

BUCHANAN LAW OFFICE, P.A.
ATTORNEYS AND COUNSELORS AT LAW
 212 Newberry Street, N.W. (29801)
 Post Office Box 463
 Aiken, South Carolina 29802-0463
 (803) 649-2586
 (803) 649-1392 (Facsimile)
 rlbuchananjr@atlanticbbn.net

Robert L. Buchanan, Jr.

October 13, 2014

VIA FACSIMILE ONLY
803-734-1496

SC Court of Appeals
 Post Office Box 11629
 Columbia, South Carolina 29211

ATTENTION: ELLA

RE: Melissa J. Lackey-Oremus and James T. Oremus, Appellants
 v. 4 K&D Corporation, d/b/a Grand Estates Auction Company
 Stacy Kirk and Valaria Devine
 Case No. 2010-CP-02-03055

Dear Ella:

The dismissal of Grand Estates Advertising, LLC is a part of the Order that we are appealing; however, we are not appealing its dismissal. As indicated in the Order, a copy of which is being faxed herewith, that dismissal was done with our consent. Please let me know if you need anything further.

With best regards, I am

Yours very truly,



Robert L. Buchanan, Jr.
 BUCHANAN LAW OFFICE, P.A.

ph

Enclosure

CC: Alice Paylor, Esquire w/encls. (via facsimile only - 843-724-8036)
 Robin A. Braithwaite, Esquire w/encls. (via facsimile only - 803-649-4696)

RECEIVED

OCT 13 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

MELISSA J. LACKEY-OREMUS)
AND JAMES T. OREMUS,)

CIVIL ACTION NO.: 2010-CP-02-03055

PLAINTIFFS,)

Vs.)

ORDER

4 K & D CORPORATION,)
D/B/A GRAND ESTATES)
AUCTION COMPANY, GRAND)
ESTATES ADVERTISING, LLC,)
STACY KIRK,)
VALARIA DEVINE,)

DEFENDANTS.)

FILED June 11 2014
Shei Godard
J.C. CP & AG
Valeria Devine
2:30 pm

This matter came before the Court for a hearing on June 2, 2014, on Defendants' Motion for Summary Judgment. After considering the briefs, affidavits, deposition excerpts and exhibits filed, as well as the arguments of counsel, I grant Defendants' motion with regard to Valaria Devine as to all causes of action without prejudice for Plaintiffs to renew their claim for piercing the corporate veil/alter ego should they obtain a verdict against the remaining Defendants and prove that Ms. Devine should be liable under that theory. In addition, I grant the motion as to Grand Estates Advertising, LLC, with the consent of the Plaintiffs. With regard to the remaining Defendants, 4K&D Corporation, dba Grand Estates Auction Company ("GEA") and Stacy Kirk, I grant them summary judgment as to the Second Cause of Action, alleging Negligence, Recklessness and Willfulness, the Third Cause of Action, alleging Intentional Interference with

MAE
AT

Contract, the Fourth Cause of Action, alleging Unfair Trade Practice, and the Sixth Cause of Action alleging Promissory Estoppel. The Fifth Cause of Action is asserted solely against Ms. Devine. The sole remaining cause of action is the First Cause of Action, alleging Fraud against Stacy Kirk and GEA.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

FINDINGS OF FACT¹

In 2009, the Defendants, GEA and Stacy Kirk, President of GEA, negotiated a contract to sell The Balcony, a residence in Aiken, with its owners, the Hirschhorns. On February 9, 2010, Stacy Kirk and other agents and employees of GEA, conducted the auction. There were certain requirements for a bidder to qualify to participate. Prior to the beginning of the auction, Ms. Kirk announced that one of the proposed bidders was not eligible because he had not met the requirements and would not be allowed to bid. The auction then proceeded with the Plaintiffs having the highest bid in the amount of \$1,875,000.00, which amount was less than the owners had hoped for.

