

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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**APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr, Circuit Court Judge**

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**Circuit Court Case No. 2017-CP-10-4112
Appellate Case No.: 2018-000249**

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**Chris Khamnei, .....** Appellant,

**v.**

**Columbus Street Holdings, LLC; Roy T. Willey, IV; and Eric M. Poulin, .....** Respondents.

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APPELLANT'S REPLY BRIEF

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**RECEIVED**

**MAR 26 2019**

**SC Court of Appeals**

**March 19<sup>th</sup>, 2019**

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## STANDARD OF REVIEW

“A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true.” *Fabian v. Lindsay*, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (quoting *Disabato v. S.C. Ass’n of Sch. Adm’rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013)). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Clearwater Tr. v. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). “Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015); *Spence v. Spence*, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006).

To establish a claim for breach of contract accompanied by a fraudulent act, a party must show: (1) a breach of contract; (2) fraudulent intent relating to the breaching or the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Conner v. City of forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). **“Fraudulent act” is broadly defined as “any act characterized by dishonesty in fact or unfair dealing.”** *Id.* at 466, 560 S.E.2d at 612. “Fraud, in this sense, assumes so many hues and forms, that **courts are compelled to content themselves with comparatively few general rules for its discovery and defeat and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.**” *Id.* (quoting *Sullivan v. Calhoun*, 117S.C. 137, 139, 108 S.E. 189, 189(1921)). “Fraudulent intent is normally a factual question proved by circumstances surrounding the breach.” *Floyd v. Country*

*Squire Mobile Homes, Inc.*, 287 S.C. 5 L 54, 336 S.E.2d 502, 503-04 (Ct. App. 1985).

### **REPLY TO REPENDENT'S STATEMENT OF FACTS**

Respondents falsely state in their Statement of Facts that “\$50,000 of the purchase price was to be held in escrow until the *lis pendens* was dissolved and the squatters evicted.” The Purchase and Sales Addendum describing the agreement specifies that the “Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis and release of the *lis pendens* on the property (2017LP100240). Seller agrees to continue to pursue, retain attorney, and fund the eviction of Tenant Davis and dismissal of the *lis pendens*.” The closing attorney became the power of attorney for the seller (Appellant) and simultaneously drafted the Escrow Agreement which was a direct translation of the Purchase and Sales Agreement Addendum. Take note that the Appellant did NOT sign the Escrow Agreement or the closing documents for the sale of the property. On April 21<sup>st</sup>, 2017, the Power of Attorney and Escrow Agent signed along with Roy Willey from Columbus Street holding the Escrow Agreement that specifically in clear and understandable language that “Upon notification of the cancellation of the Lis Pendens and the removal of Travis Davis, the Parties have agreed to disburse the funds in the following manner: (a) The balance of all moneys shall be returned to the Client.” There were NO other tasks that the Appellant needed to achieve to release the escrow funds.

### **APPELLANT'S CLAIM OF FRAUD**

On or about September 5<sup>th</sup>, 2017, Appellant filed his Amended Complaint. Contrary to Repondent's claim, the word “fraud” appears in the heading “Breach of Contract Accompanied by a Fraudulent Act” and is claimed on “All Defendants (Columbus Street, Wiley and Poulin)”. The Amended Complaint ¶¶55-61 is recited here as follows:

55. Plaintiff re-alleges and incorporates the allegations of paragraphs 1-54 of the Complaint as if fully set forth herein.
56. Plaintiff and Columbus Street entered into a series of written agreements related to the sale and closing of the Property, including the Addendum and the Escrow Agreement, and an agreement between the parties wherein Plaintiff agreed to reduce the sales price of the Property by twenty six thousand dollars (\$26,000) in consideration of Columbus Streets agreement to close the sale by a specified date, and release the escrow funds upon satisfaction of the agreed upon conditions, which the parties expressly acknowledged was expected to occur by May 31, 2017.
57. Plaintiff fully performed under the terms of the Agreements, including satisfying the two conditions required under the parties' agreement for the release of the escrow funds.
58. Columbus Street breached the Agreements by failing and refusing to consent to the release of the escrow funds back to Khamnei's upon and despite Khamnei's satisfaction of the two conditions precedents according to the specific terms of the parties' written agreements.
59. Columbus Street has breached, and continues to breach, the Agreements willfully, and with conscious indifference to Plaintiffs pressing need for the funds, and his rights under the Agreements to their release.
60. Knowing of Plaintiffs financial urgency in obtaining the release of the escrow funds, Willey and Poulin, on behalf of Columbus Street, intentionally breached the Agreements with Plaintiff to force Plaintiff into the position of having to choose whether to pay Columbus Street \$10,000, or lose \$15,000 as a penalty for defaulting on Plaintiffs other obligation.
61. Columbus Street's and Willey and Poulin' s intentional breach of the Agreements with Plaintiff in order to wrongfully gain financial advantage and extort money from Plaintiff

