that the permitting issues were a matter of law or a matter they could have ascertained in the exercise of their own due diligence. Carolina One relies on the proposition that "[t]he law imputes to a purchaser of real estate notice of the recitals contained in the written instruments forming his chain of title *and charges him with the duty of making such reasonable inquiry and investigation as is suggested by the recitals and references contained therein.*" *LoPresti v. Burry*, 364 S.C. 271, 276, 612 S.E.2d 730, 732-33 (Ct. App. 2005) (citations omitted) (emphasis in original). However, *LoPresti* is distinguishable from the case at bar because (1) the information that would have provided notice of the permit and elevation issues were not contained in the "written instruments forming [Plaintiffs'] chain of title;" and (2) it did not involve the representations of a fiduciary to

[4] Carolina One also cites *Thomas v. Jeffcoat*, 230 S.C. 126, 94 S.E.2d 240 (1956), where the court found the buyer could not rely on the representation of a seller's agent regarding a lot where the buyer had viewed the lot himself. That case is inapplicable because no fiduciary relationship existed and the buyer had seen the lot and could have inspected it further to identify the issue.

his principal. Again, Missy Huff testified she did not know where to go to answer the elevation questions, so she asked her real estate professional. Despite Beach's admission that he should have directed her (his principal) to the County when asked, he did not. Instead, as a fiduciary agent, he took it upon himself to incorrectly surmise (in an area outside of his real estate expertise)[5] that the home had been grandfathered in, and he made that direct and specific misrepresentation to his principal.[6] The jury could have reasonably inferred that Missy Huff, by asking the questions of Beach, was attempting to exercise her own due diligence, and had Carolina One done as it admitted it should have, Huff testified she would have contacted the County. Instead, Carolina One/s misrepresentations induced Plaintiffs from discovering the true facts regarding whether the home's elevation was "grandfathered in" as well as the unpermitted addition.[7] Moreover, Carolina One and Plaintiffs had a fiduciary relationship, and Missy Huff was an inexperienced homebuyer.

"[A]lthough the real fact appears on the public record, the representee is under no obligation to examine the records, and his failure to do so does not defeat his right of action" especially "where the very representations relied on induced the hearer to refrain from an examination of the records, where the employment of an expert would have been required to deduce the truth from an examination of the records, where confidential relations existed, or where the defrauded party was inexperienced." *Reid v. Harbison Dev. Corp.*, 285 S.C. 557, 561, 330

[5] Doing so was in direct contravention of S.C. Code Ann § 40-57-350€(1)(b)(iv) (requiring the buyer's agent to advise "the buyer to obtain expert advice on material matters that are beyond the expertise of the licensee.").

[6] In addition, he then went a step further by erroneously assuring Plaintiffs that he had a flood certificate to assuage their concerns.

[7] Throughout its motion, Carolina One only refers to the permitting issue. While the unpermitted addition and renovations required that the home had to be elevated, Plaintiffs' precise and operative questions related to the home's elevation, not whether the addition was permitted or not.

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S.E.2d 532, 535 (Ct. App. 1985) (finding evidence upon which the jury could have reasonably found that the seller's representations induced the buyers from discovering the true facts and they acted with reasonable prudence despite not examining the public records); *Slack v. James*, 364 S.C. 609, 615-16, 614 S.E.2d 636, 640-41 (2005) (holding "the alleged misrepresentation by sellers' agent may have induced buyers to refrain from discovering the true facts regarding whether there were any easements on the property before entering into a contract creating a question of fact."). Plaintiffs offered evidence at trial regarding each circumstance outlined in *Reid,* which forgives a representee from examining and therefore determining the real facts as they appear on the public record.

(3) Contractual Provisions

Carolina One also argues that various contractual provisions prevent any justifiable reliance by the Plaintiffs. Again, the Court disagrees. The codified fiduciary duties Carolina One owed to Plaintiffs cannot be contracted away, as Carolina One itself admitted at trial. In addition, Carolina One presented the same contractual provisions and arguments to the jury and it rejected them by finding Plaintiffs justifiably relied on its agent.

(a) The Purchase Contract "Non-Reliance" Clause.

Carolina One relies on the following clause in the Purchase Contract:

> Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect.

(Ex. 11 at 6). However, this is the sort of general, non-reliance clause that lacks the required specificity to be effective: "A general non-reliance clause, just as a merger clause, does not prevent one from proceeding on ***tort theories of negligent misrepresentation . . . .*" *Slack v. James*, 364

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S.C. 609, 618, 614 S.E.2d 636, 641 (2005) (emphasis added).[8] The *Slack* court continued that "[a]n opposite finding 'would leave swindlers free to extinguish their victims' remedies simply by sticking in a bit of boilerplate'" and "[a] party should not be given the opportunity to free himself from an allegation of fraud by incorporating a generalized non-reliance clause into a contract." *Id.* at 619 (quoting *Whelan v. Abell*, 48 F.3d 1247, 1258 (D.C. Cir. 1995)).

