THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2023-CP-29-01534
Appellate Case No. 2025-002538

MTS CLT, LLC,

……Appellant,

v.

Jane M. Pettus, Trustee of The Joseph A. Pettus and Jane A. Pettus Revocable Living Trust U/I/D April 12, 2005, and Rob Bilbro ……Respondents.

RESPONDENT ROB BILBRO'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Statutes

STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN FINDING THAT MR. BILBRO'S ACTIONS AS MS. PETTUS'S AGENT WERE PRIVILEGED AND NON-ACTIONABLE WITH REGARD TO A CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS?

II. DID THE CIRCUIT COURT ERR IN FINDING THAT MTS DID NOT PROVE THE ELEMENTS NECESSARY FOR A TORTIOUS INTERFERENCE CLAIM AGAINST MR. BILBRO?

III. 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 matter concerns a failed real estate transaction in which the purchaser/developer, Appellant MTS CLT, LLC ("MTS"), seeks to blame the seller and her realtor for its own failures to close the transaction by the deadlines set forth in the underlying purchase agreement between the purchaser and seller.

Respondent Jane A. Pettus Revocable Living Trust U/I/D April 12, 2005 ("Pettus") is the owner of real property located in Lancaster Couty, South Carolina (the "Property"). Pettus retained Respondent Rob Bilbro ("Bilbro") to serve as her realtor for the marketing and sale of the Property on June 16, 2019. (Deposition of R. Bilbro, June 6, 2024, at p. 22 l. 11-13, R. _____).

On November 30, 2020, MTS and Pettus entered into a contract for the purchase and sale of the Property. (Compl. Ex. A, R._____). While the reasons for a failure to close are disputed between MTS and Pettus, it is undisputed that the transaction has never closed.

On November 22, 2023, MTS filed this action against Pettus and Bilbro asserting claims (1) that Pettus breached the contract, (2) for specific performance of the contract by Pettus, (3) that Bilbro tortiously interfered with the contract, and (4) that Bilbro committed acts that constituted unfair trade practices. (Compl., R._____). Pettus filed an Answer and Counterclaim on December 19, 2023. (R. _____). Bilbro filed an Answer on January 5, 2024. (R. _____). In so doing, Bilbro denied the material allegations set forth in the Complaint and asserted various affirmative defenses.

On June 13, 2024, Bilbro, jointly with Pettus, filed a Motion for Protective Order concerning questions offered by counsel for MTS at Bilbro's deposition taken on June 6, 2024. (R. _____). The questions at issue concerned whether privilege applied to (a) communications between Bilbro and the transactional attorney for Pettus and (b) communications between Bilbro,

litigation counsel for Pettus, and Pettus. (R. _____). MTS filed a Motion to Compel on August 12, 2024, concerning the same issues. (R. _____). Following a hearing, in an Order entered on September 19, 2024, the circuit court held that (a) Bilbro served as an agent of Pettus through the negotiation of the contract and after its failure to close and (b) that the communications within their agency are entitled to attorney-client privilege. (R. _____). No motion to reconsider this order was filed thereafter.

On July 28, 2025, all three parties filed separate motions for summary judgment. (R. _____). The motions were heard on September 23, 2025. On December 4, 2025, the Court issued two orders, one granting Bilbro's motion for summary judgment and another granting Pettus's motion for summary judgment while denying MTS's motion for summary judgment. (R. _____). MTS filed two Motions for Reconsideration, pursuant to Rule 59(e), SCRCP on December 12, 2025, which were subsequently denied by order filed December 18, 2025. (R. _____). MTS filed its Notice of Appeal on December 19, 2025.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c). *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 36, 637 S.E.2d 560, 561 (2006). Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing'—that

is, pointing out to the trial court—that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *Midland Mutual Life Ins. co. v. Darrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). Even though courts must view facts favorably to the nonmoving party, a party cannot survive summary judgment by creating unreasonable inferences or non-genuine issues of fact. *Grimsley v. S.C. Law Enforcement Div.*, 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). The nonmoving party must specifically set forth such facts showing that a true issue for fact finder determination exists. *See* Rule 56(e), SCRCP.

