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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master In Equity

Case No. 2020-CP-37-00249
Appellate Case No. 2022-000699

Michel D. Haynes .... Appellant,

vs.

Saverne Haynes .... Respondent.

INITIAL BRIEF OF APPELLANT

---

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN DETERMINING THE PROMISSORY NOTE WAS NOT A NEGOTIABLE INSTRUMENT AND THEREBY FAILING TO APPLY S.C. CODE 36-3-118(a) AS THE APPLICABLE STAUTE OF LIMITATIONS?

II. DID THE TRIAL COURT ERR IN FINDING THAT THE PROMISSORY NOTE IS OWNED BY THE ESTATE OF EFFORD HAYNES?

III. DID THE TRIAL COURT ERR IN BARRING MICHEL D. HAYNES' CLAIM PURSUANT TO S.C. CODE 15-3-530 WHEN INSTALLMENTS CONTINUED TO ACCRUE?

IV. DID THE TRIAL COURT ERR IN DETERMINING THAT MICHEL D. HAYNES WAS NOT AN ASSIGNEE OF THE PROMISSORY NOTE AND HAD NO STANDING TO PURSUE THE ACTION?

a. Did the Trial Court err in finding that endorsement of the Note was required for enforcement?

b. Did the Trial Court err in finding no evidence of assignment?

c. Did the Trial Court err in finding that Michel D. Haynes was required to provide consideration to Saverne Haynes?

d. Did the Trial Court err in finding that only Reverend Haynes had deposited funds into the multi-party account at the time of the Promissory Note?

V. DID THE TRIAL COURT ERR IN FINDING THE LANGUAGE OF THE PROMISSORY NOTE WAS NOT ADEQUATE TO CREATE AN ASSIGNMENT?

VI. DID THE TRIAL COURT ERR IN APPLYING A DEFENSE OF EQUITABLE SETOFF?

VII. DID THE TRIAL COURT ERR IN FAILING TO APPLY THE PAROL EVIDENCE RULE?

VIII. DID THE TRIAL COURT ERR BY FAILING TO SEPARATELY IDENTIFY THE CONCLUSIONS OF LAW AS REQUIRED BY RULE 52(A), *SCRCP?*

STATEMENT OF THE CASE

On April 8, 2020, Michel D. Haynes, as the holder and owner of a Promissory Note dated June 4, 2015, brought this action based on breach and enforcement of said Note. (Complaint). The Note entitled "Personal Loan Agreement" was executed by Saverne Haynes wherein she promised to repay her father, Rev. Efford Haynes, the sum of $50,000.00 in monthly payments of $400.00 per month beginning September 1, 2015, and on the 10th day of every month thereafter until paid in full. (Pl. Exhibit 1). The Note further specified that this single instrument was binding between Saverne Haynes and Rev. Efford Haynes and his heirs and assigns as named, Michel D. Haynes and/or Lucille J. Haynes, until the loan was paid in full. Lucille J. Haynes died intestate July 1, 2017, and Rev. Efford Haynes died intestate September 26, 2017. Saverne Haynes failed to make the payments required of her pursuant to the terms and conditions of the Note.

Saverne Haynes filed responsive pleadings offering only a general denial except to admit the intestate deaths of Rev. Efford Haynes and Lucille J. Haynes, and asserted a defense of statute of limitations pursuant to S.C. Code 15-3-530, South Carolina Code of Laws (2022 Edition). (Answer).

Following discovery, the case was referred to the Master In Equity for final disposition. (Order of Reference).

After deposing Saverne Haynes, Michel D. Haynes filed a Motion for Summary Judgement pursuant to Rule 56, SCRCP, on July 28, 2021, and a hearing was held October 28, 2021. (Motion for Summary Judgment). Saverne Haynes submitted a

response to Michel D. Haynes' Motion and confirmed that she, "did not in any way admit to signing that document." (Answer to Motion for Summary Judgment). Michel D. Haynes presented the subject Note and Saverne Haynes' deposition as evidence to support his position that no genuine issue as to any material facts existed. The Trial Court denied Michel D. Haynes' motion by Form 4 Order on November 2, 2021. (Order).

Michel D. Haynes filed his Trial Brief on February 21, 2022, setting forth his position to the Court and simultaneously served Saverne Haynes with same. (Trial Brief).

The matter proceeded to trial before the Honorable Steven C. Kirven, Master In Equity for Oconee County, on February 24, 2022. Michel D. Haynes presented the subject Note as a negotiable instrument subject to a six-year statute of limitations pursuant to S.C. Code 36-3-118, South Carolina Code of Laws (2022 Edition). (Pl. Ex. 1). Saverne Haynes denied it was her signature on the Note and pled the three-year statute of limitations pursuant to S.C. Code 15-3-530, South Carolina Code of Laws (2022 Edition). Saverne Haynes offered no other defenses and entered no evidence into the record.

On May 12, 2022, the Trial Court issued its Final Order finding in favor of Saverne Haynes, in which the court applied the defenses of set off and non-negotiability although neither of these defenses were raised by Saverne Haynes in her Answer. (Final Order). These unpled, unraised issues of defense at trial are contradicted by Rule 8(c), *SCRCP*, which requires Saverne Haynes to set forth any affirmative defenses in order to avoid surprise defenses.

Michel D. Haynes filed his appeal on May 23, 2022, and Saverne Haynes was

simultaneously served with same. (Notice of Appeal).

STANDARD OF REVIEW

Statutory construction of Article 3, Sections 36-3-104 - 110(a) et. seq. is applicable to the subject Note to ascertain the intent of the legislature. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 577 S.E.2d 202 (S.C. 2003).

"Where the terms of a written instrument are unambiguous, clear and explicit, extrinsic evidence of statements made contemporaneously with or prior to its execution are inadmissible to contradict, vary or explain its terms, in the absence of fraud, accident or mistake in its procurement." *Ray v. South Carolina National Bank, Inc.*, 314 S.E.2d 359, 281 S.C. 170, (Ct. App. 1984), citing *Proffit v. Sitton*, 244 S.C. 206, 136 S.E.2d [281 S.C. 173] 257 (1964); *Charleston & W.C. Ry. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957); *McLeod v. Sandy Island Corp.*, 265 S.C. 1, 216 S.E.2d 746 (1975).

