Judgment rendered November 18, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,110-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

JANET LOUISE PAYNE GLISSON AND WILLIAM BRADLEY GLISSON — Plaintiffs-Appellants

versus

EDWARD JAY ELLINGTON, KATHY RISER ELLINGTON, GROUP ONE REALTY, L.L.C. D/B/A COLDWELL BANKER REALTY ONE AND JOHN CHRISTOPHER STEPHENSON — Defendants-Appellees

* * * * *

Appealed from the
Third Judicial District Court for the
Parish of Lincoln, Louisiana
Trial Court No. 62,496

Honorable Thomas Wynn Rogers, Judge

* * * * *

AYRES, SHELTON, WILLIAMS, BENSON & PAINE, LLC
By: Lee H. Ayres
Codi D. Setters — Counsel for Appellants

NAPPER & MADDEN LAW OFFICE & TITLE COMPANY By: Michael Ryan Madden	Counsel for Appellees, John Chris Stephenson, John Christopher Stephenson, Martha Sue Stephenson, Kiley Edwards Stephenson, and Katie Stephenson Steed
OFFICE OF W. KYLE GREEN, LLC By: Rebekah H. Wade	Counsel for Appellees, Edward J. Ellington and Kathy Riser Ellington
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH By: Richard G. Duplantier, Jr. Patricia P. Wattigny Parker William Bradley	Counsel for Appellees, Group One Realty, L.L.C. and Coldwell Banker Realty One

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Before COX, HUNTER, and MARCOTTE, JJ.

HUNTER, J.

Plaintiffs, Janet Louise Payne Glisson and William Bradley Glisson, appeal a district court judgment granting a motion for summary judgment filed by defendant, Group One Realty, L.L.C. d/b/a Coldwell Banker Group One Realty. For the following reasons, we reverse the judgment of the district court and remand this matter for further proceedings.

FACTS

On May 18, 2021, defendants, Edward Jay Ellington and Kathy Riser Ellington ("the Ellingtons"), signed an "Exclusive Right to Sell Agreement" to sell immovable property located at 126 Llanfair Drive in Ruston, Louisiana. The Ellingtons designated defendant Group One Realty ("Group One") as their broker and defendant John Christopher Stephenson as their agent. Stephenson had been an agent and broker with Group One since 2012.

On May 21, 2021, plaintiffs, Janet and William Bradley Glisson, signed an agreement to purchase the property from the Ellingtons for $429,000. Stephenson also acted as plaintiffs' agent. The sale was completed, the closing took place on July 22, 2021, and plaintiffs moved into the house on August 7, 2021. Prior to the purchase, the inspections of the home and swimming pool revealed several issues, some of which were corrected prior to closing. After moving into the home, plaintiffs alleged they began noticing "numerous defects to the interior and structure of the home," and they notified the Ellingtons, Stephenson, and Group One and requested they remedy the alleged defects. Defendants failed to do so.

On August 5, 2022, plaintiffs filed a "Petition in Redhibition, for Damages, Breach of Contract, and Fraud." Plaintiffs alleged the residence

was uninhabitable "due to structural damage, rodent infestation, and redhibitory defects which renders it unfit for the purpose it was constructed for." Plaintiffs also alleged defendants "knowingly and intentionally misrepresent[ed] the condition and inhabitability of the property purchased." Additionally, plaintiff averred defendants failed to disclose and intentionally concealed major defects in the home, such as the hidden damage to the shed; a crack in the concrete on the carport; a leaking sink inside a cabinet; an underground rotted return air pipe, which was disconnected from the HVAC and "filled with stagnant ground water and open to the interior of the home *** causing foul smelling air, insects, and reptiles to come into the home"; the pool was not functional; the gas had been disconnected from the furnace; and the air conditioning ducts "contained the remains of several dead rodents and rodent feces."[1]

On September 22, 2022, Group One filed peremptory exceptions of no cause of action and prescription and dilatory exceptions of vagueness and ambiguity. Group One raised the following arguments: (1) plaintiffs had contractually waived their claims of redhibition; (2) the claims of redhibition had prescribed; and (3) plaintiffs' allegations against Group One were vague and were not pled with particularity. The district court granted the exceptions, in part, and dismissed the redhibition claims against Group One.

[1] Stephenson died on February 13, 2023. Thereafter, plaintiffs amended the petition to substitute as defendants "The Estate of John Chris Stephenson, Martha Sue Stephenson in her capacity as surviving spouse of John Chris Stephenson, Kiley Edwards Stephenson, and Katie Stephenson Steed, as heirs of John Chris Stephenson" ("the Stephenson defendants"). The claims pertaining to the Stephenson defendants are not at issue in this appeal.

