

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

Case No.: 2010-CP-40-007333

Shelby King, Appellant,

v.

Amy Bennett, The Amy D. Bennett Trust, and Amy Bennett Trustee, Respondents.

RECORD ON APPEAL

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Suite A
Columbia, South Carolina 29205
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Attorneys for Appellant

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Attorneys for Respondent

RECEIVED
FEB 13 2013
SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4007333

Shelby King

Amy Bennett and The Amy D. Bennett Trust, Amy Bennett,
Trustee

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self Represented Litigant

RICHLAND COUNTY
FILED
2012 MAY 9 AM 10:17
JEANETTE W. McBRIDE
C.C.J. & G.

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Plaintiff's Motion to Reconsider is Denied.

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge *NB* Judge Code 2161 Date 05/08/2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of May, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

T. Jeff Goodwyn, Jr.
ATTORNEY(S) FOR THE PLAINTIFF(S)

Todd R. Ellis
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court *Jeanette W. McBride*

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

JUDGM. IN A CIVIL CASE

CASE NUMBER: 2010CP4007333

Shelby King

Amy Bennett

Amy D Bennett Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other _____

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This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 20 June 2012 to attorneys of record or to parties (when appearing pro se) as follows:

T. Jeff Goodwyn Jr.

James H Swick
Todd R Ellis

Amy Bennett

Amy Bennett

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W McBride

RICHLAND COUNTY
FILED
2012 JUN 20 PM 12:19
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

IN THE FIFTH JUDICIAL CIRCUIT

Shelby King,)

Civil Action No.: 2010-CP-40073

Plaintiff,)

ORDER GRANTING DEFENDANTS

vs.)

MOTION FOR SUMMARY

Amy Bennett, The Amy D. Bennett Trust,)
and Amy Bennett, trustee,)

JUDGMENT

Defendants.)

2012 JUN 19 AM 10:50
RICHLAND COUNTY
FILED
JEANETTE G.S.
M. MCBRIDE

THIS MATTER CAME BEFORE THE COURT upon a motion by the Defendants Amy Bennett, The Amy D. Bennett Trust, and Amy Bennett trustee for summary judgment on all claims. A hearing was held on April 17, 2012. Counsel Jeff Goodwyn appeared for the Plaintiff and the Defendants were represented by Todd Ellis. Both parties filed memorandums in support of their positions. The Court considered the materials provided and the arguments of counsel and finds that there are no material facts in dispute, and considering the facts in a light most favorable to the Plaintiff, the Defendants are entitled to Summary Judgment on all claims.

The action was filed and served in October 2010. Ms. King is a licensed real estate agent who asserts that she is entitled to a fee from the Defendants for "125 hours of her time researching homes, market values and trends, previewing homes....and other activities real estate professionals regularly perform" Paragraph 5 of Plaintiff's Complaint. The Bennetts were

moving from Chicago, Illinois and ultimately purchased a home in Columbia.

In Plaintiff's Brief in Response to Defendant's Motion for Summary Judgment filed with the Court on November 8, 2011, Ms. King stipulates to the Court that "none of the Plaintiff's claims relate to recovery of a commission on the sale of the home" purchased by the Bennetts but rather for professional real estate services she provided preceding the sale. At the hearing on this motion, counsel for the Plaintiff conceded that there is no writing between the parties which would constitute an agreement for payment or a buyer's agent agreement between Ms. King and the Defendants. For the purpose of summary judgment, the Court considers all services and time Plaintiff provided such commonly known professional real estate services to be true as well as such purported material facts related to Ms. King alerting the Bennetts to the ultimate home they purchased. Considering these facts, the Court grants Defendant's motion for summary judgment on Plaintiff's claims for quantum meruit and unjust enrichment, fraud, civil conspiracy, conversion by false pretenses and for a constructive trust of proceeds she asserts she is entitled to receive from Plaintiffs for professional real estate services.

A licensed real estate agent is bound by South Carolina Code section 40-57-135 (D)(4) (1976). The law requires that a listing or buyer's representation agreement must be in writing and must set forth all material terms of the parties' agency relationship. The writing must provide, among other things, the amount of compensation to be paid or the method used in calculating the amount of compensation to be paid, and how and when the compensation is to be paid as well as the duties the agent is to provide. *Id.* There is no dispute in this case that there is no writing or

agency agreement signed by the parties outlining any of the terms required.

Plaintiff argues that her claims are based in equity, not contract, and she is not seeking a specific commission from the home the Defendants' purchased and therefore § 40-57-135 (D)(4) does not bar her claims. The Court disagrees. The statute does not limit the requirement of a written agreement between the parties to only such times a real estate agent is seeking to be paid by commission through the sale of a home, but rather, requires a written agreement with "any compensation to be paid or the method to be used in calculation the amount of compensation to be paid." S.C. Code §40-57-135(D)(4)(b). Whether the claims are postured in equity or contract, the law requires a clear writing of the terms. Ms. King is not prohibited from charging by the hour for services as she claims in her complaint. She is however barred from recovering for such services because she has no writing with Defendants which complies with the statute. Therefore, the Defendants motion for summary judgment is granted on all claims.

IT IS, THEREFORE, ORDERED that the Defendants' Motion for Summary Judgment is granted and that the Plaintiff's causes of action for Quantum Merit and Unjust Enrichment, Constructive Trust, Fraud, Civil Conspiracy, and Conversion by False Pretenses are dismissed with prejudice.

AND IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin

Columbia, South Carolina
6-18, 2012

COUNTY OF RICHLAND

Shelby King,

Plaintiff(s)

CIVIL ACTION COVERSHEET

2010 - CP - 40 - 07333

vs.

Amy Bennett, Charlie Bennett, and The Amy D. Bennett Trust,

Defendant(s)

(Please Print)

Submitted By: T. Jeff Goodwyn, Jr., Esquire

Address: 3100 Devine Street
Columbia, SC 29205

SC Bar #: 73789

Telephone #: (803) 251-4517

Fax #: (803) 251-4527

Other:

E-mail: JGoodwyn@Goodwynlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated: A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- Constructions (100)
- Debt Collection (110)
- Employment (120)
- General (130)
- Breach of Contract (140)
- Other (199)

Torts - Professional Malpractice

- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Notice/ File Med Mal (230)
- Other (299)

Torts - Personal Injury

- Assault/Slander/Libel (300)
- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Other (399)

Real Property

- Claim & Delivery (400)
- Condemnation (410)
- Foreclosure (420)
- Mechanic's Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (499)

Fraud/Quantum Meruit

Inmate Petitions

- PCR (500)
- Sexual Predator (510)
- Mandamus (520)
- Habeas Corpus (530)
- Other (599)

Judgments/Settlements

- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Other (799)

Administrative Law/Relief

- Reinstate Driver's License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture (840)
- Other (899)

Appeals

- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SCDOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Administrative Law Judge (980)
- Public Service Commission (990)
- Employment Security Comm (991)
- Other (999)

Special/Complex /Other

- Environmental (600)
- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of State Depositions (650)

Submitting Party Signature:

T. Jeff Goodwyn, Jr.

Date: October 18, 2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Florence, Murray, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Shelby King,

Plaintiff,

vs.

Amy Bennett, Charlie Bennett, and The
Amy D. Bennett Trust,

Defendants.

Civil Action No. 2010 CP

SUMMONS

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 OCT 20 AM 9:48

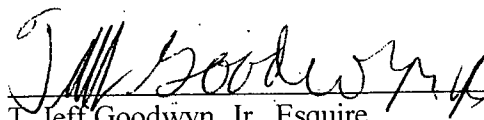
RICHLAND COUNTY
FILED

TO: THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served on you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office at 3100 Devine Street, Columbia, South Carolina, 29205, within thirty (30) days of the date of service, exclusive of the day of such service; if you fail to answer the said Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the said relief demanded in the Complaint.

GOODWYN LAW FIRM, LLC

By:



T. Jeff Goodwyn, Jr., Esquire
3100 Devine Street
Columbia, South Carolina 29205
(803) 251-4517
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
October _____, 2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Shelby King,)
)
 Plaintiff,)
)
 vs.)
)
 Amy Bennett, Charlie Bennett, and The)
 Amy D. Bennett Trust,)
)
 Defendants.)

Civil Action No. 2010 CP

COMPLAIN

JEANETTE W. McBRIDE
 C.C.P. & S.

2010 OCT 20 AM 9:48

RICHLAND COUNTY
 FILED

COMES NOW, Shelby King, and brings this action against the Defendants, stating the following:

1.

Plaintiff resides at 3108 Hope Avenue, Columbia, Richland County, South Carolina.

2.

Defendants Amy Bennett and Charles Bennett both reside at 14 Ashworth Court, Columbia, Richland County, South Carolina and may be served at this address and is subject to the jurisdiction and venue of this Court.

3.

On Information and belief Defendant The Amy D. Bennett Trust is a trust with Defendant Amy Bennett as the Trustee and Beneficiary and may be served through Defendant Amy Bennett at 14 Ashworth Court, Columbia, Richland County, South Carolina and is subject to the jurisdiction and venue of this Court.

4.

Defendants Amy Bennett and Charlie Bennett on behalf of themselves and as agents of Defendant The Amy D. Bennett Trust engaged the services of Plaintiff in November 2009 to locate them a suitable house in the Columbia, South Carolina area when they were moving to Columbia from Chicago, Illinois.

5.

Plaintiff spent approximately 125 hours of her time researching homes, market values and trends, previewing homes, communicating with the Defendants about homes, school districts, and other desired features, showing Defendants homes, driving Defendants to the airport and performing other activities real estate professionals regularly perform.

6.

On multiple occasions, Plaintiff asked Amy Bennett to execute a buyers agency agreement to which she neglected to do despite the fact that the agreement provided that the seller pay real estate commissions.

7.

From November 2009 until the time Plaintiff brought the Home to Defendants' attention on July 9, 2010, Defendants neither engaged the services of any other real estate agent nor did Defendants cease using Plaintiff's real estate services.

8.

A home located at 14 Ashworth Court, Columbia, South Carolina (the "Home") went on the market July 5, 2010.

9.

Recognizing that the Home met Defendant's specifications, Plaintiff sent an email dated July 9, 2010 and another email between July 5, 2010 and July 9, 2010 bringing this home to the attention of Amy Bennett.

10.

Defendant Amy Bennett responded to these emails by indicating in an email dated July 12, 2010 that she was interested in viewing the Home and wanted Plaintiff to show her the Home over the upcoming weekend.

11.

In response to Defendant Amy Bennett's request for her to show her the Home, Plaintiff previewed the Home and sent Defendant Amy Bennett an email dated July 14, 2010 with the information she gained from the preview.

12.

Defendant Amy Bennett responded to this email with an email dated July 14, 2010 that her and her husband were no longer interested in purchasing a home at this time and would contact Plaintiff when they became interested.

13.

Defendants then proceeded to directly contact the listing agent for the Home, Liz Sullivan, viewed the home, and negotiated a purchase contract for the Home.

14.

In the process of these negotiations, Defendants requested that the listing agent reduce her sales commission in exchange for a proportionate reduction in the purchase price of the Home. This amount was based on the real estate commission Plaintiff would have been entitled to had Defendants executed the buyer's agency agreement.

15.

Defendants have not offered to compensate Plaintiff for the work Defendants have asked Plaintiff to perform nor have the Defendants offered to reimburse Plaintiff for the out of pocket expenses she incurred in working for Defendants.

COUNT I
QUANTUM MERUIT AND UNJUST ENRICHMENT

16.

Plaintiff re-alleges the allegations set forth in paragraphs 1-15 as if set forth here verbatim.

17.

Plaintiff conferred upon Defendant the benefit of 125 hours of her time during which Plaintiff conferred her extensive knowledge and research into the Columbia, South Carolina real estate market, her resources in locating suitable homes, her skill in identifying and notifying Defendant of the home she ultimately purchased, as well as out of pocket expenses for meals and mileage.

18.

Because Defendant's Amy Bennett's intentional inaction when asked to execute a buyer's agency agreement, Defendants were able to then confer an additional benefit to themselves by negotiating an additional reduction in the purchase price of the Home by an amount equal to the real estate commission Plaintiff would have received had Defendant executed the buyers agency agreement.

19.

Defendant realized all of the above-reference benefits while working with Plaintiff in searching for a suitable home in the Columbia, South Carolina area.

20.

It is unjust and inequitable under the circumstances in this case for the Defendants to retain the benefits conferred upon them by Plaintiff without paying a fair value for them.

21.

As a result, Plaintiff is entitled to at least \$24,400 in compensation for the benefits conferred on Defendant.

COUNT II
CONSTRUCTIVE TRUST

22.

Plaintiff re-alleges the allegations set forth in paragraphs 1-21 as if set forth here verbatim.

23.

By negotiating with the listing agent of the Home for the listing agent to reduce her commission by three percent (3%) in light of the Defendants cutting Plaintiff out of receiving a commission, Defendants were able to unjustly profit by this same amount at the direct expense of the Plaintiff.

24.

Plaintiff asks the court to determine that Defendants are then holding the amount of the negotiated discount in a constructive trust in favor of Plaintiff.

COUNT III
FRAUD

25.

Plaintiff re-alleges the allegations set forth in paragraphs 1-24 as if set forth here verbatim.

26.

In her individual capacity and as agent or trustee of The Amy D. Bennett Trust, Defendant Amy Bennett made material false representations and withheld material information relating to how Plaintiff would be compensated for the real estate services Plaintiff was providing to Defendants.

27.

Defendants never intended to pay or cause to be paid to Plaintiff a real estate commission or to compensate Plaintiff in any way for the extensive real estate services Plaintiff provided Defendants.

28.

Defendants intended for Plaintiff to rely upon these representations so that Plaintiff would continue to provide her real estate services month after month under the belief that she would be compensated for her services.

29.

Plaintiff rightfully relied upon these representations and did not know that Defendant had no intentions of including Plaintiff in the negotiations of the sales contract of the Home or otherwise compensating Plaintiff for her extensive work.

30.

Instead of paying Plaintiff or causing Plaintiff to be paid a real estate commission for her extensive work for Defendants, Defendants not only refused to execute a buyers agency agreement or voluntarily pay her a commission, but they also used the fact that they were not going to pay Plaintiff a commission as a bargaining chip to further reduce the price of the home they purchased by that same amount.

31.

Defendants intended from the outset of the relationship to mislead Plaintiff into believing that she would be paid a real estate commission or otherwise so that they could use her for her knowledge, the use of her car, meals, experience and other real estate resources only to take the commission she was rightfully entitled to and enrich themselves through negotiating a discount of equal amount from the listing agent of the home they purchased.

32.

As a result of the fraud Defendants engaged in, Plaintiff is entitled to actual damages in the amount of \$24,400 and punitive damages in an amount to be determined at trial.

COUNT IV
CIVIL CONSPIRACY

33.

Plaintiff re-alleges the allegations set forth in paragraphs 1-32 as if set forth here verbatim.

34.

Defendants Amy Bennett, Charles Bennett and The Amy D. Bennett Trust entered into a civil conspiracy to defraud Plaintiff of commissions, meals, auto mileage, and rightful payment for time Plaintiff was asked to spend educating them on the Columbia, South Carolina real estate market, and locating the Home Defendants purchased.

35.

As a result of the Civil Conspiracy of Defendants Amy Bennett, Charles Bennett and Amy Bennett Trust, Plaintiff is entitled to actual and punitive damages in an amount to be determined at trial.

COUNT V
CONVERSION BY FALSE PRETENSES

36.

Plaintiff re-alleges the allegations set forth in paragraphs 1-35 as if set forth here verbatim.

37.

In an effort to have Plaintiff buy them meals and use Plaintiff's personal resources to show them homes and for trips to the airport, Defendants intentionally misled Plaintiff into believing that she would be paid for her work.

38.

As a result of this deception, Defendants have converted money, Defendant used to purchase Defendants' meals and the auto mileage used to transport Defendants in an amount to be determined at trial.

WHEREFORE, Plaintiff demands a jury trial, judgment against the Defendants in the amount of at least \$24,400.00, together with all interest allowed by law, all costs of this action, punitive or exemplary damages, a constructive trust in Plaintiff's favor, and such other legal and equitable relief as this Court deems proper.

This 18th day of October, 2010.

GOODWYN LAW FIRM, LLC

By: 

T. Jeff Goodwyn, Jr., Esquire
3100 Devine Street
Columbia, South Carolina 29205
(803) 251-4517
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Shelby King,)
 Plaintiff,)
 vs.)
)
 Amy Bennett, Charlie Bennett, and)
 The Amy D. Bennett Trust,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-07333

ANSWER OF DEFENDANTS
 AMY BENNETT, CHARLIE BENNETT
 AND THE AMY D. BENNETT TRUST

TO: T. Jeff Goodwyn, Jr., Esquire, Attorney for Plaintiff Shelby King.

Defendants Amy Bennett, Charlie Bennett and the Amy D. Bennett Trust hereby answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE
 (12(b)(1))

1. Defendants would show that the court lacks subject matter jurisdiction over this matter; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
 (12(b)(6))

2. Defendants would show that the Plaintiff has failed to allege facts sufficient to constitute a cause of action; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
 (General Denial)

3. Each and every paragraph of Plaintiff's Complaint not specifically admitted is herein denied and strict proof is demanded thereof.

4. Defendants admit the allegations of paragraphs 2 and 3 of Plaintiff's Complaint; however, Defendants would note that the property address is 14 Ashworth Lane and not 14 Ashworth Court.
5. Defendants deny the allegations of paragraphs 7, 11, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37 and 38 of Plaintiff's Complaint and demand strict proof thereof.
6. Defendants lack sufficient information to form a belief as to the allegations of paragraphs 1, 5, 8, 9, 10 and 17 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
7. To the extent that a response is required to paragraphs 16, 22, 25, 33, and 36 of Plaintiff's Complaint, Defendants deny said paragraphs and demand strict proof thereof.
8. Defendants deny the allegations of paragraph 4 of Plaintiff's Complaint to the extent that any of the Defendants "engaged the services of Plaintiff" and admit only that Plaintiff was one of several real estate professionals that Defendant Amy Bennett worked with in the search for a home in Columbia, South Carolina.
9. Defendants deny the allegations of paragraph 6 of Plaintiff's Complaint and admit only that Defendant Amy Bennett was unwilling to execute a buyers agency agreement with Plaintiff.
10. Defendants deny the allegations of paragraph 12 of Plaintiff's Complaint and admit only that Defendant Amy Bennett indicated that she was in no hurry to buy and that she did not wish to meet with Plaintiff as Plaintiff had suggested.
11. Defendants deny the allegations of paragraph 13 of Plaintiff's Complaint and admit only that Defendant Amy Bennett independently located several potential homes for purchase prior to her move to Columbia in mid July and that Defendant Amy Bennett contacted various listing agents and negotiated the purchase of the home utilizing the services on another broker.

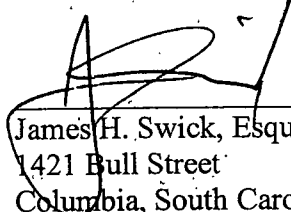
FOR A FOURTH DEFENSE

(Failure to Mitigate Damages)

12. Defendants would show that Plaintiff's claims are barred by their failure to mitigate damages as required by law.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

SWICK & HINDERSMAN, LLC



James H. Swick, Esquire
1421 Bull Street
Columbia, South Carolina 29201
803-253-8785
803-253-8786 (facsimile)
Attorney for Defendants

Columbia, South Carolina
December 13, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Shelby King,)
)
Plaintiff,)
)
vs.)
)
Amy Bennett, Charlie Bennett, and)
The Amy D. Bennett Trust,)
)
Defendants.)
_____)

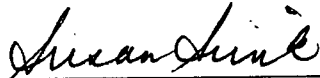
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-07333

CERTIFICATE OF SERVICE

I, Susan Swick, an employee of the law firm of Swick & Hindersman, LLC, attorney for Defendants in the above captioned matter, certify that I have this 23 day of December, 2010 served one copy of Defendant's Answer to the below named Attorney for Plaintiff by depositing the same in the United States Mail, with sufficient postage affixed, and addressed as follows:

Thomas Jefferson Goodwyn, Jr.
Goodwyn Law Firm
3100 Devine Street
Columbia, South Carolina 29205



Susan Swick

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Shelby King,)
)
Plaintiff,)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-07333

DEFENDANTS FIRST AMENDED
ANSWER AND COUNTERCLAIMS

vs.)
Amy Bennett, Charlie Bennett, and)
The Amy D. Bennett Trust,)
Defendants.)

FILED
2011 AUG - 8 PM 12:39
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO: T. Jeff Goodwyn, Jr., Esquire, Attorney for Plaintiff Shelby King.

Defendants Amy Bennett, Charlie Bennett and the Amy D. Bennett Trust hereby submits
Defendants' First Amended Answer and Counterclaims to Plaintiff's Complaint as
follows, pursuant to Rule 15(a) and Rule 13 (a) of the South Carolina Rules of Civil
Procedure :

FOR A FIRST DEFENSE

(12(b)(1))

1. Defendants would show that the court lacks subject matter jurisdiction over this matter; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

(12(b)(6))

2. Defendants would show that the Plaintiff has failed to allege facts sufficient to constitute a cause of action; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(12(b)(3))

3. Defendants would show that the Plaintiff has brought this action in an improper venue; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

(17)(a)

4. Defendants would show that the Plaintiff is not the real party in interest in this action; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 17 (a) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

Statute of Frauds

5. Defendants would show that the Plaintiff is barred from pursuing this action as a matter of law, therefore, Plaintiff's Complaint should be dismissed pursuant to SC Code of Laws, Title 32, Chapter 3-10 and 3-20, the Statute of Frauds.

FOR A SIXTH DEFENSE

SC Code of Laws, Title 40, Chapter 57

6. Defendants would show that the Plaintiff is barred from pursuing this action as a matter of law, therefore, Plaintiff's Complaint should be dismissed pursuant to SC Code of Laws, Title 40, Chapter 57; especially 135(D)(4); 137(Q); 139(G) and 145(E).

FOR A SEVENTH DEFENSE

(General Denial)

7. Each and every paragraph of Plaintiff's Complaint not specifically admitted is herein denied and strict proof is demanded thereof.
8. Defendants deny the allegations of paragraphs 2 of Plaintiff's Complaint. Defendants would note that the property address is 14 Ashworth Lane and not 14 Ashworth Court.

9. Defendants deny the allegations of paragraph 3 of Plaintiff's Complaint.
10. Defendants deny the allegations of paragraphs 7, 11, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37 and 38 of Plaintiff's Complaint and demand strict proof thereof.
11. Defendants lack sufficient information to form a belief as to the allegations of paragraphs 1, 5, 8, 9, 10 and 17 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
12. To the extent that a response is required to paragraphs 16, 22, 25, 33, and 36 of Plaintiff's Complaint, Defendants deny said paragraphs and demand strict proof thereof.
13. Defendants deny the allegations of paragraph 4 of Plaintiff's Complaint to the extent that any of the Defendants "engaged the services of Plaintiff" and admit only that Plaintiff was one of several real estate professionals that Defendant Amy Bennett worked with in the search for a home in Columbia, South Carolina.
14. Defendants deny the allegations of paragraph 6 of Plaintiff's Complaint and admit only that Defendant Amy Bennett did not execute a buyers agency agreement with Plaintiff.
15. Defendants deny the allegations of paragraph 12 of Plaintiff's Complaint and admit only that Defendant Amy Bennett indicated that she was in no hurry to buy and that she did not wish to meet with Plaintiff as Plaintiff had suggested.
16. Defendants deny the allegations of paragraph 13 of Plaintiff's Complaint and admit only that Defendant Amy Bennett independently located several potential homes for purchase prior to her move to Columbia in mid July, 2010 and that Defendant Amy Bennett contacted various listing agents and negotiated the purchase of the home utilizing the services of another broker.

FOR A EIGHTH DEFENSE

(Failure to Mitigate Damages)

17. Defendants would show that Plaintiff's claims are barred by their failure to mitigate damages as required by law.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper including sanctions pursuant to SC Code of Laws Title 15, Chapter 36, Frivolous Lawsuits.

COUNTERCLAIM AGAINST PLAINTIFF SHELBY KING

Now comes Amy Bennett, Charlie Bennett and the Amy Bennett Trust, (Defendants) and brings these counterclaims against the (Plaintiff), Shelby King as follows:

COUNT 1

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

18. Plaintiff, Shelby King, has intentionally filed this lawsuit and continued with this lawsuit since it was filed on October 25, 2010, knowing that Defendant's did not have a written and signed buyers agency agreement, as mandated by SC Code of Laws, Title 40, (which applies to the real estate industry, including brokers) with Plaintiff which would have detailed all agreed to commissions and/or amounts due her and from whom the payment would have been made .
19. Plaintiff, Shelby King, on August 24, 2010, sent Defendants an email stating that defendants actions were "unconscionable" and demanding that Defendants pay her money. The email sent to Defendant Dr. Charlie Bennett, a state employee, was sent to him at his work address.
20. On September 13, 2010, Plaintiff, Shelby King, through her attorney, wrote to Defendant Amy Bennett again demanding payment of \$23,700.
21. Plaintiff, Shelby King, by filing her action in the Court of Common Pleas in Richland County, South Carolina, Case No. 2010-CP-40-07333 on October 25, 2010, accuses Defendants of, among other things, Fraud, Civil Conspiracy, and Conversion by False Pretenses in a public forum, the court system.
22. These actions by Plaintiff, Shelby King, have caused Defendants emotional distress, have caused Defendants damages and are ongoing by virtue of the ongoing nature of her lawsuit.

23. As a result of Plaintiff Shelby King's actions causing Defendant's intentional infliction of emotional distress, Defendant's are entitled to actual and punitive damages in an amount to be determined at trial.

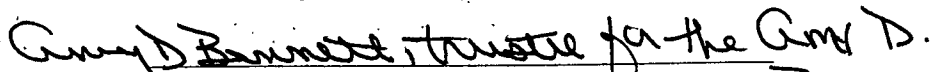
COUNT 2
LIBEL AND SLANDER

24. Plaintiff, by intentionally filing her action in the Court of Common Pleas in Richland County, South Carolina, Case No. 2010-CP-40-07333 on October 25, 2010, accuses Defendants of, among other things, Fraud, Civil Conspiracy, and Conversion by False Pretenses in a public forum, the court system.
25. Plaintiff, by filing her complaint has imputed Defendants have committed an act moral turpitude and reflects negatively on Defendant's character, morality and integrity.
26. The statements contained in Plaintiff's complaint are false.
27. Defendant Dr. Charles Bennett is a state employee and is employed by the University of South Carolina.
28. As a result of Plaintiff's intentional actions, Defendants have incurred damages.
29. As a result of Plaintiff, Shelby Kings actions, Defendant's are entitled to actual and punitive damages in an amount to be determined at trial.

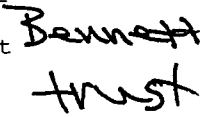
WHEREFORE, Defendants Amy Bennett, Charlie Bennett and the Amy Bennett trust demands a jury trial, judgment against the Plaintiff Shelby King in an amount to be determined at trial, all costs of this action, punitive or exemplary damages and such other legal and equitable relief as this Court deems proper.

Respectfully submitted,





Amy Bennett, Charlie Bennett and Amy D.
Bennett, trustee of the Amy D. Bennett Trust
14 Ashworth Lane
Columbia, SC 29206
847 804 2480
clbhealth@aol.com
Pro Se



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Shelby King,

Plaintiff,

vs.

Amy Bennett, Charlie Bennett, and The
Amy D. Bennett Trust,

Defendants.

Civil Action No. 2010 CP 40-07333

**PLAINTIFF'S ANSWER AND REPLY
TO DEFENDANTS' COUNTERCLAIM**

RICHLAND COUNTY
FILED
SEP - 9 AM 9:33
ANNETTE W. MCBRIDE
C.C.P. & G.S.

COMES NOW Plaintiff, Shelby King, and files this Answer to Defendants' Counterclaims and responds to Defendants' allegations as follows:

FOR A FIRST DEFENSE

Plaintiff denies each allegation not specifically addressed below and responds to each numbered paragraph in Defendants' Counterclaim as follows:

1.

With respect to paragraph 18 of Defendants' Counterclaim, Plaintiff admits that she filed this Complaint in this case October 20, 2010 and denies the other allegations in this paragraph as stated.

2.

With respect to paragraph 19 of Defendants' Counterclaim Plaintiff admits that she sent Amy Bennett and Charlie Bennett an email August 24, 2010 stating in part that their behavior was unconscionable and requesting that they pay her a commission on the sale of the home. Plaintiff denies any other allegations made in this paragraph.

3.

With respect to paragraph 20 of Defendants' Counterclaim Plaintiff admits that her attorney wrote Amy Bennett a demand letter dated September 13, 2010 in an effort to resolve this dispute short of litigation.

4.

With respect to paragraph 21 of Defendants' Counterclaim Plaintiff admits that, through her attorney, she filed this lawsuit in the Richland County Circuit Court on October 20, 2010 with the allegations as set forth in the Complaint. Plaintiff denies any other allegations set forth in this paragraph.

5.

Plaintiff denies the allegations set forth in paragraph 22 of Defendants' Counterclaim.

6.

Plaintiff denies the allegations set forth in paragraph 23 of Defendant's Counterclaim.

7.

With respect to paragraph 24 of Defendants' Counterclaim, Plaintiff admits that she filed the Complaint in this case October 20, 2010 with the allegations set forth therein and denies the other allegations in this paragraph as stated and denies that the filing of the suit meet the publication requirement for a defamation claim.

8.

With respect to paragraph 25 of Defendants' Counterclaim, Plaintiff denies the allegations as stated.

9.

With respect to paragraph 26 of Defendants' Counterclaim, Plaintiff denies that the allegations made in Plaintiff's Complaint are false.

10.

With respect to paragraph 27 of Defendants' Counterclaim, Plaintiff is without sufficient information to either admit or deny the allegations.

11.

Plaintiff denies the allegations set forth in paragraph 28 of Defendants' Counterclaim.

12.

Plaintiff denies the allegations set forth in paragraph 29 of Defendants' Counterclaim.

FOR A SECOND DEFENSE

13.

Defendants have alleged libel and slander against Plaintiff. Plaintiff asserts truth as an absolute defense to these claims.

14.

FOR A THIRD DEFENSE

Defendants' Counterclaims fail to state a claim against the Plaintiff upon which relief can be granted.

15.

FOR A FOURTH DEFENSE

This Plaintiff would show, upon information and belief, that the Defendants' counterclaim for punitive damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States of America in that it violates the double

jeopardy clause in that this Plaintiff could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because this Plaintiff can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Defendant's Counterclaim for punitive damages violates this Plaintiff's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills this Plaintiff's exercise of that right; the Defendants' Counterclaim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed, the Defendants' Counterclaim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Defendants' Counterclaim for punitive damages should be dismissed.

FOR AN FIFTH DEFENSE

16.

This Plaintiff preserves and reserves the right to rely on and assert any and all other applicable defenses either in contract or under the law as may be asserted by any other Party in this action or that may become evident in its investigation and Discovery.

FOR A SIXTH DEFENSE BY WAY OF REPLY/COUNTERCLAIM

AGAINST THE DEFENDANT

VIOLATIONS OF S. C. FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT

17.

Plaintiff incorporates by reference each preceding paragraph in this Answer and Counterclaim as if set forth here in full.

18.

Defendant has filed a counterclaim against Plaintiff for the tort of intentional infliction of emotional distress which is also known as "outrage" under South Carolina law.

19.

The basis of Defendants' claim for intentional infliction of emotional distress is the fact that this lawsuit was filed and an email dated August 24, 2010 to Amy Bennett and Charlie Bennett stating that their behavior was "unconscionable" and demanding that they pay her.

20.

A cursory review of the case law on outrage and intentional infliction of emotional distress would show that this claim is part of the "flood of frivolous litigation" the Court feared (see Ford v. Hutson 276 S.C. 157 (1981)).

21.

The behavior alleged in Defendant's Counterclaim does not come close to meeting the elements of the tort as determined by the Courts since the tort was created, especially the elements requiring that the conduct be so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community, and that the distress suffered was so severe that no reasonable man could be

expected to endure it.

22.

Defendant's purpose in filing this clearly baseless claim is to harass and financially injure the Plaintiff by requiring Plaintiff to defend the claim.

23.

Plaintiff requests sanctions under S.C. Code §15-36-10 et. seq. for attorney's fees, travel expenses, parking fees, mileage, cost of reports and any additional reasonable consequential expenses due to the defense of this frivolous action.

24.

Defendant has filed a counterclaim against Plaintiff for the tort of defamation (libel and slander).

25.

The sole basis of Defendants' defamation claim is the fact that this lawsuit was filed alleging unflattering facts.

26.

The filing of a lawsuit alleging fraud, conversion, conspiracy, and conversion by false pretenses is not a proper basis for a defamation claim.

27.

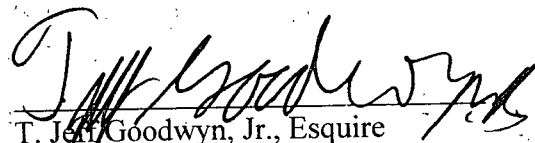
Defendant's purpose in filing this clearly baseless claim is to harass and financially injure the Plaintiff by requiring Plaintiff to defend the claim.

Defendant requests sanctions under S.C. Code §15-36-10 et. seq. for attorney's fees, travel expenses, parking fees, mileage, cost of reports and any additional reasonable consequential expenses due to the defense of this frivolous action. Plaintiff has admitted that she has never mentioned any issue about unpaid wages to Defendants much less given the Defendants an opportunity to address such issues.

WHEREFORE, having fully answered Defendants' Counterclaim, Plaintiff prays that Defendants' Counterclaims be dismissed, with prejudice, for its costs, for sanctions pursuant to the South Carolina Frivolous Proceedings Sanctions Act, and for such other and further legal and equitable relief as this Court deems just and proper.

Respectfully submitted this 7th day of September, 2011.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, S.C. 29205

(803) 251-4517

(803) 251-4527 (f)

JGoodwyn@Goodwynlaw.com

Attorney for Plaintiff

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Shelby King,)
)
Plaintiff,)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-07333

DEFENDANTS SECOND AMENDED
ANSWER

vs.)
Amy Bennett, Charlie Bennett, and)
The Amy D. Bennett Trust,)
)
Defendants.)

