RECEIVED
Sep 04 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2025-002538

MTS CLT, LLC, ...Appellant,

v.

Jane M. Pettus, Trustee of the Joseph A. Pettus
and Jane M. Pettus Revocable Living Trust
u/i/d April 12, 2005, and Rob Bilbro, ...Respondents.

APPELLANT'S FINAL REPLY BRIEF

J. Kemper Patton (SC Bar No. 105202)
James C. Adams, II (*Pro hac Vice,* NC Bar No. 18063)
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420
(336) 271-3117
(919) 882-2518
jadams@brookspierce.com
kpatton@brookspierce.com
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

INTRODUCTION

The Respondents' Opening Briefs failed to rectify the errors cited in Appellant MTS CLT, LLC's ("MTS") Opening Brief.

Respondent Jane M. Pettus, Trustee of the Joseph A. Pettus and Jane M. Pettus Revocable Living Trust u/i/d April 12, 2005 ("Ms. Pettus") argued that Circuit Court did not abuse its discretion by granting her summary judgment motion on the grounds that the record developed significantly since her initial summary judgment motion. (Pettus Initial Br. pp. 22–28). In doing so, Ms. Pettus presented irrelevant arguments concerning the state of discovery at the time of her first summary judgment motion in an effort to distract this Court from the Circuit Court's clear error—granting a previously denied summary judgment motion without hearing new arguments or evidence.

With respect to the Contract[1] itself, Ms. Pettus argued that the Circuit Court properly found that MTS was required to close on the purchase of the Pettus Property, if at all, by September 28, 2023. Ms. Pettus relied on cherry-picked, isolated provisions of the Contract to re-write its terms, strike the condition precedent to MTS's obligation to close, and replace the conditional closing date with a hard, required closing date. (Pettus Initial Br. pp. 12–22). This argument, as adopted by the Circuit Court, is meritless and contradicts well-established South Carolina case law providing that courts may not alter the terms of a contract. (*Id.*)

Respondent Rob Bilbro ("Mr. Bilbro") relies on the same arguments he presented at the summary judgment stage. With respect to MTS's tortious interference with contractual relations claim, Mr. Bilbro argued that his actions were privileged as Ms. Pettus's purported agent, and even

[1] The "Contract" as used in this Reply Brief refers to the Contract, as amended, for MTS to purchase Ms. Pettus's property located at located at PINS 0003-00-052.00 and PINS 0003-00-052.06 (the "Pettus Property"). (R. pp. 55–81).

if such actions were not privileged, MTS failed to establish that Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract. (Bilbro Initial Br. pp. 7–11). Mr. Bilbro's arguments with respect to his purported agency status are meritless because Mr. Bilbro was a third-party outsider to the Contract, and even if his actions could be privileged, he lost those protections by acting outside the scope of his agency to Ms. Pettus. Mr. Bilbro's other arguments are likewise meritless as they improperly weigh MTS's evidence and view it in the light most favorable to Mr. Bilbro, the movant, rather than in the light most favorable to MTS as required.

With respect to MTS's South Carolina Unfair Trade Practices Act ("SCUTPA") claim, Mr. Bilbro argued that there is no evidence that Mr. Bilbro's actions violated the SCUTPA. (Bilbro Initial Br. pp. 11–15). Mr. Bilbro's argument here has no basis in law and, once again, improperly weighs MTS's evidence and views it in the light most favorable to Mr. Bilbro, rather than in the light most favorable to MTS.

For the reasons set forth herein, as well as in MTS's Initial Brief, the Circuit Court erred in granting summary judgment for Ms. Pettus and Mr. Bilbro, and denying summary judgment for MTS. This Court should reverse the Circuit Court's respective orders.

ARGUMENT

I. Ms. Pettus's argument that the Circuit Court did not abuse its discretion by considering her second summary judgment motion is unavailing.

On appeal, MTS argued that the Circuit Court erred by overruling the Honorable Judge Brian Gibbons's denial of Ms. Pettus's first summary judgment motion on the grounds that the Circuit Court granted the exact same motion Judge Gibbons denied without hearing new arguments or evidence. (MTS Initial Br. pp. 15–20). In response, Ms. Pettus tries to distract this Court with irrelevant matters, such as that MTS opposed Ms. Pettus's first summary judgment motion partially on prematurity grounds,[2] and that MTS presented evidence on Ms. Pettus's first summary judgment motion indicating Ms. Pettus may have breached the Contract prior to September 28, 2023. (Pettus Initial Br. pp. 24–26). Ms. Pettus's arguments are inapposite and inconsistent with South Carolina law.

