

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Kathryn B. Godley and Rock Hill City Plaza,
LLC, a North Carolina limited liability
company,

Plaintiffs,

v.

The Welfont Group, LLC, Joseph Johnson,
Sean Marcel, Tax Appraisal Group, LLC,
Lynda Scull, Bryant Asset Advisors, LLC,
Andrew J. Bryant, Christopher D. Bryant, and
Acts Community Development Corporation,

Defendants.

Case No. 0:24-cv-07705-MGL

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO MOTION TO DISMISS**

Plaintiffs Kathryn B. Godley and Rock Hill City Plaza, LLC, a North Carolina limited liability company ("Plaintiffs") by and through undersigned counsel, hereby submit this Response in Opposition to Motion to Dismiss.

INTRODUCTION

Defendants marketed and engineered a bargain-sale transaction that depended on an IRS "Qualified Appraisal," promised Plaintiffs substantial charitable-contribution benefits, and—while undertaking to coordinate and facilitate that appraisal—embedded mechanics (including a same-day flip) that predictably undermined the appraisal's validity and triggered IRS disallowance years later. Plaintiffs' Amended Complaint pleads, with particularity, the who, what, when, where, and how; ties each defendant to specific conduct; and alleges concrete damages exceeding \$3.69 million (disallowed deductions, penalties/interest, and professional fees).

More specifically, Plaintiffs were contacted by Welfont employee Bill Zapf, whose email touted Welfont's expertise in charitable-donation transactions: Welfont would provide a charitable buyer and a "Qualified Appraisal" meeting IRS standards; Plaintiffs would sell property to the charity below the appraisal and claim a deduction for the difference. The appraisal procured by appraisers selected by Welfont dramatically overstated value. The IRS later determined the appraisal was not qualified and disallowed the deduction, causing Plaintiffs to incur additional tax, penalties, interest, and professional fees.

This Memorandum first addresses the Rule 12, FRCP standard and Defendants' improper reliance on extrinsic material. It then shows that the Amended Complaint plausibly alleges (I) breach of contract; (II) negligence and negligent misrepresentation under a voluntarily-assumed-duty theory; (III) fraud satisfying Rule 9, FRCP; (IV) SCUTPA violations with public-interest impact, and (V) civil conspiracy. The motion to dismiss should be denied in its entirety. At a minimum, any perceived defect is curable and the Court should grant leave to amend rather than dismiss at the threshold.

To survive dismissal, a complaint must plead "enough facts to state a claim to relief that is plausible on its face," allowing the court to draw the reasonable inference of liability. *Bell Atl. Corp. v. Twombly*, 550 U.S. 554 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

I. The Breach of Contract Claim.

Plaintiffs preliminarily note that the Defendants rely heavily on a contract that they have attached to their motion as Exhibit C to Exhibit A, the Real Estate Purchase Agreement ("REP"). Defendants' contract exhibit is outside the pleadings and not proper on a Rule 12(b)(6) motion. It is neither attached to nor incorporated in the complaint, and Plaintiffs dispute both its completeness and the characterization urged by Defendants. The Court should therefore exclude it. In *Zak v.*

Chelsea Therapeutics Int'l, Ltd., 780 F.3d 597 (4th Cir. 2015), the Fourth Circuit emphasized that courts are generally limited to the allegations in the complaint and documents attached to or incorporated into the complaint when evaluating a Rule 12(b)(6) motion. The court clarified that consideration of extrinsic documents not integral to the complaint improperly converts the motion to dismiss into a motion for summary judgment, which is inappropriate when the parties have not had an opportunity to conduct reasonable discovery. In *Columbia v. Haley*, 738 F.3d 107 (4th Cir. 2013), the Fourth Circuit reiterated that a district court cannot consider matters outside the pleadings without converting the motion into one for summary judgment, unless the documents are integral to the complaint and their authenticity is not disputed.

