

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**May 30 2023**

**SC Court of Appeals**

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APPEAL FROM SPARTANBURG COUNTY  
Court of Master and Equity

Shannon M. Phillips, Master and Equity Judge

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APPELLATE CASE NO.: 2022-001304

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Kesha Petty, Appellant

v.

Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc., and B&B Amusement, Inc., Respondent.

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RECORD ON APPEAL

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Kesha Petty R. Jay Anthony  
553 Chastine Drive 650 E. Washington Street Spartanburg, SC 29301  
Greenville, SC 29601 *Pro-se Appellant Attorney for Respondent*

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**FORM 4**

**STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE**

|                  |                               |
|------------------|-------------------------------|
| <b>COUNTY OF</b> | <b>IN THE COURT OF COMMON</b> |
| Spartanburg      | PLEAS CASE NO.                |
|                  | 2019CP4203418                 |

Kesha Petty Cathy Biggerstaff et al

PLAINTIFF(S) DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

**JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

**DECISION BY THE COURT.** This action came to trial or hearing before the court.



The issues have been tried or heard and a decision rendered.

**ACTION DISMISSED** (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a),

SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);

Other

**ACTION STRICKEN** (CHECK REASON): Rule 40(j), SCRCP; Bankruptcy;

Binding arbitration, subject to right to restore to confirm, vacate or modify

arbitration award;

Other

**STAYED DUE TO BANKRUPTCY**

**DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):

Affirmed; Reversed; Remanded;

Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR

ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** See attached order (formal order to follow) Statement of Judgment

by the Court:

See additional order information below

**ORDER INFORMATION**

This order ends does not end the case. See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on .06/05/2020

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| <b>NAMES OF TRADITIONAL FILERS SERVED BY MAIL</b> |
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SCRCP Form 4CE (08/31/2017) Page 1 of 2 ROA001

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter came before the court on the Defendants' SCRCP Rule 12(b)(6) motion as to the fraud claim and SCRCP Rule 56 motion for summary judgement as to the Breach of Contract, Fraud, and Promissory Estoppel causes of actions. After reviewing the documents presented by both sides and receiving the arguments from both sides, this Court will grant the present motions. The granting of the present motions will NOT end the case and the form 4 should reflect that it does NOT end the case.

Since the granting of these motions do not conclude the case on its merits, no other formal order will be issued by this Court. If the parties desire a more formal order,

counsel for the defendants is asked to prepare one for this court to sign.

A few observations that control the present decision. The statute of fraud clearly applies. This is a contract that involves real estate. Also, the potential contract at issue could not have been performed within 12 months. This Court cannot reasonably conclude that financing for the purchase of the property was going to be for a term less than 12 months.

Also, while the parties clearly were negotiating potential terms of the contract, no contract was ever signed, thus there was no meeting of the minds for purposes of an analysis under a breach of contract or promissory estoppel theory. The arguments that the defendant had a potential buyer waiting in the wings, so to speak, has no factual relevancy to why the plaintiff did not sign the contract. Plaintiff simply did not sign the contract. Also, while this Court views the allegations in the complaint liberally, in this case the “right to reply” was not adequately presented nor was it supported factually for purposes of a fraud analysis.

Nevertheless, the case continues.

Thank you all for your attention.

Mark Hayes



Spartanburg Common Pleas

**Case Caption:** Kesha Petty VS Cathy Biggerstaff ,  
defendant, et al **Case Number:** 2019CP4203418

**Type:** Order/Electronic Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

Electronically signed on 2020-06-05 14:55:35 page 3 of 3

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IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-03418

ROA003

STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

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Kesha Petty,

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Plaintiff,

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v.

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Cathy Biggerstaff, individually and as

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owner of B&B Amusement, Inc., and

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**ORDER**

This matter came before the Court on Plaintiff's Motions to Dismiss and for Summary

Judgment. A hearing was held on Wednesday, August 12, 2020. As a safeguard due to the COVID

crisis, and with the consent of both parties, the hearing was held via WebEx link. At the time for

the hearing, counsel for both Plaintiff and Defendants were present. Briefs and exhibits were submitted by the parties with regard to the motions. After careful consideration of the arguments of counsel, the briefs, and the case file, the motions are denied.

This matter involves claims by the Plaintiff relating to negotiations between herself and Defendants to lease and to potentially purchase a property located at 1330 Southport Road in Spartanburg, South Carolina (hereinafter the “Property”). Plaintiff asserted various claims against Defendants in her Complaint, including a claim for Unjust Enrichment. In response, Defendant asserted counterclaims for (1) Unjust Enrichment, (2) Trespass, and (3) Eviction. Plaintiff moved to dismiss all of Defendants’ counterclaims and also moved for summary judgment as to her own claim against Defendants for Unjust Enrichment.

**A. Plaintiff’s Motion to Dismiss**

Plaintiff moved to dismiss the claims for Trespass and Eviction arguing that Plaintiff lacked standing to assert such claims due to the subsequent sale of the building. Plaintiff also moved to dismiss the claim for Unjust Enrichment based on a ruling by Judge Mark Hayes on motions

previously filed by the Defendants, which held that no contract existed between the parties. In their brief and during the hearing, Defendants agreed that the counterclaim for Eviction is moot, as Plaintiff left the Property following the filing of the Counterclaim. Therefore, only the counterclaims for Trespass and Unjust Enrichment remain.

A Rule 12(b)(6) motion “must be based solely upon the allegations set forth on the face of the complaint.” Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). At this stage, the Court must presume all well-pled facts to be true.” Gressette v. South Carolina Elec. & Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006). “A Rule 12(b)(6) motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.” Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995).

Viewing the pleadings through the standards set forth above, Plaintiff’s Motion to Dismiss must be denied. With regard to Defendants’ counterclaim for Trespass, the elements of the cause of action are (1) legal possession, (2) voluntary entry on the property by the defendant, and (3) the entry was without plaintiff’s permission. See Michael G. Sullivan, ELEMENTS OF CIVIL CAUSES OF ACTION, § 44-A. Defendants’ pleadings satisfy the elements, and so dismissal is not

appropriate under the Rule 12(b)(6) standard.

Similarly, with regard to Defendants' counterclaim for Unjust Enrichment, the elements of the cause of action are: (1) a benefit conferred upon the defendant by the plaintiff; (2)

realization of the benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. See Columbia

Wholesale Co., Inc. v. Scudder, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1993). Again,

Defendants' pleadings satisfy the elements, and so dismissal is not warranted.

### **B. Plaintiff's Motion for Summary Judgment**

In addition to the Motion to Dismiss, Plaintiff moved for Summary Judgment as to her claim for Unjust Enrichment against Defendants. Plaintiff argued that all elements have been established.

Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law. See Glover v. County of Charleston, 361 S.C. 634, 606 S.E.2d 773 (2004)<sup>1</sup>. Viewing the pleadings, deposition excerpts, and other facts

within the case file in this light, summary judgment is not warranted, as genuine issues of

material fact on this matter remain, including whether work done by Plaintiff conferred a benefit

on the Defendants and whether Defendants realized and retained any such benefit without paying

value to the Plaintiff.

### **C. Conclusion**

For the reasons set forth above, Plaintiffs' Motion to Dismiss and Motion for Summary Judgment are denied.

**IT IS SO ORDERED.**

\_\_\_\_\_, 2020 Circuit Court Judge  
Spartanburg, South Carolina

\_\_\_\_\_  
Hon. R. Keith Kelly

<sup>1</sup> Overruled on other grounds by Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005).

**Case Caption:** Keshia Petty VS Cathy Biggerstaff ,  
defendant, et al **Case Number:** 2019CP4203418

**Type:** Order/Other



It is so Ordered.

s/ R. Keith Kelly - 2165

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**FORM 4**

**STATE OF SOUTH CAROLINA JUDGMENT IN A CIVIL CASE**

**COUNTY OF**  
Spartanburg

**PLEAS CASE NO.**  
2019CP4203418

**IN THE COURT OF COMMON**

Kesha Petty Cathy Biggerstaff et al

PLAINTIFF(S) DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

**JURY VERDICT.** This action came before the court for a trial by jury. The issues

have been tried and a verdict rendered.

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■ **DECISION BY THE COURT.** This action came to trial or hearing before the court.

The issues have been tried or heard and a decision rendered.

**ACTION DISMISSED** (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a),

SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);

Other

**ACTION STRICKEN** (CHECK REASON): Rule 40(j), SCRCP; Bankruptcy;

Binding arbitration, subject to right to restore to confirm, vacate or modify

arbitration award;

Other

**STAYED DUE TO BANKRUPTCY**

**DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):

Affirmed; Reversed; Remanded;

Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR

ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** See attached order (formal order to follow) Statement of Judgment

by the Court:

The motion to refer to masters is granted.

**ORDER INFORMATION**

This order ends does not end the case. See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/24/2021

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

SCRCP Form 4CE (08/31/2017) Page 1 of 2 ROA008

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's

entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**Case Caption:** Kesha Petty VS Cathy Biggerstaff ,  
defendant, et al **Case Number:** 2019CP4203418

**Type:** Order/Electronic Form 4



Spartanburg Common Pleas

It is so Ordered.

s/ R. Keith Kelly - 2165

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STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

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Kesha Petty,

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Plaintiff,

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v.

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Cathy Biggerstaff, individually and as

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owner of B&B Amusement, Inc., and

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B&B Amusement, Inc.,

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Defendants.

