STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen,	)	
Plaintiff,	)	PLAINTIFF'S BRIEF IN SUPPORT OF MOTION TO DISMISS COUNTERCLAIMS PURSUANT TO RULE 12(b)(6)
v.	)	
Ann Marie Watson,	)	
Defendant.	)	

Statement of Facts

Plaintiff, Kellum Allen, was defendant's attorney in her divorce. On August 15, 2022, five years after the entry of the final order of divorce, Mr. Allen and defendant entered into a written option contract for the property which is the subject of this lawsuit. The written option agreement granted plaintiff until February 15, 2024 to exercise the option. The total purchase price was Two Hundred Ten Thousand One Hundred Twenty Dollars ($210,120.00) for seventeen and 51/100 (17.51) acres. Plaintiff tendered a $500 check on August 7, 2022 in accordance with the terms of the option. Defendant cashed this check.

In January of 2024, plaintiff attempted to exercise his option to purchase the property. Shortly thereafter, defendant advised Mr. Allen's attorney that she would not comply with the option. This action for specific performance of the contract ensued.

Discussion

I. Defendant's Counterclaims Are Based Upon Alleged Violations Of The Rules Of Professional Conduct Which Do Not Create A Private Cause Of Action.

The South Carolina Rules of Professional Ethics do not create a private cause of action. The Rules of Professional Ethics state:

> [7] ***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. 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. Scope, RPC, Rule 407, SCACR (2024) (emphasis added)

The South Carolina Rules of Professional Conduct "simply do not provide a private cause of action." Hutson v. Hood, No.: 2021-CP-40-00946, 2021 S.C. C.P. LEXIS 3707 at *9 (Richland Co. October 4, 2021). See Hizey v. Carpenter, 119 Wn.2d 251, 830 P.2d 646 (Wash. 1992)(The Rules of Ethics "provide only a public, e.g., disciplinary, remedy and not a private remedy.") (*citing* 1 R. Mallen & J. Smith, Legal Malpractice § 6.27 (3d ed. 1989), Terry Cove North, Inc. v. Marr & Friedlander, P.C., 521 So. 2d 22 (Ala. 1988), and Merritt-Chapman & Scott Corp. v. Elgin Coal, Inc., 358 F. Supp. 17 (E.D. Tenn. 1972)). Cf. Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (S.C. Ct. App 2006)(Statutes prohibiting unauthorized practice of law do not create a private cause of action).

While the Rules of Professional Conduct do not create a private cause of action, they can be consulted in interpreting a recognized tort in an ***active*** attorney client relationship. In Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920 (S.C. 2011), the Court held:

> the Rules of Professional Conduct do not, in themselves, create a cause of action or establish evidence of negligence per se, they are relevant in assessing the legal duty of an attorney in a malpractice action. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996). HN17[ ] "In order to relate to the standard of care in a particular case, . . . a Bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm." Id. at 437, 472 S.E.2d at 614 (citation omitted). It is the breach of a duty, not the breach of a rule, that is of determinative import. Id. at 436 n.5, 472 S.E.2d at 614 n.5. HN18[ ] ***Duties owed to a former client are not controlled by the Rules of Professional Conduct.*** A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation. Id. at 161, 716 S.E.2d at 927 (emphasis added).

While in some situations representation may not end until the time for taking an appeal has ended, in South Carolina divorce proceedings representation ends when ***a final decree of divorce is entered***. *See* 7 Am Jur 2d *Attorneys at Law* § 170 (2017). "The attorney-client relationship terminates after the judgment of divorce is entered." Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987). *Compare* Floyd v. Kosko, 285 S.C. 390, 393, 329 S.E.2d 459, 460 (S.C. Ct. 1985) ("An attorney who undertakes the representation of a client in a cause impliedly agrees to see the case through to its termination and is not at liberty to abandon it without reasonable cause.")

This Court should find that Mr. Allen's representation of defendant had terminated at the time he sought to create or exercise the option. There is no dispute that a final decree of divorce was entered ***before*** the option was created or exercised under which defendant would be paid over $210,000 for seventeen and a half acres. As the divorce decree had been entered and his representation of defendant has terminated, the Rules of Professional Conduct do not apply to this matter and cannot create a cause of action.

Defendant's contention that the representation continued because of the later communications with the Defendant is unfounded and illogical. On her logic, a later communication with Defendant, ***ten years later***, by an attorney would suddenly create an

ongoing active representation for the entire ten-year period. This would create uncertainty in representation, a potential malpractice "trap" for the attorney in a divorce action and discourage the attorney most familiar with the history of the case from participating in a later communication with Defendant. This Court should find that Mr. Allen's representation ended when the final decree was entered and was not vaguely "ongoing."

Defendant's causes of action based on Professional Negligence/Malpractice and the South Carolina Unfair Trade Practices Act are based upon alleged violations of the Code of Professional Conduct. Both causes of action allege an ongoing, active attorney-client relationship. Paragraph 54 of the Complaint under the Professional Negligence Cause of Action states "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." Again, Paragraph 61 of the Complaint under the Unfair Trade Practices Act states: "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."

Both causes of action mention duties owed under the Rules of Professional Conduct. Paragraph 55 of the cause of action for Professional Negligence/Malpractice states "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." Paragraph 57(c) states Mr. Allen is liable for: "(c) Failing to disclose to the Defendant that the Plaintiff was prohibited by the South Carolina Rules of Professional Conduct from entering into this transaction unless he had obtained her properly informed, written consent." Paragraph 57(c) states Mr. Allen is liable for: (d) Failing to comply with the rules, regulations and statutes governing attorneys' conduct in the State of South Carolina." Paragraph 64 under the Cause of Action for an alleged violation of the Unfair Trade Practices Act, Defendant alleges Mr. Allen "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.***"

Similarly, Defendant's cause of action based on alleged breaches of the duty good faith, loyalty, and confidentiality are rooted in the Code of Professional Conduct. Rule 1:6 provides: "(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)." Rule 1:6, RPC, Rule 407, SCACR (2024). Rule 1:8 provides "use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty." Rule 1:8, RPC, Rule 407, SCACR cmt. 5 (2024). Defendant's counterclaims are clearly based upon the Rules of Professional Conduct.

Likewise, Defendant's allegations of misappropriation of confidential information are clearly based upon alleged violations of Rules 1:6 and 1:9. Rule 1:6 deals with confidentiality of information of a present client. Rule 1:9 deals with confidentiality of information with former clients, requiring the old and new ***representation*** to be *substantially related.* See e.g. Rule 1:9, RPC, Rule 407, SCACR cmt 3 (2024) Defendant contends that she was an ongoing divorce client of Mr. Allen, even though a final entry of divorce had been entered. She certainly cannot contend that Mr. Allen used her confidential information in a subsequent ***active representation of a different client.***

All of these actions are rooted, anchored, and inextricably intertwined with alleged violations of the South Carolina Rules of Professional Conduct. ***All*** must be dismissed because the Rules of Professional Conduct do not create a private cause of action. ***All*** must be dismissed because the Rules of Professional Conduct cannot be used to interpret the duties owed between attorneys and former clients.

II. Defendant's Counterclaims Are Barred Because She Failed To File An Affidavit As Required By Section 15-36-100 Of The South Carolina Code.

Section 15-36-100 of the South Carolina Code requires the filing of an affidavit in any action involving professional malpractice. It provides, in part:

> (B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), 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. S.C. Code Ann. § 15-36-100(B) (2024).

The affidavit requirement of section 15-36-100(B) applies to legal malpractice actions. H & H of Johnston v. Old Republic Nat'l Title Inc. Co., 405 S.C. 469, 473-74, 748 S.E.2d 72 (S.C. Ct. App. 2013). See Pruitt v. Parker, No. 2022-UP-043, 2022 S.C. App. Unpub. LEXIS 55 at *2-3 (S.C. Ct. App. February 9, 2022); Green v. McClain, No.: 6:19-3270-TMC-SVH, 2020 U.S. Dist. LEXIS 247440 at *8-10 (D.S.C. October 1, 2020); Weil v. Killough. No. 2:12-cv-00856-DCN, 2012 U.S. Dist. LEXIS 110812 at *14-15 (D.S.C. August 8, 2012). No case has found that the "common knowledge" exception section 15-36-100(C)(2) applies in the context of an attorney malpractice action.