"If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." Rule 43(l), SCRCP. While a party may renew a summary judgment motion, they can only do so if they present new evidence in support of that motion. *See e.g., Crosswell Enters., Inc. v. Arnold*, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992) ("The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment ***based on matters not involved in the decision on the first motion***. (emphasis added)); *Dreier v. Advanced Flooring & Design Div. of ISI, LLC*, No. 2022-000016, 2024 WL 5415792, at *4 (S.C. Ct. App. Feb. 19, 2025) (unpublished) ("Second, we hold ***Judge Price could not grant a second motion for summary judgment on the issue of the enforceability of the indemnity provisions because Judge DeBerry had denied summary judgment on the same issue based on the same arguments and the Subcontractors presented no new evidence to support the second motion***." (emphasis added)).

This issue is far simpler than Ms. Pettus suggests. On her first summary judgment motion, Ms. Pettus presented Judge Gibbons with the Contract and requested that he rule, as a matter of law, that "[t]he determinative issues turn on the language of the Contract" and "the Contract required that [MTS] close on the purchase of the Property by no later than September 28, 2023." (R. p. 217). Judge Gibbons denied that request, leaving only two options—either the Contract was

---

[2] Ms. Pettus omitted the fact that Judge Gibbons denied MTS's continuance motion several days prior to the hearing on her first summary judgment motion.

not ambiguous, and MTS is entitled to judgment as a matter of law, or the Contract is ambiguous, and summary judgment was inappropriate. On her second summary judgment motion, Ms. Pettus presented the Circuit Court with the exact same motion based on the exact same argument: "This case does not present any disputed issue of material fact and its disposition turns entirely on the clear and unambiguous terms of the written contract between the parties. The express language of the Contract establishes that closing shall occur by no later than September 28, 2023 … ." (R. pp. 601–602; R. pp. 585–586). The Circuit Court erroneously overruled Judge Gibbons's order by granting that motion. MTS's defenses with respect to Ms. Pettus's first summary judgment motion are irrelevant to this.

Ms. Pettus's argument to avoid the admonition of Rule 43(1) completely ignores the purpose of the Rule and makes no actual effort to fall within the lone recognized exception of relying on new evidence. Instead of pointing to new evidence, Ms. Pettus's argument focuses on the mere fact that discovery took place between those identical motions, arguing that "the backdrop for the Second Motion was fundamentally different than the backdrop of the First Motion given the development of the record through discovery." (Pettus Initial Br. pp. 27–28). The "backdrop" or existence of "discovery" Ms. Pettus referenced were irrelevant because Ms. Pettus never relied on any new evidence derived from that discovery. Ms. Pettus's argument is simply that the mere fact that discovery was conducted entitles a litigant to a second bite at the same summary judgment apple even if, as is the case here, none of that discovery is argued or relied on in the second motion. That argument fails. *See Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 592, 658 S.E.2d 539, 543 (Ct. App. 2008). Indeed, if the Court were to adopt Ms. Pettus's argument, the Court would essentially eviscerate Rule 43(l), SCRCP completely. Litigants could avoid the Rule simply by taking a deposition or serving written discovery so they could make a second summary judgment motion based on the exact same argument raised and rejected once before. South Carolina law does not allow for this. The Circuit Court erred in violating this mainstay of summary judgment procedure and should be reversed.

II. Ms. Pettus seeks to re-write the unambiguous language of the Contract to remove MTS's condition precedent and replace its conditional closing date with a firm closing date.

"In determining the intent and purport of a contract, a court should not look solely to one clause read in isolation from the rest of the document; rather, it should consider the contents of the whole instrument." *J.T.M. Co. v. Vane*, 283 S.C. 512, 516, 323 S.E.2d 794, 796 (Ct. App. 1984). "Courts 'are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully.'" *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 397 (2014) (quoting *S.C. Dep't. of Transp. v. M & T Enters. of Mt. Pleasant,* 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct.App.2008)).