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IN THE COURT OF COMMON PLEAS

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This matter came before the Court for trial on Thursday, August 11, 2022. Present at the trial were Zachary Farr, counsel for Plaintiff, and Jay Anthony, counsel for Defendants. The parties were also in attendance.

This case was initially filed by Plaintiff on September 25, 2019 in the Court of Common Pleas for Spartanburg County, setting forth four causes of action: (1) Breach of Contract; (2) Fraud; (3) Unjust Enrichment; and (4) Promissory Estoppel. Defendants filed an Answer and Counterclaim. After discovery, Defendants filed a Motion to Dismiss as to the Fraud cause of action and a Motion for Summary Judgment as to the Breach of Contract, Fraud, and Promissory Estoppel causes of action, as well as Plaintiff's claims for attorney's fees and costs. These motions were granted, leaving only Plaintiff's cause of action for Unjust Enrichment, as well as Defendants' counterclaims for Unjust Enrichment and Trespass. Defendants then made a motion

to refer this matter to this Court, which motion was granted.

Prior to the commencement of the proceedings, Plaintiff and Defendants agreed on the admission of various documents, which were admitted into evidence by stipulation. Plaintiff and

ROA011

Defendants thereafter presented witnesses and exhibits in support of their cases. Following the conclusion of the presentations by both parties, Defendants moved for summary judgment as to the claims against Ms. Biggerstaff, individually, asserting that Plaintiffs failed to meet their burden of showing any claims viable against Ms. Biggerstaff. Having heard the witnesses and considered the testimony, exhibits, and arguments of counsel, it is left to the Court to make findings of fact and conclusions of law, as set forth below.

### LAW

“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” Dema v. Tenet Physician Servs.–Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). To recover restitution

in the context of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. See Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012).

Notably, not just any benefit conferred meets the first element. See Inglese v. Beal, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). Rather, the benefit must be non-gratuitous, either because it was conferred at the defendant's request or because the circumstances were such that the plaintiff could reasonably rely on the defendant for repayment. See id. at 298, 742 S.E.2d at 691.

### **FINDINGS OF FACT & CONCLUSIONS OF LAW**

After considering the testimony and evidence presented, as well as facts admitted by both parties, I make the following Findings of Fact and Conclusions of Law:

ROA012

1. This matter came before me pursuant to the Order of Hon. J. Mark Hayes dated June 5, 2020.

2. In 2019, Plaintiff Kesha Petty sought to rent property for an event planning and

event rental business. She made contact with Defendants Cathy Biggerstaff and B&B Amusement, Inc. (hereinafter “B&B”) (collectively “Defendants”). B&B owned certain property located at 1330 Southport Road in Spartanburg (the “Property”). Ms. Biggerstaff is the owner of B&B.

3. Plaintiff and B&B engaged in discussions about terms of a lease and a potential agreement to purchase. While the parties agreed on some terms, they were ultimately unable to fully agree on the terms of a lease and Plaintiff was unable to obtain the financing to purchase.

4. B&B allowed Plaintiff to move into the Property while negotiations were ongoing, and Ms. Petty was in possession of the Property for nine months (March – November of 2019). See Plaintiff’s Responses to Requests for Admission, No. 3. During this time, Plaintiff never paid any rent, utilities, or taxes to B&B Amusement for the Property.

5. When the discussions regarding the lease broke down, Plaintiff filed suit, while still using the Property. In fact, Plaintiff maintained possession of the Property even after Defendants filed a counterclaim for eviction and trespass. Plaintiff ultimately turned her key over to B&B in November of 2019.

6. When Plaintiff took possession of the Property, it was in need of cleaning and the parties agreed that Plaintiff would do such cleaning in exchange for the waiver of the security

deposit as well as the first month's rent. The parties had agreed that the security deposit would be \$800 and the monthly rent would be the same.

7. Once she took possession of the Property, Plaintiff noticed water damage to one wall and communicated the issue to B&B.

ROA013

8. The parties agreed that Plaintiff would repair the wall, with help from a friend of Ms. Biggerstaff, and that Defendants would pay for materials. However, Ms. Biggerstaff's friend was unable to assist due to a medical condition. Plaintiff acknowledges that B&B paid for drywall materials for the repair to the wall.

9. In addition to cleaning the space and repairing the wall, Plaintiff engaged in other work on the Property to transform the space into an event venue (the "Other Work"). This work included removing ceiling fans and replacing them with chandeliers, painting the bar, landscaping around her sign, and painting the floor white.

10. Plaintiff began the Other Work while negotiations with B&B were still ongoing and she acknowledged in her testimony that, while she obtained consent from B&B to perform the

cleaning and wall repair work, B&B did not expressly consent to the Other Work, nor did B&B

agree to compensate her for the same.

11. In fact, Plaintiff mentioned in an April 2019 text message, “I have did a lot of work to the building . . . going out on faith.” *See* Text Messages, Plaintiff’s Exhibit 9.

12. Plaintiff testified in her deposition that at some point, Ms. Biggerstaff discouraged her from doing further work.

13. Once she was given access to the space, Plaintiff moved some inventory from her home into the Property.

14. During her testimony at trial, Plaintiff initially denied holding events at the Property during her time in possession. However, when confronted with deposition testimony, she acknowledged holding events such as a family gathering, teen night, and grand opening for her business.

ROA014

15. Numerous times during her testimony, Plaintiff was contradicted by her deposition testimony, impacting her credibility as a witness. This is of particular significance in a case where

so much of Plaintiff's damages depend on uncorroborated receipts.

16. Plaintiff seeks the total sum of \$12,253.27 in restitution based on amounts she alleges she spent to improve the Property. This includes (1) \$6,560 for labor; (2) \$5,583.27 for materials; and (3) \$110 for locksmith services. Plaintiff testified that she paid for all labor in cash and presented as evidence receipts which she wrote.

17. From the receipts, those labor receipts relating to wall repair total \$1,600.00. Though the parties' agreement was that Defendants would pay for materials only, and though the only evidence of the amounts paid for labor is through receipts for cash hand-written by Plaintiff,

B&B agreed at trial that B&B should pay Plaintiff \$1,600 for this work. I find that restitution is owed in the amount of \$1,600 for this work.

18. Plaintiff acknowledged that B&B paid for drywall materials. While Plaintiff presented a number of receipts into evidence, many of which were not legible, Plaintiff did not establish what amounts, if any, related to drywall repair. I therefore find Plaintiff has not met her burden to show that any restitution is owed for materials relating to wall repair, above what B&B already paid.

19. I find that the Other Work performed by Plaintiff does not meet the elements of Unjust Enrichment. As recited above, to recover under a theory of Unjust Enrichment, a party must establish that she has conferred a non-gratuitous benefit on another. See Campbell, 398 S.C. at 24, 726 S.E.2d at 228. Not just any benefit conferred meets this element. See Inglese, 403 S.C. at 298, 742 S.E.2d at 691. Rather the benefit must be non-gratuitous, either because it was conferred at the defendant's request or because the circumstances were such that the plaintiff could

ROA015

reasonably rely on the defendant for repayment. See id. 298, 742 S.E.2d at 691. Plaintiff has not met her burden on this point. Plaintiff presented no testimony that Defendants requested the Other Work. In fact, testimony established that B&B had discouraged her from taking such steps.

20. Furthermore, Plaintiff did not meet her burden of establishing that Defendants received value for the Other Work. The proper amount of damages in quantum meruit is the value received, not the amount spent. See Stringer Oil Co., Inc. v. Bobo, 320 S.C. 369 (1995) ("In an action in quasi-contract, the measure of recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly

enriched at the expense of the plaintiff.”). The January 15, 2020 property tax receipt shows the

property was valued at \$154,350.00. *See* Defendants’ Exhibit 4. In April 2020, Defendant sold

the property to a third party for \$130,000. *See* Defendants’ Exhibit 9. There appears to be no

increased value to Defendants based on Plaintiff’s Other Work. The work performed was to

benefit Plaintiff’s event business, and was not necessarily to increase the property’s value for

B&B. Given these issues, no restitution is warranted to Plaintiff for the Other Work.

21. As noted above, though Plaintiff testified that she was to have the security deposit waived as compensation for cleaning (a total of \$800), Ms. Biggerstaff testified that the agreement was that Plaintiff would have the security deposit waived and receive the first month’s rent free (a total of \$1,600). I therefore adopt the valuation of Ms. Biggerstaff and find restitution is warranted for the cleaning in the amount of \$1,600.

22. After Plaintiff filed suit, Defendants presented counterclaims based on unpaid rent, utilities, property taxes, and insurance.

23. I find that Defendant B&B is entitled to restitution under the theory of Unjust Enrichment for these items. Plaintiff undoubtedly was benefitted by being in possession of the

ROA016

Property for the nine-month period, during which she utilized the space for storage of her inventory

and during which time she hosted a number of events and attempted to start an event venue business. It is undisputed that B&B paid the utilities, property taxes, and insurance on the Property.