In a breach of contract claim, the elements under South Carolina law are an offer, acceptance, and valuable consideration. The plaintiff must plead sufficient factual allegations to establish these elements and show the existence of a valid contract. The complaint must provide enough factual detail to give the defendant fair notice of the claim and the grounds on which it rests, as required by Rule 8, FRCP. Here, the Complaint has literal pages of allegations setting forth the alleged misconduct in detail, providing fair notice. Doubtless, substantially more information will be forthcoming during discovery, from both sides, and that is the norm in complex litigation. The Court should deny this motion.

If the Court wishes to consider the Exhibit produced by Defendants, Plaintiffs assert in the alternative that their motion still fails. Welfont's operational role in the appraisal process is set forth multiple places in Exhibit C to the attached contract and the contract itself. For example, REP §4(a) states Seller "has requested, and Buyer has agreed, that The Welfont Group, LLC shall coordinate and facilitate the Appraisal with an independent appraisal management company, or another qualified appraiser that complies with the requirements of Section 170 of the IRC [and

related IRS guidance].” This is a present-tense undertaking that ties Welfont to the “Qualified Appraisal” process the motion to dismiss claims is solely the Seller’s burden.

Further, REP §16(n) expressly makes Welfont a third-party beneficiary “with respect to all representations, disclaimers and other matters relating to the IRS section 170 Bargain Sale transaction,” confirming the parties understood Welfont’s integral role and that the transaction depended on IRS-qualified compliance steps Welfont helped “coordinate and facilitate.” And finally, Exhibit C provides that the Buyer “makes no representations of what the Buyer will or will not do with the property after” closing, and notes Seller isn’t imposing a post-sale restriction unless disclosed to the appraiser (which could affect value). This language does not immunize nonparties from fraudulent concealment of a same-day flip plan if they knew it would undermine the “Qualified Appraisal” they were coordinating; it simply assigns what the charity buyer represents. That also applies to the fraud section, and it shows how Welfont was embedded in the transaction at all levels.

II. The Claims for Negligence and Negligent Misrepresentation.

The allegations include the assertion that Defendants agreed to obtain a §170-compliant appraisal. In so doing, Defendants voluntarily assumed a duty to use reasonable care in that undertaking—independent of general sales functions. Its commission, pegged to “cash equivalent” including projected tax savings, evidences a pecuniary interest in the appraisal outcome. Plaintiffs allege transaction-specific information supplied by Welfont’s Letter of Intent and coordination role, reliance, and pecuniary loss (disallowed deductions, penalties/interest, and professional fees), which is the core of negligent-misrepresentation doctrine in business transactions. This is not mere non-performance under a sale contract; it is false and/or incomplete compliance information in a bespoke, Welfont-coordinated §170 process that foreseeably caused financial harm.

By agreeing to “coordinate and facilitate” a § 170-compliant appraisal, Defendants voluntarily undertook services “necessary for the protection of” Plaintiffs’ interests in a compliant charitable-deduction transaction. That undertaking created a duty to exercise reasonable care. Plaintiffs plausibly allege both (1) increased risk of harm from negligent performance (a non-qualified appraisal leading to disallowance and penalties) and (2) reliance on the undertaking (Welfont’s LOI and coordination role).

South Carolina recognizes the principle that one who voluntarily undertakes to render services to another, which they should recognize as necessary for the protection of the other’s interests, assumes a duty to exercise reasonable care in performing that undertaking. South Carolina law recognizes and applies § 323 of the *Restatement (Second) of Torts* to voluntarily assumed duties. This principle is well-established in South Carolina jurisprudence, which holds that when a party voluntarily undertakes to render services to another, whether gratuitously or for consideration, they assume a duty to exercise reasonable care in performing the undertaking. This duty arises if the failure to exercise such care either increases the risk of harm to the plaintiff or if the plaintiff suffers harm due to reliance on the undertaking. *Johnson v. Robert E. Lee Acad., Inc.*, 401 S.C. 500, 504-505, 737 S.E.2d 512 (Ct. App. 2012); *Wright v. PRG Real Est. Mgmt.*, 426 S.C. 202 213-214, 826 S.E.2d 285 (2018).