On November 17, 2025, Group One filed a motion for summary judgment arguing plaintiffs did not identify any acts of intentional fraud or misrepresentation committed by or on behalf of Group One. More specifically, Group One asserted the allegations set forth in plaintiffs' petition did not concern it and failed to specify how it misrepresented or suppressed the truth in connection with the sale. Group One further noted an "Independent Agent Agreement" existed between it and Stephenson and attached documents indicating the buy/sell agreement signed by plaintiffs provided that Stephenson was "an independent contractor for Broker" and "shall not be an employee of the sponsoring or qualifying broker."[2]

Following a hearing, the district court granted the motion for summary judgment and dismissed plaintiffs' claims against Group One with prejudice. The court found that Stephenson was an independent agent, and plaintiffs "fail[ed] to provide anything to establish a genuine issue of material fact as to the status of John Chris Stephenson as an independent contractor. Consequently, Group One Realty cannot be held vicariously liable for any of the actions of John Chris Stephenson." The court also found that there is nothing in the record to establish that Paula Beasley, the managing broker for Group One, "knew of any defects, had any reason to know, or provided any incorrect information to [plaintiffs]." The district court stated:

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[2] Further, Group One argued that plaintiffs were provided with a property disclosure document, engaged a company to inspect the property and a separate company to inspect the swimming pool, and received inspection reports for the property and the condition of the pool. Group One also asserted that plaintiffs accepted and signed a waiver of warranty contained in the Act of Sale, which provided the property was being sold "as-is" and specifically stated the sellers were relieved and released "from any and all claims for any vices or defects in said property, whether obvious or latent, known or unknown, easily discoverable or hidden, and particularly for any claim or cause of action for redhibition."

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> Neither the Restated Petition of the Petitioners [n]or Janet Glisson's affidavit filed in opposition to Group One Realty's Motion for Summary Judgment provide[s] any facts to show that anyone associated with Group One Realty had any knowledge of the defects claimed by Petitioners. No facts are alleged to indicate that anyone at Group One Realty had any reason to make inquiry regarding any of these defects or had any reason to even suspect that the defects existed. Neither of the inspection reports provided to the Petitioners pointed to any of the defects claimed by Petitioners.
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> The Property Disclosure Statement provided to the Petitioners was completed by the Ellingtons and clearly is their representation of the condition of the home. R.S. 9:389B states that "The licensee is not liable for any error, inaccuracy or omission in a Property Disclosure Document, unless the licensee has actual knowledge of the error, inaccuracy or omission by the Seller." None of the genuine material facts claimed by the Petitioners indicate anyone related to Group One Realty actually knew of the defects or had any reason to know.

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Plaintiffs appeal.

DISCUSSION

Plaintiffs contend the district court erred in treating the pleading filed by Group One as a motion for summary judgment. They argue Group One had filed an exception of vagueness, in which it claimed plaintiffs' allegations were vague and did not allege fraud or mistake with particularity, and the district court overruled the exception. Thereafter, Group One filed a motion for summary judgment on the same grounds – plaintiffs "failed to state any alleged cause of action for fraud against Group One with particularity required by [La. C.C.P. arts.] 856 and 891." According to plaintiffs, the motion for summary judgment was merely a "do over" for the previously denied exception of vagueness, and any alleged failure to plead with particularity must be addressed by an exception of vagueness, not by motion for summary judgment.

Further, plaintiffs argue the district court violated La. C.C.P. art. 966(F) by granting summary judgment on grounds not raised in the motion for summary judgment. Plaintiffs argue pursuant to Art. 966(F), the district court was permitted to render judgment "only as to those issues set forth" in Group One's motion for summary judgment. Plaintiffs further assert Group One did not specifically assert that plaintiffs lacked factual support for the claims asserted against Group One and did not explicitly argue that there were no genuine issues of material fact in dispute regarding the claims of fraud and misrepresentation. Therefore, the district court improperly granted the motion for summary judgment on those grounds.

An exception of vagueness is raised by dilatory exception. La. C.C.P. art. 926(A)(5). On the trial of the dilatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. La. C.C.P. art. 930. The purpose of the exception of vagueness is to place the defendant on notice of the nature of the facts sought to be proved so as to enable him to identify the cause of action, thus preventing future relitigation after a judgment is obtained. *Port City Glass & Paint Inc. v. Brooks*, 52,534 (La. App. 2 Cir. 2/27/19), 266 So. 3d 516; *Casares v. James M. Brown Builder, Inc.*, 44,561 (La. App. 2 Cir. 8/19/09), 17 So. 3d 1022, *writ denied*, 09-2055 (La. 11/20/09), 25 So. 3d 813.