FACTUAL BACKGROUND

Pettus is the owner of the Property, located in Lancaster County, South Carolina with tax map numbers 0003-00-052.00 and 0003-00-052.06. Pettus retained Bilbro on June 16, 2019 as her exclusive realtor for the marketing and sale of the Property. (Deposition of R. Bilbro, June 6, 2024, at p. 22 l. 11-13, R.____; Affidavit of R. Bilbro dated July 28, 2025, at ¶ 4, R.____). Bilbro served as an agent of Pettus throughout the negotiation of the contract and after its failure to close. (Order dated September 19, 2024; Bilbro Aff. ¶ 6, R.____).

On November 30, 2020, MTS and Pettus entered into a contract for the purchase and sale of the Property (the "Contract"). (Compl. Ex. A, R._____). The Contract, as amended, provided for closing at the earlier of (i) thirty (30) days after the receipt of Required Approvals or (ii) September 28, 2023. (R._____). While the reasons for a failure to close are disputed between MTS and Pettus, it is undisputed that the transaction has never closed.

As set forth in the Complaint, MTS makes the following accusations as to the actions of Bilbro in support of its claims:

a. After the failure to close, Bilbro informed contractors that the Property was no longer under contract with MTS. (Complaint ¶ 41). (R._____).

b. After the failure to close, Bilbro asked Lancaster County Sewer and Water District to halt its approval process. (Complaint ¶ 42). (R._____).

c. Bilbro interfered with approvals from Lancaster County government approvals throughout the course of the contract. (Complaint ¶ 43). (R._____).

d. After the failure to close, Bilbro procured the breach of the contract by relisting the Property for sale. (Complaint ¶ 63). (R._____).

At the summary judgment hearing, MTS limited its argument, asserting that only the conduct of Bilbro that occurred prior to September 28, 2023 (the time period where both MTS and Pettus agree that the Property was under contract) supported its claims, as follows:

a. While the Property was undisputably under contract, Bilbro advised Pettus, as her realtor, concerning the terms of the contract and what would occur if closing did not occur by September 28, 2023. MTS argued that an expiration or termination of the Contract was to Bilbro's benefit because he could list the Property for a higher amount, resulting in a higher commission earned.

b. While the Property was undisputably under contract, Bilbro communicated with third parties concerning the Contract's status and the potential availability of the Property.

c. While the Property was undisputably under contract, Bilbro communicated with the Lancaster County Planning Department concerning whether someone else could modify the preliminary plat approval if MTS did not close.

(Hearing Transcript, Sept. 28, 2025, p. 60, R._____).

Counsel for Pettus sent letters on September 18, 2023, and September 27, 2023 to attempt to complete the closing per the deadline in the contract. (Pettus Answer, ¶ 53, Ex. C, R._____; MTS Reply, ¶ 19, R._____; Pettus Aff., Mar. 26, 2024, ¶ 14, R._____; Heath Myers Aff.,

Nov. 8, 2024, ¶ 20, R._____). When the purchase failed to close by September 28, 2023, Bilbro had the belief that the contract for the purchase of the Property "did not exist anymore" because Pettus's attorney Heath Myers had informed Bilbro that there was no longer a contract. (Bilbro Depo. p. 161 l. 1-5, 12-14, R._____).

Bilbro never spoke with anyone concerning placing the Property back on the market prior to the expiration of the contract. (Bilbro Depo. p. 163 l. 24 – p. 164 l. 2, R._____). The first of any such discussions with the Pettus family occurred in October 2023. (Deposition of S. Pettus, November 1, 2024, p. 111 l. 11 – p. 113 l. 13, R._____). Bilbro activated the listing for the Property per instructions from Pettus (or her children) on October 20, 2023. (Bilbro Aff. ¶ 11, R._____). While Bilbro did receive letters of intent from third-party potential purchasers, no negotiation of contract terms or entry into any purchase agreement ever occurred. Instead, the offers were received, and the offerors were told that a lawsuit had been filed and that no response would be made until after the lawsuit's conclusion. (Bilbro Depo. p. 173 l. 5 – p. 175 l. 4, R._____).

Bilbro did not have any communications with the Lancaster County Water and Sewer District or the Lancaster County Planning Commission after the date of the believed expiration of the contract for purchase of the Property. (Bilbro Aff. ¶¶ 22-23, R._____). Bilbro's only communications prior to September 2023 with anyone in the Lancaster County government concerned the status of a sewer line, moving forward with preliminary plat review, and whether plat approvals would apply to a new purchaser. (Bilbro Depo. p. 45 l. 15 – 49 l. 12, R._____).

