IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT

Appeal No. 2D24-0543
L.T. No. 2023-CA-3599-NC

N & S, LLC, d/b/a Art Avenue,
Plaintiff/Appellant,

v.

Harry E. Robbins Associates,
Inc. and Kevin Robbins, *et al*,
Defendants/Appellees.

APPELLANT'S INITIAL BRIEF

This is an appeal of an Amended Final Summary Judgment entered in favor of Defendants/Appellees in the Twelfth Judicial Circuit in and for Sarasota County, Florida, Lower Tribunal Case No.: 2023-CA-3599-NC, Circuit Judge, Hunter W. Carroll, presiding

E. Dusty Aker
Fla. Bar No.: 657166
AKER Law Firm, P.A.
3400 S. Tamiami Trail, Ste. 101
Sarasota, FL 34239
Phone: 941-462-2020
Facsimile: 941-462-2022
Email: dustyaker@akerlawfirm.com
Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CITATIONS

PREFACE

Plaintiff/Appellant, L & S, LLC d/b/a Art Avenue, will be referred to herein as Plaintiff, "L & S" or Appellant. Defendant/Appellee, Harry E. Robbins Associates, Inc. will be referred to herein as "Robbins Associates." Defendant/Appellee, Kevin Robbins, will be referred to herein as "Robbins."

The Final Summary Judgment will be referred to herein as "FSJ." The Amended Final Summary Judgment will be referred to herein as "Amd FSJ." The Motion for Summary Judgment will be referred to herein as "MSJ." The Response to the MSJ will be referred to herein as "Response to MSJ."

Citations to the record will be by "R" followed by the page number of the record.

STATEMENT OF THE CASE AND OF THE FACTS

The Nature of the Case and the Facts

Plaintiff, as tenant, was looking to enter into a 5-year commercial retail lease for its art gallery in the art district in downtown Sarasota from Defendant, Kress, as Landlord. R 81-134; Amended Complaint, ~~₱₱~~'s 32-37. The prospective landlord, Defendant, Kress, was represented through its real estate brokers, Defendants, Robbins Associates, and its employee-broker, Kevin Robbins. *Id.* Plaintiff sued the Robbins Defendants and Kress. *Id*. The Robbins Defendants filed a motion for summary judgment ("MSJ"), which is the subject of this appeal. R 186-224. The motion attached a Statement of Undisputed Facts ("Statement of Facts"). *Id.* at R 190. Kress remains a pending Defendant in this action and doesn't appear in this appeal.

Defendant, Kevin Robbins, submitted the initial draft of the proposed lease to Plaintiff, L & S, on October 4, 2021. R 190, Statement of Facts, Exhibit "B." Paragraph 1 of the lease, entitled "TERM AND RENT," provided that it was for 5 (five) years. *Id.* Paragraph 28 of the first draft of the lease, entitled "Right to Sell," provided,

> "28. **RIGHT TO SELL**. Landlord is entitled to sell the Premises at Landlord's discretion at anytime during the Term of this Lease. If Landlord decides to sell or convey the title to the Premises, then Tenant will be obligated to Landlord's successor in title and

> will be required to maintain adherence to the conditions and requirements of this Lease. In the event of a proposed sale by Landlord, Tenant will execute an estoppel certificate of such other documentation as may be reasonably required by Landlord."

Id.

On October 5, 2021, Mr. Sykes suggested 8 changes to the prospective lease. R 190, Statement of Facts, Exhibit "C." None of the 8 suggested changes proposed any change to the term of the lease nor to ₱ 28.

On October 26, 2021, Mr. Robbins emailed a second version of the Lease to the Tenant that contained the Termination Clause at issue in this action. In his accompanying email, Mr. Robbins stated:

> "Good morning Paul,
>
> Please see the attached revised lease . Please review and approve when you have a moment. Please note there are **some revised sections of the lease agreement to provide clarification. Also, please note changes below per your email. I have provided my comments in bold.**
>
> Eric wants to get this finalized. We have another group with an alternative use that is reaching out about the space. He needs to know if we have a deal and are going to proceed.
>
> Please let me know when you can discuss.
> Thank you."