JEANETTE M. McBRIDE
C.C.P. & G.S.
2011 SEP 23 PM 2:52

RICHLAND COUNTY
FILED

TO: T. Jeff Goodwyn, Jr., Esquire, Attorney for Plaintiff Shelby King.

Defendants Amy Bennett, Charlie Bennett and the Amy D. Bennett Trust hereby submits Defendants' First Amended Answer to Plaintiff's Complaint as follows, pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure :

FOR A FIRST DEFENSE

(12(b)(1))

1. Defendants would show that the court lacks subject matter jurisdiction over this matter; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

(12(b)(6))

2. Defendants would show that the Plaintiff has failed to allege facts sufficient to constitute a cause of action; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(12(b)(3))

3. Defendants would show that the Plaintiff has brought this action in an improper venue; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(3) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE

(17)(a)

4. Defendants would show that the Plaintiff is not the real party in interest in this action; therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 17 (a) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE

Statute of Frauds

5. Defendants would show that the Plaintiff is barred from pursuing this action as a matter of law, therefore, Plaintiff's Complaint should be dismissed pursuant to SC Code of Laws, Title 32, Chapter 3-10 and 3-20, the Statute of Frauds.

FOR A SIXTH DEFENSE

SC Code of Laws, Title 40, Chapter 57.

6. Defendants would show that the Plaintiff is barred from pursuing this action as a matter of law, therefore, Plaintiff's Complaint should be dismissed pursuant to SC Code of Laws, Title 40, Chapter 57; especially 135(D)(4); 137(Q); 139(E) and 139(G).

FOR A SEVENTH DEFENSE

(General Denial)

7. Each and every paragraph of Plaintiff's Complaint not specifically admitted is herein denied and strict proof is demanded thereof.
8. Defendants deny the allegations of paragraphs 2 of Plaintiff's Complaint. Defendants would note that the property address is 14 Ashworth Lane and not 14 Ashworth Court.

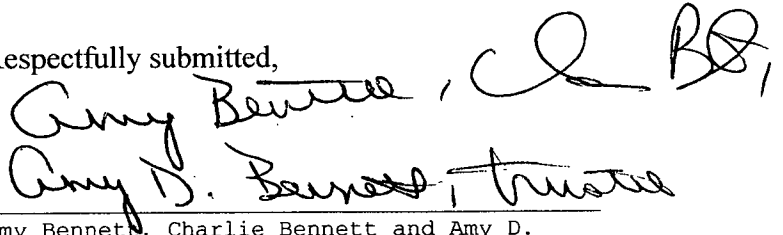
9. Defendants deny the allegations of paragraph 3 of Plaintiff's Complaint.
10. Defendants deny the allegations of paragraphs 7, 11, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37 and 38 of Plaintiff's Complaint and demand strict proof thereof.
11. Defendants lack sufficient information to form a belief as to the allegations of paragraphs 1, 5, 8, 9, 10 and 17 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.
12. To the extent that a response is required to paragraphs 16, 22, 25, 33, and 36 of Plaintiff's Complaint, Defendants deny said paragraphs and demand strict proof thereof.
13. Defendants deny the allegations of paragraph 4 of Plaintiff's Complaint to the extent that any of the Defendants "engaged the services of Plaintiff" and admit only that Plaintiff was one of several real estate professionals that Defendant Amy Bennett worked with in the search for a home in Columbia, South Carolina.
14. Defendants deny the allegations of paragraph 6 of Plaintiff's Complaint and admit only that Defendant Amy Bennett did not execute a buyers agency agreement with Plaintiff.
15. Defendants deny the allegations of paragraph 12 of Plaintiff's Complaint and admit only that Defendant Amy Bennett indicated that she was in no hurry to buy and that she did not wish to meet with Plaintiff as Plaintiff had suggested.
16. Defendants deny the allegations of paragraph 13 of Plaintiff's Complaint and admit only that Defendant Amy Bennett independently located several potential homes for purchase prior to her move to Columbia in mid July, 2010 and that Defendant Amy Bennett contacted various listing agents and negotiated the purchase of the home utilizing the services of another broker.

FOR A EIGHTH DEFENSE
(Failure to Mitigate Damages)

17. Defendants would show that Plaintiff's claims are barred by their failure to mitigate damages as required by law.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper including sanctions pursuant to SC Code of Laws Title 15, Chapter 36, Frivolous Lawsuits.

Respectfully submitted,



Amy Bennett, Charlie Bennett and Amy D.
Bennett, trustee of the Amy D. Bennett Trust
14 Ashworth Lane
Columbia, SC 29206
847 804 2480
clbhealth@aol.com
Pro Se

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Amy Bennett, Charlie Bennett, Amy D. Bennett trustee for the Amy D. Bennett Trust
14 Ashworth Lane
Columbia, SC 29206
Pro Se for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

FILED
NOV 2 2011
J. J. McBRIDE
C.C.P. & G.S.

IN THE COURT OF COMMON PLEAS
Case No.: 2010-CP-40-7333

Shelby King,

Plaintiff,

vs.

Amy Bennett, Charlie Bennett, and
the Amy D. Bennett Trust

Defendants

**FIRST AMENDED MEMORANDUM IN
SUPPORT
OF MOTION TO DISMISS/MOTION FOR
SUMMARY JUDGMENT**

**SCHEDULED TO BE HEARD NOVEMBER 8,
2011 AT 3:30PM
Judge James Barber**

Defendants Amy Bennett, Charlie Bennett, and the Amy D. Bennett Trust submit this Memorandum of Law in Support of their Motion to Dismiss/Motion for Summary Judgment pursuant The South Carolina Code of Laws and/or SCRPC 12(b) (1,) (3) and/or(6)and/or SCRPC 17, and shows this Court the following in support thereof:

FACTS

I. This frivolous case is brought by Plaintiff, in her individual capacity, who is a disgruntled Re/Max Advantage Group sales associate, against Defendants, the buyers of a home (only Defendant Amy Bennett negotiated for and

1 purchased the home in question). It should also be noted that according to
2 Plaintiff's Contractor Agreement with RE/Max Advantage Group, any fees
3 earned by Plaintiff **are to be collected by Re/Max Advantage Group and not**
4 **collected by Plaintiff.** (See Exhibit 32, Plaintiff's Contractor Agreement
5 with Re/Max Advantage Group, paragraph 4). Re/Max Advantage Group is not a
6 party to this lawsuit.

7 Plaintiff, however, in violation of her contract agreement with RE/Max
8 Advantage Group, is seeking directly from the buyers (Defendants) a
9 hypothetical commission she claims she might have received from the listing
10 agent if Defendants had signed an exclusive buyers agency agreement with
11 Re/Max Advantage Group naming RE/Max Advantage Group as Defendants
12 "exclusive buyers agent" as defined by state statute.

13 Plaintiff, as a seasoned real estate agent who sits on the contract committee of
14 the Central Carolina Board of Realtors, was well aware she/ReMax Advantage Group, was
15 not Defendants exclusive buyers agent. Plaintiff admits that she/RE/Max Advantage
16 Group has no signed written exclusive buyers agency agreement with Defendants, as
17 mandated by state statute in order for recovery, which would have outlined any
18 compensation/fee due RE/Max Advantage Group (See Plaintiff's Complaint #6). Plaintiff
19 has no other agreement with Defendants regarding paying Plaintiff any commission or
20 any other expenses. In fact, in an email to Defendant Amy Bennett dated March 22,
21 2010, Plaintiff specifically stated "we never collect a fee from the buyer". (see
22 Exhibit 19)

23 As Plaintiff admitted in Response 9, of Defendant's First Requests for Admission
24 to Plaintiff, Exhibit 20), Plaintiff was not a party to the purchase of the home that
25 is subject of this lawsuit; Plaintiff did not show Defendants the home that Defendant
26 Amy Bennett ultimately purchased, nor did Plaintiff participate in the negotiations
27 for that property.

1 Defendant Amy Bennett had the freedom to contract with anyone she chooses to
2 represent her and did have a signed buyers agency agreement with another realtor to
3 represent her in the transaction that is the subject of this lawsuit (See exhibit 1).
4 Defendant Amy Bennett negotiated for the purchase of a home with that other realtor.
5 Defendants did not negotiate for or pay a commission on the property purchased, nor
6 are they, as buyers, obligated to pay any commissions. Again, in an email to
7 Defendant Amy Bennett dated March 22, 2010, Plaintiff specifically stated "we never
8 collect a fee from the buyer". (see Exhibit 19)

9 A commission was paid to Defendant Amy Bennett's agent in this transaction by the
10 seller per the terms of the listing agreement between the listing agent and the
11 seller. (See Exhibits 18, 21) RE/Max Advantage Group needs to make a claim for and
12 receive any commission due them from that listing agent as that is who was paid a
13 commission by the seller in this transaction. In fact, Re/Max Advantage Group and
14 Plaintiff do have a claim for the same commission Plaintiff is seeking here against
15 that listing agent. (See Exhibit 13) That action is currently pending at the Central
16 Carolina Board of Realtors, which is, per statute, the body that hears broker
17 disputes. However, Plaintiff refuses to provide a copy of the duplicative claim made
18 against the listing agent for the same commission as she is requesting here. (See
19 Plaintiff Answer to Defendant's First Interrogatories # 35, and Plaintiff's Answers to
20 Defendants First Request to Produce #9, Exhibit 22).

21 When Defendants were served with the lawsuit in question, Defendant Amy Bennett
22 contacted the Central Carolina Board of Realtors (CCBR). The CCBR was aghast that
23 this lawsuit had been filed against us, as buyers, and directed us to the South
24 Carolina Department of Labor, Licensing and Regulation, which has oversight
25 responsibilities of the real estate industry. There is currently an open
26 investigation at the South Carolina Department of Labor, Licensing and Regulation
27 against Plaintiff as it relates to Plaintiff's actions against Defendants in this
28 lawsuit. (See Exhibits 13 and 14)

1 Defendants are aware of at least 4 other attorneys Plaintiff went to with her claim
2 against Defendants prior to her contact with her present council. All of those other
3 attorneys told her she did not have a case and refused to file an action on her
4 behalf. It was not until she approached her current council, who until recently
5 rented office space with the law firm Plaintiff's employer, RE/Max Advantage Group,
6 regularly steers its clients for closing matters, who agreed to represent her.

7 II. In 2009-2010, Defendant, Charlie Bennett was recruited by the University of
8 South Carolina for a position with the University. At the time, Defendants
9 were living in Illinois (see attached Exhibit 9). In November of 2009,
10 during a recruiting trip, the University brought Defendants to Columbia.
11 Someone from the University introduced Defendant Amy Bennett to Plaintiff.
12 Defendant, Amy Bennett came down to Columbia again in March, 2010, after
13 Charlie Bennett had accepted the position with the University. Plaintiff
14 spent approximately two afternoons showing Amy homes. At the conclusion of
15 that visit, Amy Bennett made an offer to purchase a home in the Preserves
16 that Plaintiff had showed Amy Bennett in which Plaintiff presented and
17 negotiated the offer. That contract of sale was never accepted by the
18 seller. After the contract of sale was not accepted, no
19 commission/compensation for time was paid to Plaintiff or RE/Max Advantage
20 Group and none was requested by Plaintiff and or Re/Max Advantage Group.

21 Defendant Amy Bennett flew to Columbia a second and final time in May, 2010.
22 Again Plaintiff showed Defendant Amy Bennett several homes during an approximately 2
23 day period. Again, Amy Bennett made an offer on a home at 168 Island View that
24 Plaintiff had showed Amy which Plaintiff, in her capacity as a Re/Max Advantage Group
25 sales associate presented and negotiated the contract of sale. At that time, on May
26 12, 2010, Defendant Amy Bennett also drafted a check to RE/Max Advantage Group in the
27 amount of \$5000 as earnest money for the potential house that Plaintiff was submitting
28 the contract of sale on (see attached Exhibit 3). That contract of sale was also not

1 accepted by sellers. Again, in May of 2010, Plaintiff and or Re/Max Advantage Group
2 made no request to Defendants for a commission/compensation for time and in fact,
3 Plaintiff returned the entire \$5000 to Amy Bennett and made no claim to any of that
4 amount for any outstanding amounts due her for any activities performed. Defendants
5 have not initiated contact with Plaintiff since that time and in fact have not seen
6 Plaintiff since May, 2010. Plaintiff admits that she never requested from any
7 Defendants any compensation for time spent or for reimbursement of expenses until
8 around August 20, 2011, after Defendant Amy Bennett signed a broker agency agreement
9 with another realtor (See Plaintiff's responses to Defendant's First Requests for
10 Admission to Plaintiff, #14, Exhibit 23).

11 It should be noted, that Defendant Amy Bennett did a lot of independent research,
12 looked at many other properties through her own efforts and made offers to purchase on
13 several other properties through several other real estate agents, other than
14 plaintiff during November 2009- August 2010. Plaintiff has been provided evidence of
15 such independent efforts and have given Plaintiff a list of at least 8 other
16 individuals/realtors. Defendant Amy Bennett looked at homes with during her house
17 search and with whom she made offers on other properties with (See exhibit 24,
18 Defendants Answer to Plaintiff's First Interrogatories #12 and Exhibits 6 and 44)

19 In May, 2010, after the Plaintiff, in her capacity as a Re/Max Advantage Group
20 sales associate, could not get an offer to purchase accepted, defendant Amy Bennett,
21 on two occasions requested that Plaintiff refrain from contacting her anymore (See
22 Exhibits 35 and 36). Plaintiff acknowledged that Defendants wished no further action
23 on the part of Plaintiff, yet on June 16, 2010, Plaintiff sent Amy Bennett an email
24 wanting to know if Defendant's house in Chicago had closed yet and further stated "Let
25 me know when you want to round up again and find a home" (see attached Exhibit 2).
26 This email clearly shows that Plaintiff understood that Defendant's were no longer
27 dealing with her. Defendant Amy Bennett made at least 13 attempts to try to get
28

1 Plaintiff to refrain from contacting her after the last time she saw Plaintiff in May,
2 2010 to no avail.

3 Defendants did not move to Columbia until July 13, 2010 (see attached lease,
4 Exhibit 4) when they rented a corporate apartment. Just prior to their move to
5 Columbia in July, while still in Illinois, Defendant Amy Bennett did a realtor.com
6 search of properties in the Columbia area that were for sale. Amy Bennett identified
7 several homes she might be interested in, including the one she ultimately purchased.
8 This is a common practice for prospective buyers. At no time did Defendants initiate
9 contact with Plaintiff or anyone at RE/Max Advantage regarding any of the homes Amy
10 Bennett was interested in looking at upon her arrival in Columbia in mid July, 2010.

11 It is a common practice for potential buyers to perform internet searches and
12 identify potential properties they might be interested in. Listing agent contact
13 information is given on line and when someone calls to see the home, listing agents
14 are more than willing to show the home. It is no surprise that Defendant Amy Bennett
15 went on line to locate home listings in the Columbia area. Plaintiff was well aware
16 of the fact that Defendants were sophisticated buyers and were using the internet to
17 locate properties on their own. In an email from Defendant Amy Bennett to Plaintiff
18 on November 17, 2009, Ms. Bennett stated "I will look up Columbia properties on
19 realtor.com ", (see Exhibit 25). This is the very first communication Defendant Amy
20 Bennett had with Plaintiff. Also, in an email Defendant Amy Bennett sent to Plaintiff
21 on March 17, 2010 (see attached Exhibit 5), Amy indicated " I went on line last night
22 and found many interesting properties #262930, 258505, 261959, 23709, 251673, 261861
23 and 236870".

24 On July 20, 2010, Defendant Amy Bennett signed a dual agency agreement, and an
25 agency policy and acknowledgement form with Liz Sullivan/Graham Realty relating to the
26 possible purchase of 14 Ashworth that Amy Bennett identified from an internet search
27 (see attached Exhibit 1). Dual Agency is permitted by statute. The forms used are
28 approved by the Central Carolina Board of Realtors. When the initial offer on the

1 house on Ashworth was not accepted, Defendant Amy Bennett made another offer for
2 purchase using another realtor (not Liz Sullivan/Graham Realty or Plaintiff) on
3 another property in Spring Valley on July 21, 2010 (see attached Exhibit 6). This
4 Spring Valley home was also identified during Defendant Amy Bennett's internet search
5 for available homes. That offer on the Spring Valley home was not accepted and
6 Defendant Amy Bennett ultimately purchased the home on Ashworth through her broker on
7 the property, Liz Sullivan/Graham Realty.

8 Plaintiff, in her complaint, claims that she sent Defendant Amy Bennett an email
9 dated around July 5- July 9, 2010 and another email July 9, 2010 bringing the home
10 Defendant Amy Bennett ultimately purchased to her attention (Plaintiff's complaint #
11 9). However, Plaintiff can not show that Defendant Amy Bennett, or any of the
12 Defendants actually received and/or read those emails. When Plaintiff could did not
13 get any reponse from Defendants to her emails, Plaintiff took the bold step and
14 contacted Defendant Charlie Bennett's direct supervisor, a state employee at the
15 University of South Carolina and solicited his assistance in contacting Defendants.
16 In an email Defendant Amy Bennett from Plaintiff dated July 12, 2010, (see attached
17 Exhibit 7) it reads "... I want to know if you are getting my emails... Can you bring me
18 up to date on your plans?" This email clearly shows Defendants had not been in
19 contact with Plaintiff nor had they "Let Plaintiff know when Defendants wanted to
20 round up again and find a home", -as Plaintiff had requested earlier. It should be
21 noted that the email dated July 12, 2010 sent by plaintiff to Amy Bennett did not
22 detail any specific property.

23 Despite the fact that Defendants did not initiate contact with Plaintiff at any
24 time after May, 2010, despite the fact that Defendant Amy Bennett made at least 13
25 attempts to try to get Plaintiff to refrain from contacting her after the last time
26 she saw Plaintiff in May 2010, Plaintiff, through her own efforts, attempted to
27 determine from the real estate broker Defendant Amy Bennett used for the purchase of
28 the property on Ashworth, who the purchaser of the property was. In an email from

1 Plaintiff to Defendant Amy Bennett's broker, Liz Sullivan, dated August 23, 2010 (see
2 attached Exhibit 8), Plaintiff was wanting to negotiate with Liz Sullivan a commission
3 from the proceeds of the purchase (the same commission Plaintiff is requesting in the
4 present law suit). In that email to Defendant Amy Bennett's broker, Plaintiff
5 acknowledges that she made other offers on other properties on behalf of Defendant Amy
6 Bennett and admitted that Plaintiff is "not going to contact her now as she made a
7 decision... I know her very well.. and know how she thinks".

8 On August 24, 2010, just prior to the close of the house Amy Bennett purchased on
9 Ashworth, Plaintiff emailed Defendants wanting a commission on the property (see
10 Exhibit 9 attached). Amy Bennett forwarded that email to her closing attorney, James
11 Swick. Not wanting to get in the middle of two realtors disputing a commission,
12 Defendant Amy Bennett did not want to go through with the closing unless Graham
13 Realty (Defendant Amy Bennett's realtor) would indemnify Defendant Amy Bennett, as
14 apparently Graham Realty was not willing to share any of any commission the seller
15 owed them with RE/Max Advantage Group. On August 25, 2010, Defendants attorney, Jim
16 Swick, indicated to Amy Bennett that Plaintiff "has no claim based in law or equity"...
17 and to provide Amy Bennett additional inducement to close, if Plaintiff did pursue
18 this further, Mr. Swick would be happy to represent Defendants on a pro bono basis (see
19 attached Exhibit 11).

20 Plaintiff subsequently filed this lawsuit against Defendants seeking payment of a
21 commission directly to her. As stated previously, Plaintiff has also filed a claim
22 for the same commission against the listing agent at the Central Carolina Board of
23 Realtors. Also, as previously stated, Defendants are aware of at least 4 other
24 attorneys Plaintiff went to with her claim against Defendants prior to her contact
25 with her present council. All of those other attorneys told her she did not have a
26 case and refused to file an action on her behalf. It was not until Plaintiff
27 approached her current council, who until recently rented office space with the law
28

1 firm Plaintiff's employer, RE/Max Advantage Group, regularly steers its clients for
2 closing matters, who agreed to represent her.

3 When Plaintiff did in fact sue Defendants, Mr. Swick, Defendant Amy Bennett's
4 closing attorney, did agree to represent Defendants as promised on a pro bono basis.
5 However, on July 18, 2011 Defendant Amy Bennett got a call from Mr. Swick's law firm
6 claiming Mr. Swick is no longer practicing law. Despite the fact that Defendants
7 attorney representation agreement was with the firm Swick & Hindersman, LLC, no one
8 from the firm was willing to assume Defendant's pro bono defense agreed upon, even
9 though that agreement calls for the Firm, at their expense, to provide alternate
10 counsel.

11
12 **LEGAL THEORIES TO SUPPORT MOTION TO DISMISS**

13 Plaintiff's claim must be dismissed because her legal claims are without merit.
14 There are several legal theories as to why Plaintiff's Claims should be dismissed
15 under South Carolina Code of Laws and/or under SCRCP 12(b)(1), (3) and/or (6) and/or
16 SCRCP 17.

17 **I. Plaintiff's Complaint Fails To State a Facts Upon which Relief May Be Granted**
18 **as a Matter of Law**

19 **A. SC Code of Laws, Title 32, Chapter 3-10 and 3-20 Statute of Frauds states:**
20 **STATUTE OF FRAUDS**

21 **SECTION 32-3-10. Agreements required to be in writing and signed.**

22 **No action shall be brought whereby:**

23 (1) To charge any executor or administrator upon any special promise to answer damages
out of his own estate;

24 (2) To charge the defendant upon any special promise to answer for the debt, default or
25 miscarriage of another person;

26 (3) To charge any person upon any agreement made upon consideration of marriage;

27 (4) To charge any person upon any contract or sale of lands, tenements or
28 hereditaments or any interest in or concerning them; or

1 (5) To charge any person upon any agreement that is not to be performed within the space
2 of one year from the making thereof;

3 **Unless the agreement upon which such action shall be brought or some
4 memorandum or note thereof shall be in writing and signed by the party to be
5 charged therewith or some person thereunto by him lawfully authorized.**

6 **SECTION 32-3-20.** Action on representation as to character will lie only where
7 representation is in writing and signed.

8 **No action shall be brought whereby to charge any person upon or by reason of any
9 representation or assurance made or given concerning or relating to the character,
10 conduct, credit, ability, trade or dealings of any person to the intent or purpose
11 that such other person may obtain credit, money or goods thereon unless such
12 representation or assurance be made in writing, signed by the party to be charged
13 therewith or by some person thereunto by him legally authorized.**

14 Filing this lawsuit and applying SC Code of Laws, Title 32, Chapter
15 3-10 and 3-20 Statute of Frauds, Plaintiff can not recover against
16 defendants as the Statute clearly states that no action can be brought
17 (citing SC Code of Laws, Title 32-3-10(4) to charge any person upon any
18 contract of sale of lands.. or any interest in or concerning them... Unless
19 the agreement upon which such action shall be brought... shall be in writing
20 and signed by the party to be charged... Plaintiff admits in her complaint
21 that she has no agreement in writing with any Defendant (Plaintiff
22 Complaint #6).

23 **B. SC Code of Laws, Title 40, Chapter 57** specifically applies to real estate
24 brokers, salesmen and property managers such as Plaintiff and details the conduct that
25 must be followed. Plaintiff, as a RE/Max Advantage Group sales associate, is in
26 violation of many of the applicable sections and as such cannot recover a commission
27 from the buyers, the Defendants. See discussion below.

28 **C. S.C. Code of Laws, Title 40, Chapter 57-139(G) states:** For all real estate
transactions, no agency relationship between a buyer, seller, landlord, or tenant and a brokerage
company and its affiliated licensees exists unless the buyer, seller, landlord, or tenant and the
brokerage company and its affiliated licensees agree, in writing, to the agency relationship. **No
type of agency relationship may be assumed by a buyer, seller, landlord, tenant, or licensee or
created orally or by implication.**

In her complaint, Plaintiff acknowledges (see #6 of Plaintiff's complaint) that
RE/Max Advantage Group/Plaintiff did not have any written exclusive agency agreement,

1 as mandated by all of the above mentioned statutes, with Defendants nor did Defendants
2 sign or agree to a buyer agency contract with Defendants which would have detailed any
3 agreed compensation, retainer fee, or brokers fee due RE/Max Advantage Group by
4 Defendants. By statute, unless there is a written buyer agency agreement, which
5 detailed commission/retainers/fees, there can be no implied agreement.

6
7 **D. S.C. Code of Laws, Title 40, Chapter 57-135(D)(4) further states:**

8 **A listing or buyer's representation agreement must be in writing and must set forth all**
9 **material terms of the parties' agency relationship including, but not limited to:**

10 (a) a description of the agent's duties or services to be performed for the principal;

11 (b) **the amount of compensation to be paid** or the method to be used in calculating the amount
12 of compensation to be paid;

13 (c) **an explanation of how and when the agent earns his compensation;**

14 (d) an explanation of how compensation will be divided among participating or cooperating
15 brokers, if applicable;

16 (e) **the amount of retainer fees, deposits, or any other money which is collected before the agent's**
17 **performance of any services on behalf of the principal and an explanation of whether or not, and**
18 **if so, under what conditions such monies are refundable or payable to or on behalf of the**
19 **principal;**

20 (f) **the duration of the agency relationship, setting forth specific dates for the beginning and**
21 **ending of the relationship;**

22 (g) **the signature of all parties.**

23 (j) **a buyer's representation agreement must be clearly defined if intended to be either an**
24 **exclusive agency listing or buyers representation agreement.. or exclusive right to buy buyer's**
25 **representation agreement.**

26 In her complaint, Plaintiff acknowledges (see #6 of Plaintiff's complaint) that
27 she did not have any written agency agreement with Defendants nor did Defendants sign
28 or agree to an exclusive buyer agency contract with Plaintiff which would have

1 detailed any agreed compensation, retainer fee, or brokers fee due her by Defendants
2 or from anyone else. By statute, unless there is a written buyer agency agreement,
3 which detailed commission/retainers/fees, there can be no implied agreement and hence
4 no commission due.
5

6 E. S.C Code of Laws, Title 40, Chapter 57-139 (E) states:
7

8 A licensee who has substantive contact with a potential buyer or seller shall provide to the potential buyer or
9 seller an agency disclosure form at the first substantive contact. At the time of contact, it is presumed that
10 the potential buyer or seller is to be a **customer** of the licensee as defined by this chapter and that the
11 licensee shall offer services to a customer as defined by Section 40-57-137(O) only until the potential buyer
12 or seller requests representation; however, before ratification of the real property sales agreement, the real
13 estate licensee **must represent either the buyer or seller in an agency capacity in order to be in
14 compliance with this chapter.**

15 Plaintiff admits that she made at least one offer on behalf of Defendant Amy
16 Bennett (see Exhibit 34). As stated above in S.C Code of Laws, Title 40, Chapter 57-
17 139 (E), Plaintiff was mandated by statute to have obtained an agency agreement from
18 Defendants, which would have outlined the circumstances in which a commission would
19 have been due **before** the property sales agreement was signed. Plaintiff, without a
20 signed buyers agent agreement, submitted the contract of sale on the Island view
21 Property, evidenced by Exhibit 34, in violation of the S.C. Code of Laws. In
22 addition, Plaintiff fraudulently represented on that contract of sale that Defendant
23 Amy Bennett was her "client", when in fact no agency agreement existed making
24 Defendant Amy Bennett her "client" as defined by **SC Code of Laws, Title 40, Chapter
25 57-30(5) which defines "client" as a person with whom a licensee has established an
26 agency relationship**.

27 Plaintiff cannot, in her individual capacity, now claim a commission from Defendants, buyers, on the
28 purchase of another property through the use of another broker whom Defendant Amy Bennett has an
agency agreement with (See Exhibit 1).

F. S.C. Code of Laws, Title 40, Chapter 57-137 (Q) reads that the provisions of
this section which are inconsistent with applicable principles of common laws

1 supersede the common law... and only allows suits **against** licensees, their companies
2 or brokers in charge.

3 The Plaintiff cannot invent legal theories in an effort to go around the mandates
4 in the South Carolina statutes requiring individuals and/or real estate agents, such
5 as Plaintiff, to obtain a written agency agreement detailing the agreed upon amount of
6 compensation, if any, to be paid, etc. signed by all parties, prior to ratification of
7 a land transaction in order for any payments to be enforceable. Thus, the present
8 case must be dismissed against all Defendants.

9
10
11 **G. S.C. Code of Laws, Title 40, Chapter 57-145** details grounds for denial of
12 issuance of license or for disciplinary action against a licensee, (such as
13 Plaintiff). While, as stated above, the subject of disciplinary action against
14 Plaintiff regarding this matter is being reviewed by the South Carolina Department of
15 Labor, Licensing and Regulation (See exhibits 13 and 14), the following provisions of
16 the statute are among provisions Plaintiff may be violating.

17 **57- 145(4)**: in the practice of real estate demonstrates bad faith,
18 dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest
19 of the public. Plaintiff has accused Defendants, in a public forum, of actions such
20 as fraud, conversion by false pretenses; civil conspiracy, etc. with no proof (See
21 Plaintiff's complaint). Also, Plaintiff failed to secure a signed agency agreement
22 with Defendant Amy Bennett prior to her submission of at least one offers to purchase
23 other properties, as required by Statute and falsely labeled her relationship with
24 Defendant Amy Bennett as a "client", in violation of **SC Code of Laws, Title 40,**
25 **Chapter 57-30(5)** (See exhibit 34). In addition, after Plaintiff had attended a
26 broker's open house for the property in question hosted by the listing agent on July
27 14, 2010, Plaintiff was falsely labeling Defendants as her "clients" when she was
28 talking to the listing agent. (See exhibits 46 and 47. The label "client" can only be

1 used to refer to a party with whom there is a written agency agreement with pursuant
2 to **SC Code of Laws, Title 40, Chapter 57-30(5)**. Until an agency relationship exists
3 per the terms of the Statute, the term client is inaccurate. Plaintiff also harassed
4 Defendant Charlie Bennett at work. When Plaintiff could did not get any response from
5 Defendants to her emails in early July, 2010, Plaintiff took the bold step and
6 contacted Defendant Charlie Bennett's direct supervisor, a state employee at the
7 University of South Carolina and solicited his assistance in contacting Defendants.
8 (See Exhibit 26, Plaintiff's response to Defendant's first interrogatories #23). This
9 conduct is harassing and not professional. The Plaintiff further sent Defendant a
10 threatening email at his work on August 24, 2010 (she had never emailed Dr. Bennett
11 prior to that time) requesting a commission. (See attached Exhibit 9). When asked in
12 Defendant's First Interrogatories to Plaintiff, whether it is Plaintiff's regular
13 practice to harass and threaten state employees at work using their public work email,
14 Plaintiff refused to answer. Thus it can be inferred that this aggressive behavior on
15 the part of Plaintiff is commonplace to her and in violation of the statute (See
16 Exhibit 27), Answer # 29 of Defendant's First Interrogatories to Plaintiff.

17 **57-145(14)**: Receives compensation in a real estate transaction or
18 directly resulting from a real estate transaction from more than one party...

19 In this case, Plaintiff has a claim pending with the Central Carolina Board of
20 Realtors against the listing agent for the same commission she is seeking here. (See
21 Exhibit 13). Plaintiff cannot now file a similar action against Defendants for the
22 same commission that she is seeking in another forum. She cannot get two commissions
23 from 2 different parties for the same transaction.

24 **57-145 (23)**: engages in a practice or takes action inconsistent
25 with the agency relationship that other real estate licensees have established with
26 their clients. In the present lawsuit, Defendant Amy Bennett had a written agency
27 agreement with another realtor for this transaction (See exhibit #1). That agent with
28 whom Defendant Amy Bennett had a written agency agreement with received a commission

1 from the seller per the terms of the listing agreement between the seller and the
2 listing agent. With the filing of this lawsuit, Plaintiff is taking an action
3 inconsistent with the agency relationship that Defendants already have with someone
4 else.

5
6 In summary, in her complaint, Plaintiff acknowledges that she/RE/Max
7 Advantage Group did not have any written agreement as mandated by statute
8 with Defendants nor did Defendants sign or agree to a buyer agency
9 contract with Defendants which would have detailed any agreed
10 compensation, retainer fee, or brokers fee due Re/Max Advantage Group by
11 Defendants. By statute, SC Code of Laws, Title 32, Chapter 3-10 and 3-20
12 Statute of Frauds; **S.C. Code of Laws, Title 40, Chapter 57-135(D)(4), and 139**
13 **(G) mandates that** unless there is a written buyer agency agreement, which
14 detailed commission/retainers/fees, there can be no implied agreement and
15 hence no recovery. Plaintiff right to a commission solely lies within the
16 terms of ~~SC Code of Laws, Title 40, Chapter 57~~. If
17 she does not comply with the requirements of that statute, as is the case
18 here, no commission is due her.

19
20 To allow this lawsuit would open Defendant's to lawsuits from a host of
21 individuals Defendants sought assistance from in their cross country move into a new
22 city including friends, co workers, at least 8 other real estate professionals,
23 movers, etc. all of which had spent considerable time making Defendants knowledgeable
24 about the neighborhoods, schools, restaurants, etc. in the Columbia area and all of
25 which had no written agreement, as it relates to the present property, with any
26 Defendant regarding any fees due or commission owed in relation to Amy Bennett's
27 purchase of a home. Plaintiff has been provided evidence of such independent efforts
28 and have given Plaintiff a list of at least 8 other individuals/realtors Defendant Amy

1 Bennett looked at homes with and made other offers to purchase with during her house
2 search (See Defendants Response to Plaintiff Interrogatories #12, exhibit 24, and
3 exhibits 6 and 44).

4 The Statute of Frauds and SC Code of Laws, Title 40, Chapter 57 was
5 enacted to protect the public and regulate the real estate industry. The Statutes
6 were enacted to prevent frivolous claims such as the present case. The Plaintiff
7 cannot invent legal theories in an effort to go around the mandates in the South
8 Carolina statutes requiring individuals and/or real estate agents, such as Plaintiff,
9 to obtain a written agency agreement detailing the agreed upon amount of compensation,
10 if any, to be paid, etc. signed by all parties, prior to ratification of a land
11 transaction in order for any payments to be enforceable. Thus, the present case must
12 be dismissed against all Defendants.

