THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Common Pleas Case No. 2010-CP-10-9158

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SC Court of Appeals

APPELLATE CASE NO. 2015-000111

Johnson Koola, *Pro se*, Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC Carolina One, and William E. Jenkinson, IV, Individually,

Of whom Trademark Properties, Inc., and Carolina One Real Estate are the Respondents.

INITIAL BRIEF OF RESPONDENT TRADEMARK PROPERTIES, INC.

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STATEMENT OF ISSUES ON APPEAL

Did the trial court correctly find that Respondent Trademark, a listing agent uninvolved in the sale of a condominium to Appellant, was not liable to Appellant for any non-disclosures and/or misrepresentations made during the sale transaction?

STATEMENT OF THE CASE

Appellant Koola ("Appellant") filed this civil action against Respondent Trademark Properties, Inc. ("Respondent Trademark") and other named Defendants, arising out of Appellant's purchase and subsequent ownership of a condominium unit in the Cambridge Lakes condominium development.

As a matter of brief but relevant background, on June 16, 2008, the Cambridge Lakes Condominium Homeowners Association, Inc. (the "HOA"), on behalf of itself and the individual condominium unit owners, filed a lawsuit against Respondent Trademark and other parties, alleging defects in the construction and conversion of the condominium buildings and violations of the South Carolina Horizontal Property Regime Act, S.C. Code Ann. § 27-31-1 et seq. (the "Horizontal Property Act"), in connection with the sale of the condominiums (the "HOA's 2008 lawsuit"). Out of the approximate 104 unit-owners in Cambridge Lakes at that time, Appellant was one of approximately ten unit owners that refused to join the HOA's 2008 lawsuit. In 2011, the HOA's 2008 lawsuit settled against Respondent Trademark and other parties on the eve of trial.

On November 4, 2010, Appellant filed a Complaint against Respondent Trademark and eight (8) other Defendants, alleging that he relied on false representations made to him relative to his decision to purchase his condominium (R.__, Compl. 30, 31, 43, 47) and that he suffered damage from these misrepresentations and other non-disclosures when he placed his condominium unit up for sale and then learned it was "virtually worthless because of the violations of the Horizontal Property Act." (R. __, Compl. 18) Among the eight other defendants named was Defendant O'Shaughnessy Real Estate, Inc. d/b/a Prudential Carolina Real Estate n/k/a Carolina One Real Estate

("Carolina One"), the listing office/agency involved in the sale transaction of the subject condominium to Appellant. (R.__, Compl. 11; R.__, MLS Report; R.__, Consent to Dual Agency; R.__; Listing Info.)

Respondent Trademark timely answered, then moved for summary judgment on December 5, 2013 on grounds that it was not involved in the condominium sale transaction, out of which Koola's alleged damages arose. (R.__, Resp't Mot. for Summ. J. 1-2) Respondent Trademark's Motion was supported by the Affidavits of Richard Davis, (R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013), a Memorandum in Support of Summary Judgment (R.__, Resp't Mem. in Supp. of Mot. for Summ. J.), a Supplemental Memorandum in Support of Summary Judgment (R.__, Resp't Supplemental Mem. in Supp. of Mot. for Summ. J.), and Appellant's Complaint (R.__, Compl.)

On October 13, 2014, Appellant filed a Consent Order for William Jung, Esq. to Withdraw as Counsel, then, proceeding *pro se*, filed his memoranda and evidentiary exhibits in response to Respondent Trademark's Motion for Summary Judgment.

The Motion for Summary Judgment was heard by the Honorable R. Markley Dennis, Jr. on October 22, 2014. (R.__, Order Granting Summ. J.). Judge Dennis issued a Form 4 Order on October 28, 2014 (R.__, Form 4) and signed the formal order granting summary judgment to Respondent Trademark on November 3, 2014, based on the undisputed fact that Respondent Trademark was not involved in the sale of the subject condominium to Appellant. (R.__, Order Granting Summ. J.) Appellant timely moved to reconsider on November 12, 2014. (R. __, Mot. to Reconsider.) Appellant submitted additional memoranda in support of his positions. (R. __, Mem. in Supp. of Mot. to

Reconsider.) Judge Dennis issued a Form 4 Order denying the Motion to Reconsider, finding no need for oral argument on the matter and declining to modify the previous order. (R. __, Order Denying Mot. to Reconsider.) Appellant served a Notice of Appeal on January 2, 2015.

