STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

Patrick C. Fant, III, Circuit Court Judge

Appellate Case No. 2025-000614
Civil Action No. 2024-CP-40-00827

Kellum W. Allen, ...Respondent,

v.

Ann Marie Watson, ...Appellant

RECORD ON APPEAL

Robert P. Wood (SC Bar No. 6206)
ROGERS TOWNSEND LLC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900
Robert.wood@rogerstownsend.com

December 3, 2025

Counsel for Appellant, Ann Marie Waston

INDEX TO RECORD ON APPEAL

Orders

Pleadings, Motions, and Briefs

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/24/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This Matter came before the Court on December 16, 2024, pursuant to multiple motions filed by both Parties.

Regarding Plaintiff's Motion Pursuant to SCRCP Rule 39(a), Plaintiff's Motion is hereby Denied and this Court will not refer this matter to the Master-in-Equity of Richland County considering the Defendant has asserted compulsory legal counter-claims that go to enforceability of the land sale contract. See Rule 53(b), SCRCP.

Regarding Plaintiff's Motion to Dismiss Counterclaims of Defendant Pursuant to SCRCP Rule 12(b)(6), based on the law of South Carolina, the Court Dismisses Defendant's Second Counterclaim alleging Misappropriation of Confidential Information because the claim does not exist, or is otherwise duplicative of Defendant's First Counterclaim for Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality. The Court has not found any cause of action for Misappropriation of Confidential Information nor were any elements pled by the Defendant. The Court will allow the Defendant to proceed with all other Counterclaims alleged.

Regarding Plaintiff's Motion to Strike Certain Pleadings in the Amended Answer of Defendant Pursuant to SCRCP Rule 12(f), based on the arguments of the attorneys and the relevant law, Plaintiff's Motion is hereby Granted as to Defendant's Second Counterclaim, however, the Motion is Denied as to the rest of Plaintiff's requests.

Regarding Plaintiff's Motion for Protective Order Pursuant to SCRCP Rule 26(c)(1) and (2), the Court Grants this Motion considering that the Court has found it proper to strike and dismiss Defendant's Second Counterclaim as stated above. Plaintiff can appropriately respond now, in light of the Court's ruling in this Order.

Regarding Defendant's Motion for Partial Summary Judgment, based on a review of the file, submissions of the Parties, and oral arguments by the attorneys, the Court believes Summary Judgement should be Denied at this point and not revisited until each Party has had a full and fair opportunity to complete discovery. See Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001), citing, Baughman v. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-01-24 11:27:09 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/24/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This Order supplements the Court's prior Order filed on January 24, 2025. The Court's prior Order is hereby supplemented to reflect that the Court is hereby striking and dismissing Defendant's Fourth Counterclaim that alleges violations of the South Carolina Trade Practices Act. Other than the Dismissal of the Defendant's South Carolina Unfair Trade Practices Act Counterclaim, the prior Order has not been changed. Therefore, the Court's prior Order is hereby supplemented to reflect the following:

This matter came before the Court on December 16, 2024, pursuant to multiple motions filed by both Parties.

Regarding Plaintiff's Motion Pursuant to SCRCP Rule 39(a), Plaintiff's Motion is hereby Denied and this Court will not refer this matter to the Master-in-Equity of Richland County considering the Defendant has asserted compulsory legal counter-claims that go to enforceability of the land sale contract. See Rule 53(b), SCRCP.

Regarding Plaintiff's Motion to Dismiss Counterclaims of Defendant Pursuant to SCRCP Rule 12(b)(6), based on the law of South Carolina, the Court Dismisses Defendant's Second Counterclaim alleging Misappropriation of Confidential Information because the claim does not exist, or is otherwise duplicative of Defendant's First Counterclaim for Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality. The Court has not found any cause of action for Misappropriation of Confidential Information nor were any elements pled by the Defendant. The Court will also Dismiss Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practice's Act based on the fact this case concerns a private transaction that does not affect the public interest. The Defendant may proceed on it's First and Third Counterclaims.

Regarding Plaintiff's Motion to Strike Certain Pleadings in the Amended Answer of Defendant Pursuant to SCRCP Rule 12(f), based on the arguments of the attorneys and the relevant law, Plaintiff's Motion is hereby Granted as to Defendant's Second and Fourth Counterclaims, however, the Motion is Denied as to the rest of Plaintiff's requests.

Regarding Plaintiff's Motion for Protective Order Pursuant to SCRCP Rule 26(c)(1) and (2), the Court Grants this Motion considering that the Court has found it proper to strike and dismiss Defendant's Second and Fourth Counterclaims as stated above. Plaintiff can appropriately respond now, in light of the Court's ruling in this Order.

Regarding Defendant's Motion for Partial Summary Judgment, based on a review of the file, submissions of the Parties, and oral arguments by the attorneys, the Court believes Summary Judgement should be Denied at this point and not revisited until each Party has had a full and fair opportunity to complete discovery. See Doe ex rel. Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857, (2001), citing, Baughman v. Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-01-24 16:41:07   page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4000827

Kellum W Allen
PLAINTIFF(S)

Ann Marie Watson
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Please see the attachment on Page 2 below.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case.

☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/24/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter is before the Court pursuant to two Motions filed by the Parties requesting this Court to reconsider it's Order filed on January 27, 2025.

Regarding Defendant Ann Marie Watson's Motion to Reconsider the Court's Dismissal of Defendant's Fourth Counterclaim alleging violations of the South Carolina Unfair Trade Practices Act, the Court hereby Denies the Defendant's Motion.

Regarding Plaintiff Kellum Allen's Motion to Reconsider the Court's decision not to dismiss the Defendant's Third Counterclaim alleging Professional Negligence, the Court hereby Denies the Plaintiff's Motion.

It is so ordered.

Richland Common Pleas

Case Caption: Kellum W Allen vs Ann Marie Watson

Case Number: 2024CP4000827

Type: Order/Electronic Form 4

So Ordered

Patrick C. Fant, III

Electronically signed on 2025-03-24 14:24:02 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen, Plaintiff,	)	
v.	)	**SUMMONS**
Ann Marie Watson, Defendant.	)	(Non-Jury Requested)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 140 East Main Street, Lexington, South Carolina, WITHIN THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVIS FRAWLEY, LLC

<u>*/s/ James Randall Davis*</u>
James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512

Lexington, South Carolina
January 25, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen, Plaintiff,	)	
v.	)	**COMPLAINT** (Non-Jury; Specific Performance)
Ann Marie Watson, Defendant.	)	

Plaintiff, Kellum W. Allen, complaining of the Defendant, alleges as follows:

1. Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.

2. Defendant is a citizen and resident of the County of Greenville, State of South Carolina.

3. This action is for specific performance of a Land Option entered into by Plaintiff and Defendant on August 15, 2022 involving 17.51 acres, more or less, located in Richland County having TMS#R20700-03-04 (hereinafter referred to as "Subject Property").

4. The jurisdiction of this Court is based on the allegations set forth in paragraphs 1 thru 3 above.

5. The venue of this Court is established by the fact that the above referenced Subject Property is located in the County of Richland, State of South Carolina.

6. Plaintiff alleges that a written Land Option was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024.

7. Plaintiff alleges the Subject Property, as referenced in the Land Option, is described as follows:

> All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, containing 17.51 acres, more or less,

as shown as on a plat prepared by Glenn Associates Surveying, Inc., entitled "CLOSING SURVEY FOR ANN MARIE WATSON," dated April 12, 2010 recorded on May 27, 2010 in Plat Book 1609 at Page 2333 in Richland County, South Carolina. Reference is hereby made to the above mentioned plat for a complete metes and bounds description thereof.

8. Plaintiff alleges that the purchase price was Two Hundred Ten Thousand One Hundred Twenty and no/100 ($210,120.00) Dollars payable as follows: Five Hundred and no/100 ($500.00) Dollars at execution of the Land Option and the further payment of Two Hundred Nine Thousand Six Hundred Twenty and no/100 ($209,620.00) Dollars in cash or by certified or cashier's check at closing.

9. Plaintiff has paid the Five Hundred and no/100 ($500.00) Dollar payment as referenced in said Land Option.

10. Plaintiff alleges that Defendant was to convey the property to the Plaintiff, his heirs, successors and assigns, in fee simple by proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to and assumed by Purchase.