ARGUMENT

The Circuit Court correctly held that the claims asserted against Bilbro fail as a matter of law.

I. THE CIRCUIT COURT CORRECTLY HELD THAT THE CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS FAILS.

MTS's claim for tortious interference with contractual relations fails because the actions of Bilbro are privileged and not all of the elements of this claim are met.

A. The Actions of Bilbro Are Privileged and Not Actionable

Of utmost importance, the actions of Bilbro as an agent of Pettus are privileged and therefore non-actionable. "[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). In other words, a party to a contract cannot tortiously interfere with its own contract. This also means that an agent, acting on behalf of his principal, cannot tortiously interfere with his principal's contract, as a matter of law. "[T]he actions of a principal's agent are afforded a qualified privilege from liability for tortious interference with the principal's contract." *Dutch Fork Dev. Group II, LLC v. Sel Props., LLC*, 406 S.C. 596, 605, 753 S.E.2d 840, 844 (2012). "'The reason for this privilege is that holding an agent liable would be like holding the principal itself liable for the tort of interfering with its own contract, instead of holding the principal liable for breach of contract.'" *Id.* quoting *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 357 F.3d 375, 385 (3d Cir. 2004). If an agent induces the breach of a contract by acting on behalf of the principal and within the scope of his employment or agency, then the inducement is privileged and not actionable. *Bradburn v. Colonial Stores, Inc.*, 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979).

Based on the Order entered on September 19, 2024, it is conclusively established that Bilbro served as an agent of Pettus throughout the negotiation of the contract and after its failure to close. (Order dated September 19, 2024, R._____). This is further supported by the testimony

of Bilbro. (Bilbro Aff ¶¶ 4, 6-7, R._____). Even without the September 19 Order, there is no question of fact as to Bilbro's role – he served as a realtor engaged by Pettus to assist her with the sale of the Property. In this role, he was the legal agent of Pettus. "The test to determine agency is whether or not the purported principal has the *right to control* the conduct of the alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424, 426 (1982) (emphasis in original). "An agency relationship may be established by evidence of actual or apparent authority." *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004) (citation omitted). There is no evidence that contradicts the testimony and affidavit of Bilbro – he was retained to act at the direction of Pettus as her agent.

The privilege is qualified because if the actions are outside the scope of the agency, then the privilege may not apply. Put in other words, "[t]he authorized acts of an agent are the acts of the principal." *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 242, 489 S.E.2d 470, 472 (1997). MTS's assertion of tortious conduct are: (a) preparing for contingencies if the Contract terminated, (b) contacting builders as potential buyers of the property, and (c) contacting county authorities concerning approvals and permits.[1] All of these actions are clearly within the normal scope of what a realtor does for his seller. There is no testimony in the record to support the notion that somehow these actions were outside the scope of his role as a realtor, and MTS has not retained any expert to support its assertion of what is inside and outside of his

[1] MTS also includes arguments relating to the increased listing price of the Property post-termination. However, MTS abandoned any arguments concerning post-September 28, 2023 conduct at the summary judgment hearing. If a party abandons certain facts or issues at a summary judgment hearing, those facts or issues are also considered abandoned for purposes of appeal. *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 505, 812 S.E.2d 438, 441 (2018) (the court reiterated that issues must be raised to and ruled upon by the trial court to be considered on appeal). Regardless, such action is also within the scope of Bilbro's agency.

agency. That Bilbro was acting all times within the scope of his authority is not questioned by the people in the agency relationship – Bilbro and Pettus. Instead, MTS is trying to bootstrap the actions of Bilbro into something more than they actually were, in an attempt to create a question of fact where none exists. MTS argues that Bilbro was not acting within his agency to keep its tortious interference claim alive, all when there is no statement by the principal herself that Bilbro was doing anything at all outside of the agency relationship. 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. It is well-established that statements made by attorneys during arguments or in written briefs are not evidence and cannot be considered by the court in determining whether a genuine issue of material fact exists. *Higgins v. Medical Univ.*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (1997).

As it is without question and previously established that Bilbro acted as Pettus's agent, Bilbro's actions are therefore privileged and not actionable. Thus, this cause of action fails.