A breach of contract claim is an action at law. *Barnacle Broad., Inc., v. Baker Broad., Inc.,* 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct.App.2000). In an action at law tried without a jury, "our scope of review extends merely to the corrections of errors of law." Id. Therefore, [the]... court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). *South Carolina Elec. & Gas Co. v. Hartough*, 654 S.E.2d 87, 375 S.C. 541 (S.C. App. 2007).

"As a general rule in equity, as at law, it is essential to the establishment of a set off that the claims or debts be mutual, that is they must subsist or be owing, between the same parties in the same right or capacity, and must be of the same kind or quality.

Equity will not ordinarily allow a set off of debts accruing in different rights or in dissimilar capacities." *South Carolina Nat. Bank, Greenville v. Hammond*, 198 S.E2d 123, 260 S.C. 622 (S.C. 1973) citing 20 Am.Jur. (2d), Counterclaim, Recoupment, etc., Section 75, at Page 293.

The criterion for setoff requires the person making a setoff pose a claim based on an enforceable right. *In re: Georgetown Steel Co., LLC*, 318 B.R. 313 (Bankr S.C. 2004).

"The purpose of all rules of contract construction is to determine the parties' intentions. The courts, in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes, at the time the contract was entered into. (Citation omitted.) The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language. *Wilbur Smith and Associates v. National Bank of South Carolina*, 263 S.E.2d 643, 274 S.C 296 (S.C. 1980) citing *Klutts Resort Realty, Inc. v. Down 'Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20, 24 (1977).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where the words in the statute are clear and unambiguous, we cannot give them a different meaning. *Id.* If the statute is in derogation of a common law right, it "must be strictly construed and not extended in application beyond clear legislative intent. Therefore, a statute is not to be construed in derogation of common law rights if another

interpretation is reasonable." *Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct.App.2004). However, the statute must also be read as a whole and in harmony with its purpose. *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). In that vein, "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *Browning v. Hartvigsen*, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992). Similarly, we are to construe a statute so "that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995). In the end, however, we will reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it. *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575." *16 Jade St., LLC v. R. Design Constr. Co.*, 398 S.C. 338, 728 S.E.2d 448 (S.C. 2012).

FACTS

The Note was executed by Saverne Haynes on June 4, 2015, and specifically set forth that Saverne Haynes promised to pay Efford Haynes, his heirs and assigns as named, Michel D. Haynes and/or Lucille H. Haynes, the sum of $50,000.00 in monthly installments of $400.00 beginning September 1, 2015, and every month thereafter until paid in full. The unmistakable signature of Saverne Haynes leaves no question concerning authenticity; however, Saverne Haynes denied signing the Note. The cancelled check (Plaintiff's Ex. 2), deposit slip (Plaintiff's Ex. 4), and checking account statement (Plaintiff's Ex. 5) confirm that Saverne Haynes received and deposited the $50,000.00 into her personal account within four days of the execution of the Note.

Further, Michel D. Haynes received delivery of the Note by his father, Rev. Efford Haynes, a couple of months prior to Rev. Efford Haynes' death and became the sole owner and holder of the Note. (Tr. p. 22, lines 5-9) Lucille J. Haynes died on July 1, 2017, and Efford Haynes died on September 26, 2017.

Saverne Haynes produced no documents in her responses to discovery, denied she received the $50,000.00 as a loan, denied that she signed the Note, and denied that the Note contained her signature as borrower. She confirmed that she had made no payments due to Rev. Efford Haynes on the Note and that the she had made no payments to any other party.

In her deposition on June 23, 2021, Saverne Haynes admitted that the signature on the Note looked like her signature but denied signing the Note. (Motion for Summary Judgment, Exhibit B, pp. 7, line 25; 8, lines 1-4; 10, lines 14-25) In comparing Saverne Haynes's signature on the Note to the endorsement on the back of the check, the signatures appear to be identical.

When questioned at trial if the Note was signed by her as obligor, her father as obligee, and Michel D. Haynes as a witness, Saverne Haynes testified that it was the way it looked but she did not sign it. In fact, Saverne Haynes denied signing the Note four separate times during the trial (Tr. pp. 10, lines 11-13; 30, line 6; 34, lines 21-23; and 35, line 14). Despite Saverne Haynes' repeated denials, the Trial Court concluded it was undisputed that Saverne Haynes' signature was on the Agreement and that she was "highly credible." (Final Order). Saverne Haynes's repeated testimony that she never made a payment on the Note confirms her breach to repay the Note in the installments as

promised.

This Court should REVERSE the judgment below and direct entry of judgment that the Note is a negotiable instrument, the negotiable instrument was properly transferred and assigned to and held by Michel D. Haynes, that the defense of setoff should not have been considered by the Trial Court, and award the sum of Fifty Thousand and 00/100 ($50,000.00) Dollars to Michel D. Haynes plus fees, costs, related expenses, and interest pursuant to Rule 22, *SCACR* and S.C. Code 34-31-20(B), South Carolina Code of Laws (2022 Edition).

Should this Honorable Court determine that this Note is a private contract, this Court should REVERSE the judgment below and REMAND for a calculation of the amount due, if any, upon proper consideration for Thirty-five Thousand and 00/100 ($35,600.00) Dollars which is the amount due if prior installments are barred by S.C. Code 15-5-530, South Carolina Code of Laws (2022 Edition).

ARGUMENT

I. THE TRIAL COURT ERRED IN DETERMINING THE PROMISSORY NOTE WAS NOT A NEGOTIABLE INSTRUMENT AND THEREBY FAILING TO APPLY S.C. CODE 36-3-118(a) AS THE APPLICABLE STAUTE OF LIMITATIONS.

The threshold question is whether or not the subject Promissory Note is a negotiable instrument governed by Article 3 of the South Carolina Uniform Commercial Code---Negotiable Instruments. (Final Order).