24. Defendants submitted into evidence the utility bills and tax receipts for the Property during the time period in which Plaintiff was in possession and I find that these amounts are owed as restitution. *See A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 591–92, 812 S.E.2d 759, 765 (Ct. App. 2018) (finding rent owed as damages for quantum meruit claim).*

These total \$ 5,336.63 (broken-down as follows):

a. Duke Energy: \$2,515.71

b. Spartanburg Water: \$256.83

c. Spartanburg County Property Tax (Pro-Rated): \$2,564.09

25. To determine the amount owed for the nine months that Plaintiff was in possession of the Property, I find that the best valuation is the rental figure that the parties had agreed upon in attempting to negotiate the lease. Rent restitution is therefore calculated at \$800/month for the total of \$7,200.<sup>1</sup>

26. The total amount of restitution owed to B&B therefore totals \$10,265.80.

27. Receipts Plaintiff provided showed labor for the wall repair totaling \$1,600. When added with the \$1600 from the cleaning, Plaintiff is owed restitution of \$3,200.

28. When offset by the restitution owed to Plaintiff, I find that B&B is owed the total sum of \$7,065.80.

<sup>1</sup> Plaintiff and B&B did agree that the security deposit and first month's rent would be waived as part of the cleaning. However, as the lease was not put into effect and these calculations are being made for the purpose of restitution only (with restitution being awarded to Plaintiff for the cleaning), I am including the first month's rent in this calculation of B&B's damages in order to ensure a balanced calculation.

ROA017

29. Defendants presented documents and testimony to establish that the Property was owned by B&B, sold by B&B, proceeds of the sale were received by B&B, all utilities were paid by B&B, checks were written from a B&B account, and the proposed lease was to be entered into between Plaintiff and B&B. Plaintiff presented no evidence to establish liability on behalf of Cathy Biggerstaff, the sole shareholder B&B. Plaintiff cites to no law or theory by which a shareholder of a corporation is liable for the alleged liability or obligations of the corporation, and such a position is contrary to South Carolina law. See, e.g., S.C. Code Ann. § 33-6-220(b) (“[A]

shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.”); see also 16 Jade

Street, LLC v. R. Design Constr. Co., 405 S.C. 384, 747 S.E.2d 770 (2013) (finding builder who was a member of the LLC did not have an independent duty to the plaintiff by virtue of holding a residential builder’s license). Given this, I find that there is no genuine issue of material fact as to the liability of Cathy Biggerstaff and I find for her on Plaintiff’s remaining claim for Unjust Enrichment. See Tupper v. Dorchester County, 326 S.C. 318, 325, 487, 187, 191 (1997).

30. Defendants provided Plaintiff a key to the property, and she returned it when it was demanded back. The Court declines to find Plaintiff trespassed on the property. This claim is dismissed with prejudice.

It is therefore ORDERED THAT:

1. Defendants’ trespass claim is dismissed with prejudice.
2. Defendant Cathy Biggerstaff is not personally liable on Plaintiff’s claim of unjust enrichment.
3. As to Plaintiff’s claim for unjust enrichment against B&B, B&B owes restitution to Plaintiff in the total amount of Three Thousand Two Hundred and No/100 Dollars (\$3,200.00).

4. As to Defendant B&B's claim for unjust enrichment, Plaintiff owes restitution to

B&B in the total amount of Ten Thousand Two Hundred Sixty Five and 80/100 Dollars

(\$10,265.80).

5. Defendant Biggerstaff is not owed in her personal capacity.

6. With these amounts offset, I award judgment to B&B in the total amount of Seven

Thousand Sixty Five and 80/100 Dollars (\$7,065.80).

7. Each party is to bear its own attorney's fees and costs.



Spartanburg Common Pleas

**Case Caption:** Kesha Petty VS Cathy Biggerstaff ,  
defendant, et al **Case Number:** 2019CP4203418

**Type:** Master/Order/Other

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

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ROA020

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

) SEVENTH JUDICIAL CIRCUIT

COUNTY SPARTANBURG )

) Case No.: 2019-DR-42-\_\_\_\_\_

Kesha Petty, )

)

Plaintiff, )

) **SUMMONS**

vs. )

)

Cathy Biggerstaff, individually and as )

owner of B&B Amusement, Inc., and )

B&B Amusement, Inc., )

)

)

Defendants. )

\_\_\_\_\_ )

**TO: CATHY BIGGERSTAFF AND B&B AMUSEMENT, INC.**

**YOU ARE HEREBY SUMMONED** and required to answer the Complaint in this action, a

copy which is herewith served upon you, and to serve a copy of your Answer to said

Complaint on the subscriber at 1725 John B. white Sr. Blvd., Unit B, Spartanburg, South

Carolina, 29301, within thirty (30) days from the date of service hereof, exclusive of the date

of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by

default shall be rendered against you for the relief in the Complaint.

Victoria Law Firm, LLC

s/J. Zachary Farr

J. Zachary Farr (SC Bar # 100925)

1725 John B. White Sr. Blvd.

Spartanburg, SC 29301

T: (864) 707-2551

F: (864) 707-2552

E: [jzachfarr@gmail.com](mailto:jzachfarr@gmail.com)

September 24, 2019



COME NOW the Plaintiff complaining of the Defendants would respectfully show unto the

Court that:

**PARTIES AND JURISDICTION**

1. The Plaintiff is a citizen and resident of Spartanburg County, South Carolina, and has been in excess of the statutory period prior to the filing of this action.

2. The Defendant Cathy Biggerstaff is citizens and residents of Spartanburg County, South Carolina, and has been in excess of the statutory period prior to the filing of this action.

3. The Defendant B&B Amusement, Inc. ("B&B) is a corporation duly licensed, organized and existing under the laws of South Carolina and which maintains its principal place of business in Spartanburg, South Carolina

4. This Court has jurisdiction over the persons named in this lawsuit and the subject matter covered in this Complaint.

5. Venue is proper in Spartanburg, South Carolina because the lawsuit concerns an agreement that was to be performed regarding property located in Spartanburg County, South Carolina.

ROA022

6. This lawsuit arises from the renovation of the commercial building located at 1330 Southport Road, Spartanburg, South Carolina.

7. At all times relevant, the Defendant, Cathy Biggterstaff, individually and as owner of B&B Amusement, Inc., was (and remains) the fee simple owner of the property in dispute.

### **FACTUAL BACKGROUND**

8. The Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

9. The Plaintiff is the sole owner of Dream Catcher's Party and Wedding Planning Company.

10. On or about March 20, 2019, the Plaintiff and the Defendant Ms. Cathy Biggerstaff, doing business under B&B Amusement, Inc. entered into a verbal agreement via text messages regarding the Plaintiff leasing the property located at 1330 Southport Road, Spartanburg, Sout Carolina with the option to buy the commercial building for an event venue for her party planning business.

11. The parties agreed to an initial lease price of eight hundred dollars (\$800.00) a month payable to the Defendant, Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc. by the Plaintiff. The parties also agreed to a purchase price of One Hundred Fifty Thousand Dollars (\$150,000.00).

12. Shortly after the parties agreed to a purchasing price, the Plaintiff sought to obtain financing through the Small Business Association (“SBA”) which if approved for financing, would allow the Plaintiff to pay the Defendant, Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc. in full for the agreed purchase price.

ROA023

13. However, in order to obtain the financing through the SBA, the Plaintiff would need to operate her new business for approximately twenty-four months (24).

14. The Defendant Cathy Biggerstaff, understood and accepted the Plaintiff’s situation regarding financing and still decided to let the Plaintiff lease the property for \$800.00 a month with the option to buy it at a later date for the agreed purchase price of \$150,000.00.

15. The property needed renovations and repairs in order to be suitable for the Plaintiff to operate and conduct business out of the building.

16. The parties continued to communicate via telephone calls and text messages regarding renovations and repairs that the Plaintiff had completed that were needed to get the building operational. These renovations and repairs were a substantial cost and expense to the Plaintiff to complete.

17. Upon completion of the renovations and the text messages with the agreed lease terms, the Plaintiff started to conduct her business at said property.

18. On or about June 30, 2019, the Defendants presented the Plaintiff a written contract/lease agreement for the property located at 1330 Southport Road, Spartanburg, South Carolina. However, the terms and amounts in the written contract were not the same as the agreed amounts the parties had previously agreed to via text message.

19. The Plaintiff refused to sign the new contract/lease and asked that the Defendant re-write the contract with the agreed amounts.

20. When it became apparent to the Plaintiff that the parties no longer had an agreement regarding the price and lease of the building, the Plaintiff demanded to be refunded for the renovations and repair expenses that she incurred due to expecting to receive the building at the original agreed purchasing price and lease amount.

21. The Plaintiff had to cancel contracts with customers who had booked events with the Plaintiff to be held at said location.

22. The Defendants have refused to reimburse the Plaintiff for the renovations and repairs the Plaintiff has made to the building.

23. The Defendants have refused to lease the property to the Plaintiff for the agreed lease amount and have refused to sell the property to the Plaintiff for the agreed purchase amount.

**FOR A FIRST CAUSE OF ACTION**

**(Breach of Contract)**

24. The Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

25. The parties entered into an agreement wherein the Defendants agreed to allow the Plaintiff lease the said property with the option to buy said property for an agreed amount.

26. The parties' agreement constitutes a valid, enforceable and binding contract where the parties entered into valid contractual obligations to each other.

27. The Plaintiff relied upon the terms of the agreement with the Defendants and had a right to rely thereon.

28. The Defendants breached their agreement by refusing to honor the original agreed price of the lease and purchase price of the building, by not refunding the Plaintiff for expenses she incurred for renovations and repairs on said property, and because of said breach of contract, costing the Plaintiff substantial loss of business.

