

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

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SC Court of Appeals

Appellate Case Nos. 2014-0001780 and 2014-0001792

SEBRINA LEIGH-JONES, *Plaintiff-Respondent*,

versus

EVE F. OLASOV, *Defendant-Appellant*,

and

LUXURY LAND AND HOMES, INC. AND EVE F. OLASOV, *Plaintiffs-Appellants*,

versus

SEBRINA LEIGH-JONES, CHRIS LEIGH-JONES, LUXURY SIMPLIFIED, LLC, BRIDGE
CHARLESTON INVESTMENTS, LLC, AND LUXURY SIMPLIFIED REAL ESTATE, INC.,
Defendants.

of whom SEBRINA LEIGH-JONES is the *Respondent*.

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STATEMENT OF ISSUE ON APPEAL

I. Is the Circuit Court's order divesting Appellant of her role as a licensed real estate broker-in-charge with supervisory authority over Respondent and indefinitely appointing a new broker-in-charge to supervise Respondent appealable under S.C. CODE ANN. § 14-3-330 on the grounds that it has the practical effect of granting an injunction or appointing a receiver, involves the merits, affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken, or involves a novel issue of law and its resolution will promote judicial economy?

II. Did the Circuit Court err as a matter of law by contravening the provisions of the parties' contract and South Carolina's statutes governing licensed real estate brokers-in-charge and salespersons when it divested Appellant of her role as licensed broker-in-charge with supervisory authority over Respondent and appointed a new broker-in-charge to supervise Respondent for an indefinite period of time?

III. Did the Circuit Court err as a matter of law by divesting Appellant of her role as a licensed real estate broker-in-charge with supervisory authority over Respondent and indefinitely appointing a new broker-in-charge to supervise Respondent based on allegations unsupported by the factual record and without first affording Appellant a full hearing and an opportunity to fully respond to Respondent's allegations?

Appellant Eve F. Olasov (“Olasov”) is a licensed real estate broker-in-charge (“BIC”) and is the founder and 50% owner of a real estate brokerage located in Charleston, South Carolina known as Luxury Land and Homes, Inc. (“LLH”). At the time the Circuit Court rendered its order at issue in this appeal, Respondent Sebrina Leigh-Jones (“Leigh-Jones”) was a real estate salesperson employed by LLH and was under Olasov’s supervision as BIC.

This appeal involves the novel issue of whether a Circuit Court is authorized to divest a real estate BIC of her supervisory authority over a salesperson and to indefinitely appoint a new BIC to supervise the salesperson based on the conclusion that the salesperson and her existing BIC “have irreconcilable differences as to management issues and an irreparable working relationship” when the parties’ contract specifically mandates the existing BIC must supervise the salesperson, which contract the Circuit Court did not find had been breached, and South Carolina’s statutes governing real estate BIC and salespersons only allow for the appointment of an interim BIC for up to six months when the existing BIC dies or is medically incapacitated, neither of which is present in this case. *See* S.C. CODE ANN. § 40-57-130(C)(3).

STATEMENT OF THE CASE

Olasov has been licensed by the State of South Carolina as a real estate salesperson since 1988, a real estate broker since 2003, and a BIC since 2004. *See* Amend. Compl. ¶ 13; Olasov Aff. filed 2.19.14 ¶ 2. Olasov has served as the BIC for LLH for over ten years and was the company’s founder and original shareholder. *See* Amend. Compl. ¶ 14; Olasov Aff. filed 2.19.14 ¶ 1. LLH’s focus is high-end or luxury residential properties. *See* Amend. Compl. ¶ 15; Olasov Aff. filed 2.19.14 ¶ 3. LLH’s real estate brokerage license is attached to or associated with Olasov’s license. *See* Amend. Compl. ¶ 16; Olasov Aff. filed 2.19.14 ¶ 1; SC LLR information for LLH. Over the course of many years, Olasov has spent considerable time, effort, and money

in building up the business, securing clientele, and creating good will. *See* Amend. Compl. ¶ 17.

In 2012, Leigh-Jones and her husband and business partner, Chris Leigh-Jones (“Chris”), expressed an interest to Olosov for Leigh-Jones to become a real estate salesperson, which is an area in which Leigh-Jones had no prior professional experience, and for Leigh-Jones to acquire an ownership interest in LLH. *See* Amend. Compl. ¶ 21; Olosov Aff. filed 2.19.14 ¶ 8. Thereafter, over the course of several months, Olosov and Olosov’s brother (David M. Olosov, an attorney licensed in New York) participated in negotiations with Leigh-Jones, Chris, and their attorney (Manning Unger, an attorney licensed in South Carolina) involving Leigh-Jones’s agreement to subscribe to purchase shares in LLH. *See* Amend. Compl. ¶ 21; Olosov Aff. filed 2.19.14 ¶¶ 8-31; David Olosov Aff. filed 6.4.14.

On October 26, 2012, Olosov, Leigh-Jones, and LLH entered into a “Stock Subscription Agreement” (“Stock Subscription Agreement”) and an “Amended and Restated Shareholders Agreement for Luxury Land & Homes, Inc.” (“Shareholders Agreement”). *See* Stock Sub. Agt.; Amend. & Restated Shareholders Agt. Under the Stock Subscription Agreement, Leigh-Jones subscribed to purchase 100 shares of LLH. *See* Stock Sub. Agt. Paragraph 3 of that agreement sets forth specific installment payments to be made by Leigh-Jones as the purchase price for her shares. *Id.* ¶ 3. Leigh-Jones agreed to accept stock in LLH in the amount of 100 shares upon her full payment of the purchase price. *Id.* Olosov and Leigh-Jones are each certificate owners of 50% of the issued and outstanding shares of LLH, although Leigh-Jones’s shares are held in escrow pursuant to S.C. CODE ANN. §§ 33-6-200(e), -210(b) & (e) until such time as she pays the full purchase price for her shares, which has not yet occurred. *See* Amend. Compl. ¶ 24; *see also Ballard v. Roberson*, 399 S.C. 588, 598, 733 S.E.2d 107, 112 (2012).

As part of the Shareholders Agreement, Leigh-Jones and Olasov also agreed:

. . . . Unless the Shareholders otherwise agree, [Olasov] shall act as president and broker in charge of [LLH], and shall, in addition to the duties set forth in the By-Laws of the Company, have responsibility for hiring and supervising real estate sales persons operating under [LLH's] brokerage license and for the management of all of [LLH's] websites currently on-line. . . .

See Stock Sub. Agt. ¶ 2.3. The parties' contract expressly states that Olasov shall have the responsibility for supervising all of LLH's salespersons, including Leigh-Jones.

As part of the Shareholders Agreement, Leigh-Jones also requested and agreed to a non-compete provision barring her and Olasov from directly or indirectly owning, investing in, managing, operating, consulting or being employed in a business substantially similar to, or competitive with, the present business of LLH or such other business activity in which LLH may substantially engage. *See* Stock Sub. Agt. ¶ 11.2.

After Olasov and Leigh-Jones entered into their business relationship, Leigh-Jones failed to comply with her contractual obligations by, among other things, failing to pay the purchase price for her stock. *See* Amend. Compl. ¶ 24; 6.11.14 Hearing Transcript pp. 219-20; Olasov Aff. filed 2.19.14 ¶¶ 32-60; Olasov Aff. filed 8.18.14 ¶¶ 19-20. Additionally, with assistance from her husband (Chris), Leigh-Jones attempted to circumvent her contractual obligations and engaged in conduct violating her non-compete agreement. *See* Amend. Compl. ¶¶ 31-34, 42-50; Olasov Aff. filed 2.19.14 ¶¶ 32-60; Olasov Aff. filed 4.23.14 ¶¶ 34-43; Olasov Hearing Exhibits 1, 33-38, 40-41, 44-45; Swanson Depo. pp. 12, 17-19, 30-35, 40-41, 56-60, 65-74, 143-56. In November of 2013, LLH and Olasov discovered that Leigh-Jones and Chris had helped organize and fund another real estate brokerage company (Luxury Simplified Real Estate, Inc.) that directly competes with LLH and which literally operates out of one of LLH's offices at 95 Broad Street in Charleston. *See* Amend. Compl. ¶¶ 31-34, 42-50; Olasov Aff. filed 2.19.14 Exhs. 18 & 21;

Olasov Aff. filed 4.23.14 Exh. 25; Olasov Aff. filed 8.18.14 ¶¶ 7-18, 31; 6.11.14 Hearing Transcript pp. 38-39, 222, 235-36; SC LLR information for LLH.