Defendants’ commission, tied to the “cash equivalent” including projected tax savings, evidences financial interest in the appraisal outcome—supporting a duty of care in supplying information for a business transaction. Plaintiffs allege false or incomplete compliance information in a bespoke § 170 process, reliance, and financial loss (disallowed deductions, penalties/interest, professional fees). That states negligent misrepresentation. In *Winburn v. Insurance Co. of N. Am.*, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985), the court recognized that a duty to exercise

reasonable care in providing information arises when the defendant has a pecuniary interest in the transaction. The court stated that recovery for negligent misrepresentation may be based on a negligently made false statement if the plaintiff suffers injury or loss as a result of relying on the misrepresentation. *Id.* at 441-442. The court emphasized that the existence of a pecuniary interest in the transaction is sufficient to establish the duty to exercise reasonable care in giving information, even if no consideration is received at the time. *See also Redwend LP v. Edwards*, 354 S.C. 459, 582 S.E.2d 496 (Ct. App. 2003) (the court reiterated the elements of negligent misrepresentation, including the requirement that the defendant have a pecuniary interest in making the representation and a duty to exercise reasonable care in communicating truthful information).

The statutory requirements under 26 USCS § 170 and 26 USCS § 6664 provide additional context for the defendants' duty. Section 170 mandates that a qualified appraisal must meet specific standards, including being conducted by a qualified appraiser under generally accepted appraisal practices. These two statutes further emphasize the importance of obtaining a qualified appraisal and conducting a good faith investigation of the property's value to avoid penalties for substantial valuation misstatements. 26 USCS § 6664. By undertaking to coordinate and facilitate the appraisal, the defendants assumed responsibility for ensuring compliance with these statutory requirements.

The knowledge that the charity immediately sold the property at a relatively small profit after the purported charity bargain sale could significantly undermine the validity of the appraisal. Under Treasury Regulation § 1.170A-13, recordkeeping and return requirements for deductions for charitable contributions, a qualified appraisal must include "[t]he terms of any agreement or understanding entered into (or expected to be entered into) by or on behalf of the donor or donee

that relates to the use, sale, or other disposition of the property contributed." This requirement ensures that the appraisal reflects all relevant facts that could affect the fair market value of the property. If the appraiser or broker knew of the immediate resale at a lower price and failed to disclose this information, the appraisal may not meet the regulatory requirements for a "qualified appraisal," potentially invalidating the charitable deduction. *Cave Buttes, LLC v. Comm'r*, 147 T.C. 338 (2016), *Emanouil v. Comm'r*, T.C. Memo 2020-120.

Under 26 USCS § 6664, the reasonable cause and good-faith exception to penalties for valuation misstatements does not apply unless the taxpayer both obtained a qualified appraisal and made a good faith investigation of the property's value. If the appraiser or broker knew of the immediate resale and its terms but failed to account for this in the appraisal, it could show a lack of good faith in the valuation process, further invalidating the appraisal and exposing the taxpayer to penalties. 26 USCS § 6664; *Chief Counsel Advice Memoranda 200950037*, IRS CCA 200950037, UI No. 170.14-00, (Release Date: December 11, 2009); *Blau v. Comm'r*, 924 F.3d 1261 (D.C. Cir. 2019).

The immediate resale of the property at a lower price, combined with the appraiser's or broker's knowledge of this fact, undermines the credibility of the appraisal and its compliance with IRS requirements. This could and did lead to the disqualification of the appraisal and the denial of the charitable deduction claimed by the plaintiffs. *Cave Buttes, LLC v. Comm'r*, 147 T.C. 338 (2016), *Emanouil v. Comm'r*, T.C. Memo 2020-120. The argument about the importance of providing a valid appraisal is also relevant and important in the context of the fraud and SCUTPA claims discussed below.

