

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2024 CA 0721

WILLIAM W. ALDEN MD

VERSUS

JENNIFER RICE AND DIANA KOUKOUTCHOS INDIVIDUALLY
AND IN HER CAPACITY AS EXECUTRIX/ADMINISTRATRIX OF
THE SUCCESSION OF BRIAN KOUKOUTCHOS

Judgment Rendered: MAY 28 2025

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 2020-12892

WA
JRS

The Honorable Vincent J. Lobello, Judge Presiding

* * * * *

Jack W. Harang
Kenner, LA

Attorney for Plaintiff/Appellant
William W. Alden, MD

Martin E. Golden
Baton Rouge, LA

Attorney for Defendant/Appellee
Jennifer Rice

Alexander L. H. Reed
Ross F. Lagarde
Slidell, LA

Attorneys for Defendant/Appellee
Dianna Koukoutchos individually and
in her Capacity as
Executrix/Administratrix of the
Succession of Brian Koukoutchos

* * * * *

BEFORE: PENZATO, STROMBERG, and FIELDS, JJ.

alp
Penzato, J., concurs

STROMBERG, J.

The plaintiff/appellant, William W. Alden, M.D., appeals the trial court's February 5, 2024 judgment granting summary judgment in favor of the defendant/appellee, Jennifer Rice, and dismissing Dr. Alden's claims against Ms. Rice with prejudice. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

This matter involves a dispute over the expiration of a purchase agreement for immovable property (the "property") located at 28 Eagle Trace, Mandeville, Louisiana. In April 2019, Ms. Rice, a real estate agent, listed the property for sale on behalf of the owners, Brian and Dianna Koukoutchos.¹ At some point after Ms. Rice listed the property, Mr. Koukoutchos passed away. On October 14, 2019, Dr. Alden submitted a "LOUISIANA RESIDENTIAL AGREEMENT TO BUY OR SELL" (the "purchase agreement") offering to purchase the property for \$700,000. Mrs. Koukoutchos countered Dr. Alden's offer, requesting a \$738,100 purchase price. Dr. Alden then counteroffered \$725,000, which Mrs. Koukoutchos accepted on October 28, 2019. The counteroffer accepted by Mrs. Koukoutchos provided that the sale was contingent on the approval of the court handling Mr. Koukoutchos' succession and stated certain furnishings would be included in the sale, but otherwise incorporated "[a]ll other terms and conditions" of the purchase agreement. The purchase agreement provided that the sale was conditioned upon Dr. Alden's ability to obtain financing. Ms. Rice acted as a dual agent in the transaction, representing both Dr. Alden and Mrs. Koukoutchos. Ms. Rice was also working with Rick Stanley, the attorney for Mr. Koukoutchos' succession proceedings.

The purchase agreement further required the sale be closed on or before December 16, 2019. On December 6, 2019, Mrs. Koukoutchos and Dr. Alden

¹ Mrs. Koukoutchos' first name is sometimes spelled "Diana" in the record. Mrs. Koukoutchos spelled her first name "Dianna" in her answer to Dr. Alden's petition and therefore, we refer to her using that spelling.

executed a written extension of the purchase agreement, extending the date to close on the sale until December 30, 2019. The extension specifically provided “all other terms and conditions of [the purchase agreement] are to remain in full force and effect.” Notably, the purchase agreement contained a section titled “**DEADLINES**” that stated, in pertinent part, “TIME IS OF THE ESSENCE and all deadlines are final, except where modifications, changes, or extensions are made in writing and signed by all parties to this Agreement. All ‘calendar days’ as used in this Agreement shall end at 11:59 p.m. in Louisiana.” The sale did not close on December 30, 2019, and no further written extensions were executed. On February 24, 2020, Mrs. Koukoutchos accepted an offer from a third party and the sale of the property to the third party closed on April 9, 2020.