On August 14, 2013, in an effort to eliminate LLH's corporate existence and to effectively shield herself from enforcement of the non-compete agreement, Leigh-Jones filed a lawsuit against Olasov entitled *Sebrina Leigh-Jones v. Eve F. Olasov*, Case No. 2013-CP-10-4798, which seeks to dissolve LLH based on alleged deadlock between Olasov and Leigh-Jones and to render the non-compete agreement unenforceable. *See* Compl.; 6.11.14 Hearing Transcript pp. 20-21. On October 21, 2013, Olasov filed an Answer & Counterclaims in response to Leigh-Jones's lawsuit. *See* Answer & Counterclaims.

On October 21, 2013, Olasov and LLH also filed a separate lawsuit against Leigh-Jones, Chris, and their wholly-owned entities (Luxury Simplified, LLC and Bridge Charleston Investments, LLC) entitled *Luxury Land and Homes, Inc. and Eve F. Olasov v. Sebrina Leigh-Jones, Chris Leigh-Jones, Luxury Simplified, LLC, and Bridge Charleston Investments, LLC*, Case No. 2013-CP-10-6162. *See* Compl.¹ The initial Complaint in that case avers, *inter alia*, that Leigh-Jones and Chris improperly competed with LLH in violation of the non-compete agreement, breached the terms of the Stock Subscription Agreement and the Shareholders Agreement, misappropriated LLH's trademarks and designs, and usurped and misappropriated LLH's assets, property, and business opportunities. *Id.* On November 14, 2013, Olasov and LLH filed an Amended Complaint in Case No. 2013-CP-10-6162, the primary purpose of which was to add as an additional defendant the other real estate brokerage company (Luxury Simplified Real Estate, Inc.) that Leigh-Jones and Chris had helped organize and fund to directly compete with LLH. *See* Amend. Compl.

¹ The Circuit Court consolidated the two cases for discovery purposes. *See* Orders filed 5.28.14.

On January 9, 2014, without a supporting affidavit, Leigh-Jones filed motions in both actions seeking the appointment of a receiver or custodian for LLH to manage LLH's business and affairs pursuant to S.C. CODE ANN. § 33-14-320 based on alleged "deadlock" between Leigh-Jones and Olasov. *See* Motions to Appoint Receiver.

On February 19, 2014, along with a supporting affidavit, Olasov and LLH filed motions in both actions seeking a temporary restraining order and preliminary injunction against the Defendants to enjoin them from violating the non-compete agreement and misappropriating LLH's trademarks and designs. *See* Motions for TRO & Prelim. Inj.; Olasov Aff. filed 2.19.14.

On March 26, 2014, Leigh-Jones filed an affidavit in support of her motion for appointment of a receiver or custodian for LLH. *See* Leigh-Jones Aff. filed 3.26.14.

Olasov filed affidavits opposing Leigh-Jones's motion for appointment of a receiver or custodian on February 19, 2014, April 23, 2014 and August 18, 2014. *See* Olasov Aff. filed 2.19.14, 4.23.14 & 8.18.14. On April 24, 2014, Olasov and LLH also filed a memorandum of law opposing Leigh-Jones's motion for appointment of a receiver or custodian. *See* Memo. in Opp. Appt. of Receiver. The memorandum pointed out that the only deadlock presented by Leigh-Jones to support her motion involved her refusals to comply with her contractual obligations with Olasov and LLH. Olasov and LLH further noted that the court could not appoint a receiver or custodian for LLH as requested by Leigh-Jones without violating the South Carolina licensing laws applicable to real estate brokerages.

Circuit Judge Roger M. Young conducted a hearing on June 10 and 11, 2014, to take testimony involving Leigh-Jones's motion for appointment of a receiver or custodian and Olasov's motion for a temporary restraining order and preliminary injunction. On June 9, 2014, on the eve of the hearing, Leigh-Jones filed a memorandum in support of her motion for

appointment of a receiver or custodian which asserted for the first time that she was requesting the appointment of a new BIC pursuant to S.C. CODE ANN. § 40-57-135(C)(3) and which alleged that she had a “sales pipeline” of over \$14.5 million in real estate deals that needed to close in the imminent future. *See* Memo. in Supp. Motion Appt. of Receiver. Leigh-Jones had not previously provided any such information to Olosov in discovery. *See* 6.11.14 Hearing Transcript p. 35.

The hearing on the motions went forward on June 10 and 11, 2014. However, the hearing did not finish and Judge Young rescheduled it to resume on August 19, 2014. When the hearing was adjourned on June 11, Leigh-Jones had not yet completed the presentation of her case and Olosov and LLH had not yet had the opportunity to present their rebuttal or response witnesses. *See* 8.19.14 Hearing Transcript pp. 6-7; Rosen letter dated 7.16.14; Emails from Niland dated 7.6.14 and 8.5.14. Despite the fact that Olosov and LLH had not yet presented their witnesses and evidence, Judge Young nevertheless *sua sponte* issued a bench ruling at the conclusion of the second day’s testimony that he would divest Olosov of her supervisory authority over Leigh-Jones and appoint a new BIC for Leigh-Jones under S.C. CODE ANN. § 33-14-320, which authorizes the appointment of a receiver or custodian for a corporation. *See* 6.11.14 Hearing Transcript pp. 309-18. Leigh-Jones claimed that it was urgent and necessary for Judge Young to immediately appoint a new BIC to supervise her because Olosov allegedly had refused to supervise her listings, closings were imminent on her alleged \$14.5 million “sales pipeline” of real estate deals, and exigent circumstances justified the appointment of a new BIC. *Id.* Leigh-Jones admitted no evidence at the hearing to support these allegations.² At the June 11 hearing,

² The next day, on June 12, 2014, Olosov’s counsel requested that Leigh-Jones provide information and documentation to support her representation to the Circuit Court that the immediate appointment of a BIC was necessary because of her pipeline of impending real estate transactions. Leigh-Jones refused to provide the requested information or documentation. *See* Email exchange dated 6.12.14; Rosen letter dated 6.16.14.

Olasov objected to Leigh-Jones's request and pointed out to Judge Young that he lacked authority to appoint a new BIC for Leigh-Jones except for the limited reasons stated in S.C. CODE ANN. § 40-57-135(C)(3), which Leigh-Jones did not satisfy. *Id.* pp. 314-318.³ Although Judge Young did not appoint either a receiver or a custodian for LLH, he advised the parties that he was relying upon § 33-14-320 to immediately appoint a new BIC to supervise Leigh-Jones. *Id.*

On June 23, 2014, pursuant to his comments at the hearing, Judge Young entered an order formally appointing Charles F. Middleton as the new BIC for Leigh-Jones to serve indefinitely “until relieved by further Order of the Court.” *See* Order filed 6.23.14 pp. 1-4. The order divests Olasov “of her supervisory authority and responsibility over [Leigh-Jones]” while at the same time holding that “[Leigh-Jones] shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olasov.” *Id.* pp. 3-4. The order directs the new BIC not to deposit the fees or compensation earned by LLH from Leigh-Jones's listings into LLH's operating account, but instead directs him to deposit the funds into a separate bank account that he and Leigh-Jones will control (and over which Olasov has no control) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. *Id.* p. 3. As justification for appointing a new BIC, the order states that “[Leigh-Jones] and Olasov have irreconcilable differences as to management issues and an irreparable working relationship.” *Id.* p. 2. The order states that appointment of a new BIC is necessary for the “protection of the public” based on “the apparent likelihood that closings will need to occur in the near future.” *Id.* pp. 2-3.

³ Section 40-57-130(C)(3) is contained in the state statutes specifically regulating licensed real estate BICs and salespersons and allows for the appointment of an interim BIC for a salesperson for up to six months only when the existing BIC dies or is medically incapacitated. S.C. CODE ANN. § 40-57-130(C)(3). It does not allow for the appointment of an interim BIC for any other reason.

On July 1, 2014, in response to a letter sent by Leigh-Jones's counsel requesting Judge Young to modify his prior order appointing a new BIC for Leigh-Jones, Judge Young entered a written order amending his prior Order as requested by Leigh-Jones's counsel. *See Amended Order filed 7.1.14.*

On July 2, 2014, Olasov and LLH moved to alter and/or amend the amended order appointing a new BIC for Leigh-Jones. *See Motion to Alter/Amend.* On July 15, 2014, without conducting oral argument or a hearing, Judge Young entered an order denying Olasov's and LLH's motion to alter or amend. *See Order filed 7.15.14.*

On August 15, 2014, Olasov and LLH timely served Notices of Appeal in both actions involving Judge Young's order appointing a new BIC for Leigh-Jones.