The body of the Note reads as follows:

Personal Loan Agreement

This loan is made and will be effective on Thursday, June 4, 2016.

LENDER: Rev. Efford, father of Saverne Haynes and resident of 209 South Poplar Street, Seneca, SC 29678

BORROWER: Saverne D. Haynes, daughter of Re. E. Haynes and resident of 211 South Poplar Street, Seneca, SC 29678

TERMS AND CONDITIONS

Promise to Pay:

"Saverne Haynes promise to repay to Rev. E. Haynes Fifty thousand dollars ($50,000.00)

Beginning September 1, 2015 and will pay on or before the 10th day of every month the monthly payments in the amount of four hundred dollars ($400.00) continuously until paid in full.

This loan is binding between Saverne Haynes and Rev. E. Haynes and his heirs and assigns as named Michel D. Haynes and/or Mrs. Lucille J. Haynes until this loan has been paid in full.

Legal Premise:

This agreement and the contract enforcement shall be governed by the law of the Land."

In the Final Order, the Trial Court set forth requirements in order for the Note to qualify as a negotiable instrument:

(1) be in writing and signed by the person undertaking to pay, see, definition of "Promise". §33-3-103(12) S.C. Code of Laws, as amended;

It should be noted that Title 33 of the South Carolina Code of Laws, as amended, is Corporations, Partnerships and Associations and specifically, S.C. Code 33-3-103 is Emergency Powers and is in no way related to the Uniform Commercial Code or its

application thereof. S.C. Code 36-3-103(12) defines "Promise" as a, "...a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation."

The Trial Court confirmed and concluded that the Note was in writing, was signed by Saverne Haynes, and Saverne Haynes agreed to pay a sum of money. (Final Order).

(2) contain an unconditional promise or order to pay a sum certain in money. §36-3-104(a) S.C. Code of Laws, as amended;

Although the Trial Court did not specifically conclude whether or not the Note contained an unconditional promise or order to pay a sum certain in money, the language of the Note speaks for itself with the following language, "Saverne Haynes promise to repay to Rev. E. Haynes Fifty thousand dollars ($50,000.00)." (Plaintiff's Ex. 1).

(3) be payable on demand or at a definite time, §36-3-104(a)(2); and

The Trial Court confirmed and concluded the Note provides for payment at a definite time. (Final Order).

(4) be payable to order or to bearer. §36-3-104(a)(1), S.C. Code of Laws, as amended.

The Trial Court erroneously concluded that the Note, "...does not provide for payment on demand nor "to the order" of the payee. It only provides payment to Reverend. Absent a provision for payment on demand or payment to order the Agreement cannot be deemed a negotiable instrument. As written, the Agreement is merely a private contract between Saverne and Reverend..." (Final Order). The Trial Court's basis that the Note did, "not provide for payment on demand nor 'to the order' of

the payee" is incorrect. S.C. Code 36-3-104(a)(1) and (2) provides that it is a negotiable instrument if it, "(1) is payable to bearer **or** (emphasis mine) to order at the time it is issued **or** (emphasis mine) first comes into possession of a holder; and (2) is payable on demand **or** (emphasis mine) at a definite time..." The subject Note was payable at a definite time and was made payable to Rev. Efford Haynes.

The term 'bearer' is defined as a person who is in possession of a negotiable instrument. S.C. Code 36-1-201, South Carolina Code of Laws (2022 Edition). A promise is payable to a person in possession of a negotiable instrument provided it states that it is payable to bearer or indicates that the person possessing the negotiable instrument is entitled to payment. S.C. Code 36-3-109, South Carolina Code of Laws (2022 Edition). Michel D. Haynes had actual possession of the Note itself.

As in the case of *Swindler v. Swindler*, 355 S.C. 245, 584 S.E.2d 438 (S.C. App. 2003), clearly all the requirements have been met in this case to establish that the subject Note is a negotiable instrument. Saverne Haynes never asserted that the Note failed to satisfy the criteria of S.C. Code Sections 36-3-101, et. seq. of the South Carolina Code of Laws, as amended.

Actions involving negotiable instruments are governed by S.C. Code 36-3-118(a) of the South Carolina Code of Laws (2022 Edition), which provides, "...an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date." Because Michel D. Haynes has established the Note is a negotiable instrument, he would be well within the

statute of limitations to bring the action.

The Trial Court has created criteria not related to the intent and working of this statute or the language of the Note to incorrectly find the Note non-negotiable. "...we will reject any interpretation which would lead to a result so absurd that the General Assembly could not have intended it." *16 Jade St., LLC v. R. Design Constr. Co.*, 398 S.C. 338, 728 S.E.2d 448 (S.C. 2012) citing *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575.

II. THE TRIAL COURT ERRED IN FINDING THAT THE PROMISSORY NOTE IS OWNED BY THE ESTATE OF EFFORD HAYNES.

The Trial Court concluded that the language of the Note made it doubtful that Michel D. Haynes would become the owner of the Note except as an heir at law of the intestate Estate of Rev. Efford Haynes. (Final Order). This conclusion by the Trial Court is erroneous because Rev. Efford Haynes did not simply assign the Note to his heirs and assigns. Rev. Efford Haynes assigned the Note to specific heirs and assigns:

> "This loan is binding between Saverne Haynes and Rev. E. Haynes and **his heirs and assigns as named: Michel D. Haynes and/or Mrs. Lucille J. Haynes** (emphasis mine) until this loan has been paid in full."

Nothing in the South Carolina Uniform Commercial Code---Negotiable Instruments prohibits naming a beneficiary and naming Michel D. Haynes did not impair the negotiability of the Note. It was legally permissible for Rev. Efford Haynes to draw a Note binding his named heirs and assigns to carry out the terms of the Note. *Wilbur Smith and Associates* (supra). Ownership of the Note was transferred to Michel D. Haynes pursuant to the unambiguous language of the Note.

"(1) Unless otherwise agreed between the promisor and promise, a beneficiary of

a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either (a) the performance of the promise will satisfy an obligation of the promise to pay money to the beneficiary; or (b) the circumstances indicate that the promise intends to give the beneficiary the benefit of the promised performance." RESTATEMENT (SECOND) OF CONTRACTS Section 302 (2006).

