

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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DEC 20 2013  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

70742

Appellate Case No.: 2012-212218

Shelby King,.....Appellant.

v.

Amy Bennett and The Amy Bennett Trust, Amy Bennett  
Trustee,.....Respondents

**APPELLANT'S PETITION FOR REHEARING**

T. Jeff Goodwyn, Jr., Esquire  
Goodwyn Law Firm, LLC  
2519 Devine Street  
Suite A  
Columbia, South Carolina 29205  
(803) 251-4517  
Attorney for Appellant

Todd Ellis  
The Law Office of Todd Ellis, P.A.  
7911 Broad River Road  
Suite 100  
Irmo, South Carolina 29063  
(803) 732-0123  
Attorney for Respondent

December 20, 2013

Pursuant to Rules 221 and 240, SCACR, the Appellant, Shelby King, hereby petitions for a rehearing of her appeal, which was decided, via unpublished opinion no. 2013-UP-459, filed December 11, 2013. The Appellant hereby respectfully submits that the following points were overlooked or misapprehended by the Court, and respectfully requests a rehearing:

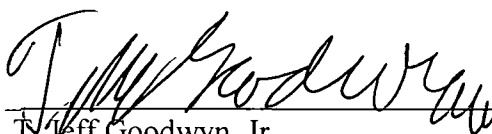
1. Both courts that have considered Appellant's claim by relying upon S.C. Code Ann. §40-57-135(D), which requires a signed buyer's agency agreement. However, the Appellant has always asserted that she was entitled to be compensated for services provided to Respondents, outside of any agency agreements. The facts before the lower court give rise to at least an inference that Appellant expected, and the parties contemplated, that Appellant would be compensated for her time assisting Respondents. The fact that evidence was presented that Appellant also sought to be compensated, at one time, as a buyer's agent or, alternatively, from the seller's broker, does not bar her from asserting an equitable claim for compensation outside or refute an inference that she expected to be paid for her work by Respondents even if there was no signed agreement. Common sense dictates that most people do not work for free; rather, most people expect to be paid for services rendered and most customers expect to pay for such services.
2. Appellant did raise the issue that she was entitled to be compensated for services rendered, outside of a buyer's agency relationship, in her pleadings and at summary judgment. Accordingly, her claim falls within the purview of 40-57-

137(O). Pleadings are to be liberally construed under South Carolina law. Specifically, Paragraph 4 of her Affidavit reflects that she did provide an explanation to Respondents of the services she was rendering: scouting neighborhoods; researching school districts; previewing homes; and analyzing market values. It is further undisputed that as a result of Appellant's services in locating the Ashworth home, Respondents received a benefit, and that they totally and completely "cut" Appellant out of the deal – realizing a benefit without paying a dime for its value.

3. Sufficient issues of fact were present to allow Appellant's fraud; civil conspiracy; and conversion claims to go forward. Specifically, Appellant presented testimony that she performed approximately 125 hours of work for the Respondents as she assisted them in their home search, relying upon their actions and/or words in assuming she would be compensated for her time. Additionally, Appellant presented testimony that she found the house that Respondents bought, and that Respondents lied to her when they told her they were no longer interested in buying, only to then turn around and purchase the home. In short, Appellant presented evidence which at least created a question of fact for the jury as to whether Respondents behavior constituted fraud and or a conspiracy to deprive Appellant of her rightful earnings.
4. The undisputed facts before the courts show that Appellant has presented claims, in equity, that should be heard by a jury.

-signature page to follow-

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "T. Jeff Goodwyn, Jr.", written over a horizontal line.

T. Jeff Goodwyn, Jr.

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Attorneys for the Appellant

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[JGoodwyn@Goodwynlaw.com](mailto:JGoodwyn@Goodwynlaw.com)

December 20, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Shelby King, Appellant,

v.

Amy Bennett, The Amy D. Bennett Trust, and Amy  
Bennett, Trustee, Respondents.

Appellate Case No. 2012-212218

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Appeal From Richland County  
DeAndrea G. Benjamin, Circuit Court Judge

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Unpublished Opinion No. 2013-UP-459  
Heard October 8, 2013 – Filed December 11, 2013

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**AFFIRMED**

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Thomas Jefferson Goodwyn, Jr., of Goodwyn Law Firm,  
LLC, of Columbia, for Appellant.

Todd Raymond Ellis, of Law Office of Todd Ellis, P.A.,  
of Irmo, for Respondents.

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**PER CURIAM:** Shelby King sued Respondents Amy Bennett, The Amy D. Bennett Trust, and Amy Bennett, Trustee, asserting various equitable causes of action, fraud, civil conspiracy, and conversion by false pretenses arising from

King's claim that she was entitled to compensation for her services as a real estate professional. The trial court granted summary judgment to Respondents, holding King could not recover either damages or equitable relief because she did not have a written agreement with Respondents. King appeals. We affirm.

1. King argues the trial court erred in ruling that pursuant to section 40-57-135(D)(4) of the South Carolina Code (2011), the absence of a written agreement barred her from recovering for the services that she provided to Respondents. We disagree.