B. The Elements for Tortious Interference With Contractual Relations Cannot Be Met

In the alternative, if the Court holds that the privilege as set forth above does not apply, MTS's claim for tortious interference with contractual relations also fails because not all of the elements of this claim are met. "The elements of a cause of action for tortious interference with contract are: (1) the existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3); his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 376 S.E.2d 472, 473 (1985). A failure of any single element means that the claim fails.

Bilbro relies on the arguments presented by Pettus, both in its underlying summary judgment motion and in this appeal, to support the position that no contract existed at the time of

the alleged wrongful acts, as the contract had already expired per its terms at the time of any of the acts MTS or its representative testified to. If the claim of breach of contract by MTS against Pettus fails, then this prong of the tortious interference claim necessarily fails as well.

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 do not equate to an intentional procurement of the breach of the contract. These are normal acts within the scope of agency of a realtor to his client. There are no facts to support that Bilbro interfered in the permitting and approvals process. MTS wants to rely on the simple fact that such communications occurred as enough to lead to a question of fact. This is not a record of conflicting evidence, as argued by MTS. With nothing more than argument, and with no facts connecting the dots of the conspiracy theory that Bilbro's intention was to "sabotage" the contract, a summary judgment ruling in favor of Bilbro was appropriate. The intentional procurement prong fails because no facts establish any such intent by Bilbro. Instead, MTS wants to make the unreasonable inference that Bilbro purposefully gave bad advice and knew that he could make a higher commission. These are again simply arguments of counsel without support in the record.

Furthermore, many of the purported tortious acts alleged by MTS occurred after the expiration of the Contract. As set forth in the Order granting Pettus's Motion for Summary Judgment, the Circuit Court found that the Contract expired per its terms by no later than September 28, 2023. The order entered granting Pettus's motion provides the findings for the expiration of the Contract. Therefore, based on those findings, no actions by Bilbro conducted after September 28, 2023 support this claim, and therefore the claim fails as to any of Bilbro's

actions from after that date. In addition, as set forth above, MTS abandoned any argument that post-September 28, 2023 conduct supports its positions in opposition to Bilbro.

Thus, the Circuit Court correctly granted summary judgment and dismissed MTS's claim for tortious interference with contract.

II. THE CIRCUIT COURT CORRECTLY HELD THAT THE CLAIM FOR UNFAIR TRADE PRACTICES FAILS.

The transaction at issue is for the purchase of a tract of land for development of a residential neighborhood. There is no relationship, transaction, or contract between Bilbro and MTS. Bilbro is the realtor for the seller, while MTS is the buyer, a sophisticated commercial developer, who also had its own real estate agent. This type of transaction really should not invoke or in any way involve the South Carolina Unfair Trade Practices Act ("SCUTPA"). This is a dispute concerning a breach of contract and whether the contract had expired. This claim should be dismissed on the theory that it does not apply to transactions like the one before the Court, without the need for analysis of the elements of such a claim.

However, set forth herein is an analysis of the elements and law concerning SCUTPA to show that trying to use this law to support a claim against Bilbro is attempting to place a square peg into a round hole.

Looking at the elements:

SCUTPA declares "unfair or deceptive acts or practices in the conduct of any trade or commerce . . . unlawful." S.C. CODE ANN. § 39-5-20(a). "To recover in an action under the UTPA, the plaintiff must show (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

There is no evidence to support (1) that Bilbro engaged in an unlawful trade practice, (2) that any alleged unlawful trade practice engaged in by Bilbro had an adverse impact on the public interest, (3) that the actions of Bilbro are capable of repetition, or (4) that MTS suffered actual ascertainable damages as a result of Bilbro's use of an alleged unlawful trade practice. *See* S.C. CODE ANN. § 39-5-140.

A deceptive act is any act which has a tendency to deceive. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). The alleged wrongful and deceptive acts committed by Bilbro are (1) having conversations with county officials regarding the expiration of the contract and blocking permitting to occur, (2) informing other builders that the contract has expired or terminated, (3) advising Pettus, his client, about the end date of the contract and items related thereto, and (4) activating the listing of the property following the date of expiration. The record contains no witness that confirms what was stated to or with any county official. There is no witness that can directly testify to these statements even being made and no third-party builder is listed as a witness by any of the parties. Regardless, none of these are deceptive practices. They are normal practices of a realtor for his principal. Furthermore, this Court can determine as a matter of law that informing third parties about one's belief that a contract has expired is not a deceptive practice.