"A promise in a contract creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty." RESTATEMENT (SECOND) OF CONTRACTS Section 304 (2006).

The Note should be treated no differently than a payable on death account or a deed reserving a life estate interest. Rev. Efford Haynes was within his right to benefit whomever he chose and in this particular case it was his manifested intent to choose Michel D. Haynes and/or Mrs. Lucille J. Haynes. Because Lucille J. Haynes predeceased Rev. Efford Haynes, Michel D. Haynes was the only living heir named as the owner and beneficiary of the Note. It would not have been proper to include the Note in the Rev. Efford Haynes' estate because he had specifically named the heirs and assigns he wanted to carry out the terms of the Note until it was paid in full. The wording of the Note was intentional to ensure that Michel D. Haynes and/or Lucille J. Haynes were included in the transaction and provided for after death of Rev. Efford Haynes because the account from which the Fifty Thousand and 00/100 ($50,000.00) Dollars was drawn was a joint account owned by Rev. Efford Haynes, Lucille J. Haynes, and Michel D. Haynes.

At trial, Michel D. Haynes introduced a letter from Tiffany N. Provence, former Probate Judge for Dorchester County, Souh Carolina, who was appointed the Personal Representative for the Estates of Rev. Efford Haynes and Lucille J. Haynes. In her letter the Personal Representative interpreted the Note signed by Saverne Haynes as a debt assigned to Michel D. Haynes and not an asset of the estate of Efford Haynes. (Pl. Ex. 3). As Personal Representative of the Estate, Ms. Provence declined to pursue collection of the Note because she maintains the debt is solely to Michel D. Haynes and not to the Estate of Efford Haynes. "Unless the language or the circumstances indicate the contrary, as in an assignment for security, an assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of assignor's and a delegation of his unperformed duties under the contract." RESTATEMENT (SECOND) OF CONTRACTS Section 328 (2006).

III. THE TRIAL COURT ERRED IN BARRING MICHEL D. HAYNES' CLAIM PURSUANT TO S.C. CODE 15-3-530 WHEN INSTALLMENTS CONTINUED TO ACCRUE.

Michel D. Haynes does not concede that the document is anything but a negotiable instrument or that a three-year statute of limitations should apply; however, should such application be made, this Court should be guided by equitable principles which provide that amounts which were in installments beyond a three-year period would not be due until the agreed date of future payment. South Carolina law supports the legal concept that separate, recurring invasions even of the same right constitute a continuous accrual with each triggering its own limitations period. In *Wilson*, 414 S.C. 33, 777 S.E.2d 176, the South Carolina Attorney General brought an action against a

pharmaceutical company alleging violations of the UTPA in connection with its drug labeling. The defendant asserted that the state's claims were barred by UTPA's three-year limitations period because its labeling violations began more than three years before the applicable limitations period.

Although the South Carolina Supreme Court found that claims for violations occurring prior to the limitations period were time barred, it rejected the defendant's position that its successful statute of limitations defense for old violations also "insulated" it from liability for its new violations. The Court endorsed the "concept of continuous accrual" in cases where a claim "presents a series of discrete, independently 15 actionable wrongs . . . ." Id. at 77–78, 777 S.E.2d at 199. This Court explained the principles of this type of continuous accrual respond to:

> [T]he inequities that would arise if the expiration of the statute of limitations period following a first breach of duty or instance of misconduct were treated as sufficient to bar suit for any subsequent breach or misconduct; parties engaged in long-standing malfeasance would thereby obtain immunity in perpetuity from suit even for recent and ongoing malfeasance. In addition, where misfeasance is ongoing, a defendant's claim to repose, the principal justification underlying the limitations defense, is vitiated. . . . [Accordingly,] separate, recurring invasions of the same right can each trigger their own statute of limitations. . . . Generally speaking, continuous accrual applies whenever there is a continuing or recurring obligation: [w]hen an obligation or liability arises on a recurring basis, a course of action accrues each time a wrongful act occurs, triggering a new limitations period.

Id. at 78, 777 S.E.2d 199–200 (emphasis added) (quoting *Aryeh v. Canon Bus. Solutions, Inc.*, 55 Cal.4th 1185, 151 Cal. Rptr. 3d 827, 292 P.3d 871, 880 (2013) (quotations and citations omitted)).

The doctrine of continuous accrual is applicable in this case. Saverne Haynes' payments were to continue through 2025 pursuant to the terms of the Note. It would be inequitable to allow the breaches to continue as Saverne Haynes has made no payment whatsoever. Each breach beyond the three-year period is a recurring breach and is the basis of a new, unbarred cause of action. *Westchester Cty. Corr. Officers Benev, Ass'n, Inc. v. Cty. of Westchester*, 65 A.D.3d 1226, 1228, 885 N.Y.S.2d 728, 732 (2009).

In *Paul Holt Drilling, Inc. v. Liberty Mut. Ins. Co.*, 664 F.2d 252, 255–56 (10th Cir. 1981) the court cited 4 A. Corbin, Corbin on Contracts § 956, at 841 (1951). "There are contracts, however, that have been said to require continuing (or continuous) performance for some specified period of time, a period that may be definite or indefinite when the contract is made. These contracts too are capable of a series of 'partial' breaches, as well as of a single total breach by repudiation or by such a material failure of performance when due as to go 'to the essence' and to frustrate substantially the purpose for which the contract was agreed to by the injured party. For each 'partial' breach a separate action is maintainable…."

This action to collect on the Note was commenced April 8, 2020. The terms of the Note provided that Saverne Haynes was required to repay the loan in monthly installments beginning September 1, 2015, and on or before the 10th day of every month until paid in full which would be on or about September 10, 2025. Despite no payments being made on the Note by Saverne Haynes, Michel D. Haynes was still within the statutory period to file his action on April 8, 2020.