A plaintiff cannot avoid the affidavit requirement of section 15-36-100(B) by filing a malpractice claim under a different legal theory. In H & H of Johnston, for example, the plaintiff filed a malpractice claim under the theory of breach of contract and therefore no affidavit was required. The Court held: "We find Bufkin was acting as an attorney at the closing…. We find any advice Bufkin gave H & H regarding potential adverse claims constituted the practice of law…. Accordingly, we affirm the circuit court's grant of Bufkin's summary judgment motion." H & H of Johnston, 405 S.C. at 475.

Again, in Green v. McClain the Court dismissed a breach of contract claim for failure to file the affidavit required by section 15-36-100(B). In ruling the Court cited cases where plaintiffs attempted to file legal malpractice claims under different legal theories. The Court held:

> Plaintiff's failure to file the necessary expert affidavit warrants dismissal of his legal malpractice claim…. See, e.g., Rotureau v. Chaplin, C/A No. 2:09-1388-DCN, 2009 U.S. Dist. LEXIS 118618, 2009 WL 5195968, at *6 (D.S.C. Dec. 21, 2009) (dismissing malpractice claim without prejudice as a result of plaintiff's failure to comply with § 15-36-100 by filing an expert affidavit and finding that § 15-36-100 is not a mere "procedural" requirement and is applicable in federal court); Eaglin v. Metts, C/A No. 0:08-2547-TLW-PJG, 2010 U.S. Dist. LEXIS 26901, 2010 WL 1051177, at *8 (D.S.C. Feb.16, 2010) (finding that a plaintiff could not proceed with a state law claim of negligence against a professional where he failed to file an expert witness affidavit with his complaint). Green, 2020 U.S. Dist. LEXIS 247440 at *10.

Again, in David v. Savage, No. 2:19-cv-3139-SAL, 2020 U.S. Dist. LEXIS 260344 (D.S.C. July 6, 2020), plaintiff filed claims of professional malpractice, negligence, and breach of fiduciary duty. After noting that "a legal malpractice cause of action is predicated on an injury or damage to a client caused by an alleged breach of duty by the client's attorney, " the Court found that BOTH the negligence claim and the breach of fiduciary duty claim were duplicative of the professional malpractice claim. The Court held "[c]omparing the allegations in Plaintiff's Complaint against the above standard, the court concludes that the negligence/negligence per se claim must be construed as one seeking recovery for legal malpractice." Id. at *8. The Court further held

> Turning to the breach of fiduciary duty cause of action, this court similarly concludes that it also seeks relief for alleged professional legal malpractice. South Carolina courts "have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship." Spence v. Wingate, 395 S.C. 148, 716 S.E.2d 920, 926 (S.C. 2011). "A claim for breach of fiduciary, as a

> general matter, is distinguishable from a claim for legal malpractice because it can arise in contexts other than one involving an attorney-client relationship." RFT Mgmt. Co., LLC v. Tinsley & Adams LLP, 399 S.C. 322, 732 S.E.2d 166, 173 (S.C. 2012) (noting "RFT's claim for breach of fiduciary duty arose out of the duty inherent in the attorney-client relationship and it arose out of the same factual allegations"). David, 2020 U.S. Dist. LEXIS 260344 at *8-9.

This Court should dismiss Defendant's counterclaims because the required expert affidavit has not been filed pursuant to section 15-36-100(B) of the South Carolina Code. No court has found the "common knowledge" exception applies in the context of a legal malpractice/negligence claim; the law and the standard of care expected of attorneys is not a matter of common knowledge.

Defendant's counterclaim based on professional negligence must be dismissed for failure to file the required affidavit, as should her claim based on misappropriation of confidential information. Both stem out of Mr. Allen's legal representation; the claims involve the same facts. An affidavit is clearly required for both claims

Likewise, defendant's counterclaim alleging breach of fiduciary duty must be dismissed for failure to file the required expert affidavit. As noted by the Court in David, the attorney-client relationship is at its core a fiduciary relationship; any claims of a breach of fiduciary duty is therefore a professional malpractice claim for which and affidavit is required.

Finally, defendant's counterclaim for alleged violations of Unfair Trade Practices Act must be dismissed as well for failure to file the affidavit required by section 15-36-100(B). See Barnes v. Seigler, No. 5:11-1156-MBS-KDW, 2012 U.S. Dist. LEXIS 10523 at *6-7 (D.S.C. January 30, 2012)(dismissing SCUFTA claim in federal court for failure to file affidavit). As noted above, paragraph 63 asserts that plaintiff's actions are capable of being repeated because he is a practicing attorney; an essential element of her claim is predicated upon alleged "continuing" malpractice. Paragraph 61 alleges that she relied on plaintiff as her "trusted attorney." The prerequisite "trade" she alleges plaintiff was engaged in is the practice of law. Defendant's counterclaim must be dismissed because she failed to file the required affidavit.

III. There Is No Breach of Confidence Action In The Context Of The Attorney Client Relationship And Defendant's Counterclaim Must Therefore Be Dismissed.

South Carolina has only recognized a cause of action for Breach of Confidentiality only in the context of the physician-patient relationship; it has not recognized a similar cause of action in the context of the attorney-client relationship. The Court of Appeals first recognized an independent tort of breach of confidence in the context of the physician-patient relationship in 1997. McCormick v. England, 328 S.C. 627, 638-640, 494 S.E.2d 431, 436-37 (S.C. Ct. App. 1997). In the over twenty-five years since McCormick, the Court has not extended its holding, which was ***explicitly*** limited to the physician-patient relationship. Id. at 640, 494 S.E.2d at 437. ("We find the reasoning of the cases from other jurisdictions persuasive on this issue and today we join the majority and hold that an actionable tort lies for a physician's breach of the duty to maintain the confidences of his or her patient in the absence of a compelling public interest or other justification for the disclosure.").

In Viscuso v. Quicken Loans, Inc., No. 3:21-cv-01924-JMC, 2022 U.S. Dist. LEXIS 50874 (D.S.C. March 22, 2022), the U.S. District Court for the District of South Carolina again refused to extend the holding of McCormick to the attorney-client relationship. The Court held:

> Although Plaintiff argues that she can assert a claim for breach of confidentiality against Defendant, a non- physician, this court has never reached this conclusion. See Stephens v. United States, C/A No. 0:16-149-BHH- PJG, 2018 U.S. Dist. LEXIS 32772, 2018 U.S. Dist. LEXIS 32772, 2018 WL 1110853, at *3 (D.S.C. Jan. 30, 2018) ("Because Stephens's Second Amended Complaint continues to allege that the erroneous disclosure of his medical records was not made by a physician, Stephens fails to plausibly allege that the defendant is liable to him for the South Carolina tort of breach of confidentiality." (citing McCormick, 494 S.E.2d at 437)); Gallipeau v. Correct Care Sols., C/A No. 3:10-2017-JFA-JRM, 2011 U.S. Dist. LEXIS 11208, 2011 WL 4502043, at *3 (D.S.C. Sept. 29, 2011) ("South Carolina courts have recognized a cause of action for breach of

> confidentiality, but such actions only lie against a physician where there is a 'absence of a compelling public interest or other justification for the disclosure.' Here, the cause of action asserted is not against a physician." (quoting McCormick, 494 S.E.2d at 431-37)). Moreover, after reviewing relevant case law to include Hotel & Motel Holdings, LLC v. BJC Enters., LLC, the court is also not persuaded that the South Carolina appellate courts have extended breach of confidentiality to actions against non-physicians. Accordingly, the court finds that Defendant is entitled to dismissal of Plaintiff claim for breach of confidentiality. Viscuso, 2022 U.S. Dist. LEXIS 50874 at *11.

See Marcum v. Bowden, 372 S.C. 452, 455 n.2, 643 S.E.2d 85, 86 n.2 (S.C. 2007)("The only appellate decision which arguably permits the plaintiff the benefit of the newly-recognized, non-foreshadowed tort duty is McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997), but it is unclear whether the Court of Appeals found this new duty in the common law or in legislative enactments. McCormick may represent an aberration: it is certainly not our general rule.")