Significantly, none of these alleged actions taken by Bilbro are directed to MTS. If the statements or actions were not directed to MTS, then MTS could not be deceived by the actions. For example, Bilbro did not obtain information from a government office and then report misinformation concerning that communication back to MTS. Without deception directed to MTS, the claim fails. If SCUTPA is designed to protect against deception in this set of facts, it would be a claim of deception between a realtor and his client seller, not the adverse purchaser

who is represented by its own, separate realtor. For MTS to have a claim of violation of SCUTPA, the deceptive act must affect the public interest, and not simply be a deception of Pettus as argued by MTS. (MTS Brief at p. 11, R. ____). No facts can be presented that support that deceptive statements or acts occurred between Bilbro and MTS, or that they affected the public at large. The alleged actions taken by Bilbro do not cause the danger SCUTPA is intended to protect – somehow misleading a consumer for the purposes of financial gain for the alleged wrongdoer. Likewise, activating a listing and taking offers do not rise to deceptive acts; rather, they are publicly open acts. Again, it does not deceive parties to this transaction or the public at large. The builders who did submit letters of intent were informed that no contract negotiations could commence. Just because MTS did not like that Pettus sought to move on from the failed closing does not make such a practice a violation of SCUTPA.

Furthermore, conduct which only affects the parties to the transaction does not affect a public interest and provides no basis for a claim for violation of SCUTPA. *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994); *see also LaMotte v. The Punch Line of Columbia, Inc.*, 296 S.C. 66, 71, 370 S.E.2d 711, 713 (1988); *Ardis v. Cox*, 314 S.C. 512, 519, 431 S.E.2d 267, 271 (Ct. App. 1993); *Woodson v. DLI Props., LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014) (SCUTPA is not available to address a private wrong because an unfair or deceptive act that only affected the parties to the transaction is beyond the scope of the statutory scheme); *Columbia E. Assoc. v. Bi-Lo, Inc.*, 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989) (restating a deliberate or intentional breach of a valid contract, without more, does not constitute a violation of SCUTPA). "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace." *Noack Enters., Inc. v. Country Corner Interiors, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 349-50 (Ct. App. 1986). This

litigation is about a failed transaction for the purchase of a tract of real estate for development by a sophisticated, commercial buyer – not a repetitive set of events that negatively impacted consumers in South Carolina.

The ”public interest” element “may be satisfied by proof of facts demonstrating the potential for repetition of the defendant’s actions…plaintiffs generally have shown repetition in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence…or (2) by showing the company’s procedures create a potential for repetition of the unfair and deceptive acts.” *Daisy Outdoor Adver. Co., Inc. v. Abbott*, 322 S.C. 489, 493, 473 S.E.2d 47, 51 (1996); *see also Skywaves I Corporation v. Branch Banking and Trust Company*, 423 S.C. 432, 814 S.E.2d 643 (2018) (holding that plaintiff could not maintain an action under SCUTPA absent evidence that defendant had engaged in violations in the past or that defendant’s institutional procedures created a potential for repetition of unfair and deceptive acts).

MTS attempts 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. No facts are in the record to address the prong that the same kinds of actions previously occurred. No facts are in the record as to what, if any, actions by Bilbro caused such transactions to fail to close. MTS again attempts to make unreasonable inferences and bootstrap a lacking record into something that simply does not exist. That Bilbro represented other sellers in South Carolina and had transactions that failed to close does not establish that a similar transaction to the one 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.

MTS's brief goes to great efforts to conjure that some form of deception occurred, twisting testimony to argue that a question of fact exists. Arguments do not create questions of fact. Instead, reviewing the facts in a light most favorable to MTS and the law as provided to this Court, the claim of violation of SCUTPA fails as a matter of law.

For these reasons, the claim of unfair trade practices fails as a matter of law and the claim was appropriately dismissed by the Circuit Court.

CONCLUSION

For the foregoing reasons, the Court should **AFFIRM** the Circuit Court's order granting summary judgment in favor of Bilbro and dismissing MTS's claims against him.

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