

AIMEE S. SPANGENBERG	*	NO. 2026-CA-0275
AND RICHARD S.		
SPANGENBERG	*	
		COURT OF APPEAL
VERSUS	*	
		FOURTH CIRCUIT
WEATHERLY S. WATTERS	*	
AND CHRISTOPHER F.		STATE OF LOUISIANA
WATTERS	*****	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2019-02506, DIVISION “L”
Honorable Kern A. Reese, Judge

Judge Paula A. Brown

(Court composed of Judge Daniel L. Dysart, Judge Paula A. Brown, Judge Nakisha Ervin-Knott)

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REVERSED AND REMANDED
OCTOBER 20, 2026

PAB
DLD
NEK

This is a civil action. Appellants, Aimee and Richard Spangenberg (the “Spangenbergs”) appeal the district court’s January 6, 2026 judgment, which granted Appellee’s, HJD Corp., (“HJD”), motion for summary judgment, dismissing the Spangenbergs’ claims with prejudice. For the reasons that follow, we reverse the district court’s judgment and remand the matter to the district court for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On March 9, 2018, the Spangenbergs purchased a property located at 7918 Freret Street, New Orleans, Louisiana (the “property”) from Weatherly and Christopher Watters (the “Watters”) through an act of cash sale in the amount of \$972,000.00. As the Spangenbergs prepared to move in, they discovered defects—specifically moisture, water intrusion and extensive mold growth—on the interior and exterior walls of the property. After learning of the alleged defects, on May 14, 2018, the Spangenbergs notified the Watters of what they discovered and invited them to inspect the property. The Watters declined and, through their attorney, denied responsibility for the defects. The Spangenbergs undertook

repairs, but because of the extensive work required, they still had not occupied the property a year after the sale.

On March 7, 2019, the Spangenberg's filed a *Petition for the Reduction of the Purchase Price, Redhibitory¹ Defects, Damages, Breach of Warranty, and Fraud* against the Watters, alleging fraud and redhibitory defects arising from their purchase of the property. As recited in the petition, before the sale, the Watters provided a property disclosure form to the Spangenberg's representing that they had no knowledge of mold, mildew, or other adverse conditions at the property by checking the box marked "no-knowledge" on the form. The Spangenberg's alleged that the Watters, indeed, had knowledge of the defective conditions of the property, they failed to disclose the defects, and they made efforts to conceal the defects, all of which are separate acts of material misrepresentations. According to the Spangenberg's, the Watters' failure to disclose such defects nullified any alleged waiver of redhibition.

On April 30, 2019, the Spangenberg's filed a *Motion and Order to Appoint Special Process Server* to perfect service upon the Watters, which was granted by the district court. The Watters were served at their residence on May 22, 2019. In response to the petition, the Watters filed an *Exception of Vagueness to the*

¹ Louisiana Civil Code article 2520 provides:

The seller warrants the buyer against redhibitory defects, or vices, in the thing sold.

A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale.

A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

Petition, on July 9, 2019. The Watters argued that the allegations of fraud in the petition were not made with particularity as required by La. C.C.P. art. 856.² After continued motion practice, the Spangenberg's filed a *First Amended Petition*, wherein they added allegations of fraud against the Watters based upon a 2015 property owner's insurance claim relating to mold and moisture damage at the property.

The instant matter on appeal commenced on March 30, 2023, more than three years later, when the Spangenberg's filed a *Second Amended Petition* naming several additional defendants, including HJD, a real estate brokerage company. In addition, the Spangenberg's named as additional defendants: (1) Watters Edge Realty LLC ("Watters Edge Realty"); (2) Continental Casualty Co.; (3) Mathilda Berenson ("Ms. Berenson"); and (4) Latter & Bloom Holding, L.L.C. ("Latter & Blum"). In this appeal, the Spangenberg's alleged that HJD sponsored and employed Mr. Watters as a real estate agent, and that Mr. Watters was acting in the course and scope of his employment with HJD when the property was listed and sold. Additionally, they asserted that HJD was liable under the theory of *respondeat superior*, pursuant to La. C.C. art. 2320,³ for Mr. Watters' actions and inactions. The Spangenberg's purported that HJD, Latter & Blum and Watters Edge Realty jointly listed the property, with HJD supposedly receiving the other one-half of the commission.