Defendant's counterclaim for breach of a duty of confidentiality should be dismissed by this Court. There is no independent tort for breach of a duty of confidentiality by a client against his/her attorney. Defendant has clearly failed to state a claim.

All of Defendant's counterclaims, whether they be cast as professional negligence/malpractice, a violation of the South Carolina Unfair Trade Practices Act, misappropriation of confidential information, or an independent tort for breach of confidentiality, are rooted in the same set of facts and predicated upon the same faulty supposition – namely, that there is a private cause of action rooted in a duty of confidentiality. No matter how Defendant tries to "gussy" it up or disguise it, there is no private cause of action based ***either*** upon a common law duty of confidentiality or the Rules of Professional Conduct.

IV. The South Carolina Unfair Trade Practices Act Does Not Apply Since Defendant Has Admitted That Plaintiff's Actions Are Not Capable Of Repetition.

The South Carolina Unfair Trade Practices Act applies to attorneys. RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 338, 732 S.E.2d 166, 174 (S.C. 2012); Camp v. Spring Mortgage Corp., 307 S.C. 283, 414 S.E.2d 784 (S.C. Ct. App. 1991).

"[Th]e Unfair Trade Practices Act is unavailable to redress private wrongs if the public interest is unaffected." LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 71, 370 S.E.2d 711, 713 (S.C. 1988). "[A]fter alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest." Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (S.C. 1996). "An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts." Skywaves I Corp. v. Branch Banking & Trust Co., 423 S.C. 432, 455 814 S.E.2d 643, 655 (S.C. Ct. App. 2018).

In Skywaves, plaintiff alleged that BB&T's institutional procedures made it likely to repeat its allegedly misleading actions against other customers. It also alleged that "BB&T and Edahl treated Skywaves differently than a normal bank customer by giving it advice and asking others to invest in Skywaves, causing BB&T and Edahl to have a fiduciary duty to Skywaves that is not normally owed by a bank to a customer." Id. at 455, 455 814 S.E.2d at 656. The Court found that Skywaves could not rely on mere conclusory allegations to assert the repetition and thereby an impact on the public interest.

In RFT Management, the lower court held that the UFTA did not apply to attorneys because they were regulated by the Supreme Court. The Supreme Court held that the UFTA did apply to attorneys, but that the dismissal was appropriate on other grounds. The Court held:

> Because RFT alleged the same facts for its UTPA claim as in the legal malpractice claim, i.e., the deceptive acts of Law Firm, which the jury has already rejected, RFT has not shown it could have established all of the necessary elements of this claim. Id. at 339, 732 S.E.2d at 179.

This Court should find that Defendant has failed to allege that Plaintiff's actions have impacted the public interest and dismiss its SCUTPA claim. There is no chance that Plaintiff will repurchase the property over and over again. By her own admission, the acts Defendant alleges are not capable of repetition.

Further, as noted above, Defendant cannot maintain an action for professional negligence because it has not contemporaneously filed the expert witness affidavit required by section 15-36-100. Since it cannot prevail on its professional negligence claim, its claim for a violation of the South Carolina Unfair Trade Practices Act must be dismissed under RFT Management. See also Barnes v. Seigler, No. 5:11-1156-MBS-KDW, 2012 U.S. Dist. LEXIS 10523 at *6-7 (D.S.C. January 30, 2012) (dismissing SCUTPA act claim for failure to file expert witness affidavit).

Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Court dismiss all of Defendant's counterclaims.

DAVIS FRAWLEY, LLC
BY: */s/ James Randall Davis*
James Randall Davis, SC Bar #1580
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for the Plaintiff

December 11, 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.	PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Statement of Facts

Plaintiff, Kellum Allen, was defendant's attorney in her divorce. On August 15, 2022, after the entry of the final order of divorce in 2017, Mr. Allen and defendant entered into a written option contract for the property which is the subject of this lawsuit. The written option agreement granted plaintiff until February 15, 2024 to exercise the option. The total purchase price was Two Hundred Ten Thousand One Hundred Twenty Dollars ($210,120.00) for seventeen and 51/100 (17.51) acres. Plaintiff tendered a $500 check on August 7, 2022 in accordance with the terms of the option. The Defendant cashed the check at the time the contract was signed by her.

In January of 2024, plaintiff attempted to exercise his option to purchase the property. Shortly thereafter, defendant advised Mr. Allen's attorney that she would not comply with the option. This action for specific performance of the contract ensued.

Discussion

I. Defendant's Motion for Summary Judgment Cannot Be Granted As Discovery Has Been On Hold Pending These Motions And Factual Issues Are Therefore Still in Dispute.

Rule 56 of the South Carolina Rules of Civil Procedure states, in part:

The judgment sought shall be rendered forthwith if the pleadings, ***depositions, answers to interrogatories, and admissions on file***, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. S.C.Civ.P. Rule 56(c)(2024).

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" Baughman v. At&T, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (S.C. 1991) "This means, among other things, that summary judgment must not be granted until the opposing party has had a ***full and fair opportunity to complete discovery***." Id. (*citing* 10A Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983) and 6 Moore's Federal Practice para. 56.02[6], p. 56-39 (2d. ed. 1990)). See Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (S.C. 2003); Gary v. Askew, 423 S.C. 47, 49, 813 S.E.2d 717, 718 (S.C. 2018) "Nonetheless, the nonmoving party must demonstrate the likelihood that ***further discovery*** will uncover additional relevant evidence and that the party is "not merely engaged in a 'fishing expedition.'" Dawkins, 354 S.C. at 69, 580 S.E.2d at 439 (emphasis added).

Rule 56 of the South Carolina Rules of Civil Procedure mirrors Rule 56 of the Federal Rules. S.C.Civ.P. Rule 56(c) note (2024). Under the Federal Rules, a motion for summary judgment should "be denied, or the hearing on the motion to be continued, if the nonmoving party has not had an opportunity to make full discovery." Celotex Corp. v. Catrett, 477 U.S. 317, 326, 106 S. Ct. 2548, 2254, 91 L. Ed. 2D 265, 276 (1986). See Works v. Colvin, 519 Fed. Appx. 176, 181-82 (4t Cir. 2013)("'summary judgment [should] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.'... Such requests should be denied, however, if the additional evidence sought for discovery would not have by itself created a genuine issue of material fact sufficient to defeat summary judgment.'") Murrell v. Bennett, 615 F.2d 306 (5t Cir. 1980)("summary judgment normally should not be granted before discovery is completed."); Olin Corp. v. Insurance Co. of N. Am., 603 F. Supp. 445, 449 (S.D.N.Y. 1985)("Summary judgment should not be granted while the parties opposing judgment seek discovery of potentially favorable information.")

This Court should find that Defendant's Motion for Summary Judgment is premature. Summary Judgment is inappropriate, under ***BOTH*** South Carolina Rule 56 and Federal Rule 56, until the opposing party has had a full and fair opportunity to conduct discovery. Discovery has not begun in this case; a motion for Summary Judgment is premature.

In this situation, Plaintiff is under ***no obligation*** to show that he is not on a fishing expedition and that ***further discovery*** would produce evidence that will create a genuine issue of fact. At this point there has been essentially no discovery because of the Motions for Protective Orders.

There are many issues in Defendant's claims that require factual development. At the heart of ALL of Defendant's allegations are claims that; (1) Mr. Allen was her attorney at the time of the creation of the option, even though a final entry of divorce had been entered in the case 5 years before; and (2) Is the Option Price on the property inadequate and/or inequitable. In South Carolina, the attorney client relationship terminates upon the final entry of divorce. Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987).

II. Defendant's Claim That the Option Lacks Consideration Is Meritless

Option contracts have three characteristics: "(1) they are unilateral contracts where the optionor, for a valuable consideration, grants the optionee a right to make a contract of purchase but does not bind the optionee to do so; (2) they are continuing offers to sell, irrevocable during the option period; and (3) the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract." Huffines Co., LLC v. Lockhart, 365

S.C. 178, 194, 617 S.E.2d 125, 133 (S.C. Ct. App. 2005) (*quoting* Hutto v. Wiggins, 175 S.C. 202, 205, 178 S.E. 869, 871 (1935)).