On July 10, 2020, Dr. Alden filed suit against Ms. Rice and Mrs. Koukoutchos, individually and in her capacity as the executrix/administratrix of Mr. Koukoutchos’ succession. Dr. Alden alleged Ms. Rice negligently allowed the purchase agreement to expire. Dr. Alden further alleged Ms. Rice breached her fiduciary duty to him, failed to timely communicate an offer or counteroffer, misrepresented the status of an offer or counteroffer, and failed to negotiate in good faith on his behalf. Dr. Alden alleged that he had the property inspected due to a crack in the floor of the kitchen, and that Ms. Rice shared the resulting inspection report with Mrs. Koukoutchos without his knowledge or consent. Dr. Alden alleged Ms. Rice, while acting as a dual agent, disclosed confidential information from one client to the other and disclosed the price Mrs. Koukoutchos was willing to accept other than the listing price, in violation of La. R.S. 9:3897(B)(1) and (2), respectively. Dr. Alden also alleged that Ms. Rice and Mrs. Koukoutchos colluded with one another “to obtain the highest sale price for the Succession of Brian Koukoutchos, without regard for enforceable pending purchase offers, all to the detriment of Dr. Alden.” Dr. Alden sought stipulated damages in the amount of

\$72,500 (ten percent of the sales price), as provided in the purchase agreement, and any other reasonable damages.

On July 24, 2023, Ms. Rice filed a motion for summary judgment seeking dismissal of Dr. Alden's claims against her. Ms. Rice argued Dr. Alden is an experienced property purchaser who understands that a contract to sell property must be in writing; however, his lawsuit relies on the purchase agreement he allowed to expire. Ms. Rice asserted that Dr. Alden was aware that the purchase agreement expired on December 30, 2019, but he failed to sign the amendment Ms. Rice sent to him. Ms. Rice argued she had no duty to ensure Dr. Alden executed the contract documents she sent to him and had no right to require that Mrs. Koukoutchos continue to negotiate with Dr. Alden after the purchase agreement expired on December 30, 2019.

On October 3, 2023, Dr. Alden filed an opposition to Ms. Rice's motion for summary judgment. Dr. Alden argued that genuine issues of material fact existed regarding whether Ms. Rice breached her fiduciary duties to him because she waited until the last minute to attempt to extend the purchase agreement and failed to explain to Dr. Alden the consequences of allowing the purchase agreement to expire. In a second opposition filed by Dr. Alden on October 16, 2023, he asserted that Ms. Rice committed fraud by failing to secure an extension of the purchase agreement while also advising Dr. Alden that the sale could still proceed.

On January 4, 2024, a hearing was held on Ms. Rice's motion for summary judgment. Following argument, the trial court granted the motion, finding there was no genuine issue of material fact regarding the expiration of the purchase agreement or any breach by Ms. Rice. On January 5, 2024, the trial court signed a written judgment granting Ms. Rice's motion for summary judgment and dismissing with prejudice Dr. Alden's claims against her. Dr. Alden appeals this judgment.

STANDARD OF REVIEW

Appellate courts review the granting of a summary judgment *de novo* using the same criteria governing the trial court's consideration of whether summary judgment is appropriate, *i.e.*, whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. See La. Code Civ. P. art. 966(A)(3); **Bayview Loan Servicing, LLC v. Holden**, 2023-1347 (La. App. 1st Cir. 6/7/24), 391 So.3d 751, 756, writ denied, 2024-01032 (La. 11/14/24), 396 So.3d 62.

The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. See La. Code Civ. P. art. 966(A)(2). The purpose of a motion for summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. **Hines v. Garrett**, 2004-0806 (La. 6/25/04), 876 So.2d 764, 769 (*per curiam*). After an adequate opportunity for discovery, summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(A)(3). The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. La. Code Civ. P. art. 966(A)(4).²

On a motion for summary judgment, the initial burden of proof rests with the mover. See La. Code Civ. P. art. 966(D)(1); **Bayview Loan Servicing, LLC**, 391

² Louisiana Code of Civil Procedure article 966 was amended, effective August 1, 2023, by Acts 2023, No. 317, § 1, which expanded the exclusive list of documents that may be filed or referenced in support of or opposition to a motion for summary judgment. However, Ms. Rice's motion for summary judgment was filed on July 24, 2023, prior to the effective date of the amendment, and we therefore refer to the version of Article 966 in effect prior to the 2023 amendment. See **Rainey v. Knight**, 2023-0133 (La. App. 1st Cir. 11/3/23), 378 So.3d 116, 121 n. 3.

