

Jul 23 2020

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 John Michael Timmons, Jr. d/b/a Tavern on)
 the Loop,)
 Plaintiff,)
 vs.)
)
 First Reliance Bank, Inc.; The Blanton)
 Company, Inc.; JB JR Enterprises, Inc. d/b/a)
 The Blanton Company, Inc.; WW Plasma II,)
 LLC; Dale Porter; F.R. Saunders, Jr.; Hunter)
 Williams; and Joseph B. Blanton,)
 individually,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 CASE NO.: 2018-CP-21-00227

**ORDER DENYING PLAINTIFF’S
 MOTION FOR SUMMARY JUDGMENT
 AGAINST DEFENDANTS FIRST
 RELIANCE BANK, DALE PORTER AND
 F.R. SAUNDERS, JR., AND ORDER
 GRANTING DEFENDANTS FIRST
 RELIANCE BANK, INC., DALE PORTER
 AND F.R. SAUNDERS, JR.’S MOTION
 FOR SUMMARY JUDGMENT AS TO
 ALL CLAIMS ASSERTED BY PLAINTIFF**

THIS MATTER came before this Court on Cross- Motions for Summary Judgment filed by Plaintiff John Michael Timmons, Jr. d/b/a Tavern on the Loop and Defendants First Reliance Bank, Dale Porter, and F.R. Saunders, Jr. (collectively the “First Reliance Defendants”), filed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Plaintiff filed a Motion for Summary Judgment, or in the Alternative, Motion for Partial Summary Judgment against the First Reliance Defendants on February 11, 2020. The First Reliance Defendants filed a Motion for Summary Judgment as to all claims asserted by the Plaintiff on May 6, 2020. The Court held a hearing on Plaintiff’s Motion for Summary Judgment against the First Reliance Defendants on May 20, 2020, at which all Parties were represented by Counsel. The Court held a hearing on the First Reliance Defendants’ Motion for Summary Judgment against the Plaintiff on June 10, 2020, at which all Parties were represented by Counsel. After considering the written Memorandums and all exhibits, pleadings and affidavits, and hearing oral arguments on May 20, 2020 and June 10, 2020, the Court **DENIES IN WHOLE** Plaintiff’s Motion for Summary Judgment or in the

Alternative Motion for Partial Summary Judgment. The Court **GRANTS IN WHOLE** the First Reliance Defendants' Motion for Summary Judgment.

LEGAL STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedures states a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom should be viewed in the light most favorable to the non-moving party." *id.* However, "[i]t is not sufficient that evidence create a far-fetched inference." *Saluda Motor Lines, Inc. v. Crouch*, 300 S.C. 43, 45, 386 S.E.2d 290, 292 (Ct. App. 1989). "The question on a motion for summary judgment is whether there is anything of substance to be tried. Therefore, it is incumbent upon the court to search the proof as proffered by affidavits or otherwise, to ascertain whether it discloses a real issue, rather than a formal, perfunctory, or shadowy one." *Id.*

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct.App.2007). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." *Regions Bank v. Schmauch*, 354 S.C. 64S, 582 S.E.2d 432 (Ct.App.2003). "The nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005). Moreover, in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand

a motion for summary judgment. However, in cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009).

UNDISPUTED FACTUAL BACKGROUND

On August 14, 2006, non-party Atlantic Regional, LLC (“Atlantic Regional”) executed a Mortgage in favor of First Reliance Bank, conveying a first-position security interest in the Sweetbriar Shopping Center, 1935 Second Loop Road, Tax Parcel No. 90029-01-014 (“Sweetbriar”).¹ Beginning in approximately 2008, Atlantic Regional engaged The Blanton Company, Inc. (“TBC”) as its property manager to manage tenants and rentals at Sweetbriar.² On July 20, 2015, First Reliance Bank filed a foreclosure complaint against Atlantic Regional in the Superior Court of Florence County, Civil Action No. 2011-CP-21-2106 (the “Foreclosure Action”).³ In connection with the Foreclosure action, on July 20, 2015, FRB filed a Notice of *Lis Pendens* against Sweetbriar, stating “[n]otice is hereby given that an action has been commenced by the Plaintiff [] against the Defendant [] for the foreclosure of a certain mortgage given by Atlantic Regional, LLC to First Reliance Bank...”.⁴

On July 23, 2015, First Reliance Bank filed a “Motion for Order to Pay Rents to the Plaintiff” in the Foreclosure Action. The Motion states Plaintiff “will move the Court to direct [TBC] to pay lease proceeds due to Atlantic Regional, LLC over to Plaintiff.”⁵ By letter dated July

¹ Pl. Compl. at Exhibit G-1.

² Deposition of Joseph Blanton taken January 22, 2020, Vol. 2 at P. 8-10, attached to First Reliance Defendants’ Summary Judgment Memorandum filed May 15, 2020 as Exhibit B (hereinafter “Blanton Deposition”).

³ Pl. Complaint at Ex. G.

⁴ *Id.*

⁵ Pl. Compl. at Ex. I.

23, 2015 to Atlantic Regional and TBC, First Reliance Bank demanded payment of the rents derived from Sweetbriar and enclosed a copy of the Motion.⁶

Following filing of the Foreclosure Action and Notice of *Lis Pendens*, on August 20, 2015, Plaintiff executed a Commercial Lease Agreement for a retail space in Sweetbriar.⁷ The Lease states that it is between “The Blanton Company” as Lessor, and Mike Timmons d/b/a Tavern on the Loop as Lessee (the “Lease”).⁸ Mr. Blanton testified TBC “entered [Plaintiff’s] lease on behalf of Atlantic Regional.”⁹ The Lease provides for a term of three years, commencing August 20, 2015 and terminating on September 1, 2018, with subsequent option periods of five and ten years. The Lease provides “this lease is and shall be subordinated to all existing and future liens against the property.”¹⁰ Plaintiff did not record the Lease.¹¹ Plaintiff testified he did not know about the Foreclosure Action at the time he executed the Lease, and did not learn of the Foreclosure Action until February of 2016.¹² Plaintiff testified “the only person I had any discussion with concerning this contract before I signed it was Joe Blanton.”¹³ Plaintiff also testified that he had no communications with First Reliance Bank until January 2017, approximately 17 months after he executed the Lease.¹⁴

⁶ Pl. Compl. at Ex. I.