The Defendants' argument that their liability sounds only in contract, not tort, is unpersuasive under South Carolina law. Courts have recognized that a party's voluntary

assumption of a duty can give rise to tort liability, even absent a contractual obligation. In *Sanders v. United States*, 493 F. Supp. 3d 470 (D.S.C. 2020), the court held that a party's failure to exercise due care in performing mandatory and nondiscretionary tasks could constitute negligence, independent of contractual obligations. In *Doe v. Varsity Brands, LLC*, 679 F. Supp. 3d 464 (D.S.C. 2023), the court noted that the negligent-undertaking rule applies even if the duty arises from a contract or a gratuitous undertaking. Thus, the Defendants' voluntary assumption of the duty to facilitate a qualified appraisal supports a claim for negligence and negligent misrepresentation.

To survive a motion to dismiss under Rule 12(b)(6), the complaint must state a plausible claim for relief. The court must accept all factual allegations as true and draw reasonable inferences in favor of the plaintiff. In *West v. Contec, Inc.*, 749 F. Supp. 3d 550 (D.S.C. 2024), the court emphasized that a complaint need only allege sufficient facts to allow the court to infer that the defendant is liable for the alleged misconduct. The allegations that the Defendants undertook to coordinate a Section 170-compliant appraisal, failed to exercise reasonable care, and caused harm to the plaintiffs are enough to meet this standard.

III. The Fraud Claims.

Rule 9(b), FRCP, requires that fraud claims specify the "who, what, when, where, and how" of the alleged fraud. *OmegaGenesis Corp. v. Mayo Found. for Med. Educ. & Research*, 851 F.3d 800 (8th Cir. 2017), *Newberry v. Silverman*, 789 F.3d 636 (6th Cir. 2015). The Plaintiffs have provided detailed allegations, including:

- (a) Who: Defendant Welfont and its employee, Bill Zapf;
- (b) What: The April 13, 2017 Letter of Intent (LOI) promoting an IRS §170 bargain sale and a \$9,975,000 "Opinion of Value," as well as the assignment to Welfont to coordinate a §170-compliant appraisal. The communication from Welfont to

plaintiffs additionally touted Welfont as particularly knowledgeable in charity donation sales which would result in a large financial benefit to Plaintiffs.

- (c) When and Where: The LOI and related representations were made during the transaction timeline, including pre-closing and post-closing mechanics.
- (d) How: The actionable misstatements and omissions involved present-tense claims and concealments about fair market value and appraisal validity, which were material to the transaction.

These are contemporaneous statements and omissions—not “fraud by hindsight.” The allegations, taken as true, support a strong inference of scienter given the coordination role and concealment of mechanics material to appraisal validity, and they plead materiality, reliance, and loss (lost deduction, interest, penalties, and professional fees at the least).

These allegations provide sufficient particularity to meet Rule 9(b)’s requirements, as they identify specific misstatements, the individuals involved, and the context in which the fraud occurred. *See OmegaGenesis Corp.*, 851 F.3d 800 and *Newberry*, 789 F.3d 636, *supra*.

The Defendants’ argument that the case involves “fraud by hindsight” is misplaced. Courts have consistently held that fraud claims must be based on misstatements or omissions that were misleading at the time they were made, not on later disagreements or outcomes. *Firefighters Pension & Relief Fund v. Bulmahn*, 53 F. Supp. 3d 882 (E.D. La. 2014), *City of Philadelphia v. Fleming Cos.*, 264 F.3d 1245 (10th Cir. 2001). Here, the plaintiff alleges that the misstatements and omissions were present-tense claims and concealments during the transaction, not retroactive disagreements with IRS outcomes.

The Plaintiffs’ allegations focus on the Defendants’ conduct during the transaction, including the promotion of an inflated “Opinion of Value” and the concealment of post-closing

mechanics that undermined the validity of the appraisal. These allegations go to the heart of the transaction's fairness and compliance with IRS §170 requirements, distinguishing the case from mere hindsight-based claims. *Firefighters Pension & Relief Fund v. Bulmahn*, 53 F. Supp. 3d 882.