So.3d at 756. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, after meeting its initial burden of showing that there are no genuine issues of material fact, the mover may point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, summary judgment shall be granted unless the adverse party can produce factual evidence sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. See La. Code Civ. P. art. 966(D)(1); **Bayview Loan Servicing, LLC**, 391 So.3d at 756-57.

DISCUSSION

Dr. Alden argues on appeal that the trial court erred by granting summary judgment because there are genuine issues of material fact regarding whether Ms. Rice breached her duty to him to ensure the timely execution of an extension of the purchase agreement. Dr. Alden also argues there exist genuine issues of material fact regarding whether Ms. Rice provided him with an extension of the purchase agreement that complied with the agreement of the parties.

In support of her motion for summary judgment, Ms. Rice attached the following evidence: her affidavit and attachments thereto; excerpts of Dr. Alden's deposition and attachments thereto; and Dr. Alden's petition. In her affidavit, Ms. Rice attested to the fact that Dr. Alden was unable to obtain financing prior to December 30, 2019 and therefore, the purchase agreement expired on that date. However, Ms. Rice stated that she knew Mrs. Koukoutchos was not receiving offers on the property and believed that if Dr. Alden submitted an identical offer, then Mrs. Koukoutchos would accept it. Ms. Rice explained, however, that by that point Mr. Stanley had become involved in the negotiations and insisted that any new offer

provide for an additional \$10,000 deposit, on top of the original \$5,000 deposit agreed to in the purchase agreement, which would be non-refundable if the parties failed to close by the new closing deadline. Ms. Rice averred that she prepared an offer as an amendment to the original purchase agreement with the new deposit requirements and sent it to Dr. Alden for his signature. The offer, dated December 30, 2019, was attached to Ms. Rice's affidavit as an exhibit. Ms. Rice stated that Dr. Alden advised that he wanted his attorney to review the amendment before signing it, but despite numerous inquiries from Ms. Rice, Dr. Alden failed to sign the amendment.

Ms. Rice also stated in her affidavit that by January 29, 2020, she was being pressured by Mr. Stanley to submit a new offer in writing if Dr. Alden still wanted to purchase the property, so she prepared another offer on that date. The new offer, which was attached to Ms. Rice's affidavit as an exhibit, was for the same purchase price, \$725,000, and provided for the same \$5,000 deposit as in the purchase agreement, but required a \$10,000 non-refundable deposit, along with other terms as requested by Dr. Alden. Ms. Rice stated that she sent the new offer to Dr. Alden, but he never signed it. Therefore, Ms. Rice did not send the new offer to Mrs. Koukoutchos. Ms. Rice explained that Mr. Stanley and Mrs. Koukoutchos became frustrated that Dr. Alden would not submit a new offer, and Mr. Stanley required Ms. Rice to re-list the property and entertain offers from other parties while continuing the negotiations with Dr. Alden. Ms. Rice stated that on February 22, 2020, Dr. Alden finally signed a new offer, which she then submitted to Mrs. Koukoutchos. However, Mrs. Koukoutchos rejected Dr. Alden's offer because she had received a higher offer on February 21, 2020. Ms. Rice stated that Mrs.

Koukoutchos and the third-party purchasers negotiated and entered into a purchase agreement on February 24, 2020 and the sale closed on April 9, 2020.³

