

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

JOHNSON KOOLA,

Plaintiff,

vs.

CAMBRIDGE TWO, LLC, ALBERT  
V. ESTES, individually, CAMBRIDGE  
LAKES, LP., STEPHEN R. HEAPE,  
individually and as General partner of  
CAMBRIDGE LAKES, LP,  
CAMBRIDGE LAKES  
APARTMENTS, LP a/k/a  
CAMBRIDGE LAKES APARTMENT  
HOMES a/k/a CAMBRIDGE LAKES  
APARTMENT, LP, a/k/a  
CAMBRIDGE LAKES APARTMENT  
HOMES, LP, CLASSIC PROPERTIES  
OF CHARLESTON, INC.,  
CAMBRIDGE CONTRACTING, LP,  
TRADEMARK PROPERTIES, INC.,  
O'SHAUGHNESSY REAL ESTATE,  
INC., d/b/a PRUDENTIAL  
CAROLINA REAL ESTATE n/k/a,  
CAROLINA ONE REAL ESTATE.

Defendants.

) IN THE COURT OF COMMON PLEAS  
) NINTH JUDICIAL CIRCUIT  
) CASE NO: 2010-CP-10-9158

) **ORDER GRANTING DEFENDANT**  
) **O'SHAUGHNESSY REAL ESTATE,**  
) **INC., d/b/a PRUDENTIAL CAROLINA**  
) **REAL ESTATE n/k/a, CAROLINA ONE**  
) **REAL ESTATE'S MOTION FOR**  
) **SUMMARY JUDGMENT**

**RECEIVED**  
JAN 12 2015  
SC Court of Appeals

2014 NOV 18 PM 5:36  
JULIE J. PARASTRONG  
CLERK OF COURT

**FILED**

This matter came before the Court on the motion of Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate (hereinafter "Defendant Prudential"), for an Order granting Summary Judgment pursuant to Rule 56, SCRPC. Defendant Prudential was represented by Michael C. Scarafale, Esquire, and the Plaintiff appeared and proceeded at the hearing *pro se*, as his former counsel, Brad Jung, had been relieved of counsel by consent order. All issues, which included a separate, but factually related, motion for Summary Judgment filed on behalf

RMDT/1

of Defendant Trademark Properties, Inc., were fully briefed and oral arguments were held on October 22, 2014. After considering the briefs and exhibits that were submitted, by all parties, the arguments, relevant statutory and case law, and the facts of this case, this Court hereby grants Defendant O'Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate's Motion for Summary Judgment.

### FACTS

The Plaintiff's claims arise out of his purchase of a converted condominium unit, identified as 1587 Cambridge Lakes Drive, located in a complex known as Cambridge Lakes in Mount Pleasant, South Carolina. The Plaintiff closed on his purchase on February 20, 2004. Cambridge Lakes was originally an apartment complex that was converted and sold as individual condominium units beginning in 2002. Defendant Prudential was not involved in the conversion of Cambridge Lakes and never leased, owned, or co-owned any unit in the Cambridge Lakes apartments, but was later hired to list some of the converted units for the owner.

The Plaintiff filed this lawsuit on November 4, 2010 against Defendant Prudential, among other Defendants, alleging violations of The South Carolina Horizontal Property Regime Act, S.C. Code Ann. 27-31-10 *et. seq.* and related causes of action for violation of the Unfair Trade Practices Act, Breach of Contract/Warranty, Negligence, Fraud, Deceit and Negligent Misrepresentation, all arising out of an alleged violation of The South Carolina Horizontal Property Regime Act.

The seller of the property in question had previously been dismissed from this action based on the Plaintiff's failure to file this action prior to the expiration of the statute of limitations. Defendant Prudential filed its Motion for Summary Judgment

based on the undisputed fact that it was not the seller, lessee, sole owner, or co-owner of the property purchased by the Plaintiff and had no duties under The South Carolina Horizontal Property Regime Act.

### **SUMMARY JUDGMENT STANDARD**

Rule 56(c), SCRPC, provides that a trial court may grant a motion for summary judgment “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 facts and that the moving party is entitled to a judgment as a matter of law.” “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.” Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329-30, 673 S.E.2d 801, 802 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. Gauld v. O’Shaughnessy Realty Co., 380 S.C. 548, 558, 671 S.E.2d 79, 85 (Ct. App. 2008). Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Id. at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present at least a scintilla of probative evidence showing a genuine issue for trial that does not rest on mere speculation. Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).