² Louisiana Civil Code article 856 provides that:

In pleading fraud or mistake, the circumstances constituting fraud or mistake shall be alleged with particularity. Malice, intent, knowledge, and other condition of mind of a person may be alleged generally.

³ Louisiana Code of Civil Procedure article 2320 will be discussed more fully *infra*.

On June 27, 2023, the Spangenbergsgs filed a *Motion to Appoint a Special Process Server* after unsuccessful attempts to serve HJD. On November 7, 2023, HJD filed a *Motion for Extension of Time* to answer the *Second Amended Petition*. The district court granted the motion, and HJD filed an *Answer to Second Amended Petition* on December 31, 2023. In its answer, HJD asserted general denials and further answered that any losses the Spangenbergsgs suffered resulted from their failure to mitigate damages. On August 16, 2025, HJD moved for summary judgment, arguing that the Spangenbergsgs could not establish that HJD was a party to the co-listing agreement or that Mr. Watters acted under HJD's brokerage in connection with the listing or sale of the property.

HJD attached to its motion: (1) Homer Joseph Dupuy ("Mr. Dupuy") deposition and affidavit, the President and Director of HJD; (2) a copy of the co-listing agreement for the property; (3) the sponsorship affidavit of Mr. Watters by HJD; (4) the termination of sponsorship of Mr. Watters by HJD; (5) the deposition of Mr. Watters; (6) the deposition of Ms. Berenson; (7) the deposition of Mrs. Watters; (8) the deposition of Mrs. Spangenberg; and (9) the deposition of Mr. Spangenberg. On December 4, 2025, the Spangenbergsgs filed an opposition to HJD's motion for summary judgment. In their opposition, the Spangenbergsgs argued that summary judgment was not proper because genuine issues of material fact existed as to (1) whether HJD was a party to the co-listing agreement; (2) whether HJD is liable to the Spangenbergsgs for the actions and inactions of Mr. Watters; and (3) whether HJD had actual knowledge of the defects of the property. Many of the exhibits attached to the Spangenbergsgs' opposition were duplicative of the exhibits attached to HJD's motion for summary judgment; however, the Spangenbergsgs also attached (1) a denial of insurance coverage from Chubb Group

of Insurance Companies (“Chubb”) for the property; (2) an assessment of damage for the property from the year 2015; and (3) the affidavit of Tom Axelrad (“Mr. Axelrad”), who signed the inspection report of the property prior to the sale in dispute.

A hearing on the matter was held on December 19, 2025. Ruling from the bench, the district court granted HJD’s motion for summary judgment and dismissed the Spangenbergs claims against it with prejudice. This timely appeal followed.

After the instant appeal was lodged with this Court, on May 8, 2026, the Spangenbergs filed a motion to consolidate this appeal, docketed as No. 2026-CA-0248 with a separate appeal filed by them, docketed as No. 2026-CA-0275; alternatively, the Spangenbergs sought to utilize the record on appeal in No. 2026-CA-0275 for both appeals. On May 12, 2026, this Court issued an order to consolidate the appeals. Upon review, considering the relationships between the parties and the issues raised on appeal, we, *sua sponte*, deconsolidate those appeals, but will use the appellate record contained in No. 2026-CA-0275 in reviewing both appeals, pursuant to La. Unif. R. Ct. App. 2-1.14. Therefore, this appeal will only address the Spangenbergs’ grievances as they pertain to the granting of the motion for summary judgment in favor of HJD. The Spangenbergs’ grievances against Latter & Blum and Ms. Berenson will be addressed in a separate opinion.