11. Plaintiff has given written notice to the Defendant of his exercising of the right to purchase said Subject Property and his intention of exercise said purchase of the Subject Property. A letter dated January 3, 2024 was sent to the Defendant, which Defendant has received and acknowledged receipt thereof, and the contents of that letter is hereby incorporated in this Complaint as follows:

Dear Ms. Watson:

This law firm represents Kellum W. Allen. Enclosed is a copy of the Land Option which you executed on August 15, 2022 agreeing to sell to him the 17.51 acres, more or less, parcel of land in Richland County, South Carolina. The purchase price was $210,120.00. Five Hundred and no/100 ($500.00) Dollars was paid to you as a down payment in regards to this purchase. Mr. Allen is giving you written notice that he wishes to exercise this Option. Mr. Allen intends to fully comply with the terms of this Option in closing this transaction. Further payment on this Option would be either in cash or by a Cashier's Check as required. This law firm will prepare the closing

> documents for the transaction and forward them to you or your attorney, as you so request. The only expense that you would have, per the Option, would be pay for the Deed Stamps on transfer of the property and your proration of real estate taxes for the year of closing.
>
> Please acknowledge receipt of this letter, in writing, and please make contact with this office or have your attorney make contact in regards to setting a closing date. We are suggesting the middle of January of 2024. We would like to hear from you at least by the week of January 8 as to a specific closing in January.

12. Defendant has advised the attorney for the Plaintiff that she will not comply with the terms of the Land Option.

13. Subsequent to the above letter, Plaintiff has sent a letter dated February 5, 2024 to the Defendant confirming that Defendant has advised the attorney for the Plaintiff that she will not comply with the terms of the Land Option.

14. Plaintiff has fully fulfilled all of his present obligations under the written Land Option and will fulfill all future obligations, including paying the agreed upon remaining purchase price upon execution of the deed and the closing on this transaction by the Plaintiff; or, in the alternative, deposit said funds with the Court if necessary.

15. Plaintiff is asking the Court to issue its Order requiring the Defendant to specifically perform under the terms of Land Option and convey the Subject Property to the Plaintiff; or, in the alternative, have the Court vest title in the Subject Property in the Plaintiff pursuant to the South Carolina Rules of Civil Procedure Rule 70.

WHEREFORE, Plaintiff prays:

A. This Court issue its Order to require the Defendant to convey the Subject Property to the Plaintiff per the terms of the Land Option in fee simple by proper statutory general warranty deed, free from any and all encumbrances except as herein agreed to and assumed by Purchaser;

B. For an Order requiring the Defendant to specifically perform under the terms of Land Option and convey the Subject Property to the Plaintiff; or, in the alternative, have the Court vest title in the Subject Property in the Plaintiff pursuant to the South Carolina Rules of Civil Procedure Rule 70; and

C. For such other and further relief as this Court may deem just and proper.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis
James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512

Lexington, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen, Plaintiff, v. Ann Marie Watson, Defendant.	ANSWER AND COUNTERCLAIMS (Jury Trial Demanded)

TO JAMES RANDALL DAVIS, ESQ. ATTORNEY FOR THE PLAINTIFF:

The Defendant, answering the Complaint and by way of counterclaims, would respectfully show that:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Each and every allegation of the Complaint not expressly admitted herein is denied.

2. Paragraphs 1 and 2, alleging that the Plaintiff is a citizen and resident of Lexington County and that the Defendant is a citizen and resident of Greenville County, are admitted.

3. Only so much of Paragraph 3 is admitted as can be construed as alleging that the Plaintiff seeks specific performance related to a document dated August 15, 2022 involving 17.51 acres, more or less, in Richland County having TMS# R20700-03-04 (the "Subject Property").

4. Paragraphs 4 and 5, alleging that the jurisdiction of the Court is based on the allegations of Paragraphs 1 through 3 and that venue is proper in Richland County, is admitted.

5. Paragraph 6, alleging that a written land option ("Land Option") was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024, is denied as alleged because no such document was attached to the Complaint. Furthermore, the document the Defendant believes the Plaintiff is referring to is void and/or voidable for the reasons set forth

below, and the Defendant voided the Land Option by letter dated on or about July 31, 2023, and tendered the return of the Plaintiff's earnest money with a note reading, "Refunded deposit – No Sale." The check was for $450, which she thought was the full amount of the Plaintiff's deposit. The Plaintiff returned the tendered check on August 23, 2023, without explanation. The Defendant would further show that on March 6, 2024, through counsel, the Defendant tendered the return of the full $500, which tender the Plaintiff has not accepted.

6. The Defendant admits the legal description of the Subject Property as alleged in ¶ 7.

7. Paragraph 8 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

8. Paragraph 9 is admitted to the extent it can be construed as alleging that the Plaintiff has paid $500, but the Defendant would show that:

a) implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to advise the client when to obtain independent legal counsel;

b) also implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to treat his client fairly and reasonably and not to use her confidential information for his own benefit;

c) the Plaintiff knew or should have known that inserting into a land option of this sort a refundable down payment in any amount was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

d) the Plaintiff knew or should have known that a down payment of $500 for a land option of this sort was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

e) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain independent counsel to advise her on the fairness and reasonableness of the offer, and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with in her divorce case to the Plaintiff's personal advantage; and

f) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain a real estate broker or appraiser to advise her on the reasonableness of the offer in terms of i) price; ii) the diminution of the per-acre value of the Defendant's adjoining lands; iii) the duration of the Land Option; iv) the difficulties and expense of enforcing the restriction on the disruption of the pet cemetery; v) the Defendant's continued access to the pet cemetery; vi) the advisability of a clause whereby the cost of the Land Option would increase as the exercise of the Land Option were delayed; vii) public interest in the lands in light of public comments made by officials of Richland School District Two regarding the possible construction of a $140 million high school on lands adjoining those of the Plaintiff and his siblings; viii) the down payment was to be applied to the purchase price; and ix) the advisability of the Land Option being assignable; and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with in her divorce case to the Plaintiff's personal advantage; and

g) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver a writing that the Plaintiff had drafted yet he knew or should have known was not phrased in terms the Defendant could reasonably understand;

h) the Plaintiff, while serving as the Defendant's divorce lawyer, encouraged her to execute and deliver a writing without stating whether he represented her in that transaction;

i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her liquidity, her access to liquidity, her negotiating personality and skills, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage;

j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale; and

k) the Plaintiff had vastly superior knowledge about prospective uses for the Subject Property than did the Defendant, yet he failed to disclose those to her; and

l) the Plaintiff failed to advise the Defendant (his client) that she would not be able to enforce any oral promises he had made to her (such as those about lot density, the pet cemetery, and equestrian amenities) that were not included in the written contract.

9. Paragraph 10 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

10. Paragraph 11, alleging that the Plaintiff has given written notice to the Defendant of his exercising of a so-called right to purchase the Subject Property and setting out the language of the letter, is admitted, but the Defendant would show that the Plaintiff, as the Defendant's

lawyer, failed to advise her that the Land Option was void or voidable and that the Plaintiff had misappropriated the Defendant's information to his own personal benefit in violation of his duties of good faith, loyalty, and confidentiality.

11. Paragraphs 12 and 13 are admitted to the extent they can be construed as alleging that the Defendant has advised the attorney for the Plaintiff that she will not comply with the Land Option, the reasons being stated above. She would further show that she tendered the return of the down payment.

12. Since the Land Option is void, voidable, and unconscionable, ¶ 14, alleging that the Plaintiff has fulfilled his present obligations and will fulfill all future obligations, is denied; and, further, the Defendant is without information sufficient to form a belief as to the truth or falsity of the allegation that the Plaintiff will fulfill all future obligation or has the ability to do so and therefore denies same.

13. Paragraph 15, asking for an order requiring the Defendant to specifically perform under the terms of the Land Option or have the Court vest title in the Subject Property in the Plaintiff, does not require a response. To the extent a response is required, it is denied, since the Land Option is void or has been voided and is not enforceable.

FOR A SECOND DEFENSE
(Contract Illegal and Therefore Void and Voidable)

14. The preceding paragraphs are incorporated by reference.

15. The Plaintiff was the Defendant's lawyer in a family court matter when he entered into this business transaction with her.

16. The Plaintiff drafted the Land Option.

17. The Plaintiff did not advise Defendant in writing or otherwise of the desirability of seeking advice of independent legal counsel in the transaction and did not give her a reasonable opportunity to seek the advice of independent legal counsel on the transaction.

18. The terms of the Land Option are not fair for the reasons stated above.

19. The Plaintiff did not draft the Land Option in a manner such that the Defendant, the Plaintiff's client, could reasonably understand it.

20. The Plaintiff did not explain to the Defendant that he was not her lawyer with respect to the transaction.

21. The Plaintiff drafted the Land Option in violation of the Plaintiff's common law duties of the utmost good faith, loyalty, and confidentiality and in violation of the South Carolina Rules of Professional Conduct, and the Land Option is therefore illegal and unenforceable.

FOR A THIRD DEFENSE
(Lack of Consideration; and Inadequate Consideration Under the Circumstances)

22. The preceding paragraphs are incorporated by reference.

23. The Land Option was not supported by consideration, since the $500 was to be held in the Defendant's bank account and was therefore refundable and did not constitute consideration. To the extent the Land Option is deemed to be supported by consideration, the consideration was wholly inadequate under the circumstances, making the Land Option void and unenforceable.