To establish fraud, the plaintiff must show that the misstatements or omissions were material and that they relied on them to their detriment. *SG Homes Assocs., LP v. Marinucci*, 718 F.3d 327, 334 (4th Cir. 2013); *Gary v. Jordan*, 236 S.C. 144, 113 S.E.2d 730 (1960). The Plaintiffs have alleged that the Defendants' representations about the fair market value and the appraisal's compliance with IRS §170 were material to the transaction and that they relied on these representations in moving forward with the bargain sale. These allegations, if proven, satisfy the elements of materiality and reliance.

Rule 9(b) allows intent and knowledge to be alleged generally, provided the overall allegations give rise to a strong inference of fraudulent intent. *Honeyman v. Hoyt (in Re Carter-Wallace Sec. Litig.)*, 220 F.3d 36 (2d Cir. 2000). The plaintiffs' allegations regarding the Defendants' coordination of a §170-compliant appraisal, promotion of an inflated "Opinion of Value," and concealment of post-closing mechanics support an inference of intent to deceive. Courts have recognized that deliberate concealment of material facts can establish the requisite scienter for fraud. *City of Philadelphia v. Fleming Cos.*, 264 F.3d 1245 (10th Cir. 2001).

In *Scharpf v. Gen. Dynamics Corp.*, 137 F.4th 188. (4th Cir. 2025), the court applied a "relaxed Rule 9(b) standard" in cases involving fraud by omission or concealment, recognizing the inherent difficulty for plaintiffs to plead all necessary facts with particularity when such facts are solely within the defendant's possession. The court also noted that dismissal should be avoided if the defendant has sufficient notice of the claims and the plaintiff has substantial pre-discovery evidence. Here, the plaintiffs have provided detailed allegations about the Defendants' conduct

during a complex transaction involving IRS §170 requirements. The allegations are tailored to the specific facts of the case and provide a sufficient factual basis to support a strong inference of fraudulent intent.

Courts have emphasized that motions to dismiss should be denied unless it is certain that the plaintiff can prove no set of facts entitling them to relief. *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049 (2d Cir. 1993). The Plaintiffs' detailed allegations, if proven, would establish a claim for fraud. Also, the district court in *Little v. Brown & Williamson Tobacco Corp.*, 243 F. Supp. 2d 480 (D.S.C. 2001) applied Rule 9(b) in a manner consistent with Fourth Circuit precedent. The court noted that dismissal under Rule 9(b) is inappropriate if the defendant has been made aware of the particular circumstances for which they must prepare a defense and if the plaintiff has substantial pre-discovery evidence of the alleged fraud. *Id.* at 506. The court also acknowledged that in cases involving complex fraud schemes or numerous misrepresentations over an extended period, some flexibility in pleading specificity may be justified. *Id.* at 506-07. Therefore, dismissal at this stage would be inappropriate.

South Carolina law recognizes fraud claims where there is a false representation of a material fact, knowledge of its falsity, intent to induce reliance, justifiable reliance by the plaintiff, and resulting damages. *Thomas Daniels Agency v. Nationwide Ins. Co. of Am.*, 122 F. Supp. 3d 448 (D.S.C. 2015). The defendants' failure to disclose the same-day flip is a material nondisclosure, as it directly impacts the credibility of the appraisal and the plaintiffs' reliance on it. Under South Carolina law, a duty to disclose when one party reposes trust and confidence in the other or when the transaction is intrinsically fiduciary in nature. *Thomas Daniels Agency v. Nationwide Ins. Co. of Am.*, 122 F. Supp. 3d 448 (D.S.C. 2015), *Harrell v. BMW of N. Am., LLC*, 517 F. Supp. 3d 527 (D.S.C. 2021). The defendants had a duty to disclose the flip due to the nature

of the transaction and the reliance placed on the appraisal. Please see the discussion of IRS requirements for a compliant appraisal and the consequences of failure to provide such an appraisal in the discuss of the Negligence claims, above.