IV. THE TRIAL COURT ERRED IN DETERMINING THAT MICHEL D.

HAYNES WAS NOT AN ASSIGNEE OF THE PROMISSORY NOTE AND HAD NO STANDING TO PURSUE THE ACTION.

Michel D. Haynes is identified as a payee and assignee of the Note. Clearly Rev. Efford Haynes desired Michel D. Haynes to be the beneficiary of said Note. No ambiguity exists since Michel D. Haynes and his mother, Lucille J. Haynes, were the only beneficiaries pursuant to the four corners of the Note. As Lucille J. Haynes predeceased Rev. Efford Haynes, Michel D. Haynes was entitled to the benefits of the Note. Michel D. Haynes submits that the language of the Note is unambiguous. As set forth in *Ray* (supra), "[The Circuit Judge ruled that]...the notes are clear and unambiguous on their face and therefore speak for themselves."

a. The Trial Court erred in finding that endorsement of the Note was required for enforcement.

The Trial Court's conclusion and ruling that, "It is not clear whether Rev. Efford Haynes actually delivered possession of the Agreement to Michel..." and, "There is no indication that Reverend "endorsed" the Agreement over to Michel." (Final Order) is not consistent with the meaning and intent of S.C. Codes 36-3-201, 36-3-202, 36-3-203, and 36-3-204, South Carolina Code of Laws (2022).

Michel D. Haynes testified without dispute or objection that the Note was delivered to him by his father about two months before his father passed (Tr. p. 22, lines 5-9) which was undisputed by Saverne Haynes during her cross-examination of Michel D. Haynes. (Tr. p. 28, lines 2-5). The definition of transfer means the "physical delivery of any instrument – negotiable or not – intending to pass title. S.C. Code 36-3-203(a) of the South Carolina of Laws (2022 Edition) provides an instrument is transferred when it

is delivered by a person other than the issuer for the purpose of giving to the person receiving delivery the right of enforcement.

Michel D. Haynes was the holder of the Note and therefore entitled to enforce it. "Persons entitled to enforce" the Note would include a non-holder who has possession of the Note with rights of the holder. S.C. Code 36-3-301, South Carolina Code of Laws (2022). S.C. Code 36-3-301 recognizes that transferees such as Michel D. Haynes may take shelter in the rights of the transferor or holder. S.C. Code 36-3-203(b), South Carolina Code of Laws (2022), is known as also known as the shelter rule, meaning Michel D. Haynes takes "shelter" in the rights of Rev. Efford Haynes. The transfer or delivery of an instrument, regardless if the transfer is a negotiation, vests any right of the transferor to enforce the instrument in the transferee. That would include any right as a holder in due course. Even if the transferee is not a holder because the transferor did not endorse, the transferee is still entitled to enforce the instrument under S.C. Code 36-3-301, South Carolina Code of Laws (2022) if the transferor was a holder at the time of transfer. Even if the transferee is not a holder, under subsection S.C. Code 36-3-203(b) the transferee obtained the rights of the transferor as holder. Transfer is the physical delivery of any instrument – negotiable or not – intending to pass title. S.C. Code 36-3-203(a) provides that an instrument is transferred when it is delivered by a person other than the issuer for the purpose of giving to the person receiving delivery the right of enforcement. S.C. Code 36-3-201(a) of the South Carolina of Laws (2022 Edition) defines negotiation as a transfer of possession, whether voluntary or involuntary, of an instrument to a person who becomes its holder if possession is obtained from a person

other than the issuer of the instrument. A holder is defined in S.C. Code 36-1-201(b)(21) of the South Carolina of Laws (2022 Edition) as, " (A) the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession; (B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or (C) the person in control of a negotiable electronic document of title.

Even if the Trial Court was correct and there was no endorsement to Michel D. Haynes, Michel D. Haynes as the new owner of the Note would take shelter in the holder status of Rev. Efford Haynes and is still entitled to enforce the Note according to S.C. Codes 36-3-203(b) and 36-3-301, and 36-3-308(b), South Carolina Code of Laws (2022).

Nonetheless, the clear language of the Note specifically naming Michel D. Haynes as an owner and assignee of the Note with all rights possessed by Rev. Efford Haynes expresses the intent of Rev. Efford Haynes. Any requirement of endorsement or consideration would be unnecessary since ownership of the Note passed solely to Michel D. Haynes at the death of Rev. Efford Haynes as Lucille J. Haynes predeceased Rev. Efford Haynes.

b. The Trial Court erred in finding no evidence of Assignment.

The Trial Court further contends there is no language indicating that the Note was assigned to Michel D. Haynes by Rev. Efford Haynes. (Final Order). Michel D. Haynes joins the Trial Court in citing *Moore v. Weinberg*, 644 S.E.2d 740, 373 S.C. 209 (2007) and *Wilbur Smith and Associates v. National Bank of South Carolina*, 263 S.C.2d 643, 274 S.C. 296 (1986). Not only was there an (1) assignor, namely Rev. Efford Haynes;

(2) assignee, namely Michel D. Haynes; and (3) and transfer of the Note assigned from the assignor to assignee, specifically the undisputed transfer from Rev. Efford Haynes to Michel D. Haynes. (Tr. p. 22, lines 5-9). See also *Donahue v. Multimedia, Inc.*, 608 S.E.2d 162, 362 S.C. 331 (S.C. App. 2005).

The Note itself could only be interpreted to vest ownership in Michel D. Haynes. "The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered so that it may judge the meaning of the words and the correct application of language." *Wilbur Smith and Associates* (supra). The Note was explicit and specific in manifesting its intent.

c. The Trial Court erred in finding that Michel D. Haynes was required to provide consideration to Saverne Haynes.

Saverne Haynes never pled the affirmative defense of lack of consideration. The Trial Court's finding that there was no consideration for the assignment begs the question as to whether or not such consideration is required. Michel D. Haynes alleges that there is no such requirement. There was a negotiation of the Note by undisputed transfer from Efford Haynes to Michel Haynes. S.C. Codes 36-3-201 and 36-3-302, South Carolina Code of Laws (2022 Edition).