FOR A FOURTH DEFENSE
(Unclean Hands)

24. The preceding paragraphs are incorporated by reference.

25. The Plaintiff has unclean hands with respect to this transaction for the reasons stated above and is not entitled to enforce the Land Option.

BY WAY OF A FIRST COUNTERCLAIM

(Breach of Fiduciary Duties of Good Faith, Loyalty and Confidentiality)

26. All preceding paragraphs are incorporated by reference.

27. The parties are within the jurisdiction of the Court, and venue is proper here in Richland County.

28. In presenting the Land Option to the Defendant, the Plaintiff did not advise the Defendant to seek independent counsel or independent business advice, did not explain that he was not acting as her lawyer in the business transaction, did not present the Land Option to her in a way she could understand, did not share with her that he was intending to combine her property with that of others and offer the combined tracts to a real estate developer for a high density, non-equestrian residential development, did not reveal to her the financial benefit he was obtaining from the transaction, did not explain to her that promises he had made regarding his use for the Subject Property would only be binding on her to the extent they were expressed in the written document, did not explain to her that the $500 deposit he was leaving her was not remotely adequate or customary for such a land option, did not disclose to her all known information that was significant and material regarding the transaction, did not explain to her how difficult it might be for her to enforce the pet cemetery restriction shown on a plat she had sent him.

29. In so doing, the Plaintiff breached the fiduciary duties he owed to his client, the Defendant, of the utmost good faith, loyalty and confidentiality.

30. The Plaintiff violated his duty not to take advantage of his client, the Defendant, by any misrepresentation or concealment.

31. After the Defendant exercised her lawful right not to honor the illegal contract, the Plaintiff sued the Defendant and recorded a lis pendens against the Subject Property.

32. The Defendant has suffered actual damages as a direct and proximate result of the Plaintiff's breach of fiduciary duties.

33. The Defendant is informed and believes that the Plaintiff willfully engaged in his conduct with callous disregard to the Defendant's rights, and the Defendant is informed and believes she is entitled to a judgment for punitive damages in such an amount as is just and will deter the Plaintiff and other lawyers from entering into business transactions with their clients without first complying with the fiduciary duties they owe to their clients.

BY WAY OF A SECOND COUNTERCLAIM
(Misappropriation of Confidential Information)

34. All preceding paragraphs are incorporated by reference.

35. The Defendant entrusted her personal information to the Plaintiff as described above.

36. The Plaintiff used the Defendant's personal information for his own personal benefit by drafting the Land Option in a way grossly and unfairly favorable to him but knowing the Defendant, who trusted him, would execute it anyway.

37. The Plaintiff presented the ill-gotten Land Option to a third-party real estate developer along with other papers and obtained for himself some unknown benefit, and he remains in wrongful possession of that benefit today.

38. The circumstances under which the Plaintiff acquired a benefit from the real estate developer make it inequitable that the Plaintiff should retain that benefit.

39. The Plaintiff is entitled to an order rescinding the Land Option, imposing a constructive trust upon the benefit the Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to the Defendant the benefit he has received from the Land

Option, and ordering the Defendant to pay the Defendant such additional sums as are necessary to restore the Defendant to the position she occupied prior to executing the Land Option.

WHEREFORE, having fully answered and asserted her Counterclaims, the Defendant prays:

A. That this Court deny the Plaintiff any relief whatsoever;

B. That this Court award the Plaintiff actual damages;

C. That this Court order that the Land Option be declared rescinded, void and of no force or effect;

D. That this Court order that the Plaintiff's lis pendens be canceled of record;

E. That this Court require the Plaintiff to account for and to turn over to the Defendant any benefit he has received from the Land Option and to pay the Defendant the additional sums necessary to restore the Defendant to the position she occupied prior to executing the Land Option;

F. That this Court award the Defendant punitive damages in such an amount as is just.

Respectfully Submitted,

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
Post Office box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@RogersTownsend.com

April 15, 2024. Attorney for the Defendant

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION TO STRIKE CERTAIN PLEADINGS IN THE ANSWER OF DEFENDANT PURSUANT TO SCRCP RULE 12(f)**
v.	)	
	)	
Ann Marie Watson,	)	
	)	
Defendant.	)	
	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order striking certain allegations in the pleadings in the Answer of the Defendant. As to paragraphs 8(a) through 8(l), 10, 15 (which is also denied), 17, 18, 19, 20, and 21 of the Answer, these allegations denote insufficient defense and/or immaterial allegations which are directly related to the first and second Counterclaims of the Defendant which fail to state a proper cause of action. Therefore, pursuant to South Carolina Rules of Civil Procedure Rule 12(f), paragraphs 8(a) through 8(l), 10, 15(which is also denied), 17, 18, 19, 20, and 21 of the Answer, filed against Plaintiff should be stricken.

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis
James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
May 14, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
Plaintiff,	)	
v.	)	**NOTICE OF MOTION AND MOTION TO DISMISS COUNTERCLAIMS OF DEFENDANT PURSUANT TO SCRCP RULE 12(b)(6)**
Ann Marie Watson,	)	
Defendant.	)	

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order dismissing the Counterclaims of the Defendant. This motion is made on the grounds that Defendant fails to state facts sufficient cause of action against the Plaintiff in her Counterclaims on which relief can be granted in that Defendant is attempting to utilize alleged violations of the South Carolina Professional Conduct act as a basis for civil liability. See Rule 407(7), South Carolina Rules of Professional Conduct. As an additional ground for dismissal of the second Counterclaim, there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim. Also, any claim for imposing an accounting based on constructive trust, should be dismissed because the accounting is based on a cause of action alleged in the Second Counterclaim which does not exist as a cause of action. Therefore, pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6), the Counterclaims filed against Plaintiff should be dismissed.

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis
James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
May 14, 2024

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen, Plaintiff, v. Ann Marie Watson, Defendant.	AMENDED ANSWER AND AMENDED COUNTERCLAIMS (Jury Trial Demanded)

TO JAMES RANDALL DAVIS, ESQ. ATTORNEY FOR THE PLAINTIFF:

The Defendant, answering the Complaint and by way of Amended Counterclaims, would respectfully show that:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. Each and every allegation of the Complaint not expressly admitted herein is denied.

2. Paragraphs 1 and 2, alleging that the Plaintiff is a citizen and resident of Lexington County and that the Defendant is a citizen and resident of Greenville County, are admitted.

3. Only so much of Paragraph 3 is admitted as can be construed as alleging that the Plaintiff seeks specific performance related to a document dated August 15, 2022 involving 17.51 acres, more or less, in Richland County having TMS# R20700-03-04 (the "Subject Property").

4. Paragraphs 4 and 5, alleging that the jurisdiction of the Court is based on the allegations of Paragraphs 1 through 3 and that venue is proper in Richland County, is admitted.

5. Paragraph 6, alleging that a written land option ("Land Option") was granted to the Plaintiff to purchase the Subject Property on or before February 15, 2024, is denied as alleged because no such document was attached to the Complaint. Furthermore, the document the Defendant believes the Plaintiff is referring to was voidable for the reasons set forth below, and

the Defendant voided the Land Option by letter dated on or about July 31, 2023, and tendered the return of the Plaintiff's deposit with a note reading, "Refunded deposit – No Sale." The Plaintiff returned the tendered check on August 23, 2023, without explanation, and the contract was voided by the Defendant's actions. Defendant would further show that on March 6, 2024, through counsel, the Defendant again tendered the return of the full amount paid for the deposit, $500, which tender the Plaintiff has not accepted.

6. The Defendant admits the legal description of the Subject Property as alleged in ¶ 7.

7. Paragraph 8 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

8. Paragraph 9 is admitted to the extent it can be construed as alleging that the Plaintiff deposited $500 with the Defendant, but the Defendant would show that:

a) implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to advise the client when to obtain independent legal counsel and independent business advice;

b) also implied within the scope of any legal representation agreement, this one included, is the lawyer's promise to treat his client fairly and reasonably and not to use her confidential information for his own benefit;

c) the Plaintiff knew or should have known that inserting into a land option of this sort a refundable deposit in any amount was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

d) the Plaintiff knew or should have known that a deposit of $500 for a land option of this sort was not customary and was utterly unfair, unreasonable, and unconscionable to his client, the Defendant;

e) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain independent legal counsel or business advice to advise her on the fairness and reasonableness of the offer, and the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with to the Plaintiff's personal advantage; and

f) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver the Land Option yet never advised her to retain a real estate broker or appraiser or independent counsel to advise her on the reasonableness of the offer in terms of i) price; ii) the diminution of the per-acre value of the Defendant's adjoining lands; iii) the duration of the Land Option; iv) the difficulties and expense of enforcing the restriction on the disruption of the pet cemetery; v) the Defendant's continued access to the pet cemetery; vi) the advisability of a clause whereby the cost of the Land Option would increase as the exercise of the Land Option were delayed; vii) public interest in the lands in light of public comments made by officials of Richland School District Two regarding the possible construction of a $140 million high school on lands adjoining those of the Plaintiff and his siblings; viii) the down payment was to be applied to the purchase price; and ix) the advisability of the Land Option being assignable. In addition, the Plaintiff took full advantage of the fact that the Defendant relied on the Plaintiff to know what was customary, fair, and reasonable for such a transaction when, in fact, the Plaintiff was using information the Defendant had entrusted him with to the Plaintiff's personal advantage; and

g) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver a writing that the Plaintiff had drafted yet he knew or should have known was not phrased in terms the Defendant could reasonably understand;

h) the Plaintiff, while serving as the Defendant's domestic lawyer, encouraged her to execute and deliver a writing in an unrelated matter without stating whether he represented her in that transaction;

i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her access to liquidity, her negotiating personality, skills and experience, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage;

j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale; and

k) the Plaintiff had vastly superior knowledge about prospective uses for the Subject Property than did the Defendant, yet he failed to disclose those to her; and

l) the Plaintiff failed to advise the Defendant (his client) that she would not be able to enforce any oral promises he had made to her (such as those about lot density, the pet cemetery, and equestrian amenities) that were not included in the written contract.