STANDARD OF REVIEW

“It is well-settled law that ‘[t]his Court reviews the granting of ‘[a] summary judgment on appeal *de novo*, using the same criteria that govern the [district] court’s determination of whether summary judgment is appropriate.’” *Williams v.*

Touro Infirmary, 23-0180, p. 6 (La. App. 4 Cir. 12/20/23), 382 So.3d 345, 351 (alterations in original) (quoting *Sebble on Behalf of Est. of Brown v. St. Luke's #2, LLC*, 22-0620, p. 4 (La. App. 4 Cir. 3/6/23), 358 So.3d 1030, 1034). “Generally, on a motion for summary judgment, the burden of proof remains with the mover.” *Id.* (citation omitted). “But, if the moving party will not bear the burden of proof on the issue at trial and identifies an absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense, then the non-moving party must produce factual support sufficient to counter that assertion and establish that he will be able to satisfy his evidentiary burden of proof at trial.” *Id.* at pp. 6-7, 382 So.3d at 351 (quoting *Cooper v. Brisco*, 22-0196, p. 4 (La. App. 4 Cir. 10/18/22), 366 So.3d 552, 555). “However, if the opponent of the motion cannot do so, there is no genuine issue of material fact and summary judgment will be granted.” *Id.* at p. 7, 382 So.3d at 351 (quoting *Cooper*, 22-0196, p. 4, 366 So.3d at 555-56).

DISCUSSION

In their appeal to this Court, the Spangenberg's contend the district court erred in granting summary judgment in favor of HJD. Specifically, they maintain that genuine issues of material fact remain as to (1) whether HJD is vicariously liable for Mr. Watters' actions and omissions; and (2) whether HJD was a party to the co-listing agreement. Before discussing the merits of this case, it is important to outline the relationship between a broker and its real estate agents or licensees, or, in this case, the relationship between HJD and Mr. Watters.

Real Estate Brokers and Licensees

“A real estate broker is a professional who holds himself out as trained and experienced to render a specialized service in real estate transactions.” *Tres' Chic*

in a Week, L.L.C. v. Home Realty Store, 07-1373, p. 4 (La. App. 1 Cir. 7/17/08), 993 So.2d 228, 231. Louisiana Revised Statutes 37:1431(4)⁴ defines “broker” or “real estate broker” as “a licensed real estate broker performing activities as an individual real estate broker, a sponsoring broker . . . or limited liability company which has been granted a real estate license through a designated qualifying broker.” “The broker stands in a fiduciary relationship to his client and is bound to exercise reasonable care, skill, and diligence in the performance of his duties.” *Id.* at p. 4, 993 So.2d at 231 (citation omitted). “Generally, a broker’s duties are limited to those which can be analogically drawn . . . from the customs and practices of real estate brokers in general.” *Id.* at p. 4, 993 So.2d at 232. “Ultimately, the precise duties of a real estate broker must be determined by an examination of the nature of the task the real estate broker undertakes to perform and by the agreements the broker makes with the involved parties.” *Id.*

A “licensee” is any person who has been issued a real estate license by the Louisiana Real Estate Commission as a real estate salesperson or a real estate broker. La. R.S. 9:3891(11). Louisiana Revised Statutes 9:3894 provides:

A. Licensees shall treat all customers honestly and fairly and when representing a client in a real estate transaction may provide assistance to a customer by performing ministerial acts. Performing those ministerial acts shall not be construed in a manner that would violate the brokerage agreement with the client, and performing those ministerial acts for the customer shall not be construed in a manner as to form a brokerage agreement with the customer.

B. A licensee shall not be liable to a customer for providing false information to the customer if the false information was provided to the licensee by the licensee’s client or client’s agent and the licensee did not have actual knowledge that the information was false.

Further, Louisiana Administrative Code title 46 § 303 provides in pertinent part:

⁴ Louisiana Revised Statutes 37:1431 was recently amended by Acts 2026 807, No. 468, § 1431, however, the amendment has no effect on the definition procured from the referenced statute.

A. Applicants for a salesperson license shall be sponsored by an active licensed broker and shall submit the Affidavit of Sponsorship Form (Part B) prescribed by the commission as proof of sponsorship.

* * *

E. Active licensed brokers who elect to sponsor an applicant for a real estate license shall be subject to the duties and penalties prescribed for sponsoring brokers in the Louisiana Real Estate License Law and commission rules and regulations and shall bear the responsibility for the license activity of any sponsored licensee, which shall also include ensuring timely license renewal prior to the practicing of real estate.