⁷ Pl. Compl. at Ex. A.

⁸ *Id.*

⁹ Blanton Deposition at P. 120 Vol. 2.

¹⁰ Pl. Compl. at Ex. A.

¹¹ Blanton Deposition, P. 54 Vol 2. Plaintiff does not dispute this fact.

¹² Deposition of Plaintiff Timmons taken August 20, 2019 (“Timmons Deposition”) at P. 64, attached to First Reliance Defendants’ Summary Judgment Memorandum filed May 15, 2020 as Exhibit C together with Mr. Timmons’ continued deposition taken October 9, 2018 (“Timmons Cont. Deposition”).

¹³ Timmons Deposition at P. 67.

¹⁴ Timmons Cont. Deposition at P. 67, 75.

By Order dated October 2, 2015, the Foreclosure Court granted First Reliance Bank's Motion for Order to Pay Rents to the Plaintiff ("Rents Order"). The Rents Order provides:

[FRB] holds a recorded Assignment of Rents given by Defendants in connection with the loan. The Assignment provides that Plaintiff may collect the rents if the Defendants default in payment of the loan... Plaintiff proposes that the current property manager, The Blanton Company, remain property manager, but that all rents collected be paid over to Plaintiff pursuant to the terms of the Assignment until this action is concluded. I find that the Defendants are in default in payment of the loan. The Blanton Company should remain as property manager, and all rents collected should be paid over to Plaintiff.¹⁵

TBC did not distribute any rental proceeds from the Sweetbriar property to FRB until after the Court entered the order directing him to pay over rents to FRB; TBC issued the first rental proceeds check to FRB on October 16, 2015.¹⁶

On December 3, 2015, the Foreclosure Court entered a foreclosure judgment in favor of First Reliance Bank against Atlantic Regional.¹⁷ The foreclosure judgment provides, in pertinent part:

That Plaintiff have judgment of foreclosure against Atlantic Regional, LLC on the obligation and mortgage as set forth in the Complaint for the sum of \$887, 222.47...

That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid...

That on default of payment at or before the time herein indicated, the mortgaged property described in the Complaint, as hereinafter set forth, be sold by the undersigned, at public auction

The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

¹⁵ Pl. Compl. at Ex. J.

¹⁶ Blanton Deposition at P. 31 Vol. 2.

¹⁷ Pl. Compl. at Ex. L.

And it is further ORDERED, ADJUDGED AND DECREED **that each Defendant named herein and all person whomsoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity in redemption in the said mortgaged premises so sold, or any part thereof.**¹⁸

The Special Referee held a public auction and sale on February 4, 2016, at which First Reliance Bank was the highest bidder.¹⁹ On February 11, 2016, the Special Referee issued a deed to First Reliance Bank.²⁰

By letter dated February 8, 2016, First Reliance Bank informed Mr. Blanton that the Bank purchased Sweetbriar at public auction on February 4, 2016, and was now the owner.²¹ First Reliance Bank communicated its position as follows:

As a result of [the foreclosure] sale, all agreement (lease or otherwise) with Atlantic Regional and occupants related to the Sweet Briar Shopping Center are extinguished. The bank would like to enter into month-to-month lease agreements with the current tenants until it has the opportunity to explore purchaser opportunities. We would also like to employ your firm to assist the bank with these agreements and the management of this property while the bank finds a purchaser. If a future purchaser wishes to enter into long term leases with any of the current tenants that will be between them and the tenants with the change of ownership. However, if the bank finds a purchaser that wishes to use the property for some other purpose then the bank cannot put itself in a position not to be able to accommodate that purchaser's wishes.²²

By letter dated February 26, 2016, Mr. Blanton forwarded First Reliance Bank's letter to all existing Sweetbriar tenants, including Plaintiff, informing them of First Reliance Bank's position.²³ Plaintiff received a copy of this letter from First Reliance Bank, but he continued operating his business and did not attempt to contact First Reliance Bank regarding the property

¹⁸ *Id.* (emphasis added).

¹⁹ Pl. Compl. at Ex. M.

²⁰ *Id.*

²¹ Pl. Compl. at Ex. N.

²² *Id.*

²³ Pl. Compl. at Ex. O; Timmons Cont. Deposition at P. 71-72.

until approximately one year later, at which time he disputed First Reliance Bank's position that the foreclosure terminated the Lease.²⁴ First Reliance Bank sold Sweetbriar to WW Plasma II, LLC ("Plasma") on January 27, 2017.²⁵ After Plasma purchased Sweetbriar, by letter dated February 6, 2017, Plasma notified Plaintiff it intended to terminate his month-to-month tenancy.²⁶ Plaintiff subsequently vacated Sweetbriar.²⁷

PROCEDURAL BACKGROUND

Plaintiff filed this action on January 29, 2018, alleging that the Lease was not extinguished by the judgment and sale in the Foreclosure Action and that the Lease is enforceable against First Reliance Bank. Plaintiff brings the following causes of action against the First Reliance Defendants: (1) Count 1- Breach of Contract; (2) Count 2- Breach of Contract accompanied by Fraudulent Act; (3) Count 5- Fraud; (4) Count 7- Negligent Misrepresentation; (5) Count 9 – Unfair Trade Practices Act; (6) Count 11- Tortious Interference with Contract; (7) Count 12- Tortious Interference with prospective Business Opportunities; (8) Count 13- Breach of Duty of Good Faith and Fair Dealing; and (9) Count 14- Negligent Supervision.