9. Paragraph 10 is denied as alleged, and the Defendant refers the Court to the document itself for its terms.

10. Paragraph 11, alleging that the Plaintiff has given written notice to the Defendant of his exercising of a so-called right to purchase the Subject Property and setting out the language of the letter, is admitted, but the Defendant would show that the Plaintiff, as the Defendant's lawyer, failed to advise her that the Land Option was void or voidable and that the Plaintiff had misappropriated the Defendant's information to his own personal benefit in violation of his duties of good faith, loyalty, and confidentiality.

11. Paragraphs 12 and 13 are admitted to the extent they can be construed as alleging that the Defendant has advised the attorney for the Plaintiff that she will not comply with the Land Option, the reasons being stated above. She would further show that she tendered the return of the $500 deposit. The Plaintiff further violated his duties to the Defendant by purporting to reject the tender.

12. Since the Land Option is void, voidable, and unconscionable, ¶ 14, alleging that the Plaintiff has fulfilled his present obligations and will fulfill all future obligations, is denied; and, further, the Defendant is without information sufficient to form a belief as to the truth or falsity of the allegation that the Plaintiff will fulfill all future obligations or has the ability to do so and therefore denies same.

13. Paragraph 15, asking for an order requiring the Defendant to specifically perform under the terms of the Land Option or have the Court vest title in the Subject Property in the Plaintiff, does not require a response. To the extent a response is required, it is denied, since the Land Option has been voided and is not enforceable.

FOR A SECOND DEFENSE
(Contract Illegal and Against Public Policy, Therefore Unenforceable)

14. The preceding paragraphs are incorporated by reference.

15. The Plaintiff was the Defendant's lawyer in a family court matter when he initiated discussions regarding and entered into this business transaction with her in a completely unrelated matter.

16. The Plaintiff drafted the Land Option.

17. The Plaintiff did not advise Defendant in writing or otherwise of the desirability of seeking independent legal or business counsel in the transaction and did not give her a reasonable opportunity to seek such independent advice.

18. The terms of the Land Option are not fair for the reasons stated above.

19. The Plaintiff did not draft the Land Option in a manner such that the Defendant, the Plaintiff's client, could reasonably understand it.

20. The Plaintiff did not explain to the Defendant that he was not her lawyer with respect to the transaction.

21. The Plaintiff drafted the Land Option in violation of the Plaintiff's common law duties of the utmost good faith, loyalty, and confidentiality and in violation of the South Carolina Rules of Professional Conduct, and the Land Option is therefore illegal, against the public policy of the State of South Carolina and unenforceable.

FOR A THIRD DEFENSE
(Lack of Consideration; and Inadequate Consideration Under the Circumstances)

22. The preceding paragraphs are incorporated by reference.

23. The Land Option was not supported by consideration, since the $500 deposit was to be held in the Defendant's bank account and was therefore refundable and did not constitute

consideration. To the extent the Land Option is deemed to be supported by consideration, the consideration was wholly inadequate under the circumstances, making the Land Option voidable and unenforceable, and the Defendant has declared it void and has tendered the return of the $500 deposit to the Plaintiff.

FOR A FOURTH DEFENSE
(Unclean Hands)

24. The preceding paragraphs are incorporated by reference.

25. The Plaintiff has unclean hands with respect to this transaction for the reasons stated above and is not entitled to enforce the Land Option.

FOR A FIFTH DEFENSE
(Transaction Unfair)

26. The preceding paragraphs are incorporated by reference.

27. The Land Option is not fair, just, or equitable in the ways stated above and for the reasons stated above and was not entered into openly and in an aboveboard manner. Instead, the Land Option was entered into in bad faith through the Plaintiff's concealment, misrepresentation, undue advantage, and oppression and was entered into due to the Defendant's comparative ignorance in business and legal matters and her misplaced trust. Hence, the Plaintiff is not entitled to the remedy of specific performance.

FOR A SIXTH DEFENSE
(Transaction Unconscionable)

28. The preceding paragraphs are incorporated by reference.

29. The Land Option is not fair, as described above.

30. The Plaintiff is a sophisticated attorney and former judge who has drafted or reviewed professionally thousands of contracts and conducted hundreds of negotiations.

31. The Defendant has no formal legal training or experience and has only rarely reviewed a contract or negotiated the terms of one. She knows very little about substantive contract law, the terms normally found in an option contract or contract for the sale of undeveloped real property, or the bargaining process.

32. The Plaintiff's bargaining power is immensely greater than that of the Defendant.

33. The Land Option the Plaintiff presented to the Defendant failed to contain terms the Defendant asked for with respect to the Plaintiff's use of the Subject Property.

34. Because the Land Option was substantively unfair and because the bargaining process was unfair, the Land Option is unconscionable and unenforceable. The Defendant has declared it so, and it is now void.

FOR A SEVENTH DEFENSE
(Estoppel)

35. The preceding paragraphs are incorporated by reference.

36. For the reasons stated above, the Plaintiff should be estopped from asserting any rights he might otherwise have under the Land Option.

BY WAY OF A FIRST COUNTERCLAIM
(Breach of Fiduciary Duties of Good Faith, Loyalty, and Confidentiality)

37. All preceding paragraphs are incorporated by reference.

38. The parties are within the jurisdiction of the Court, and venue is proper here in Richland County.

39. In presenting the Land Option to the Defendant, the Plaintiff did not advise the Defendant to seek independent counsel or independent business advice, did not explain that he was not acting as her lawyer in the business transaction, did not present the Land Option to her in an arm's-length transaction or in a way she could understand, did not share with her that he was

intending to combine her property with that of others and offer the combined tracts to a real estate developer for a high density, non-equestrian residential development, did not reveal to her the financial benefit he was obtaining from the transaction, did not explain to her that promises he had made regarding his use for the Subject Property would only be binding on her to the extent they were expressed in the written document, did not explain to her that the $500 deposit he was tendering to her was not remotely adequate or customary for such a land option, did not disclose to her all known information that was significant and material regarding the transaction, and did not explain to her how difficult it might be for her to enforce the pet cemetery restriction shown on a plat she had sent him and on which she had conditioned all further transactions regarding the Subject Property.

40. In so doing, the Plaintiff breached the fiduciary duties he owed to his client, the Defendant, of the utmost good faith, loyalty and confidentiality.

41. In presenting the Land Option to the Defendant and accepting her signature on it, the Plaintiff violated his duty not to take advantage of his client, the Defendant, by any misrepresentation or concealment.

42. After the Defendant exercised her lawful right to void the illegal contract, the Plaintiff sued the Defendant and recorded a lis pendens against the Subject Property.

43. The Defendant has suffered actual damages as a direct and proximate result of the Plaintiff's breach of fiduciary duties. Those damages include her loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss

of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

44. The Defendant is informed and believes that the Plaintiff willfully engaged in his conduct with callous disregard to the Defendant's rights, and the Defendant is informed and believes she is entitled to a judgment for punitive damages in such an amount as is just and will deter the Plaintiff and other lawyers from entering into business transactions with their clients without first complying with the fiduciary duties they owe to their clients.

BY WAY OF A SECOND COUNTERCLAIM
(Misappropriation of Confidential Information)

45. All preceding paragraphs are incorporated by reference.

46. The Defendant entrusted her personal information to the Plaintiff as described above.

47. The Plaintiff used the Defendant's personal information for his own personal benefit by drafting the Land Option in a way grossly and unfairly favorable to him but knowing the Defendant, who trusted him and was not in a position to exercise independent judgment by virtue of her attorney-client relationship with Plaintiff, would execute it anyway.