On August 19, 2014, Judge Young resumed the hearing in the Circuit Court to take testimony involving Olasov's motion for a temporary restraining order and preliminary injunction. Although Leigh-Jones already had been granted two full hearing days on June 10 and 11, 2014 to present testimony involving her motion for appointment of a receiver or custodian, Judge Young held over Olasov's objections that he would allow Leigh-Jones to use the first three hours of the August 19 hearing to present additional testimony in opposition to Olasov's motion for a temporary restraining order and preliminary injunction and would grant Olasov the last three hours of the hearing to present her witnesses. *See 8.19.14 Hearing Transcript pp. 6-7; Rosen letter dated 7.16.14; Emails from Niland dated 7.6.14 and 8.5.14.*

On August 28, 2014, Judge Young entered an order denying Olasov's and LLH's motion for a temporary restraining order and preliminary injunction. *See Order filed 8.28.14.*

By letter dated August 29, 2014, the Clerk of Court for this Court requested the parties to submit memoranda in both cases addressing the appealability of the Circuit Court's order

appointing a new BIC for Leigh-Jones. Appellants and Respondent subsequently submitted their respective memoranda addressing this issue. On September 26, 2014, this Court entered orders allowing the appeals to proceed while stating the parties may raise the issue in their briefs along with the discussion of the merits. The orders also consolidated both cases for appeal.

On January 27, 2015, Leigh-Jones voluntarily changed her license to “inactive status” with the South Carolina Real Estate Commission. *See* Letter from SCLLR 1.27.15.

ARGUMENTS

I. STANDARD OF REVIEW.

As discussed below, the Circuit Court’s order has the practical effect of granting an injunction or appointing a receiver. Actions for injunctive relief are equitable in nature. *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005) (citing *Wiedemann v. Town of Hilton Head*, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001)). The appointment of a receiver is an action in equity. *Wadsworth Industries, Inc. v. Westgate Knitting, Inc.*, 264 S.C. 106, 109, 212 S.E.2d 571, 572 (1975); *Elgin v. Kelly*, No. 2006-UP-270, 2006 WL 7286048, at *4 (S.C. Ct. App. Aug. 28, 2006) (unpublished). In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence. *Doe v. Clark*, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976).

II. THE CIRCUIT COURT’S ORDER IS APPEALABLE.

As a threshold issue, the Circuit Court’s order is appealable under the provisions of S.C. CODE ANN. § 14-3-330 for several reasons. First, the Order constitutes an interlocutory order that has the practical effect of granting an injunction or appointing a receiver within the meaning of § 14-3-330(4). Second, the order constitutes an intermediate order involving the merits within

the meaning of § 14-3-330(1). Third, the order affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken within the meaning of § 14-3-330(2). Finally, the Court should hear this appeal because this case involves a novel issue of law and its resolution will promote judicial economy.

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. CODE ANN. § 14–3–330.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6-7, 630 S.E.2d 464, 467 (2006); *see also Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (“Absent some specialized statute, the immediate appealability of an interlocutory or intermediate order depends on whether the order falls within S.C. CODE ANN. § 14-3-330.”). Pursuant to § 14-3-330, the following types of orders are appealable:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. CODE ANN. § 14-3-330; *see also Edwards*, 369 S.C. at 93-94, 631 S.E.2d at 530. “While [§] 14–3–330 states it applies to ‘law cases,’ [our Supreme Court] ha[s] recognized it as applicable in equity cases as well.” *Kriti Ripley, LLC v. Emerald Investments, LLC*, 404 S.C. 367, 379, 746

S.E.2d 26, 32 (2013) (citation omitted).

When there is a single order that is appealable in part, the entire order should be considered upon the appeal. *Rice Hope Plantation v. S. Carolina Pub. Serv. Auth.*, 216 S.C. 500, 511, 59 S.E.2d 132, 136 (1950), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

A. *The Circuit Court's Order Has the Practical Effect of Granting an Injunction or Appointing a Receiver.*

The Circuit Court's order has the practical effect of granting an injunction or appointing a receiver within the meaning of § 14-3-330(4). Leigh-Jones's motion filed on January 9, 2014 originally sought the appointment of a receiver or custodian for LLH pursuant to the statutory authority granted in S.C. CODE ANN. § 33-14-320. However, at the hearing conducted on the motion, Leigh-Jones requested the appointment of a new BIC pursuant to S.C. CODE ANN. § 40-57-135(C)(3). Although the Circuit Court's order does not expressly appoint either a receiver or custodian *for LLH*, it appoints a new supervising BIC *for Leigh-Jones*, enjoins and restrains Olasov from supervising Leigh-Jones or acting as her BIC, and has the effect of appointing a receiver for real estate listings and commissions that belong to LLH.

Chapter 57 of Title 40 of the South Carolina Code governs a licensed BIC and her salespersons. Section 40-57-30(4) defines a "broker-in-charge" as "the broker who is designated as having responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for any real estate trust accounts." S.C. CODE ANN. § 40-57-30(4). "Trust account" means "an escrow account or properly designated bank account established and maintained by a broker-in-charge . . . to safeguard funds belonging to parties to a real estate transaction." *Id.* § 40-57-30(16). A "broker" is the individual "who for a fee, salary,

commission, or other valuable consideration . . . or who with the intent or expectation of receiving compensation . . . negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements thereon [and] offers to act as an agent representing a principal in a real estate transaction.” *Id.* § 40-57-30(3). “Associated licensee” means “a licensee who is affiliated with a broker-in-charge” *Id.* § 40-57-30(1). A “salesman” is “a licensee associated with a broker-in-charge” *Id.* § 40-57-30(15). South Carolina law is clear that a real estate salesperson or licensee cannot engage in real estate transactions except under a licensed BIC.

As BIC, Olasov is required to “adequately supervise employees or associated licensees to ensure their compliance with this chapter and maintain real estate trust accounts when required by law,” to “maintain adequate, reasonable, and regular contact with [her] associated licensees engaged in real estate transactions so as to prevent or curtail practices by a licensee which would violate any provision of this chapter . . . ,” to “instruct employees and associated licensees on the proper handling of trust funds,” and to “ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts.” *Id.* § 40-57-135(A)(1), (3), (4), (6). The statute further requires the BIC to maintain records for the real estate trust accounts, imposes specific requirements on when funds must be deposited into the company’s trust account and when they can be disbursed from the account, and requires the BIC to render an accounting involving the trust funds. *Id.* § 40-57-135(B)(4) & (7). The statute also states that the BIC “shall establish and *maintain control of and responsibility for an active real estate trust account* so designated in the company name for which the respective broker-in-charge’s . . . license is issued” *Id.* § 40-57-135(B)(1) (emphasis added). Only a licensed BIC can supervise a trust account. *See Walker Aff.* filed 4.23.14 ¶ 3.

In addition to these statutory obligations, the Shareholders Agreement executed by Leigh-Jones and Olosov expressly states that Olosov “shall act as president and broker in charge of [LLH], and shall, in addition to the duties set forth in the By-Laws of the Company, have responsibility for hiring and supervising real estate sales persons operating under [LLH’s] brokerage license” *See* Shareholders Agt. ¶ 2.3. The Shareholders Agreement gives Olosov the responsibility for supervising LLH’s salespersons, including Leigh-Jones.

“In determining what constitutes an injunction subject to interlocutory review the court should look to the substance of the order rather than its form.” *Jordan v. Officer*, 508 N.E.2d 1077, 1079 (Ill. App. Ct. 1987). “An order—including a postjudgment order—is properly characterized as an ‘injunction’ when it substantially and obviously alters the parties’ pre-existing legal relationship.” *Jones-El v. Berge*, 374 F.3d 541, 544 (7th Cir. 2004).

In this case, the Circuit Court’s order clearly alters the parties’ legal relationship. Notwithstanding statutory and contractual obligations to the contrary, the order appoints a new BIC for Leigh-Jones to serve for an indefinite period of time and divests Olosov “of her supervisory authority and responsibility over [Leigh-Jones]” while at the same time holding that “[Leigh-Jones] shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olosov.” *See* Order pp. 1-4. The order expressly permits Leigh-Jones to continue to deposit or withdraw funds and direct transactions from LLH’s trust account while at the same time specifically barring Olosov from controlling or supervising Leigh-Jones or her transactions involving the LLH trust account. It further directs the new BIC not to deposit the fees or compensation earned by LLH from Leigh-Jones’s listings into LLH’s existing bank account, but instead directs him to deposit the funds into a new bank account that he and Leigh-Jones will control (and over which Olosov has no control) and further authorizes the new BIC to “make all

decisions on disbursement of all funds from that” bank account. *Id.* p. 3. The order has an indefinite duration and does not state it will terminate once the litigation ends. The order does not state when or if the new BIC’s appointment will end, when or if his authority over LLH’s commissions will terminate, or when or if Olasov will ever resume her supervisory responsibilities over Leigh-Jones and the listings and commissions belonging to LLH.