APPLICABLE LAW AND ANALYSIS

I. Count 1 of Plaintiff's Complaint: Breach of Contract

The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015). Plaintiff asserts that the Lease is a valid contract enforceable against First Reliance Bank.

²⁴ Timmons Cont. Deposition at P. 71-72; 75.

²⁵ Pl. Compl. at Ex. Q.

²⁶ Pl. Compl. at Ex. R.

²⁷ Timmons Cont. Deposition at P. 91.

A. Effect of the Filing of the Notice of *Lis Pendens* and Foreclosure Judgment and Sale on Plaintiff's Lease executed August 20, 2015

A *lis pendens* informs a prospective purchaser or encumbrancer, such as Plaintiff, that a particular piece of real property is subject to litigation. The *lis pendens* statute states:

From the time of filing only, the pendency of the action shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and *shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.*

S.C. Code Ann. § 15-11-20 (emphasis added). When a *lis pendens* is filed, an encumbrancer is charged with notice of the litigation if his encumbrance is subsequently executed. *MI Co., Ltd. v. McLean*, 325 S.C. 616, 626, 482 S.E.2d 597, 602 (Ct. App. 1997). That the person who acquires an interest in the property lacks actual knowledge of the filing is irrelevant, and the court is not permitted to weigh equities between the filer of the *lis pendens* and the subsequent encumbrancer. *Id.* A properly filed *lis pendens* binds subsequent purchasers or encumbrancers to all proceedings evolving from the litigation. *South Carolina Nat'l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). A *lis pendens* “notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002).

In this case, the foreclosure and *lis pendens* were filed on July 20, 2015. As a matter of law, any deed, lease, or other interest in the property acquired after that date is subject to the foreclosure proceedings, regardless of whether the person who subsequently acquired the interest had knowledge of the filing. *MI Co., Ltd.*, 325 S.C. at 626. Because Plaintiff executed his Lease

after First Reliance Bank recorded a *lis pendens*, as a matter of law, Plaintiff is charged with notice of the foreclosure proceedings, the Lease is subject to the foreclosure judgment and sale, and Plaintiff is bound by the foreclosure judgment and sale as if he had been made a party thereto. *See* S.C. Code Ann. § 15-11-20; *MI Co., Ltd.*, 325 S.C. at 626; *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774, 777 (1932) (“one may not rely upon a purchase or encumbrance made after the filing of the *lis pendens*.”); *Savannah Timber Co. v. Deer*, 285 F. 777, 783 (D.S.C. 1918). For these reasons, the Lease is not enforceable against First Reliance Bank.

In addition, the Lease was extinguished by operation of law following the entry of foreclosure judgment and sale of the property to First Reliance Bank at the foreclosure auction. Plaintiff executed his Lease subsequent in time to First Reliance Bank’s recorded Mortgage, and Plaintiff did not record his Lease. The Lease contained an express clause subordinating it to all liens and encumbrances on Sweetbriar, including First Reliance Bank’s Mortgage and Notice of *Lis Pendens*. Both by operation of law and pursuant to the express terms of the Lease, the Lease was subject to First Reliance Bank’s Mortgage. The Judgment rendered against Atlantic Regional in the Foreclosure Action established the amount of debt owed by Atlantic Regional, and provided the parameters for the forthcoming public auction to be conducted by the Special Referee in the event Atlantic Regional did not pay the amount of the judgment entered by the date of the sale. The foreclosure judgment provided “[t]he sale shall be subject to taxes and assessments, existing easements and restrictions of record” and that Atlantic Regional and “all person whomsoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity in redemption in the said mortgaged premises so sold, or any part thereof.” *See also Wright v. Home Beneficial Life Ins. Co.*, 155 Ga. App. 241, 242, 270 S.E.2d 400, 401–02 (1980) (“When a lessee Leases property subsequent to the execution of a deed to secure debt [i.e. Atlantic's mortgage] and the grantee of

such deed exercises the power of sale, the lessee becomes a tenant at sufferance, and the party acquiring title by foreclosure is entitled to maintain a statutory eviction proceeding against the tenant.”).

S.C. Code Ann. § 27-33-30 provides “[i]n order to give notice to third persons any lease or agreement for the use or occupancy of real estate shall be recorded in the same manner as a deed of real estate.” It is undisputed that Plaintiff did not record his Lease, and the Lease was not a restriction of record as of the date of the Foreclosure Auction. Plaintiff did not provide proper notice to third parties of the existence of his lease as required by statute. Accordingly, by virtue of foreclosure judgment and sale, as well as Plaintiff’s failure to provide proper notice to third parties, any leasehold interest Plaintiff acquired in Sweetbriar was extinguished when First Reliance Bank purchased the Subject Property at the public foreclosure auction conducted by the Special Referee on February 4, 2016 and the Lease is not enforceable against First Reliance Bank.

B. Plaintiff’s Allegation that The Blanton Company entered the Lease as agent of First Reliance Bank

Plaintiff argues that First Reliance Bank is the “true lessor” and a party to Plaintiff’s Lease, and that therefore the *Lis Pendens* statute and the Foreclosure judgment and sale do not render the Lease unenforceable against First Reliance Bank. Plaintiff argues that as of August 20, 2015, the date TBC executed the Lease with Plaintiff, First Reliance Bank had assumed control over Sweetbriar and authorized and directed TBC to act as its agent to enter into the Lease. As set forth above, as a matter of law, the Lease is not enforceable against First Reliance Bank due to the filing of the *Lis Pendens* and the effect of the foreclosure judgment and sale. Additionally, the Court finds no genuine issue of material fact exists as to whether First Reliance Bank was a party to Plaintiff’s Lease.