48. The Plaintiff presented the ill-gotten Land Option to a third-party real estate developer along with other papers and obtained for himself some unknown benefit, and, on information and belief, he remains in wrongful possession of that benefit today.

49. The circumstances under which the Plaintiff acquired a benefit from the real estate developer make it inequitable that the Plaintiff should retain that benefit.

50. The Defendant is entitled to an order declaring that the Land Option is void, imposing a constructive trust upon the benefit the Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to the Defendant the benefit he has received from the Land Option, and ordering the Plaintiff to pay the Defendant such additional sums as are necessary to restore the Defendant to the position she occupied prior to executing the Land Option.

51. The Defendant also suffered damages in the form of loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to Defendant's actions that the high-density residential development referred to above would be delayed.

BY WAY OF A THIRD COUNTERCLAIM
(Professional Negligence)

52. All preceding paragraphs are incorporated by reference.

53. The Plaintiff has at all relevant times been an attorney practicing law in South Carolina.

54. The Defendant retained the Plaintiff to serve as her attorney in a domestic matter. He served as her attorney in that matter from May 1, 2016 through October 2022.

55. By accepting the Defendant as his client, the Plaintiff assumed duties to her to possess and exercise the same degree of skill, care, learning, communication, and disclosure as would be expected of a reasonable, competent, and trustworthy attorney under the same or similar circumstances. Those duties included, among other things, the duty to inform, consult, and communicate with the client as to a need to retain other counsel if he could not represent her yet knew she needed a lawyer.

56. When the Plaintiff offered to enter into a business transaction with the Defendant, he knew she needed separate legal and business counsel, yet he failed to advise her of that.

57. The Plaintiff acted negligently, carelessly, recklessly, and wantonly in the following particulars:

a) Failing to render legal services in the form of advice to retain separate counsel with respect to the Land Option;

b) Failing to disclose to the Defendant that he had a conflict of interest and could not enter into the Land Option without her properly informed, written consent;

c) Failing to disclose to the Defendant that the Plaintiff was prohibited by South Carolina Rules of Professional Conduct from entering into this transaction unless he had obtained her properly informed, written consent;

d) Failing to comply with the rules, regulations and statutes governing attorneys' conduct in the State of South Carolina; and

e) Taking advantage of the Defendant.

58. As a direct and proximate result, the Defendant entered into a business transaction with the Plaintiff where the transaction was unfair to her and grossly favorable and profitable to the Plaintiff, and she has suffered actual damages as a result. Those damages include loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

BY WAY OF A FOURTH COUNTERCLAIM
(Violation of the South Carolina Unfair Trade Practices Act)

59. All preceding paragraphs are incorporated by reference.

60. The Plaintiff is an attorney who at all relevant times has been engaged in trade or commerce in South Carolina. He has committed, participated in, directed, or authorized the commission of the acts described below, and he is the one who made the decisions to commit those unlawful acts.

61. As described above, the Plaintiff enticed the Defendant to enter into the business transaction with him where he knew that the Defendant was his client, that she looked up to him as her trusted attorney, that she did not have separate counsel for the transaction, and that he had superior knowledge about impact of a new high school being built nearby.

62. The Plaintiff's actions constitute unfair or deceptive acts or practices in the conduct of trade or commerce in South Carolina.

63. The Plaintiff's actions are capable of repetition because he is a practicing attorney who accepts cases from the general public and from family members.

64. The Plaintiff's actions have also actually been repeated. Specifically, on information and belief, the Plaintiff and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without full disclosure and written, informed consent. The Plaintiff dropped his claims against Mr. Rawl shortly after Mr. Rawl filed his lawsuit for violation of the South Carolina Unfair Trade Practices Act. See Lexington County Civil Action No. 2000-CP-32-0248.

65. The Plaintiff's actions are also capable of repetition because he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients.

66. The Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar.

67. The Plaintiff's actions also affect the public interest in that they are violations of the South Carolina Rules of Professional Conduct and not merely violations of common law fiduciary duties.

68. The Plaintiff's actions have cost the Defendant an ascertainable sum of money in the form of loss of profits from her inability to market the Subject Property, loss of profits from her inability to manage the Subject Property for timber and other forest products, loss of profits

from her inability to enter into long-term contracts for the use of the Subject Property, loss of profits from her inability to sell the Subject Property for an equestrian-residential development similar to that on Persimmon Fork Road, loss of tax benefits from placing the Subject Property into a conservation easement, loss of income from her inability to use the Subject Property as collateral for a loan, and otherwise. She also lost the unfettered right to develop or improve the Subject Property as she wished. She also suffered shame, embarrassment, and emotional distress when she realized it was highly likely the Plaintiff had told the real estate developer referred to in ¶ 39 that it was due to the Defendant's actions that the high-density residential development referred to above would be delayed.

69. The Plaintiff's actions were committed willfully in that the Plaintiff took his actions in knowing violation of the law. He had done this sort of thing before with Mr. Rawl and settled his case with Mr. Rawl. The Plaintiff is also a lawyer and knows the law of unfair trade practices, the law of fiduciary duties, and the restrictions on lawyers transacting business with a client. He also knows the reasons for those rules.

70. The Defendant is informed and believes she is entitled, as a direct and proximate result of Plaintiff's conduct, to judgment against the Plaintiff for actual damages, treble damages and attorney's fees and costs incurred.

WHEREFORE, having fully answered the Complaint and asserted her Amended Counterclaims, the Defendant prays:

A. That this Court deny the Plaintiff any relief whatsoever;

B. That this Court award the Defendant actual damages, punitive damages, treble damages, attorney's fees, and costs;

C. That this Court order that the Land Option be declared rescinded, void and of no force or effect;

D. That this Court order that the Plaintiff's lis pendens be canceled of record; and

E. That this Court require the Plaintiff to account for and to turn over to the Defendant any benefit he has received from the Land Option and to pay the Defendant the additional sums necessary to restore the Defendant to the position she occupied prior to executing the Land Option; and

F. That this Court grant the Defendant such other and further relief as is just and proper.

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@RogersTownsend.com

June 12, 2024.

Attorney for the Defendant

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
Kellum W. Allen, Plaintiff, v. Ann Marie Watson, Defendant.	Civil Action No.: 2024CP4000827 **NOTICE OF MOTION AND MOTION TO DISMISS COUNTERCLAIMS OF DEFENDANT PURSUANT TO SCRCP RULE 12(b)(6)**

TO: ROBERT P. WOOD, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Kellum W. Allen, by and through his undersigned attorneys, will move before the presiding Judge of the Fifth Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, or at such other place as the Court may designate, for 1701 Main Street, Columbia, or at such other place as the Court may designate, for an Order dismissing the Counterclaims of the Defendant.

This motion is made on the grounds that Defendant fails to state facts sufficient to state a cause of action against the Plaintiff in her Counterclaims on which relief can be granted in that Defendant is attempting to utilize alleged violations of the South Carolina Professional Conduct act as a basis for civil liability. See Rule 407(7), South Carolina Rules of Professional Conduct. As an additional ground for dismissal of the Second Counterclaim, there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim. Also, any claim for imposing an accounting based on constructive trust should be dismissed because the accounting is based on a cause of action alleged in the Second Counterclaim which does not exist as a cause of action.

Further, Plaintiff's Third Counterclaim should be dismissed in that she alleges professional negligence of the Plaintiff and pursuant to *SC Code Ann.* §15-36-100, *et seq*., when the allegation of professional negligence are alleged, the party that is alleging such negligence is contemporaneously to file an affidavit of an expert specifying negligent act(s) or omission(s) to which the Defendant failed to submit.

In addition, the Defendant's allegations in the Fourth Counterclaim are duplicate to the allegations in the Third Counterclaim and since the Third Counterclaim does not state a cause of action as to the reasons set forth in the Third Counterclaim, there is no cause of action in the Fourth Counterclaim. Also, as to the Fourth Counterclaim, Defendant has failed to properly plead the necessary allegations for the elements of public harm and repetitive action which are mandatory elements of an action for Unfair Trade Practice Act.

Further, the allegations in the Fourth Counterclaim are void of the allegations required by the definition of trade and commerce in SC Code Ann. §39-5-10(b).

For the causes set forth above, all Counterclaims of the Defendant should be dismissed pursuant to South Carolina Rules of Civil Procedure Rule 12(b)(6).

This Motion is based upon the Pleadings in this matter, statutes, including but not limited to provisions of the South Carolina Rules of Civil Procedure, case law, rules of court, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

/s/ James Randall Davis
James Randall Davis, SC Bar No.: 1580
140 East Main Street, Post Office Box 489
Lexington, South Carolina 29072
Phone No.: (803) 359-2512
ATTORNEY FOR THE PLAINTIFF

Lexington, South Carolina
June 27, 2024

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen, Plaintiff, v. Ann Marie Watson, Defendant.	**DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO JAMES RANDALL DAVIS, ESQ., ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that on the tenth day after service hereof or as soon thereafter as counsel can be heard and at such place and time as set by the court, the Defendant will move the court pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for summary judgment as to the Plaintiff's demand for specific performance on the basis that there is no genuine issue of material fact and the Defendant is entitled to judgment as a matter of law.