STATEMENT OF FACTS

This case arises out of Appellant's purchase of a condominium unit at a complex known as Cambridge Lakes in Mount Pleasant, South Carolina. The Cambridge Lakes complex was originally an apartment complex that was converted to a condominium complex and sold as individual condominium units beginning in 2002. (R.__, Compl. 4, 6). Appellant purchased his subject condominium in February 2004. (Br. of Appellant p. 7; R__, Agreement To Buy and Sell)

The following material facts are undisputed:

- Cambridge Two, LLC was the sole owner of Cambridge Lakes when it was converted from apartments to condominiums. (R.__, Ex. Right to Sell; Br. of Appellant p. 4)

- In August 2002, Respondent Trademark was hired as the marketing and listing agent for Cambridge Lakes condominiums by Albert V. Estee of Cambridge Two, LLC. (R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013; R__, Ex. Right to Sell)

- Respondent Trademark never leased, owned, or co-owned any unit in the Cambridge Lakes apartment. (R.__, Davis Aff. Dec. 3, 2013; R.__, Order Granting Summ. J. 2)

- Cambridge Two, LLC, as owner and developer of Cambridge Lakes, established Cambridge Lakes Horizontal Property Regime on February 24, 2003, through the recordation of the Master Deed. (R.__, Master Deed)

- Respondent Trademark acted as the listing and marketing agent for Cambridge Lake condominiums until May 2003. (R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013; Br. of Appellant p. 4)

- Between August 2002 and May 2003, Respondent Trademark completed approximately thirty (30) pre-sales of the Cambridge Lakes converted

condominiums. None of Respondent Trademark's thirty (30) presales were made to Appellant Koola or involved the sale of Appellant Koola. (R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013; Br. of Appellant p. 2)

- After May 2003, Carolina One acted as the listing's condominium. (Br. of Appellant p. 2)

- Respondent Trademark had no further involvement with the Cambridge Lakes project, as a listing agent or otherwise, after it ceased to act as the listing and marketing agent in May 2003. (R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013)

- In January 2004, Appellant entered into a Buyer Representation Agreement with Carolina One, for Carolina One to act as Appellant's exclusive buyer's agent. (R.__, Compl. 11; Br. of Appellant p. 5-6; R.__, Buyer Representation Agreement)

- On January 24, 2004, Carolina One provided a Consent to Dual Agency and Relationship Disclosure to Appellant, which Appellant signed, granting Carolina One consent to act as a dual agent. (R.__, Consent to Dual Agency)

- Appellant purchased his subject condominium unit in February 2004, more than 8 months after Respondent Trademark's services as a listing agent at Cambridge Lakes ended. (Br. of Appellant p. 5; R.__, Compl. 11; R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013)

- When Appellant purchased his condominium unit in February 2004, the listing agent was William E. Jenkinson, IV, from Carolina One. (R.__, Compl. 11; Br. of Appellant p. 6-7)

- When Appellant purchased his condominium unit in February 2004, the Sell Agent was Steve Hayes, from Carolina One. (R.__, MLS Report)

- Respondent Trademark had no interaction, communication, or other involvement with Appellant about the Cambridge Lakes condominiums or the sale of the subject condominium to Appellant. (Br. of Appellant. p. 2, 5; R.__, Order Granting Summ. J. 2)

Based on the foregoing, it is undisputed that Carolina One served as Appellant's and sellers' dual listing agent at all times relevant to Appellant's purchase of his condominium (Br. of Appellant pp. 5-6; R__, Buyer Representation Agreement; R__, Consent to Dual Agency; R__, Agreement to Buy and Sell) and that Respondent

Trademark was *__not__* involved in the sale of the subject condominium to Appellant (Br. of Appellant pp. 2,5,6; R __, Order Granting Summ. J.).

STANDARD OF REVIEW

An appellate court's review of a grant of summary judgment is subject to the same standard that governs the trial court under Rule 56(c), SCRP. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 509 (2006). A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving part. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24, 25 (1988).

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. Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 558-59, 671 S.E.2d 79, 85 (Ct. App. 2008). 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).

ARGUMENT

A. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT HAS NO VIABLE CAUSE OF ACTION AGAINST RESPONDENT TRADEMARK BECAUSE RESPONDENT TRADEMARK WAS NOT INVOLVED WITH THE SALE TRANSACTION.