29. As a direct and proximate result of the Defendants breach, the Plaintiff has suffered actual and consequential damages in an amount to be proven at trial, for which they hereby sue, together with attorney fees, and cost allowed by law.

ROA025

**FOR A SECOND CAUSE OF ACTION**

**(Fraud)**

30. The Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

31. The Defendant falsely represented to the Plaintiff that she would accept the initial agreed lease amount and purchasing price from the Plaintiff and allow the Plaintiff to conduct

business out of said property.

32. The Defendant’s representations were material to the Plaintiff’s decision to repair and renovate said property.

33. The Defendant, Cathy Biggerstaff, knew her representations were false and/or has a reckless disregard for the truth or falsity of her representations.

34. The Defendants intended for the Plaintiff to believe and rely upon her false representation in order that the Defendants might financially benefit from Plaintiff’s ignorance and reliance on her false representations.

35. The Plaintiff has suffered consequent and proximate injuries based on its reliance of the Defendants’ false representations.

36. The Plaintiff is entitled to actual, incidental, consequential, and punitive damages, in an amount to be proven at trial, together with accrued interest, attorney fees, and cost due to the Defendants’ fraud.

**FOR A THIRD CAUSE OF ACTION**  
**(Unjust Enrichment)**

37. The Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

38. The Plaintiff conferred a benefit upon the Defendant by renovating and repairing a commercial property that belonged solely to the Defendant. The Plaintiff did this while relying on the representation of the Defendant that the Plaintiff would be able to use and lease the said property for an agreed amount and be able to conduct business out of said property.

39. The Defendant realized and accepted the benefit of the Plaintiff renovating and repairing the building without compensating the Plaintiff for the value of the renovations or repairs.

40. Under these circumstances, it would be unjust for the Defendant to retain the benefit and the Plaintiff has suffered, and will continue to suffer damages by virtue of Defendants' conduct.

41. The Defendants have been unjustly enriched and should reimburse the Plaintiff the expense for the repairs and renovations of said property.

**FOR A FOURTH CAUSE OF ACTION**

**(Promissory Estoppel)**

42. The Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

43. The Defendant made an unambiguous promise to the Plaintiff to allow the Plaintiff to lease said building with the option to buy said building for the purpose of the Plaintiff to conduct business out of said property.

44. The Plaintiff reasonably relied on the Defendants' promise to lease the said building for an agreed price.

45. In reliance on the Defendants' promise, the Plaintiff fully renovated and repaired said building.

ROA027

46. The Defendants expected that the Plaintiff would rely on the Defendant's representations.

47. It was foreseeable to the Defendants that the Plaintiff would rely on the Defendant's promise to lease the Plaintiff the building for the agreed amount.

48. The Plaintiff was damaged by the reliance on the Defendants' promise and the Defendants' failure to carry out its promise.

49. As a direct and proximate cause of the acts and omissions of the Defendants, the Plaintiff has been damaged and continues to suffer damages and the Defendant is estopped from denying liability to the Plaintiff.

**WHEREFORE**, the Plaintiff prays for an Order of this Court as follows:

- a. An award of actual and consequential damages;
- b. An award for punitive damages;
- c. An award for attorney fees, cost and expenses incurred in having to bring this lawsuit;
- d. Awarding any such other relief as this Court may deem just and proper.

By: s/J.Zachary Farr

J. Zachary Far, Esq. (100925)  
Attorney for the Plaintiff  
1725 John B. White Sr. Blvd.

September 24, 2019 Spartanburg, South Carolina 29301 Spartanburg, South Carolina  
T: (864) 707-2551  
E: [jzacharyfarr@gmail.com](mailto:jzacharyfarr@gmail.com)

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IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-03418

STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

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Kesha Petty,

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Plaintiff,

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v.

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Cathy Biggerstaff, individually and as

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owner of B&B Amusement, Inc., and

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B&B Amusement, Inc.,

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Defendants.

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**ANSWER AND COUNTERCLAIM**

“B&B”) (collectively “Defendants”), and answer the Complaint and assert Counterclaims as

follows:

**FOR A FIRST DEFENSE**

(General Denial)

1. Defendants deny each and every allegation of the Complaint not hereinafter expressly admitted.

2. Upon information and belief, Defendants admit the allegations of Paragraph 1.

3. Responding to Paragraph 2, Defendants admit that Cathy Biggerstaff is a citizen and resident of Spartanburg County. Defendants deny the remaining allegations of the Paragraph. 4. Defendants admit the allegations of Paragraph 3 through 5.

5. Responding to Paragraph 6, Defendants admit that the lawsuit is based, in part, on work performed by Plaintiff on a commercial building owned by Defendant B&B. 6. Defendants deny the allegations of Paragraph 7. The property at 1330 Southport Road in Spartanburg, South Carolina (hereinafter the “Property”), is owned by Defendant B&B.

ROA030

7. Paragraph 8 constitutes a restatement of Plaintiff’s prior allegations to which no

response is required. To the extent that a response is required, Defendants restate their responses to the preceding paragraphs.

8. Upon information and belief, Defendants admit the allegations of Paragraph 9.

9. Defendants deny the allegations of Paragraphs 10 and 11.

10. Responding to Paragraph 12, upon information and belief, Defendants admit that Plaintiff sought to obtain a Small Business Association loan in order to potentially purchase the Property. Defendants deny the remaining allegations of this Paragraph.

11. Upon information and belief, Defendants admit the allegations of Paragraph 13.

12. Defendants deny the allegations of Paragraph 14.

13. Responding to Paragraph 15, Defendants admit that Plaintiff performed some renovations on the Property, and was compensated for such work, but Plaintiff also performed various work to suit her preferences and in conjunction with the use she intended for the Property.

These latter renovations did not add value to the Property. Defendants deny the remaining allegations of this Paragraph.

14. Responding to Paragraph 16, Defendants admit that Plaintiff performed some

renovations on the Property at her own cost and that the parties communicated regarding the renovations. Defendants paid Plaintiff for some of the renovation work and requested receipts for other work, which were not provided. Defendants deny the remaining allegations of this Paragraph.

15. Responding to Paragraph 17, Defendants admit that, at some point, Plaintiff began operating her business out of the Property. Defendants deny the remaining allegations of this Paragraph.

ROA031

16. Responding to Paragraph 18, Defendants admit that they presented Plaintiff with a written lease and that she refused to sign. Defendants deny the remaining allegations of this Paragraph.

17. Responding to Paragraph 19, Defendants admit that Plaintiff refused to sign the lease document presented to her. Plaintiff then asked her attorney to review the document. Defendants deny the remaining allegations of this Paragraph.

18. Responding to Paragraph 20, Defendants admit that Plaintiff sought reimbursement of renovation expenses and had done so previously, and been paid some amounts by Defendants.

Defendants deny the remaining allegations of this Paragraph.

19. Defendants deny the allegations of Paragraph 21. Plaintiff has occupied the Property since she moved into the space and, to Defendants' knowledge, remains in possession of the Property. Defendants question why Plaintiff would have felt the need to cancel any events.

20. Defendants deny the allegations of Paragraph 22. Defendants have repeatedly requested documentation and receipts relating to the repair work, but Plaintiff has failed to provide the same. When Plaintiff provided documentation in the past, Defendants paid or reimbursed Plaintiff for such work. Additionally, only some of the renovation and repair work was beneficial to the Property. Other work was performed based on Plaintiff's own preference – such as painting the floor.

21. Responding to Paragraph 23, Defendants deny that the parties agreed on terms and has certainly refused to lease and/or sell the Property to Plaintiff based on the terms she proposed. Defendants deny the remaining allegations of this Paragraph.

ROA032

22. Paragraph 24 constitutes a restatement of Plaintiff's prior allegations to which no

response is required. To the extent that a response is required, Defendants restate their responses to the preceding paragraphs.

23. Defendants deny the allegations of Paragraphs 25 through 29.

24. Paragraph 30 constitutes a restatement of Plaintiff's prior allegations to which no response is required. To the extent that a response is required, Defendants restate their responses to the preceding paragraphs.

25. Defendants deny the allegations of Paragraphs 31 through 36.

26. Paragraph 37 constitutes a restatement of Plaintiff's prior allegations to which no response is required. To the extent that a response is required, Defendants restate their responses to the preceding paragraphs.

27. Responding to Paragraph 38, Defendants admit that some of Plaintiff's renovations and repairs improved the Property. Defendants further respond that they paid Plaintiff for some of the repairs and renovations and requested documentation and receipts relating to others, but Plaintiff did not provide the documentation. Defendants deny the remaining allegations of this

Paragraph.

28. Responding to Paragraph 39, Defendants again admit that some of Plaintiff's renovations and repairs improved the Property. Defendants further respond that they paid Plaintiff for some of the repairs and renovations and requested documentation and receipts relating to others, but Plaintiff did not provide the documentation. Plaintiff performed some work based on her own preference, such as painting the floor. Defendants deny the remaining allegations of this Paragraph.

29. Defendants deny the allegations of Paragraphs 40 and 41.

ROA033

30. Paragraph 42 constitutes a restatement of Plaintiff's prior allegations to which no response is required. To the extent that a response is required, Defendants restate their responses to the preceding paragraphs.

31. Defendants deny the allegations of Paragraphs 43 through 49.

32. Plaintiff's "WHEREFORE" paragraph constitutes a prayer for relief to which no response is required. To the extent that a response is required, Defendants deny the allegations.