13
14 **II. Plaintiff's Complaint Fails To State a Facts Upon which Relief May Be**
15 **Granted Under SCRPC Rule 17-Lack of Real Party in Interest**

16 Plaintiff's case should be dismissed because the Plaintiff has no standing to sue
17 for the damages she is claiming. SCRPC mandates that an action must be brought in the
18 name of the real party in interest. Plaintiff is not the real party in interest.
19 Plaintiff is a sales associate with RE/Max Advantage Group (see Exhibit 12).
20 Plaintiff has filed this law suit as an individual and not in her capacity as a RE/Max
21 Advantage Group sales associate based on her request that a commission/compensation be
22 paid directly to her resulting from activities performed by Plaintiff in her capacity
23 as a RE/Max Advantage Group sales associate. RE/Max Advantage Group is not the
24 plaintiff in this case nor are they a party to this law suit.

25 According to the Contractor Agreement Plaintiff signed with RE/Max Advantage
26 Group, "all fees due to Plaintiff are to be collected by RE/Max Advantage Group and
27 not by Plaintiff individually". (See Exhibit 32, #4A) RE/Max Advantage Group is the
28 party with standing to recover, if any, amounts are due.

1 Plaintiff's lawsuit is silent as to the fact that Plaintiff is a sales
2 associate with Re/Max Advantage Group and that her claims stem from activities she
3 performed in the capacity of her relationship with RE/Max Advantage Group. Any claims
4 for recovery during the course of Plaintiff's duties as a RE/Max Advantage Group sales
5 associate belong to and are to be recovered by RE/Max Advantage Group and not to
6 Plaintiff individually.

7 In this case, any exclusive buyers agency agreement would not have been with
8 Plaintiff directly as an individual. In fact, if any Defendant had signed a buyers
9 agency agreement as Plaintiff is admitting was not signed, the agreement would have
10 been between Defendants and RE/Max Realty Advantage (see Exhibit 33, Draft Exclusive
11 Buyer Agreement that Defendants did not sign), similar to the agreement that was
12 signed with Defendant Amy Bennett's agency agreement with her agent in this purchase,
13 Graham Realty (see exhibit 1). As such, any commission or fees owed would have been
14 made to and flowed to RE/Max Advantage Group and not directly to Plaintiff, similar to
15 the check written to RE/Max Advantage by Amy Bennett on May 12, 2010 and given to
16 Plaintiff when she made an offer on another home in which Plaintiff assisted her
17 on (see exhibit 3).

18 One could infer that Re/Max Advantage Group did not feel as though there was a
19 cause of action against Defendants regarding the activities that are the subject of
20 this lawsuit, which is why RE/Max Advantage Group is not the party bringing this
21 action, as all of Plaintiff's activities she is alleging she performed on behalf of
22 defendants occurred in her capacity as a RE/Max Advantage Group sales associate. In
23 fact, Defendants filed a subpoena on August 16, 2011 against Peggy Gainey (see
24 attached Exhibit 28), the broker in charge of the RE/Max Advantage Group office that
25 Plaintiff works out of, requesting certain documents including:

26 * documentation allowing Plaintiff's right to individually recover from a buyer for a
27 commission involving activities occurring during her scope as a RE/Max Advantage Group
28 sales associate

1 *Documentation of any fee structure RE/Max Advantage Group has that it regularly
2 charges to the public for activities of its sales associates in showing homes to
3 potential buyers for whom it has no buyer agency agreement with.

4 *Documentation of other recoveries for expenses, time spent, and/or commission by any
5 RE/Max Advantage Group sales associate against a buyer whom they have no signed
6 written buyer's agency agreement with.

7 The subpoena was ignored by RE/Max Advantage Group and no response was made.
8 Thus, it is presumed that RE/Max Advantage Group, where Plaintiff is affiliated, is
9 not interested in pursuing any claim for a commission in this matter against any buyer
10 with whom they have no agency agreement with (i.e. Defendants).

11 Attached is a letter from RE/Max, LLC World Headquarters to Amy Bennett regarding
12 this matter dated November 12, 2010 (see exhibit 12). The letter was in effect an
13 apology for the actions of Plaintiff and her lawsuit and referred to Plaintiff as "a
14 problem". The letter confirms that Plaintiff is a sales associate with RE/Max
15 Advantage Group. In describing the situation and Plaintiff's actions, RE/Max stated
16 "As with any business, however, occasional problems such as those expressed by you
17 will arise".

18 It is unclear why plaintiff has filed this complaint individually and not in
19 her capacity as a RE/Max Advantage Group sales associate. Rather it must be inferred
20 from Plaintiff's complaint that Plaintiff was performing any activities gratuitously
21 as a private individual.

22 Thus, the present lawsuit must be dismissed on the ground that it is not
23 prosecuted in the name of the real party in interest, Re/Max Advantage Group.

24
25
26 **III. Plaintiff's Complaint Fails To State a Claim Upon which Relief May Be Granted**
27 **Under SCRCP 12(b)(3) - Improper venue**
28

1 Under SCRCF 12(b)(3) the case should be dismissed because Plaintiff's claim for a
2 commission/compensation has been filed in an improper venue and is duplicative of
3 other filings Plaintiff has made for the same compensation in other, more appropriate
4 forums.

5 The South Carolina Real Estate Commission established under SC. Code of Laws
6 Title 40 Chapter 57-10, was established with the purpose of "regulating the real
7 estate industry so as to protect the public's interest when involved in real estate
8 transactions".

9 S.C. Code of Laws, Title 40, Chapter 57-137 (Q) reads that the provisions of this
10 section which are inconsistent with applicable principles of common laws supersede the
11 common law.. and only allows suits **against** licensees, their companies or brokers in
12 charge.

13 S.C. Code of Laws, Title 40, Chapter 145 (A)(14) provides for disciplinary
14 actions or denial of issuance of a realtor's license if licensee "receives
15 compensation in a real estate transaction or directly resulting from a real estate
16 transaction from more than one party.,.,)

17 Shortly after Defendant Amy Bennett closed on the property on Ashworth, and before
18 the present lawsuit was filed, Plaintiff filed a claim with the Central Carolina
19 Realtors Association against Liz Sullivan/Graham Realty, the listing agents, for the
20 same commission she is seeking in this lawsuit (see Exhibit 13). Filing claims with
21 the Central Carolina Realtors Association is the proper/common route realtors, such as
22 Plaintiff, pursue to have commission disputes adjudicated and resolved. Plaintiff is
23 claiming Defendants, buyers of a home, owe her individually, a commission that she
24 might have received. However, the claim Plaintiff has pending at the Central Carolina
25 Board of Realtors against the listing broker is for the same commission she is seeking
26 here from Defendants, buyers of the property. Plaintiff has refused to produce a copy
27 of that complaint she filed at the Central Carolina Realtors Association against the
28 listing agent for the same commission she is seeking here(See Exhibit 22). Plaintiff

1 has not as yet been denied a commission from the listing broker as that case has not
2 been heard as yet. Thus it is premature for Plaintiff to bring this case against
3 anyone else for a commission.

4 According to the above cited statutes, Plaintiff is in jeopardy of
5 disciplinary actions by the SC Department of Labor, Licensing and Regulation because
6 her actions in violation of the South Carolina Code of Laws and because of her actions
7 relative to this matter. See the attached letter (Exhibit 14) from the South Carolina
8 Department of Labor, Licensing and Regulation, Division of Legal Services, Office of
9 Investigations and Enforcements to Defendant Amy Bennett dated December 3, 2010,
10 indicating that an investigation is underway by that Department relating to
11 Plaintiff's activities as it relates to this action and they will be making
12 recommendations on this matter. See also Exhibit 13 which is a letter from the
13 Professional Standards Administrator at the Central Carolina Realtors Association to
14 RE/Max Advantage Group indicating that the requested arbitration Plaintiff requested
15 for payment of the same commission she is seeking in the present lawsuit is presently
16 being held in abeyance temporarily, as will any subsequent action which may be filed
17 against Plaintiff at the state Licensing Board as it relates to Plaintiff's actions in
18 this matter.

19 Plaintiff claims she was wanting Defendant Amy Bennett sign an Exclusive Buyer
20 Agency Agreement, which she did not sign (See Exhibit 33). Just as Plaintiff is now
21 suing Defendants for a hypothetical commission she claims she might have made if the
22 agency agreement had been signed, that same hypothetical exclusive buyer agency
23 agreement calls for mandatory Mediation in accordance with the Rules and Procedures of
24 the Dispute Resolution System of the National Association of REALTORS. Plaintiff has
25 not availed herself of that forum as mandated.

26 Plaintiff also has a Contractor Agreement with RE/Max Advantage Group which also
27 mandates dispute resolution for activities in the course of her association with
28 RE/Max Advantage Group (See exhibit 32, #8). According to that Agreement, Plaintiff

1 subscribes to the RE/Max Dispute Resolution System and elects binding arbitration and
2 waives her right of judicial recourse as a means of resolution of any future dispute
3 of any kind. If Plaintiff disputed the fact that Re/Max Advantage refused to pursue
4 any claim against buyers with home they had no exclusive agency agreement with
5 (Defendants in this case), Plaintiff was obligated to pursue her action using the
6 RE/Max Dispute Resolution System.

7 Given that the South Carolina statute, S.C. Code of Laws, Title 40, Chapter
8 57-137 (Q) prohibits Plaintiff from a common law cause of action against a buyer in a
9 real estate transaction unless there is a written agreement; the fact that Plaintiff
10 is already seeking a remedy for compensation in a forum created by the Central
11 Carolina Realtors Association, of which she is a member, and is forbidden by statute to
12 recover from 2 parties for the same fee; and the fact that Plaintiff has 2 other
13 forums she is mandated to avail herself of in lieu of judicial recourse, and the fact
14 that there is an active SC. Department of Labor, Licensing and Regulation investigation
15 relating to Plaintiff's claims, this case should be dismissed under SCRPC 12(b)(3) as
16 Plaintiff has availed herself, or can avail herself of other appropriate venues for
17 recovery, if applicable, that were set up to handle the issues she raises here.

18
19 **IV. Plaintiff's Complaint Fails To State a Claim Upon which Relief May Be Granted**

20 **Pursuant to SCRPC 12(b)(6)**

21 A Plaintiff's claim should be dismissed if she fails to state facts sufficient to
22 constitute a cause of action. S.C.R. Civ. P. 12(b)(6).

23 **ARGUMENT**

- 24 **1. Plaintiff's claim for Quantum Meruit and Unjust Enrichment should be dismissed**
25 **as it fails to state a claim upon which relief can be granted.**

26
27 To recover under the equitable doctrine of quantum meruit, a Plaintiff must prove
28 that: (1) a benefit was conferred upon the defendant by the Plaintiff; (2) the

1 Defendant realized the benefit; and (3) retention by the Defendant is under conditions
2 that make it unjust to retain the benefit without paying its value. *Myrtle Beach*
3 *Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000).

4 As stated above, First S.C. Code of Laws, Title 40, Chapter 57-139(G) states: For
5 all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and
6 a brokerage company and its affiliated licensees exists unless the buyer, seller, landlord, or
7 tenant and the brokerage company and its affiliated licensees agree, in writing, to the agency
8 relationship. **No type of agency relationship may be assumed by a buyer, seller, landlord,**
9 **tenant, or licensee or created orally or by implication.**

10 S.C. Code of Laws, Title 40, Chapter 57-135(D)(4) further states:

11 **4) A listing or buyer's representation agreement must be in writing and must set forth all**
12 **material terms of the parties' agency relationship including, but not limited to:**

13 (a) a description of the agent's duties or services to be performed for the principal;

14 (b) **the amount of compensation to be paid** or the method to be used in calculating the amount
15 of compensation to be paid;

16 (c) **an explanation of how and when the agent earns his compensation;**

17 (d) an explanation of how compensation will be divided among participating or cooperating
18 brokers, if applicable;

19 (e) the amount of retainer fees, deposits, or any other money which is collected before the agent's
20 performance of any services on behalf of the principal and an explanation of whether or not, and
21 if so, under what conditions such monies are refundable or payable to or on behalf of the
22 principal;

23 (f) the duration of the agency relationship, setting forth specific dates for the beginning and
24 ending of the relationship;

25 (g) **the signature of all parties.**

26 The applicability of quantum meruit as it applies to real estate commissions has
27 arisen several times in South Carolina, and our Courts are well settled on the
28

1 doctrine's applicability. The South Carolina Court of Appeals adopted a long-held
2 view from other jurisdictions holding:
3 "(A) broker is never entitled to commissions for unsuccessful efforts. The risk of
4 failure is wholly his. The reward comes only with his success. That is the plain
5 contract and contemplation of the parties. The broker may devote his time and labor,
6 and expend his money with ever so much of devotion to the interests of his employer,
7 and yet if he fails, if without effecting an agreement or accomplishing a bargain, he
8 abandons the effort, or his authority is fairly and in good faith terminated, he gains
9 no right to commissions. He loses the labor and effort which was staked upon success.
10 And in such event it matters not that after his failure, and the termination of his
11 agency, what he had done proves of use and benefit to the principal. *** He may have
12 introduced to each other parties who otherwise would never have met; he may have
13 created impressions which, under later and more favorable circumstances, naturally
14 lead to and materially assist in the consummation of a sale; he may have planted the
15 very seeds from which others reap the harvest; but all that gives him no claim. It
16 was part of his risk that failing himself, *** others might be left to some extent to
17 avail themselves of the fruit of his labors."

18 *Webb v. First Fed. Sav & Loan Ass'n of Anderson*, 300 S.C. 507,512,388 S.E.2d 823,826
19 (S.C. Ct. App. 1989). Overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City*
20 *of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000) (citing *Sibbald v. Bethlehem Iron*
21 *Co.*, 83 N.Y. 378,383,38 Am. Rep. 441,445 (1881); see also *Hilton Head Island v. Skull*
22 *Creek Club*, 287 S.C. 530,339 S.E.2d 890 (Ct. App. 1986) and *Hutson v. Stone*, 119 S.C.
23 259, 263,112 S.E.39,40 (1922).

24 Plaintiff's complaint acknowledges that no contract or exclusive buyers agency
25 agreement was ever signed by any Defendant with Plaintiff or Re/Max Advantage Group.
26 Further, Plaintiff's complaint states that Plaintiff asked Defendants to enter into an
27 exclusive buyers agency agreement which would have provided that the **Seller** pay the
28 real estate commission. (Complaint #6, Exhibit 33). The exclusive buyers agency

1 agreement Plaintiff wanted Defendant Amy Bennett to sign not only provided that the
2 seller pay real estate commissions, but in #15 of that proposed Exclusive Buyer Agency
3 Agreement made clear that "no commission is to be collected from buyer. Brokers fee
4 is provided through listing broker." (See Exhibit 33). It is clear from the complaint
5 and from the proposed Exclusive Buyer Agency Agreement Plaintiff provided through
6 Discovery to Defendants, that Plaintiff never expected any real estate commissions to
7 be paid by the Defendants. Additionally, in an email to Defendant Amy Bennett dated
8 March 22, 2010, Plaintiff specifically stated "we never collect a fee from the
9 buyer" (see Exhibit 19).

10 Plaintiff admits that she never requested from any Defendants any compensation
11 for time spent or for reimbursement of expenses until around August 20, 2011, after
12 Defendant Amy Bennett signed a broker agency agreement with another realtor (See
13 Plaintiff's responses to Defendant's First Requests for Admission to Plaintiff, # 14,
14 Exhibit 23).

15 Defendants requested that Plaintiff and the Broker in Charge of the office Plaintiff
16 works out of, RE/Max Advantage Group, produce pricing/cost documentation/guidelines
17 that they use to charge potential buyers for time in showing property and education
18 them about Columbia, SC. Defendants also requested proof that that pricing
19 information was communicated by Plaintiff to Defendants. Neither Plaintiff or RE/Max
20 Advantage Group provided any such information. Thus, it can be inferred that there is
21 no pricing/cost guidelines Plaintiff uses to charge potential buyers, such as
22 Defendants, and none was communicated to Defendants. (See Exhibits 28 and 29),
23 Plaintiff's Response to Defendants First Request to Produce # 26 and 27 and Subpoena
24 to Peggy Gainey at RE/Max Advantage Group which went unanswered).

25 Thus, the argument for any "unjust enrichment" is not there as Plaintiff
26 expected (to any extent there was an expectation) payment from the seller by way of
27 the listing broker, and not from the Defendants. Plaintiff has a current claim
28

1 pending at the Central Carolina Board of Realtors against the listing broker for the
2 same commission she is claiming here.

3 In addition, Plaintiff claims in her complaint that she performed "services" for
4 Defendants from November 2009 to July 2010 (see Complaint #4 and #7).

5 At no time during those months did Plaintiff make any request to Defendants for
6 reimbursement for any expenses, out of pocket costs or for reimbursement for her time
7 all the while knowing that no buyers agency agreement, mandated by statute, had not
8 been agreed on or accepted (see 23). Additionally, at no time did Plaintiff mitigate
9 her damages by refusing to provide any further information to Defendants without an
10 enforceable agreed upon and signed buyers agency agreement detailing any amount of
11 Plaintiff's compensation, if any, as mandated by statute. Exhibit 33, the alleged
12 proposed Exclusive Buyers Agency Agreement Plaintiff is claiming she wanted Defendant
13 Amy Bennett to sign, is dated March 26, 2010. If Plaintiff could not get an agreement
14 relating to payment for services signed, why would she continue to perform any alleged
15 activities?

16 Plaintiff had no reasonable expectation of being paid or reimbursed by buyers,
17 the defendants, for expenses or for any other services performed. Also, in
18 Plaintiff's complaint #12, she states that Defendant Amy Bennett sent Plaintiff an
19 email dated July 14, 2010 stating that Amy Bennett was not interested in looking at
20 any homes with Plaintiff. In addition, Defendant Amy Bennett on at least 2 occasions
21 in May, 2010 notified Plaintiff that she no longer wanted to look at property with
22 Plaintiff (See exhibits 35 and 36) Thus, any relationship with Plaintiff was
23 terminated (although Defendants claim that there was no relationship or agency to
24 terminate as none existed) and Plaintiff had no expectation or entitlement to a
25 commission.

26 At a minimum, Plaintiff has not shown in her pleadings that any "benefit"
27 supposedly given is under conditions that make it unjust for defendants to retain any
28 alleged "benefit". Plaintiff allegedly sent Defendant Amy Bennett a draft Exclusive

1 Buyer Agency Agreement on March 22, 2010 and indicated in that email "don't worry
2 about signing it". (See exhibit 33). Plaintiff knew that no exclusive buyers agency
3 agreement detailing any reimbursement for expenses or work performed had not been
4 agreed to and signed by Defendants. If anything, Plaintiff was expecting any
5 commission, if due, would come from the seller, through the listing broker and not
6 from the buyer, Defendant Amy Bennett. Plaintiff could have ceased providing any
7 "benefit" at any time, knowing that there was no written agreement, as mandated by
8 statute, regarding reimbursement of expenses, or commission due. In continuing to
9 provide any supposed "benefit", Plaintiff did so at her own risk and in violation of
10 the above cited statutes with no expectation of being compensated for it.

11 Defendants through interrogatories and request for Production to Plaintiff,
12 requested information as to other times Plaintiff recovered fees/commissions from a
13 potential buyer in which she had no buyers agency agreement. Plaintiff refused to
14 provide any such information. (See Plaintiff's Answers to Defendant's First
15 Interrogatories, # 17, 18, 19, and 20, Exhibit 30). It can be concluded that Plaintiff
16 has never recovered any fees/commission from a buyer with whom she has no written
17 buyers agency agreement with and thus has no expectation of any payment in the present
18 case.

19
20 Additionally, Defendant requested that Plaintiff produce any documentation where
21 a real estate broker has recovered a commission/fee/cost and/or expenses from a buyer
22 in which they had no written buyer agency agreement. Plaintiff refused to answer and
23 it can be concluded that there has been no prior case in which a buyer paid a realtor
24 a commission/fees in which there was no written buyer agency agreement. (See Exhibit
25 31, Plaintiff response to Defendants First Request to Produce # 34).

26 The Statute of Frauds and SC Code of Laws, Title 40, Chapter 57 was
27 enacted to protect the public and regulate the real estate industry. The
28 Statutes were enacted to prevent frivolous claims such as the present case.

1 The Plaintiff cannot invent legal theories in an effort to go around the
2 mandates in the South Carolina statutes requiring real estate agents and
3 individuals, such as Plaintiff, to obtain a written agreement detailing the
4 amount of compensation, if any, to be paid, etc. signed by all parties, in
5 order for any payments involved in land transfers to be enforceable. If
6 Plaintiff's theory were to be accepted, a claim for quantum meruit and unjust
7 enrichment could be pled in every case in which a real estate broker or
8 individual provided any service to any party in a land transfer in which they
9 had no contractual relationship with. Hypothetically Defendants could be sued
10 by everyone upon their purchase of property who gave them information regarding
11 their cross county move to Columbia, SC and gave them information about
12 schools, neighborhoods, restaurants, etc. That is not what the current law
13 provides and that is not the current fee structure in the real estate industry.
14 In fact, there were several other real estate agents Defendant Amy Bennett
15 sought information from. In fact Defendant Amy Bennett made offers to purchase
16 on other homes not subject to this lawsuit with realtors not part of this
17 action. (See exhibits 6 and 44). Plaintiff has been provided that documentation.
18 In none of those cases have those other real estate agents contacted Defendants
19 wanting a commission for the purchase of this home.

20 In addition, Plaintiff subpoenaed various documents from Defendant Amy
21 Bennett's real estate broker in this transaction, Graham Realty. Among the
22 documents produced to Plaintiff and Defendants by Graham Realty was the
23 exclusive right to sell contract between seller and Graham Realty dated 7/1/10.
24 (See exhibit 18) (Note that Defendant Amy Bennett did not purchase the
25 property until a few weeks after that listing agreement between seller and
26 listing agent was made) Defendants were not a party to that exclusive right to
27 sell contract nor were they aware of any of the terms of the contract,
28 especially as it related to the broker fee/commission arrangement (See exhibit

1 18). That document was only provided to both parties by Graham Realty upon
2 Plaintiff's subpoena dated June 27, 2011. That document provides that Seller
3 was to pay Graham Realty a broker fee of 5% upon the sale of the property.
4 However, if the property sold in a dual agency situation (as was the case
5 here), Seller's obligation for a broker fee to Graham Realty was "3% if dual
6 agent Graham Realty". Thus, it is arguably Seller (and not Defendants) who was
7 "unjustly enriched" as instead of being obligated to pay a 5% broker fee upon
8 the sale of the property, by operation of the contract between seller and
9 Graham Realty, seller only had to pay a 3% broker fee to Graham Realty.
10 Defendant Amy Bennett negotiated the price of the home she purchased. Amy
11 Bennett did not negotiate the broker fee with anyone. There is no evidence to
12 show otherwise. Defendants were not responsible for payment of any commission
13 or broker fee (see Contract of Sale, Exhibit 17).

14 As such the complaint for Quantum meruit and unjust enrichment should be
15 dismissed against Defendants as it fails to state a claim upon which relief
16 can be granted.

17
18
19 **2. Plaintiff's claim for Constructive Trust should be dismissed as it fails to**
20 **state a claim upon which relief can be granted.**

21 In South Carolina, a constructive trust will arise whenever the
22 circumstances under which property was acquired make it inequitable that it
23 should be retained by the one holding legal title. *Lollis, 291 S.C. 529, 354*
24 *and 561*. In general a constructive trust may be imposed when a party obtains a
25 benefit which does not equitably belong to him and which he cannot in good
26 conscience retain or withhold from another who is beneficially entitled to it
27 as where money had been paid by accident, mistake of fact, or fraud, or has
28

1 been acquired through a breach of trust or the violation of a fiduciary duty.
2 *Straight v. Goss*, 383 S.C. 180, 210, 678 S.E. 2d 443, 459 (S.C. Ct. App. 2009).
3 In *Straight*, the court was asked to find that the defendant had misappropriated
4 corporate opportunities, and imposed a constructive trust on the defendant in
5 favor of the plaintiff. *Id.* The court declined to find that the defendant had
6 misappropriated corporate opportunities and never reached the issue of whether
7 a court could impose a constructive trust against a party for that reason. *Id.*
8 The South Carolina Court of Appeals has noted more recently that " a
9 constructive trust arises against one who by fraud, actual or constructive, by
10 duress or abuse of confidence, by commission of a wrong or by any form of
11 unconscionable conduct, artifice, concealment, or questionable means and
12 against good conscience hold and enjoy." *Halbersberg v. Berry*, 302 S.C. 97,
13 106, 394 S.E.2d 7,13(S.C. Ct. Ap. 1990). Constructive trusts are created when
14 one obtains property, and the court creates a trust with the wrongfully
15 obtained property (that belongs to someone else) as the trust corpus.

16 The facts and allegations of Plaintiff's case do not fit the instances of
17 when a constructive trust is created in a court of equity. Defendant Amy
18 Bennett lawfully purchased a home. There is no claim that purchase was
19 unlawful. Plaintiff states in paragraph 23 of her complaint, that by
20 negotiating with the listing agent for the agent to reduce her commission...
21 defendants were able to unjustly profit by this amount." Plaintiff has,
22 through discovery, produced no proof that Defendants ever negotiated a
23 commission with the listing broker. However, among the documents produced to
24 Plaintiff and Defendants by Graham Realty was the exclusive right to sell
25 contract between seller and Graham Realty dated 7/1/10. Defendants were not a
26 party to that contract dated July 1, 2010, (prior to the date of Amy Bennett's
27 purchase of the home) nor were they aware of any of the terms of the contract,
28 especially as it related to the broker fee/commission arrangement (See exhibits

1 18, and 21). That document was only provided to both parties by Graham Realty
2 upon Plaintiff's subpoena dated June 27, 2011. That document provides that
3 **Seller** was to pay Graham Realty a broker fee of 5% upon the sale of the
4 property. However, if the property sold in a dual agency situation (as was the
5 case here), Seller's obligation for a broker fee to Graham Realty was "3% if
6 dual agent Graham Realty". Thus, it is arguably Seller (and not Defendants)
7 who profited as instead of being obligated to pay a 5% broker fee upon the sale
8 of the property, by operation of the contract between the seller and Graham
9 Realty, Seller only had to pay a 3% broker fee to Graham Realty. A commission
10 was paid to Graham Realty by the seller (see Exhibit 21).

11 Plaintiff, in paragraph 24 of her complaint, asks the court to determine
12 that defendants are holding the negotiated discount in trust for plaintiff.
13 Payment of any commission/broker fee was paid by Seller per the terms of the
14 exclusive right to sell contract between the seller and the listing agent and
15 any negotiation regarding the commission structure would have had to occur
16 between Seller and that listing agent. Defendant Amy Bennett, as a purchaser
17 of real estate, negotiated a purchase price of a home with Liz Sullivan, her
18 real estate broker (see exhibit 17). Plaintiff was not a party in that
19 transaction. Defendants were not a party to any commission agreement between
20 the listing real estate broker and the seller (see exhibit 18, Exclusive right
21 to sell contract between listing agent and seller).

22 As stated earlier, and Plaintiff admits, Plaintiff was not an exclusive
23 agent for the Defendants (Plaintiff's complaint #6), Plaintiff had no written
24 buyers agency agreement as required by statute that would have set forth any
25 amounts due Plaintiff from Defendants, and in any event in Plaintiff's own
26 complaint (#12), had any "relationship" terminated by Defendant's at least by
27 May 26, 2010 (See exhibit 35, an email from defendant Amy Bennett to Plaintiff
28 indicating she wanted to take a break from looking). Thus, Plaintiff was not

1 entitled to a commission in this sale from the buyers, the defendants, and in
2 any event was expecting a commission come from the seller through the listing
3 broker at the time of the sale (See #6 of Plaintiff's complaint and exhibit 33)

4 Here, even if Plaintiff's allegation is true (which Defendants deny) that
5 Defendants negotiated a reduction of the commission with their real estate
6 broker, that act does not constitute fraud.

7
8 Plaintiff has failed to state that Defendants obtained some money or property
9 that otherwise belongs to Plaintiff. Plaintiff was not expecting to a
10 commission in this sale from the buyers, Defendants, and in any event was
11 expecting a commission come from the seller at the time of the sale (See #6 of
12 Plaintiff's complaint).

13 If Plaintiff's theory were to be accepted, a claim for constructive trust
14 could be pled in every lawsuit for money damages.

15 Additionally, fraud is an essential element in the creation of a
16 constructive trust. The Supreme Court said, a constructive trust results from
17 fraud, bad faith, abuse of confidence, or violation of fiduciary duty which
18 give rise to an obligation in equity to make restitution. Fraud is an
19 essential element. *Lollis v Lollis*, 291 S.C. 525, 529, 354 S.E.2d 559, 561
20 (1987). As discussed below, Plaintiff has failed to plead the elements of
21 fraud and therefore the claim for constructive trust against defendants must
22 fail on this issue as well.

23 For the above reasons, Plaintiff's claim for Constructive Trust should be
24 dismissed against Defendants as it fails to state a claim upon which relief can
25 be granted.

26 **3. Plaintiff's claim for Fraud should be dismissed as it fails to state a claim**
27 **upon which relief can be granted.**

1 In order to recover in an action for fraud and deceit, based upon
2 misrepresentations, the following elements must be shown by clear, cogent and
3 convincing evidence: (1) a representation; (2) its falsity. (3) its materiality;
4 (4) either knowledge of its falsity or a reckless disregard of its truth or
5 falsity; (5) intent that the representation be acted upon; (6) the hearer's
6 ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the
7 hearer's right to rely thereon; and (9) the hearer's consequent and proximate
8 injury. Failure to prove any one of the elements is fatal to recovery. *Kahn*
9 *Consturction Co. v. South Carolina National Bank*, 275 S.C.381, 384, 271 S.E.2d
10 414,415 (1980) (citing *O'Shields v. Southern Fountain Mobile Homes, Inc.*, 262
11 S.C. 276, 204 S.E.2d 50;(1974) .; See also *Kiriakides v. Atlas Food Sys. &*
12 *Servsl, Inc.*, 338 S.C. 572, 527 S.E.2d 371 (Ct.App. 2000), modified, 343 S.C.
13 587, 541 S.E.2d.257 (2001).

14 A. In #26 of Plaintiff's complaint, Plaintiff states that Defendant Amy
15 Bennett "made material false representations and withheld material information
16 relating to how Plaintiff would be compensated for the real estate services
17 Plaintiff was providing". Our Courts have consistently required a
18 representation by made; and here, Plaintiff states that no representation was
19 made. To the extent this allegation can be construed to allege that
20 Defendants made a "false representation" it is insufficient in so far as it
21 fails to state the content of the representation and thus fails to state a
22 claim upon which relief can be granted. To the extent this allegation can be
23 construed to allege that Defendant Amy Bennett "withheld material information
24 relating to how Plaintiff would be compensated", the elements of the cause of
25 action are incomplete as no representation was made. Generally, silence may
26 constitute fraud only when a fiduciary relationship is involved. See *Moore v.*
27 *Moore*, 599 S.E.2d 467 (S.C. Ct. App. 2004). Here, no fiduciary relationship
28 existed between the parties.

1 B. In addition, Plaintiff admits that Defendants did not execute any
2 exclusive buyers agency agreement that would have provided seller pay any real
3 estate commissions (#6 of Plaintiffs complaint). Such signed agency agreement
4 is mandated by state statute in order for recovery of a commission. Plaintiff
5 was not ignorant of any false representations. Plaintiff was well aware of the
6 fact that no written exclusive buyers agreement detailing any commission or
7 other amounts due Plaintiff/ RE/Max Advantage Group had been agreed to or
8 signed by Defendants and as such, by law, she was not entitled to any
9 expectation of payment from Defendants. As stated before, in Plaintiff's
10 Complaint #6, Plaintiff's expectation of payment was from the seller through
11 the listing broker (Exhibit 33) at the time of closing and not from Defendants,
12 one of whom was the buyer. In fact, as previously stated, Plaintiff
13 represented to Defendant Amy Bennett in an email to her on March 22, 2010 "We
14 never collect a fee from the buyer". (See Exhibit 19). Also, in an email
15 Plaintiff sent to the listing broker on August 23, 2010, Plaintiff was looking
16 for a commission from the listing agent. In that email, Plaintiff stated "I am
17 not going to contact Defendant Amy Bennett now as she has made a decision (See
18 Exhibit 8).

19 C. In Paragraph #27, #31 of Plaintiff's complaint, she states that
20 Defendants never intended to pay or cause to be paid Plaintiff a real estate
21 commission. However, Plaintiff has admitted that she submitted several offers
22 on other properties on behalf of Defendant Amy Bennett and would have obtained
23 commission at the time of sale if those offers had been accepted. (See Exhibits
24 3,8 and 34). Thus, there is no intent to defraud Plaintiff. Plaintiff was not
25 a party to the transaction for the purchase of 14 Ashworth and had no written
26 agreement with Defendants to provide any commission/compensation, as required
27 by statute, in order for a claim for such to be upheld.

28

1 D. Plaintiff alleges in paragraph 30 of her complaint that defendants used
2 the fact that they were not going to pay plaintiff a commission as a bargaining
3 chip to reduce the price of the home they purchased. However, as stated
4 previously, Defendant Amy Bennett negotiated the price of a home with the
5 listing agent (see exhibit 17). There was no negotiating between Defendants and
6 listing broker about any commission due or not due as the broker fee agreement
7 was already agreed to between seller and the listing agent on July 1, 2010 (see
8 Exhibit 18 and 21). The full amount of any commission due was paid by Seller
9 to the listing broker per the terms of the exclusive right to sell contract
10 between seller and listing broker (see exhibit 18 and 21). There is no
11 evidence to the contrary.

12 E. Plaintiff had been seeking a commission from the listing broker prior to
13 August 24, 2010 (see exhibit 8) Plaintiff's initial demand to Defendants for a
14 commission was on August 24, 2010, just prior to Amy Bennett's closing of the property
15 in question (See Exhibit 9) That demand was forwarded to Defendant Amy Bennett's
16 attorney. Amy Bennett was advised by counsel that Plaintiff had no claim in law or
17 equity relating to a commission from her. (See Exhibit 11). Upon advice of counsel, no
18 commission was paid to Plaintiff by Defendant Amy Bennett at the time of closing.
19 Defendants acted on advice of counsel and no fraud was committed. Also, as previously
20 stated, Defendants are aware of at least 4 other attorneys Plaintiff went to with her
21 claim against Defendants prior to her contact with her present council. All of those
22 other attorneys told her she did not have a case and refused to file an action on her
23 behalf. It was not until Plaintiff approached her current council, who until recently
24 rented office space with the law firm Plaintiff's employer, RE/Max Advantage Group,
25 regularly steers its clients for closing matters, who agreed to represent her.