R 190, Statement of Facts, Exhibit "D." Emphasis added. Mr. Robbins'

email of October 26, 2021 also included Mr. Robbins' response to the changes to the proposed lease suggested by Mr. Sykes in his email. *Id*. Changes to paragraph 1.C.1. of the second draft of the lease furnished on October 26, 2021 were highlighted by red-lining. R 276-293; R 230, ₱ 23.d of the Declaration of Sykes. There was no highlighting of ₱ 28 of the lease.

Undetected by Plaintiff, the second draft of the lease had buried in it a new clause in ₱ 28, which provided:

> "During the Term of this Lease, Landlord shall have the option, in Landlord's sole and absolute discretion, to terminate the Lease upon delivery of 180 day written notice to Tenant. In the event that the Landlord elects to terminate the Lease as provided herein, the Tenant shall vacate and deliver possession of the Premises to Landlord within 180 days of the Tenant's receipt of the Landlord's written notice electing to terminate."

R 276-293; R 257.

This clause substantially changed the lease from a 5-year lease to one terminable on 180 days' notice for any reason without Plaintiff's informed consent.

Mr. Sykes testified in his Declaration:

> "I communicated with Kevin Robbins about a lease of the subject premises from on or about 8-10-21 or earlier until the Lease was executed on 11-22-21. At no time in that time frame was there any communication between Kevin Robbins or any Defendant and myself about the Lease other than it being a 5-year lease. There was no

communication with me in this time frame about the Landlord having a right to terminate on 180 days' notice."

R 230, Declaration of Sykes at ₱ 29.

Mr. *Sykes* testified in ₱₱'s 23--31 (R 230) of his Declaration*, inter alia,* as follows:

"I expected the following based upon the above email (Robbins' email of 10-26-21) and all of my communications with Kevin Robbins:

a. That any revisions of the Lease would be for clarification only.
b. That the term of the Lease did not need clarification—it was always considered by me and conveyed by Kevin Robbins to me to be a 5-year Lease, and not one terminable on 180 days' notice.
c. That when Robbins pointed out his changes in bold below my email requesting changes, that any revisions would be to those sections about which I requested changes.
d. That attached hereto is one of the revised versions of the lease which redlines certain changes to the lease; however, ₱ 28 is not redlined.
e. That I expected that Robbins would call to my attention by redlining or otherwise any other material changes to the lease, especially changing the term from a 5-year lease to one terminable on 180 days' notice.

24. The change to ₱ 28 of the Lease was not pointed out to me, nor was it obvious to me. I did not notice the change to ₱ 28 of the Lease until I received the Notice of Eviction on June 23, 2022, demanding that Plaintiff and I vacate the premises by December 20, 2022.
25. I would not have signed the Lease had I known of the change to ₱ 28 of the Lease, nor would I have expended substantial sums to improve the premises in reliance on having a five-year lease.

26. I reposed trust and confidence in Kevin Robbins, had what I considered to be a confidential relationship with him and believed that he would, *inter alia,* disclose all material facts and not conceal material facts and Robbins acted all as if he accepted such trust and confidence that I reposed in him.

27. I believed that Robbins would deal honestly, ethically, and with candor and fairness towards me and Art Avenue.

28. When I executed the final draft of the Lease, I thought that Art Avenue was entering into a 5-year lease.

29. I communicated with Kevin Robbins about a lease of the subject premises from on or about 8-10-21 or earlier until the Lease was executed on 11-22-21. At no time in that time frame was there any communication between Keven Robbins or any Defendant and myself about the Lease other than it being a 5-year lease. There was no communication with me in this time frame about the Landlord having a right to terminate on 180 days' notice.

30. I communicated with Kevin Robbins about the executed Lease from 11-22-21 until I received the Notice of Termination on June 23, 2022. At no time in that time frame was there any communication with me about the Lease other than it being a 5-year lease. There was no communication in this time frame with me about the Landlord having a right to terminate on 180 days' notice.