constitutes dishonesty in fact and unfair dealing.

62. As a direct and proximate result of Columbus Street's and Willey and Poulin's failure and refusal to release the escrow funds, in breach of the Agreements, Plaintiff has suffered actual consequential, and incidental damages in an amount to be proven at trial, but no less than ninety-one thousand dollars (\$91,000).

Appellant used ALL the correct terms in the well-pleaded claims as follows:

1. "Fraudulent Act";
2. "Columbus Street's and Wiley and Poulin's intentional breach";
3. "Wrongfully gain financial advantage";
4. "Willfully, and with conscious indifference";
5. "Extort money";
6. "Dishonesty in fact and unfair dealing" **which is the definition of fraud**; and
7. "Columbus Street's and Willey and Poulin's failure and refusal to release the escrow funds, in breach of the Agreements".

The court is compelled to content itself with comparatively few general rules for its discovery and defeat and **allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.** See *Sullivan v. Calhoun*. Appellant has been deprived of allowing a jury to determine its presence or absence. Appellant is *pro se* and has no formal legal training. The Respondent's are Harvard graduated attorneys practicing in Charleston and particularly investing in distressed sales of real estate. The facts and circumstances of fraud peculiar to this case is that a Harvard educated attorney could imaginably believe that the only requirement in the Real Estate Addendum (viz. "Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing

attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis”) could mean “all squatters”. Further, that the same attorneys could possibly believe that the escrow requirement (viz. “Upon notification of the cancellation of the Lis Pendens and the removal of Travis Davis, the Parties have agreed to disburse the funds in the following manner: (a) The balance of all moneys shall be returned to the Client”) could possibly mean that the escrow funds did NOT have to be released until “all squatters were evicted”. The Appellant has been compelled to produce over 10 pounds of discovery (3 years of financial records) irrelevant to these proceedings. However, Respondents have NOT produced one page of discovery including most importantly the leases that were offered by Columbus Street Holdings to the so called “squatters”!

### CONCLUSION

Please reverse the Trial Court's decision and allow the claims to be heard by a jury in a fair trial. Appellant has substantial evidence and witnesses to prove that Respondent's acted in bad faith only to be unjustly enriched. Because of the Trial Court's decision, the Respondents have refused to provide discovery claiming it is now irrelevant to a simple Breach of Contract matter.

Respectfully Submitted and Dated at Burlington, Vermont on March 19<sup>th</sup>, 2019,

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**Attorney for Respondents**

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Chris **Khamnei**, Appellant,

v.

Columbus Street Holdings, LLC; Roy T. Willey and Eric M. Poulin, Respondents.

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**PROOF OF SERVICE**

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I certify that I have served Appellant's Reply Brief on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on March 19th, 2019, addressed to Attorney for Respondents at:

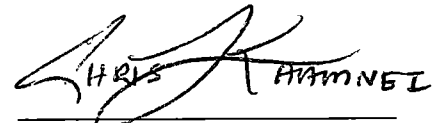
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March 19, 2018

Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

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RE: Khamnei v. Columbus Street Holdings, et al.
Appellate Case No. 2018-000249

Dear Ms. Kitchings:

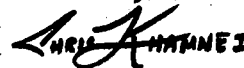
Please find enclosed for filing in the above-referenced case the following:

1. Proof of Service; and
2. Appellant's Reply Brief.

If you have any questions or require further information, please contact me at 802-777-6007 or at chris@rentinvt.com.

Thank you for your assistance.

Sincerely,



Chris Khamnei
Plaintiff, *pro se*

Enclosures

cc: Stefan B. Feidler (Counsel of Record for Columbus Street Holdings)

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