In the excerpts of Dr. Alden's deposition attached to Ms. Rice's motion for summary judgment, he testified that he is the sole member or partial owner of 40 companies which collectively own 20 different investment properties, both residential and commercial, most of which were purchased without a real estate agent. During his deposition, Dr. Alden stated that he wanted his counteroffer to include a closing date that was 90 days out from the date of the purchase agreement. However, he acknowledged that the counteroffer he electronically signed did not provide for a 90-day closing date. Dr. Alden testified that he sought financing for the purchase of the property from two financial institutions, but never received pre-approval letters. Dr. Alden identified email correspondence attached to his deposition, including an email dated December 30, 2019, from Ms. Rice to Dr. Alden's attorney, Scott Dusang. In the email, Ms. Rice referenced an attached forwarded email from Mr. Stanley wherein he stated that the court handling Mr. Koukoutchos' succession had approved the sale of the property to Dr. Alden. Ms. Rice asked Mr. Dusang whether Dr. Alden had obtained financing and advised "[w]e need an amendment signed today." The email correspondence attached to Dr. Alden's deposition also included a reply email from Mr. Dusang wherein he stated that he had not heard from a lender yet and advised Ms. Rice to follow up with Dr. Alden, which he also planned to do. On January 8, 2020, Ms. Rice emailed Mr. Dusang again, explaining that she needed Dr. Alden's signature on the amendment to the purchase agreement, and that Dr. Alden advised her that Mr. Dusang was reviewing the document for him. That same day, Mr. Dusang replied to Ms. Rice's email, stating that he had spoken to Dr. Alden the previous day, and that he was

³ Ms. Rice also attached to her affidavit the original purchase agreement, the December 6, 2019 extension of the purchase agreement, and Dr. Alden's February 22, 2020 offer.

waiting on Dr. Alden to email with comments about changes to the document. Ms. Rice sent another email to Mr. Dusang on January 9, 2020, asking whether he had heard from Dr. Alden. Mr. Dusang replied the same day asking Ms. Rice to call him for some “cliff notes.”

In support of his opposition to Ms. Rice’s motion for summary judgment, Dr. Alden attached four exhibits, consisting of purported email correspondence and text messages. In his memorandum in support of his opposition, Dr. Alden stated that the exhibits were provided by Ms. Rice in her discovery responses. The emails and text messages were not attached to or identified by an affidavit or deposition, and Dr. Alden did not attach any discovery responses from Ms. Rice.

As discussed, the applicable version of La. Code Civ. P. art. 966(A)(4) provides that the only documents that may be filed in support of or opposition to a motion for summary judgment are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. The email correspondence and text messages do not fall into any category of documents listed in La. Code Civ. P. art. 966(A)(4). However, there were no objections to any evidence attached to Dr. Alden’s opposition. Thus, under La. C.C.P. art. 966(D)(2), this court “shall consider any documents to which no objection is made” to determine, *de novo*, if any evidentiary value should be given to the documents. **Brown & Root Industrial Services, LLC v. Farris**, 2023-0706 (La. App. 1st Cir. 6/27/24), 392 So.3d 424, 428 n. 4, writ denied, 2024-00954 (La. 11/14/24), 395 So.3d 1183.

The email correspondence and text messages are unsworn and unverified documents because they are not attached to an affidavit or otherwise authenticated.⁴ A document that is not an affidavit or sworn to in any way, or is not certified or

⁴ We also note that the text messages do not contain a phone number or contact information to identify the origination of the text messages.

attached to an affidavit, has no evidentiary value on a motion for summary judgment. **Unifund CCR Partners v. Perkins**, 2012-1851 (La. App. 1st Cir. 9/25/13), 134 So.3d 626, 632. Therefore, in meeting the burden of proof, unsworn or unverified documents, such as the email correspondence and text messages, annexed to motions for summary judgment are not self-proving and will not be considered; attaching such documents to a motion for summary judgment does not transform such documents into competent summary judgment evidence. See **Bunge North America, Inc. v. Board of Commerce & Industry and Louisiana Dept. of Economic Development**, 2007-1746 (La. App 1st Cir. 5/2/08), 991 So.2d 511, 527, writ denied, 2008-1594 (La. 11/21/08), 996 So.2d 1106. Accordingly, the email correspondence and text messages have no evidentiary value.