Even if the Court considered the non-reliance of clause, the totality of circumstances as presented at trial support the jury's determination the Plaintiffs justifiably relied on Carolina One reliance was justified. *Redwend Limited Partnership v. Edwards*, 354 S.C. 459, 474-75, 581 S.E.2d 496, 504 (Ct. App 2003); *Parks v. Morris Homes Corp.*, 245 S.C. 461, 467, 141 S.E.2d 129, 132 (1965) ("What constitutes reasonable prudence and diligence with respect to reliance upon a representation in a particular case and the degree of fault attributable to such reliance will depend upon the various circumstances involved, such as the form and materiality of the representation, the respective intelligence, experience, age, and mental and physical condition of the parties, the relation and respective knowledge and means of knowledge of the parties, etc."). As noted above,

[8] The court cited the following cases: *Texas Taco Cabana, L.P. v. Taco Cabana of New Mexico*, 304 F.Supp.2d 903 (W.D.Tex. 2003) (illustrating nonreliance clause in franchise specifically identifies statements not relied on, but will not always bar claims on other issues not expressly disclaimed in agreement); *Manufacturers Hanover Trust Co. v. Yanakas*, 7 F.3d 310 (2d Cir. 1993) (illustrating general boilerplate nonreliance clause will not prevent fraudulent inducement suit but specific statement in contract that states party is not relying on representation as to very matter claims it was defrauded on will prevent such suit); *Miles Excavating, Inc. v. Rutledge Backhoe Septic Tank Servs., Inc.*, 23 Kan.App.2d 82, 927 P.2d 517 (1997) (parol evidence admissible to show fraud even where contract contains provision stating parties have not relied on any representations other than those contained in the writing); *Allen-Parker Co. v. Lollis,* 257 S.C. 266, 272-73, 185 S.E.2d 739 (1971) ("Even specific provisions or stipulations in a contract providing in effect for immunity from or nullification or waiver of preliminary or extraneous misrepresentations are generally ineffective, and do not prevent subsequent assertion of misrepresentations as basis for fraud.").

"[t]he general rule is that questions concerning reliance and its reasonableness are factual questions for the jury." *Unlimited Servs., Inc. v. Macklen Enters., Inc.*, 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); *see also Starkey v. Bell*, 281 S.C. 308, 313, 315 S.E.2d 153, 156 (Ct. App. 1984) ("Issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts."). As noted above, a key factor supporting reasonable and justifiable reliance is when one party owes fiduciary duties to another, as was the case here. *See Redwend,* 354 S.C. at 474-475, 581 S.E.2d at 504. Considering Carolina One's fiduciary duties to Plaintiffs, Missy Huff's inexperience as a home buyer, the lack of opportunity to modify the contract, and the relative bargaining positions of the parties, Plaintiffs presented evidence in opposition to the non-reliance provision to the jury, and it decided the reliance was justifiable.

(b) The Purchase Contract's Broker Disclaimer Clause.

Carolina One also relies on the Broker Disclaimer Clause in the Purchase Contract which provides:

> Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements ...

(Ex. 11 at 6). This provision deigns that Carolina One gave no "representations of any kind" regarding the condition of the property. The problem here is that Carolina One did make a representation as to the elevation of the home and it did so as Plaintiffs' fiduciary. This provision cannot modify or change that special, statutorily created relationship.

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In addition, "questions concerning reliance and its reasonableness are factual questions for the jury." *Unlimited Servs., Inc. v. Macklen Enters., Inc.*, 303 S.C. 384, 387, 401 S.E.2d 153, 155 (1991); *see also Starkey v. Bell*, 281 S.C. 308, 313, 315 S.E.2d 153, 156 (Ct. App. 1984) ("Issues of reliance and its reasonableness, going as they do to subjective states of mind and applications of objective standards of reasonableness, are preeminently factual issues for the triers of the facts."). Carolina One elicited testimony and made arguments regarding this provision in the context of reliance. Plaintiffs presented evidence and arguments to the contrary. Therefore, JNOV is not warranted.

(c) Conditional Disclosure Statement Clause ("CDS").

Carolina One also cites the portion of the Purchase Contract that provides the buyer understands the CDS does not replace inspections, the brokers are not liable for anything in the CDS, and the CDS is not a substitute for inspecting the property.[9] However, the evidence presented at trial established that Plaintiffs did hire a home inspector (who Carolina One recommended) to inspect the property. Carolina One's agent testified that, when he undertook to advise Plaintiffs regarding the elevation (which was outside his real estate expertise), he relied on the seller's

[9] On a related note, Carolina One also identifies, without further discussion, the "due diligence provisions in the Disclosure Statement" as additional support for its non-reliance argument. Presumably, as support for this notion, Carolina One cites *McLaughlin,* 379 S.C. at 459-60, 665 S.E.2d at 671-72, stating it affirmed the "trial court's conclusion that an 'as is' clause and a 'right to inspect' clause in the contract for sale barred the plaintiff from establishing the reliance element of a negligent misrepresentation claim." (Mot. for JNOV at 8). While the circuit court in *McLaughlin* did bar the buyer's negligent misrepresentation claim against the seller due to those clauses, the court of appeals did *not* affirm that decision. In dicta, the court of appeals addressed McLaughlin's challenge to the circuit court's decision on that ground because he had inspected the property and therefore could rely on the Disclosure Statement. The court only stated it could not accept that argument "having concluded McLaughlin could not rely on the Disclosure Statement due to the information contained in the Home Inspection Report and the CL-100." 379 S.C. at 459-60, 665 S.E.2d at 671-72. Nevertheless, as discussed previously, *McLaughlin* is distinguishable from the case at bar (primarily because the seller owed no fiduciary duties to the buyer) and does not support Carolina One's arguments.

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disclosure when incorrectly concluding that the home's elevation had been grandfathered in. Accordingly, the relevance of this provision to any of the issues before the Court is not evident.

(d) The Exclusive Buyer Agency Agreement.