In its Opening Brief, MTS established that the Contract unambiguously contained a condition precedent to its obligation to close—receipt of all Required Approvals[3]—which unequivocally was not satisfied by September 28, 2023. (MTS Initial Br. pp. 21–23; R. pp. 402–403, 406, ¶¶ 22, 34–36; R. pp. 435–436, ¶¶ 23–24). MTS described the numerous provisions of the Contract that supported the proposition that the Contract would remain in place after September 28, 2023, if this condition precedent was not satisfied. (MTS Initial Br. pp. 22–23). MTS further argued that Ms. Pettus could not point to any express term in the Contract requiring that MTS waive this condition precedent or terminate the Contract if the condition precedent was not met by

[3] The relevant "Required Approvals" are generally set out in Section 5(b) of the Contract, and with specificity in the First Affidavit of Brandon Pridemore. (R. pp. 398–399, ¶ 7).

September 28, 2023. (MTS Initial Br. pp. 23–25). Ms. Pettus made no effort to contradict any of these points in her Opening Brief, and instead, relied on isolated, cherry-picked provisions to ask the Court to strike the condition precedent to MTS's obligation to close and replace the conditional closing date with a final, firm closing date. In effect, Ms. Pettus unequivocally asks the Court both to ignore existing language in the Contract and to add language that does not exist.

a. Ms. Pettus's argument is inconsistent with the unambiguous language of the Contract.

At the core of Ms. Pettus's argument is the proposition that, if the parties had not obtained all Required Approvals by September 28, 2023, MTS was left with just two options—waive its condition precedent and close, or terminate the Contract. (*See* Pettus Initial Br. pp. 14–17). The critical, and unavoidable, shortcoming of Ms. Pettus's argument is that she cannot point to a single provision of the Contract expressly requiring MTS to terminate the Contract or waive its condition precedent if the Required Approvals were not obtained prior to September 28, 2023. Instead, Ms. Pettus cited to isolated provisions of the Contract, none of which mandate that MTS waive its condition precent or terminate the Contract if Required Approvals were not obtained by September 28, 2023: Section 8, as amended, concerning the closing of the Contract, Section 18(k) containing a "time is of the essence" provision, Section 5 concerning the Entitlement Period; and Section 4 providing for extensions on the conditional closing date. These provisions do not support Ms. Pettus's argument.

Section 8 of the Contract provides as follows with respect to the parties' closing obligations:

> *<u>Provided that all conditions of closing have been either satisfied or waived</u>*, the closing of the sale and purchase of the Property (the "Closing") shall take place on or before the date (the "Closing Date") that is the earlier of (i) Thirty (30) days after the receipt of the Required Approvals, or (ii) September 28, 2023. The Closing shall take place at an acceptable location mutually agreed upon by the parties. *<u>Seller</u>*

> *shall, as a precondition to closing, deliver exclusive possession of the Property to Buyer on the Closing Date, including all declarant, entitlement, final development plan approvals, final construction plan approvals, permit, and all other development authorities or other Property ownership rights of Seller, including those achieved by any jointly filed zoning and entitlement applications or requests.*

(R. p. 80, § 3 (emphasis added)). Ms. Pettus asserts, without offering any supporting explanation, that this language "establishes that if [MTS] was going to close on the purchase of the Property, [MTS] was required to close by September 28, 2023." (Pettus Initial Br. p. 13). Ms. Pettus disregarded that the first clause and the concluding sentence of the closing language create a condition precedent to MTS's obligation to close and provide that the September 28, 2023 date was nothing more than a conditional closing date.[4] Nothing in Section 8 of the Contract mandates that September 28, 2023 is a final closing date, as Ms. Pettus suggested.

Ms. Pettus next cites the "time is of the essence" provision contained in Section 18(k) of the Contract, which provides that "[t]ime is of the essence *with respect to the parties obligations hereunder*." (R. p. 66, § 18(k) (emphasis added)). Ms. Pettus completely ignored the underlined language of this provision from her Opening Brief—that time is of the essence only with respect to the parties' current obligations. (R. p. 66, § 18(k)). It is undisputed that as of September 28, 2023, the parties had not obtained all Required Approvals required by the Contract to trigger MTS's obligation to close. (R. pp. 402–403, 406, ¶¶ 22, 34–36; R. pp. 435–436, ¶¶ 23–24; R. p. 938, lines 9–20). Accordingly, if MTS's obligation to close had not yet arrived, time could not be "of the essence" because there was no existing obligation. The only existing obligation as of September 28, 2023 was the same obligation the parties had been subject to since the inception of the Contract—namely, MTS "shall use commercially reasonable efforts to obtain [Required Approvals]" and Ms. Pettus must "cooperate with [MTS] in obtaining such approvals at no cost to

[4] Notably, Ms. Pettus omitted the concluding clause, which memorializes her obligation to deliver all Required Approvals as a precondition to closing, from her Initial Brief.