Although not referenced in his opposition as an attached exhibit, Dr. Alden filed an affidavit the same day he filed his opposition to Ms. Rice's motion for summary judgment. As the affidavit was filed on the same day, we will consider it to be filed in support of his opposition pursuant to La. Code Civ. P. art. 966(A)(4). In his affidavit, Dr. Alden attested to the fact that he initially told Ms. Rice he "would like to have an option to close in 6 months rather than 90 days" and Ms. Rice suggested he make a counteroffer including those terms. Dr. Alden stated that on October 24, 2019, he submitted a counteroffer to purchase the property for \$725,000 "requesting these concessions." Dr. Alden stated his counteroffer was accepted by Mrs. Koukoutchos.⁵ Dr. Alden stated that after the sale of the property was approved by the court handling Mr. Koukoutchos' succession on December 23, 2019, he asked Ms. Rice for a closing date at the end of March 2020. Dr. Alden stated that Ms. Rice provided a "faux" closing date in January, but assured him the parties could close

⁵ The record does not contain a counteroffer by Dr. Alden requesting an option to close on the property in six months. The record does contain the counteroffer submitted by Dr. Alden on October 24, 2019, which did not request a closing date later than December 16, 2019, the closing date provided in the purchase agreement.

“at the end of March 2020 or sooner if [he] desired.” Dr. Alden stated that he told Ms. Rice “that all important communication with me regarding this purchase needed to be via telephone, in person, or by written correspondence, and not by email.” Dr. Alden stated that on December 30, 2019, Ms. Rice sent him a text message advising that he needed to sign an extension of the purchase agreement, but she did not send an extension agreement until the next day, after the purchase agreement had expired. Dr. Alden stated that Ms. Rice emailed him an extension on December 31, 2019 and January 2, 2020, but did not present the document to him in person, as he had requested.

Dr. Alden also stated in his affidavit that Ms. Rice never informed him that the purchase agreement was no longer valid and did not “follow up” on having him execute a formal extension. Dr. Alden stated he was under the impression the sale could still move forward based on Ms. Rice’s January 10, 2020 email, wherein she advised that the parties could still make the sale work if Dr. Alden desired. Dr. Alden stated, pursuant to the email, he was under the belief “that the closing date at the end of January 2020 had been approved by the succession and that we were still going to closing on or before April 1, 2020.” Dr. Alden acknowledged in his affidavit that the purchase agreement contained language providing that the sale was contingent on his ability to obtain financing and he was unable to do so.

A buyer’s remedy against a real estate broker is limited to damages for fraud under La. Civ. Code art. 1953 or for negligent misrepresentation under La. Civ. Code art. 2315. **Smith v. Grantham**, 2023-0881 (La. App. 1st Cir. 9/4/24), 394 So.3d 316, 326. In order for a plaintiff 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. **Id.**

A real estate broker is a professional who holds himself out as trained and experienced to render a specialized service in real estate transactions. 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. **Hughes v. Goodreau**, 2001-2107 (La. App. 1st Cir. 12/31/02), 836 So.2d 649, 660, writ denied, 2003-0232 (La. 4/21/03), 841 So.2d 793. A realtor has a fiduciary duty to his client, and a breach of that duty to the client is actionable under La. Civ. Code art. 2315. **Hughes**, 836 So.2d at 660. Ultimately, the precise duties of a real estate broker must be determined by an examination of the nature of the task the real estate agent undertakes to perform and the agreements he makes with the involved parties. **Mallet v. Maggio**, 503 So.2d 37, 38-39 (La. App. 1st Cir.), writ denied, 504 So.2d 880 (La. 1987). A real estate broker or agent owes a specific duty to communicate accurate information to the seller and the purchaser and may be held liable for negligent misrepresentation. **Hughes**, 836 So.2d at 663. A real estate broker also has the duty to take the necessary steps to bring a signed contract for purchase of real property to the act of sale within the time period designated by the contract. See **Markovich v. Prudential Gardner Realtors**, 2010-1886 (La. App. 1st Cir. 7/1/11) 2011 WL 2601442, *2 (unpublished); **Naquin v. Robert**, 559 So.2d 18, 21 (La. App. 4th Cir.), writ denied, 561 So.2d 118 (La. 1990).