"An option is to be distinguished from a sale, or a contract, or agreement or offer to sell. The chief difference between a contract to sell and purchase real property, and an option to purchase said property lies in the fact that, while the former creates a mutual obligation on the part of one party to sell and the other to purchase, the option merely gives the right to purchase, at a fixed price, within a fixed time, without imposing any obligation to do so." Hutto, 175 S.C. at 205, 178 S.E. at 871.

"An option contract is a promise which limits the promisor's power to revoke an offer." Faulkner v. Millar, 319 S.C. 216, 220, 460 S.E.2d 378, 380 (S.C. 1995) (*citing* Restatement (Second) of Contracts § 25). See Alexander's Land Co., L.L.C. v. M&M&K Corp., 390 S.C. 582, 599, 703 S.E.2d 207, 216 (S.C. 2010). Section 25 of the Restatement (Second) of Contracts, cited in Faulkner, provides:

> An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer. Restatement (Second) of Contracts § 25 (1981).

Comment d, following section 25, further elaborates on the irrevocability of an option with consideration, providing:

> d. Effect of option contract. The principal legal consequence of an option contract is that stated in this Section: it limits the promisor's power to revoke an offer. The termination of the offeree's power of acceptance is subject to the requirements for discharge of a contractual duty. See § 37. ***A revocation by the offeror is not of itself effective, and the offer is properly referred to as an irrevocable offer.*** Restatement (Second) of Contracts § 25 cmt. d (1981).

The consideration that makes the offer under an option irrevocable can be as little as one dollar ($1). In Mullins, Inc. v. Benton, 309 S.C. 85, 419 S.E.2d 838 (S.C. Ct. App. 1992), the Court, citing American Jurisprudence on *Specific Performance*, held:

> As to the one dollar stated consideration, the consideration for an option contract which is sought to be specifically enforced is the purchase price agreed upon and not the nominal amount paid for the option. 71 Am. Jur.2d Specific Performance § 143 (1973). ***One dollar may be adequate consideration for an option if the consideration for the purchase of the land is adequate. Id. Therefore, we reject the argument that there was inadequate consideration for the option agreement.*** Mullins, Inc., 309 S.C. at 89, 419 S.E.2d at 840

This Court should deny Defendant's Motion for Summary Judgment on the basis of lack of consideration. Mr. Allen tendered $500 to Defendant as consideration for the option agreement. Defendant accepted and deposited the check. Under Mullins, Inc. one dollar ($1) is adequate consideration for the option to purchase land. The $500 payment made Defendant's offer under the option irrevocable for the period provided in the option agreement. Defendant cannot revoke her offer.

To the extent that Defendant is contending the purchase price is not adequate, summary judgment cannot be granted without any discovery.

III. An Alleged Violation of the Rules of Professional Conduct Cannot Be Used Defensively in an Action in Equity.

The South Carolina Rules of Professional Conduct cannot be used to bar an action in equity. The Scope section of the Rules provides, in part:

> [7] 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.*** 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.*** Scope, RPC, Rule 407, SCACR (2024) (emphasis added)

In M.A. Mills, P.C. v. Kotts, 640 S.W.3d 323 (Tex. Ct, App. 2022), the lawyer entered into a contract with a client to manage one of its businesses. The client alleged the contract was void because the attorney violated Rule 1.08 of the Rules of Ethics. After discussing cases from other jurisdictions and their wide variety of approaches to whether the violation of an ethical rule renders a contract voidable, the Court noted “that "courts must exercise judicial restraint in deciding whether to hold arm's-length contracts void on public policy grounds." Id. at 331. The Court also noted the preamble to the Rules of Ethics, which provided:

> These rules do not undertake to define standards of civil liability of lawyers for professional conduct. Violation of a rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached. Likewise, these rules are not designed to be standards for procedural decisions. Furthermore, the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons. Id. at 331

Finally, the Court cited a Texas case for the proposition that “unless the contract is declared by law to be void or unenforceable, a court should not refuse to enforce the contract simply because it is in contravention of a statute.” Id. at 331. The Court held that Rule 1.08 could not be used to bar a contract claim, finding:

> we note that there is no statute or disciplinary rule declaring a contract void or unenforceable because the contract fails to adhere to the requirements of Rule 1.08(a). But this does not mean that there is no framework at all for ensuring that Rule 1.08(a) is respected. An attorney's failure to comply with Rule 1.08(a) can result in disciplinary action, including disbarment. See Tex. R. Disciplinary P. 15.04(D) (providing guidelines for sanctioning a lawyer who fails to avoid conflicts of interest), reprinted in Tex. Gov't Code, tit. 2, subt. G, app. B, part XV; e.g., Rosas v. Comm'n for Lawyer Discipline, 335 S.W.3d 311, 315-16 (Tex. App.—San Antonio 2010, no pet.) (an attorney violated Rule 1.08(a), and was ultimately disbarred, when he entered into a written contract with a client without properly admonishing the client, who was unskilled, about their business transaction). Because that consequence is available, public policy does not demand the invalidation of the parties' oral agreement, especially where that agreement has been shown to be fair and reasonable to both sides.
> Id. at 331-32.

This Court should find that an alleged violation of the South Carolina Rules of Professional Conduct cannot be used as a defense to an otherwise valid contract in a civil action between an attorney and his client, whether a current or former client. Defendant was a former client of Plaintiff; the final decree of divorce in Defendant’s divorce case was entered by the court 5 years before the Plaintiff and Defendant entered into an option contract. Shannon v. Shannon, 292 S.C. 112, 117, 355 S.E.2d 4, 6 (S.C. Ct. App. 1987). Rule 1:8, upon which Defendant is basing its claims, does not apply to Mr. Allen.

Even were this court to find that there was a nebulous "ongoing" attorney client relationship between Mr. Allen and Defendant, this Court should find that Rule 1:8 cannot be used defensively to bar Mr. Allen's claim for specific performance. The Preamble to the Texas Code of Ethics quoted in M.A. Mills, P.C. and paragraph [7] of the Scope of the South Carolina Rules of Professional Conduct ***are virtually identical.*** As in M.A. Mills, P.C., there is no statute in South Carolina that declares a contract void for a violation of the Rules of Professional Conduct. This Court should follow the holdings in M.A. Mills, P.C. and In re Estate of Pedrick and find that any alleged failure to follow an ethical rule cannot be used as a defense in an action for specific performance of an option contract.

Conclusion

For the reasons stated above, Plaintiff respectfully requests this Court to deny Defendant's Motion for Summary Judgment.

DAVIS FRAWLEY, LLC

BY: */s/ James Randall Davis*
James Randall Davis, SC Bar #1580
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for the Plaintiff

December 11, 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 SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

The only material issue Judge Allen raises in his affidavit is whether he was Ms. Watson's lawyer in the summer of 2022. This averment is demonstrably false, constitutes a sham affidavit under Rule 56(g), and does not create a **genuine** issue of material fact.

We refer the court to ¶¶ 30 and 31 of Judge Allen's affidavit, where he claims, incredibly, that he was not Ms. Watson's lawyer during the summer of 2022 (when he entered into a business transaction with Ms. Watson).

By way of reference, events in this case picked up April 20, 2022, when Ms. Watson sent Judge Allen an email (**Ex. F**. to Watson Affidavit) about her family court matter. Watson Aff. ¶ 21. Judge Allen does not deny Ms. Watson's averment about discussions about her family court matter on June 21, 2022. And most importantly, we have Judge Allen's notes from that discussion. They are attached hereto as **Ex. A**. Those notes, handwritten by Judge Allen himself, say,

> 6-21-22. Ann Marie.
> **Client** doesn't want to [___] (Emphasis added that he was referring to Ms. Watson as his client.)
> May 2022 [illegible] Δ didn't make -
> How did he make payment? Gift?
> Any other [illegible] ? No.
> $41,616.62 vs. $47,950?
> _____

6/28/22
Call D. Wilson Wednesday [Wilson is the ex-husband's attorney]

______
$5,000 [illegible]
[illegible]

____
6/29/22 D Wilson – 10 minutes. He will call back before
AM. 5,000 increments
He will raise [illegible….]

A Marie
Offer $2500 E w/ [illegible
9/30 [illegible]
Ct. Order –

____
7/14/22
Did He pay 3.5 interest on balance of Eq. Div.? Apparently yes.
1. Mutual mistake of Fact and [illegible] "net"
2. Net difference on her assets
3. P. 4 waiver of all equitable claims
4. [illegible]
5. [illegible]
6. He took sales commissions [illegible] on his profits

On July 5 the ex-husband's lawyer referred to Judge Allen's "threat of filing an action to increase child support." **Ex. B**, attached.