The Trial Court contends that Michel D. Haynes' qualifications as an owner, holder, and named beneficiary required evidence of consideration supplied by Michel D. Haynes. "The only consideration which is shown by the evidence was the $50,000.00 advanced by Reverend to Saverne pursuant to the Agreement. That consideration would have supported the obligation of Saverne under the Agreement during the life of

Reverend and as to any claim asserted after Reverend's death by his estate. However, Michel has provided nothing to Saverne to support her obligation to pay nor has he provided any consideration to Reverend for an assignment or negotiation of the Agreement." (Final Order). These requirements are inconsistent with the Uniform Commercial Code and law governing negotiable instruments. The term "consideration" is defined as, "...any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration...." S.C. Code 36-3-303(b), South Carolina Code of Laws (2022 Edition). The consideration of $50,000.00 was provided in the original Note signed by Rev. Efford Haynes and Saverne Haynes and funded by the joint financial account of Rev. Efford Haynes, Michel D. Haynes, and Lucille J. Haynes. (Pl. Ex. 2)(Tr. pp. 16, lines 1-25; 17, lines 1-10). Therefore, Michel D. Haynes was the owner of the account from which Saverne Haynes was paid the $50,000.00.

Swindler (supra) held that, "...only if the obligee can show the obligor is in possession of the instrument "'unintentionally, or under a mistake, or without authority'" can the presumption be overcome and the discharge proven to be without effect." Saverne Haynes never disputed the assignment or Michel D. Haynes' possession thereof. "A term of a contract manifesting an obligor's assent to the future assignment of a right or an obligee's assent to the future delegation of the performance of a duty or condition is effective despite any subsequent objection. A manifestation of such assent ....in circumstances in which a promise would be binding without consideration or if a material change of position takes place in reliance on the manifestation." RESTATEMENT

(SECOND) OF CONTRACTS Section 323 (2006). Regardless of the Trial Court's finding and conclusion of no consideration, the Note itself expresses that Michel D. Haynes was vested with the same rights held by Rev. Efford Haynes which included the right to pursue a claim to enforce the Note.

d. The Trial Court erred in finding that only Reverend Haynes had deposited funds into the multi-party account at the time of the Promissory Note.

Undisputed evidence shows that the check for $50,000.00 was funded from the joint account of Rev. Efford Haynes, Lucille J. Haynes, and Michel D. Haynes. The Trial Court contended, "There is no evidence that anyone other than Reverend had deposited funds into that account at the time of the Agreement and the advance of funds to Saverne. During the lifetime of the parties to a multi-party account, the funds on deposit are the property of the person who deposited those funds into the account, in this case apparently Reverend." (Final Order).

Michel D. Haynes testified that the funds were drawn on account owned with his parents and he agreed to Saverne Haynes receiving the loan as a joint owner of the money. (pp. 16, lines 1-25; 17, lines 1-10). Saverne Haynes did not dispute Michel's testimony and she never at any time alleged that the account was funded solely by her father. Even if the Trial Court's assumption was accurate, it is of no legal consequence if Michel D. Haynes did not fund the account since he was a joint owner as well as a named the payee and assignee of the Note.

V. THE TRIAL COURT ERRED IN FINDING THE LANGUAGE OF THE PROMISSORY NOTE WAS NOT ADEQUATE TO CREATE AN ASSIGNMENT.

The Trial Court's findings of noncompliance with the definition of a negotiable instrument are refuted and satisfied by the provisions set forth in Article 3 of the South Carolina Uniform Commercial Code---Negotiable Instruments, specifically S.C. Codes 36-3-203(b) and 36-3-301, South Carolina Code of Laws (2022 Edition).

The record is replete with facts showing why Michel D. Haynes was an assignee and holder in due course and beneficiary of the Note.

(1) The Note itself contained Michel D. Haynes' name and identity with power to enforce the Note until paid in full. (Pl. Exhibit 1).

(2) There was undisputed testimony that Michel D. Haynes was a joint owner to the account from which Efford Haynes wrote the $50,000.00 check to Saverne Haynes. (pp. 16, lines 1-25; 17, lines 1-10).

(3) Michel D. Haynes provided undisputed testimony that he received possession of the Note about two months before the death of Efford Haynes, that he was the payee of the Note, that no payment was made on the Note, and no reason was supplied by Saverne Haynes for not paying it. (Tr. p. 22, lines 5-25).

(4) Saverne Haynes questioned Michel D. Haynes concerning his possession of the Note but did not dispute his possession or claim that he had no right to possession. (Tr. p. 28, lines 2-15).

The Trial Court further concluded that Michel D. Haynes was required to prove that Saverne had an obligation to pay him. (Final Order). Michel D. Haynes once again relies upon S.C. Codes 36-3-203(b) and 36-3-301, South Carolina Code of Laws (2022

Edition), the language of the Note, and check number 1041 for $50,000.00 (Pl. Exs. 1 and 2), which was signed by Rev. Efford Haynes and from the joint account of Efford, Lucille, and Michel Haynes and received by Saverne Haynes.

The Trial Court erred in finding legal deficiency as to possession stating, "very little information surrounding his obtaining possession of the Agreement after his mother had died and shortly before his father died" (Final Order) despite there being no dispute as to possession of the Note and no objection being raised concerning Michel D. Haynes' possession thereof. Two facts are clear: (1) Michel D. Haynes had possession of the Note, and (2) the Note was given to him by Rev. Efford Haynes before his death.

In any case, "Where the terms of a written instrument are unambiguous, clear and explicit, extrinsic evidence of statements of any of the parties to it, made contemporaneously with or prior to its execution, is inadmissible to contradict, add to, subtract from, vary or explain its terms, in the absence of fraud, accident or mistake in its procurement." *Ray* (supra) citing *Proffit v. Sitton*, 244 S.C. 206, 136 S.E.2d [281 S.C. 173] 257 (1964); *Charleston & W.C. Ry. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957); *McLeod v. Sandy Island Corp.*, 265 S.C. 1, 216 S.E.2d 746 (1975).