Carolina One also refers to the Exclusive Buyer Agency Agreement where it states:

> Buyer acknowledges that Broker is being retained solely as a real estate agent and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector, or other professional service provider. Buyer agrees to seek professional advice concerning the condition of the property, legal, tax, and other professional service matters.

(Ex. 4 at 3). Plaintiffs presented testimony that they reasonably believed that the questions regarding the home's elevation were within the scope of those real estate professional services. If that belief was incorrect, Carolina One had a statutory duty to direct them to the appropriate expert (in this case, the County). Instead, it responded to a precise inquiry by making a positive, distinct, and definite misrepresentation that the elevation had been grandfathered in and there was a flood certificate to support that assertion. *See Epstein*, 308 S.C. at 530-31, 419 S.E.2d 379, 380-82 (quoting 37 Am.Jur.2d supra § 252, at 337) ("[T]he rule is widely followed . . . that one to whom a positive, distinct, and definite representation has been made is entitled to rely on such representation and need not make further inquiry concerning the particular facts involved. . . ."). When Carolina One undertook to do so, it was required to exercise reasonable skill and diligence to provide Plaintiffs with accurate information and advice. Plaintiffs presented evidence that it did not. Nor did Carolina One direct Plaintiffs to the County for those answers as the statute required as Carolina One and its agent testified he should have.

(4) **Unenforceability**

As explained above, Carolina One's reliance arguments are unavailing because the jury was presented with evidence from both sides regarding these contractual provisions and they are

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ineffective as a matter of law to render Plaintiffs' reliance on Carolina One unjustifiable. In addition, JNOV is inappropriate because those same contractual provisions are violative of statutory law and public policy. Specifically, these contractual clauses improperly seek to limit, modify, and/or remove Carolina One's obligation to fulfill the statutory duties it owed to its principal (the Plaintiffs). Courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the Constitution. *Simpson v. MSA of Myrtle Beach*, 644 S.E.2d 663, 671 (2007); *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 555, 606 S.E.2d 752, 758 (2004). In this case, the cited provisions clearly do so as they relate to a buyer's agent and its principal. Furthermore, as outlined below, these clauses are unconscionable and therefore unenforceable as well.[10]

(a) Statute

In *Simpson*, the South Carolina Supreme Court found that an arbitration clause limiting statutory remedies (specifically those outlined in the S.C. Unfair Trade Practices Act) violated statutory law by preventing the plaintiff from receiving mandatory statutory remedies to which he/she may have been entitled to. 644 S.E.2d. at 671. Specifically, the court held that "unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes of punishing acts that

[10] To be clear, violating statutory law, the public interest, and/or unconscionability can each provide an independent ground establishing the unenforceability of a contractual provision. "A refusal to enforce a contract on the ground[ ] of public policy is distinguished from a finding of unconscionability[.]" *Damico v. Lennar Carolinas*, LLC, 437 S.C. 596, 622, 879 S.E.2d 746, 760 (quoting 17A Am. Jur. 2d Contracts § 238 (Supp. 2021)). When reviewing a contract from a public policy perspective, "rather than focusing on the relationship between the parties and the effect of the agreement upon them," the court must "consider the impact of such arrangements upon society as a whole." *Id.* (quoting 17A Am. Jur. 2d Contracts § 238 (Supp. 2021)).

adversely affect the public interest." *Id.*[11] The *Simpson* court's analysis equally applies in the instant case when substituting "statutory duties" for "statutory remedies."

South Carolina law explicitly mandates that "[a] real estate brokerage firm that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting as set forth in this chapter." S.C. Code Ann. § 40-57-350(A). By doing so, the South Carolina Legislature placed on real estate agents "the highest standard of duty implied by law." *Black's Law Dictionary*, 625 (6th Edition 1990). Such statutory duties cannot be removed by a contract. Carolina One itself agreed that those statutory, fiduciary duties cannot be contracted away. Accordingly, these clauses are unenforceable as violative of statutory law.

(b) Public Policy

Beyond the specific statutory provisions implicated, these clauses are also violative of public policy. South Carolina courts have addressed public policy in the context of contractual provisions seeking to relieve a party to a contract from liability for his own negligence, but the analysis of these cases is similarly applicable to the reliance issues at hand. Such clauses violate public policy when attempting to exculpate "for negligence in the performance of a duty of public service, or where a public duty is owed, or public interest is involved, or where public interest requires the performance of a private duty, or when the parties are not on roughly equal bargaining terms." *Pride v. Southern Bell Telephone and Telegraph Co.*, 244 S.C. 615, 138 S.E.2d 155 (1964); *see also Murray v. The Texas Co.*, 172 S.C. 399, 174 S.E. 231 (1934) ("even under the view that a person may under some circumstances contract against the performance of . . . duties a party

[11] The court also found the arbitration clause was oppressive, one-sided, and unenforceable. *Id.* at 670-71.

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owes independent of the contract, he cannot do so where the interest of the public requires the performance thereof, or where, because the parties do not stand on a footing of equality, the weaker party is compelled to submit to the stipulation"). Furthermore, "[s]ince such provisions tend to induce a want of care, they are not favored by the law and will be strictly construed against the party relying thereon." *Pride*, 244 S.C. at 619, 138 S.E.2d at 157. [12]

This case involves "where public interest requires the performance of a private duty" which is evident by the high duties the legislature mandated for the real estate profession as well as its extensive regulation. Expressions of public policy may be found in constitutional or statutory authorities, as well as judicial decisions. *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004); *see also* Citizens' Bank v. Heyward, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925) ("The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration."). The General Assembly may impose statutory or regulatory requirements (such as licensing procedures) for the purpose of protecting the public interest. S.C. Code Ann. § 40–1–10(B)-(C). In doing so, the General Assembly examines whether the service is required by a substantial portion of the population; whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that the practitioner has met minimum qualifications; whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous, or irresponsible members of the profession or occupation; and whether current laws that pertain to public health, safety, and welfare are generally inadequate to protect the public. S.C. Code Ann. § 40–1–10(D).