The practical effect of the Circuit Court’s order is to grant injunctive relief because it enjoins or restrains Olasov from supervising Leigh-Jones or having any authority over the listings or commissions that Leigh-Jones generates even though Olasov is a 50% owner of LLH and is supposed to be Leigh-Jones’s BIC by statute and under the parties’ contract. The order effectively restrains Olasov from operating her real estate brokerage business. Numerous cases have held that similar orders restraining a party are immediately appealable. *See, e.g., Appeal of Paslay*, 230 S.C. 55, 94 S.E.2d 57 (1956) (order of circuit court restraining master from delivering deed to successful bidder at partition sale was appealable); *Williams v. Jones*, 62 S.C. 472, 40 S.E. 881 (1902) (holding that an interlocutory order restraining a defendant from operating her ginnery was immediately appealable); *Eldridge v. City of Greenwood*, 308 S.C. 125, 417 S.E.2d 532 (1992) (order prohibiting landowners who brought suit to determine ownership of railroad right-of-way from contacting potential members of plaintiff class unless city first contacted them was injunction that was immediately appealable.); *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (observing that order of reference which enjoined property owners from erecting any buildings on their property during pendency of action to enforce subdivision covenants was immediately appealable); *Ex parte McFarlin*, 2007 WL 8326605, *2 (S.C. Ct. App. 2007) (order freezing accounts is in the nature of an injunction.); *see also Jordan*, 508 N.E.2d at 1077 (trial court’s order postponing city election was appealable by

successful candidates because it was restraint upon successful candidates that was essentially injunctive in character); *In re Marriage of Granger*, 554 N.E.2d 586 (Ill. App. Ct. 1990) (“gag order” restraining parties and their attorneys from making extrajudicial comments about pending civil matter was construed as injunction; therefore, order was appealable under rule authorizing interlocutory appeals as of right from orders granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction); *Williams v. Nw. Sec. Life Ins. Co.*, 307 S.C. 462, 463-64, 415 S.E.2d 809, 809-10 (1992) (order denying motion to dismiss, which had the effect of refusing an injunction, was appealable under § 14-3-330(4)).

The Circuit Court’s order also effectively disposes of LLH’s commissions or property without Olasov’s control or consent. The commissions generated by Leigh-Jones’s real estate listings are owned by LLH (the brokerage) and constitute its property. *See Walker Depo.* pp. 67-69. South Carolina law specifically requires that “[a]ll cash monies or certified funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge . . . immediately must be delivered to the broker-in-charge . . . , except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge . . . as soon as the sales or lease agreement is ratified by both parties.” S.C. CODE ANN. § 40-57-135(B)(8).

The Circuit Court’s order diverts to the new BIC and Leigh-Jones funds that belong to LLH from Leigh-Jones’s listings and allows those funds to be deposited into a new account controlled by the new BIC and Leigh-Jones and over which Olasov has no control. The order further authorizes the new BIC to dispose of LLH’s commissions generated by Leigh-Jones subject to his exclusive discretion or judgment without any involvement, consent, oversight, or control by Olasov or LLH. The order does not require Leigh-Jones or the new BIC to hold

LLH's commissions or to refrain from disbursing those funds. These provisions of the order violate state law requiring that LLH's funds be subject to Olasov's supervision and control.

Although the Circuit Court labeled the appointment as a new BIC rather than a "receiver," the label utilized by the Circuit Court is not dispositive. The reality is that the new BIC could exercise the same type of authority and powers which are typically given to receivers. *U.S. v. Sylacauga Properties, Inc.*, 323 F.2d 487, 490 (5th Cir. 1963) ("A receiver by any other name, or by no name, is still a receiver."); *Piambino v. Bailey*, 610 F.2d 1306, 1327 (5th Cir. 1980) (appeal could be taken from order appointing lead counsel as "trustees" of the defendant's real and personal property with instructions to liquidate the property within six months in a commercially reasonable manner; court stated "[w]e have no doubt that this was in effect an appointment of a receiver and was an order appealable" under 28 U.S.C. § 1292(a)(2)).

It is anticipated that Leigh-Jones will rely upon this Court's decision in *Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 360 S.C. 473, 602 S.E.2d 83 (Ct. App. 2004), to argue that the Circuit Court's order is not appealable. In *Shapemasters*, this Court held that an order appointing a custodian—as contrasted with one appointing a receiver—was not appealable under the facts of that case. *Id.* at 479-80, 602 S.E.2d at 87. The trial court's order in that case held that "a *prima facie* case [was] made to justify the appointment of a custodian to marshal and protect [the company's] assets until final adjudication of this case on the merits" *Shapemasters Golf Course Builder, Inc. v. Shapemasters, Inc.*, 2002 WL 34454088 (S.C. Com. Pl. July 15, 2002). On appeal, this Court observed that the custodian "was appointed specifically for the purposes of 'overseeing ongoing projects and to allocate man and machinery among the proposed projects to maximize profits.'" *Shapemasters*, 360 S.C. at 479-80, 602 S.E.2d at 87. This Court found that the custodian in that case did not have the powers of a receiver—which

include the power to dispose of the corporation's assets—thus making that case distinguishable from the present case. In contrast to the custodian in *Shapemasters*, the new BIC appointed in this case is *not* ordered to marshal or protect LLH's assets until a final adjudication of this case is made on the merits. Instead, he is given full authority over LLH's commissions to the extent generated by Leigh-Jones and is authorized to unilaterally make management or operational decisions on LLH's behalf and to dispose of LLH's commissions or property without the consent or control of Olasov or LLH.

The fact that the new BIC has the powers of a receiver—even though the Circuit Court's order does not purport to appoint a receiver for LLH—makes the order appealable. In *Razin v. A Milestone, LLC*, 67 So.3d 391 (Fla. Ct. App. 2011), the Florida appellate court held that the appointment of a custodian was immediately appealable under a statutory provision allowing for the review of an interlocutory order granting the appointment of a receiver even though the trial court labeled the appointment as “custodian” because “the reality” was that the appointed person could “exercise the same type of authority and powers which are typically given to receivers,” including “the authority to cast a deciding vote on any management or operational decision when [the plaintiff and defendant] cannot agree on the particular matter.” *Id.* at 395-96. Similarly, in the present case, the new BIC is given the authority to unilaterally make management or operational decisions on LLH's behalf and to dispose of LLH's commissions or property to the extent they involve Leigh-Jones or her real estate listings without the consent of Olasov or LLH.

B. The Circuit Court's Order Involves the Merits.

The Circuit Court's order also constitutes an intermediate order involving the merits within the meaning of § 14-3-330(1). “An order ‘involves the merits,’ as that term is used in Section 14-3-330(1) and is immediately appealable when it finally determines some substantial

matter forming the whole or part of some cause of action or defense.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 467 (citations & footnote omitted); *see also Cooke v. Palmetto Health Alliance*, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005) (“To involve the merits, an order ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense’” (quoting *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993))). “An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights.” *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7, 630 S.E.2d at 468.

The Circuit Court’s order fully adjudicates the parties’ rights involving Leigh-Jones’s requests to rid herself of Olasov’s supervision, to have a different BIC supervise her, and that she be allowed to complete real estate transactions without Olasov’s supervision or involvement. Leigh-Jones argued to the Circuit Judge that it was urgent and necessary for the Court to appoint a new BIC to supervise her because Olasov allegedly had refused to do so (which is untrue) and she allegedly had a “sales pipeline” of over \$14.5 million in real estate transactions that needed to be closed in the immediate future (which was not proved). Immediately following the hearing, Leigh-Jones refused to provide any information or documentation regarding these real estate transactions (although requested by Olasov). *See* Emails dated 6.12.14; Rosen letter dated 6.16.14. The Circuit Court’s order directs the new BIC not to deposit the fees or compensation earned by LLH from Leigh-Jones’s listings into LLH’s existing bank account, but instead directs the new BIC to deposit the funds into a new bank account that he and Leigh-Jones will control (and over which Olasov has no control) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. *See* Order p. 3. *Although issued*

based on alleged exigent circumstances, the Order is not limited in time, nowhere states it is temporary, and does not indicate it will terminate once the litigation ends or at any point in the future.

There is nothing left for the Circuit Court to do involving Leigh-Jones's request to rid herself of Olasov's supervision as BIC despite the contrary statutory and contractual obligations or the disbursement of LLH's commissions and assets generated by Leigh-Jones's listings. Instead, the Circuit Court has already decided those matters. Its order does not require Leigh-Jones or the new BIC to hold LLH's commissions in escrow or to refrain from disbursing those funds pending some further determination by the court, but allows Leigh-Jones and the new BIC to immediately disburse and dispose of LLH's commissions or assets without any involvement, consent, oversight, or control by Olasov or LLH. Because no further action is required in the Circuit Court to determine the parties' rights, the Circuit Court's order is appealable. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 7-8, 630 S.E.2d at 468 ("No further action is required in the family court to determine the parties' rights; therefore, the order is immediately appealable under Section 14-3-330(1).").