Specifically, the Land Option was voidable when executed because it was drafted by the Defendant's own lawyer, who violated his fiduciary duties to his client (the Defendant) by failing to inform her of her right to be represented in the transaction by independent counsel and the Defendant thereafter declared the Land Option void and tendered the return of the Plaintiff's earnest money security deposit.

Furthermore, the Plaintiff violated Rule 1.8 of the South Carolina Rules of Professional Conduct by entering into the business transaction with the Defendant, his client, without first (a) advising her in writing of the desirability of seeking the advice of independent legal counsel on the transaction, (b) giving her a reasonable opportunity to seek the advice of independent legal counsel on the transaction, and (c) obtaining the Defendant's informed consent in writing as to the lawyer's role in the transaction, including whether the lawyer represented the client in the transaction, and any contract a lawyer enters into in violation of the Rules of Professional Conduct is voidable as a matter of law, and the Defendant has voided the Land Option and tendered the return of the Plaintiff's earnest money security deposit.

Furthermore, the Plaintiff has the burden of proving he is entitled to specific performance, and he cannot show the Land Option is fair, just, and equitable since it is not supported by consideration.

Furthermore, even if the Land Option was not voidable for lack of consideration, as a matter of law, a refundable deposit of $500 for an 18-month land option is not fair, just and equitable under the undisputed facts and circumstances of this case.

This motion is based upon the pleadings, the Affidavit of Desa Ballard, the Affidavit of Ann Marie Watson (and exhibits attached thereto, including the Land Option), the laws of the State of South Carolina, a memorandum of law to be submitted in due course, and upon such other and further matters as may be properly submitted to the court.

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, Columbia, SC 14th Floor (29201)
Post Office box 100200
Columbia, SC 29202
(803) 771-7900
Robert.Wood@RogersTownsend.com

September 6, 2024

Attorney for the Defendant

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen, Plaintiff, v. Ann Marie Watson, Defendant.	DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTIONS a. To Strike Demand For Jury Trial b. To Dismiss Counterclaims c. For Protective Order

The Plaintiff has filed numerous motions so far in this case. They should all be denied. The Defendant's Motion for Partial Summary Judgment is briefed separately.

Background

This is a lawsuit by a lawyer against his former client. In his suit, he asks the court for specific performance – to force his then-current client[1] to honor a Land Option he (the lawyer) drafted and instructed her (the client) to sign, yet never advised his client (in writing or otherwise) to have the proposed Land Option reviewed by an independent lawyer. And it gets worse, as we will see.

The Motion to Refer Should be Denied

Plaintiff filed this suit on February 7, 2024, and Defendant served an Answer and Counterclaims on April 15, demanding a trial by jury on all issues. In response, Plaintiff filed a Motion pursuant to Rule 39(a) to refer the case to the Master-in-Equity. Plaintiff says the basis for his motion is that the "main purpose" of the "matter" is specific performance of the Land Option. What the "main purpose" of Plaintiff's Complaint is, however, is not the test of whether

1 Plaintiff was representing Defendant in her family court matter, which included equitable distribution of real property that was the subject of the requested Land Option.

Defendant is entitled to a jury trial. The test is whether she has asserted any legal, compulsory counterclaims. And because she has, she is entitled to a jury trial.

Defendant's Return to the Motion pointed out that she had asserted legal compulsory counterclaims (for actual and punitive damages for breach of fiduciary duty and for equitable relief for misappropriation of her confidential information) for which Defendant was constitutionally entitled to a trial by jury.

Before the motion could be heard, Defendant filed an Amended Answer and Amended Counterclaims that included the original counterclaims for breach of fiduciary duty and misappropriation of her confidential information but added counterclaims for damages for Misappropriation of Confidential Information and Professional Negligence and for damages and treble damages for violation of the South Carolina Unfair Trade Practices Act.

Plaintiff did not file a new motion to refer, but he did not withdraw it, either.

The Motion to Refer is Moot

In *Schein v. Lamar,* 284 S.C. 252, 255, 325 S.E.2d 573, 574 (Ct. App. 1985), the South Carolina Court of Appeals held that since Plaintiff's first amended complaint had been superseded by the second amended complaint, it was no longer the operative pleading in the case. "Thus, any [previous] questions as to the sufficiency of the First Amended Complaint are now moot." *Id*. The same would apply to the original counterclaim in this case: It has been superseded by the Amended Answer and Amended Counterclaims, and the motion to refer is moot.

Hence, if Plaintiff desired to keep his motion to refer in place after Defendant filed her Amended Answer and Amended Counterclaims, he should have filed a new motion to refer the case to the Master.

<u>Defendant has a Right to a Jury Trial on Her Compulsory Legal Counterclaims</u>

Assuming the Court decides to treat the motion to refer as not being moot, the case should not be referred anyway.

Plaintiff claims this case should be tried by non-jury by the Master-in-Equity because the "main purpose of this matter is specific performance of the Land Option." That is simply not the question. The question is whether the Amended Counterclaims are legal and compulsory, and they are.

The South Carolina Supreme Court has held that "both plaintiffs and defendants have a right to a jury trial of issues raised in a compulsory legal counterclaim interposed in an equitable action." *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 54, 354 S.E.2d 895, 896 (1987). Specifically, "If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim." *Id*. at 56, 354 S.E.2d at 897. The Supreme Court laid out the analysis this way:

> (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.
>
> (b) If separate trials are ordered, the judge must determine which issues are to be tried first. **If there are factual issues common to both claims, absent the 'most imperative circumstances,'** *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. (2d) 988 (1959), **the 'at law' claim must be tried first**. If there are no common factual issues, it is within the trial judge's discretion which claim will be tried first.
>
> (c) **If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues.** The court may

> then determine the equitable claims, but **the jury's determination of common factual issues shall be binding upon the court.**

Id. (emphasis added).

The counterclaims for damages for Breach of Fiduciary Duty, Professional Negligence, and Unfair Trade Practices are no doubt legal counterclaims. (A suit for damages for breach of fiduciary duty is one at law. *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 130 (2005)(holding that a cause of action seeking punitive damages for breach of fiduciary duty was at law); *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 n. 1 (1997)("An action for breach of fiduciary duty is an action at law. . ..") . A suit for damages for misappropriation of confidential information is one at law. *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020)(holding that an action for money damages for misappropriation of trade secrets was an action at law.) . A suit for damages and treble damages under the Unfair Trade Practices Act is one at law. *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017)).

To be "compulsory" counterclaims, they have to have arisen "out of the transaction or occurrence that is the subject matter of the opposing party's claim and [do] not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Rule 13(a), SCRCP; and *Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, 440 S.C. 409, 892 S.E.2d 280 (2023) (rejecting prospectively the "logical relationship" test of *North Carolina Federal Savings & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 517-18, 381 S.E.2d 903, 905 (1989)).

Here, Defendant's counterclaims did in fact arise out of the same transaction or occurrence as the Land Option. In fact, they are based on the Land Option and the way Plaintiff manipulated Defendant into signing it and how, while negotiating the Land Option, Plaintiff used his own client's confidential information to his personal advantage. This is laid out in detail in ¶8 of her Amended Answer (which is incorporated into the Amended Counterclaims) and in each of her Amended Counterclaims. It is also covered in Defendant's Affidavit and in the affidavit of her expert witness, Desa Ballard.

In short, the allegations of the Amended Counterclaims, if true, impact the very enforceability of the Land Option and how Defendant was damaged by it, so Defendant is entitled to a jury trial. *See* SC Const. Art. I § 14 and SCRCP 38(b). After the jury returns its verdict, the Court may rule on any equitable claims or defenses.

Motion to Strike Specific Allegations from the Original Answer and Counterclaims

Plaintiff filed a motion to strike paragraphs 8(a) through 8(l), 10, 15, 17, 18, 19, 20, and 21 of her Answer. Plaintiff did not file a similar motion after Defendant filed her Amended Answer and Amended Counterclaims. Because the Amended Answer and Amended Counterclaims are now the operative pleadings, that motion is moot, as discussed at the beginning of this brief.

Motion to Dismiss Counterclaims

After Defendant filed her Amended Answer and Amended Counterclaims, Plaintiff filed a motion to dismiss them.[2] We will address each basis separately.

1. Applicability of the Rules of Professional Conduct

Plaintiff first claims Defendant is using the Rules of Professional Conduct as a basis for civil liability, citing Rule 407[7]. Rule 407[7] reads in relevant part:

> Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.

[2] Plaintiff did not withdraw her similar motion addressed to the original Answer and Counterclaims, but it appears this new motion does in fact serve to replace it. If we are wrong, we ask permission to brief the original motion.