26
27 F. Defendant Amy Bennett had, on multiple occasions, attempted to have
28 Plaintiff cease contact with her. On May 26, 2010, shortly after the last time

1 Defendant Amy Bennett had physical contact with Plaintiff and sorter after
2 Plaintiff submitted a failed contract for sale on her behalf, Amy Bennett
3 responded to Plaintiff's request "if something special comes up, do you want me
4 to call you?" Defendant Amy Bennett responded "I am taking a break from
5 looking". (Exhibit 35). Despite that request to refrain from further contact,
6 Plaintiff again contacted Defendant Amy Bennett on May 28, 2011 with a
7 property. On May 29, 2010, Defendant Amy Bennett again responded to Plaintiff
8 "Like I said, I have so much going on, I don't want to deal with this...".
9 (Exhibit 36).

10 Despite Defendant Amy Bennett's second request to Plaintiff to refrain
11 contact, Plaintiff again sent 2 emails to Defendant Amy Bennett on 6/4/2010
12 (Exhibit 37), which Amy Bennett did not answer. Again, unsolicited, Plaintiff
13 sent Defendant Amy Bennett a 4th email dated 6/16/2010 (Exhibit 2), requesting
14 Defendant Amy Bennett "Let me know when you want to round up again and find a
15 home". Defendants never initiated any response to request that Plaintiff
16 "round up again and find them a home. It is clear from Plaintiff's 6/16/2010
17 email that she was well aware Defendants would contact Plaintiff if/when they
18 desired further contact.

19 If that weren't enough, Plaintiff initiated a 5th unsolicited contact with
20 Defendant Amy Bennett on 6/24/10, again acknowledging to Defendant Amy Bennett
21 that she understood Defendants told her "don't contact us" by stating "Let me
22 know when and how I can help as you come out this way". That email was also
23 unanswered by Defendants (Exhibit 38).

24 Defendant Amy Bennett closed on her home in Chicago on 6/25/10. From that
25 time until Amy Bennett arrived in Columbia, SC on 7/13/10 (Exhibit 4),
26 Defendant Amy Bennett was preparing for a cross country move and was traveling.
27 She did not check her emails and did not contact Plaintiff during that time.
28 Shortly before Defendant Amy Bennett arrived in Columbia, at the beginning of

1 July, 2010, Amy Bennett did a relator.com search of available properties and
2 identified at least 6 homes to look at upon her arrival. The results of this
3 internet search and evidence of looking at properties with various other
4 realtors upon Defendant Amy Bennett's arrival in Columbia in mid July 2010 were
5 given to Plaintiff through discovery.

6 (See exhibits 24 and 44). In fact Defendant Amy Bennett made offers to
7 purchase on 2 other properties other than the one she ultimately purchased
8 through other realtors, none of which are now claiming a commission on the
9 purchase of the present property.

10 Plaintiff should not be surprised that Defendant Amy Bennett did a relator.com
11 search. This is a common practice among potential buyers. Plaintiff was well aware
12 of the fact that Defendants were sophisticated buyers and were using the internet to
13 locate properties on their own. In an email from Defendant Amy Bennett to Plaintiff
14 on November 17, 2009; Ms. Bennett stated "I will look up Columbia properties on
15 realtor.com ", (see Exhibit 25). This is the very first communication Defendant Amy
16 Bennett had with Plaintiff. Also, in an email Defendant Amy Bennett sent to Plaintiff
17 on March 17, 2010 (see attached Exhibit 5), Amy indicated " I went on line last night
18 and found many interesting properties #262930, 258505, 261959, 23709, 251673, 261861
19 and 236870".

20 Despite the previously mentioned requests by Defendant Amy Bennett to Plaintiff
21 in which she tactfully requested that Plaintiff cease contacting her (emails 5/26/10
22 and 5/29/10, exhibits 35 and 36); despite another email from Plaintiff to defendant Amy
23 Bennett on 6/4/10 sending her unsolicited information about a property, which
24 Defendants did not respond to (Exhibit 37) and despite 2 acknowledgements from
25 Plaintiff that she understood that Plaintiff would wait until Defendants initiated
26 contact with her to let Plaintiff know when/how Plaintiff could help (see Plaintiff's
27 emails to Defendant Amy Bennett dated 6/16/10 and 6/24/10, Exhibits 2 and 38) that
28 again when unanswered by Defendants, Plaintiff continued to deluge Defendant Amy

1 Bennett with unsolicited emails. Plaintiff sent an additional 3 emails to Amy Bennett
2 that Defendant Amy Bennett did not see nor did she respond to (See Exhibit 39, 2
3 emails from Plaintiff dated 7/9/10) and another email dated 7/10/10.) At some point,
4 when Defendant Amy Bennett did not answer any of these 5 unsolicited emails from
5 Plaintiff from the period 6/14-7/12/10, and even after Plaintiff acknowledged she
6 would wait for Defendants to contact her should they want her assistance, Plaintiff
7 took the bold step and contacted Defendant Dr. Charles Bennett's supervisor, a state
8 employee, and requested assistance for Dr. Bennett's supervisor in getting defendants
9 to respond to Plaintiff (See exhibit 26, Plaintiff's response to Defendants First
10 Interrogatories #23). It should be noted that Plaintiff refused to respond to
11 questions put to her in Defendant's First Interrogatories to her, whether it is
12 Plaintiff's regular practice to contact someone's direct supervisor, asking them to
13 intercede on Plaintiff's behalf for obtaining business (Exhibit 26, Plaintiff's
14 answers to Defendants First Interrogatories #24 and 25).

15 Defendants also asked Plaintiff, in interrogatories, how many times does
16 Plaintiff need to be told by a buyer, either directly or by not responding to calls
17 and emails, that a buyer with whom Plaintiff has no signed agency agreement with,
18 wants contact with Plaintiff to cease before Plaintiff backs off and ceases contacting
19 buyers such as Defendants and their co workers. Plaintiff refused to respond to this
20 interrogatory as well (See Plaintiff answers to Defendant's First Interrogatories #27,
21 Exhibit 40).

22 As stated above, after being requested by Defendants on 2 occasions in as tactful
23 way as possible on May 26 and May 29, 2010 requesting that Plaintiff cease contact and
24 despite 2 acknowledgements on 6/16 and 6/24/11 by Plaintiff that she understood that
25 she would wait until Defendants initiated contact with her to let Plaintiff know when
26 they "wanted to round up again to find a home" and despite 6 unanswered emails from
27 Plaintiff to Defendant Amy Bennett (2 on 6/4/10; 6/24/10; 2 on 7/2/10 and 7/10/10) and
28 after Plaintiff's attempt to initiate contact with Defendants through Defendant Dr.

1 Charles Bennett's direct supervisor, Defendant Amy Bennett could not figure out what
2 else to do to get Plaintiff to leave them alone.

3 On the very first day Defendant Amy Bennett arrived in Columbia SC on 7/13/10,
4 she noticed yet another unsolicited email from Plaintiff dated 7/12/10. (Exhibit 41).
5 This was Defendant Amy Bennett's first day in Columbia after a cross country move and
6 Amy Bennett was trying to get set up in temporary housing. Defendant Amy Bennett
7 opens her email and who is pestering her again, Plaintiff. There was no turning
8 Plaintiff off. Remember, Plaintiff had no signed exclusive buyers agency agreement
9 with Defendants. Since directly telling Plaintiff to back off did not stop Plaintiff
10 despite Plaintiff acknowledging at least 2 times to Defendants that she would wait for
11 Defendant Amy Bennett to contact her and despite Defendants not responding to
12 apparently 6 of Plaintiff's emails to Amy Bennett and after Plaintiff's contact with
13 Defendant Charlie Bennett's direct supervisor, Defendant Amy Bennett, in yet another
14 effort to get Plaintiff off her back, tactfully tells Plaintiff maybe in the upcoming
15 weekend se will see some unspecified house near Dent with Plaintiff. Plaintiff
16 responded on 7/13 wanting to know if Defendant Amy Bennett wanted to see the home on
17 Sat or Sunday. Defendant Amy Bennett did not respond (Exhibit 41).

18 Apparently Plaintiff attended a brokers open house on 7/14/10 for the property in
19 question, hosted by the listing agent of the property (Exhibit 46) along with other
20 brokers. Again, this was done at Plaintiff's initiative and not at Defendants request.
21 On 7/14/10, Plaintiff sent Defendant Amy Bennett an email after attending the brokers
22 open house (Exhibit 42). Again, the email from Plaintiff contained no property
23 address and merely gave a general description of the home she saw at the brokers open
24 house. Defendant Amy Bennett made yet another attempt to get Plaintiff to discontinue
25 Plaintiff's unwanted and unsolicited contact with Defendants. On 7/14/10, Defendant
26 Amy Bennett responded to Plaintiff's 7/14/10 email by indicating to Plaintiff that
27 they were busy getting settled and did not have time to look at some unidentified home
28 with Plaintiff. Again, keep in mind, Defendants have given Plaintiff evidence of at

1 least 6 other properties Defendants looked at with other realtors after their arrival
2 in Columbia and had made at least 2 other offers on properties other than on the
3 present home (Exhibit ~~44~~⁸⁴⁴).

4 In response, on 7/14/10, Plaintiff sent Defendant Amy Bennett an email (Exhibit
5 43) stating for the 3rd time acknowledging Plaintiff was not to initiate contact with
6 Defendants by saying "let me know when you want me to start up again". Again
7 Defendants never responded or initiated contact with Plaintiff to that email of
8 7/14/10. Plaintiff, a woman who won't take no for an answer, continued to send
9 Defendant Amy Bennett more emails dating 7/27 and 8/18/2010 (exhibit 45) wanting to
10 know Defendants status. Again, Defendants let these continued unsolicited emails go
11 unanswered.

12 Prior to and after attending the brokers open house on 7/14/10, Plaintiff was
13 fraudulently representing to the listing broker of the home in question that Plaintiff
14 had a "client" she wanted to show the house to. (See exhibit 47) As stated previously,
15 the term "client" is statutorily defined as one you have a written agency agreement
16 with. Plaintiff had no such written agency agreement with Defendants. (SC Code of
17 Laws, Title 40, Chapter 57-30(5). Plaintiff never mentioned this "illusive client" by
18 name to the listing agent until over 1 month after Defendant Amy Bennett's contract to
19 purchase a home was signed. (See email dated 8/20/10 from Plaintiff to the listing
20 agent of the property in question, Exhibit 48).

21 Getting no response to Plaintiffs unsolicited emails of 7/27 and 8/18/10 to
22 Defendant Amy Bennett (Exhibit 45), and despite knowing that Plaintiff had no written
23 buyers agency agreement as mandated by statute before any amounts can be paid to a
24 broker, Plaintiff continued her relentless pursuit of Defendants. In an email to the
25 listing agent on 8/21/10, Plaintiff admitted she had no contact with Defendants.
26 Somehow, Plaintiff continued her stalking of Defendants and was investigating
27 Defendants activities. In that 8/21/10 email to the listing broker, Plaintiff stated
28

1 she "heard Defendant's bought a home... I don't see a thing that closed..or would meet
2 their needs.." (Exhibit 49)

3 The above timeline demonstrates that Defendant Amy Bennett was not fraudulent in
4 her interactions with Plaintiff and in fact made at least 15 attempts at distancing
5 herself from Plaintiff's relentless pursuit of her, both prior to and after the end of
6 May, 2010, well before Defendant Amy Bennett had any contact with the listing agent
7 for the purchase of the home she bought. Plaintiff continued pursuing Defendant Amy
8 Bennett even after Plaintiff acknowledged on at least 3 occasions she was waiting for
9 Defendant Amy Bennett to initiate contact and let her know when Defendant Amy Bennett
10 "wanted to round up again and look at homes". Defendants never initiated any such
11 further contact. Plaintiff was zealously pursuing Defendants all the while knowing
12 she had no written agreement with the regarding payment of any fees/commission, as
13 mandated by state statute; and all the while knowing she had represented to
14 Defendants that she never collects fees from buyers. In the meantime, Plaintiff
15 herself was fraudulent as to her representation to others, including the listing
16 agent, as to what Plaintiff's true relationship was with Defendants and Plaintiff was
17 herself violating many state statutes. In addition, Plaintiff's actions violated SC
18 Code of Laws, Title 40, Chapter 57, 145(A)(23) forbidding Plaintiff to "engage in
19 conduct that is inconsistent with the agency relationship that other real estate
20 licenses have with their clients". Defendant Amy Bennett had an agency relationship
21 with another broker in this matter.

22 G. In addition, as stated previously, the last time Defendant Amy Bennett
23 had contact with Plaintiff in May, 2010, a check for \$5000 was given to
24 Plaintiff. (see exhibit #3) When the offer did not go through, Plaintiff
25 returned the entire \$5000 to Defendant Amy Bennett. There was no claim made by
26 Plaintiff on that \$5000 for reimbursement of any expenses/costs or for
27 compensation owed. The money was returned to Amy Bennett in full.

28

1 Plaintiff knew that she did not have a signed buyers agency agreement
2 required by statute, which would have outlined any compensation due Plaintiff
3 and from whom that compensation was due. There was no material false
4 representation about that by Defendants. Defendants did not sign any buyers
5 agreement with Plaintiff. Plaintiff should have refused to provide any
6 "services month after month", as alleged in paragraph 28 of Plaintiff's
7 complaint, unless she had a signed agency agreement as mandated by statute.
8 Plaintiff had told Defendant Amy Bennett in March 2010, Plaintiff never
9 collects a fee from buyers like Defendants (See Exhibit 19). In addition,
10 Defendant Amy Bennett made at least 13 attempts to try to get Plaintiff to
11 refrain from contacting her after the last time she saw Plaintiff in May 2010.
12 Plaintiff acknowledged to Defendant Amy Bennett at least 3 times that she
13 understood and would wait for Defendants to contact her if they needed any
14 further assistance. Defendants never initiated contact with Plaintiff.
15 Plaintiff did not mitigate her damages, and in fact she herself is responsible
16 for any alleged damages she suffered.

17
18 Accordingly, Plaintiff's complaint against Defendants for fraud
19 should be dismissed as Plaintiff has failed to state facts which give rise to
20 the claim.

21
22 **4. Plaintiff's claim for Civil Conspiracy should be dismissed as it fails to**
23 **state a claim upon which relief can be granted**

24
25 The elements of civil conspiracy in South Carolina are (1) the combination
26 of two or more people (2) for the purpose of injuring the plaintiff, (3) which
27 causes special damages. *Lamotte v. Punch Line of Columbia, Inc.*, 296 SC 66, 370
28

1 S.E.2d 711 (1988). It is essential that the Plaintiff prove all of these
2 elements in order to recover."

3 Plaintiff in #34 of her complaint merely states that Defendants "entered
4 into a civil conspiracy to defraud Plaintiff of commissions...". No other
5 actions to support her claim are given. Plaintiff alleges (see Complaint #6)
6 that she on multiple occasions asked Defendant Amy Bennett to execute an
7 exclusive buyers agency agreement dated March 26th, 2010 (Exhibit 33). An
8 buyers agency agreement was never signed by any Defendant as required by
9 statute in order for a commission/fee. Plaintiff was well aware that no
10 agreement for compensation had been agreed to or signed. There was no fraud.
11 Plaintiff continued, at her risk, to continue to contact Defendants, even after
12 Amy Bennett requested she cease (see exhibits 2, 35, 36 and 38).

13 It is unbelievable to now claim that not signing a buyers agency
14 agreement constitutes civil conspiracy to defraud Plaintiff. As has been
15 previously shown, Plaintiff was in violation of the Statute of Frauds, SC Code
16 of Laws, Title 40, Chapter 57-135(D) (4) and 139 (G) and

17 **S.C Code of Laws, Title 40, Chapter 57-139-(E) which states:**

18 **A licensee who has substantive contact with a potential buyer or seller shall provide to the potential buyer or**
19 **seller an agency disclosure form at the first substantive contact. At the time of contact, it is presumed that**
20 **the potential buyer or seller is to be a customer of the licensee as defined by this chapter and that the**
21 **licensee shall offer services to a customer as defined by Section 40-57-137(O) only until the potential buyer**
22 **or seller requests representation; however, before ratification of the real property sales agreement, the real**
23 **estate licensee must represent either the buyer or seller in an agency capacity in order to be in compliance**
24 **with this chapter.**

25 There are no facts to support the claim that Defendants entered into a civil
26 conspiracy for the purpose of injuring the plaintiff. There are no special
27 damages alleged. Defendants were moving to Columbia. Defendant Amy Bennett
28 was looking to purchase a home and negotiated that purchase with her broker,
Liz Sullivan and Graham Realty, who Defendant Amy Bennett signed an agency
agreement with for the purchase of a home (see exhibit 1). Defendants have

1 freedom to contract with whomever they choose and Defendant Amy Bennett chose
2 to contract with another broker.

3 As stated previously, the last time Defendants had contact with
4 Plaintiff in May, 2010, a check for \$5000 was given to Plaintiff. (see
5 exhibit 3) When the offer did not go through, Plaintiff returned the entire
6 \$5000 to Defendant Amy Bennett. There was no claim made by Plaintiff on that
7 \$5000 for reimbursement of any expenses/costs or for compensation owed. The
8 money was returned to Defendant Amy Bennett in full.

9 In addition, Defendant Charlie Bennett was not a party to any purchase of
10 property (see exhibits 17 and 20), was not part of any negotiations for the
11 purchase of 14 Ashworth and did not sign any agency agreements (see exhibit 1,
12 Exhibit 33) with any one regarding the purchase of 14 Ashworth or any other
13 property. Additionally, Charlie Bennett has no interest in the Amy Bennett
14 trust, is not a trustee, and has no beneficial interest in the trust. (See
15 Exhibits 1, 15 and 16). Amy Bennett is the trustee of her trust. For a
16 conspiracy to have taken place, you need to have at least two different parties
17 conspire, and that is not the case here.

18 For the above reasons, Plaintiff's claim for Civil Conspiracy should be
19 dismissed against Defendants as it fails to state a claim upon which relief
20 can be granted.

21 **5. Plaintiff's claim for Conversion by False Pretenses should be dismissed as it**
22 **fails to state a claim upon which relief can be granted**

23 False pretense is a term used to describe the deliberate lying and/or making of
24 false statements of an individual to obtain the personal property and its title
25 from another. The factors which must be proven include (1) the perpetrator must
26 knowingly provide false statements with the intent to defraud, (2) the victim's
27 innocence and (3) the victim must not be aware of the falseness of the
28 statements of the perpetrator. To be guilty of false pretenses, the title of

1 the property must actually exchange hands. Plaintiff claims in #37 of her
2 complaint that "Defendants intentionally misled Plaintiff into believing that
3 she would be paid for her work" and as a result of this deception, defendants
4 converted money defendant used to purchase meals. Again Plaintiff has not
5 indicated what false statements were made with the intent to defraud or what
6 statements were alleged to be made that Plaintiff was not aware of the
7 falseness thereof. As stated many times, Plaintiff alleges (see Plaintiff's
8 Complaint #6) that she on multiple occasions asked Defendant Amy Bennett to
9 execute a written buyers agency agreement which would have provided that the
10 seller pay real estate commissions. An agreement was never signed by any
11 Defendant, as mandated by statute. Plaintiff's Complaint #6 also states that
12 the exclusive buyers agency agreement Plaintiff claims she asked Defendant Amy
13 Bennett to sign only provided that the seller pay real estate commissions.
14 Plaintiff's complaint does not indicate she ever asked Defendants for any other
15 costs/expenses nor did she expect to recover any from Defendants (See exhibit
16 33, proposed Exclusive Buyer Agency Agreement, #. 15 and exhibit 19). Thus
17 there was no written/oral agreement as to what services would be provided by
18 Plaintiff or what amount, if any Plaintiff would be compensated for, as
19 required by statute. Thus, defendants did not intentionally misled Plaintiff
20 and both parties knew that there was no agreement for reimbursement of
21 expenses. As stated before, Plaintiff could at any time have ceased contacting
22 Defendant's in that she knew there was no statutorily mandated agreement as to
23 reimbursement for her time/expenses, there was no false statements made by any
24 defendants, there was no intent to defraud, the plaintiff was not innocent,
25 Plaintiff was aware of the situation and no property ever exchanged hands
26 between Plaintiff and Defendants. Plaintiff did not mitigate her damages by
27 ceasing to provide any "services" knowing Defendants had not signed any buyers.

28

1 agency agreement, and in fact Plaintiff herself is responsible for any alleged
2 damages she suffered.

3
4 In Paragraph #27 of Plaintiff's complaint, she states that Defendants
5 never intended to pay or cause to be paid Plaintiff a real estate commission.
6 In Paragraph # 37 of Plaintiff's complaint she states that Defendants
7 intentionally misled Plaintiff into believing that she would be paid for her
8 work. However, Plaintiff has admitted that she submitted several offers on
9 other properties on behalf of Defendant Amy Bennett and would have obtained
10 commission at the time of sale if those offers had been accepted. (See Exhibits
11 3,8 and 34). Also, on March 22, 2010, Plaintiff represented to Defendant Amy
12 Bennett in an email to her "we never collect a fee from the buyers". (See
13 exhibit 19). Also, the proposed Exclusive Buyers Agreement Defendant Amy
14 Bennett did not sign (Exhibit 33) also states in Paragraph 15 that "no
15 commission is to be collected from buyer". Finally, Plaintiff produced what is
16 alleged to be a record of expenses she made while showing Defendants properties
17 amounting to about \$50 (See Exhibit 50). There is no record that any of that
18 \$50 in expenses supposedly incurred was "converted" by Defendants so that title
19 passed. Rather it appears any funds expended were gratuitously paid by
20 Plaintiff and expensed out. Thus, there is no intent to defraud Plaintiff and
21 no conversion by Defendants.

22
23 Plaintiff was not a party to the transaction for the purchase of 14
24 Ashworth and had no written agreement with Defendants to provide anything
25 otherwise. Defendant Amy Bennett has a right to contract with whomever and
26 chose not to contract with Plaintiff in the purchase of 14 Ashworth.

27 As stated previously, the last time Defendants had contact with
28 Plaintiff in May, 2010, a check for \$5000 was given to Plaintiff. (see

1 exhibit 3) When the offer did not go through, Plaintiff returned the entire
2 \$5000 to Defendant Amy Bennett. There was no claim made by Plaintiff on that
3 \$5000 for reimbursement of any expenses/costs or for compensation owed. The
4 money was returned to Defendant Amy Bennett in full. Again, Plaintiff
5 represented to Defendants that she never collects fees from buyers.

6 None of the facts outlined in Plaintiff's complaint even remotely fit
7 the definition of conversion by false pretenses. These are very serious
8 charges and Defendants are appalled that Plaintiff is making these
9 accusations in a public forum.

10 Accordingly, Plaintiff's complaint against Defendants for conversion by
11 false pretenses should be dismissed as Plaintiff has failed to state facts
12 which give rise to the claim.

13
14 **V. Plaintiff's claims against Defendant Charlie Bennett should be dismissed as**
15 **it fails to state a claim upon which relief can be granted specifically**
16 **against Defendant Charlie Bennett.**

17 Defendant Charlie Bennett was not a party to any purchase of any
18 property (see exhibits 15 and 17), was not part of any negotiations for the
19 purchase of 14 Ashworth and did not sign any agency agreements with any one
20 regarding the purchase of 14 Ashworth or any other property (See exhibit 1
21 and 33). Additionally, Charlie Bennett has no interest in the Amy Bennett
22 trust, is not a trustee, and has no beneficial interest in the trust (See
23 Exhibit 16). Amy Bennett is the trustee of her trust. In Plaintiff's entire
24 complaint there are no allegations of any actions undertaken by Defendant
25 Charlie Bennett to give rise to any claim. In addition, through discovery
26 submitted by Plaintiff, Plaintiff has not provided any documents or proof of
27 any of the allegations as it relates to Defendant Charlie Bennett.

28

1 In the Exclusive Buyer Agency Agreement Plaintiff wanted signed, the
2 agreement would have been with Defendant Amy Bennett and Re/Max Advantage
3 Group. (see exhibit 33) Charlie Bennett was never a party Plaintiff was
4 attempting to contract with.

5 For the above reasons, Plaintiff's claims against Defendant Charlie
6 Bennett should be dismissed as it fails to state a claim upon which relief
7 can be granted.

8 **VI. Plaintiff's claims against Defendant Amy D. Bennett trust should be**
9 **dismissed as it fails to state a claim upon which relief can be granted**
10 **Pursuant to Pursuant to SCRCP 12(b)(6).**

11
12 Plaintiff has filed a claim against the Amy D. Bennett trust for the torts of
13 Quantum Meruit/Unjust Enrichment; Constructive Trust, Fraud, Civil Conspiracy and
14 Conversion by False Pretenses. As the Amy D. Bennett Trust exists only as a piece of
15 paper and exists only upon the death of Amy D. Bennett, it is impossible that a piece
16 of paper can commit any of the elements needed to be shown to prove that any of the
17 alleged causes of action.

18 For the above reasons, Plaintiff's claims against Defendant Amy D. Bennett trust
19 should be dismissed as it fails to state a claim upon which relief can be granted.

20
21 **VII. Plaintiff's Complaint Fails To State a Claim Upon which Relief May Be**
22 **Granted Pursuant to SCRCP 12(b)(6).**

23
24 Defendants have a right to freedom of contract. In this instance, Defendant
25 Amy Bennett had a right to contract with another party other than Plaintiff for the
26 purchase of her home, which was the case here. Exercising that right does not give
27 rise to Plaintiff's claim under quantum meruit or fraud as Plaintiff is alleging.

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CONCLUSION

For the reasons stated above, Defendant's First Amended Motion to Dismiss/Motion for Summary Judgment should be granted and Plaintiffs complaint against Defendants should be dismissed with prejudice.

Dated this 2nd day of November, 2011

Amy Bennett, Charlie
Bennett and Amy D.
Bennett, trustee of the
Amy D. Bennett trust
14 Ashworth Lane
Columbia, SC 29206
For Defendants-Pro Se

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shelby King,)

Plaintiff,)

vs.)

Amy Bennett, Charlie Bennett, and The)
Amy D. Bennett Trust,)

Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-07333

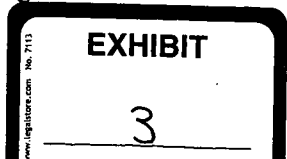
**PLAINTIFF'S BRIEF IN RESPONSE
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

2011 NOV - 8 PM 3: 02
RICHLAND COUNTY
FILED
JENNIFER W. McBRIDE
C.C.P. & G.S.

COMES NOW, Plaintiff, by and through her undersigned counsel, and hereby files this brief in response to Defendants' Motion to Summary Judgment. Plaintiff relies on the Affidavit of Shelby King, interrogatory responses of all parties, the pleadings, and requests to admit, and shows the Court as follows:

Plaintiff would first argue that this motion is should not be heard until Defendants appear for their depositions. Plaintiff began contacting Defendants immediately after the October 6, 2011 status conference to schedule their depositions prior to their summary judgment motions being heard. Defendants did not respond and Plaintiff was forced to notice it without prior agreement for November 7, 2011. Defendants indicated that this date was not convenience, and when asked to provide a date prior to the hearing that was convenient, no date was given. Plaintiff then went forward with the depositions as noticed and neither Defendant appeared. It is now unfair to hear Defendant's summary judgment motion with them having intentionally failed to produce themselves for their deposition.

If the Motion is heard, Plaintiff would first point out that the argument in Defendant's brief is replete with inadmissible testimony and documents that the Court can not consider for the purposes of this motion. Defendants have not submitted any affidavits authenticating documents



referred to in their brief nor have they submitted any affidavits containing any testimony to consider. As a result, any such evidence and testimony may not be considered by the Court for the purposes of this motion.

In response to Defendant's first legal argument relating to the Statute of Frauds, Plaintiff would point out that the Statute of Frauds is totally inapplicable to this case as Plaintiff has not brought a claim against Defendants trying to enforce a contract for the sale of land. As a result, this argument should have no bearing on the decision by the Court.

In response to Defendants' arguments relating to Plaintiff's inability to recover a commission, none of Plaintiff's claims relate to the recovering of a commission on the sale of the home. There is nothing in chapter 57 of title 40 that restricts the manner in which a real estate agent may be paid when representing a buyer to a commission based on a signed buyers agency agreement. Plaintiff is not making a contractual claim for a commission, but rather has brought claims in equity, fraud and constructive trust based on Defendants' intentional misrepresentations and intentional omission of material information relating to Defendants responses to Plaintiff inquiries as to how she would be paid for the work Defendants asked and continued to ask her to perform. Through their words, intentional omissions and deeds, Defendants agreed to pay Plaintiff for the work she performed for them and it is inequitable for Defendant to retain the benefits Plaintiff's conferred upon her.

Chapter 57 of Title 40 is full of requirements and duties of real estate professionals requiring them to be fair and honest in their dealings with customers and clients. Just because there are no explicit requirements in the statutes that the consumer be honest and fair doesn't mean that common law equitable concepts of quantum meruit and fraud don't still apply. Anyone in any business relationship has a duty of fair dealing and honesty. Just because you are the consumer and the law thinks of you as being the vulnerable party doesn't give you the right to behave unethically,

dishonestly or in a fraudulent manner. Nowhere in the law is unethical and immoral behavior condoned. Nowhere in the law is lying for financial gain encouraged.

In response to Defendants argument that allowing this suit to continue will invite every buyers agent who doesn't have a signed buyer's agency agreement to file this type of suit, it will not. For the buyer's agents with no signed buyer's agency agreement who never inquire as to how they will get paid, they have no argument that the buyer lied to or mislead them as to how they would be paid. If a buyer's agents with no signed buyer's agency agreement makes such an inquiry and the buyer honestly tells the agent that he/she has no intent to sign a buyer's agency agreement or to pay them otherwise, again, the buyer's agent has no claim. Only in the situation such as this when the buyer intentionally misleads an agent into thinking they will get paid in an effort to keep the agent working for free would the buyer then be exposed to this type of claim.

In responses to Defendant's argument that Plaintiff is not the real party in interest, Plaintiff would again point out that Plaintiff is not claiming that she is owed a commission. Plaintiff is claiming that is owed for the value of her work after being intentionally deceived by the Defendants that she would be paid for her efforts. Even if Plaintiff was claiming a commission, she is the real party in interest as she is the one who would have received the commission despite any contractual agreement with her broker to pay it a portion of the commission.

In response to Defendants' argument that Plaintiff's claims be dismissed for being brought in the incorrect venue, Plaintiff would simply point out that Defendants are undisputed residents of Richland County and that Richland County is the proper venue for this action. The citations made in Defendants' brief are inapplicable to venue.

In addressing Defendants' argument that Plaintiff's quantum meruit and unjust enrichment claims fail, Plaintiff agrees with Defendants as to the elements of quantum meruit: 1) a benefit was conferred upon the defendant by the plaintiff; 2) realization of that benefit by the defendant; and 3)

retention by the defendant of the benefit under condition that make it inequitable for him to retain it without paying its value. See Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (1988); see also Myrtle Beach Hospital v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000). In this case, Plaintiff conferred the benefit of over 125 hours of her service to Defendant researching homes, market values and trends, previewing homes, communicating with the Defendants about homes, school districts, and other desired features, showing Defendants homes, driving Defendants to the airport and performing other activities in response to Defendants requests for her services including ultimately introducing Defendants to the home she purchased (see attached Affidavit of Shelby King and Plaintiff's interrogatory responses). Defendants realized the benefit of these services by becoming more knowledgeable on the Columbia, South Carolina real estate market, by being introduced to many potential homes, by being able to view these homes more easily, by having someone else drive her to these homes and to the airport, and by being introduced to the home that Defendants purchased and live in now. It is inequitable for Defendants to retain these benefits without paying for them because Defendants intentionally misled Plaintiff into believing that she would be paid for her services and gave her every indication that she would be paid all in an effort to induce Plaintiff into continuing to work for Defendants without having to pay an up front fee (see attached Affidavit of Shelby King).

Defendants cite *Webb v. First Federal Savings and Loan of Anderson*, 300 S.C. 507, 388 S.E.2d 823 (S.C. App. 1989), in support of their argument that an agent isn't entitled to a commission for unsuccessful efforts. Plaintiff would make two points in response to this argument. First, the evidence shows that Plaintiff's efforts were not unsuccessful. Plaintiff introduced Defendant to the sellers who, six days after the introduction, contracted with for the purchase of their home (see Affidavit of Shelby King and attached emails). It was Defendants

who intentionally misled Plaintiff into believing that she was no longer in the market so she would be unaware that Defendants were working behind her back to get a contract on the home. Second, Plaintiff is not seeking a commission. Plaintiff is seeking fair compensation for the time she spent performing services that she was asked to perform for Defendants. What distinguishes this case from *Webb* and the other real estate cases cited by Defendants is that in each of these cases, the agent is seeking a commission and there are no allegations that the buyer behaved unethically, made intentional misrepresentations or intentionally omitted material information as to how the agent was to be compensated.

As shown above, based on the evidence in this case, Plaintiff's unjust enrichment/quantum meruit claim is clearly a viable claim. There can be little dispute that the first two elements are met. Plaintiff clearly conferred a benefit on the Defendant and the Defendant clearly accepted and retained the benefit. While there may be some dispute about whether it is inequitable for the Defendants to retain the benefit without paying for it, there is enough evidence for a jury to find that it is making the issue a fact question for the jury to decide.

This situation is no different than an attorney taking a contingent case without a written fee agreement and the client firing him/her immediately after closing arguments of the trial. The client then refuses to pay the attorney anything despite the favorable jury verdict. The attorney is unquestionably owed at least a reasonable rate for the time he worked on the case under an unjust enrichment/quantum meruit theory. The Plaintiff is a real estate professional instead of legal professional but the situation is analogous and the Plaintiff should be able to recovery under an unjust enrichment/quantum meruit theory.

With respect to Defendants' argument that Plaintiff's fraud claim must fail, Plaintiff would show that the elements of a fraud claim can be met and is question for the jury to decide.