A party may move for summary judgment for all or part of the relief for which he has prayed. La. C.C.P. art. 966(A)(1). The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. The procedure is favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2). After an

opportunity for adequate discovery, a motion for 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. C.C.P. art. 966(A)(3); *Staten v. Glenwood Reg'l Med. Ctr.*, 53,220 (La. App. 2 Cir. 1/29/20), 290 So. 3d 280, *writ denied*, 20-00591 (La. 9/23/20), 301 So. 3d 1184.

In the instant case, Group One filed its motion for summary judgment and attached multiple exhibits, including the independent agent agreement between Group One and Stephenson, the dual agency agreement between Stephenson and plaintiffs, an affidavit executed by Paula Beasley, the managing broker for Group One, the home and swimming pool inspection reports, and the documents associated with the sale. In the motion and supporting memorandum, Group One noted Stephenson was an independent contractor, and it introduced the agreement between it and Stephenson to support its claim. Group One also argued that plaintiffs failed to allege or present evidence of fraud or misrepresentation committed by Group One or any of its employees.

As stated above, La. C.C.P. art. 966(A)(3) provides that "a motion for 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." Throughout the motion and accompanying documents, Group One referred to Stephenson as an independent contractor and argued that plaintiffs' allegations pertained to Stephenson and could not be attributable to Group One.

We find Group One's motion and argument were sufficient to put plaintiffs on notice of Group One's contention that since Stephenson was an independent agent, Group One could not be held vicariously liable for any alleged fraud or misrepresentations that may have been committed by Stephenson. Accordingly, we find the motion, memorandum, and supporting documents filed by Group One constituted a motion for summary judgment and cannot be construed as an exception of vagueness or no cause of action. Further, we find the district court properly considered the arguments and documents submitted by the parties. Although in its reasons for judgment, the court noted issues not raised by Group One, we find the court did not base its ruling solely on those issues.[3]

Plaintiffs also contend the district court erred in granting the motion for summary judgment filed by Group One. They argue, *inter alia*, that summary judgment is improper because genuine issues of material fact are in dispute regarding Stephenson's status as an independent contractor.

A summary judgment is reviewed de novo, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate, *i.e.*, whether there is any genuine issue of material fact and whether the movant is entitled to judgment as a matter of law. *Samaha v. Rau*, 07-1726 (La. 2/26/08), 977 So. 2d 880; *Logan v.*

[3] Appeals are taken from the judgment, not the written reasons for judgment. Thus, the well-settled rule is that the trial court's oral or written reasons for judgment form no part of the judgment, and that appellate courts review judgments, not reasons for judgment. *Wooley v. Lucksinger*, 09-0571 (La. 4/1/11), 61 So. 3d 507; *Union Fed. Credit Union v. Thornton*, 49,529 (La. App. 2 Cir. 1/28/15), 162 So. 3d 414, *writ denied*, 15-0404 (La. 5/1/15), 169 So. 3d 375.

Richland Par. Hosp., 56,127 (La. App. 2 Cir. 4/9/25), 408 So. 3d 1208, *reh'g denied* (5/15/25), *writ denied*, 25-00760 (La. 10/1/25), 417 So. 3d 570.

The burden of proof on a summary judgment motion remains with the mover. La. C.C.P. art. 966(D)(1). However, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support 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. *Id*. If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment should be granted. *Staten*, *supra*.

A fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. *Peironnet v. Matador Res. Co.*, 12-2292 (La. 6/28/13), 144 So. 3d 791; *McGee v. Ashford Place Apartments, LLC*, 54,795 (La. App. 2 Cir. 11/16/22), 351 So. 3d 899. A genuine issue is one regarding which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for a trial on that issue and summary judgment is appropriate. *Hines v. Garrett*, 04-0806 (La. 6/25/04), 876 So. 2d 764; *McGee*, *supra*.