> The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Rule 407[7], SC Rules of Professional Conduct.

Plaintiff seems to want the Court to rule that he is immune from civil liability for breach of fiduciary duty, stealing confidential information, professional negligence, and violation of the South Carolina Unfair Trade Practices Act if his breach happens also to be a violation of the Rules of Professional Conduct. He is wrong.

For example, Rule 1.1 requires a lawyer to provide competent representation. If Plaintiff's position were right, no lawyer could be sued for professional negligence. Rule 1.3 requires a lawyer to act with reasonable diligence and promptness, so under Plaintiff's view, a lawyer couldn't be sued for failing to file a timely notice of appeal. Rule 1.4 requires a lawyer to comply with reasonable requests for information. Rule 1.6 prohibits a lawyer from revealing information related to the representation of a client. The list goes on and on.

Defendant has retained South Carolina's premier expert in the subjects of legal ethics, professional responsibility and legal malpractice, Desa Ballard. Her affidavit is on file with the Court. She has focused her practice for more than 35 years on professional responsibility and ethics, representing lawyers, judges, law firms, and persons seeking admission to the Bar and litigation regarding law firm break-ups, associate departure and related matters. Ballard Aff. ¶ 4.

She has opined that the Land Option "is likely void as against public policy as the product of a breach of fiduciary duty and over-reaching by Plaintiff as to his obligations to Ann

Marie." Ballard Aff. ¶ 33. She has further opined, "At all times, Plaintiff had to know that the land option contract was against public policy, as the product of an unfair business transaction between a client and her lawyer the result of duress, and a violation of his fiduciary duties to Ann Marie." *Id.* ¶ 42. And she further opined:

> 51. In my professional opinion to a reasonable degree of certainty, Plaintiff deviated from the standard of care owed by attorneys to their clients when he:
>
> ***
>
> > h. Continued to attempt to enforce the land option contract despite knowing that it was against public policy, had been voided, and was the result of a violation of his fiduciary duty to Ann Marie, arising from the confidential relationship of attorney-client that existed between them at the time Plaintiff initiated a discussion about his interest in purchasing the subject property.
>
> ***
>
> 53. It is also my opinion that Plaintiff has breached his fiduciary duty to Ann Marie, separately from the duties he owed her as her lawyer. Because Plaintiff and Ann Marie had a familial relationship and Plaintiff undertook her legal representation when she was especially vulnerable, then exploited it for his own purposes separate and apart from the duties he owed to Ann Marie as her counsel, the breach of his fiduciary duties to Ann Marie are extreme in nature.

Attorney Ballard did not stop with breaches of common law fiduciary duty. She has opined that Plaintiff failed to meet an attorney's standard of care. She wrote:

> 49. The standard of care for an attorney requires the attorney to act, without exception, in the best interests of the client. Using the existence of the attorney-client relationship to initiate a land sale proposal during the time of the representation requires that the attorney give full disclosure to his client of the possibility or actual conflict between them, and he is required to disclose in writing his advice for the client to seek independent counsel regarding the transaction.
>
> 50. Plaintiff did none of that.

And then in Paragraph 51 she provided detail after detail of how Plaintiff further violated the standard of care:

> 51. In my professional opinion to a reasonable degree of certainty, Plaintiff deviated from the standard of care owed by attorneys to their clients when he:

a. Initiated discussions with Ann Marie about a business transaction intended to benefit him personally without advising her to seek independent counsel while he was also representing her.

b. Failing to advise Ann Marie to get independent advice regarding the enforceability of the deed restriction in her deed to the 17.51 acres, the potential tax consequences, the price, burden of future zoning issues, the financial terms of the land option contract, and/or failing to advise her to get independent advice on those and other topics.

c. Continuing discussions with Ann Marie about a business transaction intended to benefit him personally after Ann Marie shared emotional and heart-wrenching information about her feelings related to the property in the context of the attorney-client relationship between Ann Marie and Plaintiff, which should have alerted Plaintiff to the fact that Ann Marie was under emotional pressure and needed independent advice in order for her to engage in an arms-length transaction regarding the property.

d. Took advantage of Ann Marie, who was his client and to whom he owed the highest duty of care and loyalty.

e. Departed from his duty of loyalty, fairness by using Ann Marie, who was his client, to enrich himself and his family to Ann Marie's detriment.

f. Failing to disclose to Ann Marie the plans Plaintiff had with his family to add Ann Marie's land to larger parcels owned by Plaintiff and his family to make a large and lucrative land deal with Mungo Homes.

g. Departed from his duty of loyalty, fairness and reason after Ann Marie verbally voided the land option contract upon learning that Plaintiff intended to violate his promises to Ann Marie regarding the use that would be made of the property after Plaintiff resold the property to Mungo Homes.

h. Continued to attempt to enforce the land option contract despite knowing that it was against public policy, had been voided, and was the result of a violation of his fiduciary duty to Ann Marie, arising from the confidential relationship of attorney-client that existed between them at the time Plaintiff initiated a discussion about his interest in purchasing the subject property.

i. In failing to fully disclose to Ann Marie his intentions regarding the property prior to preparing a land option contract for her signature.

j. In failing to properly advise Ann Marie regarding the legal significance of terms used in the land option contract and failing to disclose his own personal plans to enrich himself and his family by using Ann Marie's property as part of a larger sale to Mungo Homes.

k. In refusing to accept the return of a deposit of money that was never actually paid to Ann Marie, since the land option contract prohibited her from accepting the $500.00 payment as her own funds.

l. In failing to advise Ann Marie to seek real estate professional assistance prior to engaging with Plaintiff in a transaction that affected her ownership of real property, especially since Plaintiff was acting as Ann Marie's legal counsel at the time.

m. In using his knowledge of Ann Marie's assets, which he learned in the course and scope of his representation of her in the domestic action, to his own advantage and causing harm to Ann Marie.

n. In preparing a land option contract that gave no consideration to Ann Marie.

o. In attempting to enforce a void land option contract that he knew or should have known was void, especially after Ann Marie voided it.

p. Failing to ensure Ann Marie had independent legal advice and professional real estate advice prior to entering into the land option contract.

q. In depriving Ann Marie of the value of her real estate through wrongful acts;

r. In taking action to devalue the real property that Ann Marie did not contract to sell;

s. In using client information to profit for himself individually, which also harmed his client, Ann Marie.

So, no, Defendant is not invoking the Rules of Professional Conduct as procedural weapons. The Common Law of the State of South Carolina is sufficient.

And we ask the Court not to forget the last line of Rule 407[7]:

Since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule **may be evidence of breach of the applicable standard of conduct**.

<u>(emphasis added).</u>

2. Cause of Action for Breach of Confidence

We are, frankly, bewildered by Plaintiff's position that "there is no breach of confidence action recognized in South Carolina based on the allegations in said second Counterclaim."

In South Carolina, where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose made in confidence by the client are at [her] instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived. *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 293, 692 S.E.2d 526, 530 (2010).

The information Defendant disclosed to Plaintiff while she was his client belonged to her and not to him.

> A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience is bound to act in good faith and with due regard to the interests of the one imposing the confidence. To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant. *See generally Moore v. Moore,* 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) (discussing the elements comprising a breach of fiduciary duty claim). Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." *Spence v. Wingate,* 395 S.C. 148, 158, 716 S.E.2d 920, 926 (2011).

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-336, 732 S.E.2d 166 (2012) (internal citations omitted).

In *Burgess v. American Cancer Society, So. Car. Div., Inc.*, a client provided confidential information to her attorney, and the attorney passed that along to a third party, to the Plaintiff's detriment. Although barred by the statute of limitations, by Court of Appeals viewed the allegation as actionable.

<u>3. Cause of Action for Accounting Allegations as Otherwise Actionable</u>

Plaintiff claims Defendant is not entitled to an accounting of the profits he, her lawyer, made by using her confidential information for his personal gain.

No doubt Defendant has alleged that she and Plaintiff had a confidential relationship. Defendant alleges in ¶ 8:

> i) the Defendant had entrusted the Plaintiff with intimate, personal knowledge about her financial and emotional condition, her assets, her liabilities, her net worth, her liquidity, her debts, her access to liquidity, her negotiating personality, skills and experience, her tolerance for conflict, her level of trust in the Plaintiff, her lack of knowledge of commercial real estate transactions, her access to family support, her children's current needs, the level of support from her family and the reasons for it, and her emotional state over the recent loss of her father; and the Plaintiff used that information to his personal advantage; [and]
>
> j) the Defendant had entrusted the Plaintiff with knowledge of her fractured relationship with her siblings, and the Plaintiff used that information to his personal advantage by proposing to buy land from the Defendant when the Plaintiff knew the siblings, or one or more of them, would be opposed to any such sale.