C. *The Circuit Court's Order Affects a Substantial Right and in Effect Determines the Action and Prevents a Judgment from Which an Appeal Might be Taken.*

The Circuit Court's order also affects a substantial right and in effect determines the action and prevents a judgment from which an appeal might be taken within the meaning of § 14-3-330(2). "A 'substantial right' is 'a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which a man is entitled to have preserved and protected by law: a material right.'" *Barnes v. Kochhar*, 633

S.E.2d 474, 479 (N.C. Ct. App. 2006) (citation omitted).⁴ “A substantial right involves the idea of a legal right, one which is protected by law.” *Union Camp Corp. v. Whitman*, 375 N.E.2d 417, 419 (Ohio 1978).

“An interlocutory order which affects a substantial right, and either in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues an action, is immediately appealable under § 14–3–330(2)(a).” *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012). “Immediate appeals under [§ 14–3–330(2)] have been allowed in situations where the substantial right could not be vindicated on appeal after the case.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

Because of the Circuit Court’s appointment of a new BIC and the other provisions in the order, Leigh-Jones and the new BIC have been allowed to conduct real estate transactions and closings on LLH’s behalf without Olasov’s knowledge, supervision, or control and while withholding from Olasov information and documentation involving these transactions. As the BIC for LLH, Olasov has a substantial right—indeed, a statutory duty and contractual right—to supervise, account for, and be responsible for the real estate activities of LLH’s salespersons (including Leigh-Jones) and to protect and preserve LLH’s commissions and property. *Barnes*, 633 S.E.2d at 480 (plaintiffs who were 50% shareholders in company established a substantial right to preservation of what they alleged to be the company’s assets and corporate opportunities). The Shareholders Agreement specifically requires Olasov to have the responsibility for supervising LLH’s salespersons, including Leigh-Jones. *See* Shareholders Agt. ¶ 2.3. The Circuit Court’s order effectively vacates this contractual provision, without making

⁴ In *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008), this Court pointed out that North Carolina’s statute involving appealability of orders affecting a “substantial right” is similar to our § 14–3–330(2).

any determination of breach by Olasov. The order obviously adversely determines substantial contractual and statutory rights belonging to Olasov.

Even if this Court should later determine that the Circuit Court erred in appointing a new BIC for Leigh-Jones and in allowing the real estate transactions to proceed without Olasov's supervision or involvement, it will be impossible to undo the particular transactions that have already taken place under the Circuit Court's orders. The transactions will have already occurred and there is nothing this Court could do to rectify the Circuit Court's improper rulings. In short, if these real estate transactions are allowed to continue under the Circuit Court's order, this Court will not be able to provide an effective remedy to Olasov or LLH if they have to wait until the entire controversy is disposed of before they can appeal the order. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. at 8, 630 S.E.2d at 468 (agreeing that order unsealing family court records was immediately appealable because no appellate remedy is likely to repair any damage done by an improper disclosure).⁵

D. This Appeal Involves a Novel Issue of Law and its Resolution Will Promote Judicial Economy.

Even if the Court should find that this case does not fit within § 14-3-330, the Court should still decide the novel issues in this appeal in the interest of judicial economy. In *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005), our state supreme court found that the trial court's order was not immediately appealable, but nevertheless addressed the novel issue raised in the appeal in the interest of judicial economy. *Id.* at 14, 625 S.E.2d at 208 ("Although we dismiss the order as not immediately appealable, we address this novel issue in the interest of judicial economy."); *see also Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471-72, 674 S.E.2d 154, 160-

⁵ The Circuit Court's order fails to require Leigh-Jones to give a bond or otherwise indemnify the Appellants for any loss they may sustain if it should finally be determined the order was

61 (2009) (allowing appeal from discovery order when it involved a novel question of law in a matter that was the subject of numerous claims in state and federal courts and a decision by the Court would best serve the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 452, 661 S.E.2d 81, 87 (2008) (allowing appeal from class certification order based in part on finding that the issue presents a novel question of law which should be addressed at this time in the interest of judicial economy and guidance to the bench and bar).

As discussed above, this appeal involves the novel issue of whether the Circuit Court is authorized to replace an existing BIC and appoint a new BIC to supervise a real estate salesperson for an indefinite period of time based on the conclusion that the salesperson and her existing BIC “have irreconcilable differences as to management issues and an irreparable working relationship” when the parties’ contract specifically requires the existing BIC to supervise the salesperson and when the statutes governing real estate brokers only allow for the appointment of an interim BIC for up to six months if the existing BIC dies or is medically incapacitated, neither of which is present in this case. *See* S.C. CODE ANN. § 40-57-130(C)(3).

Because of the Circuit Court’s appointment of a new BIC and the provisions in the Circuit Court’s order, Leigh-Jones and the new BIC have been allowed to conduct real estate transactions and closings on LLH’s behalf without Olasov’s knowledge, supervision, or control and while withholding from Olasov information and documentation involving these transactions. It is more economical to decide the novel issues raised in this appeal at this juncture before additional real estate transactions are completed under the Circuit Court’s order, instead of waiting until the entire controversy is decided at which point any relief this Court may grant to

Olasov and LLH would be a hollow gesture because the transactions will already have been completed and cannot be undone.

III. THE CIRCUIT COURT CONTRAVENED THE PARTIES' CONTRACT AND VIOLATED SOUTH CAROLINA'S STATUTES GOVERNING LICENSED REAL BROKERS-IN-CHARGE AND SALESPERSONS BY DIVESTING APPELLANT OF HER ROLE AS BROKER-IN-CHARGE WITH SUPERVISORY AUTHORITY OVER RESPONDENT AND BY INDEFINITELY APPOINTING A NEW BROKER-IN-CHARGE TO SUPERVISE RESPONDENT.

The Circuit Court divested Olasov of her supervisory authority over Leigh-Jones and appointed a new BIC (Charles F. Middleton) for Leigh-Jones to serve for an indefinite period of time “until relieved by further Order of the Court.” *See* Order pp. 1-4.⁶ The order strips Olasov “of her supervisory authority and responsibility over [Leigh-Jones]” while at the same time holding that “[Leigh-Jones] shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olasov.” *Id.* pp. 3-4. The order directs the new BIC not to deposit the fees or compensation earned by LLH from Leigh-Jones’s listings into LLH’s operating account, but instead directs him to deposit the funds into a new bank account that he and Leigh-Jones will control (and over which Olasov has no control) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. *Id.* p. 3. As justification for appointing a new BIC for Leigh-Jones, the order states that “[Leigh-Jones] and Olasov have irreconcilable differences as to management issues and an irreparable working relationship.” *Id.* p. 2. The order states the appointment is necessary for the “protection of the public” based on “the apparent likelihood that closings will need to occur in the near future.” *Id.* pp. 2-3.

The Circuit Court’s order should be reversed because it is controlled by an error of law.

⁶ On January 27, 2015, Leigh-Jones voluntarily changed her license to “inactive status.” *See* Letter from SCLLR 1.27.15. The Circuit Court has not terminated Mr. Middleton’s appointment as Leigh-Jones’s BIC or relieved him as of the date of this brief, which is approximately seven months after the Circuit Judge initially appointed Mr. Middleton as the new BIC.

A. The Circuit Court's Order Disregards the Express Provisions of the Parties' Contract and Ignores South Carolina's Statutes Governing Real Estate Brokers-in-Charge and Salespersons.

The Circuit Court's order disregards the provisions of the parties' contract and violates South Carolina statutory law by divesting Olasov of her supervisory authority over Leigh-Jones and appointing a new BIC for Leigh-Jones for an indefinite duration.

When the Circuit Court rendered its order, the uncontroverted evidence showed that Olasov is the licensed BIC for LLH, that LLH's real estate brokerage license is attached to or associated with Olasov's license, and that Leigh-Jones is a licensed salesperson associated with Olasov as BIC. *See* SC LLR information for LLH. The Shareholders Agreement executed by Olasov and Leigh-Jones specifically mandates that Olasov shall have the responsibility for supervising LLH's salespersons, including Leigh-Jones. *See* Shareholders Agt. ¶ 2.3. The agreement states that Olasov "shall act as president and broker in charge of [LLH], and shall, in addition to the duties set forth in the By-Laws of the Company, have responsibility for hiring and supervising real estate sales persons operating under [LLH's] brokerage license" *Id.* The Circuit Court nowhere found that Olasov had breached this contract. The Circuit Court's order nevertheless effectively vacates this contractual provision.