Furthermore, in determining whether an issue is genuine, a court should not consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *McGee*, *supra*; *Marioneaux v. Marioneaux*,

52,212 (La. App. 2 Cir. 8/15/18), 254 So. 3d 13. The prohibition on making credibility determinations on summary judgment extends to expert affidavits admitted without objection. *McGee*, *supra*; *Aziz v. Burnell*, 21-187 (La. App. 3 Cir. 11/3/21), 329 So. 3d 963; *Thompson v. Center for Pediatric and Adolescent Med.*, *LLC*, 17-1088 (La. App. 1 Cir. 3/15/18), 244 So. 3d 441. Finally, the court must draw those reasonable inferences from the undisputed facts which are most favorable to the party opposing the motion; likewise, all doubt must be resolved in the opposing party's favor. *McGee*, *supra*; *Wyrick v. Golden Nugget Lake Charles, LLC*, 20-0665 (La. App. 1 Cir. 12/30/20), 317 So. 3d 708.

Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed. La. C.C. art. 2320. For an employer to be held liable for the actions of an employee under article 2320, the plaintiff must prove the following: (1) a master-servant relationship existed between the tortfeasor and the employer, and (2) the tortious act of the tortfeasor was committed within the scope and during the course of his employment with the employer. *Hughes v. Goodreau*, 01-2107 (La. App. 1 Cir. 12/31/02), 836 So. 2d 649, *writ denied*, 03-0232 (La. 4/21/03), 841 So. 2d 793; *Brumfield v. Gafford*, 99-1712 (La. App. 1 Cir. 9/22/00), 768 So. 2d 223. Therefore, once it is determined that an employment contract exists, for purposes of the employer's vicarious liability in tort, it is necessary to determine what type of employment contract exists, *i.e.*, whether the employee is a mere servant or an independent contractor. *Hughes*, *supra*. The distinction between a mere servant and an independent contractor is a factual determination

decided on a case-by-case basis. *Tower Credit, Inc. v. Carpenter*, 01-2875 (La. 9/4/02), 825 So. 2d 1125.

Generally, although courts look at the totality of the circumstances, the most important factor in determining whether an employment relationship exists is the principal's right of control and supervision over the individual. *Savoie v. Fireman's Fund Ins. Co.*, 347 So. 2d 188 (La. 1977); *Smith v. Moreau*, 17-0003 (La. App. 1 Cir. 6/2/17), 222 So. 3d 761; *Bouquet v. Williams*, 16-0134 (La. App. 1 Cir. 10/28/16), 206 So. 3d 232, *writ denied*, 16-2077 (La. 1/9/17), 214 So. 3d 870. When, as here, the issue is whether the worker is an independent contractor or an employee, the court should also consider if (1) a valid contract exists between the parties; (2) the work is of an independent nature; (3) the contract allows for the work to be done according to the contractor's own methods, without being subject to control and direction, except as to the result of the services to be rendered; (4) a specific price for the overall undertaking is agreed upon; and (5) the duration of the work is for a specific time and not subject to termination at the will of either party. *See*, *Hickman v. Southern Pacific Transport Co.*, 262 La. 102, 262 So. 2d 385 (La. 1972); *Smith*, *supra*; *Bouquet*, *supra*. The distinction between an employee and an independent contractor is a factual determination that must be decided on a case-by-case basis. *Tower Credit*, *supra*; *Smith*, *supra*.

In *Hughes, supra*, the First Circuit considered the issue of whether the real estate agents were employees of the company or were independent contractors. In that case, the buyers purchased a home from the sellers. At the time of the sale, the sellers engaged the services of Roberta Broussard, a sales associate for Prudential Louisiana Properties d/b/a Property Plus

("Prudential"), to list and assist in the sale of their home. The buyers, who were relocating from Alabama, engaged Sharon Haber, also a sales associate of Prudential, to help them find a suitable home in Mandeville. Less than six months after the buyers purchased and moved into the home, water flooded the downstairs portion of the house following a heavy rain.

The buyers filed a lawsuit naming the sellers as defendants, alleging the property contained a redhibitory defect, and seeking rescission of the sale or, alternatively, reduction of the purchase price. The sellers answered the lawsuit and filed third party demands against Prudential claiming they were entitled to tort damages. Following a trial, the court concluded Prudential was liable for negligent misrepresentation and awarded damages. Prudential appealed, arguing it was not vicariously liable for the actions of the real estate agents/sales associates because the sales associates were independent contractors. In support of its argument, Prudential noted the contractual agreements it entered into with its sales associates, in which Prudential identified itself as a "broker" and the sales associates as "independent contractors."