First, Plaintiff argues that as a matter of law and by virtue of the Mortgage executed by Atlantic Regional in favor of First Reliance Bank on August 14, 2006, First Reliance Bank was the legal owner of Sweetbriar on August 20, 2015, and that all leases Atlantic Regional entered into were “automatically transferred to the Bank.” Plaintiff’s assertions are inconsistent with South Carolina law regarding the nature of a mortgage. *See* S.C. Code Ann. § 29-3-10 (“the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by foreclosure and sale according to law”); S.C. Code Ann. § 29–3–630 (2007) (requiring a court of competent jurisdiction must establish “the debt for which the security is given” before any sale of the foreclosed property may be valid to pass title); *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 282, 711 S.E.2d 912, 915 (2011) (“The mortgagor of land is the owner in fee and has title to the land so mortgaged, but the mortgagee has a lien upon the land to secure his debt.”).

The Mortgage and Assignment of Rents executed by Atlantic Regional in favor of First Reliance Bank contain no agreement by First Reliance Bank to assume the duties of Atlantic Regional under any contracts Atlantic Regional entered into with its tenants.²⁸ The Court has not been able to find a South Carolina appellate decision specifically addressing the argument made by Plaintiff in this case, which is that a tenant that enters into a lease with a property owner can assert a landlord-tenant relationship with the property owner’s lender due to assignment language in the property owner’s loan documents. However, it appears that other jurisdictions have considered this argument and rejected it. *See e.g.* Restatement (Third) of Property (Mortgages) § 4.2 (1997) (the “collection of rents pursuant to such a mortgage does not constitute the mortgagee a ‘mortgagee in possession,’ with the duties and liabilities attendant to that status.”); *Wright v.*

²⁸ Pl. Compl. at Ex. G-1 and F.

Home Beneficial Life Ins. Co., 155 Ga. App. 241, 242, 270 S.E.2d 400, 402 (1980) (“[tenant] asserts that the trial court erred in not enforcing a landlord-tenant relationship between himself and [foreclosing bank] which allegedly arose from the assignment agreement between [the borrower/landlord] and [the foreclosing bank]. In effect, [tenant] contends that the assignment of leases, rents and profits amounted to a transfer of [the borrower’s] entire interest in the property to [the bank]. This contention is without merit. What [the bank] received by this assignment was merely additional security for the indebtedness—a chose in action in the event of default.”).

This Court does not find support for Plaintiff’s contention that the loan documents executed by Atlantic Regional in favor of First Reliance Bank support the existence of a landlord-tenant relationship between First Reliance Bank and Plaintiff as a matter of law.

Second, Plaintiff argues that as a factual matter, as of August 20, 2015, First Reliance Bank had assumed control over TBC as property manager, and that TBC entered the Lease as agent for First Reliance Bank. “Agency is the fiduciary relationship that arises when one person (a principal) manifests assent to another person (an agent) that the agent shall act on the principal’s behalf and subject to the principal’s control.” *Froneberger v. Smith*, 406 S.C. 37, 49, 748 S.E.2d 625, 631 (Ct. App. 2013). “An agency may not be established solely by the declarations and conduct of an alleged agent.” *Cowburn v. Leventis*, 366 S.C. 20, 39–40, 619 S.E.2d 437, 448 (Ct. App. 2005). “An agency relationship may be established by evidence of actual or apparent authority.” *Charleston, S.C. Registry for Golf & Tourism, Inc. v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 642, 598 S.E.2d 717, 721 (Ct. App. 2004).

An agency relationship based on actual authority exists when a purported principal and an alleged agent mutually consent to the principal controlling the agent in the work the agent has agreed to do on the principal’s behalf. *Froneberger v. Smith*, 406 S.C. 37, 61–62, 748 S.E.2d 625,

638 (Ct. App. 2013). As of August 20, 2015, the date Plaintiff executed his lease with TBC, Atlantic Regional was the owner of Sweetbriar, and had not been divested of any rights in the property. The only right First Reliance Bank had sought to exercise was the right to receive rental payments, which was not granted until after Plaintiff executed his Lease with TBC.²⁹ As a matter of law, the relationship between First Reliance Bank and TBC as of August 20, 2015 was not that of principal and agent.

Moreover, there is no evidence to support Plaintiff's factual allegation that TBC entered the Lease as agent of First Reliance Bank on August 20, 2015. First Reliance Bank denies TBC acted as agent for First Reliance Bank any time prior to First Reliance Bank's purchase of the property on February 4, 2016, and denies that as of August 20, 2015 it had authorized TBC to transact business on its behalf or specifically to enter Plaintiff's Lease.³⁰ Mr. Blanton testified, "I entered [Plaintiff's] lease on behalf of Atlantic Regional."³¹ The record evidence shows that Mr. Blanton emailed Plaintiff's Lease Proposal dated August 17, 2015 to a representative of Atlantic Regional.³² TBC negotiated the terms of Plaintiff's Lease at Atlantic Regional's express direction.³³ Mr. Blanton testified as follows:

Q: And I believe you testified that you spoke to Rick Cranford, who was with Atlantic Regional, about Mr. Timmons' interest in the property?

A (By Mr. Blanton): Yes.

Q: And did Mr. Cranford, acting on behalf of Atlantic Regional, approve Mr. Timmons' lease for the property?

A: Yes...

²⁹ Pl. Compl. at Ex. I and J.

³⁰ Deposition of Dale Porter taken January 24, 2020 at P. 129; 153-155; 166-167; 174; 177; Ex. 16; , attached to First Reliance Defendants' Summary Judgment Memorandum filed May 15, 2020 as Exhibit A ("Porter Deposition"); Affidavit of Ray Coit Yarborough attached to First Reliance Defendants' Summary Judgment Memorandum as Exhibit E.

³¹ Blanton Deposition at P. 120 Vol. 2.