Appellant's claims arise out of alleged misrepresentations and non-disclosures that occurred during the course of the sale transaction for the subject condominium, a transaction to which Respondent Trademark was not a party. (Br. of Appellant pp. 2, 3, 15, 18, 21-24, 26, 30; Order Granting Summ. J.) Broadly interpreted, Appellant brought causes of action for negligence, breach of contract/warranty, fraud, violations of the South Carolina Unfair Trade Practices Act and liability under the South Carolina Horizontal Property Act. Specifically, Appellant alleges his damages arose from the following:

1) The documents provided by Carolina One and/or Cambridge Two, LLC, misrepresented the quality of the condominium (Br. of Appellant p. 7); and

2) No one delivered the mandated Disclosure Report to Appellant prior to his purchase of the condominium, in violation of the Horizontal Property Act. (Br.of Appellant p. 2)

While it is difficult to pinpoint exactly what duties Appellant is alleging were breached by which defendant, the gravamina of Appellant's allegations of damages are the alleged misrepresentations and non-disclosures during the sale transaction in which he bought the subject condominium. (Br. of Appellant p. 2, 7; R. __, Compl. 18) Further, in his prayer for relief, Appellant asks this Court to find that a real estate listing agent that sells converted condominiums has a duty to provide the Disclosure Report to condominium buyers. (Br. of Appellant p. 30.) In reaching its decision, the trial court

properly recognized that the damages Appellant alleges to have suffered arise from the sale transaction, wherein Appellant purchased his condominium, (R __, Order Granting Summ. J. 4) and that any viable cause of action springs from the sale transaction for the subject condominium to Appellant. (R__, Order Granting Summ. J. 4).

It is undisputed that Respondent Trademark was not the listing agent for Cambridge Lakes condominiums when Appellant bought the subject condominium (or in the eight months prior to the time Appellant bought the subject condominium) and was not otherwise involved in the sale transaction of the subject condominium. (Br. of Appellant p. 2, 5; R.__, Order Granting Summ. J. 2; R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013) Further, according to his own pleadings, Appellant's claims arise from the sale transaction of the condominium, to which Respondent Trademark was not a party. (Br. of Appellant p. 2; R.__, Compl. 16, 17, 22, 23; R.__, Order Granting Summ. J.) Any duties Respondent Trademark owed to potential condominium buyers, while acting as the listing agent for Cambridge Lakes condominiums between August 2002 and May 2003, ended when Respondent Trademark ceased acting as the listing agent for Cambridge Lakes condominiums in May 2003. As set forth more fully below, the Respondent Trademark's lack of involvement in the sale transaction is fatal to Appellant's causes of action and the trial court correctly found that Respondent was entitled to judgment as a matter of law. (R.__, Order Granting Summ. J.)

1. Appellant Failed to Establish a Claim of Negligence.

With respect to negligence, the claimant must show: (1) a duty of care owed by the defendant to the plaintiff; (2) breach of that duty; and (3) damages resulting from the breach. Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 88, 502 S.E.2d 78, 82

(1998). "A breach of duty exists when it is foreseeable that one's conduct may likely injure the person to whom the duty is owned." Vinson v. Hartley, 324 S.C. 389, 400, 477 S.E.2d 715, 720 (ct. App. 1996). Since Respondent Trademark was not the Appellant's listing agent and was not involved in the sales transaction at issue, Respondent Trademark owed no duties to Appellant, and the cause of negligence fails as a matter of law.

2. Appellant Failed to Establish a Claim for Breach of Contract or Warranty.

Similarly, Appellant's cause of action for breach of contract and warranty fails as a matter of law. The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Here, there was no contract between Appellant and Respondent Trademark because Respondent Trademark's status as the listing agent for Cambridge Lakes ended eight (8) months before Appellant bought his condominium. (R.__, Davis Aff. Dec. 3, 2013) Appellant failed to plead any facts which demonstrated there was ever a contract that existed between himself and Respondent Trademark. Because bare legal conclusions without any facts to support those allegations are simply not enough to survive summary judgment, Appellant's claim of breach of contract was properly dismissed. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, (2009); Gauld, 380 S.C. at 558-59, 671 S.E.2d at 85.

Further, Under South Carolina law, the implied warranty of fitness and habitability "springs from the sale itself." Lane v. Trenholm Bldg. Co., 267 S.C. 497, 500, 229 S.E.2d 728, 729 (1976). However, Respondent Trademark was not involved in the sale of the subject condominium to Appellant. Instead, Appellant alleges that the

listing agent when he bought his condominium in early 2004 was William E. Jenkinson, IV. (R.__, Compl. 11) As a result, there is not even a scintilla of evidence that Respondent Trademark made any warranties to him about the subject condominium, and the breach of warranty claim fails as a matter of law. See Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).