Defendants gave every indication that she would pay Plaintiff (see Affidavit of Shelby King). This representation was false as Plaintiff has not been paid for her work. The representation was material in that being paid for services rendered is the most material portion of a request for services. Defendant's actions in intentionally misleading Plaintiff into thinking she was not interested in the home she purchased six days later is evidence to show that Defendants planned from the beginning to never pay Plaintiff despite requesting and accepting her services. Defendants certainly intended for Plaintiff to rely upon these representations to have her continue to provide services to her. Plaintiff clearly did not know the representations were false as evidenced by her willingness to continue to work in anticipation of being paid. Plaintiff had a right to rely on Defendants' representations and no reason to rely on them. Because Plaintiff relied on the representations, she performed work and was ultimately uncompensated for it. As a result, the fraud claim is a fact question for the jury to decide.

In response to Defendant's argument that the civil conspiracy claim should be dismissed, Plaintiff would show that Defendants failed to appear for their depositions November 7, 2011. As stated above, Plaintiff made every effort to schedule Defendants depositions prior to this hearing to have their testimony on record for use to defend their motion for summary judgment.

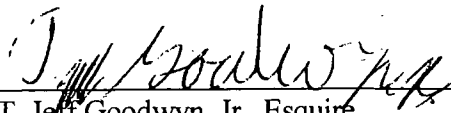
With respect to Plaintiff's claim for conversion, this claim is supported by Plaintiff's Affidavit and her responses to interrogatories. As noted above, Plaintiff is needing Defendants deposition testimony to use in defense of this motion as well.

In conclusion, even without the deposition testimony of Defendants, there is ample evidence in the record to support Plaintiff's claims for unjust enrichment/quantum meruit and fraud as outlined in detail above. Without the deposition testimony of Defendants, Plaintiff is unable to produce evidence of conspiracy or constructive trust.

Respectfully submitted,

GOODWYN LAW FIRM, LLC

By:



T. Jeff Goodwyn, Jr., Esquire
2519 Devine Street, Suite A
Columbia, South Carolina 29205
(803) 251-4517
Attorney for Plaintiff
ATTORNEY FOR PLAINTIFFS

Columbia, South Carolina
April 20, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) IN THE FIFTH JUDICIAL CIRCUIT

Shelby King,) Civil Action No.: 2010-CP-40-07333
 Plaintiff,)

vs.)

Amy Bennett, Charlie Bennett and The)
 Amy D. Bennett Trust, Amy Bennett,)
 trustee,)

Defendants:)

**NOTICE OF MOTION AND MOTION
 FOR SUMMARY JUDGMENT OF
 DEFENDANT AMY BENNETT AND
 THE AMY D. BENNETT TRUST**

FILED
 FEB 22 AM 11:57
 CLERK OF COURT
 P. & G.S.

TO: T. JEFF GOODWYN, JR., ESQ., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendants Amy Bennett and the Amy D. Bennett Trust, Amy Bennett, Trustee, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center, Columbia, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and considering the evidence in the light most favorable to the Plaintiff, there is no genuine issue of material fact and the Defendants are entitled to a judgment as a matter of law on the following grounds:

1. Plaintiff's equitable claims for money owed for "work performed" relating to the Defendants ultimate purchase of the home on 14 Ashworth Lane is barred because S.C. Code Ann. § 40-57-135(D)(4) (Supp. 1998) requires that a buyer's agreement must be in writing for a real estate professional to be paid for services in the sale or real property;
2. Plaintiff's Claims fail for the Statute of Frauds;
3. All of Plaintiff's equitable claims are barred by the doctrine of estoppel; and

4. Plaintiff lacks standing to bring the claims.

This motion is based on the pleadings filed in the case, any and all discovery, including depositions, completed at the time of the hearing of this motion; any and all Affidavits filed in support of this Motion filed in accordance with the South Carolina Rules of Civil Procedure and such other matters as may be properly presented to the Court at the time of the hearing.

RESPECTFULLY SUBMITTED,

LAW OFFICE OF TODD ELLIS, P.A.

By: 

Todd R. Ellis, Esq.

7911 Broad River Road

Suite 100

Irmo, South Carolina 29063

(803) 732-0123

ATTORNEY FOR DEFENDANTS

Irmo, South Carolina
February 22, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010 CP 40 07333

Shelby King,)

Plaintiff,)

vs.)

Amy Bennett and The Amy D. Bennett)
Trust, Amy Bennett, trustee)

Defendants.)

MOTION TO RECONSIDER

2012 MAY -7 AM 11:58
JEANETTE W. HERRIDGE
C.C.P. & G.S.

FILED

TO: TODD R. ELLIS, ATTORNEY FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, will move before the Court for an Order granting Plaintiff's Motion to Reconsider the Court's Order granting of Defendant's Motion for Summary Judgment pursuant to the grounds stated in this motion. Said motion will be heard at _____ (time) on _____ (date) in the Court of Common Pleas of Richland County, for which you will be notified.

The Plaintiff, pursuant to Rule 59, S.C.R.Civ.P., hereby moves the Court to reconsider its Order granting Defendant's Motion for Summary Judgment which was signed and filed on April 26, 2012. Plaintiff argues that her motion should be granted for the following reasons:

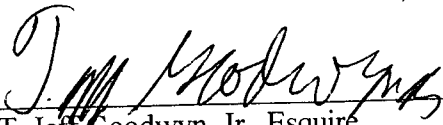
This suit involves a real estate agent with no signed buyer's agency agreement who has brought causes of action against Defendants under theories of quantum meruit, fraud, conversion by false pretenses, and constructive trust. Defendants did not argue and the Court has not ruled that there is not sufficient evidence in the record to support each of the claims Plaintiff has raised. The Court ruled that §40-57-135(D)(4) sets forth the exclusive method for a real estate

professional to be paid and specifically that a real estate professional performing real estate services for a buyer must have a signed agency agreement in order to successfully bring a claim against the buyer for failure to pay.

S.C. Code §40-57-135(D)(4) states in relevant part that a “buyer’s representation agreement must be in writing and must set forth all material terms of the parties agency relationship including... (b) the amount of compensation to be paid or the method to be used in calculating the amount of compensation to be paid.”

Plaintiff first argues that since there is no claim by Defendants that there is insufficient evidence in the record to support each of its causes of action, Defendant’s Motion for Summary Judgment should have been denied and that the Court should grant this Motion to Reconsider. With respect to Court’s ruling relating to §40-57-135(D)(4), Plaintiff would show that the requirement of a signed buyers agency agreement as set forth in S.C. Code §40-57-135(D)(4) is predicated on the real estate professional becoming the buyer’s agent. If the buyer does not want the real estate professional to be his or her agent, the requirement under S.C. Code §40-57-135(D)(4) is not applicable. There are many legitimate reasons why a buyer may want a real estate professional to perform certain real estate related services (show homes, educate on market, provide market research data, etc.), but not want the real estate professional to act as their agent. There is nothing in Chapter 57 of Title 40 that prohibits a real estate professional from performing these type services while not becoming the buyer’s agent. There also nothing in Chapter 57 of Title 40 that prohibits a real estate professional that has not become a buyer’s agent from bringing claims under quantum meruit, fraud, conversion by false pretenses, and constructive trust. Until a real estate professional becomes the buyer’s agent, she is no different than any other service provider who is free to bring a claim under any of the theories raised in Plaintiff’s Complaint after she provides a valuable service to a customer.

For the foregoing reasons, Plaintiff moves the Court to reconsider the April 26, 2012 Order granting Defendant's Motion for Summary Judgment and rule that Plaintiff may proceed to trial on the causes of action she has raised.


T. Jeff Goodwyn, Jr., Esquire
2519 Devine Street, Suite A
Columbia, South Carolina 29205
(803) 251-4517
Attorney for Plaintiff

Columbia, South Carolina
May 3, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Shelby King,)

Plaintiff,)

vs.)

Amy Bennett, Charlie Bennett, and The)
Amy D. Bennett Trust, Amy Bennett)
Trustee,)

Defendants.)

Civil Action No. 2010-CP-40-07333


CERTIFICATE OF SERVICE

JESMETTE M. BRIDGE
C.C.P. & S.
2012 MAY - 7 AM 11:58
FILED

The undersigned hereby certifies that on May 3, 2012, copies of the foregoing **Motion To Reconsider** was served upon the following party(s) by placing a copy of same in the United States mail, first class postage prepaid as shown below:

Todd R. Ellis, Esquire
Law Offices of Todd Ellis, P.A.
7911 Broad River Road, Suite 100
Irmo, SC 29063

The Honorable DeAndrea G. Benjamin
Judge, Richland County
PO Box 192
Columbia, SC 29202



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

) Civil Action No. 2010-CP-40-07333

Shelby King,)

)
)
) Plaintiff,)

) vs.)

) Amy Bennett, Charlie Bennett and The)
) Amy Bennett Trust,)

) Defendants.)

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S FIRST
INTERROGATORIES TO PLAINTIFF**

TO: AMY BENNETT, CHARLIE BENNETT AND THE AMY BENNETT TRUST;
DEFENDANTS:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Plaintiff, by and through her undersigned attorney, hereby answers the Interrogatories propounded by Defendants as follows:

PRELIMINARY STATEMENT

1. The following Responses are based upon information presently available to the Plaintiff, and which the Plaintiff believes to be correct. These Responses are made without prejudice to its rights to utilize subsequently discovered facts.
2. No incidental or implied admissions of fact by Plaintiff are made by the Responses below. The only admissions are express admissions. The fact that Plaintiff has responded to any Requests herein may not be properly taken as an admission that Plaintiff accepts or admits the existence of any facts set forth or assumed by such Requests, or that such Responses constitute admissible evidence. The fact that Plaintiff has responded to part or all of the Requests is not intended to be, and shall not be construed to be, a waiver by Plaintiff of all or any part of any objections made by Plaintiff to any Request.

3. Plaintiff reserves the right to supplement these objections and Responses in the event that additional responsive information or documents are located at a later date.

4. This Preliminary Statement is hereby incorporated by reference into each of the Responses set forth below.

GENERAL OBJECTIONS

1. Plaintiff objects to Defendant's Interrogatories and Requests without waiver of, or prejudice to any objections Plaintiff may make.

2. All such objections are hereby expressly preserved, as is the right to move for a protective order.

3. Plaintiff reserves all objections as to the admissibility at trial of any information provided.

4. The supplying of any information does not constitute an admission by Plaintiff that such information is relevant in this lawsuit. All information provided by Plaintiff is for use in this litigation only and for no other purpose.

5. Plaintiff and his attorneys object to each and every interrogatory and request to the extent that any of the information requested, if any, was obtained and prepared in anticipation of litigation or for trial and Defendants have made no showing that they have substantial need for the materials in the preparation of their case and that they are unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. Plaintiff and his attorneys further object to each and every interrogatory and request to the extent that the information called for, if any, is privileged and it no discoverable under the South Carolina Rules of Civil Procedure.

6. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that the information called for, if any, is protected from discovery by the attorney-client privilege.

7. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it seeks to vary the obligations imposed on Plaintiff under the South Carolina Rules of Civil Procedure.

8. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it seeks information that is equally available to Defendants and the burden on Defendants to obtain the requested information is no greater than the burden on Plaintiff.

9. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it is overly broad, oppressive, unduly burdensome and expansive and beyond that permissible scope of discovery under the South Carolina Rules of Civil Procedure.

10. Plaintiff and his attorney objects to each and every Interrogatory and Request to the extent it seeks an answer involving an opinion or contention that relates to fact or the application of law to fact before discovery has been completed.

11. Plaintiff reserves the right to supplement its responses to Defendant's Interrogatories and Requests upon completion of discovery.

12. Plaintiff objects to Defendant's use of the word "identify" in their Requests because it is multi-part and multiplies the number of Requests to an amount exceeding the amount allowed by the South Carolina Rules of Civil Procedure.

13. Plaintiff objects to these Requests on the basis that it seeks documents that are proprietary and contain confidential trade secret, research, development or commercial information.

DEFINITIONS

1. "Unduly burdensome" means that the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, or that it is unduly burdensome or expensive taking into account the needs of the case, that amount in controversy, limitations on Plaintiff's resources and the importance of the issues at stake in this litigation.

2. "Not relevant" means not relevant to the subject matter involved in this action, not admissible in evidence, and/or not reasonably calculated to lead to the discovery of admissible evidence.

3. "Overly broad" means that the discovery sought includes much more information or many more documents than is reasonably related to the subject matter or the action or likely to lead to the discovery of admissible evidence.

RESPONSES

1. Give the names, addresses and telephone numbers of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: Shelby King, Plaintiff, no statements other than what is contained in email correspondence and letters, Ms. King is expected to testify as to her activities related to assisting Defendants become educated on the Columbia real estate market, her efforts in showing them homes, previewing homes and ultimately introducing Defendants to the home they purchased as well as the events after learning Defendants had purchased 14 Ashworth Court; Amy Bennett, Defendant, no statements other than what is contained in email correspondence and letters, expected to testify as to her activities in trying to locate a home in Columbia, her involvement with Shelby King and the transaction involving the purchase of 14 Ashworth Court; Charlie

Bennett, Defendant, no statement, expected to testify as to his activities in trying to locate a home in Columbia, his involvement with Shelby King and the transaction involving the purchase of 14 Ashworth Court; Elizabeth "Liz" Sullivan, no statements, is expected to testify as to her communications with Defendants and Ms. King during the time period when Defendants were searching for a home and particularly relating to the transaction with 14 Ashworth Court as well as her involvement with the transaction involving 14 Ashworth Court. Richard Schultz, address and phone number not known, no statements, expected to testify as to his knowledge as to the relationship between the parties and any other contact he may have had with either party during this time period; Jay Graham; Graham realty's address, no statement, is expected to testify as to Ms. Bennett's request that Graham Realty indemnify her for any commission she may ultimately be required to pay Shelby King; Peggy Gainey, 3006 Devine Street, Columbia, SC 29205, no statements, expected to testify as to her knowledge as to the facts and circumstances surrounding this case; James H. "Jim" Swick, 1421 Bull Street, Columbia, SC, no statement other than emails, expected to testify as to his involvement with the closing of 14 Ashworth Court and his communications involving Ms. Bennett's request for indemnification.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relates to the claim or defense in the case.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents.

3. Set forth the names and addresses of all insurance companies which have liability

insurance coverage and/or professional errors and omission coverage for plaintiff individually and for Plaintiff under any policy relating to Plaintiff's actions as a RE/Max Advantage Group sales associate relating to the claim and/or counterclaim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE: Plaintiff objects to this request to the extent it asks for errors and omissions coverage as no claim has been brought that would potentially trigger such a claim.

4. Set forth an itemized statement of all damages claimed to have been sustained by the Plaintiff.

RESPONSE: Plaintiff is seeking to be compensated on a quantum meruit basis for the approximately 125 hours of time she worked in educating Defendants on the Columbia real estate market, showing her houses, general support in house hunting, and ultimately introducing Defendants to the house they purchased. Plaintiff is also seeking punitive damages for fraud in addition to the other causes of action outlined in Plaintiff's Complaint.

5. List the names and addresses of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of the case.

RESPONSE: Plaintiff has not retained an expert at this time but reserves the right to do so.

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: See response to Interrogatory #1.

7. State the full name, current address, date of birth of the individual(s) verifying the

answers to these interrogatories.

RESPONSE: T. Jeff Goodwyn, Attorney for Plaintiff.

8. State Plaintiff's current place of employment, detail her position there, how long she has been associated with RE/Max Advantage Group, detail her duties and detail any prior real estate experience prior to her affiliation with RE/Max Advantage Group.

RESPONSE: Plaintiff is currently employed with RE/Max as an independent contractor selling real estate and has been so since 1998. Plaintiff was not in the real estate business prior to 1998.

9. Detail all disciplinary actions, investigations, complaints, Central Carolina Realtors Association actions, employment reviews, lawsuits, Plaintiff has been part of and include sufficient details as to the facts, outcomes and current status?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to the objection, none.

10. What is the status of the South Carolina's Department of Labor, Licensing and Regulation, Division of Legal Services investigation against Plaintiff regarding this matter?

RESPONSE: Believed to be dismissed.

11. Please detail the interactions Plaintiff had with Peggy Gainey and RE/Max LLC World Headquarters regarding the filing of this lawsuit and set forth either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded statements taken from Peggy Gainey and/or RE/Max LLC World Headquarters.

RESPONSE: Plaintiff spoke to Peggy Gainey about this situation prior to filing suit and did not speak to RE/Max LLC World Headquarters prior to filing suit. Plaintiff apprised Ms. Gainey of the situation. No written or recorded statements are known.

12. Did Peggy Gainey or anyone at RE/Max LLC World headquarters ask Plaintiff not to pursue this litigation in her capacity as a RE/Max Advantage Group sales associate?

RESPONSE: No.

13. Did Plaintiff's activities that give rise to the present cause of action against Defendants occur in the scope of Plaintiff's association with RE/Max Advantage Group?

RESPONSE: No. Plaintiff is an independent contractor.

14. Plaintiff, in her complaint states that no buyer's agency agreement was signed. If a buyer's agency agreement had been signed, who would the agreement have been made with (would the agreement have been made with Plaintiff individually, or with RE/Max Advantage Group)?

RESPONSE: Plaintiff objects to this question as being asked in a hypothetical form. Plaintiff also objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

15. Why did Plaintiff not identify herself as a RE/Max Advantage Group sales associate in her complaint?

RESPONSE: Plaintiff is an independent contractor.

16. What is Plaintiff's commission/fee arrangement with RE/Max Advantage Group? If a commission/fee is paid relating to land transactions Plaintiff participates in while performing activities as a RE/Max Advantage Group sales associates, is any check written initially payable to RE/Max Advantage Group or to Plaintiff individually?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

17. In cases where Plaintiff had no listing agreement with the seller and/or no written

and signed buyers agency agreement with a potential buyer, has Plaintiff ever received a commission and/or expense reimbursement directly from the potential buyer when the potential buyer did not purchase any property, even though Plaintiff expended time and expenses showing that prospective buyer properties; and set forth either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents and include whether that payment would have gone to Plaintiff directly or through RE/Max Advantage Group?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

18. In cases where Plaintiff had no listing agreement with the seller and/or no written and signed buyers agency agreement with a potential buyer, has Plaintiff ever received a commission and/or expense reimbursement directly from the buyer when the buyer ultimately purchased a property through another real estate broker that buyer did have a signed agency agreement with that other real estate broker; and set forth either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents and include whether that payment would have gone to Plaintiff directly or through RE/Max Advantage Group.

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

19. Has Plaintiff ever recovered from potential buyers in her individual capacity (and not through RE/Max Advantage Group) for showing homes and providing market information to potential buyers when Plaintiff did not have a signed buyers agency agreement; and set forth either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents and include whether that payment would have gone to

Plaintiff directly or through RE/Max Advantage Group?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

20. Has Plaintiff ever shared a commission with another party who did not have a buyers agency agreement, a sellers agency agreement, and/or a sellers listing agreement; and set forth either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents and include whether that payment would have been made by Plaintiff directly or through RE/Max Advantage Group?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

21. As a listing broker, does Plaintiff list properties on internet based sites and give her contact information? Please identify whether the internet listings list Plaintiff's affiliation with RE/Max Advantage Group or is Plaintiff identified as a RE/Max Advantage Group broker?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

22. Has Plaintiff ever received direct inquiries from prospective buyers from internet based property she had listed that she ultimately sold directly to a buyer, without the use of another broker?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

23. Did Plaintiff contact Defendant Charlie Bennett's direct supervisor, a state employee at the University of South Carolina, Rich Schulz, in early July, 2010 through September, 2010, when she could not reach Defendants and solicit his assistance in contacting Defendants; and provide either a summary sufficient to inform the Defendants of the important

facts, or provide a copy of any written or recorded documents regarding that contact?

RESPONSE: Plaintiff contacted Mr. Schulz during this time period in an effort to contact Defendants. No statements or recordings are available.

24. Is it Plaintiff's regular practice to contact potential buyers' supervisors requesting those third parties intercede on her behalf? Is calling someone's direct supervisor asking them to intercede on Plaintiff's behalf part of Plaintiff's course of conduct for obtaining new business?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

25. Is it Plaintiff's regular practice to ask state employees to transmit messages on Plaintiff's behalf to other state employees that are of a personal business?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

26. Describe how Plaintiff investigated and found that Defendant Amy Bennett had purchased a property, provide either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents. Did Plaintiff again contact Dr. Richard Schulz, a state employee, for further information regarding the activities of Defendants?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

27. How many times does Plaintiff need to be told, either directly or by not responding to calls and emails, that a person with no agency agreement with Plaintiff, wants contact to cease and will initiate contact with Plaintiff should they want to further avail themselves to Plaintiff's efforts before Plaintiff backs off and quits contacting potential buyers and their co-workers for business?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to this objection, Plaintiff is without sufficient knowledge to provide a meaningful answer to this interrogatory.

28. How did Plaintiff get Defendant, Dr. Charlie Bennett's work email address in that she never contacted him via email prior to August 24, 2010?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

29. Is it Plaintiff's regular practice to harass and threaten state employees at work using their public work email accounts regarding private matters?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence. Plaintiff also objects to this interrogatory in that it assumes facts not in evidence and can not be answered properly.

30. If Plaintiff were to have received a commission and/or expense reimbursement regarding this sale, would not the check have been payable to RE/Max Advantage Group and not to Plaintiff directly?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

31. Regarding Plaintiff's complaint prior to the filing of this action, did Plaintiff contact other attorneys requesting they represent her in this matter?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence and is protected by the attorney-client privilege and/or work product doctrine.

32. Was Plaintiff told by any of these other attorneys that she did not have a valid

claim to pursue?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence and is protected by the attorney-client privilege and/or work product doctrine.

33. Does Plaintiff and/or RE/Max Advantage Group have an existing relationship and/or direct closings to lawyers in the office her attorney used to have space in at 3100 Devine Street?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence and is protected by the attorney-client privilege and/or work product doctrine.

34. Is Plaintiff currently, or in the last 5 years, been under the care of psychiatrist or psychologist?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

35. Has Plaintiff made a request/filing/submission to the Central Carolina Realtors Association for a commission resulting from the sale of 14 Ashworth against Graham Realty or anyone in that office? What is the status of that claim?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

36. What discussions did Plaintiff have with Chip Kreps or anyone else at the Central Carolina Realtors Association regarding her request for commission relating to the sale of the property that is subject of this lawsuit against Graham Realty; provide wither a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents regarding that contact?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

37. Plaintiff in her complaint alleges she was entitled to a commission of \$24,400. Where did she come up with that number and who would she have negotiated that amount with? Would Plaintiff have had to split any commission with RE/Max Advantage Group and would any commission due be payable initially to RE/Max Advantage Group and not to Plaintiff individually?

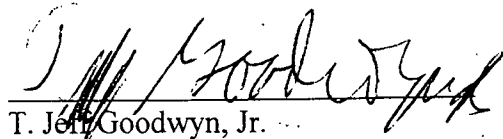
RESPONSE: This figure is an estimate of the approximate commission she would have received 3% of \$800,000.00. Plaintiff objects to the remaining questions in this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

38. Plaintiff in her complaint concedes she did not have a written buyers agency agreement with Plaintiff. Could she at any time, have declined to perform any further activities on Defendants behalf? Why did Plaintiff not mitigate any claimed damages by refusing to perform any further activities on Defendants behalf knowing she did not have a written buyers agency agreement which would have outlined Plaintiff's agreed upon compensation?

RESPONSE: Plaintiff objects to this interrogatory as being irrelevant, immaterial and not likely to lead to discoverable evidence.

39. How did Plaintiff find out about the brokers open house she attended at 14 Ashworth in July of 2010 and provide either a summary sufficient to inform the Defendants of the important facts, or provide a copy of any written or recorded documents regarding that contact?

RESPONSE: From Liz Sullivan.



T. Jeff Goodwyn, Jr.
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Plaintiff

Columbia, South Carolina
September 7, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

) IN THE COURT OF COMMON PLEAS
)

) Civil Action No. 2010-CP-40-07333
)

Shelby King,)

) Plaintiff,)

) vs.)

) Amy Bennett, Charlie Bennett and The)
) Amy D. Bennett Trust,)

) Defendants.)
)

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUESTS TO
PRODUCE TO PLAINTIFF**

TO: AMY BENNETT, CHARLIE BENNETT AND THE AMY D. BENNETT TRUST; DEFENDANTS:

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Plaintiffs, by and through his undersigned attorney, hereby submits her responses to Defendants First Requests to Produce as follows:

Plaintiff will supplement these responses as required under the South Carolina Rules of Civil Procedure.

PRELIMINARY STATEMENT

1. The following Responses are based upon information presently available to the Plaintiff, and which the Plaintiff believes to be correct. These Responses are made without prejudice to its rights to utilize subsequently discovered facts.

2. No incidental or implied admissions of fact by Plaintiff are made by the Responses below. The only admissions are express admissions. The fact that Plaintiff has responded to any Requests herein may not be properly taken as an admission that Plaintiff accepts or admits the existence of any facts set forth or assumed by such

Requests, or that such Responses constitute admissible evidence. The fact that Plaintiff has responded to part or all of the Requests is not intended to be, and shall not be construed to be, a waiver by Plaintiff of all or any part of any objections made by Plaintiff to any Request.

3. Plaintiff reserves the right to supplement these objections and Responses in the event that additional responsive information or documents are located at a later date.

4. This Preliminary Statement is hereby incorporated by reference into each of the Responses set forth below.

GENERAL OBJECTIONS

1. Plaintiff objects to Defendant's Interrogatories and Requests without waiver of, or prejudice to any objections Plaintiff may make.

2. All such objections are hereby expressly preserved, as is the right to move for a protective order.

3. Plaintiff reserves all objections as to the admissibility at trial of any information provided.

4. The supplying of any information does not constitute an admission by Plaintiff that such information is relevant in this lawsuit. All information provided by Plaintiff is for use in this litigation only and for no other purpose.

5. Plaintiff and his attorneys object to each and every interrogatory and request to the extent that any of the information requested, if any, was obtained and prepared in anticipation of litigation or for trial and Defendants have made no showing that she has substantial need for the materials in the preparation of her case and that she is

unable, without undue hardship, to obtain the substantial equivalent of the materials by other means. Plaintiff and his attorneys further object to each and every interrogatory and request to the extent that the information called for, if any, is privileged and it no discoverable under the South Carolina Rules of Civil Procedure.

6. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that the information called for, if any, is protected from discovery by the attorney-client privilege.

7. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it seeks to vary the obligations imposed on Plaintiff under the South Carolina Rules of Civil Procedure.

8. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it seeks information that is equally available to Defendants and the burden on Defendants to obtain the requested information is no greater than the burden on Plaintiff.

9. Plaintiff and his attorneys object to each and every Interrogatory and Request to the extent that it is overly broad, oppressive, unduly burdensome and expansive and beyond that permissible scope of discovery under the South Carolina Rules of Civil Procedure.

10. Plaintiff and his attorney objects to each and every Interrogatory and Request to the extent it seeks an answer involving an opinion or contention that relates to fact or the application of law to fact before discovery has been completed.

11. Plaintiff reserves the right to supplement its responses to Defendant's Interrogatories and Requests upon completion of discovery.

12. Plaintiff objects to Defendant's use of the word "identify" in their Requests because it is multi-part and multiplies the number of Requests to an amount exceeding the amount allowed by the South Carolina Rules of Civil Procedure.

13. Plaintiff objects to these Requests on the basis that it seeks documents that are proprietary and contain confidential trade secret, research, development or commercial information.

DEFINITIONS

1. "Unduly burdensome" means that the information sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, or that it is unduly burdensome or expensive taking into account the needs of the case, that amount in controversy, limitations on Plaintiff's resources and the importance of the issues at stake in this litigation.

2. "Not relevant" means not relevant to the subject matter involved in this action, not admissible in evidence, and/or not reasonably calculated to lead to the discovery of admissible evidence.

3. "Overly broad" means that the discovery sought includes much more information or many more documents than is reasonably related to the subject matter or the action or likely to lead to the discovery of admissible evidence.

RESPONSES

1. For each person known to the parties or counsel to be witness concerning the facts of this case, produce a copy of any written or recorded statements taken from such witnesses.

RESPONSE: No such statements are in Plaintiff's possession.

2. Produce any prepared documents in possession of Plaintiff that relate to the claim, defense or cross claim in this case.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

3. Produce all documents identified in response to Defendants First Interrogatories to Plaintiff.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

4. Produce the declaration page for all liability and professional error and omission policies that may provide liability insurance coverage for the claims alleged in Defendant's cross claim including policies covering Plaintiff that might be provided by RE/Max Advantage Group.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

5. Produce any evidence in support of any claim or defense Plaintiff is making in this case.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

6. Produce any expert report identified in Plaintiff's responses to Defendant's interrogatories.

RESPONSE: None at this time.

7. Produce any evidence in support any monetary damages Plaintiff is claiming.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

8. Produce any evidence in support of Plaintiff's claim of a commission of \$24,400 from Defendants.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

9. Produce a copy of Plaintiff's submission to the Central Carolina Realtors Association against Graham Realty/Liz Sullivan and/or Mr. Graham relating to a request for a commission relating to the sale of the property that is subject of this lawsuit.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

10. Produce copies of all communications/emails Plaintiff had with Chip Kreps or anyone at the Central Carolina Realtors Association relating to her request for a commission on sale of the property involved in this lawsuit against Graham Realty or anyone in that firm.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

11. Produce copies of all communications/email Plaintiff had with Liz Sullivan and/or Graham Realty regarding the subject of this lawsuit from July 20, 2010 to the present.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

12. Produce copies of all communications/emails between Defendants and Plaintiff from May 12, 2010 to the present.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

13. Produce a copy of the July 12, 2010 email referred in Plaintiff's Complaint Paragraph 10, in which Plaintiff claims Defendant Amy Bennett indicated she was interested in seeing a property.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor

agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

14. Produce a copy of documents regarding the process Plaintiff follows to file a claim for commissions with the South Carolina Board of Realtors.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence

15. Produce the contract or other employment arrangement Plaintiff has with RE/Max Advantage Group which, among other things, details Plaintiff's relationship with RE/Max Advantage Group, terms and responsibilities.

RESPONSE: See attached independent contractor's agreement.

16. Produce documentation that shows Plaintiff has the right to file actions such as this, in her own name for actions stemming from activities performed in her capacity as a RE/Max Advantage Group sales associate.

RESPONSE: Plaintiff is an independent contractor and has the right to file suit in any manner she chooses.

17. Produce documentation that shows Plaintiff's fee arrangement/commission structure between her and RE/Max Advantage Group.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to this objection, see attached independent contractor agreement.

18. Produce all emails or other communication between Plaintiff and Peggy Gainey and/or RE/Max, LLC, World Headquarters regarding this lawsuit or the subject of the claims against the Defendant.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence

19. Produce a copy of Plaintiff's personnel file or other employment file with RE/Max Advantage Group.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence

20. Produce a copy of any request by Plaintiff to Defendants to provide reimbursement for her expenses/time spent prior to August 20, 2010.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

21. Produce any evidence that Plaintiff has regarding her request of Defendant's to sign a buyer's agency agreement which would have outlined fees, any commissions owed by seller, reimbursement of expenses, or any other amounts Plaintiff is seeking.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

22. Produce any evidence of an attempt by Plaintiff to make any claim for compensation/expenses from Defendants from the \$5,000 check Defendant Amy Bennett gave to Plaintiff on or around May 12, 2010, the last time Defendants saw Plaintiff, before returning the entire \$5,000 to Defendant Amy Bennett.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

23. Produce any evidence that Plaintiff has to support her claim in Plaintiff's complaint that Defendants requested that the listing agent reduce her sales commission in exchange for a proportionate reduction in the price of the home that Amy Bennett purchased.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

24. Produce any evidence that Plaintiff has that shows that Defendant knew the commission arrangement between Defendant Amy Bennett's agent and seller prior to her contract to purchase the home on 14 Ashworth.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

25. Produce any emails Plaintiff has initiated by any Defendant in response to Plaintiff's June 16, 2010 email in which Plaintiff requested that Amy Bennett contact her when they "wanted to round up again and find a home.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-

mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

26. Produce pricing/cost documentation/guidelines Plaintiff uses to charge for her time in showing potential buyers property and educating them about the area.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

27. Produce evidence that any pricing/cost information was communicated by Plaintiff to Defendants and/or agreed to by Defendants.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

28. Plaintiff, in her complaint Paragraph 6, states that the buyer's agency agreement she wanted Defendant Amy Bennett to sign would have provided that the seller pay the real estate commission. Produce any evidence then as to why Plaintiff would now transfer that expectation of payment to Defendants.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement, and other documents bates labeled King 00001 - King 00402.

29. Produce a copy of NAR and CREA code of ethics that Plaintiff is bound to follow.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence. Plaintiff further objects to this request as this request is overly broad and burdensome and that Defendant has equal access to such regulations.

30. Produce a list of properties in which Plaintiff was the listing agent that she has sold via direct means (i.e. off internet sites or other direct means) directly to a buyer who did not use another realtor in the last 5 years.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence

31. Produce all documentation of sold properties in which Plaintiff was the listing agent and the buyer's agent with a signed buyers agency agreement and there was a claim for commission by someone not a part of the land transaction and who did have a signed buyers agency agreement with that buyer that was paid.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

32. Produce all documentation of sold properties where Plaintiff was the listing broker and acted in a dual agency role as the buyer's agent with a signed buyers agency agreement in which she discounted the commission agreement with the seller to facilitate a sale.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

33. Produce all documentation of where Plaintiff successfully obtained a commission and/or fees/expenses in which she was not the listing broker and where she did not have a signed buyers or sellers agency agreement with any of the parties.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

34. Produce any documentation Plaintiff is aware of in South Carolina of where a broker has recovered a commission/fee/costs and/or expenses from a buyer in which they had no written buyer agency agreement.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

35. Produce any evidence that Plaintiff has that supports the claim that Defendants did not independently find information about the sale of the home in question through their own efforts from information publically available on the internet or other sources.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

36. Produce any evidence that Plaintiff has that those emails Plaintiff states in her Complaint Paragraph 9, were received and/or read by Defendants in a timely fashion.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

37. Produce all documentation/emails Plaintiff has regarding information you gave Defendants about the schools.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

38. Produce a list of all properties Plaintiff sold in which she was the listing agent and the buyer's agent and acted as a dual agent in the last 5 years. Produce copies of those dual agency agreements.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

39. Produce a list of properties Plaintiff sold in the last 3 years over \$600,000.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

40. Produce a list of the number of homes Plaintiff sold in the last 3 years in Richland 2 County. Produce a list of all properties Plaintiff sold in the last 3 years in Lexington County.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

41. Produce a list of Plaintiff's sales volume by year for each of the last 5 years.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence.