31. I do not believe that Robbins and Kress treated me honestly, ethically, with candor and fairly by, among other things, concealing the changes that they made to ₱ 28 of the Lease.

In sum, the Robbins parties buried a substantial change to the Lease in the body of the 46-paragraph Lease with no notice to Plaintiff,

notwithstanding that the Robbins Defendants gave notice to Plaintiff of other changes. Plaintiff signed the Lease with no knowledge of the change of the 5-year Lease converting it to one terminable on 180-days' notice.

The Course of the Proceedings

Plaintiff filed an Amended Complaint and Demand for Jury Trial against Defendants, Robbins' and Kress, on 4-24-23. R 81. Robbins' filed a MSJ on 8-25-23. R 186. The MSJ was accompanied by a Statement of Facts. R 190.[1] Plaintiff filed a Response to the MSJ on 12-18-23, which included the Declaration of Paul Sykes, Plaintiff's managing member. R 230. The cause of action against Kress remains pending and Kress is not a party to this appeal. The court entered an Amd FSJ in favor of the Robbins Defendants and against Plaintiff (R 308), thereby denying Plaintiff's cause of action against the Robbins Defendants.

Disposition in the Lower Tribunal

[1] The Statement of Facts had attached to it: the Affidavit of Kevin Robbins as Exhibit "A"; initial draft of proposed lease with accompanying Robbins' email of 10-4-21 as Exhibit "B"; Sykes' suggested 8 changes to the proposed lease on 10-5-21 as Exhibit "C"; second draft of the lease with accompanying Robbins' email of 10-26-21 as Exhibit "D"; Robbins' email of 10-28-21 as Exhibit "E"; Sykes' email of 10-28-21 as Exhibit "F"; Robbins' email thread of 11-15-21 with Sykes' response as Exhibit "G"; Robbins' email threads of November 17-18, 2021 as Exhibits "H", "I", and "J"; and a reference to the signed lease which was Exhibit "A" to the Complaint.

The Court entered a Final Summary Judgment ("FSJ") in Favor of Defendants Robbins on 1-18-24. R 303.

The Court entered an Amended Final Summary Judgment ("Amd FSJ") in Favor of Defendants Robbins on 1-22-24. R 308.

Plaintiff filed a timely motion for rehearing and to alter or amend the FSJ on 2-2-24. R 311. Plaintiff filed an amended motion for rehearing and to alter or amend the FSJ on 2-5-24. R 319.

The court denied Plaintiff's amended motion for rehearing and to alter or amend the Amd FSJ on 2-5-24. R 328.

The appeal was timely filed on 3-4-24. R 330.

SUMMARY OF ARGUMENT

The Robbins Defendants, as real estate brokers, owed a duty of honesty, fairness and candor to Plaintiff. It is alleged that the parties developed a confidential relationship and, as such, the duties were elevated even more.

The Robbins Defendants, on behalf of their principal, the Kress Landlord, offered Plaintiff a five (5) year lease on prime property in the downtown Sarasota art district for Plaintiff's art gallery. This initial draft of the lease was furnished to Plaintiff and provided for a 5-year lease.

On October 26, 2021, Mr. Robbins emailed a second version of

the Lease to the Tenant that contained the Termination Clause at issue in this action. In his email, Mr. Robbins stated:

> Please see the attached revised lease . Please review and approve when you have a moment. Please note there are **some revised sections of the lease agreement to provide clarification. Also, please note changes below per your email. I have provided my comments in bold.**

Undetected by Plaintiff, Robbins had buried in ₱ 28 of the lease entitled "Right to Sell," a clause which provided:

> "During the Term of this Lease, Landlord shall have the option, in Landlord's sole and absolute discretion, to terminate the Lease upon delivery of 180 day written notice to Tenant. In the event that the Landlord elects to terminate the Lease as provided herein, the Tenant shall vacate and deliver possession of the Premises to Landlord within 180 days of the Tenant's receipt of the Landlord's written notice electing to terminate."