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[12] The non-reliance provisions cited by Carolina One similarly tend to induce a want of care if *nothing* (and Carolina One means absolutely nothing) represented by a fiduciary can be relied upon by its principal`.

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The General Assembly determined that the real estate profession met the requirements of § 40–1–10(D) with its enactment of the statutory provisions cited throughout this memorandum (which include placing the mantle of fiduciary on real estate professionals in service of their clients). In fact, Section 40-57-10 explicitly states that the purpose of the South Carolina Real Estate Commission "is to regulate the real estate industry so as *to protect the public's interest when involved in real estate transactions.*" *Id.* (emphasis added). Thus, any attempt to limit (or exclude) the mandatory statutory and fiduciary duties placed on real estate agents clearly violates public policy. This Court should not abide by such attempts.

(c) Unconscionability

Finally, the non-reliance clauses are unconscionable. "In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007). "Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue." *Id.* In analyzing the absence of meaningful choice, "[c]ourts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause." *Id.*

Plaintiffs are not a substantial business concern, Carolina One is a large real estate brokerage. Missy Huff was an inexperienced home buyer, and these provisions appear just as every other clause in the contract and are not conspicuous. Another factor is whether there was a

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"meaningful choice available or were these types of limitation provisions industry-wide leaving the consumer no real option." *Manchin v. QS/1 Data Sys., of JM Smith Corp.*, C/A No.: 7:13-cv-02188-GRA at 7 (D.S.C. Jul. 1, 2014) (Judge G. Ross Anderson) (citing *Gladden v. Boykin,* 402 S.C. 140, 146, 739 S.E.2d 882 (2013)).[13] The contracts Carolina One relies on are standard forms, created by the South Carolina Association of Realtors, and used in the Charleston area by all other agencies (including McClellanville). (Ex. 48 at 69 ll. 11-16, 70 ll. 11-18 [Carolina One]). These forms explicitly state they should not be altered, [14] and Carolina One testified, regarding the buyer's agreement, that it did not "see a lot of modifications to buyer's agency contracts," (Ex. 48 at 107 ll. 6-7 [Carolina One]). As for the oppressiveness of these provisions seeking to relieve Carolina One of its fiduciary duties, no reasonable person would accept that he or she could not rely on *any* representations made by his or her fiduciary regarding the very transaction for which the fiduciary was hired. Accordingly, the clauses at issue are unenforceable.

2. Broker Liability Limitation

[13] "Contrary to *Gladden* in which there was "no record on which to find that ... contracts without exculpatory clauses are unavailable in that market," 739 S.E.2d at 885, the record in this case shows that contracts without exculpatory clauses are unavailable in this market" which weighed "against enforcement of the liability waiver." *Manchin*, 2014 WL 2980258, at *4.

[14] The purchase agreement and buyer agency agreements are uniform and standard forms created by the South Carolina Association of REALTORS®. The Purchase agreement provides that the South Carolina Association of REALTORS® "owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, *alteration,* or reproduction of any part of SCR copyright content . . . in connection with any written or electronic format without the prior written consent of SCR." (Ex. 11 at 7) (emphasis added). The exclusive buyer agency agreement similarly provides: "The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®." (Ex. 4 at 4); *see also* (Ex. 48 at 69 ll. 11-16 [Carolina One]) (noting this agreement is a "standard form put out by the South Carolina Association of Realtors that we adopt and use.").

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Carolina One's motion also seeks to limit its liability and reduce the judgment against it pursuant to the limitation of liability contained in the Exclusive Buyer Agency Agreement between Carolina One and Plaintiffs:

> BROKER LIABILITY LIMITATION: *Buyer agrees Broker provided Buyer with benefits, services, assistance, and value value [sic] in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Broker, Buyer agrees that he shall pay Broker's attorney fees and that Broker, shall not be liable to Buyer, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omission, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of Broker shall not exceed the amount set forth herein. Buyer will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker. Buyer agrees that there is valid and sufficient consideration for this limitation of liability and that Broker is the intended third-party beneficiary of this provision.*

(Exhibit 4 at 3, ¶ 11) (italics in original). Carolina One is moving to enforce this provision and reduce the jury's verdict from $597,000 to $6,800. The Court will not do so.