3. Appellant Failed to Establish the Requisite Elements for Fraud.

With respect to Appellant's cause of action for fraud, in South Carolina, there are nine elements of fraud, all of which must be alleged and proven by "clear, cogent, and convincing evidence" for an Appellant to claim damages. First State Sav. & Loan v. Phelps, 299 S.C. 441, 446-47, 385 S.E.2d 821, 824 (1989); Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (2003). The nine elements necessary to prove fraud in South Carolina are: (1) **a representation**; (2) its falsity; (3) its materiality; (4) knowledge of the falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Schmauch, 354 S.C. at 672, 582 S.E.2d at 445 (2003) (emphasis added).

Again, Respondent Trademark was not involved in the sale of the converted condominium to Appellant. It is undisputed and, in fact, admitted by Appellant in his Complaint, that Appellant bought the subject condominium in early 2004 when the listing agent for Cambridge Lakes was William E. Jenkinson, IV. (R. __, Compl. 11) To the extent that any representations were made to Appellant by a listing agent, no representations were made about the condominium by Respondent Trademark, who

ceased to be Cambridge Lakes' listing agent eight (8) months before Appellant bought his condominium. (R.__, Davis Aff. Dec. 3, 2013)

4. Appellant Failed to Establish a Violation of the South Carolina Unfair Trade Practices Act.

Appellant's claim that Respondent Trademark violated the South Carolina Unfair Trade Practices Act ("SCUTPA") is without merit. Section 39-5-20(a) of the SCUTPA states that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. A plaintiff bringing a private cause of action under the SCUTPA must allege and prove the defendant's actions adversely affected the public interest. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). Whether an act or practice is unfair or deceptive within the meaning of the UTPA depends on the surrounding facts and the impact of the transaction on the marketplace. deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000)

The SCUTPA is unavailable to redress private wrongs if the public interest in unaffected. "An impact on the public interest may be shown if the acts or practices have the potential for repetition." Singleton v. Stokes Motors, Inc., 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)). The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. Singleton, 358 S.C. at 379, 595 S.E.2d at 466. Absent any representations to Appellant regarding the condominium or involvement in the transaction, there can be no act or omission which impacts the public

interest and Appellant's cause of action for violation of SCUPTA failed as a matter of law.

5. Appellant Cannot Establish that Respondent Trademark Violated the South Carolina Horizontal Property Act.

Finally, with respect to Appellant's allegation that Respondent Trademark is liable under the Horizontal Properties Act, South Carolina Code Sections 27-31-420 and 27-31-430, it is important to note Appellant makes no allegations that Respondent Trademark owed any duties or breached any duties relating to the preparation of the Disclosure Report. Appellant admits the "preparation of the S.C. Code Ann. § 27-31-430 mandated Disclosure Report is the sole responsibility of the developer/seller under all circumstances." (Br. of Appellant p. 15) Instead, Appellant merely alleges that when a listing agent sells a converted condominium on behalf of an owner, the listing agent has a duty under the Horizontal Property Act to *deliver* the Disclosure Report to the potential buyer. (Br. of Appellant pp. 3, 15, 21, 23)

This Court need not reach a decision whether a listing agent has any duties under the Horizontal Property Act to affirm the trial court's order granting summary judgment to Respondent Trademark. To the extent Appellant's interpretation of the duties of a listing agent under the Horizontal Property Act has any merit, it does not impact Respondent Trademark's liability to Appellant. It is undisputed Respondent Trademark was not the listing agent when Appellant purchased the subject condominium. (Br. of Appellant p. 2, 5; R.__, Order Granting Summ. J. 2; R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013)

B. RESPONDENT TRADEMARK IS NOT A JOINT TORTFEASOR WITH ANY PARTY INVOLVED IN THE SALE TRANSACTION OUT OF WHICH APPELLANT'S CLAIMS AROSE.

Joint tortfeasors are "two or more persons whose tortious conduct is a legal cause of a single and indivisible harm to the injured party." Restatement (Second) of Torts § 875 (1979).