In response, Judge Allen didn't say, "Don't ask me about this case; she's not my client." Instead on July 14 he wrote an email to opposing counsel reading:

> Ann Marie to reimburse Chuck $2500 per quarter commencing September 30, 2022 and the last day of each fiscal quarter thereafter until the $41,616.67 is paid in full. Ends all equitable division claims. No interest. Own fees.
>
> Let me know. Thanks. Kellum

Ex. B, attached.

Those are undeniably actions of a lawyer acting on behalf of his client. For Judge Allen to claim he was not Ms. Watson's lawyer that summer is a sham, and sham claim does not create a **genuine** issue of material fact that would prevent summary judgment from being granted to Ms. Watson. See SCRCP 56(g), which reads:

> **(g) Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 56(g), SCRCP.

The only evidence is that Judge Allen and Ann Marie started discussing a possible land transaction on the evening of June 21 – **the very same day** Judge Allen had talked to her about her ex-husband's return of some family court overpayments. Talks about the family court matter and the land transaction went on that summer almost in lockstep. On August 7, for example, Judge Allen sent the proposed land option to Ann Marie (Watson Aff. ¶ 37 and Ex. O to her affidavit). This was only 21 days after Plaintiff sent the ex-husband's lawyer an email proposal that would end all family court claims, would cover attorney's fees, and would cover equitable division. And this was almost two entire months before Plaintiff ceased giving Ms. Watson legal advice on the family court matter (by reminding his client, Ms. Watson, on September 20, that she needed to make her first quarterly payment to her ex-husband).

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

The court should ignore Judge Allen's claim that he was not Ms. Watson's lawyer when he entered into the land transaction with her.

/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

December 13, 2024

Attorney for the Defendant, Ann Marie Watson

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 AMENDED 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 Honorable Patrick C. Fant, III, 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 Amended 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 Amended Answer, these allegations denote insufficient defense and/or immaterial allegations which are directly related to the first, second, third and fourth 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 Amended Answer and the first, second, third and fourth Counterclaims, 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
December 17, 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 RETURN TO PLAINTIFF'S MOTION TO STRIKE PORTIONS OF AMENDED ANSWER AND COMPLAINT

With the Court's permission granted during the hearing held on December 16, 2024, Plaintiff filed a motion to strike allegations from Defendant's Amended Answer and Counterclaim. The court granted Defendant leave to respond.

Defendant has now reviewed the motion and has verified it is substantially the same as the motion to strike allegations of the original answer and counterclaim. Defendant is satisfied that her Memorandum in Opposition to Plaintiff's Motion to Dismiss Counterclaims filed September 19, 2024, adequately covers the points made in the new motion to strike, and she asks the court simply to consider that memorandum as her response to this motion.

/s/ Robert P. Wood
Robert P. Wood, Esquire (SC Bar No. 6206)
Rogers Townsend, LLC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
Main: (803) 771-7900
Robert.Wood@RogersTownsend.com

Attorney for Defendant

January 6, 2025

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.	MOTION TO RECONSIDER

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

YOU WILL PLEASE TAKE NOTICE that Defendant, by and through her undersigned attorney, will move before the Hon. Patrick C. Fant, III on the tenth day after service hereof or as soon thereafter as counsel may be heard, pursuant to 59(e) of the South Carolina Rules of Civil Procedure, to reconsider so much of the Court's supplemental order entered January 24, 2025 as dismissed Defendant's Fourth Counterclaim (violation of the South Carolina Unfair Trade Practices Act). The motion is based on the grounds that Defendant has in fact alleged the elements of such a claim.

The Court dismissed the Fourth Counterclaim on the basis that, "This case concerns a private transaction that does not affect the public interest."

We submit that it **does** affect the public interest when a lawyer has now twice[1] enticed clients into entering into a business transaction with him in violation of the Rules of Professional

1 Maybe more, as discussed below.

Conduct, in violation of the common-law standard of care for an attorney, and in violation of his fiduciary duties to a current client.

Actual Repetition and Potential for More Repetition

We certainly acknowledge that one bringing a private cause of action under UTPA must allege (and later prove) his opponent's actions adversely affected the public interest. *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (1996). But in *Daisy Outdoor* the Supreme Court made it clear that to meet the public interest element, all a plaintiff has to do is allege the potential for repetition of the defendant's actions. *Daisy Outdoor*, 322 S.C. at 495. According to *Daisy Outdoor,* potential for repetition can be proven a number of ways, including (1) showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. 322 S.C. at 496.

Here, we alleged the same kind of actions occurred in the past:

> We alleged in ¶ 63 that Plaintiff is a practicing attorney who accepts cases from the general public and from family members.
>
> We alleged in ¶ 64 that he 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, and we cited the lawsuit where Mr. Rawl made those allegations.
>
> We alleged in ¶ 65 that 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.
>
> We alleged in ¶ 66 that 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.

We basically alleged that Attorney Allen did unto his client Watson exactly what he had done unto his earlier client Dial Rawl. Because we have alleged that the same kind of action occurred in the past, we have met the public interest requirement.

As the Supreme Court said in *Daisy Outdoor*, "Proof of the potential for repetition of a defendant's actions satisfies the public interest requirement of [the] UTPA." *Daisy Outdoor*, 322 S.C. at 493, citing *Noack Enters., Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986) *cert. dismissed, 294 S.C. 235, 363 S.E.2d 688 (1987)*. "After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest. The plaintiff need not allege or prove anything further in relation to the public interest requirement." *Id.*

That is really all we need to have alleged to meet the public interest requirement of a UTPA claim.

But there is more.

<u>New Evidence of Potential for Repetition</u>

We have known all along that Plaintiff is involved in a business transaction with his sister, Barbara Coker, that being a purchase agreement that Plaintiff, Ms. Coker, and their brother Hiram entered into with Mungo Homes. A truncated copy of that purchase agreement is attached as **Exhibit A**.

We learned today that Plaintiff is her lawyer with respect to that transaction. See attached Subpoena Response as **Exhibit B**. So Plaintiff is once again doing business with a client.

We do not know what sorts of disclosures Plaintiff made to his siblings before agreeing to serve as their lawyer in their own business transaction, but we certainly have potential for the repetition of Plaintiff's prior unfair business practices.

Other Means of Showing Potential for Repetition/Public Impact

We note that the Supreme Court in *Daisy Outdoor* also expressly said it declined "to hold … 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." 322 S.C. at 497.

What else might satisfy that element other than actual repetition or potential for repetition?

a) *A Lawyer's Special Relationship with His Client*

A lawyer is in a unique position to prey upon his clients by using his positions of trust, confidence and professionalism, together with his skills as a negotiator and advocate to lure a client into not looking out for herself.

Here, Plaintiff holds himself out as a mediator, and we don't doubt he's a good one. Good negotiators know the importance of relationships and how to use them. They know about reciprocity, friendship, norms, and trust. They know the importance of seeing the transaction from the viewpoint of the other side in order to understand what they want and how important it is to them. The reason most mediators these days are licensed attorneys is because lawyers have negotiating skills unknown to most laymen.

We suggest the public interest is affected when a lawyer engages in multiple business transactions with clients without their informed consent.

The public policy of the State of South Carolina requires a lawyer to obtain his client's informed consent before engaging in a business transaction with that client. Rule 1.8(a), SCRPC. As we noted in our main brief, the Supreme Court of Kentucky has held that its Rules of Professional Conduct carry equal public policy weight as any public policy set forth in their Constitution or in a statute enacted by their General Assembly. "The principle that the Rules of Professional Conduct do not create a private right of action "d[oes] nothing to overturn the principle that courts will not enforce contracts that violate public policy. Also, it d[oes] nothing to question that the Rules of Professional Conduct may reflect Kentucky's public policy in proper circumstances." *Lawrence v. Bingham Greenebaum Doll, L.L.P.*, 599 S.W.3d 813, 828 (Ky. 2019). As noted on pages 14 and 15 of our brief, the States of Colorado and Washington agree.