In *Slack v. James*, 356 S.C. 479, 589 S.E.2d 772 (Ct. App. 2003), the South Carolina Court of Appeals held that fraud in the inducement or fraud in preliminary negotiations to a written contract is not merged into the contract, and contractual defenses such as disclaimers do not preclude an action for fraud. The court emphasized that fraud is a tort claim challenging the basis of a contractual undertaking, so disclaimers in the contract do not serve as a defense to a fraud claim. *Id.* at 483 fn 11. This position was reaffirmed by the South Carolina Supreme Court in a subsequent decision, where it was held that merger and disclaimer provisions in a contract do not protect sellers against allegations of fraud and negligent misrepresentation when the fraud relates to the inducement to enter the contract. *Slack v. James*, 364 S.C. 609, 614 S.E.2d 636 (2005). The misrepresentation regarding the appraisal value and failing to disclose the same-day flip were part of the inducement to enter the transaction, rendering the disclaimer ineffective as a defense.

IV. The South Carolina Unfair Trade Practices Act Claims.

Plaintiffs sued Defendants for a violation of SCUTPA alleging that their portrayal of themselves as experts and advisors in charity bargain sales with the ability to secure IRS qualified appraisals which would result in favorable tax savings for people like Plaintiffs was an unfair trade practice. Plaintiffs also allege that the relevant defendants had a network of aligned appraisers, and that their claims were credible, leading Plaintiffs to rely on their representations and ultimately sell the relevant property at a low price and lose the promised tax deductions, resulting in millions of dollars in losses (as described in Paragraph 38 of the Complaint). Defendants also arranged for the sale of the property for a \$250,000 profit from the charitable buyer to another entity at

approximately the same time as the sale from Plaintiffs to the charitable buyer. This sale demonstrated that the so-called Qualified Appraisal was wrong. Plaintiffs were unaware of the proposed sale, but Defendants were.

Defendants contend that Plaintiffs have failed properly to plead this claim because it is a private dispute and fails the requirement that the public interest be involved and that Plaintiffs do not show reason to believe that the acts alleged were likely to be repeated. Neither argument is supported by the facts herein, and the SCUTPA claims should be allowed to proceed.

For SCUTPA claims, the plaintiff must allege:

1. The defendant engaged in an unlawful trade practice.
2. The plaintiff suffered actual, ascertainable damages as a result of the defendant's conduct.
3. The unlawful trade practice had an adverse impact on the public interest.

Ameristone Tile, LLC v. Ceramic Consulting Corp., 966 F. Supp. 2d 604 (D.S.C. 2013).

To satisfy the public interest element, the plaintiff can show this in two ways:

1. By alleging that similar actions occurred in the past, making it likely they will continue absent deterrence.
2. By showing that the defendant's procedures create a potential for repetition of the unfair or deceptive acts.

Ameristone Tile, LLC v. Ceramic Consulting Corp., 966 F. Supp. 2d 604 (D.S.C. 2013); *Liberty Mut. Ins. Co. v. Employee Res. Mgmt., Inc.*, 176 F. Supp. 2d 510 (D.S.C. 2001).

Plaintiffs can satisfy either prong of the test. First, Plaintiffs ask for the Court to take judicial notice of other instances of similar conduct by Welfont and many of the other defendants named herein. Under Federal Rule of Evidence 201, a court in may take judicial notice of adjudicative facts that are not subject to reasonable dispute. Such facts must either be (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *In re King*

Resources Co., 651 F.2d 1326 (10th Cir. 1980); *Lewis v. Danos*, 83 F.4th 948 (5th Cir. 2023). Judicial notice may be taken at any stage of the proceeding, including on appeal, and may be initiated by the court *sua sponte* or upon a party's request, provided the requesting party supplies the necessary information. *Barnett v. United States*, 650 F. Supp. 3d 412 (D.S.C. 2023).

In the context of prior litigation, courts may take judicial notice of their own records or proceedings in other courts if those proceedings have a direct relation to the matters at issue in the current case. *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236 (4th Cir. 1989). The matters which Plaintiffs ask the Court to take judicial notice of come from a search for litigation involving Defendant Welfont and later reviews of the case files on PACER. Plaintiffs believe that the contents of the PACER files cannot reasonably be denied and that they are relevant herein to show that at the least, Welfont and other defendants have been accused and sometimes found responsible for conduct exactly like that alleged herein.