**FOR A SECOND DEFENSE**

(Failure to State a Claim)

33. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

34. Defendants would show that Plaintiff's allegations and causes of action fail to state a claim upon which relief may be granted and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

**FOR A THIRD DEFENSE**

(Failure to State a Claim – Attorney's Fees)

35. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

36. Defendants would show that Plaintiff's allegations and causes of action fail to state a claim upon which relief may be granted and should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

37. Defendants' defense is based on the fact that Plaintiff seeks attorney's fees, but recites no basis therefor and no legal basis exists for seeking such damages.

**FOR A FOURTH DEFENSE**

(Failure to State a Claim – Fraud)

38. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

39. Plaintiff's cause of action for Fraud must be dismissed as Plaintiff does not allege all elements of this cause of action.

**FOR A FIFTH DEFENSE**

(Statute of Frauds)

40. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

41. Defendants would show that Plaintiff's causes of action violate the Statute of Frauds in that the causes of action are (1) based upon a contract or sale of lands and/or (2) an agreement that is not to be performed within the space of one year, but is not in writing and signed by the Defendants or some person legally authorized by Defendants.

42. For this reason, Defendants' Complaint should be dismissed.

**FOR A SIXTH DEFENSE**

(Failure to Mitigate)

43. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

44. Defendants allege that Plaintiff has failed to mitigate her damages, including by ceasing to operate her business and/or canceling contracts despite occupying the Property.

**FOR A SEVENTH DEFENSE**  
(No Meeting of the Minds)

45. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

ROA035

46. South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. See Clardy v. Bodolosky, 383 S.C. 418, 679 S.E.2d 527 (Ct. App. 2009).

47. In the instant matter, there was no “meeting of the minds” to form a contract, and Plaintiff’s causes of action therefore fail.

**FOR A SEVENTH DEFENSE**

(Unclean Hands/Laches/Estoppel)

48. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

49. Defendants would show that Plaintiff's request for Unjust Enrichment and Promissory Estoppel are barred by the equitable doctrines of unclean hands, laches, and/or estoppel. Consequently, Plaintiff's Complaint should be dismissed.

**FOR AN EIGHTH DEFENSE**

(Offset)

50. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

51. Assuming, arguendo, that Plaintiff is able to establish a contract and her causes of action – which is expressly denied and assumed only for purposes of this defense – Defendants are entitled to an offset for unpaid rent, utility bills, insurance, and other expenses relating to the Property. Any damages awarded to Plaintiff must be reduced by such amounts.

**FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM**

(Eviction)

52. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

53. A landlord-tenant relationship exists between B&B and Plaintiff.

54. This is by virtue of the fact that B&B allowed Plaintiff to occupy the Property while the parties sought to reach an agreement regarding a lease.

55. The parties failed to reach an agreement, and Plaintiff is therefore not lawfully in possession of the Property. Yet Plaintiff has remained in possession of the Property, even having the locks changed, despite demands to vacate the Property.

56. Upon information and belief, Plaintiff continues to operate her business on the Property.

57. Further, Defendants' grounds for eviction are as follows:

a. Plaintiff has failed to pay any rent for her use of the Property;

b. Plaintiff has failed to have utilities transferred to her name or to pay utility bills relating to the Property; and

c. Plaintiff has failed to pay insurance amounts relating to the Property.

58. Defendants therefore seek eviction of Plaintiff from the Property.

**FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

(Unjust Enrichment)

59. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

60. By remaining on the Property and refusing to vacate the Property from April through the present, Plaintiff has received a benefit from Defendants, by having use of the Property including for the purpose of operating her business. Additionally, as part of that use, Plaintiff has enjoyed the use of utilities which have been paid by Defendants.

61. Plaintiff knowingly and voluntarily accepted that benefit.

ROA037

62. Plaintiff has not made any payment to Defendants for rent, utilities, insurance, or otherwise.

63. It would be unjust for Plaintiff to retain those benefits without paying their value.

64. Defendants are therefore entitled to actual damages relating to the Plaintiff's unjust

enrichment and are entitled to be compensated and reimbursed by Plaintiff for same.

**FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM**

(Trespass)

65. Defendants restate their responses to the preceding paragraphs as if fully repeated herein verbatim.

66. Defendant B&B is the lawful owner of the Property.

67. After Plaintiff and Defendants failed to reach an agreement relating to the lease of the Property, and after demand from Defendants that Plaintiff vacate the Property, Plaintiff refused to leave and instead continued to occupy the Property and to operate her business on the Property.

68. Plaintiff continues to occupy the Property and operate her business on the Property to this day.

69. Plaintiff's continued presence on the Property after Defendants' demand that she vacate the Property constitutes trespass.

70. In remaining on the Property, Plaintiff acted voluntarily and intentionally and without permission from Defendants. Plaintiff's actions were willful, wanton, and without regard for Defendants' rights.

71. Plaintiff's acts and omissions were a direct and proximate cause of the injuries and

damages suffered by the Defendants herein, said acts further being in violation of the Statutory and Common Laws of the State of South Carolina.

ROA038

72. Defendants are informed and believe that they are entitled to judgment in an amount of actual and punitive damages.

**WHEREFORE**, having fully answered the Complaint of the Plaintiff, Defendants pray that the Complaint be dismissed, that Plaintiff be evicted from the Property, for judgment against Plaintiff, for attorney’s fees, for costs and disbursements of this action, and for any and such other and further relief as this Court shall deem just and proper.

**THE ANTHONY LAW FIRM, P.A.**

s/Jay Anthony

K. Jay Anthony, S.C. Bar No.: 77433

Kenneth C. Anthony, Jr., S.C. Bar No.: 0404

650 E. Washington Street

Greenville, S.C. 29601

(864) 582-2355 Phone

(864) 583-9772 Facsimile

**ATTORNEYS FOR DEFENDANTS**

November 1, 2019

Greenville, S.C.

ROA039

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS )

COUNTY OF SPARTANBURG )

Kesha Petty, )

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Plaintiff. )

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vs. ) **REPLY TO COUNTERCLAIM**

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Cathy Biggerstaff, et al, )

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Defendants. ) Case No.: 2019-CP-42-03418

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**COMES NOW** the Plaintiff who, by and through her undersigned attorney,  
submits the following Reply in response to the Answer and Counterclaim filed by the  
Defendants. Except as herein specifically admitted, each and every allegation in the  
Counterclaim is expressly denied. Plaintiff states as follows:

1. In response to paragraphs 1-58 of Defendant's Answer and Counterclaim, Plaintiff reasserts all of her prior causes of action and allegations as set forth in Plaintiff's Complaint and incorporates herein by reference the below responses to paragraphs 60-72 of the Defendant's Counterclaim.
2. Plaintiff denies the allegations in Paragraphs 60 and 61 of the Defendant's Counterclaim. Further, the Plaintiff will show that she was unable to use the building to operate her business.
3. As to the allegations contained in Paragraphs 62-64 of the Defendant's

Counterclaim, the Plaintiff specifically admits that she has not made any payments for rent, or utilities due to the Defendant not accepting the payments that the Plaintiff offered to the Defendant that were in agreement with their contract. The Plaintiff denies the remaining allegations contained in Paragraphs 62-64 of the Defendant's Counterclaim that are either inconsistent or in addition to these admissions.

4. Inasmuch as the allegations contained in Paragraphs 65-72, the Plaintiff denies the allegations as stated. It is the Plaintiff's contention that an agreement was reached by the Plaintiff and the Defendant through verbal phone calls, text messages, and by the actions of the Defendant in allowing the Plaintiff to repair the building in question. The Plaintiff

ROA040

further contends that the Defendant breached their contract by changing the terms of their agreed contract. The Plaintiff further denies that she was able to operate her business due to the Defendant consistently impeding on her ability to operate her business.

**WHEREFORE**, the Plaintiff prays that the Court dismiss all counterclaims of Defendant and grant the relief sought in Plaintiff's Complaint.

VICTORIA LAW FIRM, LLC

By: s/J. Zachary Farr

J. Zachary Farr, SC Bar # 100925

Attorney for the Plaintiff

1725 John B. White Sr. Blvd. Unit B

Spartanburg, SC 29301

Phone: 864-707-2551

FAX: 864-707-2552

E-mail: jzachfarr@gmail.com

November 25, 2019

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

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Kesha Petty,

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Plaintiff,

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ROA041

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v.  
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Cathy Biggerstaff, individually and as  
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owner of B&B Amusement, Inc., and  
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B&B Amusement, Inc.,  
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)  
Defendants.  
)

**MOTION TO DISMISS**

IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-03418

\_\_\_\_\_)

YOU WILL PLEASE TAKE NOTICE, the Defendants Cathy Biggerstaff and B&B Amusement, Inc. (hereinafter “B&B”) (collectively “Defendants”), will move at a date and time to be set by the Court, pursuant to Rule 12(b) of the *South Carolina Rules of Civil Procedure*, for an order dismissing the Plaintiff’s cause of action for Fraud, based on grounds that the Complaint does not allege the required elements. This motion is based upon the pleadings filed in this action, upon any future memorandum of law submitted by the movant(s), and upon applicable

common and statutory law.