³² First Reliance Defendants' Supplemental Summary Judgment Memorandum filed June 8, 2020 at Exhibit A.

³³ See *Id.*; Blanton Depo. at P. 179 Vol. 1.

Q: Yes, sir. So you told me earlier today that it was your practice to ask Atlantic Regional to approve any tenants for the property, correct?

A: Certainly.

Q: So with regard to Mr. Timmons, you asked Atlantic Regional to approve that lease just as you did in your typical practice?

MR. LE CLERQ: Object to form.

THE DEPONENT: Yes.

BY MS. HOUGHTON:

Q: And you had a contract with Atlantic Regional that authorized you to enter into leases on their behalf?

MR. LE CLERQ: Object to form.

THE DEPONENT: Correct.

BY MS HOUGHTON:

So if you'll look at Exhibit 5 in the book in front of you, that should be Mr. Timmons' lease...

A: The lease was to commence on August 20, 2015. Signed and dated on August 20, 2015.

Q: And at that time, in August – on August 20 of 2015, you didn't have an agreement with First Reliance Bank that authorized you to enter into leases on their behalf, correct?

MR. LE CLERQ: Object to form.

THE DEPONENT: No.³⁴

Thus, the only conclusion authorized by the evidence is that TBC entered into the Lease on behalf of Atlantic Regional. There is no evidence that First Reliance Bank authorized or directed TBC to enter into the Lease on behalf of First Reliance Bank. Although Plaintiff contends there is conflicting testimony by Blanton and First Reliance Bank as to the identity of the lessor of Plaintiff's Lease, Plaintiff has not pointed to any such testimony and the Court finds none since Mr. Blanton testified unequivocally that TBC "entered the Lease on behalf of Atlantic Regional." Plaintiff points to conflicting deposition testimony given by First Reliance Bank and TBC as to whether TBC told First Reliance Bank about Plaintiff's interest in the property prior to executing the Lease.³⁵ Plaintiff also points to events that occurred *after* August 20, 2015 (disputed by the

³⁴ Blanton Deposition at P. 35-38 Vol. 2; *see also* Blanton Depo. at P. 117, Vol. 1.

³⁵ Plaintiff points to Mr. Blanton's deposition testimony concerning interactions with First Reliance Bank employee Dale Porter and First Reliance Bank's attorney in the foreclosure action,

First Reliance Defendants) as creating an issue of fact as to whether First Reliance Bank authorized TBC to enter into the Lease on August 20, 2015. However, Plaintiff has not been able to point to any evidence to support its allegation that on or before August 20, 2015, First Reliance Bank authorized TBC to enter into the Lease on behalf of First Reliance Bank. Although Plaintiff is entitled to all inferences to be drawn from the evidence in his favor at this stage, “this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury.” *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009). These are not genuine issues of material fact that preclude summary judgment in favor of the First Reliance Defendants because Plaintiff has pointed to no evidence which shows First Reliance Bank authorized TBC to enter into contracts on its behalf as of August 20, 2015, or that First Reliance Bank authorized TBC to enter into Plaintiff’s Lease on its behalf.

When evaluating the existence of apparent authority, “[t]he proper focus in determining a claim of apparent authority is not on the relationship between the principal and the agent, but on

Ray Coit Yarborough. As to Mr. Porter, Mr. Blanton testified at one point that he did not recall any conversations with any First Reliance employee about Mr. Timmons prior to entering into Plaintiff’s Lease. *See* Blanton Deposition at Vol 2 P. 37. At another point, Mr. Blanton testified: “Q: Did you have a conversation with Dale Porter regarding the prospective lease of Mr. Timmons for this property prior to August 20, 2015? A: (by Mr. Blanton): I think I did.” *See* Blanton Deposition at P. 188, Vol. 1. As to Mr. Yarborough, Mr. Blanton testified he believes he spoke to First Reliance Bank’s foreclosure attorney regarding Plaintiff’s interest in Sweetbriar, but he does not recall the content of the discussion. *See* Blanton Depo. at P. 150-151 Vol. 2; P. 181, Vol. 1. When asked if Mr. Yarborough approved or authorized Plaintiff’s Lease, Mr. Blanton testified that he did not know. *See* Blanton Depo. at P. 181, Vol. 1. Mr. Yarborough does not recall any discussion about Mr. Timmons, states he did not have authority to approve any lease on behalf of First Reliance Bank at that time and would not have approved any lease on behalf of First Reliance Bank if he had been asked. *See* First Reliance Defendants’ Summary Judgment Memorandum filed May 15, 2020 at Exhibit E. Plaintiff has pointed to a factual dispute as to whether TBC informed First Reliance Bank, through its employee or attorney, about Plaintiff’s interest in Sweetbriar. Based on all of the deposition testimony, however, the only competent, admissible evidence is that First Reliance Bank did not authorize TBC to enter into the Lease with Plaintiff. There is also no evidence First Reliance Bank was apprised of the specific proposed terms of Plaintiff’s lease including its length or Plaintiff’s anticipated investment in the property.

that between the principal and the third party.” *R & G Const., Inc. v. Lowcountry Reg’l Transp. Auth.*, 343 S.C. 424, 432, 540 S.E.2d 113, 117–18 (Ct.App.2000). “[T]he concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal.” *Id.* Further:

To establish apparent agency, it is not enough simply to prove that the purported principal by either affirmative conduct or conscious and voluntary inaction has represented another to be his agent or servant. In order for a third party to recover against the principal based upon this theory, it must be shown that he reasonably relied on the indicia of authority *originated by the principal* and such reliance must have effected a change of position by the third party.

Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 244–45, 473 S.E.2d 865, 868 (Ct. App. 1996) (citations and quotations omitted, emphasis in original); see also *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142–43, 399 S.E.2d 430, 433 (Ct. App. 1990). In this case, Plaintiff testified unequivocally that he did not have any communications with First Reliance Bank and did not know of any potential involvement First Reliance Bank had with Sweetbriar until he learned of the foreclosure 4 months after he executed the Lease.³⁶ Accordingly, there is no evidence of any manifestations by First Reliance Bank to Plaintiff that TBC was authorized to transact business on its behalf. Therefore, there is no evidence of apparent authority.

C. Plaintiff’s Allegation that First Reliance Bank ratified the Lease by accepting Plaintiff’s rent payments

Plaintiff argues First Reliance Bank ratified Plaintiff’s Lease because First Reliance Bank accepted Plaintiff’s rental payment after First Reliance Bank became the owner of Sweetbriar in February 2016. Under South Carolina law, “[r]atification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or

³⁶ See Timmons Cont. Depo. at P. 67, 69, 72, 75.

entered into in his behalf by another who at the time assumed to act as his agent.” *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989). Ratification exists upon the concurrence of three elements; (1) acceptance by the principal of the benefits of the agent’s acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements. *Neely v. Love*, 144 S.C. 271, 142 S.E. 623, 642 (1928). When the act relied on to show ratification is equally consistent with a purpose to the contrary, an intent to ratify is not ordinarily implied.” *Id.*

On February 2, 2016, Plaintiff wrote a rent check to TBC for the month of February.³⁷ On February 4, 2016, FRB purchased the Sweetbriar Shopping Center at the foreclosure sale.³⁸ By letter dated February 8, 2016, FRB notified TBC of its purchase and stated its position that all leases were extinguished as result of the foreclosure sale, and that it would permit tenants to remain on a month-to-month basis.³⁹ On February 24, 2016, TBC remitted funds to FRB representing February rental payments less expenses.⁴⁰

The undisputed facts show that First Reliance Bank stated its intention that subsequent to February 4, 2016, it considered Plaintiff’s tenancy to be only a month-to-month tenancy. Any rental proceeds received by First Reliance Bank after such date were pursuant to First Reliance Bank’s understanding that any tenancies were month-to-month. Plaintiff has not come forward or pointed to any evidence creating a genuine issue of fact as to “circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements.” Thus Plaintiff’s ratification claim fails at the summary judgment stage.

³⁷ Plaintiff’s Summary Judgment Memorandum at Exhibit 39.

³⁸ Pl. Compl. at Ex. M.

³⁹ Pl. Compl. at Ex. N.

⁴⁰ Plaintiff’s Summary Judgment Memorandum at Ex. 44.

Considering all of the evidence in the light most favorable to Plaintiff, First Reliance Bank has shown the absence of a genuine issue of material fact as to whether the Lease constitutes a contract with First Reliance Bank. Plaintiff cannot rest on mere allegations and speculation, and has not pointed to evidence that does show a genuine issue of material fact on this issue as required to support Plaintiff's breach of contract claim. The Court holds as a matter of law that Plaintiff cannot enforce the Lease against First Reliance Bank, and due to the operation of the *Lis Pendens* statute and the effect of the Foreclosure judgment and sale, First Reliance Bank purchased Sweetbriar free and clear of Plaintiff's leasehold interest. Plaintiff's breach of contract claim thus fails at the summary judgment stage.

II. Counts 5 and 7: Misrepresentation and Negligent Misrepresentation

In order to prove fraud, the following elements must be shown:

(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Id. Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. *Lawson v. Citizens & S. Nat. Bank of S. C.*, 259 S.C. 477, 481–82, 193 S.E.2d 124, 126 (1972). In order to prevail on a negligent misrepresentation claim, Plaintiff must show:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

Quail Hill, LLC v. Cty. of Richland, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010).

Plaintiff alleges Mr. Blanton made various fraudulent and negligent misrepresentations and non-disclosures to him during the Lease negotiations on and prior to August 20, 2015. Plaintiff testified that the only person he spoke to regarding Sweetbriar prior to executing the Lease was Mr. Blanton.⁴¹ Plaintiff acknowledges he had no communications with First Reliance Bank until after First Reliance Bank purchased Sweetbriar at foreclosure auction.⁴² Plaintiff argues that various alleged misrepresentations and fraudulent concealments by TBC, namely the failure to disclose the existence of the Foreclosure Action, are attributable to First Reliance Bank because TBC was acting as the Bank's agent. As set out above, there is no evidence to support Plaintiff's contention that TBC and/or Mr. Blanton served as the agent of First Reliance Bank in negotiating and executing the Lease. While Plaintiff may be able to pursue these claims against Mr. Blanton and/or The Blanton Company, none of the negligent or fraudulent misrepresentations alleged against Mr. Blanton are chargeable against First Reliance Bank under an agency theory.

Plaintiff alleges First Reliance Bank directly made fraudulent and/or negligent misrepresentations to him in First Reliance Bank's letters dated February 8, 2016 and December 27, 2016, by "[p]urporting to extinguish the Lease" and "representing that such extinguishment was a natural and unavoidable consequence of the Bank becoming the new owner of the Site, despite knowing that this was not an inevitable operation of landlord-tenant, mortgage law, or the Mortgage," and representing that "existing leases would not be honored by any subsequent purchaser, and that each tenant would have the responsibility to negotiate a new lease with a new buyer, while knowing that such Leases automatically become the obligation of the new purchaser by operation of law."⁴³ The basis of Plaintiff's fraudulent and negligent misrepresentation claims

⁴¹ Timmons Cont. Deposition at P. 67.

⁴² Timmons Cont. Deposition at P. 67, 75.

⁴³ See Pl. Compl. At Par. 149, 107, Count 7.

against First Reliance Bank is thus that after taking ownership of Sweetbriar, First Reliance Bank took an incorrect legal position as to the effect of the foreclosure on Plaintiff's Lease.