As an initial argument, Carolina One suggests that the buyer agency relationship between the parties "only exists based on the Exclusive Right to Buy Buyer Agency Agreement." While entering into that agreement triggers the fiduciary relationship between the buyer and agent, Carolina One's fiduciary duties are not established or defined by the agreement, but instead by statute. *See* S.C. Code Ann. § 40-57-350(A). Accordingly, this case is not a mere contractual dispute, and Carolina One's argument that limitations of liability are often upheld between parties of roughly equal bargaining power and rarely found to be unconscionable again ignores the context of Carolina One's fiduciary relationship with the Plaintiffs. The support offered for this argument is also distinguishable and inapplicable as the cited cases did not involve limiting liability for

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violating statutorily imposed fiduciary duties such as those owed by real estate brokerages and agents to their clients. *See Gladden v. Boykin*, 402 S.C. 140, 739 S.E.2d 882 (2013) (no statutorily mandated fiduciary relationship existed between the home inspector and his customer); *Huckaby v. Confederate Moter Speedway, Inc*, 276 S.C. 629, 281 S.E.2d 223 (1981) (speedway and its customers); *McCune v. Myrtle Beach Indoor Shooting Range, Inc.*, 364 S.C. 242, 612 S.E.2d 462 (Ct. App. 2005) (paintball range and its customers); *S.C. Elec. & Gas v. Combustion Eng'g, Inc.*, 283 S.C. 182, 322 S.E.2d 453 (Ct. App. 1984) (buyer and seller of a boiler).

Carolina One cannot rewrite the rules the Legislature has clearly set for the real estate profession to absolve itself of liability for the violation of those very rules. For the reasons stated herein, the Court finds the Broker Liability Limitation unenforceable.

(a) The Broker Liability Limitation violates statutory law and public policy.

Limited liability provisions, or exculpatory provisions, are disfavored under South Carolina law as they tend to encourage a lack of due care and courts therefore strictly construe such provisions against the party seeking to limit the liability for its own wrongdoing. *See Pride v. S. Bell Tel. & Tel. Co.*, 244 S.C. 615, 138 S.E.2d 155, 156–57 (1964). When a court upholds an exculpatory provision that exempts a party from liability due to its own negligence, "it is generally upon the ground that no considerations of public policy are present which would override the fundamental right of freedom of contract." *Pride*, 138 S.E.2d at 157; *Fisher v. Stevens*, 355 S.C. 290, 584 S.E.2d 149 (Ct. App. 2003) (finding a clause relieving the defendant from any liability for any reason was overbroad and against public policy."). The same is true of a contractual provision that violates statutory law. *Simpson v. MSA of Myrtle Beach*, 644 S.E.2d 663, 671 (2007).

Here, the Broker Limitation is violative of public policy and the statutory duties owed by real estate brokers and licensees because it insulates real estate professionals from liability for

failing to meet those duties. *See Murray v. The Texas Co.*, 172 S.C. 399, 174 S.E. 231 (1934) ("[E]ven under the view that a person may under some circumstances contract against the performance of . . . duties a party owes independent of the contract, he cannot do so where the interest of the public requires the performance thereof, or where, because the parties do not stand on a footing of equality, the weaker party is compelled to submit to the stipulation"). Carolina One argues the limitation is enforceable because it does not preclude the recovery of damages but instead only limits the amount recoverable. However, the drastic disparity between that limit and the potential damages caused by an agent failing to meet his or her statutory duties, as illustrated in this case, would render the principal with no remedy at all. *See Smith v. D.R. Horton*, Inc., 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016) (finding the only remedy in the contested provision constituted "no remedy at all because it leaves the relief to the whim of D.R. Horton while simultaneously allowing no monetary recuperation when . . . repairs are simply inadequate."). This problem would be exacerbated by the provision's requirement that the principal must pay Carolina One's attorney's fees in order to seek such a severely limited "remedy." Tellingly, Michael Scarafiles, President and CEO of Carolina One, exclaimed "that's crazy" during his testimony upon reading the attorney's fees provision in the Broker Liability Limitation.

Applying the limitation in this case further demonstrates the prejudice it creates where Carolina One seeks to limit Plaintiffs' recovery by reducing the $597,000 verdict to $6,800 (the commission it made from this sale). After years of discovery, motions practice, hiring an expert, and almost a weeklong trial, Carolina One's fees undoubtedly exceed $6,800 by an exponential margin. As found by the jury, Plaintiffs have lost hundreds of thousands of dollars due to Carolina One's negligent misrepresentations, and enforcing this provision would oppressively dock them tens of thousands more.

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With no actual exposure for failing to exercise the statutorily required standard of care and duties required of real estate agents as fiduciaries, enforcing the Broker Liability Limitation would threaten to render that standard of care and those duties meaningless. Accordingly, the Court finds the liability limitation provision is unenforceable because it violates statutory law and public policy. [15]

(b) Indemnification

This provision also violates public policy because it contains an unenforceable indemnification provision and the limitation language serves effectively has an indemnification to the extent it requires the buyer to pay Carolina One's attorney's fees. *See Builders FirstSource-*