This clause substantially changed the lease from a 5-year lease to one terminable on 180 days' notice for any reason without Plaintiff's informed consent. At no times did Robbins or anyone call to Plaintiff's attention that ₱ 28 of the lease was modified. Plaintiff signed the Lease on 11-22-21 without knowledge of the modification to ₱ 28. Robbins served notice of termination of the Lease on 6-23-22—only 7 months into the Lease. Plaintiff vacated the premises approximately 180 days later pursuant to Robbin's demand, leaving behind the substantial improvements to the premises that

he had made and a valuable site for his art gallery. *See* ₱₱'s 32-37 of the First Amended Complaint. R 81-134.

The court's Final Summary Judgment and Amended Summary Final Judgment denied Plaintiff relief on the grounds that he didn't notice the change to ₱ 28. The Court analyzed this case from the narrow perspective of whether one is bound by a contract which he did not read, without considering the facts and law that relieves such a person from contract terms which he failed to notice due to actions of the other party as discussed below. The court relied exclusively on this narrow perspective and refused to consider facts and/or considered such facts immaterial and/or refused to consider pertinent law and/or considered such law immaterial.

The court apparently did not acknowledge that failure to discover contract language and/or exceptions to *caveat emptor* arise: 1) where some **artifice or trick** has been employed to prevent the purchaser from making independent inquiry; 2) where the other party does not have equal opportunity to become apprised of the fact; and, 3) where a party undertakes to disclose facts and fails to disclose the whole truth." *Ramel v. Chasebrook Constr. Co., Inc.,* 135 So.2d 876, 882 (Fla. 2d DCA 1961). Emphasis added.

Furthermore, the court apparently did not give credence to the following law:

> "[i]f the opposite party has induced one by a trickery, fraud, or any kind of artifice, not to read the contract, **with the view of obtaining from him a paper which he could not otherwise have obtained**, the right to prove these circumstances and thereby establish the fact that he was signing an entirely different paper, may be **shown for the purpose of relieving such party from the obligation thus fraudulently obtained."**

All Florida Sur. Co., v. Coker, 88 So.2d 508, 510 (Fla 1956). Burying the change in ₱ 28 without notice to Plaintiff was a **trick or artifice** entitling Plaintiff to have the factfinder make the ultimate determination whether Robbins' actions were a trick or artifice entitling Plaintiff to relief.

Robbins' failure to disclose the change to ₱ 28 was not mere passive concealment—it was *active concealment* because the non-disclosure was accompanied by Robbins' email of October 26, 2021, wherein he affirmatively stated that the changes to the lease were for clarification and that his revisions were in bold. Active concealment provides relief for the victim of the concealment as discussed below.

"The law was settled even before (*Johnson* v. *Davis)* where there is no duty to divulge material facts, once a seller makes representations

regarding a condition, he is under a duty to disclose the complete truth to him." *Ramel v. Chasebrook Constr. Co.,* 135 So.2d 876 (Fla. 2d DCA 1961 to him." Emphasis added). Once Robbins made a representation that changes in the lease were for **clarification,** he had a duty to disclose the change to ₱ 28 which was for more than just clarification—it changed a 5-year lease to one terminable on 180-days' notice.

In sum, the court refused to consider and/or considered material facts immaterial. The court refused to consider and/or considered applicable law immaterial. A reasonable factfinder, in this case, a jury, could reasonably find that Defendants were guilty of fraudulent misrepresentation, fraudulent concealment and, alternatively, negligent misrepresentation against a backdrop in which Defendants were real estate brokers with an alleged confidential relationship with Plaintiff, all which actions by Robbins induced Mr. Sykes to sign the Lease for the Plaintiff without re-reading ₱. 28, which Lease Plaintiff would not have signed had he been informed of the change. The court made the factual finding that the reasons that the Plaintiff did not notice the change to ₱ 28 were his fault and that Robbins' actions had no legal role in inducing Plaintiff to enter into the Lease. This was error.