VI. THE COURT ERRED IN APPLYING A DEFENSE OF EQUITABLE SETOFF.

Equitable setoff was awarded by the Trial Court although Saverne Haynes never presented a defense of setoff and provided no documented, admissible, or credible evidence to support such defense. Michel D. Haynes contends that any testimony of Saverne Haynes regarding checks that pre-date the execution of the contract is

inconsistent with the debt Saverne Haynes owed under the Note and should not be considered. *Ray v. South Carolina National Bank, Inc.*, 314 S.E.2d 359, 281 S.C. 170, (Ct. App. 1984). "It is held as a general rule that in equity, as at law, the right of set-off is reciprocal, and only mutual claims and such as are in the same right can be set-off." *Elliott v. Carroll*, 173 S.E.2d 908, 172 S.C. 276 (S.C. 1934) citing 57 C.J. 446, §96.

"As a general rule in equity, as at law, it is essential to the establishment of a setoff that the claims or debts must be mutual, that is, they must subsist or be owing, between the same parties in the same right or capacity, and must be of the same kind or quality. Equity will not ordinarily allow a set off a debts accruing in different rights or in dissimilar capacities. *South Carolina National Bank, Greenville v. Hammond*, 198 S.E.2d 123, 260 S.C. 622 (S.C. 1973) citing 20 Am.Jur. (2d), Counterclaim, Recoupment, etc., Section 75, at Page 293.

Saverne Haynes' testimony never changed throughout the course of litigation. She denied signing the Note, denied that the Note was a loan, and admitted that she failed to remit any payment on the Note. Her testimony was that the $50,000.00 check she received from her father, Rev. Efford Haynes, was simply a return of money she had deposited with him back in 1997-1998 that he saved for her. (Tr. pp. 24, lines 8-14; 26, lines 4-5; 34, lines 17-25 ; 25, lines 1-25; 36, lines 1-21). However, the Trial Court still found there was a basis for a setoff claim despite the fact he confirmed from "reading between the lines" that Saverne Haynes' payments were not payments on the Note but a return of money she made to her father in 1997-1998. (Tr. p. 26, lines 9-15). Saverne Haynes' self-serving testimony lacked clarity and no relationship can be established that

would prove a lawful setoff against the Note signed by Saverne Haynes in 2015 to moneys that may have been deposited more than 17 years before the date of the Note. (Tr. p. 36, lines 10-20).

The Trial Court found Saverne Haynes, who is a retired nuclear chemist at Duke Power (Tr. p. 34, lines 6-16), to be "highly credible" and "presented herself as an intelligent, experienced person who is sincere in all that she states and presents." (Final Order). The Trial Court found that it was undisputed that Saverne Haynes signed the Note despite Saverne Haynes denying four separate times that she even signed the Note but admitting she received the $50,000.00 check (Tr. p. 30, lines 13-16).

Even if this Court should choose to consider the Trial Court's finding of setoff, his finding must be based on competent legal evidence and of probative force. The Trial Court however, in order to buttress his findings, stated nothing other than Saverne Haynes' credibility to create his unsupported presentation of setoff or that the setoff would reach or exceed $50,000.00. (Final Order). In general, in determining the sufficiency of evidence, "The evidence must be sufficient to warrant a reasonable belief in the existence of those facts which the verdict or finding establishes; the verdict of finding must be grounded on a reasonable certainty as to probabilities arising from a fair consideration of the evidence, and cannot be predicated upon a mere probability or on more possibilities." 32A C.J.S. Section 1042, p.810-812.

The record is devoid of any evidence or testimony from Saverne Haynes that she has ever made a claim against her father, Rev. Efford Haynes who died in 2017, or his estate for any funds she may have given him. Saverne Haynes is barred by the three-year

statute of limitations pursuant to S.C. Codes 15-3-530 and 19-11-20, South Carolina Code of Laws (2022 Edition). For these reasons the Trial Court could not qualify his finding of the unpled defense of setoff.

Verdicts must be based on evidence and cannot be predicated on surmise or speculation. *Coleman v. Palmetto State Life Insurance Co.*, 128 S.E.2d 699 241 S.C. 384, (S.C. 1962). In this case no admissible, credible, or non self-serving evidence was presented to support Saverne Haynes' setoff.

The case of *Patrick v. English*, 91 S.E. 295, 106 S.C. 267 (1917) held that the living party's testimony about a transaction between the living party and another party now deceased is limited. "It was manifestly incompetent for Patrick to testify that Mobley made payments and promises to him and in what the last payment consisted. Those were plainly transactions betwixt the two men, and the statute closes Patrick's mouth thereabout." *Patrick* (supra). The Trial Court considered incompetent evidence as credible when the very basis of the statute is to bar self-serving testimony that cannot be refuted by a deceased party. The record shows that Saverne Haynes did not place the checks that she presented into evidence and make them exhibits as required by Rule 901(a), *SCRE.* In spite of this evidentiary requirement, the Trial Court considered matters which were inadmissible evidence related to the transaction with the checks and Saverne Haynes' testimony as support for the setoff theory.

The Trial Court erred in basing his findings upon the theory that the burden of proof was on Michel D. Haynes to dispute or supply evidence to refute a defense that was never pled by Saverne Haynes. This is a peculiar conclusion considering that Saverne

failed to provide documentation in her responses to the Request for Production of Documents which requested that very information. It was not Michel Haynes' obligation to provide proof against a setoff claim that was unrelated to the Note, never pled, raised at trial, or documented. The Trial Court's findings are not based on any known principle of law or equity.

The case of *Drews Co., Inc. vs. Ladwith-Wolfe Associates, Inc.*, 371 S.E.2d 532, 296 S.C. 207 (S.C. 1988) provides a holding which states that the proof of damages, "must pass the realm of speculation or opinion not founded on facts, and must consist on actual facts from which a reasonably accurate conclusion regarding the cause and the amount of loss can be logically and rationally drawn. Am. Jur. 2d Section 641 (1988). The *Drews* case (supra) presents the rule of "reasonable certainty." Saverne Haynes presented no evidence whatsoever to establish specific amounts.