South Carolina law is clear that, in the context of a claim for fraud and negligent misrepresentation, "[t]here is no liability for...representations as to matters of law." *AMA Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992); *see also Schnellmann v. Roettger*, 368 S.C. 17, 21, 627 S.E.2d 742, 745 (Ct. App. 2006); *Quail Hill, LLC v. County of Richland*, 387 S.C. 223, 240-241, 692 S.E.2d 499, 508-509 (2010) ("misrepresentations as to matters of law are not actionable."); *Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 166, 714 S.E.2d 869, 875 (2011) ("no action will generally lie for a misrepresentation as to a matter of law... All individuals are presumed to know the law"). Here, all of the alleged misrepresentations by the First Reliance Defendants constituted its understanding of the law and legal position as to the legal effect of the foreclosure on any existing Sweetbriar lease. A party's communication of its legal position to another party under these circumstances is not actionable as the basis for a fraudulent or negligent misrepresentation claim.

Plaintiff has also pointed to no evidence establishing that the First Reliance Defendants had "intent that the representation be acted upon," that Plaintiff actually relied on the statements, or had a right to rely on these statements. First Reliance Bank, through the allegedly fraudulent correspondence, was transparent about its intent with respect to finding a purchaser and its position that the prior leases were now month-to-month tenancies only. There is no evidence of intent to deceive or induce any change in position on the part of Plaintiff, who was free to stay or leave in accordance with month-to-month tenancy notice requirements. There is no evidence that Plaintiff relied on the "statements" of First Reliance Bank and made any change in position based on such statements. There is no evidence Plaintiff had a right to rely on such statements. Plaintiff testified

that although he disagreed with First Reliance Bank's position as to the validity of his lease, he made no effort to contact First Reliance Bank until almost a year later.⁴⁴ Plaintiff did not take any action to investigate or independently verify First Reliance Bank's position despite his disagreement with the same and his perception of First Reliance Bank as being adverse to him. Plaintiff has pointed to no evidence establishing anything other than an arms-length relationship between First Reliance Bank and Plaintiff. See e.g. *DeHart v. Dodge City of Spartanburg, Inc.*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993) (“[T]here is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship, and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.”); *Florentine Corp. v. PEDA I, Inc.*, 287 S.C. 382, 386–87, 339 S.E.2d 112, 114 (1985) (“[w]here there is no confidential or fiduciary relationship and an arm's length transaction between mature, educated people is involved, there is no right to rely. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests,”).

Similarly, for Plaintiff's negligent misrepresentation claim, Plaintiff must establish that the First Reliance Defendants owed him a duty. “The existence of a duty owed is a question of law for the courts.” *Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 11–12, 620 S.E.2d 326, 329 (2005). As set forth above, under the circumstances of this case, there is no duty between mature business persons engaging in an arm's length transaction. Plaintiff has not pointed to existence of a duty to support his negligent misrepresentation claim against the First Reliance Defendants.⁴⁵

⁴⁴ Timmons Cont. Depo. at 71-72, 75.

⁴⁵ Finally, Plaintiff argues Blanton fraudulently and/or negligently misrepresented to him, after First Reliance Bank purchased Sweetbriar, that it was likely a new buyer would want to continue his lease, despite the warning communicated by First Reliance Bank that there was no guarantee that a new buyer would want to continue any tenancies. This statement relates purely to Blanton's

III. Count 2: Breach of Contract Accompanied by Fraudulent Act

The elements of a claim for breach of contract accompanied by fraudulent act are: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract, not merely to its making; and (3) a fraudulent act accompanying the breach. *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 654, 780 S.E.2d 263, 273–74 (Ct. App. 2015). As set forth above, there is no evidence of a contract between First Reliance Bank and Plaintiff. However, even if the Lease was a contract between First Reliance Bank and Plaintiff, First Reliance Bank has demonstrated the absence of a genuine issue of fact as to whether First Reliance Bank acted with fraudulent intent to commit a breach of the Lease, and Plaintiff has not pointed to any evidence thereof.

The First Reliance Defendants are entitled to summary judgment on Plaintiff’s claims for fraudulent misrepresentation, negligent misrepresentation and breach of contract with fraudulent intent.⁴⁶

opinion as to a likely future event, and is not an actionable statement. “The false representation must be predicated upon misstatements of fact rather than upon an expression of opinion, an expression of intention or an expression of confidence that a bargain will be satisfactory... the fraudulent representation must relate to a present or pre-existing fact and it cannot ordinarily be based upon an unfulfilled promise to perform in the future or statements as to future events.” *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 526–27, 455 S.E.2d 183, 187 (Ct. App. 1995).

⁴⁶ Plaintiff is required to show more than a mere scintilla of evidence at this stage to prevail on his fraud and breach of contract accompanied by fraudulent act claims, because these claims are subject to a heightened burden of proof at trial. *See Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330–31, 673 S.E.2d 801, 803 (2009). However, the Court finds Plaintiff has not established either a mere scintilla or “more than” a mere scintilla of evidence to support the elements of these claims.

IV. Count 9: Unfair Trade Practices Act

Under the South Carolina Unfair Trade Practice Act (“UTPA”) unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. S.C. Code Ann. § 39-5-20(a). Additionally, a UTPA plaintiff must allege and prove that the defendant’s actions adversely affected the public interest. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (S.C. 2004). Conduct that is permitted by law is not actionable under the UTPA. *See* S.C. Code Ann. § 39-5-40(a); *Allison v. McCabe Trotter & Beverly, P.C.*, No. 2:17-CV-1727-RMG, 2018 WL 3826674, at *6 (D.S.C. Aug. 10, 2018). Plaintiff has not demonstrated evidence to support his claim that the First Reliance Defendants engaged in an unfair or deceptive act. First Reliance Bank exercised its legal rights based on the superiority of its interest in Sweetbriar, and informed the Sweetbriar tenants, including Plaintiff, that any prior leases were terminated as the result of the foreclosure auction. First Reliance Bank’s exercise of its legal rights does not support a claim under the UTPA.