42. Produce documentation on how Plaintiff heard about the broker's open house on 14 Ashworth in July, 2010.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

43. Produce documentation evidencing Defendant Amy Bennett requested Plaintiff to show her the home on 14 Ashworth.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

44. Please provide all documentation that Defendants directed Plaintiff to attend a broker's open house on their behalf for 14 Ashworth in July, 2010.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

45. Produce all emails and detail all communications regarding 14 Ashworth Plaintiff had with Dr. Richard Schulz, a state employee at the University of South Carolina, from July 1, 2010 to the present.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence

46. Produce any documentation/emails Plaintiff has regarding how she investigated and found out that Defendants had purchased a home.

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to this objection, see attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

47. Produce documentation that Plaintiff was entitled to or would have received a 3% commission on property that is this subject of Plaintiff's lawsuit.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan; and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

48. Produce all emails Plaintiff wrote to or received from Defendants from May 14, 2010 to August 25, 2010. Please specifically highlight any communication initiated by Defendants and not in response to one of Plaintiff's emails.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402.

49. Produce all emails you wrote to/received from Liz Sullivan and/or Graham Realty from July 1, 2010-present relating to 14 Ashworth.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above.

See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

50. Produce copies of the 2 contracts of sale submitted by Plaintiff on behalf of Amy Bennett and the Amy D. Bennett Trust for the property on 168 Island View Circle and the property in the Preserves.

RESPONSE: See attached emails between Plaintiff and Amy Bennett, Amy Bennett and Liz Sullivan, and other emails and letters between the potential witnesses listed above. See attached unsigned buyers agency agreements, offers for sale, summary of e-mails/automatic emails sent by Shelby King to Amy Bennett, independent contractor agreement, MLS listing post sale, contract for sale of 14 Ashworth Court, HUD Statement, Agency Agreement and other documents bates labeled King 00001 – King 00402

51. Produce a list of all the attorneys Plaintiff meet with or discussed this case with before she contacted the Goodwyn Law Firm to represent her in this case. Do you or REMAX Advantage have an existing relationship with your attorney's office? Do you or REMAX Advantage direct closings and other business to your lawyer or others in his office?

RESPONSE: Plaintiff objects to this response as being overly broad and unduly burdensome, irrelevant, immaterial and not likely to lead to discoverable evidence. Plaintiff objects to this response as being protected by the attorney-client privilege.

52. Produce all evidence as to each required element of proof to support Plaintiff's claim in Count 1, quantum meruit and unjust enrichment, as it pertains against each Defendant.

RESPONSE: Plaintiff will produce such evidence at trial.

53. Produce all evidence as to each required element of proof to support Plaintiff's claim in Count 2, constructive trust, as it pertains against each Defendant.

RESPONSE: Plaintiff will produce such evidence at trial

54. Produce all evidence as to each required element of proof to support Plaintiff's claim in Count 3, fraud, as it pertains against each Defendant.

RESPONSE: Plaintiff will produce such evidence at trial

55. Produce all evidence as to each required element of proof to support Plaintiff's claim in Count 4, civil conspiracy, as it pertains against each Defendant.

RESPONSE: Plaintiff will produce such evidence at trial.

56. Produce provide all evidence as to each required element of proof to support Plaintiff's claim in Count 5, conversion by false pretenses, as it pertains against each Defendant.

RESPONSE: Plaintiff will produce such evidence at trial

57. Produce any evidence to show that Defendants negotiated with the listing agent to reduce her sales commission in exchange for a proportionate reduction in the purchase price of the home contrary to what the listing agents exclusive right to sell contract states, that Plaintiff requested from listing agent, Graham Realty, that the commission the listing agent would get from the buyer was a pre agreed to amount of 3%

should the property be sold in a dual agency situation, which it was in this case, and that document was signed July 1, several weeks before the Defendants saw the property.

RESPONSE: Plaintiff will produce such evidence at trial

58. Produce any evidence to show to the contrary, that pursuant to state and contract law, any commissions, costs, etc are paid to parties out of the proceeds of the sale at the time of sale and that the terms of the Right to Sell Contract between seller and the listing firm govern the amount of commission the seller pays the listing firm.

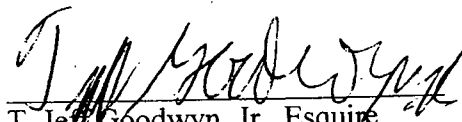
RESPONSE: Plaintiff will produce such evidence at trial

59. Produce any evidence to show to the contrary, that pursuant to state and contract law, that a buyer, when they enter into a contract of sale using standard forms authorized by The Greater Columbia Association of Realtors, are negotiating the price of a home.

RESPONSE: Plaintiff will produce such evidence at trial

60. Produce any evidence to show to the contrary, that pursuant to state and contract law and real estate practice in South Carolina, that a party making a claim for commission on a sale of a property, would negotiate any amount due with the listing firm, as they would be the party to whom the commission money flowed pursuant to their contract with the seller, unless a party had a written agreement with another party in which payment would be made otherwise.

RESPONSE: Plaintiff will produce such evidence at trial



T. Jeff Goodwyn, Jr., Esquire

Goodwyn Law Firm, LLC

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Suite A

Columbia, SC 29205

(803) 251-4517

Attorney for the Plaintiff

September 7, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP -40-0733

Shelby King,)

Plaintiff,)

vs.)

Amy Bennett individually and as Trustee of)
The Amy D. Bennett Trust, and Charlie)
Bennett,)

Defendants.)

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST REQUESTS FOR
ADMISSION TO PLAINTIFF**

TO: AMY BENNETT, CHARLIE BENNETT AND THE AMY D. BENNETT TRUST; DEFENDANTS:

Come now, Plaintiffs in the above-styled action and respond to Defendant's Request for Admission to Plaintiff by responding to each numbered request as follows:

1. Admit that Plaintiff's activity giving rise to her claim occurred while in the course of her relationship with RE/Max Advantage Group.

RESPONSE: Plaintiff admits that at the time of the activities involved in this case, she was an independent contractor of RE/Max..

2. Admit that as a real estate professional, Plaintiff is bound by the S.C. Code of Laws, Title 40 Chapter 57-135(D)(4) which states:

(a) a description of the agent's duties or services to be performed for the principal;

(b) the amount of compensation to be paid or the method to be used in calculating the amount of compensation to be paid;

(c) an explanation of how and when the agent earns his compensation;

(d) an explanation of how compensation will be divided among participating or cooperating brokers, if applicable;

(e) the amount of retainer fees, deposits, or any other money which is collected before the agent's performance of any services on behalf of the principal and an explanation of whether or not, and if so, under what conditions such monies are refundable or payable to or on behalf of the principal;

(f) the duration of the agency relationship, setting forth specific dates for the beginning and ending of the relationship;

(g) the signature of all parties.

RESPONSE: Plaintiff objects to this request to the extent that it calls for Plaintiff to admit what the law in this case is. Subject to this objection, Plaintiff admits that she is a licensee as defined in Title 40, Chapter 57 and certain provisions applicable to licensees apply to her as a licensee. Plaintiff denies that she is bound to the provisions cited in this request as her sole means of compensation.

3. Admit that as a real estate professional, Plaintiff is bound by the S.C. Code of Laws, Title 40, Chapter 57-139(G) which states: For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a brokerage company and its affiliated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its affiliated licensees agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant, or licensee or created orally or by implication.

RESPONSE: Plaintiff objects to this request to the extent that it calls for Plaintiff to admit what the law in this case is. Subject to this objection, Plaintiff admits

that she is a licensee as defined in Title 40, Chapter 57 and certain provisions applicable to licensees apply to her as a licensee. Plaintiff denies that the provisions cited in this request limit her ability to be compensated to as her sole means of compensation

4. Admit that Plaintiff does not have a written buyers agency agreement with any Defendant which would have outlined any commission or other expenses due plaintiff and from whom it would be owed by contract and as required by S.C. Code of Laws.

RESPONSE: Denied.

5. Admit that only with a written signed agency agreement is Plaintiff entitled to a commission under S.C. Code of Laws.

RESPONSE: Plaintiff denies that she is entitled to a commission only with a written signed agency agreement.

6. Admit that with no buyers agency agreement with any of the Defendants, Plaintiff was free to decline to perform any activities on their behalf.

RESPONSE: Plaintiff denies the statement as written.

7. Admit that Defendant Amy Bennett gave Plaintiff a check for \$5,000 on May 12, 2010, which was returned in full by Plaintiff.

RESPONSE: Plaintiff admits that Defendant gave her an earnest money check for an offer she was considering and that Plaintiff returned this check to Defendant when the offer was declined.

8. Admit that the last time Plaintiff saw Defendants in her capacity as a RE/Max Advantage broker was the last time she took Defendants to view homes in the middle of May 2010.

RESPONSE: Plaintiff admits that the last time Plaintiff physically saw any Defendant was in May 2010. Plaintiff continued to communicate with Defendants via email and telephone in her capacity as a RE/Max Advantage broker after May 2010.

9. Admit that pursuant to Plaintiff's Subpoena to Produce Documents dated June 27, 2011, to Liz Sullivan, Ms. Sullivan produced the exclusive right to sell contract she had signed with the seller of 14 Ashworth dated July 1, 2010 which agreement stated the seller pay a 5% commission at the time of sale to Graham Realty but only 3% if only Graham Realty was involved, which was the case here; and the Settlement Statement also produced by Ms. Sullivan, indicates that pursuant to the exclusive right to sell the Seller of 14 Ashworth did in fact pay that 3% commission to Graham Realty from the proceeds of the sale.

RESPONSE: Plaintiff objects to this request to the extent that it asks Plaintiff to admit the contents of documents and contracts produced in this case that she is not a party to. Subject to this objection, Plaintiff denies the statement as written and defers to the documents themselves and the law relating to their applicability in this case.

10. Admit that Defendant Amy Bennett sent Plaintiff an email in May, 2010 indicating that Defendants were not interested in any looking at any further properties with her at that time.

RESPONSE: Plaintiff denies the statement as written and defers to the actual email for what was communicated between the parties.

11. Admit that Plaintiff nonetheless, on June 16, 2010, sent Defendant Amy Bennett an unsolicited email, checking up on the status of her closing of her home in Illinois and stating "Let me know when you want to round up again and find a home."

RESPONSE: Plaintiff denies the statement as written and defers to the actual email for what was communicated between the parties.

12. Admit that Defendants did not initiate contact with Plaintiff after June 16, 2010 to “round up again and find a home”.

RESPONSE: Plaintiff denies the statement as written and defers to the actual email records for what was communicated between the parties.

13. Admit that Plaintiff contacted Richard Schulz, a state employee when Plaintiff could not reach Defendants in early July 2010 to get him to intercede on her behalf.

RESPONSE: Plaintiff objects to this request as irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to this objection, Plaintiff denies that any contact with Richard Schulz was to “get him to intercede on her behalf.”

14. Admit that Plaintiff never requested from any Defendants any compensation for time spent or for reimbursement of expenses prior to August 20, 2010.

RESPONSE: Plaintiff admits that no request from payment from Defendants was made until approximately August 20, 2010.

15. Admit that Plaintiff was aware that Defendant Amy Bennett was performing online searches herself for homes to purchase.

RESPONSE: As Plaintiff was never in the presence of Amy Bennett when she was on the internet, Plaintiff is without knowledge to either admit or deny this statement.

16. Admit that Plaintiff received an email from Defendant Amy Bennett on March 17, 2010 in which she stated “I went online last night and found many properties and proceeded to list the MLS numbers of 7 properties she wanted to see.

RESPONSE: Plaintiff denies the statement as written and defers to the actual email for what was communicated between the parties.

17. Admit that Plaintiff sent an email to Liz Sullivan on August 23, 2010 in which she stated "...if Amy came on her own, I am not going to contact her now as she has made a decision... I know her very well."

RESPONSE: Plaintiff denies the statement as written and defers to the actual email for what was communicated between the parties.

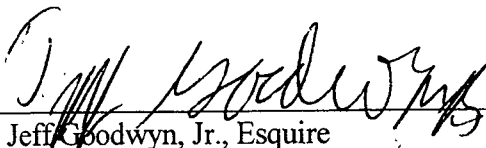
18. Admit that Plaintiff on August 24, 2010, emailed Defendants Amy Bennett and her Dr. Charlie Bennett, a state employee, a personal letter regarding her demands for a commission using Dr. Bennett's state work email account.

RESPONSE: Plaintiff admits that she emailed Amy Bennett and Charlie Bennett on August 24, 2010. Plaintiff denies any additional allegations defers to the actual email for what was communicated between the parties and to what address they were sent.

19. Admit that Plaintiff submitted or attempted to submit a request/claim at the Central Carolina Realtors Association against Graham Realty, or someone at that office, for the same commission as she is seeking in this lawsuit.

RESPONSE: Plaintiff objects to this request as irrelevant, immaterial and not likely to lead to discoverable evidence. Subject to this objection, Plaintiff denies the statement as written.

GOODWYN LAW FIRM, LLC

By: 
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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
September 7, 2011

State of South Carolina

Court of Common Pleas

County of Richland

2010-CP-40-07333

Shelby King

-VS-

Amy Bennett, et al.

:
:
: TRANSCRIPT OF RECORD
:
:

April 17, 2012

Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge.

A P P E A R A N C E S:

T. Jeff Goodwyn, Jr., Esquire
Attorney for the Plaintiff

Todd R. Ellis, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

1 **The Court:** All right. Shelby King versus Amy Bennett.
2 Thank you all for being so patient.

3 **Mr. Ellis:** Thank you, Your Honor.

4 **Mr. Goodwyn:** No problem, Your Honor.

5 **Mr. Ellis:** Thank madam court reporter and the Court,
6 for that matter. I know these things happen---

7 **The Court:** Yeah.

8 **Mr. Ellis:** ---and we will adjust. Your Honor, I'm Todd
9 Ellis. I represent the Bennetts that are left in this
10 matter. And I know you've had a diverse roster today. I
11 think we're going to add to that as well.

12 **The Court:** Okay.

13 **Mr. Ellis:** But we hope to make it as clear as possible.
14 This is a very serious matter and has ramifications legally
15 well beyond this action. To say it simply, the plaintiff in
16 this case, Shelby King, is a licensed real estate agent
17 working for Re/Max Advantage Group. The action centers on
18 services that she provided professionally through her real
19 estate license where she claims that my clients engaged her
20 in November of 2009 to locate a suitable home in Columbia,
21 South Carolina.

22 My clients, the Bennetts, moved from Chicago, Illinois,
23 later after that period of time, and he is a professor at the
24 University of South Carolina. Mrs. Amy Bennett and the trust
25 who are named defendants in this case is the spouse. The

1 trust is actually the owner of this property which is
2 essentially a residential home in Columbia, South Carolina.

3 Your Honor, the facts as pled by the plaintiff -- and
4 this is a motion for summary judgment which we thought you
5 should hear that first. If you're inclined to grant it, it
6 obviously would do away with the remainder of the motions
7 before you.

8 But the facts are, as she has pled them, is that Ms.
9 King states she spent 125 hours of her time researching
10 homes, market values and trends, previewing homes,
11 communicating with the defendants about the homes, school
12 districts and other desired features, showing defendants
13 homes, driving defendants to the airport, and performing
14 other real estate professional duties performed. So that is
15 from Paragraph 5 of her pleading.

16 Through that though and through earlier memorandum in
17 this case, this is not a claim before you today for
18 commissions to be paid purportedly. This is for some fee
19 that she claims that she is owed through providing these
20 services, and she has sued my clients for quantum meruit and
21 unjust enrichment, fraud, civil conspiracy, conversion by
22 false pretenses, and for constructive proceeds she asserts
23 she's entitled to receive from providing these services.

24 Your Honor, this is a pivotal case, an important one,
25 because this would clarify -- I don't think it needs to be

1 clarified, but this would confirm what the South Carolina
2 statute says - and this is a summary judgment for all claims
3 - in that it's based on simply a requirement that a real
4 estate professional cannot seek a fee in any form unless they
5 have a written agreement with a party to the closing of the
6 transaction, and there's no material facts in dispute. In
7 fact, admitted by the plaintiff is that she never had a
8 written buyer's agency agreement with my client. She never
9 wrote my clients and got them to sign any document or even
10 wrote them and told them: Okay, based on those 125 hours and
11 the number of hours that I spent, I'd like to be paid X
12 number of dollars.

13 So the summary judgment has a couple of levels, but
14 there is no question and no fact in dispute that she did
15 provide them some services in taking them around and showing
16 them some houses. She sent sometimes unsolicited e-mails,
17 trying to get their business, and she took them to the
18 airport on occasion. There's no question that she did that,
19 but our motion for summary judgment says irregardless of how
20 you frame those damages or claims for fees or commissions,
21 40-57-135(d)(4) states she cannot recover. Your Honor, I
22 have a memorandum---

23 **The Court:** This is 40-57?

24 **Mr. Ellis:** Yes, Your Honor. I'm going to give you the
25 memorandum; I should have done it from the beginning. I've

1 been sitting here so long that I forgot I had it for you.
2 Your Honor, it's there in full in the memorandum if you'd
3 like to look at it, and I'll tell you exactly what page it
4 starts on. It starts on page 5, Your Honor; at least that
5 argument does. And then on 6 you'll see the statute laid out
6 in full.

7 But, Your Honor, 40-57-135(d)(4), which is the South
8 Carolina code regarding real estate agents, states that a
9 listing or a buyer's representative agreement must be in
10 writing and must set forth all material terms of the parties'
11 agency relationship including but not limited to -- and it
12 goes on to list A. through L. in this case. The particular
13 ones I would highlight for you is is that B. states the
14 amount of compensation to be paid or method to be used in
15 calculating the amount of compensation to be paid, an
16 explanation of how and when the agent earns his compensation,
17 and G. down there below, Your Honor, are the signatures of
18 all the parties.

19 There is no fact in dispute that they would assert - I
20 do not know of - that the plaintiff would show you that
21 there's any writing between the parties. Ms. King sent my
22 client an agency agreement fairly early on, and she did not
23 sign that. My client did not say, "I'm going to sign that."
24 She doesn't allege that she said she was going to sign it.
25 She just alleges that she was led to believe that my client

1 would eventually sign it.

2 Now, you and I can glean what normally happens in these
3 cases. My client bought a big house in Columbia. Ms. King
4 wanted that business. She obviously gave some services early
5 on in an attempt to get her to sign the buyer's agreement,
6 but the facts show -- my client was deposed and stated she
7 dealt with a number of agents in South Carolina before
8 ultimately finding this home at Ashworth Court.

9 Now, counsel is going to tell you all these facts, which
10 I'm happy to hear again, in which she sent this house to my
11 client via e-mail, kept contacting her and said, "When are
12 you coming down?" But she never has a signed written
13 agreement in this case, and she cannot collect any form of
14 fee or commission.

15 Now, he's going to argue that it's not a commission
16 case. She's suing for quantum meruit for time she put in.
17 You can't do that either. And the statute specifically
18 states if she's to be compensated in any way - it doesn't
19 have to be based on a percentage of the sale - she must lay
20 that method out and the use of the way it's going to be
21 calculated. It frankly was just not there.

22 Now, counsel is a good lawyer and he's rightfully going
23 to say that there was some scheme or plan by my client to --
24 that she intended to use her and then not pay her in this
25 case. Irregardless of whether that's true or not - and I

1 would assert to you that there's no evidence of that in this
2 case at all - the bottom line is, Your Honor, that for this
3 Court to allow this case to go forward in a case in which a
4 real estate agent has no written agreement to a transaction
5 with a client she's suing -- it wasn't a client, never was a
6 client -- with a party to a transaction she was suing and
7 without a written agreement would be unprecedented. I know
8 of no other case, and frankly none of the real estate
9 commission has done that as well. Your Honor, I have other
10 grounds for that as well, for the summary judgment motion,
11 but that is the basis of the overall "all claims should be
12 gone in the case."

13 The plaintiff should also be estopped, Your Honor, from
14 claiming that she is supposed to collect fees from my client
15 because she has told her in an e-mail, which is attached to
16 this memorandum for Your Honor, in March of that year that
17 she does not collect fees from buyers, which is my client.
18 And as a result of that, she is estopped from attempting to
19 collect now for those fees.

20 Furthermore, Your Honor, in the exhibits with you as
21 well you will see a letter from the South Carolina Realtors
22 Association in which they are asserting that she filed a
23 claim with the Realtor Association trying to collect the fee
24 from Peggy Gainey, the actual broker that ended up selling
25 this house and, therefore, she's taking conflicting positions

1 in a judicial forum and you can judicially estop her from
2 trying to collect in this case. She has asked a third party
3 to give her the fee, sued my client who is not a party or a
4 client of hers in any way, taking a conflicting position
5 saying my client owes -- owes her those fees.

6 So we would assert the second ground for summary
7 judgment is that she should be estopped based on a position
8 in which she said she would not collect fees from the buyer
9 and, furthermore, that she's taken a conflicting position
10 with the realtors organization regarding who owes this. And
11 finally, Your Honor, and maybe most importantly -- in any
12 other case I probably would have put this first. Incredibly
13 important: That the plaintiff has no standing in this case
14 to bring the claim whatsoever. The claim is brought in her
15 own name for services that she's pled related to customary
16 real estate services.

17 She has a contract that's in your exhibits as well, the
18 memorandum, and that is with Re/Max Advantage Group. That
19 contract says that she can provide no real estate services.
20 She can attempt to collect or not collect any fee in her own
21 name, that the fee has to go through Re/Max Advantage Group.
22 Re/Max Advantage Group, if there was such a claim, would be
23 the party, the real party in interest, to bring a claim in
24 this case.

25 The plaintiff, Shelby King, has a contract which says

1 she cannot collect fees. So even if the Court let this
2 matter go forward and a jury rendered some verdict and found
3 my client liable, the award could not go, under her own
4 contract, to her individually. And I would assert to Your
5 Honor that is her way of skirting the fact that Re/Max did
6 not want to bring this claim.

7 The bottom line is, Your Honor, is that the plaintiff is
8 a sophisticated veteran real estate agent who was trying to
9 lure my clients in to make sure they get their work - I
10 cannot blame her for that - who then let her guard down and
11 did not get a buyer's agreement. My client is also a
12 sophisticated person who used multiple real estate agents in
13 a town she did not know, found a property of her own and then
14 closed on that property paying the actual seller's agent who
15 ended up being a dual agent as well.

16 She did not benefit by any money in any way, and what's
17 really interesting, Your Honor, is the fact that my client
18 was told prior to the time of the closing that Mrs. King was
19 asserting to the closing attorney that she was owed money
20 from this. My client says, "I'm not going to close." That
21 attorney, amazingly, wrote my client a letter and said: She
22 has no claim. She doesn't have a written buyer's agreement,
23 and I'll indemnify you and represent you if she sues you.

24 He then filed a summary answer and then withdrew from
25 the case, leaving my client hanging out there. So much of

1 this is coming to a head right before this matter is called
2 to a trial because I've only been retained since, I think,
3 October or November of 2011. My client has been working on
4 her own for some period of time, but it's an egregious
5 situation. And the reason that I tell you that I implore the
6 Court to grant summary judgment is because, Your Honor, if we
7 do not, this opens up every real estate agent, every buyer,
8 every party to a real estate transaction to these type of
9 potential claims.

10 Ms. King provided some services, but what if you just
11 fired out e-mails to potential clients that you had and then
12 claimed you're owed hours for researching and doing work?
13 She did more than that; I'm not trying to argue that. The
14 point is we would have an endless stream of litigation
15 related to real estate agents claiming they were part of a
16 transaction because they told them on a tip in a bar that
17 there's a house opening up on Springdale and that person went
18 over there and closed on it, and they would have claimed that
19 they have services.

20 The reason they passed this law is because they knew,
21 like other states, that it would limit litigation, require a
22 strict guideline from how to conduct business in the real
23 estate industry, and take veteran real estate agents who are
24 trained to do this to make sure they get their documents
25 signed, a buyer's agreement. So that's our motion for

1 summary judgment, Your Honor. Obviously if you're inclined
2 to grant that, I would provide you an order outlining that as
3 well, and it obviously would do away with the remainder of
4 our motions if you are so inclined to grant it.

5 **The Court:** Yes, sir, Mr. Goodwyn?

6 **Mr. Goodwyn:** Your Honor, one of the few things I think
7 I would agree with Mr. Ellis on about this situation is that
8 it is an egregious situation. This is a woman -- this is an
9 attorney herself, very clever, smart woman, knows the law,
10 moving from Chicago to South Carolina, looking for a house,
11 is referred to my client, Ms. King, to help her find a house.
12 Spent many, many hours, as Mr. Ellis said, you know,
13 researching the market for her, educating her on the market.

14 She would, you know, fly to Columbia occasionally to
15 look at houses. She would show her... Asked her to sign a
16 buyer's agency agreement on multiple occasions which she
17 refused to do, but she gave her every indication -- you can
18 look at her affidavit that I have filed in my response to the
19 motion to dismiss. Gave her every indication that she would
20 be paid for her work. Spent lots and lots of time trying to
21 find an appropriate house for the Bennetts.

22 It came down to about the time when the Bennetts were
23 actually -- or actually -- I'm sorry.. Mr. Bennett was in
24 Columbia; he had a job at the university. Mrs. Bennett
25 stayed in Chicago to sell the house. After the house sold,

1 she moved down in July. A few days before she moved, my
2 client sent her an e-mail letting her know about this house
3 that had just come on the market that met her very specific
4 criteria. She says, "Great. Let's go see it this weekend."
5 Sends her an e-mail two days later saying, "Well, no, I don't
6 think we're in the market anymore. We're going to look for
7 schools," whatever.

8 Within six days of that e-mail, she's gone to the house
9 and she has a contract on the house with the listing agent.
10 Basically used my client for six, eight months, got right up
11 to the time of the sale. My client identified this house for
12 her, said, "Hey, let's go see it." Then she misleads my
13 client to thinking that she's out of the market so she can
14 cut her out of the deal, goes to the listing agent. The
15 listing agent reduces her commission in the negotiation
16 process to help make the deal work which was all made
17 possible by the fact that there's no buyer's agent on the
18 other side. So Ms. Bennett gets a reduced price on the house
19 because she cut my client out of the deal.

20 And I understand what Mr. Ellis is saying about -- about
21 the -- you can't receive a commission on a house without a
22 listing agreement or a buyer's agency agreement which is
23 true. The act is very clear on that, but there's nothing in
24 the act, nothing in the 40-57-135(d)(4) that mentions
25 anything about an agent not being able to be paid in any

1 other fashion.

2 This is a quantum meruit claim. This is -- and this is
3 -- a very good analogy that I like to use is an attorney
4 taking a case on a contingent basis and then the client fires
5 him as soon as the jury goes out. And then the jury comes
6 back with a favorable verdict, and the client says, "No, I'm
7 not going to pay you your contingent fee." I mean, the
8 attorney has done all the work, and you can't just fire him
9 at the very last second and expect not to pay anything. The
10 attorney is at least entitled to a quantum meruit fee on his
11 hours.

12 The same thing with a real estate agent. You give a
13 real estate agent every indication that you're going to pay
14 them. The real estate agent is on a contingent fee. They
15 get you all the way up to buying your house and then you fire
16 them a few days before you get a contract on the house and
17 you cut them out of their contingent fee. Well, they're at
18 least entitled to a quantum meruit---

19 **The Court:** Let me ask: Are y'all in agreement that
20 there's no---

21 **Mr. Goodwyn:** There's no buyer's agency agreement.

22 **The Court:** Okay.

23 **Mr. Goodwyn:** Nothing was signed. She refused to sign
24 it on multiple occasions but gave my client every indication
25 that she would be paid, and that's the basis of the -- of the

1 agreement. This is not the open-the-floodgates kind of a
2 case that I think Mr. Ellis is trying to portray it as. If
3 this case goes to a jury on the quantum meruit issue, that --
4 all that means is that agents who -- if a jury believes that
5 the buyer gave the agent every indication that they'd be
6 paid, told them that they'd be paid, and then didn't sign the
7 buyer's agency agreement and tried to cut them out, that's
8 the only situation where an agent could be paid, not the
9 situation where the buyer never said anything about paying
10 the buyer's agent.

11 So this is not that big floodgate case and it -- what
12 drives me crazy personally and I think is what the statute I
13 think overlooks is -- and the statute is designed to protect
14 the consumer. It's trying -- it's to make the agents do --
15 behave ethically, do certain things, but to protect
16 consumers. There's nothing in the statute that protects the
17 agent from unscrupulous buyers like Ms. Bennett who, in our
18 opinion, and based on her prior behavior - she did this once
19 before on a prior house - get a buyer's agent involved, get
20 them to do everything a buyer's agent does but then just cut
21 them out of the deal at the very last moment. That's wrong.

22 The statute doesn't address that situation. It's
23 designed to protect the consumer, but there's nothing in the
24 act, there's nothing in the statute cited nor anywhere else
25 in the act that says that an agent cannot be paid under a

1 quantum meruit theory. I mean, there's just nothing in there
2 that -- there's nothing in there that says that. All it says
3 is that if there is a written agreement, it's got to have
4 these terms in it. It doesn't say there has to be a written
5 agreement, doesn't say they can't get paid under a quantum
6 meruit theory or any other -- or any of the other causes of
7 action that we've listed in the complaint.

8 And as a result, I think -- I think summary judgment on
9 the quantum meruit theory is not appropriate because there's
10 nothing -- there's nothing preventing it. It's an equitable
11 claim; it's not a legal claim. I would like to address a
12 couple of the other points Mr. Ellis raised if you -- I know
13 you're trying to read something.

14 **The Court:** Yeah, I was just looking at the statute.
15 You can continue.

16 **Mr. Goodwyn:** Yeah. As far as being estopped, Ms. -- I
17 don't think there's anything in the e-mail or any other thing
18 that would cause Ms. King to be estopped from bringing this
19 claim. The e-mail he cites is taken out of context, for one
20 thing, but her -- and her affidavit clearly states or
21 supports our position that there is a question for the fact
22 finder here.

23 Judicial estoppel is not appropriate. She filed a claim
24 with the Realtors Association. A., that's not a judicial
25 forum that judicial estoppel would be appropriate with, and

1 she's dropped that claim in favor of this claim once learning
2 that the Realtors Association is not everything that she
3 thought that they were. They don't do the kind of -- they
4 don't provide the kind of justice that -- that you would
5 think.

6 She does have standing -- the money -- I know we're not
7 asking for commissions. First, she's an independent
8 contractor. If she earns commissions, the agreement says,
9 yeah, you've got to -- basically Re/Max says you've got to
10 give us our cut is what the contract says. You've got to run
11 it through us, but she gets the money. She is the real party
12 in interest. I mean, why would a real estate agent not be a
13 real party in interest? She's the one getting the money at
14 the end of the day. I understand she's got to pay the broker
15 a percentage, but she's the one that did the work. She's the
16 one that stands to gain from any judgment. She is a real
17 party in interest and she has -- as a result, she has
18 standing.

19 But at the end of the day, this is just a case of fraud
20 where a clever buyer, somebody -- you know, an attorney
21 herself who knows the laws is trying to use what she thinks
22 is the law to her favor. She just refuses to sign a buyer's
23 agency agreement all along and gives every other indication
24 that she's going to get paid, and she tries to rely on this,
25 "Hey, you don't have a buyer's agency agreement; I don't owe

1 you anything," argument and she gets the benefit of the
2 bargain at the time of the closing. There's nothing in the
3 statute that says: You can't bring a quantum meruit claim;
4 this is the only way a real estate agent can get paid.

5 Nothing like that is in there, and that's frankly why I
6 took the case and we brought the claim because we couldn't
7 find anything in the statute to prevent this type of claim.
8 And it only seems fair in this type of situation: If the
9 facts as alleged are proved, why shouldn't she have to pay?
10 And so that's -- that's why I think it's going to be hard for
11 the defense to show that this cause of action should fail.

12 **The Court:** All right.

13 **Mr. Goodwyn:** And as Mr. Ellis stated, we do have a
14 number of other motions. We were talking before: If you
15 rule from the bench, that's one thing. If you hold it in
16 abeyance, obviously we'll have to argue the other motions
17 so---

18 **The Court:** I'm going to -- I'm going to -- I'll hear it
19 all, but more than likely I'm going to have y'all send me
20 proposed orders.

21 **Mr. Ellis:** Yes, Your Honor. Thank you. And I'll just
22 briefly state that I anticipated it being done. Number one,
23 Your Honor, I totally disagree with counsel. Forget about
24 the aspersions on my client, but the fact is the statute says
25 specifically: A listing or buyer's representative agreement

1 must be in writing, not shall be or can be. It must be in
2 writing, and then it sets forth not only regarding
3 commissions, but it says you must put in writing the amount
4 of compensation to be paid or the method to be used in
5 calculating the amount of compensation to be paid.

6 I would agree that real estate agents don't have to be
7 paid just on a percentage of the closing or some commission
8 on the closing, but they have to lay out the explanation of
9 how they're going to be paid and they have not done that.
10 That alone is a bar to the entire claim.

11 My client is a lawyer who went to law school; has never
12 practiced, is a -- is a person who stays at home with her
13 family. That's fine, but I would not argue otherwise. I
14 don't think she's ever practiced. If she did, I'm
15 misrepresenting---

16 **Mr. Goodwyn:** She testified she did.

17 **Mr. Ellis:** But either way, it doesn't matter. All of
18 these other facts is what you're trying to avoid on every
19 case, Your Honor, of litigation regarding transactions in
20 real estate. This is what it avoids. No, she knew better.
21 No, she told me that she was going to sign the agreement.
22 That's why they have the requirement to sign the agreement,
23 and I would argue that, Your Honor, there is a basis for
24 estoppel in this case.

25 She sent a third party, a governing body which

1 represents her industry, a position that she's seeking these
2 fees from the other real estate agent, not from my client,
3 then withdraws that because they won't give it to her - they
4 don't like her position, by the way - and then seeks it from
5 my client who is estopped. And I would totally disagree,
6 Your Honor, with regard to the issue on whether she has
7 standing which may be, by the way, your easiest way of
8 getting rid of all this matter.