In accordance with La. Admin. Code tit. 46, pt. LXVII, § 1801, entitled

Broker Supervision:

A. A broker must provide a sponsored licensee with written notice and acknowledgement of the activities that the broker authorizes the sponsored licensee to engage in under La. R.S. 37:1431(24).⁵

* * *

B. A broker who sponsors licensees or is a qualifying broker for a corporation shall have written policies

In this case, Mr. Dupuy, as the principal of HJD testified that HJD served as Mr. Watters' sponsoring broker from July 2017 through July 2018. That testimony places Mr. Watters under HJD's sponsorship during the relevant period. We now consider whether that relationship supports the Spangenberg's claim that HJD is vicariously liable for Mr. Watters' conduct.

⁵ Louisiana Revised Statutes 37:1431(24) provides:

“Real estate activity” means any activity relating to any portion of a real estate transaction performed for another by any person, partnership, limited liability company . . . who for a fee, commission, or other valuable consideration or with the intention, in the expectation, or upon the promise of receiving or collecting a fee, commission, or other valuable consideration:

- (a) Sells, exchanges, purchases, manages, rents, or leases or negotiates the sale, exchange, purchase, rental, or leasing of real estate.
- (b) Offers or attempts or agrees to negotiate the sale, exchange, purchase, management, rental, or leasing of real estate.
- (c) Lists or offers or attempts or agrees to list for sale or lease any real estate or the improvement thereon.

Vicarious liability of HJD

The Spangenberg's contend that HJD is vicariously liable for the actions and omissions of Mr. Watters because he was acting in the course and scope of his employment with HJD as a real estate agent at the time the property was listed and sold.

Louisiana Revised Statutes 37:1446(H) provides that:

H. A sponsored real estate licensee shall be an independent contractor of the sponsoring or qualifying broker for all purposes and shall not be an employee of the sponsoring or qualifying broker, if all of the following conditions are met:

- (1) The real estate salesperson or associate broker is a licensee.
- (2) Substantially all of the sponsored licensee's remuneration for the services performed is directly related to sales or other output rather than the number of hours worked.
- (3) There is a written agreement between the sponsored licensee and the sponsoring or qualifying broker that specifies that the sponsored licensee will not be treated as an employee.

Correspondingly, La. R.S. 9:3892 provides in pertinent part that "a licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a designated agent unless there is a written agreement between the broker and the person providing that there is a different relationship or the licensee is performing only ministerial acts on behalf of the person." The Spangenberg's contend that because there was no written agreement between HJD and Mr. Watters that specified that Mr. Watters would be identified as an independent contractor, Mr. Watters was an employee of HJD. As such, HJD is vicariously liable for the acts and omissions of Mr. Watters.

The theory of vicarious liability is codified in La. C.C. art. 2320, which provides that an employer is liable for damages caused by its employee "in the

exercise of the functions in which they are employed.” Before liability of an employer attaches, “the plaintiff must show that (1) an employer-employee relationship existed between the tortfeasor and the employer, and (2) the negligent act of the tortfeasor was committed within the course and scope of his employment with the employer.” *Piazza v. Johnston*, 26-83, p. 3 (La. App. 5 Cir. 5/12/26), 437 So.3d 1121, 1125 (citations omitted). The party seeking to establish an employer-employee relationship has the burden of proving it. *Bolden v. Tisdale*, 21-00224, p. 13 (La. 1/28/22), 347 So.3d 697, 708 (citing *Hillman v. Comm-Care, Inc.*, 01-1140, p. 8 (La. 1/15/02), 805 So.2d 1157, 1162).