Washington's rule creates a presumption that the defendant may try to overcome. *LK Operating, LLC v. Collection Grp., LLC*, 181 Wash. 2d 48, 90, 331 P.3d 1147, 1165 (2014). Ms. Watson cannot enter that debate if her UTPA claim remains dismissed.

We would further point out that the State of South Carolina, through its Supreme Court, regulates lawyers far more than the Department of Labor, Licensing and Regulation regulates plumbers and electricians. A customer might **hope** her electrician is giving her good advice on a repair, but a client can **expect**, can **demand**, that her lawyer fulfill his fiduciary obligations to her.

An example is the fact that an order disqualifying a lawyer from representing a client in a case is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005). This rule is based on the fact that an attorney-client relationship is confidential and trusting and involves a lawyer being a counselor and confidant who will remain loyal.

b) *Unfair Advantage*

As we pointed out in our brief, specific performance and rescission cases here in South Carolina provide guidance with respect to the public policy of South Carolina, the rule being that a court may declare a contact voidable if it was obtained through bad faith, such as concealment, misrepresentations, **undue advantage**, **oppression on the part of the one who obtains the benefit, or ignorance**, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other,--these circumstances, combined with inadequacy of price, may easily induce a court to grant relief, defensive or affirmative." *Campbell v. Carr*, 361 S.C. 258, 603 S.E.2d 625 (Ct. App. 2004) (emphasis added).

Repetitive, bad conduct that violates the Rules of Professional Conduct and is voidable to be point of allowing rescission and denial of the remedy of specific performance affects the public interest.

Discovery is Not Complete

Finally, discovery is not complete. In fact, Plaintiff has not answered our discovery despite it having been served on him on May 24, 2024. Richland County land title records have shown us what real property Plaintiff has owned here over the years, who he acquired it from, and who he sold it to. But we don't know which of those buyers or sellers were his clients. To learn that we asked Plaintiff to identify estates for which he served as executor or personal representative, trusts for which he has served as trustee, people for whom he has served as an attorney-in-fact, and corporations for which he serves as a board member or officer. That information will help us discover other times he has engaged in a business transaction with a client. And from there we can learn if he had that client's informed consent or if he has continued to lure clients into doing business with him without their informed consent.

Conclusion

For these reasons, we ask the court to reinstate Defendant's Fourth Counterclaim.

I certify under Rule 11 that I notified opposing counsel before filing this motion and asked him to consent but also knew the communication would be futile.

All of which is respectfully submitted.

/s/ Robert P. Wood

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
Main: (803) 771-7900
Robert.Wood@RogersTownsend.com

Attorney for Defendant

February 3, 2025

EXHIBIT A

THIS AGREEMENT IS SUBJECT TO ARBITRATION
PURSUANT TO S.C. CODE §§15-48-10 ET. SEQ.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "**Agreement**") is entered into as of the later of the dates this Agreement is signed by the Purchaser or Seller (the "**Effective Date**"), by and between Seller and Purchaser, as hereinafter designated, for the purchase and sale of certain real property.

Seller: Kellum W. Allen, Hiram S. Allen III and Barbara A. Coker

Purchaser: Mungo Homes Properties, LLC, a South Carolina limited liability company, or its assigns

(Purchaser and Seller shall hereinafter collectively be referred to as the "**Parties"** and individually sometimes referred to as a **"Party"**)

WITNESSETH:

IN CONSIDERATION of the mutual promises and covenants contained herein, the earnest money paid by the Purchaser, and ten dollars ($10.00) paid by the Purchaser to the Seller, the receipt and sufficiency of which are hereby acknowledged, the Seller and Purchaser, intending to be legally bound, hereby promise, covenant and agree as follows:

1. **Property:** The Property which is the subject of this Agreement consists of five parcels, which are described hereinbelow, totaling approximately Two Hundred Ninety-One and 12/100 (291.12) acres located off of Grover Wilson Road and Lawhorn Road in Richland County (the "**County**"), South Carolina, as more fully described or depicted on **Exhibit A**, together with all rights, privileges and easements appurtenant there to, if any, including any rights of view, light and air; rights of way; roadways; roadbeds and reversions or other appurtenant used in connection with the beneficial use thereof (the "**Property**"). Upon completion of a survey by Purchaser ("**Survey**"), if applicable, the property description reflected on the Survey shall automatically replace the drawing or tax map attached on the Effective Date as **Exhibit A**.

(a)	TMS # R23500-06-05-	34.97 acres
(b)	TMS # R20700-03-02-	150 acres
(c)	TMS # R20700-03-03-	17.75 acres
(d)	TMS # R20700-03-22-	20 acres
(e)	TMS # R20700-03-24-	68.4 acres

2. **Purchase and Sale:** Purchaser agrees to purchase and the Seller agrees to sell the Property, on the terms and conditions set forth herein.

3. **Purchase Price:** The "**Purchase Price**" for the Property shall be Four Million Two Hundred Thousand and no/100 Dollars ($4,200,000.00).

4. **Earnest Money:** A total deposit of One Hundred Thousand and no/100 Dollars ($100,000.00), (when deposited the "**Earnest Money**"), shall be delivered by Purchaser to McAngus, Goudelock and Courie, LLC (the "**Escrow Agent**"). The Earnest Money shall be tendered as follows:

(a) Within five (5) business days of the Effective Date of the Agreement, Twenty-Five Thousand Dollars ($25,000) of the Earnest Money shall be delivered to Escrow Agent.

(b) The remainder of the Earnest Money shall be deposited with Escrow Agent within five (5) business days following the end of the Inspection Period.

(c) The Earnest Money shall be held in trust and credited against the Purchase Price at closing (the "**Closing**") or distributed as otherwise provided for herein.

Disclosure Regarding Escrow Agent: Seller is aware that Escrow Agent serves as counsel to Purchaser in this and other transactions. Seller agrees that the duties of Escrow Agent hereunder are ministerial in nature and shall not disqualify Escrow Agent from representation of Purchaser in connection with this Agreement or any dispute that may arise hereunder. If any dispute should arise concerning the disbursement of any funds held by Escrow Agent, Escrow Agent may deposit any funds so held with the Office of the Clerk of the Court of Common Pleas for County where the Property is located (or with the Office of the Clerk of any other court where an action is permitted under this Agreement or is then pending) and may continue its representation of **Purchaser** in connection with such action.

5. **Access to the Property, Inspection Period and Termination:** At any time for Two Hundred and Seventy (270) days from the Effective Date (the "**Inspection Period**"), Purchaser may, subject to giving prior notice to the Seller, at its sole cost and expense, directly or through its agents, representatives or consultants, enter upon the Property for the purpose of inspection, surveying, environmental studies, engineering studies, soil tests, and or other study of the Property to determine the suitability of the Property to the Purchaser's requirements, provided such inspections, tests and studies, do not interfere with or damage the Property. Notwithstanding any other term contained herein, Purchaser shall have the right to perform minor clearing on the Property, if needed, to perform such inspections, tests and studies. Purchaser agrees to indemnify and hold Seller harmless from all claims, causes of action, liabilities, losses or damages, including attorneys' fees, arising from the acts, omissions, faults, or neglects of Purchaser and its agents, contractors and consultants with respect to any such investigations, which agreement shall survive termination of this Agreement or Closing. In the event this transaction does not Close, with the exception of the minor clearing rights referenced above and the rights to install a well on the Property referenced below, Purchaser shall restore and repair any damage to the Property caused by Purchaser or Purchaser's agents, contractors or consultants; provided, notwithstanding the foregoing, Seller expressly agrees that Purchaser shall not be responsible for any liability, defects or marketability issues resulting merely from the fact that Purchaser's investigations identify environmental matters, structural defects, or other adverse conditions affecting the Property that were not created by Purchaser.

It is anticipated that the Purchaser's intended development of the Property will likely require an onsite well system to provide water service to the lots to be developed on the Property. Therefore, in addition to Purchaser's rights as defined herein, Purchaser shall also have the right during the Inspection Period to install up to three test wells on the Property, in a location to be agreed upon by the Parties, for the purpose of determining if a water source is available and sufficient to service the intended development.

IN WITNESS WHEREOF, the parties have affixed their hands and seals as of the last date written below.