[Ms. Pettus].” (R. p. 62, § 13(c)). There is no evidence or argument that MTS had failed to do so. By contrast, the evidence was also undisputed that as of September 28, 2023, Ms. Pettus failed to cooperate as she was obligated to do.

Section 5(b) of the Contract similarly does not support Ms. Pettus's interpretation of the unambiguous language of the Contract. Section 5(b) of the Contract provides MTS with 481 days from the Contract's “Effective Date” to obtain Required Approvals. (R. p. 58, § 5(b)). Critically, however, Section 5(b) protects MTS's condition precedent by providing that all Required Approvals “must be to [MTS's] sole satisfaction prior to Closing.” (R. p. 58, § 5(b)). And while Section 5(b) offers MTS the option to “elect[] to Terminate on the basis of not receiving Required Approvals to [MTS's] satisfaction,” nothing in Section 5(b) mandates that MTS either terminate or waive its condition precedent if Required Approvals were not obtained to MTS's sole satisfaction. (R. p. 58, § 5(b)).

Finally, Section 4 of the Contract, which allows MTS to obtain extensions on its conditional closing date, does not support Ms. Pettus's argument. (R. pp. 79–80, § 2). MTS's use of extensions on its conditional closing date did not transform the conditional closing date language into firm closing date language as Ms. Pettus argues and as the Circuit Court erroneously concluded. As with the provisions above, Ms. Pettus is seeking to add new terms into the Contract that do not exist. The Court should not entertain such efforts.

Importantly, prior to the inception of this lawsuit, as the parties were negotiating, Ms. Pettus's counsel proposed language in a proposed amendment that was consistent with the argument Ms. Pettus now advances. (R. p. 998). That amendment was not agreed to. However, the mere fact that it was proposed demonstrates that all parties understood there was no firm closing date under the actual language of the Contract. Otherwise, the proposed amendment would not have been necessary for Ms. Pettus. Thus, Ms. Pettus effectively asked the Circuit Court to amend the Contract with language that MTS rejected. It erred when it did so.

b. Ms. Pettus's interpretation of the unambiguous language of the Contract is unreasonable, not MTS's interpretation.

Ms. Pettus argues that MTS's interpretation of the unambiguous language of the Contract is unreasonable and would render certain contractual provisions meaningless.[5] Ms. Pettus references the same provisions cited above—Sections 4 regarding extensions, 5(b) regarding the entitlement period, Section 8 regarding the closing, and Section 18(k) containing a limited "time is of the essence" provision. (Pettus Initial Br. pp. 18–19). Ms. Pettus's argument in this regard is meritless, as well.[6]

"[A]n interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." *Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) (quoting *Crown Laundry & Dry Cleaners, Inc. v. United States,* 29 Fed.Cl. 506, 515 (1993)). The provisions Ms. Pettus cites—Sections 4, 5(b), 8, and 18(k)—are not meaningless under MTS's interpretation. Rather, they act in tandem with the condition precedent to MTS's obligation to close that is memorialized in Section 8 of the Contract:

- Section 4 providing extensions on the conditional closing date granted Ms. Pettus additional compensation during the Contract's lifespan in the event that delays ensued with obtaining Required Approvals. (*See* R. pp. 79–80, § 2).

[5] Ms. Pettus also briefly mentioned that, under MTS's interpretation, the Contract "is of indefinite duration." (Pettus Initial Br. p. 18). Contracts need not contain durational terms to be enforceable. *See generally, Miller v. Dillon*, 432 S.C. 197, 208, 851 S.E.2d 462, 468 (Ct. App. 2020) ("The necessary elements of a contract are an offer, acceptance, and valuable consideration.").