Defendant alleges in ¶ 50 that as a direct result of Plaintiff's use of that confidential information for his own, personal benefit, the court should impose a constructive trust upon the benefit Plaintiff derived from the Land Option, requiring the Plaintiff to account for and to turn over to Defendant the benefit he has received from the Land Option, and ordering Plaintiff to pay Defendant such additional sums as are necessary to restore Defendant to the position she occupied prior to executing the Land Option. (She also alleges, in ¶ 51, that she suffered damages in numerous respects.)

A confidential or fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence. *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987).

A constructive trust arises whenever a party has obtained money that does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it, as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty. *Wolfe v. Wolfe*, 215 S.C. 530, 56 S.E.2d 343 (1949). A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust. *Whitmire v. Adams*, 273 S.C. 453, 257 S.E.2d 160 (1979).

It is also said that a constructive trust operates against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained, or holds the right to property which he ought not in equity and good conscience hold and enjoy. *PCS Nitrogen, Inc. v. Ross Dev. Corp.*, 126 F. Supp. 3d 611 (D.S.C. 2015), dismissed *sub nom. PCS Nitrogen Inc. v. Ross Dev. Corp. Rivers*, No. 16-1540 (L), 2018 WL 2111081 (4th Cir. 2018).

An accounting is a judicial remedy designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty. *Rogers v. Salisbury Brick Corp., 299 S.C. 141,* 382 S.E.2d 915 (1989).

Yes, certainly Defendant has stated a cause of action for an accounting based on Plaintiff's misappropriation of her confidential information.

4. Affidavit of Expert Supplied, Though not Needed

Plaintiff claims Defendant's counterclaim for professional negligence should be dismissed because she filed it without contemporaneously filing an affidavit of an expert specifying negligent acts or omissions.

We assume Plaintiff is referring to SC Code § 15-36-100. That statute creates duties for Plaintiffs and **not for counterclaiming defendants**. It reads:

> (A) In an action for damages alleging professional negligence against [an attorney at law]…, the **plaintiff** must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. (Emphasis added.)

We are not aware of any statute the requires defendants asserting counterclaims to file a contemporaneous affidavit. In fact, such a requirement would be nonsensical and violate due process and equal protection rights. This case presents a good example of that.

Plaintiff was Defendant's lawyer. Plaintiff knew his professional obligations far better than his client did, and he had three years to bring this lawsuit. Defendant had 30 days to serve her Answer and Counterclaim. At least in cases involving professionals who are lawyers, the court should honor the plain terms of the statute (which is in derogation of the common law anyway) and not play like the General Assembly meant something it did not say.

Rules for statutory interpretation are laid out succinctly in *16 Jade Streets, LLC v. R. Design Constr. Co.*, 398 SC 338, 728 S.E.2d 448 (2012):

> Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. If the statute is in derogation of a common law right, it must be strictly construed and not extended in application beyond clear legislative intent. Therefore, a statute is not to be construed in derogation of common law rights if another interpretation is reasonable. However, the statute must also be read as a whole and in harmony with its purpose. In that vein, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Similarly, we are to construe a statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous. In the end, however, we will reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it.

16 Jade St. at 347 (internal citations and quotation marks omitted).

Courts have no more right to change "plaintiff" to "defendant" than they do to change "yes" to "no." See *Lemmons v. Maced. Water Works, Inc.*, 431 S.C. 186; *Taylor v. Taylor*, 439 S.C. 272; and *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, where it is established that if the language of a statute is plain, unambiguous, and conveys a clear and definite meaning, the court must apply the statute according to its literal meaning without resorting to forced construction to change its scope.

<u>5. The Fourth Counterclaim is not a Duplicate of the Third Counterclaim</u>

Plaintiff claims the Fourth Counterclaim (Unfair Trade Practices Act) is identical to the Third Counterclaim (Professional Negligence) and therefore should be dismissed for the same reasons as the Third.

For starters, the Third Counterclaim states a perfectly good cause of action for Professional Negligence, and we once again invite the Court to take a look at the Affidavit of Desa Ballard.

Secondly, the causes of action are very different.

A claim for professional negligence contains four elements: 1) the existence of an attorney-client relationship; 2) breach of a duty by the attorney; 3) damage to the client; and 4) proximate causation of the client's damages by the breach. *Smith v. Haynsworth*, 322 S.C. 433, 435, 472 S.E.2d 612 (1996).

A claim for violation of the South Carolina Unfair Trade Practices Act contains three elements: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Maybank v.*

BB&T Corp., 416 S.C. 541, 569, 787 S.E.2d 498 (2016).

The causes of action are entirely different.

6. Defendant pled public harm or repetitive action

Plaintiff claims Defendant failed to plead what he calls the "elements of public harm and repetitive action," which he claims are mandatory elements of an action for violation of the Unfair Trade Practices Act.

Defendant alleged:

> 60. The Plaintiff is an attorney who at all relevant times has been engaged in trade or commerce in South Carolina. He has committed, participated in, directed, or authorized the commission of the acts described below, and he is the one who made the decisions to commit those unlawful acts.
>
> 61. The Plaintiff's actions constitute unfair or deceptive acts or practices in the conduct of trade or commerce in South Carolina.
>
> 63. The Plaintiff's actions are capable of repetition because he is a practicing attorney who accepts cases from the general public and from family members.
>
> 64. The Plaintiff's actions have also actually been repeated. Specifically, on information and belief, the Plaintiff and three of his law partners entered into a business transaction with a client named Dial Rawl and tried to enforce the contract despite the fact that the Plaintiff and his law partners had breached their fiduciary duties to him in entering into that contract without full disclosure and written, informed consent. The Plaintiff dropped his claims against Mr. Rawl shortly after Mr. Rawl filed his lawsuit for violation of the South Carolina Unfair Trade Practices Act. See Lexington County Civil Action No. 2000-CP-32-0248.
>
> 65. The Plaintiff's actions are also capable of repetition because he continues to practice law in South Carolina, represents naïve, uninformed, and trusting clients, owns property with other relatives in Richland County, and remains willing to conduct business with those relatives and clients.
>
> 66. The Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar.

"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 public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Maybank v. BB&T Corp.*, 416 S.C. 541, 787 S.E.2d 498 (2016).

One way (but not the only way) a plaintiff can prove that an allegedly unfair or deceptive act affected the public interest is by proving that the act had a potential for repetition. A plaintiff can prove "potential for repetition," by any one of three ways:

(1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence *(e.g., Barnes v. Jones Chevrolet Co*., 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987) (where the Court of Appeals ruled that the trial court improperly excluded evidence of padding other customers' bills), or

(2) by showing the defendant's procedures created a potential for repetition of the unfair and deceptive acts *(e.g., Dowd v. Imperial Chrysler-Plymouth*, *Inc.,* 298 S.C. 439, 381 S.E. 2d 212 (Ct. App. 1989), where the Defendant dealer's salesmen were trained to tell potential buyers what he told Plaintiff, although what he tells them might not be accurate); or

(3) some other way.

Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996).[3]

As to the "some other way," the Supreme Court held in *Daisy*:

> Generally, plaintiffs will prove potential for repetition by the two means described above. **We decline to hold, however, that those are the only means for showing potential for repetition/public impact**. Rather, **each case must be evaluated on its own merits**. We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test.

Daisy Outdoor at 497 (emphasis added)

Here, Defendant has also alleged that Plaintiff is a practicing attorney who accepts cases from the general public and from family members. Defendant also alleged that Plaintiff's actions

[3] So the test is not whether the claim contains the "elements of public harm and repetitive action."

are capable of repetition because he represents *naïve, uninformed, and trusting clients*, he owns property with other relatives in Richland County, and he remains willing to conduct business with those relatives and clients.

Defendant also alleged Plaintiff's actions affect the public interest in that they have reduced the public's confidence in the South Carolina justice system and the South Carolina Bar, and Defendant has alleged that Plaintiff's actions affect the public interest in that they are violations of the South Carolina Rules of Professional Conduct and not merely violations of common law fiduciary duties.

And Defendant has alleged that Plaintiff did the same thing to one Dial Rawl over in Lexington County, and she even cited to the civil action Mr. Rawl filed against Plaintiff.

<u>7. Defendant Pled Plaintiff was Engaged in Trade or Commerce</u>

Finally, Plaintiff claims the Fourth Counterclaim should be dismissed because it is "void of allegations required by the definition of 'trade and commerce' in SC Code § 39-5-10(b)."

The South Carolina Unfair Trade Practices Act defines "trade" and "commerce" as including the advertising, offering for sale**,** ***sale*** or distribution of any **services** and ***any property***, tangible or intangible**,** ***real***, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State. S.C. Code Ann. § 39-5-10(b).

Lawyers are subject to the Unfair Trade Practices Act. *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012). And they should remain so. A lawyer such as Plaintiff comes into contact with a cross-section of the public and develops trusting clients, many of whom are naïve and uninformed. Plaintiff owns property with other relatives in Richland County, and he remains willing to conduct business with those relatives and clients.