Because it is undisputed that Respondent Trademark was not the listing agent for Cambridge Lakes condominiums when Appellant bought the subject condominium, Appellant relies on general allegations that Respondent Trademark is a "joint tortfeasor" with those parties involved in the sale transaction, to argue that Respondent Trademark violated the Horizontal Property Act. (Br. of Appellant pp. 2, 11-12, 14) Appellant fails to explain what tortious conduct Respondent Trademark independently committed to cause harm to Appellant. (Br. of App. p. 12) Appellant merely asserts "Respondent is a joint tortfeasor based on various authorities from previous Supreme Court decisions." (Br. of Appellant p. 3)

The Supreme Court decisions cited by Appellant have no clear connection to Appellant's allegation that Respondent Trademark is a joint tortfeasor with other parties that were involved in the sale transaction, out of which Appellant's alleged damages arose. (Br. of Appellant p. 12) See Barker v. Sauls, 289 S.C. 121, 345 S.E.2d 244 (1986) (discussing a tortfeasor's liability to a third party arising out of a contractual relationship with another); JKT Company, Inc. v. Hardwick, 274 S.C. 413, 265 S.E.2d 510 (1980) (discussing whether a corporation qualifies as a "natural person" for purposes of determining to whom implied warranties extend); Scott by McClure v. Fruehauf Corp., 302 S.C. 364, 396 S.E.2d 354 (1990) (discussing the joint strict liability of a seller and a

lessor of a defective trailer in a products liability action); Terlinde v. Neely, 275 S.C. 395, 271 S.E.2d 768 (1980) (discussing the right of subsequent purchasers of a home to pursue causes of action in contract and tort against the original home builder). Appellant offers no further explanation of the relationship of any these cases to his claims against Respondent Trademark. (Br. of Appellant p. 12)

The trial court correctly found that, since Respondent Trademark was not involved in the sales transaction out of which Appellant's damages arose, Respondent Trademark could not have been a "joint tortfeasor" in the alleged harm to Appellant. (R.__, Transcript p. 14; R.__, Order Granting Summ. J. 2) Therefore, the trial court correctly concluded Appellant does not have a viable cause of action against Respondent Trademark.

C. APPELLANT MISINTERPRETS SLOAN AND THE "LAW OF THE CASE" DOCTRINE.

Appellant's characterization of Sloan Const. Co. v. Southco Grassing, Inc., 395 S.C. 164, 717 S.E.2d 603 (2011) and its application to this case does not hold up to any scrutiny and should be disregarded. (Br. of Appellant pp. 21-23) Sloan stands for the proposition that a party is precluded from re-litigating, after an appeal, matters that were either not raised on appeal, or raised on appeal but rejected by the appellate court. Id. at 170, 717 S.E.2d at 606. This proposition is known as the "law of the case" doctrine. Id.

Appellant relies on a misunderstanding of the "law of the case" doctrine to argue that the trial court in this case is bound by the decisions made by the trial court in the HOA's 2008 lawsuit. Appellant fails to recognize that the HOA's 2008 lawsuit was a separate lawsuit, entirely distinct and independent from Appellant's case, which involved different parties, different allegations, and different facts than the present case. The law

of the case doctrine is inapplicable in this context, and the trial court properly granted Respondent Trademark summary judgment based on the undisputed facts of this case.

D. APPELLANT'S RELIANCE ON "LACK OF PRIVITY" ARGUMENTS IS MISPLACED.

Appellant next asserts that Respondent Trademark is liable to him for injury arising out of Respondent Trademark's "contractual relationship with another [principal, developer/seller], despite the absence of Privity" between Respondent Trademark and Appellant. (Br. of Appellant p. 25) Appellant provides no further explanation for the injury to himself that he alleges arose out of Respondent Trademark's contractual relationship with Cambridge Two, the developer/seller of Cambridge Lakes condominiums.

Appellant further asserts that Respondent Trademark is liable to him for negligence and cannot defend against this claim using a lack of privity defense. (Br. of Appellant p. 25) Appellant provides no explanation for what duty or breach thereof he alleges Respondent Trademark committed to support this claim of negligence. Appellant merely states: "Respondent is also liable to Koola for negligence, which arose from the fact that it is a joint tortfeasor." (Br. of Appellant p. 25)

Though Appellant cites to Barker v. Sauls, 289 S.C. 121, 345 S.E.2d 244 (1986) in support of his argument that Respondent was liable to him for negligence, he fails to recognize the crucial proposition of Barker:

> The key inquiry is what duty, if any, is owed by the tort-feasor to the third party. It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tort-feasor.