A summary of the litigation against Welfont that Plaintiffs' counsel could find is:

Federal Court Cases (Last 7 Years)

- **J & A of Louisiana LLC et al. v. Bryant et al.** – *U.S. District Court, Western District of Louisiana (Shreveport Division)* – **Docket:** 5:20-cv-00980. **Filed:** July 31, 2020. This was a civil lawsuit alleging a fraudulent charitable tax-deduction scheme. The plaintiffs (a Louisiana company and its principals) claimed Welfont and affiliated parties misled them in a bargain-sale real estate transaction (sell below market value to a charity in exchange for a tax deduction) that was later disallowed by the IRS. Causes of action included breach of contract, negligence, and fraud. (Presiding Judge: S. Maurice Hicks Jr.) The case was terminated in November 2022, after proceedings including motions for summary judgment.
- **Sterling Resources Corp. & Arthur C. LeBlanc Jr. v. The Welfont Group, LLC et al.** – *U.S. District Court, Western District of Louisiana (Lafayette Division)* – **Docket:** 6:21-cv-02517. **Filed:** August 16, 2021. A diversity action (fraud/contract case) arising from a 2017 real estate “bargain sale” arranged by Welfont. The Louisiana-based plaintiffs alleged Welfont (a Florida real estate brokerage) facilitated the sale of their property to a charity at an artificially low price with the promise that the sellers could take a large charitable tax deduction for the difference. They claim Welfont and its associates (including Bryant Asset Advisors LLC and Tax Appraisal Group LLC) provided a “Qualified Appraisal” that vastly overstated the property’s value, leading to a disallowed deduction. (Judge: Robert R.

Summerhays.) The suit (categorized as “Other Fraud”. proceeded through motions to dismiss in 2022, with the court allowing several fraud and contract claims to move forward.

- **Gibbs International Inc. & Wellstone Holdings LLC v. The Welfont Group, LLC et al.** – *U.S. District Court, District of South Carolina* – **Docket:** 7:21-cv-01445. **Filed:** May 14, 2021. A contract/fraud lawsuit in which two South Carolina companies sued Welfont, Bryant Asset Advisors, and Tax Appraisal Group over a similar charitable real estate investment scheme. The plaintiffs alleged they were induced to sell property below market value based on false appraisals and promises of a tax write-off. Welfont failed to respond in court, and in February 2022 the judge entered a **default judgment** against The Welfont Group, LLC and Tax Appraisal Group LLC for approximately \$626,582 (plus interest and costs). This judgment indicates the court found that Welfont and its appraisal partner gave false tax information to the plaintiffs, causing financial harm.
- **American Properties Co., G.P. v. The Welfont Group, LLC et al.** – *U.S. District Court, Western District of Tennessee (Memphis)* – **Docket:** 2:22-cv-02329. **Filed:** May 26, 2022. A federal civil case brought by a real estate investor who participated in a Welfont-arranged bargain sale. The plaintiff alleges it sold a property at a below-market price based on Welfont’s false representations that a high appraised value and a subsequent sale to a charity would yield a large charitable income tax deduction. Defendants include The Welfont Group, Bryant Asset Advisors (the appraisal firm), and two other defendants (Andrew J. Bryant and Lynda Scull). The suit asserts claims for breach of contract and fraud, seeking damages for the disallowed ~\$2.6 million tax deduction and other losses. (Judge: Sheryl H. Lipman. **Nature:** Contract/Other.) The case resulted in a large judgment against defendants.

Copies of each Complaint are attached as Exhibits A, B, C, and D, respectively, and copies of the judgments are attached as Exhibits E and F. The copies provided are downloaded from PACER, but counsel will provide certified copies should the Court desire. the limited purpose of showing the existence and outcomes of litigation, these documents are offered not for the truth of factual allegations but for the limited purpose of showing the existence and outcomes of litigation.