In *Hughes v. Goodreau*, the plaintiffs brought suit against the real estate broker and its agents who sold their property after the property buyers sued them for redhibitory defects in the property. 01-2107, p. 1 (La. App. 1 Cir. 12/31/02), 836 So.2d 649, 652. After trial on the merits, the district court found that the real estate agents were not independent contractors of the real estate brokers, but were employees, and the appellate court agreed. The appellate court opined that although the real estate agents “entered into a written contract in which [they] were identified as independent contractors, and this designation may have [had] some validity between the parties, it [was] not binding or controlling on the rights of third persons.” *Id.* at p. 11, 836 So.2d at 659. “The rights of third persons are controlled by the substance, rather than the title, of the contractual relationship between the parties. *Id.* at pp. 11-12, 836 So.2d at 659 (first citing *Monsanto Co. v. St. Charles Parish School Bd.*, 94-2145, pp. 5-6 (La. 2/20/95), 650 So.2d 753, 756-757; then citing *DeFelice v. Garon*, 395 So.2d 658, 659 (La. 1980)). That court went on to determine whether the real estate broker was vicariously liable for the actions of its agents by considering factors such as: (1) whether the agents

worked exclusively for the broker or were free to work for others; (2) whether the broker retained the right to control the manner and method of the agents' work; (3) whether the broker required the agent to attend orientations or training on the broker's policies; (4) whether the broker retained the right to terminate the relationship for violation of its policies; and (5) whether the agents' conduct at the time of the alleged act was in the exercise of the functions for which the agents were employed. Ultimately, the *Hughes* court agreed with the district court that the agents were the broker's servants or employees based on the substance of their relationship, despite the contract's independent-contractor designation.

Unlike the defendants in *Hughes*, it is undisputed that no written agreement existed between HJD and Mr. Watters. However, a lack of a written agreement alone does not automatically designate Mr. Watters as an employee of HJD. Rather, this Court must examine the substance of the parties' relationship and the degree of control HJD retained over Mr. Watters' work to determine whether Mr. Watters was acting within the course and scope of his employment with HJD or acting on his own. Turning to the record, Mr. Dupuy testified that he was a licensed broker and that he opened HJD in 1983 to operate the real estate brokerage firm. In 2017, HJD sponsored approximately eight real estate agents, including Mr. Watters. He described his agreements with the agents as "loose", and said HJD had no written guidelines for any of its licensees. When an agent brought Mr. Dupuy a potential listing, he would meet with the clients, photograph the property, and enter it into the multiple listing service ("MLS").⁶ Mr. Dupuy

⁶ The MLS is a shared, professional database where licensed real estate brokers list, update, and access detailed property information, enabling cooperation between agents and broad exposure for sellers. It is not a single national system—there are 800+ regional MLSs across the U.S., each

testified that Mr. Beals, one of his sponsored licensees at that time, was the only agent who entered his own listings and that he had given Mr. Beals the authority to do so. He further testified that commission splits varied among agents. Regarding the property, he told Mr. Watters that the more involved HJD became in the listing, the more HJD would participate in the commission. Mr. Watters, in turn, testified that he had participated in only two real-estate listings but had never acted as a real estate agent.

Applying the *Hughes* analysis and considering the record as a whole, the record does not establish the substance of the relationship between HJD and Mr. Watters or the amount of control HJD had over Mr. Watters' work in his real estate transactions. Mr. Dupuy's testimony does, however, highlight HJD's lack of written guidelines prohibiting or limiting the real estate activity conducted by Mr. Watters on behalf of HJD. It is well-settled law that the difference between a mere servant and independent contractor is a factual determination decided on a case-by-case basis. *Hughes*, 01-2107, p. 6, 836 So.2d at 656 (citing *Tower Credit, Inc. v. Carpenter*, 01-2875, p. 6 (La. 9/4/02), 825 So.2d 1125, 1129). Accordingly, we find that there is a genuine issue of material fact as to whether Mr. Watters was acting as an employee for HJD at the time of the alleged offense. This assignment of error has merit.

Fraud or Negligent Misrepresentation

A purchaser's remedy against a real estate broker is based in fraud or negligent misrepresentation. *Cunnikin v. MS and EF, LLC*, 25-441, p. 11 (La. App. 3 Cir. 1/21/26), 433 So.3d 72, 80 (citations omitted). "In order for a plaintiff

maintaining accurate, standardized listing data. Homes.com, [what is the mls? navigating the multiple listings service - homes.com](#) (last visited Oct. 20, 2026)

to recover for negligent misrepresentation, there must be: (1) a legal duty on the part of the defendant to supply correct information; (2) a breach of that duty; and (3) damage to the plaintiff caused by the breach.” *Smith v. Grantham*, 23-0881, p. 14 (La. App. 1 Cir. 9/4/24), 394 So.3d 316, 326 (first citing *Riedel v. Fenasci*, 18-0540 (La. App. 1 Cir. 12/28/18), 270 So.3d 583, 592; then citing *Chmielewski v. Sowell*, 55,317 (La. App. 2 Cir. 11/15/23), 374 So.3d 404, 418).