9 Don't you think Re/Max would be here for their money as
10 well if they agreed with her position? There's a reason why
11 she's pled it on her own. Her contract says on Page 5 in
12 Paragraph 4: All listings and other real-estate-related
13 contracts shall be shared with the other contracts -- broker
14 and contractor shall have the right to utilize the listings.
15 All fees earned by contractor in connection with the sale of
16 each rental or management for real estate and the interest
17 therein shall be collected by the broker but shall belong to
18 the contractor.

19 They don't have the right -- she doesn't have the right
20 to collect the fees in which she's here to sue. So, again, I
21 would just reiterate those grounds for the basis for summary
22 judgment, Your Honor.

23 **Mr. Goodwyn:** Just a quick response.

24 **The Court:** Yes, sir.

25 **Mr. Goodwyn:** I think what he read kind of solidifies my

1 case on that point. The broker, according to the contract,
2 shall collect the fees, but then it's -- right after that, it
3 says but it shall belong to the contractor. So the fees
4 belong to the contractor although the broker collects them
5 because they get a cut, of course. If the fees belong to
6 her, then she's a real party in interest and she has
7 standing, and I think that argument must fail.

8 **Mr. Ellis:** If she can't collect them, she can't own
9 them.

10 **Mr. Goodwyn:** It says -- it says they belong to her.

11 **The Court:** All right. What I'll do is have you all
12 send me proposed orders on that.

13 **Mr. Goodwyn:** Okay.

14 **The Court:** And then I'll hear your motions to compel.
15 Let's see. I think both of you have...

16 **Mr. Goodwyn:** I think his -- I believe we've got to put
17 this on the record but...

18 **Mr. Ellis:** Your Honor, I do have a motion to amend, if
19 you decide to go forward, the answer to assert additional
20 defenses and counterclaims.

21 **Mr. Goodwyn:** Right.

22 **Mr. Ellis:** So there's actually three more motions.
23 This one would -- neither of the remaining three would take
24 nearly as long.

25 **The Court:** All right. I'm going to go ahead and hear

1 them today. I'm not sure -- I'm going to look over the memos
2 and the proposed orders, but I don't want to not hear these
3 today and then they get pushed back---

4 **Mr. Ellis:** I think, Your Honor, just so you know from
5 -- we obviously can go back to Judge Barber, but Judge Barber
6 was kind enough to give us the scheduling order that says:
7 Should you rule from the bench today or at any time this week
8 on the issue of summary judgment, the case would be called --
9 and denied summary judgment, the case would be called to
10 trial next week, so---

11 **The Court:** All right. I don't know that I gave---

12 **Mr. Ellis:** But also, just so you know, he also said if
13 it was not ruled upon this week, it simply would just be
14 carried over until the time in which you did rule. So I just
15 wanted to let you know.

16 **Mr. Goodwyn:** So there's no pressure.

17 **Mr. Ellis:** That's right. That's what I was saying.

18 **The Court:** Not from y'all but Judge Barber will be in
19 my office on Monday morning.

20 **Mr. Goodwyn:** Right.

21 **Mr. Ellis:** Yeah.

22 **The Court:** But I have a meeting Monday, so he won't be
23 here, but he'll be looking for me Monday saying---

24 **Mr. Ellis:** He did not give that indication because I
25 think he knew the -- you know, the length of the motions and

1 what was going on.

2 **The Court:** Okay.

3 **Mr. Ellis:** I just was letting you know what he---

4 **The Court:** Okay.

5 **Mr. Ellis:** ---told us to do, and we have an order in
6 place that says that.

7 **The Court:** Okay.

8 **Mr. Ellis:** So if you did not rule---

9 **The Court:** All right.

10 **Mr. Ellis:** ---during that time...

11 **Mr. Goodwyn:** So which motion do we want to do first?

12 **The Court:** Are you objecting to his motion to amend the
13 answer?

14 **Mr. Goodwyn:** I am actually and I've got a very good
15 argument.

16 **Mr. Ellis:** So I'm sure he wants to---

17 **The Court:** Because it's on the trial docket next week?

18 **Mr. Goodwyn:** Well, no, it's even better than that.

19 **The Court:** Okay.

20 **Mr. Goodwyn:** I mean, I don't know what---

21 **Mr. Ellis:** It is my motion. I'll just state it
22 briefly, Your Honor. As I pointed out to you, I was not
23 retained until October or November of 2011, and the reason
24 being is I think my client has been, you know, very much
25 harmed in this case by the way the assistant or prior counsel

1 handled this matter and how it's all come down. He did not
2 assert anything other than a form answer in the case.

3 She certainly did her best to file a second amended
4 answer, and I have two -- basically two defenses related to
5 this case that I think need to be added. That's the defenses
6 of the standing issue, the issue on the standing, and the
7 statutory requirements of a licensed real estate agent, all
8 of those things which I just laid out to you in the statute.
9 There's actually some more, Your Honor, and those defenses
10 are in my amended third -- third amended answer and
11 counterclaim.

12 The counterclaim, Your Honor, is for abuse of process
13 and that is: Plaintiff filed this action using legal process
14 knowing that the law did not allow recovery in this case. I
15 haven't provided that to you, Your Honor, but there's a
16 letter that she wrote to the Real Estate Commission going, "I
17 know this is the law. It's wrong; it needs to be changed,"
18 not taking legislative action to do that but suing my client
19 in an attempt to get some - I don't know - some kind of
20 justice. That would constitute abuse of process for that
21 purpose, and we'd ask that Your Honor allow that
22 counterclaim.

23 There is no discovery that needs to be done in this case
24 further than that. That's my opinion. Whatever they argue
25 -- I'm prepared to go to trial. So I provided an amended --

1 third amended answer and counterclaim that's attached to this
2 motion. I certainly would provide that to you again if you
3 ask for an order regarding that, but those are the two
4 grounds: To add some defenses and then the claim itself is
5 for abuse of process related to her attempt just to change
6 the goals legislatively -- is one of them that she's
7 articulated as opposed to just recovering from my client on a
8 valid claim that she knows the law does not allow, and that's
9 all I have on that.

10 **The Court:** All right. Yes, sir.

11 **Mr. Goodwyn:** As Mr. Ellis said, he was retained in
12 November. We had a deposition of his client scheduled for
13 January, and shortly before that, January 17th we had a
14 scheduling conference. We entered into a consent scheduling
15 order where we agreed that discovery would be completed by
16 February 27th. We took his client's deposition just a few
17 days before that. Then we get this motion to amend to add
18 these additional claims.

19 Under Poole v. Poole and under Rule 15, generally the
20 Court should allow a party to amend its pleadings unless the
21 other party is prejudiced. We're clearly prejudiced by this
22 case. The discovery period is now over. We have new claims
23 that are attempting to be made after his client's deposition
24 and after the discovery period that he consented to is over.

25 We can't conduct any additional discovery to try to

1 refute these new claims. We can't depose his client again.
2 I mean, that would be an additional cost on my part to have
3 to re-depose his client to ask her questions about these
4 brand-new claims that she's trying to make.

5 So I think there's clear -- clear prejudice in that, A.,
6 we're on the trial counter. B., the discovery period is over
7 and he had plenty of opportunity to make these. This is ten
8 weeks before or after he was retaining these claims are now
9 made. If he had only done this within a couple of weeks, I
10 would have had a chance at the regularly scheduled time of
11 his client's deposition to ask her questions about this. I
12 wouldn't have had any real objection. But after his client
13 is deposed and two or three days before the discovery period
14 that he consented to is over to make this motion, it clearly
15 puts us in a position where we cannot properly defend the
16 claim because we can't conduct any more discovery.
17 Therefore, we're prejudiced and we'd ask the Court to deny
18 the motion.

19 **The Court:** All right. And I'll rule on those together
20 with the---

21 **Mr. Ellis:** Okay.

22 **The Court:** ---summary judgment motion. If I grant it,
23 then I won't have to rule on it. If I deny it, then I'll
24 rule on it. And then, of course, I guess I'll have to get
25 with Judge Barber on it, if you're amending the answer since

1 it's on the trial docket. And then the motion to compel?

2 **Mr. Ellis:** Just briefly.

3 **The Court:** Have y'all got those worked out?

4 **Mr. Ellis:** Almost. Almost, Your Honor.

5 **The Court:** Okay. Okay.

6 **Mr. Ellis:** And Mr. Goodwyn I think can visit with this
7 or confirm this on the record. I made a motion to compel
8 basically two areas. One dealt with any and all
9 communications that she had with these real estate
10 associations where she was making claims, getting materials
11 from her, and Mr. Goodwyn, after some time, qualifying his
12 answer saying she continues to look for them -- I believe can
13 tell the Court that she has directed them that she has no
14 more materials.

15 **Mr. Goodwyn:** Right. I've given him everything that
16 she's been able to get.

17 **The Court:** Okay.

18 **Mr. Goodwyn:** I think there's been letters that she
19 wrote to the commission or to the various boards, whatever,
20 and what she has I've given him and I don't -- I don't know
21 this for sure, but he may be able to access those materials
22 from those boards directly.

23 **Mr. Ellis:** I've subpoenaed them, Your Honor, and, of
24 course, they claim confidentiality related to their
25 proceedings in that. I was going to bring a rule to show

1 cause, and depending on what happens, I'll probably have to
2 do that, but they would not give it to us as well. But I'm
3 satisfied that if she's claimed -- I mean, I don't know what
4 else to do. I think she's got more communications, but I'm
5 agreeing that if he's saying that she's represented to him
6 that she's given us all that she has, then I'm withdrawing
7 that one.

8 **The Court:** Okay.

9 **Mr. Ellis:** The one that I do have remaining, Your
10 Honor, relates to his responses or the plaintiff's responses
11 regarding damages in this case. As you've heard over and
12 over again, this is not a case for commission owed where she
13 would say, "I'm owed three percent." I don't believe she's
14 going to testify to that; she's not. She stated she's
15 entitled to fees for work done for 125 plus hours spent
16 conferring with my clients.

17 Having said that, there is no calculation whatsoever as
18 to what the value of her work is, how many hours, how did she
19 calculate that, how many trips, any other documentation
20 regarding out-of-pocket expenses, mileage, whatever it may
21 be. My clients would potentially go to trial with someone
22 saying I just owe 125 hours and having no idea what that
23 amount is. I have no idea how much damages she's claiming to
24 be owed, and I would ask that they respond with an
25 interrogatory that specifically lays out the claims that

1 would be provided to a Court asking with specificity the
2 damages to award.

3 **Mr. Goodwyn:** And in response to that, we do have a --
4 and I don't have it with me. I have a separate discovery
5 file for this case; it's huge. But it's a spreadsheet
6 listing, you know, every hour that she spent. I mean,
7 every---

8 **The Court:** She has to tell whatever it is that she's
9 asking per hour.

10 **Mr. Goodwyn:** Right. Right. I think that might be what
11 I might need to get him if that's what he's asking for is --
12 do you have that---

13 **Mr. Ellis:** I don't have the spreadsheet either.

14 **Mr. Goodwyn:** It's -- I know it's in the discovery, but
15 I'll -- I'll fax it to you this afternoon.

16 **Mr. Ellis:** Anything that calculates that.

17 **The Court:** And she needs to just respond and say, you
18 know, if she charges -- if she's saying that she's owed \$10
19 an hour---

20 **Mr. Goodwyn:** Right.

21 **The Court:** ---or a hundred dollars an hour, that's what
22 he wants to know.

23 **Mr. Goodwyn:** Okay.

24 **The Court:** All right.

25 **Mr. Goodwyn:** All right.

1 **The Court:** So that -- she needs to get that to him
2 within the next seven days.

3 **Mr. Goodwyn:** Okay. That shouldn't be a problem. And
4 the only other motion I think is my motion to compel or to
5 get the Court to rule on a claim of privilege or
6 confidentiality. There's a provision in the real estate
7 agent's act that says that communications, negotiations,
8 between a buyer and the listing agent are to be kept
9 confidential with certain exceptions: Except as required by
10 law, unless it's already made public in another way.

11 And I have noticed the deposition of the listing agent,
12 and prior to the deposition, the listing agent's attorney
13 sent me a letter saying that Ms. Bennett had made this claim
14 of confidentiality and that she's not going to testify about
15 all that stuff. And so I want a ruling on that issue.

16 It's not a claim of privilege. I mean, there is no
17 realtor listing agent privilege under the law. It's just a
18 claim under this particular statute saying it's confidential.
19 Under the statute, however, it does say, as I said, the
20 confidentiality provision doesn't apply if it's required by
21 law. Our argument is a subpoena to come to a deposition,
22 that's -- requires it by law. Two, if it says that the
23 information -- if the information trying to be obtained has
24 been made public in some other manner, then it's no longer
25 confidential.

1 It's our position that it has been made public through
2 Ms. Bennett's deposition. She testified about everything
3 that she recalls from their -- from their negotiations. So
4 it's been made public. So either way, she has no claim of
5 confidentiality under the statute, and it's -- again, there's
6 no -- there's no claim of privilege here, and to be
7 threatening some kind of claim of privilege or, you know, I'm
8 going to bring a lawsuit against you, Ms. Listing Agent, if
9 you testify to this, that -- that destroys---

10 **The Court:** So you're trying to get the listing agent
11 to---

12 **Mr. Goodwyn:** Yes, I want to ask her how the
13 negotiations went. I want to hear her side of, you know---

14 **The Court:** Is she represented by counsel?

15 **Mr. Goodwyn:** She is.

16 **The Court:** All right. Because I think your motion to
17 compel is going to probably be against her and not---

18 **Mr. Goodwyn:** Well, and I styled it originally as like a
19 rule to show cause why you -- why you wouldn't testify.

20 **Mr. Ellis:** I would agree to the same thing, Your Honor,
21 and that is -- and by the way, I would say that they raised
22 the issue, too, as well, not just us. Her -- her husband's a
23 local attorney. They raised the issue to me regarding the
24 confidentiality of it. The statute is clear, which I've
25 provided the Court as well, that they cannot disclose that,

1 and I would think that the rule to show cause against her why
2 she would not testify regarding certain terms is to them, not
3 to us.

4 **Mr. Goodwyn:** Maybe that's a better way to do it.

5 **The Court:** Yeah, I think you probably have to file that
6 against her. You probably have to---

7 **Mr. Goodwyn:** Well---

8 **The Court:** ---get her -- you're probably going to have
9 to convene the deposition. I know you probably---

10 **Mr. Goodwyn:** Well, that's what I was trying to avoid is
11 convening it, knowing this was going to happen, get it on the
12 record and then -- but I mean---

13 **The Court:** Unless she's subpoenaed and then she sends a
14 motion to---

15 **Mr. Goodwyn:** Or she sends -- she sent a letter saying,
16 "I'm not going to testify."

17 **Mr. Ellis:** I don't think she said it that way. She's
18 not going to talk about confidential communication or
19 communications---

20 **The Court:** Yeah, I don't know that she can send it
21 saying she's not going to testify because she has to come.
22 If you send her a subpoena, she has to be there.

23 **Mr. Goodwyn:** Right.

24 **Mr. Ellis:** I actually think, Your Honor, this is a very
25 limited portion of testimony. I think most of the things he

1 wanted to ask he could ask, but we're not willing to waive
2 all---

3 **Mr. Goodwyn:** I think it's crucial to the case but --
4 that limited portion, in my opinion, but...

5 **Mr. Ellis:** See, this is the mess, Your Honor, that this
6 causes. If she'd just had a written agreement, we wouldn't
7 be here on all these issues.

8 **The Court:** Yeah.

9 **Mr. Ellis:** But having said that, I think it needs to be
10 directed to Ms. Sullivan and/or him just notice the
11 deposition, bring them in there, and we'll deal with it as it
12 comes.

13 **The Court:** Yeah, I don't know if I can compel them to
14 make her do anything. I think you're going to have to deal
15 with her lawyer.

16 **Mr. Goodwyn:** Well, you can compel them to withdraw any
17 claim of privilege or confidentiality. I think that's the
18 only thing, but then again Ms. Sullivan could assert the
19 same: Hey, if it's confidential, I don't want to do that.

20 **The Court:** Yeah.

21 **Mr. Goodwyn:** But I think from their side, you know, you
22 can't -- you can't just have a potentially unfavorable
23 witness not testify in a case because of this---

24 **Mr. Ellis:** I think that's really simplified, but
25 there's also the reason why the statute exists just like any

1 other---

2 **Mr. Goodwyn:** The statutes don't exist to protect people
3 who have been alleged to have committed some sort of fraud
4 for everybody who testified---

5 **Mr. Ellis:** Well, everybody would allege that, counsel.

6 **The Court:** Well, by law I think he needs to -- I think
7 you're going to probably have to go through the process---

8 **Mr. Goodwyn:** Right.

9 **The Court:** ---of trying to get -- and then you're going
10 to have to bring her in.

11 **Mr. Goodwyn:** All right.

12 **The Court:** I think that's going to be the way to do it.

13 **Mr. Ellis:** Your Honor, what are you thinking about the
14 timing of proposed orders?

15 **The Court:** How quick can y'all get them to me?

16 **Mr. Ellis:** We'll do what you can based on all your
17 schedule and then Judge Barber, too. I mean, I can turn it
18 around. I think we both had some sort of memorandum, so...

19 **Mr. Goodwyn:** Well, I mean, I just got his memorandum
20 just now when we sat down, so my brief is in response to her
21 prior motion, not the brief I got today.

22 **Mr. Ellis:** I mean, I -- what is today? Tuesday.

23 **The Court:** I'm the -- as Judge Barber -- I'm the easy
24 one to deal with, so...

25 **Mr. Ellis:** Before Friday or on Friday or...

1 **Mr. Goodwyn:** That -- yeah. That's what I was going to
2 suggest.

3 **The Court:** Friday is fine. Now, it might be Friday
4 afternoon before I can look at it anyway---

5 **Mr. Goodwyn:** Yeah.

6 **The Court:** ---because we've had a busy week.

7 **Mr. Ellis:** Are you out next week? Are you not here?

8 **The Court:** I'm in Dorchester next week.

9 **Mr. Ellis:** Oh, okay.

10 **The Court:** Yeah. So I will -- but if y'all will get
11 them to me Friday afternoon -- because, like I said, Judge
12 Barber will probably likely be -- you don't have to put all
13 this on the record.

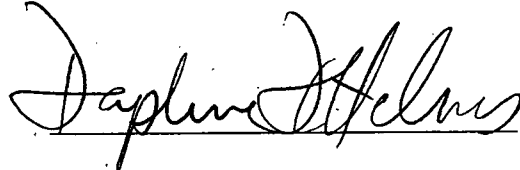
14 (Whereupon, the proceedings were concluded. There were
15 no exhibits introduced.)

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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 17th of April, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 31, 2012

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in black ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
SHELBY KING,)
PLAINTIFF,)
VS.)
AMY BENNETT, CHARLIE)
BENNETT, AND THE AMY D.)
BENNETT TRUST, AMY)
BENNETT, TRUSTEE,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

FILE NO.: 2010-CP-40-07333

DEPOSITION

OF

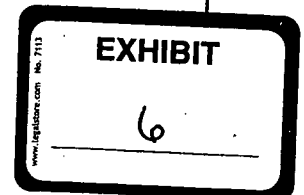
AMY BENNETT

Deposition of Amy Bennett, taken pursuant to the South Carolina Rules of Civil Procedure, commencing at the hour of 11:30 a.m., Monday, February 6th, 2011, at Law Office of Todd Ellis, PA, 7911 Broad River Road, Suite 100, Irmo, South Carolina.

COPY

Reported by
Barbara P. Scott, CVR

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1 discussing the buyer's agency agreement that one
2 had been sent to you as well as presented, but you
3 found out after the fact, I think you found it was.
4 Is that what you testified to?

5 A There was apparently an e-mail that you had
6 forwarded me that showed that she tried to send me
7 a buyer's -- it was a buyer's agency agreement, and
8 the note on that was, you know, don't worry about
9 this, this isn't a big deal. I don't recall ever
10 opening that document.

11 Q Did Ms. King ever tell you that it's important to
12 have a buyer's agency agreement signed in order for
13 her to get paid?

14 A She never said that to me, that I recall. All I
15 remember saying is that I would not sign an
16 exclusive buyer's agency agreement.

17 Q And if -- Well, we'll get into that in a minute.
18 All right. When you first started using Ms. King's
19 services, did you intend to compensate her for her
20 time and efforts to help you locate a home in the
21 Columbia area?

22 A She had notified me that she doesn't collect fees
23 for services from buyers, so, no, I did not expect
24 to compensate her.

25 Q When did she notify you of this?

1 Q Did you go out on any other home viewing
2 expeditions with any other real estate agents,
3 other than Shelby King?

4 A Yes.

5 Q Who did you go on these other expeditions with?

6 A I believe I've already provided you with a list of
7 some of them.

8 Q Are those real estate agents who had listings for
9 certain properties, or were they -- were they
10 buyer's agents?

11 Mr. Ellis: Object to the form.

12 A I don't know what a buyer's -- what you're
13 referring to as a buyer's agent. I did not sign a
14 buyer's agency agreement with anyone.

15 Q Okay. Real estate agents will have listings on
16 homes, and they -- if you contact them, they'll go
17 show you that house. They're -- But they can also
18 show you houses which they don't have a listing.

19 A Right.

20 Q What I'm asking you is, did the real estate agent
21 that you went out on -- that you just said you saw
22 some other houses with, was it the situation that
23 they had a listing on a house that you want to see
24 and you contact them about seeing the house, or was
25 it you -- they did not have the listing; they were

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Shelby King,)

Plaintiff,)

vs.)

Amy Bennett, Charlie Bennett, and The)
Amy D. Bennett Trust,)

Defendant.)

IN THE COURT OF COMMON PLEAS.

Civil Action No. 2010-CP-40-07333

AFFIDAVIT OF SHELBY KING

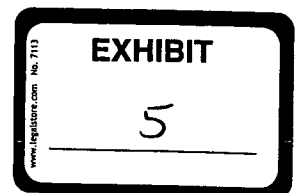
JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 NOV - 8 PM 3:02

RICHLAND COUNTY
FILED

Personally appeared before the undersigned Notary Public, Shelby King, who, being duly sworn, does hereby testify as follows:

1. I am the Plaintiff in the above-styled action and am over the age of 21:
2. I make this Affidavit upon personal knowledge and belief.
3. Defendants engaged my services in approximately February, 2010 to educate them on the real estate market in the Columbia, South Carolina area and to assist them in locating a suitable home in this area.
4. I spent at least 125 hours of my time researching homes, market values and trends, previewing homes, communicating with the Defendants about homes, school districts, and other desired features, showing Defendants homes, driving Defendants to the airport and performing other activities in response to Defendants requests for my services.
5. I presented a buyers agency agreement to Defendants on multiple occasions throughout the period I worked for Defendants indicating to her that she must sign it prior to ratifying a contract and at no time did Defendants indicate that they would not sign the agreement prior to ratifying a contract to purchase a home.



6. Defendants gave me every indication that I would be fairly compensated for the work they had asked me to do for them.

7. On July 9, 2010, I brought a home located at 14 Ashworth Court, Columbia, South Carolina to the attention of Defendants and the Defendants expressed an immediate interest in looking at the home (see emails dated 7/9/10 – 7/14/10 between Plaintiff and Defendants collectively marked as Exhibit “A” and bates labeled King 00266-King 00273).

8. Defendants then misrepresented to me their intentions relating to buying a home in an email dated 7/14/10 (see Exhibit “A”, King 00272) stating that they were not going to be purchasing a home until after school started in the fall.

9. Within a week of this statement, on July 20, 2010, Defendants had a contract to purchase the home located at 14 Ashworth Court, Columbia, South Carolina and refused to pay me for my services.

10. Because they cut me out of the transaction, Defendants were able to convince the listing agent to lower the Commission as stated in her contract and thereby lowering the amount they had to pay.

11. Defendants profited by misrepresenting their intentions to pay Plaintiff for her efforts and that they were not interested in the home they purchased located at 14 Ashworth Court when in fact they were interested enough to purchase within one week of making the statement that they were not interested.

12. When I brought 14 Ashworth Court to Defendant’s attention, at no time did any Defendant inform me that he/she had already located the home located at 14 Ashworth Court.

Shelby King

Shelby King

Sworn to before me this 4th day of November, 2011

Mary S. Bush
Notary Public for South Carolina

My Commission Expires: 10-19-2019



Graham Realty & Bldrs. Inc
 5 Calendar Court
 Columbia, SC 29206
 Phone: (803) 782-4940



CONTRACT OF SALE

Revised 1/05

(Standard Form of The Greater Columbia Association of REALTORS®.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. DATE A contract to purchase is offered this 20th day of July, year 2010
 by Amy D Bennett, trustee Purchaser(s)
 to Patricia Kenney Seller(s)

2. PROPERTY DESCRIPTION Purchaser agrees to buy and Seller agrees to sell all that lot or parcel of land, with the buildings and improvements thereon, if any, located in Richland County, South Carolina, and being described as follows:
 Street 14 Ashworth Lane City Columbia Zip 29206
 TMS# _____ Subdivision _____

3. PRICE The sales price is \$ ~~770,000~~ ~~827,000~~ 790,000 to be paid as follows:
 A. \$ 5000 Earnest money paid by cash, check, other, held in trust by Graham Realty within 48 hrs after
 B. \$ 20,000 Additional earnest money to be deposited with Graham Realty
with 2 business days prior to after inspection period
 C. \$ _____ Balance of down payment at closing is to be in the form of a cashier's check or certified funds.
 D. \$ _____ Loan amount (type marked below) to be obtained by Purchaser.

4. FINANCING A. Financing shall be FHA, VA (see addendum for FHA/VA), CONVENTIONAL, SELLER, CASH (No Financing Required), LOAN ASSUMPTION (see addendum for loan assumption), OTHER TERMS _____
 B. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.
 C. In a cash transaction, Purchaser agrees to provide Seller or Seller's Agent, within ten (10) business days of acceptance of the contract, written verification of sufficient and available funds for the specified date of closing. Purchaser's failure to comply shall constitute a default under this contract.
 D. This contract is contingent on the property appraising, according to the Lender's appraisal or other appraisal as agreed, for the selling price or more.

5. CLOSING COSTS DISCOUNT POINTS If a new loan is obtained, Purchaser's closing costs to be paid by the _____ and the Purchaser's prepaid items to be paid by the _____
 PMI, FHA-MIP, VA or Rural Housing Funding/Guarantee Fee to be paid by the _____
 To be financed. Discount Points (if any) to be paid by _____
 If Seller pays closing costs, prepaid items, (PMI, FHA-MIP, VA or Rural Housing Funding/Guarantee Fee), and/or discount points on behalf of Purchaser, Seller will pay allowable and nonallowable costs of Purchaser, not to exceed \$ _____

6. LOAN PROCESSING APPLICATION FINANCING CONTINGENCIES. Purchaser agrees to apply for financing as stated above, from the Lender of his choice, and to provide Seller, within five (5) business days from the date of contract acceptance, confirmation from Lender that application has been made and any required funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately, and Seller shall then have the option to void contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser after earnest money check has cleared the bank.

King 00390

1/05 1 of 5 Purchaser's Initials (AB) DATE 7/20/10 187 HAVE READ THIS PAGE. Seller's Initials (PK) DATE 7/20/10 HAVE READ THIS PAGE.

7. ADDITIONAL CONTINGENCIES

[] Complete the sale and closing of Purchaser's property located at _____
 It is further agreed that Seller will continue to market the property as long as the contingency relating to the sale and closing of Purchaser's property, in accordance with this contract, remains in effect. Should Seller be presented another contract, and if accepted, this contract will be voided without notification to the Purchaser or Purchaser's Agent and all earnest money refunded after earnest money check has cleared the bank. Purchaser or Purchaser's Agent will be notified of this contract being voided as soon as possible. For Purchaser to remove this contingency, Purchaser must provide documentation to Seller or Seller's Agent that any financing required under this agreement will be granted without the sale or lease of the aforementioned property and the financing contingency is removed. Upon the Purchaser's acceptance of a bona fide contract, clear of contingencies other than financing, the Seller agrees to remove his property from the market and this sale will be contingent upon the close of the Purchaser's property. Any documentation regarding the sale of Purchaser's property to be furnished upon request.

[] Complete the closing of the sale of Purchaser's property, currently under contract, on or before _____
 Property is located at _____ All documentation pertaining to this sale will be provided by Purchaser upon request.

[X] Other This contract is contingent on parcel with building and improvements appraising for at least the selling price. If the appraisal is less than selling price, Buyer shall have 24 hrs after notification of results to renegotiate contract.

8. INSPECTIONS

If parties are unable to reach agreement, then either party can terminate his contract and all earnest money will be released to Buyer.

A. Home Inspection
 The Listing and Selling Broker(s) recommend that Purchaser obtain a home inspection. Purchaser has the right within ten (10) business days after acceptance of contract, to have home inspected by qualified professional inspectors of his choice including a professional qualified to inspect for hazardous substances. Expenses of home inspections to be paid by Purchaser. If Seller does not receive Purchaser's written response to the inspection(s) and a copy of the inspection(s) report within the same ten (10) business day period, Section 8A is nullified in its entirety.

- (1) Purchaser has the option of accepting the property in current condition as referenced by the inspection report(s); otherwise, Purchaser must notify the Seller or Seller's Agent in writing by signed addendum specifying the defects or conditions Purchaser expects the Seller to remedy. Addendum must be accompanied by a copy of the home inspection report.
- (2) Seller has three (3) business days to accept or reject Purchaser's home inspection repair addendum.
 - (a) If Seller accepts addendum, Purchaser agrees to complete this sale according to the terms and conditions of this contract.
 - (b) If Seller modifies addendum, Purchaser has two (2) business days from receipt of Seller's written counterproposal to notify Seller or Seller's Agent of his acceptance of Seller's counterproposal and agrees to complete this sale according to the terms and conditions of this contract or this contract becomes null and void.
 - (c) If Seller rejects addendum, Purchaser has two (2) business days from receipt of Seller's rejection to notify Seller or Seller's Agent in writing that Purchaser agrees to complete this sale according to the terms and conditions of this contract or this contract becomes null and void.
- (3) Purchaser's failure to notify Seller or Seller's Agent in writing of any defect found by the home inspection within the time limits herein provided, or Purchaser's acceptance of the deed at closing, shall constitute Purchaser's full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by the home inspection(s).

B. Termite Inspection

Notwithstanding the provisions of Section 8A, [X] Purchaser ~~or Seller~~ shall, at his expense, furnish a current certification from a licensed and bonded exterminator stating that the herein described property, excluding detached garages, detached buildings, or detached structure(s) of every kind, is free and clear of termites, water and fungus damage or other wood destroying organisms. If any such damage or infestation is found and inspector recommends treatment and/or repairs, the Seller agrees to have it corrected at his expense prior to closing.

C. Heating & Air Inspection

Notwithstanding the provisions of Section 8A, [X] Purchaser ~~or Seller~~ shall furnish, at his expense, a letter from a heating and air company stating that heating and air conditioning (if applicable) systems are in satisfactory working order. Seller agrees to have any required repairs corrected at his expense prior to closing. Aforementioned not guaranteed for any period of time after closing.

D. Lead-Based Paint Inspection

If this home was built prior to 1978, it may contain lead-based paint. This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until midnight on the tenth (10th) business day after acceptance of this contract. This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's Agent) delivers to the Seller (or Seller's Agent) a written contract addendum listing the specific existing deficiencies, corrections needed, and the inspection and/or risk assessment report within the above time limits. The Seller may, at the Seller's option, elect in writing whether to correct the condition(s) prior to settlement. If the Seller does not elect to make the repairs, the Purchaser may remove this contingency and take the property in inspection report(s) condition within the above time limits or this contract will become void. The Purchaser may remove this contingency at any time without cause.

If this home was built prior to 1978, a "Disclosure of Information and Acknowledgment Lead-Based Paint and/or Lead-Based Paint Hazards" is hereby made an addendum to this contract and must be signed by both Purchaser and Seller.

King 00391

9. CONDITION OF PROPERTY

(A) Except as a new home being sold by the builder, the Purchaser acknowledges that Seller, except as provided in below paragraphs of this section, gives no guaranty or warranty of any kind, express or implied, and has made no representation as to the physical condition of the property, or the existence of improvements, services, appliances or systems thereof, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller.

(B) The Seller warrants the heating, air conditioning, plumbing and electrical systems, well and/or septic systems, and all appliances to be in operative condition on the day of closing or the day possession is given, whichever occurs first.

(C) After any inspection by Purchaser and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the property including yard maintenance, heating and air conditioning, plumbing, and electrical systems, and all appliances to be conveyed, in proper operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the residence which would adversely affect the value when conditions are hidden by furniture, fixtures, or window treatments currently in place in the property.

(D) Seller represents that the property is connected to public/community sewer system or to a septic tank; and to public/community water system, or to well system and is located in flood zone or is not located in flood zone.

(E) Seller represents that the property is or is not subject to a mandatory association fee (i.e. homeowner's association/regime or otherwise). If property is subject to a mandatory fee, the fee is \$ 25 per month and the fee is or is not current. Purchaser has has not received copy of restrictions/covenants, if applicable.

(F) Seller warrants that the property is or is not subject to a special assessment of any governing body, including but not limited to a homeowner's association or regime or otherwise. If the property is subject of a special assessment, the assessment has or has not been paid.

(G) Purchaser and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws has been provided to Purchaser by Seller prior to the ratification of this agreement.

Property is exempt from disclosure requirement in accordance with South Carolina Code of Laws.

10. CONVEYANCE DATE OF CLOSING

Conveyance shall be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed transfer fees shall be the responsibility of Seller. Purchaser shall pay for recording of deed. The deed shall be prepared in the name of Amy D. Bennett trust dated 2/20/2001 amended and delivered to stipulated place of closing. This transaction shall be closed on or before the first Monday then Sept 27, 2010 at 10:00 AM and the Seller will not be obligated to give possession or vacate the herein described property to the Purchaser until the first Monday then Sept 27, 2010 at 10:00 AM.

11. POSSESSION Closing

Seller agrees to deliver the property free of debris, in a clean condition with landscaping maintained. Seller shall give Purchaser access to the herein described property for the purposes of a walk through inspection within twenty-four (24) hours prior to closing. seller will also provide reasonable access to property for purpose of obtaining wood floor installation bids.