The First Circuit employed the *Hickman* factors to determine whether the real estate agents were employees of Prudential, despite the written contracts. The Court concluded the real estate agents "were not independent contractors of Prudential but mere servants for whom Prudential is vicariously liable to third persons under La. C.C. art. 2320." *Id.* at 659. The Court stated:

> Although the parties entered into a written contract in which [the real estate agents] were identified as independent contractors, and this designation may have some validity between the parties, it is not binding or controlling on the rights of third persons. The rights of third persons are controlled by

> the substance, rather than the title, of the contractual relationship between the parties. Prudential neither dictated the number of hours the associates had to work nor the properties for which they were responsible. And Prudential did not direct the associates on how to spend their time at work. Conversely, the testimony established that the associates worked exclusively for Prudential, and as in *Hickman*, were not free to carry out their work using their own methods because their written employment contract required that they "comply with the Policy and Procedures Manual prepared by Broker."
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> ***

Id. at 659.

In 2003, the year after *Hughes* was decided, the Louisiana Legislature amended La. R.S. 37:1446, and enacted paragraph H, which provides:

> 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*.

(Emphasis added).

The written agreement between Stephenson, the sponsored licensee, and Group One, the sponsoring or qualifying broker, was entitled "Independent Agent Agreement." The agreement provided in relevant part with emphasis added:

> 1. Listings and Cooperation. Broker shall make available to Salesperson all current listings of the office. Broker may, upon request, assist Salesperson in his or her work by advice and instruction. Broker shall provide to Salesperson full cooperation in every way possible. *Nothing shall herein be construed to require that Salesperson accept or serve any particular listing or prospective listing offered by Broker;*

nor shall Broker have any right or authority to direct that Salesperson to see or service particular parties, or restrict Salesperson's activities to particular areas. Broker shall have no right, except to the extent required by law, to direct or limit Salesperson's activities as to hours, leads, open houses, opportunity for floor time, production, prospects, reports, sales, schedules, services, inventory, time off, training, vacation, or other similar activities.

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3. Efforts by Salesperson. Salesperson shall work diligently and with his or her best efforts to sell, lease or rent any and all real estate listed with Broker[.] *** *Broker obtains* ***no authority or right to direct or control Salesperson's activities****, except as may be required by the statute of the State of Louisiana and the rules and regulations of the Louisiana Real Estate Commission, and the salesperson assumes and retains discretion for methods, techniques and procedures in soliciting and obtaining listings and sales, rental, or leases of listed property.*

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5. Compensation of Salesperson. The compensation of the Salesperson shall be based upon a proportionate share of the commissions charged by the Broker for services rendered in real estate transactions in which the Salesperson shall perform any service pursuant to this Agreement, whereby a commission is earned, the commission shall, when collected, be divided between Broker and Salesperson pursuant to the agreed schedule, and which Salesperson acknowledges he or she has received.

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8. Termination. This Agreement and the association created hereby may be terminated by either parity at any time, upon written notice given to the other. Upon termination, Salesperson shall return all listings, manuals and materials, forms and sales literature loaned to Salesperson by Broker. Broker shall honor any accrued commission or pending contracts upon termination of this Agreement.

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It is undisputed that Stephenson was a licensed real estate agent at the time of the sale and a valid agreement existed between him and Group One. Pursuant to the terms of the agreement, Group One lacked the authority "to direct or limit [Stephenson's] activities as to hours, leads, open houses, opportunity for floor time, production, prospects, reports, sales, schedules, services, inventory, time off, training, vacation, or other similar activities."

Furthermore, the agreement stated that Group One "obtains no authority or right to direct or control [Stephenson's] activities, except as may be required by the statute of the State of Louisiana and the rules and regulations of the Louisiana Real Estate Commission[.]"

However, a factor in determining whether a person is an independent contractor, as opposed to an employee, is whether the termination or discontinuance of the relationship is subject to the will of either party without a corresponding liability for breach of contract. Paragraph 8 of the agreement between Group One and Stephenson states, "This Agreement and the association created hereby may be terminated by either party at any time," and there are no expressed consequences for termination.

The issue of whether a person is an employee or independent contractor requires a case-by-case, fact-intensive inquiry. Based on the evidence presented, reasonable minds could disagree as to whether the dual right to terminate the agreement is sufficient to make Stephenson an employee of Group One such that Group One could be deemed vicariously liable for Stephenson's alleged fraud/misrepresentations. Given the posture of this case, summary judgment is inappropriate. Accordingly, we find the district court erred in granting Group One's motion for summary judgment. We hereby reverse the court's ruling and remand this matter for further proceedings.

CONCLUSION

For the reasons set forth herein, the district court's judgment granting the motion for summary judgment is hereby reversed, and this matter is remanded to the district court for further proceedings. Costs of this appeal

are assessed to defendant, Group One Realty, L.L.C. d/b/a Coldwell Banker Group One Realty.

REVERSED AND REMANDED.