ARGUMENT[2]

I. The Court Refused to Consider Material Facts and/or Considered Them Immaterial

The Court analyzed this case from the narrow perspective of whether one is bound by a contract which he did not read, without considering the facts and law that relieves such a person from contract terms which he failed to notice due to actions of the other party. The court relied exclusively on this narrow perspective and refused to consider facts and/or considered such facts immaterial and/or refused to consider pertinent law and/or considered such law immaterial.

There was no evidence that Mr. Sykes did not read the Lease. To the contrary, Mr. Sykes declared, "The change to ₱ 28 was not pointed out to me. I did not **notice the change** to ₱ 28 of the Lease until I received the

[2] All, but a few cases offered by the Defendants , cited herein were cited in Plaintiff's Response to the MSJ.

Notice of Eviction on June 23, 2022 ….” R 230, Declaration of Sykes, ₱ 24. Emphasis added.

The draft of the initially proposed FSJ was prepared by Robbins’ counsel. The Court amended the Summary Final Judgment to correct the inaccurate finding regarding Plaintiff not “reading the Lease” based on Plaintiff’s counsel pointing this error out to Robbins’ counsel. R 308. Amd FSJ, p 2, last paragraph.

This is a material error as explained further below, because, *inter alia*, the only two cases submitted by Robbins prior to the hearing were *Santana v. Miller,* 314 So.3d 346 (Fla. 3d DCA 2020) and *Rivero v. Rivero*, 963 So.2d 934 (Fla. 3d DCA 2007). These were cases in which the party to the document **did not read** the document at all. Both concerned settlement agreements and neither concerned a real estate broker. Neither concerned facts where a material clause was buried in a long contract after the initial draft contained no such clause. Neither case dealt with any inducement to execute the document. Neither dealt with real estate brokers.

The Court stated in the initial FSJ, “Mr. Sykes has claimed that he was relying of Mr. Robbins to notify him of **all** changes to the draft Lease.” R 303, p 2, first paragraph. Emphasis added. The draft of the initially proposed FSJ was prepared by Robbins’ counsel. This is contrary to the evidence because

Mr. Sykes declared, "That I expected that Robbins would call to my attention by redlining or otherwise any other **material** changes to the Lease …." R 230, Declaration of Paul Sykes, ₱ 23e. Emphasis added. The Court amended the FSJ to correct this inaccurate finding based on Plaintiff's counsel pointing this error out to Robbins' counsel. R 308, p 2, last paragraph.

The facts regarding Plaintiff's not noticing the change to ₱ 28 were material facts under the case law submitted by Plaintiff. The court ignored that case law and essentially ruled that if you didn't read the lease, *ipso facto,* you are bound by the Lease and nothing else is pertinent or matters.

II. <u>There Were Material Facts Regarding Fraud in the Inducement Which the Court Refused to Consider and/or Considered them Immaterial</u>

A heavily cited and followed case in this area of the law is *All Florida Sur. Co., v. Coker,* 88 So.2d 508, 510 (Fla 1956), in which the Florida Supreme Court stated:

> **"[i]f the opposite party has induced one by a trickery, fraud, or any kind of artifice, not to read the contract, with the view of obtaining from him a paper which he could not otherwise have obtained, the right to prove these circumstances and thereby establish the fact that he was signing an entirely different paper, may be shown for the purpose of relieving such party from the obligation thus fraudulently obtained."** Emphasis added.

Whether the facts establish that the actions of Robbins by burying the change in ₱ 28 of the Lease, *inter alia*, without calling Mr. Sykes' attention to the change **induced** Sykes to sign the Lease without re-reading ₱ 28 raises **material facts.** A reasonable factfinder could find such actions by Robbins acted to reasonably induce to Mr. Syles to sign the Lease without re-reading ₱ 28 of the Lease.

III. The Court Refused to Consider the Defenses to *Caveat Emptor* and/or Were Considered Immaterial

There are exceptions to the "buyer beware" concept that the Court overlooked or failed to consider. The Florida Supreme Court stated in *Besett v. Basnett,* 389 So.2d 995, 998 (Fla. 1980) that a person guilty of fraudulent misrepresentation should not be allowed to hide behind the doctrine of *caveat emptor*.