Respectfully Submitted,

**ANTHONY LAW, LLC**

s/Jay Anthony K. Jay Anthony, S.C. Bar No.: 77433 650  
E. Washington Street  
Greenville, S.C. 29607  
864.301.8141 (phone)  
864.203.8877 (fax)  
janthony@anthonylawsc.com

**ATTORNEY FOR DEFENDANTS** April 28, 2020  
Greenville, South Carolina

ROA042

STATE OF SOUTH CAROLINA  
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COUNTY OF SPARTANBURG  
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Kesha Petty,  
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Plaintiff,  
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v.  
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Cathy Biggerstaff, individually and as  
)  
owner of B&B Amusement, Inc., and  
)  
B&B Amusement, Inc.,  
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)  
Defendants.

IN THE COURT OF COMMON PLEAS  
C.A. No.: 2019-CP-42-03418

**MOTION FOR  
SUMMARY JUDGMENT**

\_\_\_\_\_)

YOU WILL PLEASE TAKE NOTICE, the Defendants Cathy Biggerstaff and B&B Amusement, Inc. (hereinafter “B&B”) (collectively “Defendants”), will move at a date and time to be set by the Court, pursuant to Rule 56(b) of the *South Carolina Rules of Civil Procedure*, for summary judgment regarding the Plaintiff’s causes of action for Breach of Contract, Fraud, Promissory Estoppel, as well as Plaintiff’s claims for attorney’s fees. This motion is based upon the pleadings filed in this action, the deposition testimony, written discovery, any future memorandum of law submitted by the movant(s), and upon applicable common and statutory law.

Defendants’ motion is based on (1) with regard to Plaintiff’s claims for Breach of Contract, the fact that Plaintiff testified in her deposition that no contract was formed or existed; (2) with regard to Plaintiff’s claims for Breach of Contract, that Plaintiff has not complied with the Statute of Frauds; (3) with regard to Plaintiff’s claims for Fraud, that Plaintiff has not pled or established the required elements of Fraud; (4) with regard to Plaintiff’s claims for Promissory Estoppel, that Plaintiff has not established an unambiguous promise; (5) with regard to Plaintiff’s

claims for attorney's fees, that Plaintiff has not established or cited any statute, contract, or other

authority which would entitle her to such relief.

Respectfully Submitted,

**ANTHONY LAW, LLC**

s/Jay Anthony

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janthony@anthonylawsc.com

**ATTORNEY FOR DEFENDANTS**

April 28, 2020

Greenville, South Carolina

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STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

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Kesha Petty,

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Plaintiff,

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v.

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Cathy Biggerstaff, individually and as

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owner of B&B Amusement, Inc., and

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B&B Amusement, Inc.,

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Defendants.

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IN THE COURT OF COMMON PLEAS

C.A. No.: 2019-CP-42-03418

**BRIEF IN SUPPORT OF DEFENDANTS'**

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**SUMMARY JUDGMENT**

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**MOTION TO DISMISS AND MOTION FOR**

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**SUMMARY**

In 2019, Plaintiff Kesha Petty sought to rent property for an event planning and event rental business. She made contact with Defendants Cathy Biggerstaff and B&B Amusement, Inc. (hereinafter “B&B”) (collectively “Defendants”), which owned certain property located at 1330 Southport Road in Spartanburg (the “Property”). Ms. Petty and Ms. Biggerstaff then engaged in discussions about terms of a lease and agreement to purchase, but – according to both parties – were ultimately unable to come to terms. Ms. Biggerstaff had allowed Ms. Petty to move into the Property while negotiations were ongoing, and Ms. Petty was in possession of the

Property for nine months (March – November of 2019). See Plaintiff’s Responses to Requests for Admission, No. 3. During this time, Ms. Petty never paid any rent.

When the discussions regarding the lease broke down, Ms. Petty filed suit, while still using the Property (rent-free). In fact, Ms. Petty maintained possession of the Property even after Defendants filed a counterclaim for eviction and trespass. Ms. Petty ultimately moved out in November of 2019 – two months after she filed suit – still having never paid any rent.

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Ms. Petty’s lawsuit sets forth four causes of action: (1) Breach of Contract; (2) Fraud; (3) Unjust Enrichment; and (4) Promissory Estoppel. This matter is before the Court on two motions filed by Defendants: First, Defendants filed a Motion to Dismiss as to the Fraud cause of action based on a failure to plead the required elements. Second, Defendants filed a Motion for Summary Judgment as to the Breach of Contract, Fraud, and Promissory Estoppel causes of action, as well as Plaintiff’s claims for attorney’s fees and costs.

Defendants’ Motion for Summary Judgment is based on (1) with regard to Plaintiff’s claims for Breach of Contract, the fact that Plaintiff testified in her deposition that no contract

was formed or existed; (2) with regard to Plaintiff's claims for Breach of Contract, that Plaintiff has not complied with the Statute of Frauds; (3) with regard to Plaintiff's claims for Fraud, that Plaintiff has not pled or established the required elements of Fraud; (4) with regard to Plaintiff's claims for Fraud, that no evidence supports this cause of action; (5) with regard to Plaintiff's claims for Promissory Estoppel, that Plaintiff has not established an unambiguous promise; and (6) with regard to Plaintiff's claims for attorney's fees, that Plaintiff has not established or cited any statute, contract, or other authority which would entitle her to such relief.

#### **STANDARD OF REVIEW**

In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. See Charleston County Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). The court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts or elements sufficient to constitute a cause of action in the pleadings filed with the court. See Sloan Constr. Co., Inc. v. Southco Grassing, Inc., 368 S.C. 523, 525, 629 S.W.2d 372, 373 (Ct. App. 2006); Inman v. Ken Hyatt Chrysler Plymouth, Inc., 363 S.E.2d 691, 294 S.C. 240 (1987).

It is well-settled that a complaint is fatally defective if it fails to allege all nine elements of fraud.

See Inman at 692.

To obtain summary judgment, the moving party must demonstrate there is “no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” See Rule 56(c), SCRPC. Where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, the trial court must grant the motion for summary judgment. See Tupper v. Dorchester County, 326 S.C. 318, 325, 487, 187, 191 (1997).

## **DISCUSSION**

Defendants will address each of the causes of action in turn:

### **A. Breach of Contract**

#### ***a. No Meeting of the Minds***

In the Complaint, Ms. Petty alleges (1) that “[t]he parties entered into an agreement wherein the Defendants agreed to allow the Plaintiff to lease the said property with the option to

buy said property for an agreed amount” and (2) “The Defendants breached their agreement by

refusing to honor the original agreed price of the lease and purchase price of the building . . .

costing the Plaintiff substantial loss of business.” See Complaint, ¶ 25, 28. This claim fails because Ms. Petty admitted repeatedly in her deposition and in written discovery that there was no “meeting of the minds” and a contract was never formed.

“It is well-settled in South Carolina that in order for there to be a binding contract between the parties, there must be a mutual manifestation of assent to the terms.” Potomac Leasing Co. v. Otts Mkt., Inc., 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct. App. 1987). “South

ROA047

Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties *with regard to all essential and material terms of the agreement.*” Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (emphasis added).

First, Defendants asked Ms. Petty, in a written interrogatory, to “[s]tate the specific terms of the alleged contract between the parties including, but not limited to: (a) the amount of rent; (b) the date on which rent was to be paid; (c) which party is responsible for utility payments (and

how such were to be paid); (d) which party is responsible for property taxes (and how it was to be paid); (e) which party is responsible for property insurance (and how it was to be paid); (f) the term of the lease; (g) the purchase price of the option to purchase; (h) the total amount of the option to purchase; (i) whether the purchase price was to be reduced by lease payments; (j) the date on which the option could be exercise (and how); (k) whether the option expired; (l) which party was responsible for improvements and/or maintenance of the property during the option period; and (m) the names of the parties to the contract.” See Defendants’ Interrogatories to Plaintiff, No.9. Ms. Petty responded: “The Plaintiff contends that the rent was to be \$800.00 per month to be paid no later than the 10<sup>th</sup> of each month. The total price to purchase the building was \$150,000.00 and the Plaintiff would be responsible for property taxes and utilities. *All other terms were not clarified.*” Plaintiff’s Answers to Interrogatories, No.9 (emphasis added).

Ms. Petty was then asked about the contract in her deposition. Throughout the deposition, she repeatedly referred to the contract as something that the parties were attempting to reach an agreement on, but never did:

- So Cathy – me and her was still talking about, you know, *trying to come up with something*. . . . and she said that *we will figure out an agreement* that will work for both of us. And we will figure out something, she was sure that *we will figure out something*. So Cathy –*we was undecided at the time*, because we was just trying to figure out, like, I

was more so concerned like, okay, what is it going to cost to clean up, is she going to do that. So that was the beginning of the *negotiation process*. See Deposition of Kesha Petty, p.38, ll. 4-18 (emphasis added).

- So between April the 4th and April the 9th, I met with Cathy again on Southport Road and we was talking. *We continued to try to come up with a lease agreement*. I probably stayed down there – I had, like, I'm going to say, a couple hours in that day, you know, trying to work with her and talk to her about, you know, *trying to come up with something that would work for the both of us*. Id. at 39, ll. 2-9 (emphasis added).
- And we went to Holden's Ranch and we ate. And you know, she was saying that she couldn't do it for 6- or 700 -- she said she couldn't do it for 6- or 650 or 700 because her property taxes were something. So we ended up, we ate, went to the parking lot, and we came up with 800. And then I would have to pay my own insurance, and she was going to have to include her property taxes in it. And then the utilities and light bill would be in my name. So we came up with that agreement, which they had gave me the keys prior to that. When we came up with that agreement, she give me the okay to – *she said that she'll type up the lease*, Charles . . . *he was the guy that was going to type up the contract* for her, because she didn't type up her own contracts. Id. at pp. 39-40, ll. 19-25, 1-10 (emphasis added).
- Okay, so on -- so I believe, like, April the 18th to 21st, *we were, like, in talks* of, like, trying to come up with a sale price for the building. Id. at p.43, ll. 1-10 (emphasis

added).

