

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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.

FINAL REPLY BRIEF OF APPELLANT

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March 4, 2013

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ARGUMENT IN REPLY

I. S.C. Code Ann. §40-57-5, et. seq. clearly defines the differences between a client and a customer. No argument presented by Respondent refutes Appellant's argument that the writing requirement as set forth in S.C. Code Ann. §40-57-135(D)(4) and relied upon by the lower Court in granting summary judgment only applies to the situation where the real estate professional represents the buyer in an agency capacity.

S.C. Code Ann. §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.” (emphasis added). Appellant had neither a “representation agreement” with Respondent nor did she have “agency relationship” with her. As a result, this code section is inapplicable to this situation. There is no other provision in S.C. Code Ann. §40-57-5, et. seq. that requires a real estate professional to have a written fee agreement with a buyer. As such, it was an error of law for the lower Court to base its granting of Respondent’s summary judgment motion on this code section.

Respondent cites a Delaware case for the proposition that oral agreements related to agents and their clients can be an unsafe practice and the requirement that listing agreements be in writing helps to foster fair dealings between parties, standardize real estate practice, prevent fraud and avoid litigation. 24 Del.C. § 2928; 24 Del.C. § 2905(1) (1988); *E. Commercial Realty Corp. v. Fusco* 654 A.2d 833 (Del. 1995). Respondent goes on to argue that requiring a writing between an agent and her client prevents disputes by agents who would claim a part of a commission or fee is due. Appellant completely agrees with the rationale behind requiring listing agreements and agency agreements to be in writing.

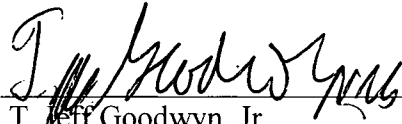
It is Appellant's understanding that prior to the passage of S.C. Code Ann. §40-57-5, et. seq., it had become very problematic with buyer's agents with no written agreement trying to compel listing agents to pay them a commission over the objection of the buyer. This problem was addressed with the inclusion of S.C. Code Ann. §40-57-135(D)(4). Because of this section, an agent in Appellant's position should not be able to successfully bring an action for a commission from the listing agent in a situation like this.

The situation in this case, however, does not involve an agent trying to compel the payment of a commission and this is where Respondent's rationale fails. There was no agency agreement between the parties and Appellant is not asking to be paid a commission from the listing agent. Appellant is seeking to be paid by a customer through the theories raised in her complaint. It was because of S.C. Code Ann. §40-57-135(D)(4) and the fact that Respondent refused to sign an agency agreement that Appellant obtained assurances from Respondent that she would be paid by her directly. Nowhere in S.C. Code Ann. §40-57-5, et. seq. is there any language suggesting that a real estate professional cannot be compensated for work she does for someone defined by the statute as a 'customer'. If Appellant can prove the elements of the theories of recovery outlined in her Complaint, she should be able to bring an action for such payment just as any other professional would.

CONCLUSION

For the foregoing reasons, Appellant contends that the lower Court erred as a matter of law in granting Respondent's motion for summary judgment dismissing this case based on S.C. Code Ann. §40-57-135(D)(4) and respectfully request that the this Court reverse this decision and allow this case to be tried on the merits.

Respectfully Submitted,



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v.

Shelby King,.....APPELLANT

PROOF OF SERVICE

I certify that I have served the Final Brief and the Final Reply Brief of the Appellant, Shelby King, by depositing a copy of same in the United States Mail, postage prepaid, on **March 4, 2013**, addressed to counsel for Respondents, Todd Ellis, at the Law Firm of Todd Ellis, P.A. to 7911 Broad River Road, Suite 100, Irmo, SC 29063.



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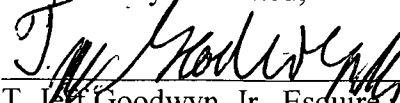
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Shelby King,.....Appellant.

CORRECTED CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with
Rule 211(b), SCACR.

Respectfully submitted,


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