When an action presents a question as to the construction of a written contract and the language of the contract is clear and unambiguous, the question is not one of fact but one of law. *Shipyard Property Owners's Assocs. v. Mangiaracina*, 307 S.C. 299, 414 S.E.2d 795, 801 (Ct. App. 1992). The court's function is to enforce contracts as made by the parties and not to rewrite or distort, under the guise of judicial construction, the terms of an unambiguous contract. *Dobyns v. South Carolina Dept. of Parks, Recreation & Tourism*, 325 S.C. 97, 480 S.E.2d 81, 84 (1997). Courts are without authority to alter a contract by construction, or to make a new contract for the

parties; their duty is limited to interpretation of the contract regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully. *Gilstrap v. Culpepper*, 283 S.C. 83, 320 S.E.2d 445, 447 (1984). The Circuit Court clearly erred by disregarding the provisions of the parties' contract.

The Circuit Court's order also ignores Chapter 57 of Title 40 of the South Carolina Code, which regulates licensed brokers-in-charge and their salespersons. These statutes mandate that a salesperson or licensee cannot engage in real estate transactions except under a licensed BIC and do not authorize a court to divest a BIC of her supervisory authority over a salesperson merely because the salesperson disagrees with the BIC's management of the brokerage. Section 40-57-30(4) defines a "broker-in-charge" as "the broker who is designated as having responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for any real estate trust accounts." S.C. CODE ANN. § 40-57-30(4). "Trust account" means "an escrow account or properly designated bank account established and maintained by a broker-in-charge . . . to safeguard funds belonging to parties to a real estate transaction." *Id.* § 40-57-30(16). A "broker" is the individual "who for a fee, salary, commission, or other valuable consideration . . . or who with the intent or expectation of receiving compensation . . . negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements thereon [and] offers to act as an agent representing a principal in a real estate transaction." *Id.* § 40-57-30(3). "Associated licensee" means "a licensee who is affiliated with a broker-in-charge . . ." *Id.* § 40-57-30(1). A "salesman" is "a licensee associated with a broker-in-charge . . ." *Id.* § 40-57-30(15).

Leigh-Jones alleged in the Circuit Court that Olasov had refused to supervise her listings as the basis for her request to rid herself of Olasov's supervision or control. As discussed below,

Leigh-Jones's allegations regarding Olasov's willingness to supervise her are false and are unsupported by the evidence. Nevertheless, based on Leigh-Jones's mere unsupported allegation, the Circuit Court held that "Leigh-Jones and Olasov have irreconcilable differences as to management issues and an irreparable working relationship." *See* Order p. 2. Putting aside for the moment the fact that Leigh-Jones's allegations of non-supervision by Olasov are vigorously contested and lack evidentiary support, even if her allegations are assumed to be true, they are insufficient as a matter of law to justify the appointment of a new BIC for Leigh-Jones.

Section 40-57-135(C)(3) unambiguously states the grounds under which a licensed salesperson's BIC may be replaced with another or different BIC. That section provides:

In the event of the death or medical incapacitation of a broker-in-charge or property manager-in-charge which precludes him from carrying out duties as required in this chapter, the department may permit an associated licensee to act as broker-in-charge or property manager-in-charge for up to six months.

S.C. CODE ANN. § 40-57-130(C)(3). This statute contains no provision allowing for the indefinite replacement of an existing BIC with a new BIC for a salesperson simply because the existing BIC and salesperson disagree regarding the management of the brokerage.

Ken Walker (an expert in South Carolina real estate brokerage practices; past President of the South Carolina Association of Realtors (SCAR); current member of SCAR's Board of Directors; past Regional Vice President and member of the Board of Directors of the National Association of Realtors; and teacher of pre- and post-licensing classes, including real estate law) specifically testified that an interim BIC can be appointed *only if* the existing BIC dies or is incapacitated. *See* Walker Depo. pp. 114-15.

None of the conditions set forth in § 40-57-130(C)(3) are applicable to this case. Olasov is alive and is not incapacitated. If the General Assembly had intended to allow appointment of a

new BIC in circumstances other than those set forth in § 40-57-130(C)(3), it would have said so in the statute. Simply stated, § 40-57-135(C)(3) does not authorize the appointment of another BIC for Leigh-Jones even assuming *arguendo* that Leigh-Jones and Olasov have “irreconcilable differences as to management issues and an irreparable working relationship.” The Circuit Court’s order disregards the clear terms of the statute and judicially expands the statute to include additional grounds for the appointment of a new BIC that simply do not exist in the statute.

Instead of appointing a BIC in accordance with § 40-57-130(C)(3), the Circuit Court circumvented that statute by attempting to justify its appointment of a new BIC under S.C. CODE ANN. § 33-14-320, which is part of the general corporation statute. Section 33-14-320 provides that as part of its relief in a corporate dissolution action, the Court may appoint a receiver or custodian *for the corporation to be dissolved*. See S.C. CODE ANN. § 33-14-320. The Court may appoint a receiver or custodian *pendente lite* “to preserve the corporate assets wherever located” and to “carry on the business of the corporation until a full hearing [in a proceeding to dissolve the corporation] can be held.” *Id.* § 33-14-310. In this case, the Circuit Court’s order does not purport to appoint a receiver or a custodian *for LLH*. However, it relies upon § 33-14-320 as the legal basis for its appointment of a new BIC *for Leigh-Jones*. Section 33-14-320 nowhere authorizes the appointment of a new BIC to supervise a real estate salesperson.

The Circuit Court’s reliance upon § 33-14-320 clearly is misplaced. First, even if this section properly applies to this case, which it does not, it is unnecessary to appoint a new BIC for Leigh-Jones to preserve the corporate assets of LLH or to carry on LLH’s business. Indeed, the Circuit Judge’s order nowhere finds that appointment of a new BIC is necessary to preserve LLH’s assets or to carry on its business. Leigh-Jones failed to present any evidence to the Circuit Court showing a single real estate transaction that LLH lost or was likely to lose because Olasov

refused to serve as BIC or to supervise Leigh-Jones's listings. Conversely, Olasov presented abundant evidence showing that she attempted to supervise Leigh-Jones and repeatedly requested information and documents from Leigh-Jones for this purpose, but Leigh-Jones refused to allow her to do so and refused to provide the documentation. The Circuit Court's order effectively appoints a new BIC for Leigh-Jones based solely on Leigh-Jones's desire to rid herself of Olasov's supervision because they are adversaries in this litigation. The Circuit Court's purported rationale for the appointment of a new BIC for Leigh-Jones is insufficient as a matter of law to justify such an appointment under § 33-14-320.

Second, nothing in § 33-14-320 authorizes a court to appoint a new BIC for a licensed real estate brokerage subject to Chapter 57 of Title 40 of the South Carolina Code. Section 33-14-320 is contained in the general corporation statute. It nowhere states that it applies to a real estate brokerage or BIC. In contrast, § 40-57-130(C)(3) is part of the statutes specifically governing the appointment of a real estate BIC. It is well-settled that “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Spectre, LLC v. S. Carolina Dep't of Health & Env'tl. Control*, 386 S.C. 357, 688 S.E.2d 844, 852 (2010); *Wilder v. S. Carolina State Highway Dep't*, 228 S.C. 448, 90 S.E.2d 635, 638 (1955); *see also Wooten ex rel. Wooten v. S. Carolina Dep't of Transp.*, 333 S.C. 464, 511 S.E.2d 355, 357 (1999) (“A specific statutory provision prevails over a more general one.”).

Our courts further adhere to the canon of statutory construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*,” which holds that “to express or include one thing implies the exclusion of another, or of the alternative.” *Hodges v. Rainey*, 341

S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (citation omitted). Courts are “confined to the statutory language” and cannot expand the statute simply because they may disagree with the wisdom of its provisions. *Scholtec v. Estate of Reeves*, 327 S.C. 551, 490 S.E.2d 603, 607 (Ct. App. 1997); *see also Hinton v. S. Carolina Dep’t of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335, 339 (Ct. App. 2004) (“If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no need to employ rules of statutory interpretation and the court has no right to look for or impose another meaning.”); *City of Camden v. Brassell*, 326 S.C. 556, 486 S.E.2d 492, 495 (Ct. App. 1997) (“Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature’s language.”).

Even if it is assumed that the general corporations statute would allow for the appointment of a new BIC for a real estate salesperson—which is denied in this case—the specific statute found at § 40-57-130(C)(3) is a qualifier to the general statute. As discussed above, § 40-57-130(C)(3) allows the appointment of a new BIC only when the existing BIC is dead or medically incapacitated. It does not allow for the appointment of a new BIC because of “irreconcilable differences as to management issues,” an “irreparable working relationship” between the existing BIC and one of her salespersons, or any other reason stated in the Circuit Court’s order. Because the conditions enumerated in § 40-57-130(C)(3) do not apply in this case, the Circuit Court erred as a matter of law by appointing a new BIC for Leigh-Jones.