At some point after the auction, Ms. Kirk approached the Plaintiffs and told them that there was a problem, because the bidder declared to be ineligible had actually

¹ For purposes of summary judgment, the Court must consider the facts in the light most favorable to the non-moving party, in this case the Plaintiffs.



submitted the required paperwork and should have been allowed to bid, that he had submitted an opening bid of \$2,000,000.00 and that the disqualified bidder and the owners were threatening to sue her and GEA. Although Plaintiffs knew that they could go forward with the purchase of the property, they told Ms. Kirk that they would release their bid. Shortly thereafter, Plaintiffs signed releases, received their \$50,000 deposit back from GEA and gave up their right to buy the property.

Subsequently, GEA sold the property to a third party, who was not the disqualified bidder or even a bidder at the auction, for \$2,500,000.00. The Plaintiffs brought this action.

CONCLUSIONS OF LAW

Claims against Grand Estates Advertising, LLC

Plaintiffs conceded at the hearing that Grand Estate Advertising, LLC was entitled to summary judgment, and the Court so concludes.

Claims against Valaria Devine

Defendant Valaria Devine is the CEO of GEA. She was not at the auction, and Plaintiffs have admitted that they had no interactions with her concerning the auction. The Court finds that the Plaintiffs have presented insufficient evidence to support their claim against Devine under the piercing the corporate veil /alter ego theory and grants Ms. Devine summary judgment. However, the Court will allow Plaintiffs the right to reargue their claim for piercing the corporate veil against Ms. Devine if Plaintiffs obtain a judgment against GEA ~~and have established the elements of either of these theories.~~ *DAE*

Thus, Ms. Devine is entitled to summary judgment without prejudice to the Plaintiffs' right to attempt to prove that the corporate veil of GEA should be pierced or that she is

DAE
AS

the alter ego of GEA. These matters are equitable claims that will be directed to the Court and not the jury.

Negligence, Recklessness and Willfulness Claim

The elements of a claim for negligence are: (1) Defendants owed Plaintiffs a duty of care; and (2) Defendants breached the duty of care by a negligent act or omission. An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co., 586 S.E.2d 586, 588 (2003) (refusing to recognize a duty of care that would permit non parties to insurance contracts to sue independent adjusters in negligence). Defendants owed no duty of care to Plaintiffs and are entitled to summary judgment as to Plaintiffs' Second Cause of Action alleging Negligence, Recklessness and Willfulness.

Tortious Interference with Contract Claim

The elements of a claim for Tortious Interference with a Contract are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages. DeBerry v. McCain, 274 S.E.2d 293 (1981). A claim for tortious interference with contract cannot be made against a party to a contract. Threlkeld v. Critoph, 312 S.E.2d 14, 16 (S.C. Ct. App. 1984). The cause of action is only valid against a third party, or outsider. Id. Agents of parties to a contract are considered parties for the purpose of the tortious interference with contract analysis when the agents are acting within the scope of their authority. Dutch Fork Development Group II v. SEL Properties, 2012 WL 3667374, *5 (S.C. 2012).

RECEIVED

OCT 13 2014

SC Court of Appeals

[Handwritten signature]

Because the Plaintiffs had not entered into a contract for the purchase of the property at the time that they released their right to purchase it, Plaintiffs have failed to prove all of the elements. In addition, Stacy Kirk and GEA were agents of the owners/sellers of the party, so they cannot be liable for this claim. Defendants are entitled to summary judgment as to the Third Cause of Action alleging Tortious Interference with Contract.

Unfair Trade Practice Claim

A claim is actionable under the South Carolina Unfair Trade Practices Act ("SCUTPA") if the plaintiff can prove (1) unfair or deceptive acts or practices in the conduct of any business; (2) the alleged unfair and deceptive acts affect the public interest of South Carolina; and (3) monetary or property loss caused by the unfair or deceptive act. Plaintiffs presented no evidence that the alleged unfair and deceptive acts, of making allegedly false statements about the amount of a pre-opening bid at a real estate auction, affected the public interest of South Carolina.