At the summary judgment hearing, King argued her claims were based in equity rather than contract and emphasized that she was not seeking a commission on the sale of the home that Respondents purchased. Section 40-57-135(D)(4), however, encompasses the possibility that a buyer's representation agreement could call for compensation to the real estate professional in forms other than a commission on a purchase or sale. This section requires numerous terms of a buyer's representation agreement to be in writing, including "the amount of compensation to be paid *or the method to be used in calculating the amount of compensation to be paid*" and "an explanation of how and when the agent earns his compensation." S.C. Code Ann. § 40-57-135(D)(4)(b) and (c) (2011) (emphasis added). Furthermore, King alleged in her complaint and her affidavit that she requested Respondents on multiple occasions to execute a buyer's representation agreement, and the evidence in the record does not give rise to an inference that she expected to be compensated for acting in any other capacity than Respondent's buyer's agent. King's affidavit includes an assertion that Respondents never indicated they would not sign a buyer's representation agreement before ratifying a contract to purchase a home, and exhibits filed with the trial court included a letter from the South Carolina Realtors Association asserting King tried to collect a realtor's fee from the broker whose firm sold the home to Respondents.

2. King also asserts that because Respondents did not establish an agency relationship with her by signing a buyer's representation agreement, they were her "customers" pursuant to section 40-57-137(O) of the South Carolina Code (2011). Based on this customer relationship, King maintains she is entitled to proceed on her claim under the equitable theories of quantum meruit, unjust enrichment, and constructive trust based on language in section 40-57-137(O)(1) of the South Carolina Code (2011).

We disagree with King's assertion that pursuant to section 40-57-137(O), she should be allowed to continue to pursue her claim for equitable relief. First, we found no indication in the record on appeal that King raised the issue of her right to recover under section 40-57-137(O)(1) during the summary judgment hearing. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991) (holding an issue was not preserved for appellate review because the plaintiffs failed to raise it to the trial court in opposition to the defendant's summary judgment motion). Furthermore, although section 40-57-137(O)(1) allows a real estate professional to offer certain services to a customer, section 40-57-137(O)(2) requires the real estate professional to provide the customer an explanation of the scope of services that the professional will provide and to provide accurate information in all dealings. King has not presented evidence that she fulfilled the requirements stated in section 40-57-137(O)(2); therefore, we hold King has not carried her burden to establish a genuine issue of material fact as to whether it would be inequitable for Respondents to retain the value of her services without paying for them. *See* Rule 56(e), SCRPC (requiring the party opposing a summary judgment motion to "set forth *specific* facts showing there is a genuine issue for trial" (emphasis added)); *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000) (stating that to recover in quantum meruit, a plaintiff must show (1) a benefit conferred by the plaintiff upon the defendant, (2) realization of that benefit by the defendant, and (3) retention of the benefit by the defendant under circumstances that make it inequitable for the defendant to retain it without paying its value); *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012) (listing similar requirements to recover on a claim for unjust enrichment); *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 294, 569 S.E.2d 371, 375 (Ct. App. 2002) ("A constructive trust results when circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title." (internal quotation marks omitted)).

3. King also contends there were sufficient questions of fact on various legal causes of action set forth in her complaint, namely fraud, civil conspiracy, and conversion. We disagree and affirm the trial court's dismissal of these claims pursuant to Rule 220(b)(2), SCACR, and the following authorities: *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (noting the elements of a fraud claim include the plaintiff's right to rely on the truth of the false representation); *id.* at 124-25, 708 S.E.2d at 770 ("[A] fraud claim requires proof by clear and convincing evidence; thus, more than a mere scintilla of evidence must be presented to withstand a motion for summary judgment."); *Oxford Fin. Cos., Inc. v. Burgess*, 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991) ("In order to

prevail in a conversion action, the plaintiff must prove either title or right to possession of the property at the time of the conversion."); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 69, 370 S.E.2d 711, 713 (1988) ("A civil conspiracy is a combination of two or more persons joining for the purpose of injuring the plaintiff and causing special damage to the plaintiff.").

**AFFIRMED.**

**SHORT, WILLIAMS, and THOMAS, JJ., concur.**

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DeAndrea G. Benjamin, Circuit Court Judge

Case No.: 2010-CP-40-007333

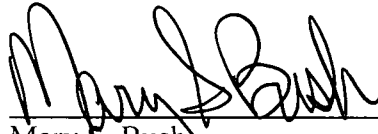
Amy Bennett and The Amy Bennett Trust, Amy Bennett  
Trustee,.....RESPONDENT

v.

Shelby King,.....APPELLANT

**PROOF OF SERVICE**

I certify that I have served the **Appellant's Petition for Rehearing**, by depositing a copy of same in the United States Mail, postage prepaid, on **December 20, 2013**, addressed to counsel for Respondents, Todd Ellis, at the Law Firm of Todd Ellis, P.A. to 7911 Broad River Road, Suite 100, Irmo, SC 29063.



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December 20, 2013

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SC COURT OF APPEALS

December 20, 2013

## VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court  
The South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

RE: ***Shelby King v. Amy Bennett and The Amy D. Bennett Trust, Amy Bennett, trustee***  
*Appellate Case No.: 2012-212218*  
*C/A No: 2010-CP-40-07333*  
*Our File No.: 3000-0028*

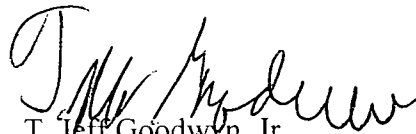
Dear Ms. Kitchings:

Enclosed for filing please find an original and one copy of Appellant's Petition for Rehearing, the Proof of Service and filing fee check in the amount of \$25.00 in regard to the above referenced matter. I would appreciate it if you would file same in your office and return a clocked copy to the courier.

By copy of this letter, I am serving a copy of Appellant's Petition for Rehearing upon Todd Ellis, Esquire, counsel for the Respondents.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

  
T. Jeff Goodwyn, Jr.

TJG/msb  
Enclosures

cc: Todd Ellis, Esquire  
Shelby King