RMDJ/3

## DISCUSSION

In his Complaint, the Plaintiff alleges that Defendant Prudential breached The South Carolina Horizontal Property Regime Act by not providing notice “either through recordation in the Master Deed filed on February 24, 2003 or by providing notice directly to prospective purchasers.” See complaint. However, the burden of such a requirement, as set forth in the statute, is clearly on the owner of a property and cannot be imputed to a real estate agent.

Under South Carolina Code section 27-31-430, upon undertaking the conversion of rental units to condominiums, the “**lessee, sole owner, or co-owner** of a building” is required to deliver, in writing, certain disclosures to all prospective purchasers “as to the physical condition of the building. The disclosure shall contain a written report prepared by an independent registered architect or engineer licensed to practice his profession in this State, describing the present condition of all general common elements. The report shall contain a good faith estimate of the remaining useful life to be expected for each item reported on, together with a list of any notices of uncured violations of building codes or other county or municipal regulations, together with the estimated cost of curing those violations.” *Id.*, emphasis added.

The duties of a “lessee, sole owner, or co-owner of a building” in a conversion of rental to condominium units is clear and created by the statutory language. The South Carolina Supreme Court has held that a developer who undertakes a condominium conversion has a duty to “turn over common areas that are not substandard and that are in good repair.” Concerned Dunes West Residents, Inc. vs. Georgia Pacific Corp., 349 S.C. 251, 257, 562 S.E.2<sup>nd</sup> 633, 637 (2002). Therefore, it was the lessee/owner of the

RMDJ/4

Cambridge Lakes who owed a duty to make the legally required disclosures to the Plaintiff as required under The Horizontal Property Regime Act. As a result, if the Plaintiff suffered damages based on any alleged violation of the Act, the proper party in any subsequent action would have been the lessee/owner of Cambridge Lakes, and not Defendant Prudential, the listing agent.

Nothing in the Horizontal Property Act places a duty upon the listing agent of a converted condominium to deliver these written disclosures to prospective purchasers and such a duty cannot, by inference, be expanded beyond its stated scope. Additionally, no Court has ever found a listing agent liable under this Act. Therefore, the Plaintiff has failed to establish, or even assert, any duty, related to The South Carolina Horizontal Property Regime Act or other statute, which exists or was violated by Defendant Prudential, the listing agent. Given the fact that all of the causes of action, as set forth in the complaint, are based on alleged conduct associated with The South Carolina Horizontal Property Regime Act, the Court's findings on this issue are dispositive to the remaining causes of action asserted by the Plaintiff.

The Plaintiff does make reference in his brief and at oral argument to the duties of a listing agent under The Residential Property Condition Disclosure Act, S.C. Code Ann 27-50-10, *et. seq.* While there are certain duties of a listing agent as set forth in The Residential Property Condition Disclosure Act, the undisputed fact is that Defendant Prudential complied with any requirement and that such disclosure, as made an exhibit to this hearing, was provided to and signed by the Plaintiff at the time of his purchase. As such, any reference to The Residential Property Condition Disclosure Act is immaterial and not related to the claims under The South Carolina Horizontal Property Regime Act.

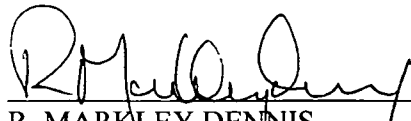
RNDJ/S

**CONCLUSION**

Because there is no evidence that Defendant Prudential was the “lessee, sole owner, or co-owner of a building” in the Cambridge Lakes conversion and had no duty under The South Carolina Horizontal Property Regime Act, Defendant Prudential is entitled to summary judgment as to all causes of action asserted in the Plaintiff’s complaint and Plaintiff Koola’s claims against Defendant O’Shaughnessy Real Estate, Inc. f/k/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate (hereinafter “Defendant Prudential”) are hereby dismissed with prejudice.

**IT IS SO ORDERED.**

This 10<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
R. MARKLEY DENNIS  
CHIEF ADMINISTRATIVE JUDGE  
NINTH JUDICIAL CIRCUIT

RMDT/6