In Schnellmann v. Roettger, 627 S.E.2d 742, 745 (S.C. Ct. App. 2006) aff'd as modified, 645 S.E.2d 239 (2007), the buyer of real property alleged that the seller violated the SCUTPA by making an allegedly false statement concerning the number of square feet in a home. On appeal, the South Carolina Court of Appeals affirmed the trial court's decision because no evidence was presented that the seller had previously misrepresented square footages or that "any procedure regularly employed by" the seller would cause the misstatement to be made again. Id. at 746. Plaintiffs failed to present any such evidence in this case.

RECEIVED

OCT 13 2014

SC Court of Appeals

TAE
#ES

The Court grants summary judgment to the Defendants as to the Fourth Cause of Action alleging a violation of SCUTPA.

Promissory Estoppel Claim

The elements of a promissory estoppel cause of action are (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance on the promise; (3) the reliance was expected and foreseeable; and (4) injury in reliance on the promise. Satcher v. Satcher, 351 S.C. 477, 483-84 570 S.E.2d 535, 538 (Ct. App. 2002). The applicability of the doctrine of promissory estoppel depends on whether the refusal to apply it would virtually sanction the perpetration of fraud or would result in other injustice. Citizens Bank v. Gregory's Warehouse, Inc., 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988).

Plaintiffs stated that the alleged unambiguous promise was that the high bidder at the auction would own the Balcony. However, there was no such promise made, because there were many steps to fulfill between bidding and owning the property. In addition, Plaintiffs testified that they did not lose anything out of pocket from participating in the auction.

Defendants are entitled to summary judgment as to the Sixth Cause of Action alleging Promissory Estoppel.

Fraud Claim

Plaintiff's Fifth Cause of Action alleges fraud. The Court concludes that there are material issues of fact that preclude summary judgment as to this claim.

IT IS, THEREFORE, ORDERED that Defendant Valaria Devine is granted summary judgment as to all causes of action asserted against her, except that, if Plaintiffs



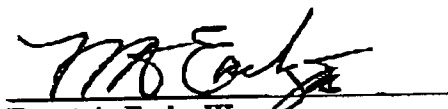
obtain a judgment against the remaining Defendants, they may attempt to prove a piercing the corporate veil / alter ego claim to the Court.

IT IS FURTHER ORDERED that Defendant Grand Estates Advertising, LLC, is granted summary judgment.

IT IS FURTHER ORDERED that all Defendants are granted summary judgment as to the Second Cause of Action alleging Negligence, Recklessness and Wilfulness; as to the Third Cause of Action alleging Tortious Interference with Contract; as to the Fourth Cause of Action alleging a violation of the South Carolina Unfair Trade Practice Act; and as to the Sixth Cause of Action alleging Promissory Estoppel.

IT IS FURTHER ORDERED that the Motion for Summary Judgment of Defendants, 4K&D Corporation, dba Grand Estates Auction Company, and Stacy Kirk, as to the First Cause of Action alleging Fraud is denied.

AND IT IS SO ORDERED.


Doyet A. Early, III
Presiding Judge

Bamberg, S.C.

June 4, 2014

RECEIVED

OCT 13 2014

SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP0203055

Melissa J Lackey-Oremus	James T Oremus	4 K & D Corporation	Grand Estates Auction Company
FILED <u>June 11 2014</u> <i>Shirley Hedard</i> J.C.C.P. & G. <i>Lisa Combs</i>		Grand Estates Advertising L L C	Stacy Kirk
		Scott Kirk	Amy Hoover

PLAINTIFF(S) 2:30 pm DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- 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:
ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 6-11-2014, and a copy mailed first class or placed in the appropriate attorney's box on 6-12-2014, to attorneys of record or to parties (when appearing pro se) as follows:

Robin A. Braithwaite
PO Box 324 Aiken, SC 29802
Robert L. Buchanan Jr
PO Box 463 Aiken, SC 29802-0463

Alice F. Paylor
PO Box 893
Charleston, SC 29402

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED

OCT 13 2014

SC Court of Appeals