[6] As part of her argument, Ms. Pettus cites testimony from the Rule 30(b)(6) deposition of MTS. (Pettus Initial Br. p. 18). This Court should disregard this testimony. This testimony was not presented to the Circuit Court for review on summary judgment, Ms. Pettus's summary judgment briefs did not cite this testimony, and the Circuit Court's order did not address this testimony.

- Section 5(b) provided MTS with a timeframe to obtain Required Approvals, but ultimately mandated that the closing cannot occur without MTS obtaining all Required Approvals to its sole satisfaction prior to closing. (R. p. 58, § 5(b)).

- Section 8 provided for a conditional closing date in the event Required Approvals had been obtained by September 28, 2023, but it required that MTS's condition precedent be satisfied before any closing could occur. (*See* R. p. 80, § 3).

- Section 18(k) provided that time is of the essence with respect to the parties current obligations, meaning that so long as the Required Approvals had not been obtained, time was of the essence only with respect to their obligations to make efforts to obtain Required Approvals in accordance with Section 13(c) of the Contract. And when the Required Approvals were obtained, time would then be of the essence with respect to the parties' obligation to close. (R. p. 66, § 18(k)).

Notably, it is Ms. Pettus's interpretation of the unambiguous language of the Contract that renders provisions meaningless, not MTS's. In addition to voiding the condition precedent to MTS's obligation to close and disregarding the requirement that Required Approvals be obtained to MTS's sole satisfaction prior to closing (R. p. 58, § 5(b)), Ms. Pettus's interpretation would require MTS to close on the Contract without knowing the cost of purchasing the Pettus Property. The Contract required MTS to pay a "Purchase Price" at the closing. (R. pp. 432–433, ¶¶ 14–15; R. pp. 56, 63, §§ 2, 14(c)). However, under the clear language of the Contract, the "Purchase Price" could not be determined with finality until all Required Approvals were obtained because it could change depending on the number of lots approved for MTS's development of the Pettus Property. (R. pp. 432–433, ¶¶ 14–15; R. pp. 56, 63, §§ 2, 14(c)). Ms. Pettus's own "closing documents" confirm that the "Purchase Price" was not determinable as of September 28, 2023, as the Code Section 12-24-70 Affidavit executed by Ms. Pettus was left blank as to the Purchase Price. (R. p. 176; R. p. 56, § 2).

While Ms. Pettus clearly regrets the contractual arrangement she bargained for, she nevertheless bargained for it, and her regrets do not render MTS's interpretation of the unambiguous contract language unreasonable. South Carolina courts will not question the unambiguous terms of a contract despite a party's failure to safeguard their interests. *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 397 (2014) (quotations omitted) ("A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully."); *see also Mears Grp., Inc. v. Kiawah Island Util., Inc.,* No. 2:17-CV-02418-DCN, 2019 WL 2297345, at *4 (D.S.C. May 30, 2019) ("Whether it is unwise or apparently unreasonable to require both parties to obtain some form of builder's risk insurance does not factor into the court's consideration.").

*****

Ms. Pettus asks this court to rely on isolated, cherry-picked provisions of the Contract, without regard to the numerous provisions MTS cited, in a manner that strikes MTS's condition precedent to closing, mandates that MTS close or terminate the Contract even if Required Approvals were not obtained by September 28, 2023, and transforms MTS's conditional closing date into a firm closing date. Nothing in the Contract or South Carolina law allows for such alterations to an unambiguous contract. The Court should reverse the Circuit Court and remand for consideration consistent with MTS's interpretation of the unambiguous language of the Contract—namely, that MTS, not Ms. Pettus, is entitled to judgment as a matter of law.

III. If the Court determines that the unambiguous language of the Contract does not support MTS's interpretation, the Contract is, at best, ambiguous.

In its Opening Brief, MTS argued that, if this Court determines that the Contract does not unambiguously dictate that the Parties remain under Contract until the Required Approvals are obtained – and therefore that Ms. Pettus is in breach of the Contract, this Court must reverse the Circuit Court because the only other alternative consistent with Judge Gibbons's July 2024 Order is that the Contract is ambiguous with respect to whether September 28, 2023 was a firm closing date. (MTS Initial Br. p. 26). In response, Ms. Pettus argues that the Contract is not ambiguous, for the reasons discussed above. (Pettus Initial Br. pp. 19–22). As already argued, this argument is meritless.