SELLER:

Kellum Allen
Kellum W. Allen

Date: 03-31-2023 | 5:31:06 PM EDT, 2023

Hiram Allen
Hiram S. Allen III

Date: 03-31-2023 | 3:10:23 PM PDT, 2023

Barbara A. Coker
Barbara A. Coker

Date: 03-31-2023 | 6:27:36 PM EDT, 2023

PURCHASER:

MUNGO HOMES PROPERTIES, a South Carolina limited liability company

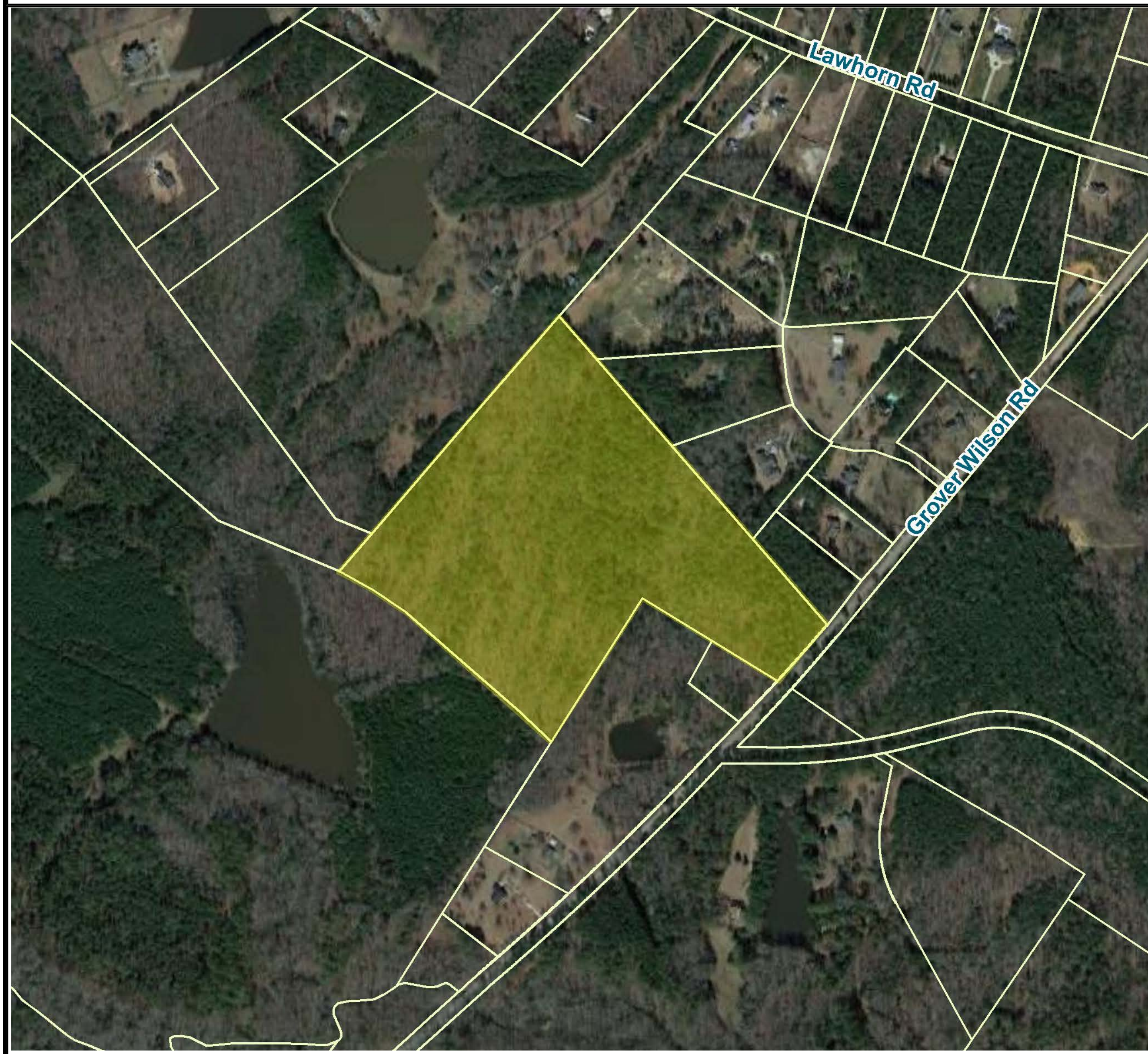
By: Chris Condon
Name: Chris Condon
Title: Regional President

Date: 04-04-2023 | 6:02:02 AM PDT, 2023

By: Maureen Mouzakis
Name: Maureen Mouzakis
Title: Assistant Secretary, VP of Finance

Date: 4/4/2023, 2023

23500-06-05



DISCLAIMER : This is a product of the Richland County GIS Department. The data depicted here have been developed with extensive cooperation from other county departments, as well as other federal, state and local governments agencies.Richland County expressly disclaims responsibility for damages or liability that may arise from the use of this map.

PROPRIETARY INFORMATION: Any resale of this information is prohibited, except in accordance with a licensing agreement.

Legend

County Boundary	Streets
Private Schools	Buildings
Public Schools	2 Ft. Contours
Police Stations	Streams
Fire Stations	Lakes
County Assets	Council Districts
Daycares	Zip Codes

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Kellum W. Allen,	)	Civil Action No.: 2024CP4000827
Plaintiff,	)	
v.	)	**RESPONSE TO SUBPOENA SENT TO BARBARA COKER**
Ann Marie Watson,	)	
Defendant.	)	

Below is the response to the subpoena issued to Barbara Coker by Robert P. Wood, Esquire with Rogers Townsend, Attorneys at Law. Said subpoena was issued by the Circuit Court in the County of Lexington since Barbara Coker resides in Lexington County. A copy of said subpoena is attached to this response, including "Exhibit A".

1. Based on the definition of "communications set forth in "Exhibit A"", Barbara Coker has had communications with Kellum Allen as to TMS#R20700-03-02; R20700-03-03; R20700-03-04; R20700-03-22; R20700-03-23; R20700-03-24; R20700-03-29; and R23500-06-05. Ms. Coker objects to revealing those communications with Kellum Allen pursuant to SCRCP Rule 45. Ms. Coker objects to disclosing those communications dating from March 1, 2021 based on attorney/client privilege she had with her brother Kellum Allen involving those parcels. The attorney/client relationship is verbal and no compensation is being paid to him because they are siblings.

2. As to 1(b), Barbara Coker had no separate communications with her brother Hiram Allen, III.

3. As to 1(c) no communications with the persons or entities named except being copied on the emails denoted on the attached Coker01-Coker11 and Coker 60 are emails involving the properties referenced in number 1 above.

4. As to 1(d) and 1(e), there have been no communications with the entities or persons mentioned in paragraphs 1(d) and 1(e).

5. As to 2, Barbara Coker is in possession of two Contracts which are attached hereto as Coker12-Coker59. These Contracts are protected by SCRCP Rule 45(c)(3)(B)(i) and should not be disclosed to persons or entities outside of Defendant and her counsel and any expert witnesses retained by Defendant.

6. As to 3, no payments have been made to Barbara Coker; and therefore, there is no payment documentation.

DAVIS FRAWLEY, LLC
140 East Main Street, P.O. Box 489
Lexington, South Carolina 29071
(803) 359-2512

BY: */s/ James Randall Davis*
James Randall Davis

Lexington, South Carolina

ATTORNEY FOR BARBARA COKER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen, Plaintiff,	)	**NOTICE OF MOTION AND MOTION TO RECONSIDER ORDER FILED JANUARY 27, 2025 AS TO THE DEFENDANT'S THIRD COUNTERCLAIM IN HER AMENDED ANSWER**
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 Honorable Patrick C. Fant, III, 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 Third Counterclaim of the Defendant.

Defendant filed and served an Amended Answer and four Counterclaims in this matter on June 12, 2024. The Third Counterclaim was an action for professional negligence against the Plaintiff. Plaintiff filed a SCRCP Rule 12(b)(6) Motion contending that the Defendant has failed to file with her Counterclaim an affidavit of expert witness. See *SC Code Ann.* §15-36-100(B). Section 15-36-100 of the South Carolina Code requires the filing of an expert witness affidavit in any action for professional malpractice. The Honorable Patrick C. Fant, III, issued an Order in this matter, on January 27, 2025, indicating his ruling on the Third Counterclaim was "The Defendant may proceed on it's First and Third Counterclaims." Defendant filed an expert witness Affidavit of Desa Ballard on August 27, 2024. No motion to amend the Third Counterclaim has been filed by the Defendant to include the expert witness affidavit as a certification in said Counterclaim.