[15] These conclusions are consistent with the prevailing rule in other jurisdictions. *See, e.g., Miller v. Crested Butte, LLC,* 549 P.3d 228, 235–236 (Colo. 2024) ("[S]ettled precedent from this court has established that a party cannot discharge its obligation to perform a statutory duty by way of an exculpatory agreement"); *JM Family Enterprises, Inc. v. Winter Park Imports, Inc.*, 10 So.3d 1133, 1133 (Fla. Dist. Ct. App. 2009) (per curiam) "[A] release or exculpatory clause that attempts to prospectively insulate a party from liability for violating a statute or ordinance enacted to protect the public is generally unenforceable as against public policy."); *La Frenz v. Lake County Fair Board,* 360 N.E.2d 605, 609 (Ind. 1977) ("[T]he obligation and the right created by [a] statute [to protect the public] are public ones which are not within the power of any private individual to waive."); *Lee v. Sun Valley Co.*, 695 P.2d 361, 364 (Idaho 1984) ("[W]hile the agreement between Sun Valley and plaintiff does absolve Sun Valley from common law liabilities, it does not absolve Sun Valley from liability for possible violation of the public duty imposed by" a particular statute.); *Henry v. Mansfield Beauty Academy, Inc.*, 233 N.E.2d 22, 24 (Mass. 1968) ("[A] contract cannot serve to shield the defendant from responsibility for violation of a statutory duty."); *Calef v. West*, 652 NW2d 496 (Mich. 2002) ("[E]xculpatory clauses in residential leasehold agreements are void, as against public policy, to the extent that they purport to immunize the landlord from tort liability for the breach of a statutory duty." Id. at 452.*James Vault & Precast Co. v. B&B Hot Oil Serv., Inc.,* 927 N.W.2d 452, 466 (N.D. 2019) ("[A] contractual provision purporting to exempt anyone from responsibility for a willful or negligent violation of statutory or regulatory law is against the policy of law and not enforceable."); *Finch v. Inspectech, LLC*, 727 S.E.2d 823, 832 (W.Va. 2012) ("[A] limitation of liability contractual provision may be invalidated as contrary to public policy if it absolves a party of liability for failure to conform to a statutorily imposed standard of conduct."); Rest.2d Contracts, § 195, cmt. a ("If, for example, a statute imposes a standard of conduct, a court may decide on the basis of an analysis of the statute, that a term exempting a party from liability for failure to conform to that standard is unenforceable.").

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Southeast Group, LLC, v. Palmetto Trim and Renovations, Op. No. 6099, at 23 (S.C. Ct. App. February 12, 2025) (recognizing in one of the contracts at issue "a disguised indemnity provision for defense costs."). The Broker Liability Limitation has the following indemnification language: *"Buyer will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker."* (Exhibit 4 at 3, ¶ 11) (italics in original).

"[O]ur supreme court has generally held that a contract of indemnity may require a party to indemnify an indemnitee against its own negligence if the 'intention is expressed in clear and unequivocal terms.'" *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 152, 810 S.E.2d 41, 45 (Ct. App. 2018) (quoting *Laurens Emergency Med. Specialists, PA*, 355 S.C. at 111, 584 S.E.2d at 379). "[T]he clear and unequivocal standard applies any time an indemnitee is seeking indemnification for its negligence, whether sole or concurrent." *Concord & Cumberland*, 424 S.C. 639, 649, 819 S.E.2d 166, 172 (Ct. App. 2018). That standard applies here because the term "parties" in the indemnification provision in the Broker Liability Limitation is ambiguous and broad enough to include indemnification for Carolina One's own negligence: *"Buyer will indemnify and hold harmless and pay attorneys fees for Broker from . . . any negligent or intentional acts or omissions by any* ***Parties.***" (italics in original, emphasis added). However, that indemnification provision does not express that intention in clear and unequivocal terms and is therefore against public policy and unconscionable. *See Builders FirstSource-Southeast Group, LLC,* Op. No. 6099, at 28-30. There is no severability provision in the Broker Liability Limitation so the offending language cannot be removed and/or the provision rewritten. *Id.* at 27-28.; *see also Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 50 n.6 , 790 S.E.2d 1, 5 n.6 (2016) (in the arbitration

context). As such, the entire Broker Liability Limitation is unenforceable. *Builders FirstSource-Southeast Group, LLC,* Op. No. 6099, at 27-28. The same can be said of the liability limitation at issue in this case which is a disguised indemnification provision for Carolina One's attorney's fees when pursuing compensation for its own negligence and breach of statutory duties.

(c) The Broker Liability Limitation is Unconscionable.

"In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24–25, 644 S.E.2d 663, 668 (2007). As discussed previously, the Exclusive Buyer Agency agreement is a standard form created by the South Carolina Association of Realtors that explicitly states it should not be altered; it is used in the Charleston area by all other agencies (including McClellanville);[16] and Carolina One did not "see a lot of modifications to buyer's agency contracts."[17] Therefore, the Buyers Agency Agreement is a standard contract which all buyers must enter into "with only a few blank spaces to fill in" and "[o]ther than those type of minor blank spaces, the terms of the [ ] agreement—particularly those of any consequence to [the seller/developer]—[are] non-negotiable." *Damico v. Lennar Carolinas*, LLC, 437 S.C. 596, 614, 879 S.E.2d 746, 756 (2022).[18]

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[16] (Ex. 48 at 69 ll. 11-16, 70 ll. 11-18 [Carolina One])

[17] (Ex. 48 at 107 ll. 6-7 [Carolina One])

[18] Carolina One argues that Plaintiffs had a meaningful choice because they could have hired 700 other agencies in Charleston. This argument misses the mark. Plaintiffs lacked any meaningful choice because all of those agencies use the same Exclusive Buyer's Agency Agreement with the same limitation of liability provision. *See Manchin,* 2014 WL 2980258, at *4 ("Contrary to *Gladden* in which there was "no record on which to find that ... contracts without exculpatory clauses are unavailable in that market," 739 S.E.2d at 885, the record in this case shows that

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Additionally, the sophistication of the Plaintiffs "pale[d] in comparison" to Carolina One who has been involved in the sale or purchase of thousands of homes, whereas this was Huff's first home purchase. *Id.* at 614–15, 879 S.E.2d at 756–57 ("[the builder] ha[d] sold thousands of homes ..., whereas [the buyers] w[ould] likely only purchase, at best, a handful of homes in their entire lifetime."). This conclusion is unchanged by Carolina One's attempts to hold Missy Huff's legal education against her, even though she has not practiced law for almost two decades and never practiced in an area pertinent to the issues in this case. Despite her education, intelligence, and success in her career, Missy Huff is not on an equal playing field with a large real estate brokerage such as Carolina One. *See Dawkins v. Eastwood Homes of Columbia, LLC*, No. 2024-000369, 2025 WL 1949798, at *2–4 (S.C. Ct. App. July 16, 2025) (assessing intelligent plaintiffs successful in their respective careers in relation to a large home builder). For these reasons, Plaintiffs lacked any meaningful choice.