“A real estate broker or agent owes a specific duty to communicate accurate information about the property he is selling.” *Id.* at p. 14, 394 So.3d at 326-27. “This duty extends to the seller and the buyer. The failure to disclose to a buyer a known material defect regarding the condition of real estate of which the real estate agent has knowledge is among a licensee’s duties . . . and from the customs and practices of real estate brokers and licensees in general.” *Id.* (citations omitted). “However, the duty to disclose any material defects extends only to those defects of which the broker or agent is aware.” *Id.* at pp. 14-15, 394 So.3d at 327.

Here, the Spangenbergs assert that after purchasing the property, they discovered mold, water intrusion and other defects that Mr. Watters knew of but failed to disclose. They do not allege that HJD itself knew of the defects—rather, they seek to hold HJD responsible for Mr. Watters’ alleged failure to disclose the known defects. Because we have already determined that a genuine issue of material fact exists as to whether Mr. Watters was HJD’s employee—a question that must be resolved before determining whether he acted within the course and scope of that employment—we pretermitt further discussion of this claim.

Whether HJD was a party to the co-listing agreement

The Spangenbergss assert that HJD was a party to the written co-listing agreement because, prior to its execution, Mr. Dupuy agreed with Mr. Watters that the property could be co-listed through HJD. Thus, the question before this Court is whether the co-listing agreement and evidence of Mr. Dupuy's prior discussions raise a genuine issue as to whether HJD agreed to be bound by the co-listing agreement.

Louisiana Civil Code article 1927 provides that "a contract is formed by the consent of the parties established through offer and acceptance." Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing or by action or inaction that under the circumstances is clearly indicative of consent." Louisiana Revised Statutes 37:1431(17) defines a listing agreement as "a written document signed by all owners of real estate or their authorized attorney in fact authorizing a broker to offer or advertise real estate described in such document for sale or lease specified terms for a defined period of time. A listing agreement shall only be valid if signed by all owners or their authorized attorney in fact." An oral agreement alone cannot constitute a valid listing agreement under La. R.S. 37:1431(17). As previously set forth elsewhere in this opinion, La Admin. Code tit. 46, pt. LXVII, § 1801(C) provides that "[l]istings and other agreements for real estate brokerage services must be solicited under the name of the broker corporation or supervising broker. These agreements shall be signed by the broker or by a sponsored licensee acting under written authority of the sponsoring broker."

Our review of the co-listing agreement shows that it is a Latter & Blum *Marketing Agreement for Sale of Property Louisiana* form listing agreement. The agreement identifies the property as the subject property to be sold and bears a

handwritten notation stating, “[t]his is a joint listing with Chris of Watters Edge Realty, LLC/ Dupuy Company listing commission is to be split evenly with L&B.” The response “Yes” is checked next to the statement “I understand and consent to Dual Agency.” The co-listing agreement was executed on January 16, 2018, and signed by (1) Mr. and Mrs. Watters as owners of the property, while also designating Mr. Watters as a licensed realtor; (2) John Weil, the manager of Latter & Blum at that time; and (3) Ms. Berenson, the Watters designated agent on behalf of Latter & Blum. During her deposition Ms. Berenson admitted that she wrote the notation, but when asked about her conversations with Mr. Dupuy or HJD leading up to the listing of the property, she testified, “[I] [d]on’t recall at all.”

Based on our discussion above, in which we found insufficient evidence to determine the substance of the relationship between Mr. Watters and HJD, we are likewise unable to determine whether HJD was a party to the co-listing agreement. Therefore, a genuine issue of material fact remains. This assignment of error has merit.

CONCLUSION

For the foregoing reasons, we reverse the district court’s judgment and remand the matter to the district court for further proceedings consistent with this opinion.

REVERSED AND REMANDED