"Exceptions to caveat emptor arise: 1) where some **artifice or trick** has been employed to prevent the purchaser from making independent inquiry; 2) where the other party does not have equal opportunity to become apprised of the fact; and 3) where a party undertakes to disclose facts and fails to disclose the whole truth." *Ramel v. Chasebrook Constr. Co., Inc.,* 135 So.2d 876, 882 (Fla. 2d DCA 1961). Emphasis added.

Burying the change in ₱ 28 without notice was a **trick or artifice**.

Robbins' failure to disclose the change to ₱ 28 was not mere passive concealment—it was *active concealment* because the non-disclosure was accompanied by Robbins' email of October 26, 2021, wherein he affirmatively stated that the changes to the lease were for clarification and that his revisions were in bold. Even if *caveat emptor* were raised by Defendants, it is not appliable in **active concealment** cases.

> "Thus in a case which involves active-as opposed to passive-concealment, a duty to reveal the facts concealed exists. This duty arises where there is a purpose or design motivating the nondisclosure and usually involves circumstances where the person responsible for the concealment has superior knowledge or action in a confidential or fiduciary capacity." *Harrell v. Branson*, 344 So.2d 604 (Fla. 1st DCA 1977).

IV. The Robbins Defendants Breached the Duties of a Real Estate Broker or Salesperson, the Court Failed to Consider Such Breaches and/or Considered Them Immaterial

The Amd FSJ overlooked or failed to consider that Robbins was a real estate broker and that "[t]he **duty of honestly, candor, and fair-dealing is imposed upon real estate brokers and salespersons**, even where there is no principal-agent relationship between the broker and seller." *Dullea v. Dep't of Business Regulation*, 599 So.2d 207, 208 (Fla. 2d DCA 1992). "When a real estate broker acts as an intermediary between a seller and a

prospective buyer, **he is under a duty to deal fairly and honestly with the prospective buyer.** *Bush v. Palermo Realty, Inc*, 443 So.2d 104 (Fla. 4th DCA 1983), citing *Prescott v. Kreher,* 123 So.2d 721, 727 (Fla. 2d DCA 1960) and *United Homes, Inc. v. Moss,* 154 So.2d 351 354 (Fla. 2d DCA 1963). The Court concluded that that the broker relationship was immaterial. It was very material in the factual scenario that occurred.

V. There was a Confidential Relationship that Affected the Duties Between the Parties which the Court Failed to Consider and/or Considered them Immaterial

The Court overlooked and/or failed to consider that Sykes alleged that he had a confidential relationship with Robbins. In *Bush v. Palermo Realty, Inc*, *supra*, the court cited two cases, *Prescott v. Kreher, supra,* and *United Homes, Inc. v. Moss, supra*, which stated:

> "There is a fiduciary relation between parties where confidence is reposed by one and a trust accepted by the other…. Such a relation has been said to exist and to suffice as a predicate for relief in all cases where influence has been acquired and abused, or **where confidence has been reposed and betrayed. The origin of confidence is immaterial. The principle applies to both technical fiduciary relations and to informal relations wherein one man trusts in and relies upon another."** (Emphasis added).

See Sykes Declaration wherein he testified that he reposed trust and confidence in Robbins and had a confidential relationship with him.

Whether a confidential relationship existed raised a genuine question of material fact.

VI. The Robbins Defendants had a Duty to Disclose the Complete Truth, which the Court refused to Consider and/or Considered this Duty Immaterial

Once Robbins made representations about changes to the Lease, he was under a duty to disclose the complete truth—the other material changes, i.e., the change to ₱ 28. "**The law was settled even before (*Johnson* v. *Davis)* where there is no duty to divulge material facts, once a seller makes representations regarding a condition, he is under a duty to disclose the complete truth to him."** *Ramel v. Chasebrook Constr. Co.,* 135 So.2d 876 (Fla. 2d DCA 1961 to him." Emphasis added).