B. The Circuit Court’s Order Makes it Impossible for Appellant to Comply with South Carolina’s Statutes Governing Real Estate Brokers-in-Charge and Salespersons.

The Circuit Court’s order makes it impossible for Olasov to comply with the obligations imposed upon her as BIC by Chapter 57 of Title 40. The order purports to relieve Olasov “of her

supervisory authority and responsibility over Leigh-Jones” while at the same time holding that “Leigh-Jones shall continue to utilize the existing trust account for LLH for which she is a co-signatory with Olasov.” *See* Order pp. 3-4. The order also directs the new BIC not to deposit the fees or compensation earned by LLH from Leigh-Jones’s listings into LLH’s operating account, but instead authorizes him to deposit the funds into a new bank account that he and Leigh-Jones will control (and over which Olasov has no control) and further authorizes the new BIC to “make all decisions on disbursement of all funds from that” bank account. *Id.* p. 3. These provisions of the Circuit Court’s order are irreconcilable with and violate South Carolina law.

A salesperson cannot engage in real estate transactions except under a licensed BIC. Leigh-Jones’s listings are owned by LLH (the brokerage), not Leigh-Jones. *See* Walker Depo. pp. 67-69. South Carolina’s real estate statutes specifically require that “[a]ll cash monies or certified funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for his broker-in-charge . . . immediately must be delivered to the broker-in-charge . . . , except for checks received as escrow or security deposits for sales or lease agreements, which must be delivered to the broker-in-charge . . . as soon as the sales or lease agreement is ratified by both parties.” S.C. CODE ANN. § 40-57-135(B)(8). Contrary to this statute, the Circuit Court’s order diverts to the new BIC and Leigh-Jones the funds belonging to LLH from Leigh-Jones’s listings and allows those funds to be deposited into a separate account controlled by the new BIC and Leigh-Jones and over which Olasov has no control.

As part of her duties as BIC, Olasov is required to “adequately supervise employees or associated licensees to ensure their compliance with this chapter and maintain real estate trust accounts when required by law,” to “maintain adequate, reasonable, and regular contact with [her] associated licensees engaged in real estate transactions so as to prevent or curtail practices

by a licensee which would violate any provision of this chapter . . . ,” to “instruct employees and associated licensees on the proper handling of trust funds,” and to “ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts.” *Id.* § 40-57-135(A)(1), (3), (4), (6). The statute further requires the BIC to maintain records for the real estate trust accounts, imposes specific requirements on when funds must be deposited into the company’s trust account and when they can be disbursed from the account, and requires the BIC to render an accounting involving the trust funds. *Id.* § 40-57-135(B)(4) & (7).

The statute also states that the BIC “shall establish and *maintain control of and responsibility for an active real estate trust account* so designated in the company name for which the respective broker-in-charge’s . . . license is issued” *Id.* § 40-57-135(B)(1) (emphasis added). Only a licensed BIC can supervise a trust account. *See* Walker Aff. ¶ 3. The statute provides that the South Carolina Real Estate Commission may take disciplinary action against a licensee (*i.e.*, the BIC, salesperson, etc.) if he or she “fails, within a reasonable time, to account for or to remit any monies coming into his possession which belong to others,” “accepts deposit money which is to be delivered to the licensee’s principal in a real estate transaction without informing the payor and having the payor acknowledge in writing who will hold the money received by the licensee,” or “issues a check in connection with his [or her] real estate business which is returned for insufficient funds or closed account.” S.C. CODE ANN. § 40-57-145(A)(10), (17), & (18).

Olasov obviously cannot fulfill these statutorily-mandated duties (or ensure that Leigh-Jones fulfills her statutory obligations) when the Circuit Court divested her of any authority to supervise or control Leigh-Jones. The Circuit Court’s order expressly permits Leigh-Jones to continue to deposit or withdraw funds and direct transactions from LLH’s trust account while at

the same time specifically barring Olov from controlling or supervising Leigh-Jones or her transactions involving the LLH trust account. The order further authorizes the new BIC to dispose of LLH's commissions generated by Leigh-Jones subject to his exclusive discretion or judgment without any involvement, consent, oversight, or control by Olov or LLH. The order does not require Leigh-Jones or the new BIC to hold LLH's commissions or to refrain from disbursing those funds. It is impossible for Olov to maintain control of and responsibility for LLH's trust account under the terms of the Circuit Court's order. The order subjects Olov to potential discipline when she has no ability to supervise or control the conduct in question.

IV. THE CIRCUIT COURT ERRED BY GRANTING RELIEF TO RESPONDENT BASED ON ALLEGATIONS UNSUPPORTED BY ANY EVIDENCE IN THE RECORD AND WITHOUT FIRST AFFORDING APPELLANT A FULL HEARING AND AN OPPORTUNITY TO RESPOND TO RESPONDENT'S ALLEGATIONS.

The Circuit Court justified its appointment of a new BIC for Leigh-Jones based on Leigh-Jones's bare allegations that Olov refused to supervise her listings and that exigent circumstances existed because real estate closings were imminent involving Leigh-Jones's alleged "sales pipeline" of over \$14.5 million in real estate deals. The Circuit Court improperly based its order on Respondent's allegations, which are unsupported by any evidence in the record, and issued its order before completing a full hearing on Leigh-Jones's motion and without allowing Olov and LLH the opportunity to present their evidence in opposition to Respondent's allegations.

The hearing on Leigh-Jones's motion started on June 10 and 11, 2014. However, the hearing did not finish and the Circuit Court rescheduled it to resume on August 19, 2014. When the hearing was adjourned at the end of the day on June 11, Leigh-Jones had not yet completed the presentation of her case and Olov and LLH had not yet had the opportunity to present their

rebuttal or response evidence. *See* 8.19.14 Hearing Transcript pp. 6-7; Rosen letter dated 7.16.14; Emails from Niland dated 7.6.14 and 8.5.14. The Circuit Court's order acknowledges that the hearing was not completed. *See* Order p. 2. Despite the fact that Olasov and LLH had not yet presented their witnesses in opposition to Leigh-Jones's motion, the Circuit Court nevertheless *sua sponte* ordered at the end of the second day of testimony that it was appointing a new BIC for Leigh-Jones under S.C. CODE ANN. § 33-14-320, which authorizes the appointment of a receiver or custodian for a corporation. *See* 6.11.14 Hearing Transcript pp. 309-18. That statute provides that a court shall not appoint a custodian or receiver until it has conducted a hearing on the matter. S.C. CODE ANN. § 33-14-320(a) ("The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian.").

The Circuit Court disregarded § 33-14-320(a) by appointing a new BIC under the statute before completing the hearing on Leigh-Jones's motion or allowing Olasov and LLH to present their witnesses and evidence in opposition to the motion. The foundation of the legal process mandates that the court *audi alteram partem*: listen to the other side. *Phillips v. Crown Cent. Petroleum Corp.*, 556 F.2d 702, 705 (4th Cir. 1977) ("One must hear before one decides. *Audi alteram partem* is a fundamental rule of procedural fairness."). Numerous cases hold that a party interested in the relief sought by a motion has a right to an opportunity to be heard before the court adjudicates the motion. *See Brown v. Mickens*, 256 S.C. 346, 182 S.E.2d 417, 417 (1971); *Westbury v. Bauer*, 284 S.C. 385, 326 S.E.2d 151, 152 (1985); *South Carolina Dept. of Social Services v. Beeks*, 325 S.C. 243, 481 S.E.2d 703, 705 (1997); *State ex rel. McLeod v. Brown*, 278 S.C. 281, 294 S.E.2d 781, 782 (1982).

The Circuit Court did not conduct a full or complete hearing on Leigh-Jones's motion

before ordering the appointment of a new BIC for Leigh-Jones; instead, it only allowed Leigh-Jones to present her case. If a full hearing had been held, Olasov and LLH would have shown that she did not refuse to supervise Leigh-Jones (indeed she did everything she could to provide supervision), that there are no exigent circumstances justifying the appointment of a new BIC for Leigh-Jones, and that the alleged emergency necessitating the appointment of a new BIC was manufactured by Leigh-Jones.