LEGAL ARGUMENT

"[A] motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 778 (2004). "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 173-73, 420 S.E.2d 834,842 (1992) (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 1720, 100 L.Ed2d 178, 184 (1988)). As a result, "a party is usually allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam*, 362 S.C. at 21, 602 S.E.2d at 778-9. Thus, a motion for reconsideration is "one final chance not only to call the court's attention to a possible misapprehension of an *earlier* argument, but also to revisit a *previously raised* argument." Id. (emphasis added).

This Court should dismiss Defendant's Third Counterclaim as to professional negligence against Plaintiff because the required expert affidavit has not been filed pursuant to *SC Code Ann.* §15-36-100(B).

> (B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), 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. S.C. Code Ann. §15-36-100(B) (2024).

The affidavit requirement of section 15-36-100(B) applies to legal malpractice actions. H & H of Johnston v. Old Republic Nat'l Title Inc. Co., 405 S.C. 469, 473-74, 748 S.E.2d 72 (S.C. Ct. App. 2013). See Pruitt v. Parker, No. 2022-UP-043, 2022 S.C. App. Unpub. LEXIS 55 at *2-3 (S.C. Ct. App. February 9, 2022); Green v. McClain, No.: 6:19-3270-TMC-SVH, 2020 U.S. Dist. LEXIS 247440 at *8-10 (D.S.C. October 1, 2020); Weil v. Killough. No. 2:12-cv-00856-DCN, 2012 U.S. Dist. LEXIS 110812 at *14-15 (D.S.C. August 8, 2012).

Again, in Green v. McClain the Court dismissed a breach of contract claim for failure to file the affidavit required by section 15-36-100(B). In ruling the Court cited cases where plaintiffs attempted to file legal malpractice claims under different legal theories. The Court held:

> Plaintiff's failure to file the necessary expert affidavit warrants dismissal of his legal malpractice claim.... See, e.g., Rotureau v. Chaplin, C/A No. 2:09-1388-DCN, 2009 U.S. Dist. LEXIS 118618, 2009 WL 5195968, at *6 (D.S.C. Dec. 21, 2009) (dismissing malpractice claim without prejudice as a result of plaintiff's failure to comply with § 15-36-100 by filing an expert affidavit and finding that § 15-36-100 is not a mere "procedural" requirement and is applicable in federal court); Eaglin v. Metts, C/A No. 0:08-2547-TLW-PJG, 2010 U.S. Dist. LEXIS 26901, 2010 WL 1051177, at *8 (D.S.C. Feb.16, 2010) (finding that a plaintiff could not proceed with a state law claim of negligence against a professional where he failed to file an expert witness affidavit with his complaint). Green, 2020 U.S. Dist. LEXIS 247440 at *10.

Based upon the above case law, the failure to file the expert witness affidavit certification to the Defendant's Counterclaim thereby fails to state a cause of action against the Plaintiff. Furthermore, no case has found that the "common knowledge" exception section 15-36-100(C)(2) applies in the context of an attorney malpractice action. Also, as indicated in section 15-36-100(B), the expert witness affidavit has to be filed in an "action" for damages and alleging professional misconduct. This would include a Complaint as well as a Counterclaim.

CONCLUSION

Based on the arguments set out above, the Plaintiff respectfully requests the Court reconsider its decision on the Third Counterclaim as to the professional negligence action against the Plaintiff and rule that because the required expert witness affidavit is not included as a certification in the Defendant's Third Counterclaim, the Counterclaim is dismissed.

Pursuant to SCRCP Rule 11, there is no duty of consultation for Motions to Dismiss and would serve no useful purpose and cannot be timely held.

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
February 3, 2025
4916-9586-4854, v. 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2024-CP-40-00827
Kellum W. Allen,	)	
Plaintiff,	)	PLAINTIFF'S BRIEF IN RESPONSE TO DEFENDANT'S MOTION TO RECONSIDER
v.	)	
Ann Marie Watson,	)	
Defendant.	)	

This Brief is being filed in response to Defendant's Motion to Reconsider filed February 3, 2025 asking the Court to reconsider its decision of dismissing the Defendant's Fourth Counterclaim dealing with Unfair Trade Practice allegations.

The Order dismissing the Fourth Counterclaim was based on a Motion Pursuant to Rule 12(b)(6) filed by the Plaintiff claiming the Defendant had not stated a cause of action for Unfair Trade Practice violation. The Court's decision indicated that what was based in the Defendant's Fourth Counterclaim concerned a private transaction which did not affect the public interest.

That decision is supported by the case of *RFT Mgmt. Co., LLC v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 732 S.E.2d 166 (2012) and also is supported by *Noack Enterprises, Inc. v. Country Corner Interiors, Inc.*, 290 S.C. 475, 351 S.E.2d 347, 350, 351 (Ct. App. 19986) as well as *Ardis v. Cocks*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). These cases contain facts identical to Defendant's claim against the Plaintiff for Unfair Trade Practice. *Tinsley* involved an attorney closing the real estate transaction and the Court ruled it was not a public interest case. The other cases cited indicate that an unfair or deceptive action to sell a business itself is not readily susceptible to repetition and therefore have no impact on the public interest. Defendant's specific claims in her Motion that this was a business transaction from Plaintiff to Defendant which the above cases indicated would not indicate public interest.

As to the other arguments presented in the Defendant's Brief, they have either: (1) been presented previously in Plaintiff's or Defendant's Brief on the Motion on Rule 12(b)(6) and would have, therefore, been considered by the Court previously; (2) new arguments that are not set forth in Defendant's Fourth Counterclaim and since this was a Rule 12(b)(6) Motion, those matters should not be considered by the Court because they were not contained in the Defendant's Counterclaim; and (3) even as to the new matters, they were only legal conclusory arguments and were not supported by factual evidence as required by *Daisy Outdoor Advertising Co. v. Abbott*, 322 S.C. 489, 473 S.E.2d 47 (Supp. Ct. 1996). For the reasons stated above, the Plaintiff would ask the Court to reaffirm its decision as to dismissing the Counterclaim for Unfair Trade Practice in that it does not involve public interest but is a private transaction between the Plaintiff and Defendant.

Conclusion

For the reasons stated above, Plaintiff respectfully requests that this Court dismiss Plaintiff's Motion to Reconsider.

DAVIS FRAWLEY, LLC
BY: */s/ James Randall Davis*
James Randall Davis, SC Bar #1580
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Attorney for the Plaintiff

February 13, 2025

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Hon. Patrick C. Fant, III

Civil Action No. 2024-CP-40-00827

Ann Marie Watson .... Appellant

v.

Kellum W. Allen .... Respondent

NOTICE OF APPEAL

Ann Marie Watson hereby appeals the following Orders of the Honorable Patrick C. Fant: (1) an Order dated January 27, 2025, that is attached hereto as Exhibit A; and (2) an Order dated March 25, 2025, that is attached hereto as Exhibit B. Appellant received written notice of the entry of each Order on the date stamped on each respective Order's margin.

Separately, and by U.S. Mail, Appellant has submitted the filing fee to the Clerk of the Court of Appeals.

Respectfully submitted,

/s/ Robert P. Wood
Robert P. Wood, SC Bar No. 6206
ROGERS TOWNSEND, LLC
1221 Main Street, 14th Floor
PO Box 100200 (29202)
Columbia SC 29201
(803) 771-7900 – Telephone
(803) 343-7017 - Fax
robert.wood@rogerstownsend.com
Attorneys for Appellant, Ann Marie Watson

Filed this 31st day of March, 2025.

Other Counsel of Record:

James Randall Davis, Esq. (S.C. Bar No. 1580)
Davis Frawley, LLC
140 East Main Street (29072)
Post Office Box 489
Lexington, South Carolina 29071
(803) 359-2512
Randy@OldCourthouse.com

Attorneys for Respondent, Kellum W. Allen

EXHIBIT A

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

EXHIBIT B

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.

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☐ 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.

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ORDER INFORMATION

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☑ 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