Although all the cases show that the conduct complained of herein was alleged in other cases in federal courts, it is especially significant for the SCUTPA claim that the *Gibbs International* case took place in South Carolina and resulted in a judgment against Welfont and others. The *Gibbs International* case considered along with this one shows that similar actions occurred in the past, thus making future misconduct likely if defendants are undeterred. Further, all the cases either resulted in judgments against the defendants or voluntarily dismissals close to

the proposed trial dates which normally suggests that a settlement was reached. Also relevant to the defenses of the other claims herein, it appears that the defendants used the same methods in all the other cases cited and even used the same appraisers, showing strong evidence of a pattern and practice of misleading property sellers.

In addition, the fact that the defendants contacted random people with property to sell shows an enterprise not likely to be a “one off” type transaction. Here, the allegations are that the Defendants had a company that held itself out as expert in charity bargain sales and approached sellers of property to persuade them to use a closing tactic at best unconventional and likely unknown to most people. The mere fact that only the Plaintiffs were involved in this particular transaction does not mean that many other efforts were made to persuade South Carolinians, and citizens of other states, to use the services of the Defendants. Only through discovery can we tell how many other potential victims of this scheme were in fact contracted. And it cannot be denied that the conduct alleged has the potential to cause significant damage to the public. It is insidious because the misconduct does not come to light until long after the tax returns are filed. Here, the IRS examined the Plaintiffs’ returns, and Plaintiffs had no idea that anything was amiss until they received notices from the IRS setting forth the tax liability in April 2024, years after the subject returns were filed.

V. The civil conspiracy Claims.

Defendants contend that the civil conspiracy claims should be dismissed because there was no specific pleading of an act in furtherance of the conspiracy outside the other claims asserted and because Plaintiffs did not plead special damages. In *Paradis v. Charleston County Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021), the South Carolina Supreme Court held:

In *Todd* the Court cited 15A *C.J.S. Conspiracy* § 33 and held a plaintiff in a civil conspiracy action must allege acts in furtherance of the conspiracy. The Court noted the only wrongful acts alleged were those for which damages had already been sought, so the claim failed as a matter of law. This was taken in cases after *Todd* as imposing a requirement of pleading (and proving) special damages for a civil conspiracy claim. We find this section of *Corpus Juris Secundum* simply addressed a prohibition on duplicative recoveries; it did not establish a requirement of pleading special damages for civil conspiracy claims. The plaintiff in *Todd* failed to plead any overt acts in furtherance of the conspiracy. Thus, the Court correctly concluded the civil conspiracy claim failed as a matter of law. In that situation, the Court noted, the plaintiff's repetition of the same acts as the prior claims was insufficient to salvage the claim.

Id. at 573.

The court went on to overrule *Todd* and to restore the original definition of conspiracy to South Carolina jurisprudence. The requirement to plead special damages is gone, as is the special rule requiring an additional act in furtherance of the conspiracy, giving restoration of the rule to its original form. Plaintiffs have pled the elements necessary to describe the acts of the conspirators taken against Plaintiffs and the damages caused thereby. Under *Paradis*, that such acts are duplicative of other claims does not bar the claim for civil conspiracy. The point of the opinion is that there cannot be a double recovery for the acts of conspiracy. That will be an issue for another day. Should the Court disagree with the Plaintiffs' analysis of *Paradis*, they respectfully request that they be allowed to amend the Complaint.

VI. The Veil Piercing Claims.

Plaintiff plans to file a voluntary dismissal without prejudice of this claim. Depending on what is determined in discovery, Plaintiffs may seek to refile the claim.

CONCLUSION

The Amended Complaint states plausible claims for breach of contract, negligence, negligent misrepresentation, fraud with particularity, SCUTPA, and civil conspiracy. The motion should be denied. In the alternative, the Court should grant leave to amend under Rule 15, FRCP.

WHEREFORE, Plaintiffs pray that the Court deny the motions to dismiss, or, in the alternative and as needed, grant Plaintiffs leave to amend the Complaint.

Respectfully submitted,

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