Irrespective of the fact that the Circuit Court made a *sua sponte* ruling without conducting a full hearing, the evidence submitted by Leigh-Jones fails to support the assertions made by her legal counsel at the hearing. At the June hearing, Leigh-Jones's counsel claimed that Olasov had refused to supervise Leigh-Jones. However, Leigh-Jones admitted no evidence showing that Olasov had refused to supervise any of her listings or had failed to perform any act which was necessary for any real estate deal to close.⁷ Olasov herself had testified that she had properly supervised Leigh-Jones. *See* 6.11.14 Hearing Transcript pp. 44-47, 230. After the June hearing was adjourned and before it resumed on August 19, 2014, Olasov submitted additional materials documenting her numerous attempts to supervise Leigh-Jones and her repeated requests for

⁷ Leigh-Jones's counsel did claim at the hearing that Olasov had failed to promptly disburse a commission to Leigh-Jones which she allegedly earned as a result of a closing that occurred involving a property known as 9 Middleton. *See* 6.11.14 Hearing Transcript p. 313. However, even by Leigh-Jones's admission, Olasov had not prevented the sale from closing. Instead, Olasov simply had refused to disburse a commission to Leigh-Jones which she claimed she had earned because Leigh-Jones refused to provide documentation requested by Olasov to show that the commissions were properly disclosed to the parties in the transaction as required by state law—*i.e.*, Olasov was performing the duties required of her as a BIC by state law. *See* 6.11.14 Hearing Transcript pp. 223-25; Olasov Aff. filed 2.19.14 Exh. 24; Olasov 4th Supp. Aff. ¶ 28 & Exh. 18; Walker Aff. filed 4.23.14; Walker Depo. pp. 23-24, 33-54. Olasov had consulted with Ken Walker (an expert in South Carolina real estate brokerage practices) who advised her Leigh-Jones had not properly disclosed the commissions to the parties on the closing documents. *See* Walker Aff. filed 4.23.14; Walker Depo. pp. 23-24, 33-54; 6.11.14 Hearing Transcript pp. 48-49, 51-54, 223-25.

information from Leigh-Jones for this purpose, but Leigh-Jones refused to allow her to do so and refused to provide the requested documentation. *See* Olasov 4th Supp. Aff. ¶ 28 & Exh. 18.

On June 9, 2014, on the eve of the initial hearing, Leigh-Jones’s attorneys filed a brief in support of her motion for appointment of a receiver or custodian which argued for the first time that Leigh-Jones had a “sales pipeline” of over \$14.5 million in real estate deals that needed to close in the immediate future. *See* Memo. in Supp. Motion Appt. of Receiver. Leigh-Jones had not provided this information to Olasov before the hearing. *See* 6.11.14 Hearing Transcript p. 35. At the June hearing, Leigh-Jones’s attorneys also reiterated their claim that Leigh-Jones’s alleged \$14.5 million “sales pipeline” of real estate deals necessitated the immediate appointment of a new BIC to supervise her. *See* 6.11.14 Hearing Transcript pp. 309-318. However, Leigh-Jones admitted no evidence at the hearing to support her allegations that she had a “sales pipeline” of real estate deals or that closings were imminent on these alleged deals. On June 12, 2014, when Olasov’s counsel requested that Leigh-Jones provide information and documentation to support her claim that appointment of a new BIC was urgently needed because of her pipeline of impending real estate transactions, Leigh-Jones refused to provide the requested information or documentation. *See* Email exchange dated 6.12.14; Rosen letter dated 6.16.14.⁸

Leigh-Jones’s attorneys also represented to the Court at the June hearing that the immediate appointment of an interim BIC was necessary for a closing to occur on June 23, 2014,

⁸ Leigh-Jones’s claim that Olasov refused to supervise her listings, that she had a \$14.5 million “sales pipeline” of real estate deals, and that closings on her deals were imminent are supported only by her lawyers’ arguments. It is well-settled law that lawyer argument is not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) (“Arguments of counsel are also not evidence.”); *McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933) (“This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered.”); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) (the trial court properly disregarded the statements of counsel that he claimed reflected testimony appearing in depositions not otherwise entered into evidence).

involving property known as 14 Middleton Oaks. *See* 6.11.14 Hearing Transcript pp. 309-318; McQuillin letter dated 6.20.14. However, after the hearing, Olasov learned that Leigh-Jones did not represent the buyer in the transaction. The buyer was represented by Carolina One Real Estate. *See* MLS Closing Sheet. The seller/owner of 14 Middleton Oaks was Robin Rogers who works as an interior design affiliate under Leigh-Jones's business known as "Luxury Simplified Group." *See* Olasov Aff. filed 2.19.14 ¶¶ 53-57 & Exhs. 36, 41 & 42; Deed for 14 Middleton 6.25.14. Terri Seignious of Sea Islands Real Estate, LLC (who is a BIC) represented the seller in the transaction. *See* MLS Closing Sheet. Leigh-Jones merely had a co-company listing with Ms. Seignious. *Id.* Ms. Seignious is a former LLH salesperson, is a witness in this matter, and is involved in the conduct violating Leigh-Jones's non-compete agreement at issue in this litigation. *See* Amend. Compl. ¶¶ 31-34, 42-50; Olasov Aff. filed 2.19.14 ¶¶ 32-60. *Because Ms. Seignious is a BIC, it was unnecessary to appoint an interim BIC for Leigh-Jones in order to close the transaction involving 14 Middleton Oaks.* Leigh-Jones misled the Circuit Court by representing to the contrary.

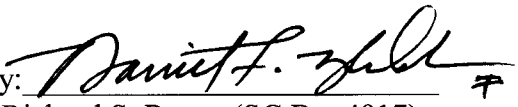
The Circuit Court's order should be reversed because it is improperly based on Respondent's allegations unsupported by evidence in the record and it was issued before the Circuit Court completed a full hearing on Leigh-Jones's motion and without allowing Olasov and LLH the opportunity to present their evidence in opposition to Respondent's allegations.

CONCLUSION

For the reasons stated, this Court should reverse and vacate the Circuit Court's order that divested Olasov of her role as BIC with supervisory authority over Leigh-Jones and which appointed a new BIC to supervise Leigh-Jones for an indefinite period of time.

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC

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ATTORNEYS FOR APPELLANTS

January 28, 2015.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

SC Court of Appeals

Appellate Case Nos. 2014-0001780 and 2014-0001792

SEBRINA LEIGH-JONES, *Plaintiff-Respondent*,
versus
EVE F. OLASOV, *Defendant-Appellant*,

And

LUXURY LAND AND HOMES, INC. AND EVE F. OLASOV, *Plaintiffs-Appellants*,
versus
SEBRINA LEIGH-JONES, CHRIS LEIGH-JONES, LUXURY SIMPLIFIED, LLC, BRIDGE
CHARLESTON INVESTMENTS, LLC, AND LUXURY SIMPLIFIED REAL ESTATE, INC.,
Defendants.

Of whom SEBRINA LEIGH-JONES is the *Respondent*.

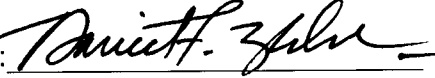
PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants and the Appellants' Designation of Matter to be Included in Record on Appeal on the Respondent by mailing a copy thereof via regular U.S. first class mail with sufficient postage affixed thereto to her attorneys of record on January 28, 2015 addressed as follows:

Wm. Howell Morrison, Esquire
Stafford J. McQuillin, III, Esquire
Haynsworth Sinkler Boyd, PA
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Respectfully submitted,

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ATTORNEYS FOR APPELLANTS

January 28, 2015.

ROSEN | HAGOOD

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RECEIVED

January 28, 2015

FEB 03 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

SC Court of Appeals

Re: *Sebrina Leigh-Jones v. Eve F. Olasov*
Appellate Case No. 2014-0001780 and

Luxury Land and Homes, Inc. and Eve F. Olasov v. Sebrina Leigh-Jones, Chris Leigh-Jones, Luxury Simplified, LLC, Bridge Charleston Investments, LLC, and Luxury Simplified Real Estate, Inc.
Appellate Case No. 2014-0001792

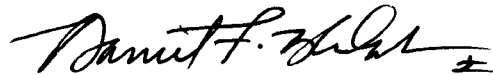
Dear Ms. Kitchings:

Please find enclosed for filing the originals and one (1) copy each of (a) the Initial Brief of Appellants, (b) Appellants' Designation of Matter to be Included in Record on Appeal, and (c) Proof of Service in the above-referenced matters, which cases were previously consolidated for appeal by Orders of the South Carolina Court of Appeals filed on September 26, 2014. We would greatly appreciate your filing these on our behalf and returned clocked-in copies to us in the return envelope provided.

Of course, please do not hesitate to contact me if you have any questions about the above.

With kind regards, I am

Sincerely yours,



Daniel F. Blanchard, III

DFB/db
Encls.

Cc: Wm. Howell Morrison, Esquire (w/ encls.)
Stafford J. McQuillin, III, Esquire (w/ encls.)



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SC Court of Appeals