Furthermore, the terms of the limitation are clearly one-sided and oppressive such that no reasonable person would make them. "Mutuality ... is a paramount consideration when assessing the substantive unconscionability of a contract term." 17A Am. Jur. 2d Contracts § 272. "A contract may be considered substantively unconscionable when a clause or term in the contract is totally one-sided or overly harsh, such that it oppresses or unfairly surprises an innocent party, [and] there is an overall imbalance in the obligations and rights imposed by the bargain ...." *Id.* (footnotes omitted). "A term may also be said to be substantively suspect if, viewed at the time the contract was formed, it reallocates the risks of the bargain in an objectively unreasonable or unexpected way." *Id.* (footnotes omitted). Given the severe limitation of a remedy against one's

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contracts without exculpatory clauses are unavailable in this market" which weighed "against enforcement of the liability waiver.").

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fiduciary agent, the provision at issue it exhibits an overall imbalance in obligations and rights, and it unreasonably reallocates the risk of a fiduciary failing to perform his or her statutory duties to the buyer (which in turn is also unexpected.)

Furthermore, no reasonable person would accept that he or she would be so severely limited in recovering damages for the wrongdoing of his or her fiduciary and, at the same time, pay that fiduciary's attorney's fees to do so. *See Manchin*, 2014 WL 2980258, at *4) ("No reasonable person would agree to risk losing millions of dollars with the only recourse against the service company a recovery of only thousands."). As noted above, even Michael Scarafiles testified, when reading the attorney's fees portion, "that's crazy." Moreover, such an oppressive term drastically chills any attempts to recover the limited amount to the point of being no remedy at all. *See Smith v. D.R. Horton*, Inc., 417 S.C. 42, 50, 790 S.E.2d 1, 5 (2016) (finding the only remedy in the contested provision constituted "no remedy at all because it leaves the relief to the whim of D.R. Horton while simultaneously allowing no monetary recuperation when . . . repairs are simply inadequate.").

3. Punitive Damages

Carolina One argues the jury's punitive damages award should be vacated because it was unreasonable based on the relative "reprehensibility" of Carolina One's conduct. Carolina One's admitted violation of S.C. Code Ann§ 40-57-350(E)(1)(b)(iv) warranted submitting punitive damages to the jury, among other things. *See Tant v. Dan River, Inc.*, 289 S.C. 325, 326–27, 345 S.E.2d 495, 496 (1986) (defendant violated air pollution regulations promulgated by the South Carolina Department of Health and Environmental Control so the issue of punitive damages was properly submitted to the jury). The jury awarded one time the actual damages presented to it. The Court finds that ratio does not represent a great disparity between the actual damage and the

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punitive award. As for reprehensibility, Plaintiffs offered evidence that Carolina One willfully (and with reckless disregard) failed to fulfill its statutory, fiduciary duties to Plaintiffs which required, in this instance, simply directing Plaintiffs to Charleston County to inquire about their elevation concerns. When considering the fiduciary relationship, the cavalier failure to do what Carolina One knew it should do, Carolina One's repeated attempts to insulate itself from liability with one-sided contractual provisions, and the gravity of the injury to Plaintiffs, evidence existed that could establish Carolina One's conduct was sufficiently reprehensible to justify the punitive damage award of one time the actual damages. Accordingly, the Court finds the jury's punitive damages award reasonable.

4. Proximate Cause

Carolina One also asserts that Plaintiffs failed to establish proximate cause, and "[n]o reasonable jury could have found that both the requirements of causation in fact and legal cause have been satisfied in this case." (Mot. for JNOV at 17). However, Plaintiffs did offer evidence that Carolina One's failure to direct them to Charleston County (as Carolina One admitted Beach should have) combined with providing Plaintiffs patently false information that the elevation of the home had been grandfathered in (despite testifying that such issues were outside the expertise of a real estate agent) was the actual cause of Plaintiffs' foreseeable injuries.

Carolina One claims proximate cause is lacking because it had nothing to do with the unpermitted repairs and failure to disclose, but instead blames (1) Missy Huff for failing to research the unpermitted work in the public records; (2) the seller for intentionally failing to disclose the unpermitted work;[19] and (3) the seller's agent for leading Carolina One to believe there was no

[19] Carolina One also highlights Missy Huff's testimony that she believed the seller did the unpermitted work on the home and lied on the Property Condition Disclosure Statement. However,

permitting issue. However, Plaintiff offered evidence that Carolina One's acts and omissions are precisely why Missy Huff did not contact Charleston County where she would have learned of the elevation issue caused by the unpermitted work when she testified that (a) Beach did not advise her to do so as he should have and (b) Beach's incorrect representation that the elevation had been grandfathered induced her to not proceed further with the issue. Evidence also showed that Carolina One undertook to advise Plaintiffs in an area it admitted was outside of its real estate expertise and despite admitting it should have instead referred Plaintiffs to Charleston County regarding their elevation concerns. Similarly, Carolina One provided incorrect information to Plaintiffs because it relied on the seller's agent to provide information regarding an area outside of both their real estate expertise to surmise (incorrectly) that the home had been grandfathered, when it should have referred Plaintiffs to the County, knew it should have, and simply did not. Accordingly, the Court finds there is sufficient evidence in the record to establish that Carolina One's conduct was the actual, "but for" cause of Plaintiffs' injuries.