12. FIXTURES AND PERSONAL PROPERTY

This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises, such as: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, TV antennas, satellite dishes, Seller-owned security systems, clothes-line poles, curtain/drapery rods, ceiling fans, attached mirrors, light bulbs, switch plates, duct covers, and built-ins, such as equipment, appliances, cabinets, furniture and shelves unless otherwise agreed herein. (Other items may be sold separately by bill of sale.)

13. REMARKS

Other conditions: Closing Aug 27, 2010

Other property to convey:
front outside planters near garage
speakers and wiring in great room
Kitchen/bar stools
fan fireplace screen in front of fireplace
hot tub + steps
mirror/stand at top of stairs
removed in downstairs room off master to be removed
tie hanger in master closet
cushions around kitchen table
swing set to be removed ab/PR
to
all paint/appliance instructions/warranties
gas grill off kitchen shall remain ab/PR

laundry bag under laundry stool shall remain

14. ADJUSTMENTS

Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessments, including homeowners association fees, regime fees or the like shall be adjusted as of the date of closing. Tax prorations pursuant to this contract are to be based on the tax information available or projected on the date of closing and are to be prorated on that basis unless otherwise stipulated in this contract.

- 15. FIRE OR CASUALTY In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after notice of such damage to terminate this contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the contract, the parties shall proceed according to the terms of the contract.
- 16. DEFAULT If the Purchaser shall default under this contract, the Seller shall have the option of suing for damages or rescinding this contract. In the event the contract is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker, and the remaining balance of earnest money shall be paid to the Seller. Upon default by the Seller, the Purchaser shall have the option of suing for damages or specific performance, or rescinding this contract. Upon default by the Seller, if the Purchaser elects to rescind this contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.
- 17. MEDIATION Any dispute or claim arising out of or relating to this contract, the breach of this contract or the services provided in relation to this contract shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Purchaser(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any contract signed by the parties pursuant to the mediation conference shall be binding. South Carolina Code Ann. Section 15-48-10. et seq. shall not apply to this contract.
- 18. ENTIRE CONTRACT BINDING CONTRACT The parties agree that this written contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that the contract shall be binding on both parties, their principals, heirs, personal representatives, successors and assigns as state law permits.
- 19. EARNEST MONEY Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker are subject to an action in the nature of interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable Attorney's fees and court cost, the same to be charged and assessed against the Purchaser(s) or Seller(s) or both as the court may decide. *
If a dispute is between you and Seller regarding deposit of the earnest money, the court will be held in the escrow account with a show Agent objection.
- 20. SURVEY, TITLE EXAMINATION, INSURANCE The Listing and Selling Broker(s) and their Agent(s) recommend that Purchaser have a survey of the subject property made, that Purchaser select an attorney to examine the title to the property and that Purchaser obtain all appropriate insurance coverage including that required by the lender, effective with the time of closing.
- 21. EXTENSION AGREEMENT Time is of the essence. If Purchaser or Purchaser's Agent has provided written loan commitment but not closed within the stipulated time limit of this contract, both parties agree to extend this contract for a period not to exceed five (5) business days from the original closing date. In a cash transaction, if terms and conditions of section 4C have been met, both parties agree to extend this contract for a period not to exceed five (5) business days from the original closing date.
- 22. BROKERAGE FEE All real estate brokerage fees as specified in the Listing Agreement and in the Buyer's Brokerage Representation Agreement, if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified herein.
- 23. NON-RESIDENT TAX Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.
- 24. HOME WARRANTY COVERAGE Both parties understand that a home warranty [X] will [] will not be provided at closing. If applicable, the warranty premium will be paid at closing by the seller in the amount of \$ _____ and provided by American Home Home Warranty Company and written through the Broker.
Shield
- 25. EXPIRATION OF OFFER This offer from Purchaser shall be withdrawn at 5:00 o'clock 5 P m.(ET) on July 21 unless accepted or countered by Seller in written form prior to such time. *counter offer expired 7/21/30*
- 26. FAX Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.
- 27. SURVIVAL If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.

If a dispute is between you and Seller regarding deposit of the earnest money, the court will be held in the escrow account with a show Agent objection.

Buyer's Court

28. DEFINITIONS

In this contract, a single business day is defined as a twenty four (24) hour period, beginning at the time of acceptance of this contract, excluding Saturdays, Sundays and South Carolina legal holidays.

29. HUD/CLOSING STATEMENT RELEASE

Seller and Purchaser authorize the closing attorney to furnish to Listing Broker and Selling Broker copies of the HUD settlement statement for the transaction.

MEGAN'S LAW


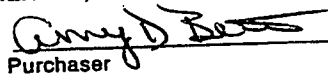
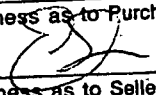
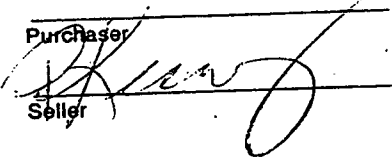
The Purchaser and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Purchaser and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Purchaser agrees that the Purchaser has the sole responsibility to obtain any such information. The Purchaser understands that Sex Offender Registry information may be obtained from the appropriate law enforcement officials.

31. DISCLAIMER

The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvements, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, express or implied, concerning the condition of the property, any matters which would be reflected by a current survey of the property, or the accuracy of the square footage heated or unheated; (C) Give no warranty, express or implied, as to title; (D) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract. Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this contract.

IN WITNESS THEREOF, this contract has been duly executed by the parties hereto.

		7/20/10	351524194
Witness as to Purchaser	Purchaser	Date	SSN
		7/20/10	
Witness as to Seller	Seller	Date	SSN
_____	_____	_____	SSN
Witness as to Seller	Seller	Date	SSN
_____	_____	_____	Telephone Number
Listing Agent	Office	_____	Telephone Number
_____	_____	_____	Telephone Number
Selling Agent	Office	_____	Telephone Number

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT 6 O'CLOCK P .M. (ET) ON 7/22/10 (DATE).

Selling Agent: Elizabeth Sullivan	Sell Agent Ph: 803-261-6784	Closed Date: 8 / 27 / 2010
Co-Sell Office:	Co-Sell Agent:	
Loan Type: Cash	CC Pd By: Both / \$	Selling Price: \$790,000 Sell \$ Per SF: 125.58

Showing: Appointment, Call Owner, Lockbox, Sign	Possession: Negotiable	Listing Date: 7 / 5 / 2010 DOM: 18
Owners Names: kenney	Owners Phone: 803-767-7007	Expir. Date:
Listing Agent: Elizabeth M Sullivan	Agent Phone: 803-261-6784	Agent E-mail: sullivanliz@bellsouth.net
Co-List Agent:	Agent Fax: 803-256-5072	Comp SB: 3 VC: Y List Type: ERTS
Listing Office: Graham Realty & Builders Inc	Agent Cell: 803-261-6784	Agent Vm/Bpr: 803-782-4940
Office Phone: 803-782-4940	Co-List Phone:	Tenant/Contact:
Office Fax: 803-782-4984	Co-List Cell:	Tenant/Contact #:

Information Herein Deemed Reliable, but Not Guaranteed. © 2010 by CMLS 8/27/2010 7:19:59 PM

Shelby King

Residential

8/27/2010 7:19 P.M.

MLS#: 271390



kitchen

Status: Closed
 Area: 5 Forest Acres, Arcadia Lakes
 Class: Residential Type: Single Family

Listing Price: \$849,000
 Original Price: \$849,000

Address: 14 ASHWORTH LANE
 Subdivision: ASHWORTH PLACE
 City: Columbia
 Zip: 29206
 County: Richland
 Parcel ID#: 16902-04-71

Primary: Forest Lake
 Elemen.: Forest Lake
 Intermd.:
 Middle: Dent
 High: RNE
 District: Richland Two

Heated SF (+/-10%): 6291
 Bedrooms: 6
 Bathrooms: 5 / 1
 Garage: Garage Attached
 Spaces / Level: 3 / M

Age (Yrs): 01 - 05
 Stories: 2
 Style: Traditional
 Constr: Brick-All Sides (Abv Found.)
 # of FP: 1 / Gas Log

Directions:

North Trenholm from Forest Drive, left into Ashworth Place. Home is second on your right inside of the gate.

Rooms	Lvl	Description	Bedrooms	Lvl	Description	Baths	Full / Half
Living Room:			Master BR:	M	Double Vanity, His & Her Closets, Private Bath, Separate Shower, Tray Ceilings, Walk-in Closet, Whirlpool	Basement:	
Family Rm/Den:			Bedroom 2:	M	His & Her Closets, Private Bath, High Ceilings, Tub Shower	Main:	2 / 1
Great Room:	M	Books, Cathedral Ceilings, Entertainment Center, Fireplace, French Doors, Hardwood Floor, Molding, Wetbar	Bedroom 3:	2	Balcony/Deck, His & Her Closets, Shared Bath, High Ceilings	2nd Floor:	3 /
Dining Room:	M	Built-ins, Cathedral Ceilings, Hardwood Floor, Molding, High Ceilings	Bedroom 4:	2	Private Bath, Walk-in Closet, High Ceilings, Tub Shower	3rd Floor:	
Kitchen:	M	Eat In, Island, Counter Tops - Granite, Cabinets - Wood-Stained	Bedroom 5:	2	Walk-in Closet, High Ceilings, Tub Shower	4th Floor:	
FROG/Other:	2	Bonus-Finished, Other	Wash/Dry:	M	Heated Space, Laundry	Frog:	
Basement:	No		Total Bed:	6		Total Baths:	5 / 1

Heating:	Central, Heat Pump 2nd Lvl, Split System	Misc:	Gated Community	Foundation:	Crawl Space
Cooling:	Central, Split System	Equip:	Dishwasher, Disposal, Icemaker, Refrigerator, Wine Cooler, Microwave-Built-in	Lot Location:	Cul-de-Sac
Water:	Public	Range:	Smooth Surface, Continuous Clean, Convection, Island Cooktop	House Faces:	
Sewer:	Public	Floors:	Carpet, Hardwood, Marble, Tile	Handicap:	
Pool:	1	Energy:	Thermopane	Green Constr:	
Fencing:	Full	Exterior:	Front Porch, Hot Tub, Sprinkler, Porch (not screened)	Road Type:	Paved
Interior:	Attic Storage, Ceiling Fan, Central Vacuum, Garage Opener, Security System - Owned, Smoke Detector, Wetbar, Attic Access, Book Case				

Remarks: Immaculate custom designed home in gated community. 10 minutes from Palmetto Richland Hospital. Architecturally designed, with hand crafted floating staircase, marble foyer, stunning details. Kitchen has eat in area and open to great room with custom crafted moldings. Ample counter and storage space. Exquisite master suite with three large closets, whirlpool tub with multiple jet system. Amazing home with brick and wrought iron fence, security system and central vacuum. Granite in every bathroom, even laundry room(with laundry shoot) 10' ceilings down, 9' upstairs (higher in foyer and great room). Appraised for 1.2 million.

Agent Remarks: Please call Patricia 767-7007 or Melissa 238-0723 (nanny) to set appt. Only 2 hour notice needed at most. Gate code: #4424 This home is the best you will find for the price in Columbia...simply amazing.

Property Disclosure:	Yes	Acres:		Foreclosed:	
Exempt Prop Disc:	No	Lot Size:	68.7x182.5x111.9x160.7	Water Front Type:	
		Water Front Ft:			

Available Financing: Assn/Regime Fee Per: \$85 / MO Includes: Common Area Maintenance, Front Yard Maintenance, Street Light Maintenance

HOA Contact Name: HOA Contact#:

Selling Office: Graham Realty & Builders Inc Sell Office Ph: 803-782-4940 Contract Date: 7 / 23 / 2010

Subj: **house alert!**
Date: 7/9/2010 3:57:11 P.M. Eastern Daylight Time
From: Shelbypking@aol.com
To: amycharlibennett@aol.com

Did you see the new listing on Ashworth, two blocks from Dent??

It is in the same gated area we looked when you were last here..location, location, location.

When are you coming to this HOT place you are going to call home?

Shelby

Shelby King, Broker, CRS, ABR, SFR

RE/MAX ADVANTAGE GROUP
3006 DEVINE ST
COLUMBIA SC 29205

803 771 9999 x3019
FAX: 18662572378

www.shelbypking.com or www.columbiamesell.com

Subj: **Description of the house on Ashworth...close to Dent.**
Date: 7/9/2010 4:01:12 P.M. Eastern Daylight Time
From: Shelbypking@aol.com
To: amycharlibennett@aol.com

Immaculate custom designed home in gated community. 10 minutes from Palmetto Richland Hospital. Architecturally designed, with hand crafted floating staircase, marble foyer, stunning details. Kitchen has eat in area and open to great room with custom crafted moldings. Ample counter and storage space. Exquisite master suite with three large closets, whirlpool tub with multiple jet system. Amazing home with brick and wrought iron fence, security system and central vacuum. Granite in every bathroom, even laundry room(with laundry shoot) 10' ceilings down, 9' upstairs (higher in foyer and great room). Appraised for 1.2 million.

Shelby King, Broker, CRS, ABR, SFR

RE/MAX ADVANTAGE GROUP
3006 DEVINE ST
COLUMBIA SC 29205

803 771 9999 x3019
FAX: 18662572378

www.shelbyking.com or www.columbiahomesell.com

Subj: HOUSE
Date: 7/12/2010 2:34:07 P.M. Eastern Daylight Time
From: Shelbypking@aol.com
To: amycharlibennett@aol.com

Hi Amy,

I don't want to call you and disturb you as you may be on vacation..I just want to know if you are getting my emails concerning the new listing I think you or Charlie should see sooner than later. It is priced really well for our market and is two blocks from Dent and less than five years old. I sent you the listing a few days ago.

Can you bring me up to date on your plans?

thanks,
Shelby

Shelby King, Broker, CRS, ABR, SFR


RE/MAX ADVANTAGE GROUP
3006 DEVINE ST
COLUMBIA SC 29205

803 771 9999 x3019
FAX: 18662572378

www.shelbyking.com or www.columbiahomesell.com

Exhibit B-4

Subj: Re: HOUSE
Date: 7/13/2010 12:18:48 P.M. Eastern Daylight Time
From: amycharlibennett@aol.com
To: Shelbypking@aol.com
Hi Shelby,

 We just got in today. I will contact you this weekend, as we are just unpacking, etc. I would like to see that one house near Dent this weekend sometime. Maybe we can meet you there at a time that is good for you.

Amy

—Original Message—

From: Shelbypking@aol.com
To: amycharlibennett@aol.com
Sent: Mon, Jul 12, 2010 2:34 pm
Subject: HOUSE

Hi Amy,

I don't want to call you and disturb you as you may be on vacation..I just want to know if you are getting my emails concerning the new listing I think you or Charlie should see sooner than later. It is priced really well for our market and is two blocks from Dent and less than five years old. I sent you the listing a few days ago.

Can you bring me up to date on your plans?

thanks,
Shelby

Shelby King, Broker, CRS, ABR, SFR

RE/MAX ADVANTAGE GROUP
3006 DEVINE ST
COLUMBIA SC 29205

803 771 9999 x3019
FAX: 18662572378

www.shelbypking.com or www.columbiahomesell.com

Subj: Re: HOUSE
Date: 7/13/2010
To: amycharlibennett@aol.com

Super, just let me know if you want Sunday or Sat.

Nice to hear from you!

Stay cool.

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In a message dated 7/13/2010 12:18:48 P.M. Eastern Daylight Time, amycharlibennett@aol.com writes:

Hi Shelby.

We just got in today. I will contact you this weekend, as we are just unpacking, etc. I would like to see that one house near Dent this weekend sometime. Maybe we can meet you there at a time that is good for you.

- Amy

-----Original Message-----
From: Shelbypking@aol.com
To: amycharlibennett@aol.com
Sent: Mon, Jul 12, 2010 2:34 pm
Subject: HOUSE

Hi Amy.

I don't want to call you and disturb you as you may be on vacation..I just want to know if you are getting my emails concerning the new listing I think you or Charlie should see sooner than later. It is priced really well for our market and is two blocks from Dent and less than five years old. I sent you the listing a few days ago.

Can you bring me up to date on your plans?

thanks,
Shelby

Shelby King, Broker, CRS, ABR, SFR

Subj: **Showing this weekend**
Date: 7/14/2010 2:05:55 P.M. Eastern Daylight Time
From: Shelbypking@aol.com
To: amycharlibennett@aol.com

Amy,

I previewed the home today that is close to Dent. The location is perfect for your family and only 8-10 minutes for Charlie to get to USC. A nurse practitioner lives there and knows how to get downtown in 8 minutes. It is also less than five years old.

The kitchen is nice, you would want to put a gas cook top and upgrade the appliances. There is natural gas and they have a gas line outside for a grill.

There appears to be enough room for a small pool in the rear.

There is carpet up and in the master down, but the agent said they would replace with hardwood in considering an offer.

There is plenty of room in the home, but no second living space on the first floor. There is a guest room on the first floor in addition to the master, however. There is also a sitting room or weight room off the master BR.

Nice home, much nicer than the other we saw over there and a three car garage.

Do you want to go on Sat. or Sun?

Shelby King, Broker, CRS, ABR, SFR

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Subj: Re: Showing this weekend
Date: 7/14/2010 8:05:10 P.M. Eastern Daylight Time
From: amycharlibennett@aol.com
To: Shelbyking@aol.com
Hi Shelby

A

We are up to our eyes in getting settled and in no hurry to buy. We will begin looking after school starts and after we figure out if TLC is the right school for us, as the alternative is private school and Richland I. I will keep in touch.

Amy

—Original Message—

From: Shelbyking@aol.com
To: amycharlibennett@aol.com
Sent: Wed, Jul 14, 2010 1:05 pm
Subject: Showing this weekend

Amy,

I previewed the home today that is close to Dent. The location is perfect for your family and only 8-10 minutes for Charlie to get to USC. A nurse practitioner lives there and knows how to get downtown in 8 minutes. It is also less than five years old.

The kitchen is nice, you would want to put a gas cook top and upgrade the appliances. There is natural gas and they have a gas line outside for a grill.

There appears to be enough room for a small pool in the rear.

There is carpet up and in the master down, but the agent said they would replace with hardwood in considering an offer.

There is plenty of room in the home, but no second living space on the first floor. There is a guest room on the first floor in addition to the master, however. There is also a sitting room or weight room off the master BR.

Nice home, much nicer than the other we saw over there and a three car garage.

Do you want to go on Sat. or Sun?

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Date	Hours Spent	Description of Time Spent	Mileage associated with this date	Expenses incurred this date	Expenses description
		Time and dates invested in educating, researching, previewing, showing, investigating, negotiating and ultimately locating a home for Amy and Charlie Bennett's family to purchase in Columbia SC.			
11/2/2009					
11/3/2009					
11/4/2009					
11/5/2009					
11/6/2009					
11/7/2009					
11/8/2009					
11/9/2009					
11/10/2009					
11/11/2009					
11/12/2009					
11/13/2009					
11/14/2009					
11/15/2009					
11/16/2009					
11/17/2009	0.20	Email to/from Amy			
11/18/2009	2.00	Email to/from Amy. MLS data set up prep time			
11/19/2009					
11/20/2009					
11/21/2009					
11/22/2009					
11/23/2009	2.00	Prep time to meet with Amy Bennett to show her homes. Setting appointments for showings.			
11/24/2009	3.00	Met Amy Bennett and Richard Schultz for lunch. Showed Amy homes until 3:00 .	32		Gas
11/25/2009					
11/26/2009					
11/27/2009	0.20	Follow up emails to Richard and with Amy			
11/28/2009					
11/29/2009					
11/30/2009					
12/1/2009					
12/2/2009					
12/3/2009					
12/4/2009					
12/5/2009					
12/6/2009					
12/7/2009					
12/8/2009					
12/9/2009					
12/10/2009					
12/11/2009					
12/12/2009					
12/13/2009					
12/14/2009					
12/15/2009					
12/16/2009					
12/17/2009					
12/18/2009					
12/19/2009					
12/20/2009					
12/21/2009					
12/22/2009					
12/23/2009					
12/24/2009					
12/25/2009					
12/26/2009					
12/27/2009					
12/28/2009					
12/29/2009					
12/30/2009					
12/31/2009					
1/1/2010					
1/2/2010					
1/3/2010					

1/4/2010				
1/5/2010				
1/6/2010				
1/7/2010				
1/8/2010				
1/9/2010				
1/10/2010				
1/11/2010				
1/12/2010				
1/13/2010				
1/14/2010				
1/15/2010				
1/16/2010				
1/17/2010				
1/18/2010				
1/19/2010				
1/20/2010				
1/21/2010				
1/22/2010				
1/23/2010	0.20	Email from Amy, my agreement to help find an apt for Charlie		
1/24/2010	1.00	Various calls to investigate short term housing for Charlie.		
1/25/2010	0.20	Email to and from Richard Schultz for short term housing.		
1/26/2010	1.20	Contact at law school via email for rental. Viewed housing in W. Columbia for short term rental and advised Amy.	14	Gas/mileage
1/27/2010	0.30	Call and emails regarding a rental for Charlie		
1/28/2010	0.30	Call and emails regarding a rental for Charlie		
1/29/2010				
1/30/2010				
1/31/2010				
2/1/2010				
2/2/2010				
2/3/2010				
2/4/2010				
2/5/2010				
2/6/2010				
2/7/2010				
2/8/2010				
2/9/2010				
2/10/2010				
2/11/2010	1.40	MLS search for listings and emails to/from Amy		
2/12/2010				
2/13/2010				
2/14/2010				
2/15/2010				
2/16/2010				
2/17/2010				
2/18/2010				
2/19/2010				
2/20/2010				
2/21/2010				
2/22/2010				
2/23/2010	1.00	Emails to Amy. CLMS data checks		
2/24/2010				
2/25/2010				
2/26/2010				
2/27/2010				
2/28/2010				
3/1/2010	0.30	Emails to Amy.		
3/2/2010				
3/3/2010				
3/4/2010				
3/5/2010	0.30	Email to Amy		
3/6/2010				
3/7/2010				
3/8/2010				
3/9/2010				
3/10/2010				
3/11/2010				
3/12/2010				
3/13/2010				
3/14/2010				

3/15/2010	1.30	Emails to/from Amy: MLS lot search and forwarded data. Prep for her visit next week.			
3/16/2010	1.00	Calls to builders to set up appointments for Amy			
3/17/2010	2.40	Prep for Amy's visit, setting some appointments, researching listings, calling listing agents.			
3/18/2010					
3/19/2010					
3/20/2010					
3/21/2010					
3/22/2010	2.00	Completed Buyer agency on ZIPFORMS and transmitted to Amy electronically with a note to become familiar with this form. Multiple emails to/from Amy regarding upcoming visit.			
3/23/2010	0.20	Emails to/from Amy			
3/24/2010					
3/25/2010	1.00	Prep work for showings, calls, appointment setting			
3/26/2010	3.00	10-1:00 Showed homes.	28		Gas
3/27/2010					
3/28/2010	4.00	Prep for tomorrow, called FSBO'S, set up appts, emails to/from Amy. Showed two homes to Amy. Kings Grant & Preserve			Gas
3/29/2010	4.30	Picked Amy up at Hotel and we looked at homes in Shandon, Preserve and Heathewood. Emails to/from Amy	32		Gas
3/30/2010					
3/31/2010	1.00	Emails and prep work to show homes			
4/1/2010	2.00	Emails to/from Amy. Prep work for showing			
4/2/2010	5.00	Showed homes in Heathewood, Shandon, Preserve; P.M	35	\$18.00	Gas and lunch: Deli
4/3/2010	4.00	Showed homes in Heathewood, Shandon, Preserve: A.M	30		Gas
4/4/2010	1.00	Follow up calls to listing agents			Gas
4/5/2010					
4/6/2010					
4/7/2010	1.00	Spoke to listing agent on Preserve regarding possible offer: emails to/from Amy.			
4/8/2010					
4/9/2010					
4/10/2010					
4/11/2010					
4/12/2010	1.30	Spoke with listing agent on Preserve home to try and negotiate a possible offer for Amy. Emails to/from Amy.			
4/13/2010					
4/14/2010					
4/15/2010	2.00	Research on comps, tax records, CMLS for Amy's interest in Preserve home. Spoke with listing agent on Heathewood/Berkeley home			
4/16/2010	1.30	Research more information on the Berkeley home Amy was interested in, faxed her a plat and tax information.			
4/17/2010					
4/18/2010					
4/19/2010					
4/20/2010	1.30	Emails to/from Amy about showing a house on Trenholm to Charlie. MLS searches for homes in NE. Set up two appts to show Charlie			
4/21/2010	2.30	Showed Charlie two homes, picked him up and dropped him at restaurant. Emails to/from Amy	28		Gas
4/22/2010	0.40	Emails to/from Amy			
4/23/2010	0.30	Emails to/from Amy			
4/24/2010	1.00	Called several agents and emailed for houses not on the market that might be interested in selling. Franklin Jones, Katie Atkinson and her mother CC, and Jim Dillard.			
4/25/2010					
4/26/2010	0:30	Emails to/from Amy. Asked for buyer agency to be signed and sent to me. I need it for our files. 2nd Request by email.			
4/27/2010	2.30	Previewed two potential homes for Amy which were not listed. Took photos and emailed	22		
4/28/2010	3.30	Picked up Charlie to show him a home at Kings Grant. Many emails to Amy	14		
4/29/2010	0.30	Emails to/from Amy			
4/30/2010					
5/1/2010					
5/2/2010	0.30	Emails to/from Amy			
5/3/2010	1.30	Change of direction for search, entering new data on MLS. Emails to/from Amy			

5/4/2010	2.00	Emails to/from Amy phone calls to agents, prep work			
5/5/2010	2.00	Prep work for showings, calls, appointment setting, preview a home not on market.			gas.
5/6/2010	1.30	Prep work for showings, calls, appointment setting			
5/7/2010	0.03	Emails/to from Amy prep for showings			
5/8/2010	2.00	Prep time for showings, appointment, calling list agents, scheduling			
5/9/2010	2.00	Prep time for showings, appointment, calling list agents, scheduling			
5/10/2010	9.00	All day Showing Amy homes in NE Columbia including lunch	46	\$17.00	gas and lunch
5/11/2010	9.00	All day Showing Amy homes in NE Columbia including lunch	46	\$16.00	gas and lunch
5/12/2010	5.00	All morning showing Amy/Charlie homes: Trip to airport.	55		gas
5/13/2010	1.50	Follow up with listing agents, builder at W.Creek and other staff.			
5/14/2010	1.30	Follow up emails to/from Amy			
5/15/2010	2.00	Follow up calls to builders/agents/Amy regarding recent visit and offers she wanted to submit including contacting on sight Architectural committee head to discuss adding on to homes and limitations, etc.			
5/16/2010	2.00	Follow up calls to builders/agents/Amy regarding recent visit and offers she wanted to submit. Follow up on offer #1 made at Wood creek.			
5/17/2010	2.00	Follow up calls to builders/agents/Amy regarding recent visit and offers she wanted to submit			
5/18/2010	2.00	Speaking with agent/builder of second home to make an offer.			
5/19/2010	3.00	Follow up and prep to send second offer. Previewed another home at Wood creek.	35		gas
5/20/2010	2.50	Follow up and prep to send second offer. Sent photos of another home which I took pictures of.			
5/21/2010	0.30	Emails to Amy			
5/22/2010	1.00	Emails to/from Amy			
5/23/2010	1.30	Revised search for Amy based on new decision to live closer to town in R/2 and not in WoodCreek.			
5/24/2010					
5/25/2010	1.00	Amy notified me she now wants to wait until mid July when she is here to think about a house purchase. She gives me another email address as the one we have been communicating is being terminated.			
5/26/2010	1.00	Emails to/from Amy			
5/27/2010					
5/28/2010					
5/29/2010	0.20	Emails from Amy			
5/30/2010					
5/31/2010					
6/1/2010					
6/2/2010					
6/3/2010					
6/4/2010	0.30	Emails to check in with Amy			
6/5/2010					
6/6/2010					
6/7/2010					
6/8/2010					
6/9/2010					
6/10/2010					
6/11/2010					
6/12/2010					
6/13/2010					
6/14/2010					
6/15/2010					
6/16/2010	0.30	Emails to/from Amy regarding the sale of her home.			
6/17/2010	0.30	Notified Amy I would change her receipt of listings to her other emails she asked me to use.			
6/18/2010					
6/19/2010					
6/20/2010					
6/21/2010					
6/22/2010					
6/23/2010					
6/24/2010	0.30	Sent Amy an email to see if she closed on her sale..no response.			
6/25/2010					

6/26/2010					
6/27/2010					
6/28/2010					
6/29/2010					
6/30/2010					
7/1/2010					
7/2/2010					
7/3/2010					
7/4/2010					
7/5/2010					
7/6/2010					
7/7/2010					
7/8/2010					
7/9/2010	1.00	Checked listings and noticed a new listing on Ashworth I thought would be perfect for the Bennett and notified her by email. Called listing agent to let her know I had someone to show.			
7/10/2010					
7/11/2010					
7/12/2010	0.30	Email to Amy about 14 Ashworth and the importance of her seeing it, asking if she was in town yet.			
7/13/2010	0.30	Amy responds saying she just got to town and was unpacking. She wanted to see the house I was telling her about "near Dent" the coming weekend.			
7/14/2010	2.00	Previewed 14 Ashworth home and met with the listing agent and discussed fully my clients needs. Informed the listing agent I wanted to show the coming weekend. I told the listing agent where my "clients" were from, about their sons need to go to Dent and the husband was at USC. Amy responds she no longer wants to buy now and will be back in touch.	14		gas.
7/15/2010					
7/16/2010					
7/17/2010					
7/18/2010					
7/19/2010					
7/20/2010					
7/21/2010					
7/22/2010					
7/23/2010					
7/24/2010					
7/25/2010					
7/26/2010					
7/27/2010	0.30	Email to Amy checking in with her. No response.			
7/28/2010					
7/29/2010					
7/30/2010					
	2.00	Approximate time on the phone at various times with Amy throughout the months.			
Total	125.03		431		\$51.00

Exhibit 19

Subj: PS
Date: 3/22/2010
To: amydbennett@comcast.net
PS:

never collect fee

RE: Buyer agreement

We never collect a fee from the buyer. In case you build, our fee will be negotiated with the builder, same is true for For Sale by Owner should this occur.

thanks,
Shelby

Shelby King, Broker, CRS, ABR, SFR

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FAX: 18662572378**

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In a message dated 3/22/2010 9:24:34 A.M. Eastern Daylight Time, amydbennett@comcast.net writes:

No

Original Message

From: Shelbyking@aol.com
To: amydbennett@comcast.net
Sent: Monday, March 22, 2010 8:08:22 AM GMT -06:00 US/Canada Central
Subject: Charlie

Amy,

Will Charlie be joining us in our search?

thanks!

Shelby King, Broker, CRS, ABR, SFR

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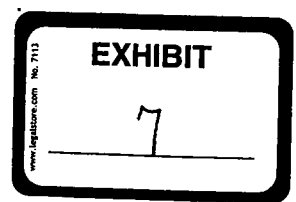


Exhibit B



The Voice for Real Estate™
in Richland, Lexington, Fairfield and Newberry Counties

1717 St. Julian Place
Columbia, South Carolina 29204
Phone (803) 771-8852
Fax (803) 771-4667
www.centralcarolinarealtors.com

REALTOR Peggy Gainey
Re/Max Advantage Group
3006 Devine St.

Columbia, S.C. 29205

29 November, 2010

Re: Gainey/King vs. Graham/Sullivan

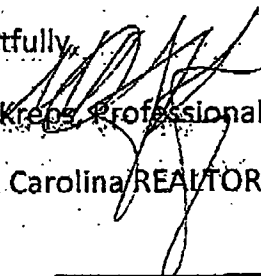
Dear REALTOR Gainey,

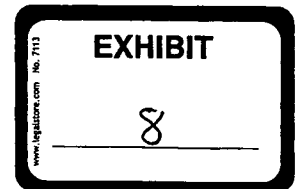
In light of the fact that the above referenced matter has become the subject of a civil action involving REALTOR King and a member of the public, Mrs. Bennett, I am writing to advise you of the current status of the arbitration request filed with my office by Ms. King.

As is required in the rules governing the Dispute Resolution System of the National Association of REALTORS, the arbitration request will be held in abeyance pending the outcome of the civil action, and any subsequent action which may be filed with the Licensing Board. So, to be clear, the pending complaint has not been considered by the Grievance Committee of the Central Carolina REALTORS Association, which is the first step in the process within the board.

Should any further questions arise concerning the status of this matter, please do not hesitate to contact me, or the person serving as the Professional Standards Administrator at that time.

Respectfully,


M.O.J. Kreps, Professional Standards Administrator
Central Carolina REALTORS Association

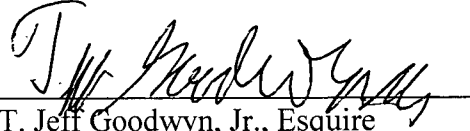


REALTOR® is a registered collective membership mark which may be used by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
(803) 251-4517 (office)
(803) 251-4527 (fax)
jgoodwyn@goodwynlaw.com
Attorney for Appellant

February 13, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Civil Action No.: 2010-CP-40-07333

Shelby King,.....Appellant.

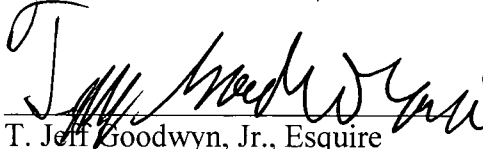
v.

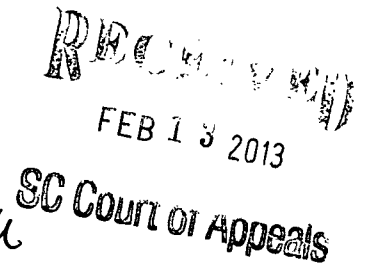
Amy Bennett and Amy Bennett Trust, Amy Bennett
Trustee,.....Respondents.

PROOF OF SERVICE

I certify that I have served the **Record on Appeal** on Todd R. Ellis, Esquire, Counsel for the Respondents at the address below by depositing a copy of same in the United States Mail, postage prepaid, on February 13, 2013.

Todd R. Ellis, Esquire
Law Offices of Todd Ellis, P.A.
7911 Broad River Road, Suite 100
Irmo, SC 29063


T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, South Carolina 29205
(803) 251-4517
(803) 251-4527 (fax)
JGoodwyn@Goodwynlaw.com
Attorney for Appellant


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FEB 13 2013
SC Court of Appeals

February 13, 2013