In **Markovich**, a seller's agent, John Middleton ("Middleton"), received two offers to purchase immovable property and extended counteroffers to both potential purchasers with roughly the same expiration period. One of the potential purchasers, T-Bo Contracting, LLC, submitted an acceptance of the counteroffer and secured the transaction with a \$5,000 deposit. The other potential purchaser, Samuel Markovich ("Markovich"), who had submitted the first offer to purchase the immovable property, filed suit against Middleton, his brokerage firm, and the firm's insurer after his acceptance and deposit were returned. **Markovich**, 2011 WL 2601442 at *1. Following a trial on the merits, the trial court found in favor of Markovich. On appeal, this court vacated the portion of the trial court's judgment

against Middleton because he was deceased at the time of trial and his estate was not substituted as a party defendant. **Id.** at *2. This court affirmed the portion of the judgment rendered against the brokerage firm and its insurer, explaining that the record supported the trial court's finding that Middleton breached his duty to take the necessary steps to bring the signed purchase agreement to closing within the time period designated by the contract. **Id.** In doing so, this court noted that Middleton, in his deposition, and the managing broker for the brokerage firm, at trial, testified that it was a mistake for Middleton to extend counteroffers to two potential purchasers at the same time. Additionally, an expert in real estate testified that Middleton "acted outside the proper requirements of a realtor marketing property for his client" when he extended both counteroffers at the same time. **Id.**

In **Naquin**, the plaintiff, a potential purchaser of immovable property in New Orleans, filed suit against his real estate broker, Sandra Robert ("Robert"), and a notary public after the purchase agreement with the seller expired. The purchase agreement required the sale to close on or before April 1, 1983, which was Good Friday. The plaintiff planned to be out of town from March 26 through March 29, 1983, and asked Robert to have the real estate agreement extended. On March 26, he signed an extension agreement on a form provided by Robert to extend the purchase agreement to April 9, 1983. **Naquin**, 559 So.2d at 19. The seller, John Ward, was represented by his son, Charles R. Ward ("Judge Ward"), a local judge, who told Robert that he would not recommend that his father sign the agreement. **Id.** at 19-20. Judge Ward instructed Robert to deliver the extension to him to present to his father. However, Robert placed it in John Ward's mailbox on March 28, 1983. On his son's advice, John Ward refused to sign the extension. On March 30, 1983, Judge Ward wrote to the plaintiff reminding him that the contract expired on April 1, 1983. The plaintiff called Robert, who assured him there was no problem because he could invoke a provision in the purchase agreement allowing a 60-day extension

to perform curative work on the title of the subject property. However, there were no issues with the title that required curative work. **Id.** at 20.

The plaintiff settled with Robert before trial and the trial court awarded the plaintiff a judgment against the notary public. **Id.** at 19. On appeal, the Fourth Circuit Court of Appeal found that although the record demonstrated that the notary public should have known there were no issues with the title which would have delayed the sale, Robert's failure to close the sale prior to the expiration date was the cause-in-fact of the plaintiff's loss. **Id.** at 20. The court explained that Robert knew that Judge Ward was going to advise his father against signing the extension of the purchase agreement and that the parties only had a few days to close the sale. **Id.** at 20-21. Therefore, the court found that Robert should have sent the extension to Judge Ward immediately after the plaintiff signed it so that she would have known if the sale needed to move forward before April 1, 1983. Thus, the court found Robert breached her duty to take the necessary steps to bring the purchase agreement to closing, which was the sole cause of plaintiff's loss. **Id.** at 21.

We find the instant case to be distinguishable from both **Markovich** and **Naquin**. In the case *sub judice*, there is no evidence before this court indicating that Dr. Alden was prepared to close on or before December 30, 2019. In fact, Dr. Alden stated in his deposition and affidavit that he wanted a later closing date. Therefore, unlike in **Naquin**, this matter does not present a situation where Ms. Rice breached her duty to Dr. Alden by failing to bring the sale to closing before the expiration of the purchase agreement. There is also no competent summary judgment evidence that another offer was pending at the time the purchase agreement expired, or that Ms. Rice was aware of another potential purchaser and intentionally allowed the

purchase agreement to expire in order to earn a commission from a sale to a different party.⁶