The Court also does not find that because Carolina One did not have notice of the unpermitted work, it was not foreseeable as a matter of law that the seller and listing agent would intentionally misrepresent the condition of the property.[20] Foreseeability, as it relates to legal cause, looks "to the natural and probable consequences of the *defendant's* [Carolina One] act or omission." *Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 369, 635 S.E.2d 97, 101 (Ct. App. 2006). "Where the injury complained of is not reasonably foreseeable there is no liability." *Crolley v.*

Huff's belief as to who put the wrong into motion has no bearing on Carolina One's conduct ultimately being the proximate cause of Plaintiffs' injuries.

[20] Carolina One asserts that the trial established it had no actual or constructive knowledge that the additions and renovations were unpermitted. However, Plaintiffs offered evidence that such knowledge was a click away in the listing just prior to the listing the parties operated under.

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Hutchins, 300 S.C. 355, 357, 387 S.E.2d 716, 717 (Ct. App. 1989). The Court finds that Plaintiffs' injuries (as they flowed from having to elevate the house) were foreseeable to Carolina One as a natural and probable consequence of its undertaking to provide incorrect information about that very issue, particularly given the evidence that it failed to direct Plaintiffs to the appropriate expert, the County, for inquiries that were outside of its real estate expertise. Plaintiffs presented evidence at trial to establish the same, the issue was properly before the jury, and it reasonably concluded proximate cause existed. *McNair v. Rainsford*, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998) (stating that proximate cause is an issue for the jury and "the trial judge's sole function is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence."). This case is not one of the "exceptional cases" where proximate cause can be decided as a matter of law. *See Trivelasv v. S.C. Dept. of Transp.*, 348 S.C. 125, 137, 558 S.E.2d 271, 277 (Ct. App. 2001).

B. Motion for New Trial

Carolina One also moves for a new trial absolute, or in the alternative, a new trial *nisi remitter*. Carolina One's basis for its motion is that the verdict is so excessive as to shock the conscience of the Court and the verdict was unjustified by the evidence such that it was necessarily the result of passion, caprice, prejudice among other things, or "the improper and erroneous rulings of this Court on evidentiary issues and matters of law." In the alternative, Carolina One suggests that the verdict is excessive and unduly liberal warranting a new trial *nisi remittitur*. Many of Carolina One's supporting arguments are identical to those made in its Motion for Judgment Notwithstanding the Verdict, such as the verdict being unjustified by the evidence and the operation of the Broker Liability Limitation. Therefore, the same reasons the Court dismissed those

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arguments in denying the JNOV motion equally apply to the duplicated issues raised in Carolina One's motion for new trial.

Carolina One does argue that the "sheer size of the damages award no doubt indicates that the verdict was rendered on some other basis that the evidence presented at trial." The Court disagrees, particularly where almost half of the damages awarded were for Plaintiffs' *actual* damages. Plaintiffs presented evidence of these damages, including testimony and invoices, and Carolina One never challenged any of the actual damages presented to the jury. As for the punitive damages award, the Court holds that verdict does not shocked the conscience as it equals one time the actual damages so there is not a great disparity between the two. Carolina One nevertheless urges the Court to insert itself as the Thirteenth Juror because "there is no evidence supporting the jury's finding that Plaintiffs suffered $300,000 in damages." Carolina One also states in support of its request for a new trial *nisi remittitur* that "the jury's damage award reflects approximately $300,000 in punitive damages which the Plaintiff did not prove at trial." However, Plaintiffs did present evidence sufficient for punitive damages to be considered by the jury, such as Carolina One's violation of a statute and its willful and reckless decision to simply not do what it should have done as Plaintiffs' fiduciary, with no explanation as to why.

Carolina One's suggestion that the jury found that Plaintiffs "suffered" punitive damages, despite the absence of evidence supporting the same, is misplaced. Punitive damages are tied to a defendant's specific, individual conduct and are intended to punish the defendant, not to compensate the injured party. *See Harleysville Grp. Ins. v. Heritage Cmtys., Inc.*, 420 S.C. 321, 353, 803 S.E.2d 288, 306 (2017); *Green v. McGee*, 446 S.C. 343, 354, 919 S.E.2d 903, 908 (2025). The goal of actual damages is to restore the injured party to the same position he or she was in before the wrongful injury occurred, while punitive damages relate not to the plaintiff, but rather

to the defendant's conduct. *Harleysville Grp. Ins.*, 420 S.C. at 353, 803 S.E.2d at 306. The Court holds that Plaintiffs are not required to present evidence that they "suffered punitive damages" as that is a legal impossibility.

For these reasons and those established regarding the JNOV motion that are applicable to Carolina One's motion for new trial, that motion is denied.

IV. CONCLUSION

For the foregoing reasons it is hereby **ORDERED** that Defendant Carolina One's Motion for Judgment Notwithstanding the Verdict is **DENIED**. Defendant's Motion for New Trial is also DENIED.

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Charleston Common Pleas

Case Caption: Emmalissa Huff , plaintiff, et al VS Keller Williams Realty Mount Pleasant , defendant, et al

Case Number: 2022CP1001312

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

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