Even if Plaintiff were to prevail on his claim that his Lease survived the foreclosure auction and sale as a matter of law, Plaintiff has not pointed to any evidence to support his allegation that the First Reliance Defendants intended to engage in an unfair or deceptive act. First Reliance Bank was transparent about its intent with respect to the tenancies immediately after it became the owner of Sweetbriar by sending a letter to this effect four days after it purchased the property at foreclosure auction.⁴⁷ Plaintiff has pointed to no evidence to suggest that First Reliance Bank set out to deliberately deceive Plaintiff. *See e.g. Robertson v. First Union Nat. Bank*, 350 S.C. 339, 350–51, 565 S.E.2d 309, 315 (Ct. App. 2002) (affirming summary judgment on UTPA claim, noting even if bank had made an under-secured loan which exposed the plaintiff to personal

⁴⁷ Pl. Compl. at Ex. N.

liability, there was “nothing in the record, other than [plaintiff’s] unproven allegations and inferences of impropriety and coincidences, to suggest that Bank deliberately set out [to make an under-secured loan]”).

Accordingly, the First Reliance Defendants are entitled to summary judgment on Plaintiff’s UTPA claim.

V. Counts 11 and 12: Intentional Interference with Contractual Relations and Prospective Business Opportunities

Plaintiff asserts First Reliance Bank “intentionally procured the breach of Timmons’s tenancy and/or Lease with [TBC] as well as of Timmons’s employee, client and supplier contracts.”⁴⁸ To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). Plaintiff’s claims are based on the premise that his Leasehold interest in Sweetbriar survived the foreclosure judgment and sale, and fail for the reasons stated above. Plaintiff’s claims also fail for the additional reasons set forth below.

As to Plaintiff’s Lease, Plaintiff argues First Reliance Bank is a party to the Lease. One must be a stranger to the contract to be liable for intentional interference; a party to a contract cannot be held liable on such claim. *See Dutch Fork Dev. Group II, LLC v. SEL Props, LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012). As a non-party to Plaintiff’s Lease, the First Reliance Defendants are not liable on an intentional interference claim where the conduct constituting the alleged interference was simply the lawful exercise of First Reliance Bank’s rights. *See S. Contracting, Inc. v. H.C. Brown Const. Co.*, 317 S.C. 95, 100, 450 S.E.2d 602, 605 (Ct. App. 1994)

⁴⁸ Pl. Compl. at Par. 203.

(“Recognizing, then, action taken which interferes with another's contract rights or prospective business opportunities involves an analysis of the circumstances, it can be said a factual issue exists unless the actor is exercising an absolute right, equal or superior to the right invaded.”). Moreover, as to the “employee, client and supplier contracts,” Plaintiff must show the existence of a valid third party contract of which the First Reliance Defendants were aware. Plaintiff has not identified any contracts he contends were interfered with by Defendants.⁴⁹

To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: (1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726 (2007). “Generally, there can be no finding of intentional interference with prospective contractual relations if there is no evidence to suggest any purpose or motive by the defendant other than the proper pursuit of its own contractual rights with a third party.” *Id.* As above, the First Reliance Defendants acted in pursuit of First Reliance Bank’s rights, and without any improper purpose or methods. Moreover, “To satisfy the first element of the cause of action for tortious interference with prospective contractual relations, South Carolina law requires that a “plaintiff must demonstrate that he had a truly prospective or potential contract with a third party; that the agreement was a close certainty; and that the contract was not speculative.” *First S. Bank v. S. Causeway, LLC*, 414 S.C. 434, 445–46, 778 S.E.2d 493, 499 (Ct. App. 2015). Plaintiff has not identified any specific future business opportunities which he contended were interfered with by Defendants.⁵⁰

⁴⁹ Timmons Cont. Depo. at P. 99-100.

⁵⁰ Timmons Cont. Depo. at P. 100-102.

The First Reliance Defendants are entitled to summary judgment on Plaintiff's claims for intentional interference with contractual relations and prospective business opportunities.

VI. Count 13 and 14: Breach of the Duty of Good Faith and Fair Dealing and Negligent Supervision

Plaintiff's claim for breach of the duty of good faith and fair dealing fails because there is no such independent cause of action. *See RoTec Servs., Inc. v. Encompass Servs., Inc.* 359 S.C.467, 597 S.E.2d 881, 884 (Ct. App. 2004). Because all of Plaintiff's substantive claims fail, Plaintiff's claim for negligent supervision likewise fails.

IT IS THEREFORE ORDERED that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Plaintiff's Motion for Summary Judgment, or in the Alternative, Motion for Partial Summary Judgment, against Defendants First Reliance Bank, Dale Porter, and F.R. Saunders, Jr. is **DENIED IN WHOLE. IT IS THEREFORE FURTHER ORDERED** that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, that Defendant First Reliance Bank, Dale Porter, and F.R. Saunders, Jr.'s Motion for Summary Judgment as to All Claims Asserted by Plaintiff is **GRANTED IN WHOLE.** The Court hereby enters summary judgment against Plaintiff on all of his claims asserted against Defendant First Reliance Bank, Dale Porter, and F.R. Saunders, Jr. in this lawsuit. Defendant First Reliance Bank, Dale Porter and F.R. Saunders Jr. are **DISMISSED** from this lawsuit **WITH PREJUDICE.**

IT IS SO ORDERED on this _____ day of June, 2020.

Honorable Judge Michael G. Nettles
Twelfth Judicial Circuit



Florence Common Pleas

Case Caption: John Michael Timmons Jr , plaintiff, et al VS First Reliance Bank Inc
, defendant, et al
Case Number: 2018CP2100227
Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140