"The fact that a party produced the best evidence he/she has, or should be expected to have, does not exempt him from the rule which requires evidence to be sufficient to satisfy a jury." 32A C.J.S. Section 1042 citing *Citizens Bank of Coldwater v.. Callecott*, 174 S.O. 78, 178 Miss 747. Regardless if the Trial Court found Saverne Haynes intelligent and credible, there must be sufficient evidence to present what allegations of facts she was credible about. An examination of the record does not present any reasonable basis of fact upon which the Trial Court's finding can be supported as sufficient evidence.

VII. THE TRIAL COURT ERRED IN FAILING TO APPLY THE PAROL EVIDENCE RULE.

The parol evidence rule prohibits testimony which is sought to be introduced to

the effect that the maker is not liable under certain conditions, the introduction of such evidence violates the rule against parol evidence and is, therefore, not admissible. *Ray* (supra).

The Trial Court's analysis of the Note made a number of erroneous findings and conclusions to find the Note non-negotiable in spite of the clear language and intent of the Note to transfer the Note to Michel D. Haynes as holder and/or a person entitled to enforce. The Trial Court erred in failing to consider the applicable statutes. In particular the provision of S.C. Code 36-3-203(b) provides, "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument."

The critical issue was whether or not Michel D. Haynes was the lawful transferee of Note. Undisputed testimony proves that he was in fact such an undisputed holder from his father. All of Trial Court's finding of lack standing, lack of consideration, lack of endorsement had no consequential effect on the Note held by Michel D. Haynes since the Note complied with S.C. Code 36-3-101 et. seq. and that Michel D. Haynes was entitled to pursue and enforce his claim as a holder of the Note pursuant to S.C. Code 36-3-203(b) since the record contains no evidence of fraud or illegality Michel D. Haynes should be declared a person entitled to enforce the Note.

Additionally, parol evidence is not admissible to contest the obligation of Michel

D. Haynes. In *Ray* (supra), the court held, "In an action on a promissory note where parole evidence is sought to be introduced to the effect that the maker is not liable under certain conditions, the introduction of such evidence violates the rule against parol evidence and is therefore, not admissible." citing *Gunter, Inc. v. Hindman*, 175 S.C. 436, 179 S.E. 494 (1935); *Conran v. Yager*, 263 S.C. 417, 211 S.E.2d 228.

VIII. THE TRIAL COURT ERRED BY FAILING TO SEPARATELY IDENTIFY THE CONCLUSIONS OF LAW AS REQUIRED BY RULE 52(A), *SCRCP.*

Michel D. Haynes submits that the Trial Court's Final Order did not properly state and set forth its conclusions of law. The Order contained various observations and suspicions which could not be determined to be findings of fact and conclusions of law relating to the facts of this case. The Trial Court did not properly and separately set forth appropriate statutes of the U.C.C. with factual findings to separately support conclusions of law sufficient to ensure the law is faithfully executed. *Church v. McGee*, 705 S.E.2d 481, 391 S.C. 334 (S.C. App. 2011).

The Trial Court's finding that the signature of Saverne Haynes was undisputed contradicted the record of the transcript showing repeated denials by Saverne Haynes that she ever signed the Note. (Tr. pp. 10, lines 11-13; 30, line 6; 34, lines 21-23; and 35, line 14). While it is true the Trial Court did not dispute Saverne Haynes' signature, Saverne Haynes did.

The Trial Court erroneously set forth S.C. Code 33-3-103 as a definition of "Promise." The correct reference is S.C. Code 36-3-103(12).

The Trial Court failed to accurately provide complete and necessary statutory

references to applicable rules affecting the negotiability of the Note, specifically S.C. Codes 36-3-104, 36-3-108, 36-3-109, 36-3-110, 36-3-201, 36-3-202, 36-3-203, 36-3-204, and 36-3-301, 36-3-302, 36-3-303, 36-3-304, 36-3-305, and 36-3-308, South Carolina Code of Laws (2022 Edition).

CONCLUSION

The Note is fully qualified as a negotiable instrument as required by S.C. Code 36-3-104, South Carolina Code of Laws (2022 Edition).

Michel D. Haynes has presented clear and convincing evidence that Saverne Haynes has made no payment pursuant to the terms of the Note.

The Trial Court cited, considered, and found numerous unpled, unraised defenses to support his ruling that the Note was not a Negotiable Instrument. Michel D. Haynes contends that none of the defenses stated in the Trial Court's findings were admissible under the applicable laws of South Carolina which require the defenses to a Note must be pled. Rule 8(c), *SCRCP*.

Therefore, the Order of the Trial Court should be reversed and Michel D. Haynes should be awarded the sum of $50,000.00 as set forth in the unambiguous language of the Note plus appropriate costs and expenses.

Respectfully submitted,

July 18, 2022

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Steven C. Kirven, Master In Equity

Case No. 2020-CP-37-00249
Appellate Case No. 2022-000699

Michel D. Haynes, Appellant,

v.

Saverne Haynes, Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Respondent, Saverne Haynes, by depositing copies of same in the United States Mail, postage prepaid, on July 5, 2022, addressed to 211 S. Poplar Street, Seneca, South Carolina 29678.

July 18, 2022

s/ Robert L. Waldrep, Jr.
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July 18, 2022

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Jul 18 2022
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

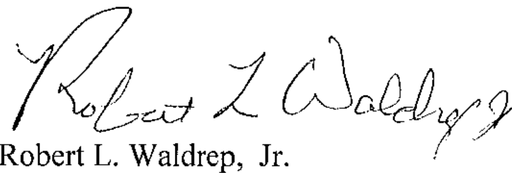
Re: Michel D. Haynes vs. Saverne Haynes
Case No.: 2020-CP-37-249
Appellate Case No. 2022-000699

Dear Ms. Kitchings:

Please find enclosed herewith the Initial Brief of Appellant and Designation of Mater to be Included in the Record on Appeal along with the Proof of Service in the above case.

Please do not hesitate to contact me should you have any questions or concerns.

Yours truly,



Robert L. Waldrep, Jr.

RLWjr.kbh
Enclosures

cc: Saverne Haynes, pro se