- And then on May the 26th -- of the 26th, we were still in talks about the purchase price.

We finally came up with \$150,000 price on April the 29th. We reached that price. It was 150,000, as is. . . . That's what she explained to me, that's what we agreed to. So then, moving forward, I reached out to the lady at the SBA. And on May the 17th, *we met about the insurance and contract. Cathy still didn't have the insurance -- the contract, because she said that Charles was the guy, her contract guy*, and he had, I think, a heart -- something was wrong with his heart or heart surgery or something. So me and her, we met at Hardee's. *She had a contract on her hand.* That was the first time I seen

her with the contract. And we met at Hardee's that night. . . . She had a contract in her hand. And she presented it-- *she tried to get me to sign it, and we was trying to complete it then.* And then we got to talking about other stuff. *And then we got to talking about the terms.* If -- the terms, like, if the financing wasn't going to go through, or you know, how would we approach it until the building was in condition to where I could get the funding. She started talking about the property taxes and insurance, telling me that the insurance that I was -- I'm still responsible for my own insurance. And then she went off talking about other stuff. . . . And my cousin showed up, because I was gone -- they was coming to my house. Duane Petty, and then Bryson Thompson. And they were sitting with us as well, *while we were in negotiating. She was trying to talk us into getting this contract wrote. And I told her I wasn't going to sign the contract tonight, I need to take it home, and I need to look over it before I actually signed that contract, because I wanted to know what was in it.* Id. at 45-47, ll. 17-25; 1-11; 1-13 (emphasis added).

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- At the Hardee's on Reidville Road. On May the 28th, *we talked via phone about the same contract.* This time, I think I was supposed to go see Beth at the Small Business Development Center in Duncan, Tyger River campus. And me and Cathy met on May the 30th. *We met at the Clock Restaurant on Reidville Road to try to complete and*

*agree on the contract.* Id. at 47-48; ll. 20-25, 1 (emphasis added).

- So I met with her again on the 30th at the Clock Restaurant on Reidville Road *to try to complete and agree on the contract* before meeting with Beth. *And we couldn't, due to the time, the insurance issue, the terms, the wording.* I still just had -- and I was approaching her with, like, this contract. *I'm like, listen, I don't agree with this contract.* I said, we got to figure out some way to reword -- I wasn't benefitting from it, it was benefitting her. And so I was telling her that, on this. Id. at p.48, ll. 14-23 (emphasis added).
- June the 5th, I tried -- we met again, we tried *another attempt to sign the contract. But we couldn't.* She went off on talking something -- about something else. Id. at p.50, ll. 2-5 (emphasis added).
- June the 6th, we met at a Hardee's at 6:55. *We tried again. And I kept telling her, I'm not comfortable with this,* and we go to figure out another way to -- you know, *we've got to make some changes to it.* Id. at p.50, ll. 6-10.
- So I met with them again at the Bronco's on -- up here. And Charles was present again. And they were -- *we was trying to get this contract done. And I think this was the last time I met with them about the contract.* We talked several times about this contract. She was reassuring me that we was going to get it done, don't stress myself out. . . . I finally met with them at Bronco's. *And we still can't get to no agreement. They wanted to scratch out on the contract. It was just, kept scratching out. We did that, like, two or three different times, scratching out on the contract. They wanted to write stuff in.* And I'm like, at this point, I'm like, no. It's like, I'm still not being heard. "Well, honey,

what is it that you want?" *And I'm like, I keep telling you, like, this contract is not*

*benefitting me, it's benefitting you.* I need some type of protection in this contract, and I

don't have it. And she was like -- I was like, I don't know, *I just have to go home and talk to my husband about it, and I'll get back to you.* Id. at pp. 56-58, ll. 24-25; 1-24; 1-2 (emphasis added).

• And she texted me a day or two later, asked me what did me and my husband think. And my husband was at a point where, like, *you just going to have to get a lawyer to try to step in and try to get this contract done.* I made an appointment, I came and spoke with Zach about *trying to get an agreement on our contract.* And she reached out to me asking me what did me and my husband think. And I said, far as I know, we moving forward. But *I hired an attorney to try to iron out this contract* with me, *because we are not getting nowhere.* I'm meeting you every day. I'm tired. I'm exhausted. I have kids. I just can't keep doing this to myself, I said. And I have the stuff that I have planned, I

ROA050

done paid for all these printouts for these events, and *I'm at a standstill because we can't get the contract done.* Id. at p.58, ll. 3-18 (emphasis added).

In short, Ms. Petty repeatedly made clear in her deposition that, while she and Ms.

Biggerstaff came to a preliminary agreement as to some of the significant terms, they never

reached a complete agreement and never formed a contract. In fact, Ms. Petty admitted that the

parties had a written contract drawn up, but neither party signed because they could not agree on

the terms. Given this, it is plain that no contract was formed. As noted above, "South Carolina

common law requires that, in order to have a valid and enforceable contract, there must be a

meeting of the minds between the parties *with regard to all essential and material terms of the agreement.*” Player, supra (emphasis added). By Ms. Petty’s own admission, this was not the case. Therefore, this cause of action cannot stand and summary judgment must be granted.

***b. Statute of Frauds***

Additionally, even if we were to assume that there were a contract, any such contract would fail due to the Statute of Frauds.

The Statute of Frauds is codified at S.C. Code Ann. § 32-3-10 – entitled “Agreements required to be in writing and signed” – and provides: “No action shall be brought whereby . . . (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof; Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.”

Plaintiff admits that the agreement was for a period of “24 months or longer”. See Plaintiff’s Answers to Interrogatories, No.11. Yet, Plaintiff has been unable to provide any writing to satisfy the Statute of Frauds. As noted above, Ms. Petty said repeatedly in her deposition that, while the parties had a written contract drawn-up, they were never able to agree

on the terms, and so that document was never signed. Plaintiff has made vague references to an agreement set forth in text messages, but has not been able to cite to specific texts demonstrating the agreement. Plaintiff was asked directly in Interrogatories to “[s]tate which specific text messages you claim form the contract between the parties to this matter, as alleged in Paragraph 10.” Plaintiff responded: “The Plaintiff is attaching said text messages” and then attached every single text message ever exchanged between Ms. Petty and Ms. Biggerstaff.

Given this, any purported agreement fails to satisfy the Statute of Frauds. Consequently, summary judgment must be granted on this cause of action.

## **B. Fraud**

### ***a. Failure to Allege Elements***

Plaintiff next includes a cause of action for fraud. Paragraph 31 of the Complaint states: “The Defendant falsely represented to the Plaintiff that she would accept the initial agreed lease amount and purchasing price from the Plaintiff and allow the Plaintiff to conduct business out of said property.” However, the Complaint fails to recite all nine elements of the cause of action.

“It is well-settled that a complaint is fatally defective if it fails to allege all nine elements of

fraud.” See Inman, supra.

A Plaintiff alleging fraud must allege the following elements: (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance upon the truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury. See First State Sav. & Loan v. Phelps, 299 S.C. 441, 385 S.C.2d 821 (1989).

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The Complaint here fails to allege that the Plaintiff had the right to rely upon the alleged false statement. Moreover, on the facts of this case, this is not a mere technicality. Given the testimony of the Plaintiff, as set forth above, Plaintiff cannot establish a right to rely on a supposed representation regarding the lease terms when the parties were actually in negotiations regarding a contract. Given this failure of the pleadings, dismissal of this cause of action is required.

***b. No Evidence to Support Claim***

In addition to the fact that all elements are not alleged, there is simply no evidence to support the Plaintiff's claim for fraud. Specifically, Ms. Petty cannot show that the alleged statement by Ms. Biggerstaff – regarding “the initial agreed lease amount and purchasing price” – was a false representation which she was justified in relying upon. Instead, Ms. Petty's own testimony makes clear that any such statement was merely a discussion of preliminary terms which was to be incorporated into a written contract, which was never signed. Even considering all inferences in the light most favorable to the Plaintiff, summary judgment is warranted here.

**C. Promissory Estoppel**

Plaintiff next includes a cause of action for Promissory Estoppel. Plaintiff alleges: “The Defendant made ***an unambiguous promise*** to the Plaintiff to allow the Plaintiff to lease said building with the option to buy said building for the purpose of the Plaintiff to conduct business out of said property.” (emphasis added).

The deposition testimony of Ms. Petty makes clear that there is certainly no “unambiguous promise” to support this cause of action. Again, Ms. Petty stated over and over in her deposition that the parties were attempting to enter into a written contract with regard to the Property. However, the parties could not agree on the terms, and so no such contract was ever

signed. Consequently, Plaintiff is simply unable to point to any unambiguous promise which would suppose a cause of action for Promissory Estoppel.

#### **D. Attorney's Fees**

Plaintiff included in her Complaint a request for attorney's fees, costs, and expenses relating to the lawsuit. In South Carolina, attorney's fees and costs may be awarded only where provided for by statute or by contract. Plaintiff has not cited to any statute or contract which would support such a claim. Consequently, Defendants ask that the Court grant summary judgment on this issue.