"A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 499, 649 S.E.2d at 502. Put differently, "[a] contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." S.*C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "Whether a contract is ambiguous is to be determined from examining the entire contract, not by reviewing isolated portions of the contract." *Williams v. Gov't Emps. Ins. Co. (GEICO)*, 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014). "Summary judgment is not appropriate if a contract is ambiguous." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009). For the reasons discussed in Sections II(a)–(b), *supra*, as well as MTS's Opening Brief, MTS's interpretation of the Contract is reasonable. Therefore, if the Court determines that the unambiguous language of the Contract does not support MTS's interpretation, the Contract is, at best, ambiguous, requiring a jury to resolve the ambiguity. The Court should reverse accordingly.

IV. Mr. Bilbro's arguments with respect to MTS's tortious interference claim have no basis in law and fail to account for the evidence MTS presented.

Mr. Bilbro advances two arguments in support of the proposition that the Circuit Court properly granted him summary judgment on MTS's tortious interference with contractual relations claim: (1) Mr. Bilbro's actions were privileged and non-actionable for the purposes of a tortious interference with contractual relations claim; and (2) MTS failed to establish the elements of a tortious interference with contractual relations claim. (Bilbro Initial Br. pp. 7–11). These arguments are baseless.

a. Mr. Bilbro's actions are not privileged for the purposes of a tortious interference claim.

Mr. Bilbro argues that, based on the September 2024 order from Judge Gibbons, as well as South Carolina common law, Mr. Bilbro's actions were taken as Ms. Pettus's purported agent, and accordingly, are privileged from a tortious interference with contractual relations claim. As set forth in MTS's Opening Brief, Mr. Bilbro's reliance on Judge Gibbons's September 2024 order is misplaced. Judge Gibbons's order concerned whether Mr. Bilbro's communications with Ms. Pettus's attorneys were privileged from disclosure. (R. p. 5). It had nothing to do with MTS's tortious interference with contractual relations claims.

Regardless of the basis of his purported agency, Mr. Bilbro's Brief completely fails to address the primary issue cited in MTS's Opening Brief—namely, that Mr. Bilbro's status as a third-party outsider to the Contract makes him potentially liable for a tortious interference with contractual relations claim. (MTS Initial Br. p. 28). Indeed, the cases Mr. Bilbro cites in support of his argument that his actions are privileged—*Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 753 S.E.2d 840 (2012) and *Bradburn v. Colonial Stores, Inc.,* 273 S.C. 186, 255 S.E.2d 453 (1979)—differ substantially from the circumstances here. In those cases, the purported agents were managerial-level employees accused of interfering with their employers' contracts. *Dutch Fork*, 406 S.C. at 598—99, 753 S.E.2d at 841; *Bradburn*, 273, S.C. at 188–89, 255 S.E.2d at 455. The courts' analyses were specific to the employees serving as insiders to their employers' contracts:

> It is generally recognized that when a contract is breached by a corporation as the result of the inducement of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment, the inducement is privileged and is not actionable.

Dutch Fork, 406 S.C. at 605, 753 S.E.2d at 844 (2012) (quoting *Bradburn,* 273 S.C. at 188, 255 S.E.2d at 455).

Here, Mr. Bilbro is not an employee of Ms. Pettus, nor is he an officer of the trust that possesses the Pettus Property. Mr. Bilbro is a third-party to a contract between MTS and Ms. Pettus. Accordingly, Mr. Bilbro's reliance on *Bradburn* and *Dutch Fork* is misplaced, and the Court should not extend privilege to his actions from a tortious interference with contractual relations claim.

b. Even if Mr. Bilbro's actions were privileged, Mr. Bilbro lost that privilege by acting outside the scope of his agency.

Even if Mr. Bilbro's actions could be privileged as Ms. Pettus's purported agent, MTS has offered evidence creating a genuine issue of material fact concerning whether he was operating outside his authority as Ms. Pettus's purported agent. *See Dutch Fork*, 406 S.C. at 605, 753 S.E.2d at 844 (2012) ("Conversely, an agent may be liable for tortious interference, just as if the agent were an outside third party, if the allegedly interfering acts were conducted outside the scope of the agent's authority.").