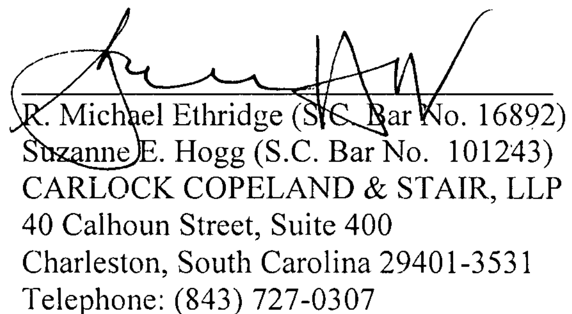
Id. at 122, 345 S.E.2d at 244.

Respondent Trademark and Appellant did not have any relationship recognized by law to support any duty owed by Respondent Trademark to Appellant. It is undisputed that Respondent Trademark was not the listing agent involved in the sale of the subject condominium to Appellant. (Br. of Appellant p. 2, 5; R.__, Order Granting Summ. J. 2; R.__, Davis Aff., Nov. 2, 2010; R.__, Davis Aff. Dec. 3, 2013) Thus, Respondent Trademark owed no duties to Appellant relating to the sale of the condominium. The trial court correctly found that Respondent Trademark is not liable to Appellant for negligence or any other viable cause of action because Respondent Trademark was not involved in the sale transaction out of which Appellant's claims arose. (R.__, Order Granting Summ. J.)

CONCLUSION

For the foregoing reasons, Respondent Trademark respectfully submits that the trial court's order granting summary judgment should be affirmed.

Respectfully submitted,



This 1st day of May, 2015.

R. Michael Ethridge (S.C. Bar No. 16892)
Suzanne E. Hogg (S.C. Bar No. 101243)
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Attorneys for Respondent Trademark Properties, Inc.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Common Pleas Case No. 2010-CP-10-9158

APPELLATE CASE NO. 2015-000111

RECEIVED
MAY 05 2015
SC Court of Appeals

Johnson Koola, *Pro se*, Appellant,

v.

Cambridge Two, LLC, Albert V. Estee, Individually, Cambridge Lakes, LP, Stephen R. Heape, Individually and as General Partner of Cambridge Lakes, LP, Cambridge Lakes Apartment Homes, a/k/a Cambridge Lakes Apartments, LP, a/k/a Cambridge Lakes Apartment Homes, LP, Classic Properties of Charleston, Inc., Cambridge Contracting, LP, Trademark Properties, Inc., Carolina One Charleston Home Team Properties, LLC, Charleston Home Team, LLC Carolina One, and William E. Jenkinson, IV, Individually,

Of whom Trademark Properties, Inc., and Carolina One Real Estate are the Respondents.

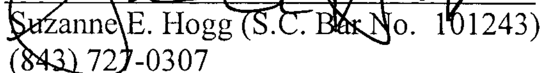
CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served Respondent's initial *Brief of Respondent* on the parties below by depositing copies of the same in the United States Mail, postage prepaid, addressed to attorneys of record as follows:

Johnson D. Koola, *Pro se*,
1587 Cambridge Lakes Dr.,
Mount Pleasant, SC 29464

Michael Scarafile, Esq.,
Carolina One Realty
4024 Salt Pointe Parkway
Charleston, SC 29405

This 1st day of May, 2015.



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(843) 727-0307

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Atlanta, Georgia 30303
404.522.8220

REPLY TO CHARLESTON OFFICE

May 1, 2015

RECEIVED
MAY 05 2015
SC Court of Appeals

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

Re: Johnson Koola v. Trademark Properties, Inc.
Appellate No.: 2015-000111
CCS File No.: 2183-48478

Dear Ms. Kitchings:

Enclosed for filing, please find an original and one copy of the following:

1. Initial Brief of Respondent Trademark Properties, Inc.; and

2. Respondent Trademark's Designation of Matter to be Included in Record on Appeal.

Please file the originals and return file-stamped copies to our office in the enclosed self-addressed, stamped envelope.

Should you have any questions or concerns, please do not hesitate to call me.

With kindest regards, I remain,

Sincerely yours,

SUZANNE E. HOGG

SEH/kjg
Enclosures
cc: Johnson D. Koola
Michael Scarafile, Esquire
Linda Gangi, Esquire
David J. Parrish, Esquire

First Class Mail

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MAY 05 2015
SC Court of Appeals

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