The summary judgment evidence indicates that Ms. Rice contacted Dr. Alden and Mr. Dusang on December 30, 2019, regarding the expiration of the purchase agreement. In her affidavit, Ms. Rice explained that she knew Dr. Alden had not yet obtained financing by December 30, 2019. She also knew that Mrs. Koukoutchos was not receiving offers on the property at that time, and believed that if Dr. Alden submitted an identical offer, then Mrs. Koukoutchos would accept it. However, Ms. Rice explained that by that point in time, Mr. Stanley had become involved in the negotiations, and had insisted that any new offer provide for an additional \$10,000 deposit, which would be non-refundable if the parties failed to close by the new closing deadline. Accordingly, Ms. Rice prepared a new offer for the same purchase price with the additional \$10,000 deposit for Dr. Alden to sign. However, in spite of her repeated efforts to get Dr. Alden to sign the new offer, he failed to do so until after Mrs. Koukoutchos received a better offer from a third party almost two months after the purchase agreement expired.

Additionally, although Dr. Alden stated in his affidavit that Ms. Rice never informed him that the purchase agreement was no longer valid, the purchase agreement and extension previously agreed to by the parties clearly provided that the purchase agreement expired on December 30, 2019. Furthermore, even if Ms.

⁶ In his affidavit, Dr. Alden stated his “belief” that Ms. Rice “was using my contract as an attempt to sell the house to another third party where in this instance she would receive a substantial commission of [approximately] \$25,000.” Dr. Alden further stated that the subsequent sale of the property for a higher price was “indicative” of a conspiracy between Ms. Rice and Mrs. Koukoutchos to find a buyer who would submit a larger offer and provide Ms. Rice with a commission. Dr. Alden also stated he never authorized Ms. Rice or Mrs. Koukoutchos to share the inspection report he paid for, but that it was his “understanding” that Ms. Rice and/or Mrs. Koukoutchos used the inspection report to show that a crack in the kitchen of the property was not a structural flaw. We find these statements do not provide fact-based evidence that Ms. Rice breached any duty to Dr. Alden or committed fraud. Although factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, mere conclusory allegations, improbable inferences, and unsupported speculation will not support a finding of a genuine issue of material fact. **Wolfe v. Quad-Area Community Action Agency, Inc.**, 2022-0203 (La. App. 1st Cir. 9/16/22), 352 So.3d 992, 996.

Rice had prepared an extension containing the conditions requested by Dr. Alden and sent it to Mrs. Koukoutchos on December 30, 2019, Mrs. Koukoutchos was under no obligation to agree to that extension. Considering Mr. Stanley's insistence that a new offer provide for the \$10,000 non-refundable deposit, any extension of the purchase agreement would likely have been contingent upon that same condition. On December 30, 2019, Ms. Rice prepared an offer for Dr. Alden to sign including the non-refundable deposit, which Dr. Alden stated he received on December 31, 2019. Ms. Rice prepared and sent another offer on January 29, 2020. The evidence provided in support of Ms. Rice's motion for summary judgment reveals that it was Dr. Alden who failed to timely sign a new offer in order to negotiate a new purchase agreement with Mrs. Koukoutchos and prevent the sale of the property to a third party. Additionally, although Dr. Alden stated his preference of discussing the transaction on the telephone, and signing documentation in person, we do not find that Ms. Rice's transmission of the offers to Dr. Alden by email was a breach of her fiduciary duties to Dr. Alden. Notably, Dr. Alden admitted in his deposition that he electronically signed his October 14, 2019 counteroffer. It also appears he electronically signed the February 22, 2020 offer that Mrs. Koukoutchos rejected.

Upon our *de novo* review, we find that Ms. Rice met her burden of proving an absence of factual support for the breach of duty element of Dr. Alden's claims. The burden then shifted to Dr. Alden to produce factual support sufficient to establish the existence of a genuine issue of material fact or that Ms. Rice is not entitled to judgment as a matter of law. We find Dr. Alden failed to meet this burden. Accordingly, we find the trial court properly granted summary judgment in favor of Ms. Rice.

CONCLUSION

For the foregoing reasons, we affirm the trial court's February 5, 2024 judgment granting summary judgment in favor of Jennifer Rice and dismissing Dr. William W. Alden, M.D.'s claims against Jennifer Rice, with prejudice. Costs of this appeal are assessed against Dr. William W. Alden, M.D.

AFFIRMED.