MTS presented extensive evidence in its Opening Brief that Mr. Bilbro acted outside of his purported agency to Ms. Pettus. (MTS Initial Br. pp. 29–30). In response, Mr. Bilbro argued that his actions amounted only to "preparing for contingencies if the Contract terminated … contacting builders as potential buyers of the property, and … contacting county authorities concerning approvals and permits," and accordingly, "[t]here is no evidence before this Court providing that Bilbro's actions were anything but at the direction of and in support of his principal." (Bilbro Initial Br. pp. 8–9). This argument improperly weighs conflicting evidence in Mr. Bilbro's favor. On summary judgment, the Court is required to give all inferences in favor of the non-moving party, here MTS. *See Summer v. Carpenter*, 328 S.C. 36, 42, 492 S.E.2d 55, 58 (1997) ("[T]he evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party."). Adopting Bilbro's argument requires the Court to do the exact opposite. A reasonable fact finder reviewing this evidence in a light most favorable to MTS could draw the inference that Mr. Bilbro was acting on his own behalf, outside of his purported agency with respect to Ms. Pettus. *Abdelgheny v. Moody*, 432 S.C. 346, 350, 852 S.E.2d 225, 227 (Ct. App. 2020) ("If a reasonable juror looking at the evidence in the light most favorable to the non-movant could draw more than one inference about a material fact from it, summary judgment must be denied."). If summary judgment is only appropriate by giving the benefit of all inferences to the **<u>moving party</u>**, then it is not appropriate at all. The case should be tried where it is the jury's province, not Mr. Bilbro's, to determine whether Mr. Bilbro's actions were taken within the scope of his purported agency to Ms. Pettus. *See Hiott v. Guar. Nat. Ins. Co.*, 329 S.C. 522, 530, 496 S.E.2d 417, 421 (Ct. App. 1997) ("The extent of such agent's authority is a question of fact for the factfinder.").

c. MTS has established a genuine issue of material fact with respect to its tortious interference claim against Mr. Bilbro.

Beyond his arguments with respect to agency, Mr. Bilbro argued that MTS failed to establish that Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract. (Bilbro Initial Br. pp. 9–11). Mr. Bilbro's argument here is also meritless. MTS submitted extensive evidence that Mr. Bilbro intentionally procured Ms. Pettus's breach of the Contract. (MTS Initial Br. p. 31). Mr. Bilbro argued that this evidence does not create a genuine issue of material fact, and that MTS lacked "facts connecting the dots of the conspiracy theory that Bilbro's intention was to 'sabotage' the contract … ." (Bilbro Initial Br. p. 10). In doing so, Mr. Bilbro made the same error that the Circuit Court made—he interpreted MTS's evidence in his own favor, rather than in favor of MTS. *See Summer*, 328 S.C. at 42, 492 S.E.2d at 58.

*****

For the reasons set out herein, as well as in MTS's Initial Brief, this Court should reverse the Circuit Court with respect to MTS's tortious interference with contractual relations claim against Mr. Bilbro.

V. Mr. Bilbro's arguments with respect to MTS's SCUTPA claim have no basis in law and fail to account for the evidence MTS presented.

To bring a claim under the SCUTPA, "the plaintiff must show (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). Mr. Bilbro's argument on MTS's SCUTPA claim is twofold: (1) Mr. Bilbro did not engage in deceptive acts towards MTS; and (2) Mr. Bilbro's acts did not affect the public interest.[7] (Bilbro Initial Br. pp. 12–15). Mr. Bilbro's arguments here are baseless for several reasons.

a. MTS has established a genuine issue of material fact that Mr. Bilbro's actions were both deceptive and unfair.

In its Opening Brief, MTS presented several unfair and deceptive trade practices Mr. Bilbro engaged in. As a preliminary matter, Mr. Bilbro failed to argue that these practices were not unfair. Rather, he solely argued that his actions were not deceptive. (Bilbro Initial Br. pp. 11–15). A SCUTPA claim may be established simply by showing a party's actions were unfair. *See Wright,* 372 S.C. at 23, 640 S.E.2d at 498. As set forth in MTS's Opening Brief, Ms. Bilbro's acts were unfair and give rise to a SCUTPA claim. (MTS Initial Br. p. 34).

[7] Mr. Bilbro cursorily asserts that none of the elements of a SCUTPA claim are met, although his argument is based solely on the deceptiveness of his actions and the public interest. (Bilbro Initial Br. p. 12). However, the Circuit Court's Order granting Mr. Bilbro summary judgment concerned only the deceptiveness of Mr. Bilbro's acts and the public interest. (R. pp. 33–34).