The Court overlooked and/or failed to consider this aspect of the law, arguably because the Court viewed this case from the isolated perspective of a person who signs a document without reading it is barred from complaining by *caveat emptor* and failed to consider the law which allows a person relief from such circumstances.

VII. Distinguishment of Two Case Cited in the Amd FSJ

Defendants submitted *Santana v. Miller, supra,* and *Rivero v. Rivero*,

supra, to the court before the hearing. However, the Amd FSJ (which Robbins' counsel prepared) cites *Winter v. Union Air Transp. GMBH*, 659 So.2d 45, 46 (Fla. 3d DCA 1994) and *Merrill, Lynch, Pierce Fenner & Smith v. Benton,* 467 So.2d 311 (Fla. 5th DCA 1985). Plaintiff did not have the opportunity to review these two cases before the motion for summary judgment hearing. Plaintiff distinguishes them herein.

In *Winter*, who was the shipper, Winter executed a letter of instructions wherein he improperly labeled the cargo but alleged that he did not read the form. He was denied relief, but no inducement to sign the form was a part of the evidence.

In *Benton,* a stockbroker's customer, who could not read English, filed a lawsuit and alleged that she did not read the contract which provided for arbitration. She was denied relief and compelled to arbitrate, but the appellate court stated that there are defenses when one signs a document that they did not read. The dissenting opinion argues that whether facts and circumstances existed to allow the defense of inducement not to read the contract existed was a question of fact and the customer should have been allowed to proceed with her lawsuit in lieu of arbitration. LEXIS NEXIS noted that *Benton* was distinguished in *Begualg Inv. Mgr't., Inc. v. Four Seasons Hotel Ltd.*, 2012 LEXIS 168; 2012 WL 5941971 (S.D. Fla. 2012). *Begualg*

denied a summary judgment to Defendants where there was evidence of reasons where the plaintiff was induced not to read the contract. There are reasons why Mr. Sykes did not re-read ₱ 28 of the Lease and the factfinder should make the determination whether the reasons fraudulently induced Mr. Sykes to sign the Lease without re-reading ₱ 28.

VIII. Standards for summary judgment

The Court "must draw every inference in favor of the party against whom the summary judgment was entered. Succinctly put, '[w]hen acting upon a motion for summary judgment if the record raises the slightest doubt that material issues could be present, that doubt must be resolved against the movant and motion for summary judgment must be denied. *Jimenez v. Faccone,* 98 So3d 621, 623 (Fla. 2d DCA 2012).

Conclusion

The court refused to consider and/or considered material facts immaterial. The court refused to consider and/or considered applicable law immaterial. A reasonable factfinder, in this case, a jury, could reasonably find that Defendants were guilty of fraudulent misrepresentation, fraudulent concealment and, alternatively, negligent misrepresentation against a

backdrop in which Defendants were real estate brokers with a confidential relationship with Plaintiff, all which actions by Robbins induced Mr. Sykes to sign the Lease for the Plaintiff without re-reading ₱. 28. The court was apparently proceeding under its theory that *caveat emptor*, buyer beware, was a complete bar to Plaintiff's action.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May 2024, a true and correct copy of the foregoing was e-filed with the Clerk of the Second District Court of Appeal through its E-Portal filing system, which will be emailed by the Clerk to all who are entitled to a copy hereof.

/s/ E. Dusty Aker, Esq.
Counsel for Appellant

RULE 9.045(e) CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Reply Brief does not exceed 13,000 words (it contains 5,388 words, including those words that are not counted for the word count limitation) and is in double-spaced, Arial 14-point font; therefore, it is in compliance with Florida Rules of Appellate Procedure 9.210(a)(2)(B) and 9.045(b) and (e).

/s/ E. Dusty Aker, Esq.
Counsel for Appellant

Aker Law Firm, P.A.
3400 S. Tamiami Trail, Suite 101
Sarasota, Florida 34239
Ph: (941) 462-2020
Fax: (941) 462-2022
Email:dustyaker@akerlawfirm.com
Co-Counsel for Appellant
BY: /s/ E. Dusty Aker
E. Dusty Aker, Esq.
Florida Bar No. 657166