With respect to the deceptiveness of Mr. Bilbro's actions, Mr. Bilbro argued that MTS's evidence is insufficient on the grounds that there are no witnesses capable of confirming what Mr. Bilbro said, and further, that Mr. Bilbro's actions were merely "normal practices of a realtor for his principal. (Bilbro Initial Br. p. 12). Regarding the latter of the two, Mr. Bilbro is, once again, reviewing MTS's evidence in a light most favorable to himself. As set forth above, the Court must review the evidence and all reasonable inferences in a light most favorable to MTS. *See Summer v. Carpenter*, 328 S.C. at 42, 492 S.E.2d at 58 (1997).

The former of Mr. Bilbro's arguments fails to take into account that Mr. Bilbro, himself, is a witness to these actions and has testified with respect to them. Moreover, MTS is not required to present a plethora of supporting witnesses simply to survive summary judgment. MTS need only come forward with evidence that, viewed in a light most favorable to MTS, could allow a reasonable juror to draw more than one inference about a material fact. *Abdelgheny*, 432 S.C. at 350, 852 S.E.2d at 227. MTS's evidence satisfies this burden.

Finally, Mr. Bilbro also argues, without any supporting authority, that his communications could not be deceptive because they were not directed to MTS. (Bilbro Initial Br. pp. 12–13). However, the relevant inquiry under the SCUTPA is simply whether Mr. Bilbro did, in fact, engage in unfair or deceptive acts. The issue of whether an unfair or deceptive act impacts MTS goes to the third element of a SCUTPA claim—whether the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). *See Wright*, 372 S.C. at 23, 640 S.E.2d at 498. Mr. Bilbro cites no legal authority providing that a litigant may not bring a SCUTPA claim, despite having suffered monetary or property loss as a result of unfair or deceptive statements, simply because those statements were not initially directed to that litigant. MTS should not be prohibited from bringing a claim against Mr. Bilbro for his unfair and deceptive acts that caused MTS to sustain monetary and property.

b. MTS has established a genuine issue of material fact that Mr. Bilbro's conduct affected the public interest.

"[A] plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition. *Wright*, 372 S.C. at 30, 640 S.E.2d at 502. "The potential for repetition may be shown . . . (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." *Singleton v. Stokes Motors, Inc.,* 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004). MTS presented evidence creating a genuine issue of fact that Mr. Bilbro's conduct affects the public on both grounds through his history of failed transactions with real estate developers. (MTS Initial Br. p. 35).

In response, Mr. Bilbro argued "[t]hat Bilbro represented other sellers in South Carolina and had transactions that failed to close does not establish that a similar transaction to the one that is before the Court on the Pettus contract occurred in the past." (Bilbro Initial Br. p. 14). Mr. Bilbro is again discounting MTS's evidence, which, viewed in a light most favorable to MTS, shows that Mr. Bilbro's history with real estate developers is riddled with failed transaction which, contrary to Mr. Bilbro's argument, fell through due to issues with obtaining approvals necessary for the transactions to proceed. (*See* R. p. 1003, ¶ 4). Such evidence is sufficient to survive summary judgment and mandate a jury trial.

CONCLUSION

For the reasons set forth herein, as well as in MTS's Initial Brief, this Court should reverse the Circuit Court's order dated December 4, 2025, granting summary judgment to Ms. Pettus and denying MTS summary judgment. Rather, the Court should grant summary judgment in favor of MTS as to its claims against Ms. Pettus. This Court should also reverse the Circuit Court's other order dated December 4, 2025 granting summary judgment to Mr. Bilbro.

Respectfully submitted this the 8th day of September, 2026.

BROOKS, PIERCE, McLENDON
HUMPHREY & LEONARD, LLP

BY: /s/ J. Kemper Patton

J. KEMPER PATTON
SC State Bar No. 105202
JAMES C. ADAMS, II, pro hac vice
NC State Bar No. 18063
P.O. Box 1800
Raleigh, NC 27602
Telephone: (919) 882-2518
Facsimile: (336) 232-9103
Email: kpatton@brookspierce.com
jadams@brookspierce.com
Attorneys for Appellant