#### **CONCLUSION**

Ms. Petty was able to possess the Property rent-free for nearly nine-months. She admits that they discussed and negotiated over a written contract, which was never signed because they could not agree on the terms. Given this, her causes of action for Breach of Contract, Fraud, and Promissory Estoppel are entirely unsupported and summary judgment is warranted.

Respectfully Submitted,

**ANTHONY LAW, LLC**

s/Jay Anthony

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K. Jay Anthony, S.C. Bar No.: 77433 .

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janthony@anthonylawsc.com

**ATTORNEY FOR DEFENDANTS** June 1, 2020  
Greenville, South Carolina

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

)

COUNTY OF SPARTANBURG )

Kesha Petty, )

)

Plaintiff. )

)

vs. ) **NOTICE OF MOTION AND**

**MOTION FOR SUMMARY**

**JUDGMENT**

)

Cathy Biggerstaff, et al, )

)

Defendants. ) Case No.: 2019-CP-42-03418

)

YOU WILL PLEASE TAKE NOTICE, the Plaintiff Kesha Petty, will move at a

date and time to be set by the Court, pursuant to Rule 56(a) of the *South Carolina Rules*

*of Civil Procedure*, for summary judgment regarding the Plaintiff's cause of action for

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Unjust Enrichment. The Plaintiff's motion is based on that there is no genuine issue as to any material fact as to unjust enrichment and that the Plaintiff is entitled to a judgment as a matter of law. This motion is based upon the pleadings filed in this action, the deposition testimony, written discovery, prior rulings, any future memorandum of law submitted by the movant(s), and upon applicable common and statutory law.

VICTORIA LAW FIRM, LLC

By: s/J. Zachary Farr  
J. Zachary Farr, SC Bar # 100925  
Attorney for the Plaintiff  
1725 John B. White Sr. Blvd. Unit B  
Spartanburg, SC 29301  
Phone: 864-707-2551  
FAX: 864-707-2552  
E-mail: jzachfarr@gmail.com

July 24, 2020  
Spartanburg, South Carolina

ROA066

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

)

COUNTY OF SPARTANBURG )

Kesha Petty, )

)

Plaintiff. )

)

vs. ) **NOTICE OF MOTION AND**

**MOTION TO DISMISS**

**COUNTERCLAIM(S)**

)

Cathy Biggerstaff, et al, )

)

Defendants. ) Case No.: 2019-CP-42-03418

)

YOU WILL PLEASE TAKE NOTICE, the Plaintiff Kesha Petty, will

move at a date and time to be sent by the Court, pursuant to Rule 41(c) of the *South* .

*Carolina Rules of Civil Procedure*, for an order dismissing the Defendants

counterclaim(s): eviction, unjust enrichment and trespass. This motion is based on the

pleadings filed in this action, prior ruling, upon any future memorandum of law

submitted by the movant(s), and upon applicable common and statutory law.

**WHEREFORE**, the Plaintiff prays that the Court dismiss all counterclaims of

Defendant and grant the relief sought in Plaintiff's Complaint.

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July 24, 2020  
Spartanburg, South Carolina

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| STATE OF SOUTH<br><br>CAROLINA COUNTY OF<br><br>SPARTANBURG  | IN THE COURT OF COMMON<br>PLEAS SEVENTH JUDICIAL<br>CIRCUIT<br><br>CASE NO.: 2019- CP-42-03418  |
| Kesha Petty,<br><br>Plaintiff, vs.<br><br>Cathy Biggerstaff, individually and<br>as owner of B&B Amusement, Inc.,<br>Defendants. | <b>PLAINTIFF KESHA PETTY'S<br/>MEMORANDUM IN SUPPORT<br/>OF MOTION FOR SUMMARY<br/>JUDGMENT</b> |

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Plaintiff Kesha Petty respectfully submits this memorandum in support of her motion for summary judgment.

### **BACKGROUND**<sup>1</sup>

On March 19, 2019, the Plaintiff reached out to an associate of the Defendant, Cathy Biggerstaff to get her phone number to see about the building on Southport Rd. Discussions between the parties over the next couple days, determined that the building was available for lease. The parties met at 1330 Southport Rd to look at the building. At this time the parties talked about a lease agreement and possible terms. Later in March after talking about a lease agreement, the Defendant gave the keys to the building to the Plaintiff for her to clean up and fix the building.

Once the keys were given over to the Plaintiff, the Defendant and Plaintiff looked at the building to see what needed to be fixed. The Defendant took a list and started calling roofing companies, contractors, and having landscaping done. At this time the Defendant was paying and/or reimbursing back the Plaintiff for any work on the building. However, that stop after the month of March – early April. The Defendant through text and orally talking with the Plaintiff to keep her

<sup>1</sup> Factual background from discovery produced.

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receipts so at the end she could reimburse for her expenses. That never happened.

As the weeks progressed, the Defendant wanted to sale the building and reached out to the Plaintiff to see if she wanted to purchase the building out right by doing a lease to purchase. The Plaintiff was interested into purchasing the building. At that time, the Defendant stopped reimbursing the Plaintiff for the work being done on the building. The Plaintiff reached out several times about forming a contract a Defendant continued to say do not worry about it we will work on an agreement. The Plaintiff continued to ask about signing a contact because she did not want to be responsible for fixing up the building. However, Defendant continued to reassure her.

From August to early September about 6 months from the initial discussions about leasing/purchasing the building, the Defendant told Plaintiff to stop working on the building. The building was almost completed at that time of stoppage. The Defendant wanted Plaintiff out of her building and have the keys returned back to her. The Defendant did not reimburse any of the

Plaintiffs expense. Plaintiff asked to be reimbursed and Defendant refused.

The Defendant filed summary judgment and dismissal on May of 2020 for the following reasons: Summary Judgment for Breach of Contract, Fraud, Promissory Estoppel, and attorney Fees – Dismiss on the cause of action for Fraud. The Honorable J. Mark Hayes, II on June 2, 2020, heard the motions. See attached Ordered. The Honorable J. Mark Hayes granted for Defendant stating there was not a contact or an oral contact, and dismissed the other causes of action. The only cause of action left for Plaintiff is Unjust Enrichment.

**STANDARD**

To grant a motion for summary judgment, the court must find that “there is no genuine issue as to any material fact.” See Rule 56(c), SCRPC. The judge is not to weigh the evidence but rather must determine if there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*,

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477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law, the trial court must grant the motion for summary judgment. See

## **DISCUSSION**

The Plaintiff asserts one cause of action against the Defendant, Kathy Biggerstaff: Unjust Enrichment. Plaintiff is entitled to summary judgment on Unjust Enrichment.

**I. The Plaintiffs cause of action for Unjust Enrichment should succeed for Summary Judgment because Plaintiff can show that she has not been reimbursed for expenses, labor, and supplies from Defendant, Kathy Biggerstaff, who has benefitted from the Plaintiffs expenses, labor, supplies and there is no genuine issue as to any material fact.**

Plaintiff is entitled to summary judgment on the Unjust Enrichment claim because Plaintiff can show that a benefit was conferred by plaintiff upon the defendant, defendant knew and realized the benefit, and Defendant retained the benefit without paying its value:

The elements to recover for unjust enrichment based on quantum meruit, quasi contract, or implied by law contract, which are equivalent terms for equitable relief, are: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." See *Tillman v. Tillman* (S.C. App. 2013)

**a. Plaintiff shows that a benefit was conferred to the Defendant.**

The Plaintiff from late March to early April was given the keys to the building at 1330 Southport Rd, Spartanburg SC. When the Plaintiff received the keys to the building both Defendant and Plaintiff walked around the building to see what need to be fixed. The reason for this was because week's prior a shooting happened at the building. From the pictures the place

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was a train wreck. There were holes in walls, blood on walls, trash, roof leaked, need a new ac unit, lights, painting, doors, and many other things for the building to be fixed. When Plaintiff started work on the building at the request of the Defendant because Defendant told Plaintiff she would reimburse for the work, Plaintiff started work. However, Defendant stopped reimbursement but reassured Plaintiff that she would be reimbursed.

“Not just any benefit conferred meets the first element.” *Inglese v. Beal*, 742 S.E.2d 687, 403 S.C. 290 (S.C. App. 2013). Rather, the benefit must be non-gratuitous, either because it was conferred at Beal's request or because the circumstances were such that Inglese could reasonably rely on Beal for repayment. *Id.* at 228

Here in the present case, Defendant and Plaintiff wrote down a list of things that needed

to be fixed. The Plaintiff and Defendant were under the impression that a contract was going to get done. Instead of Defendant hiring a cleaning crew or contractor, she allowed Plaintiff to do the work and would reimburse her. As talked continued to break down for a contact, Defendant continue to reassure Plaintiff that she would reimbursed for the work, labor, expenses, and supplies, However, a contact was never formed and Defendant kicked Plaintiff out the building when the work was completed and did not reimburse her for the work. Everything in the building was fixed. Plaintiff conferred a benefit upon Defendant and meets the first element for unjust enrichment.

**b. Plaintiff can show that the Defendant realized the benefit.**

Starting in April until early September, Defendant knew she was getting a benefit from the Plaintiff. Defendant strung along the Plaintiff for months about a contact to purchase and kept reassuring the Plaintiff that it would get done. Defendant was seeing the work done and was excited about the work. From text messages from Plaintiff and Defendant knew works was

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getting done, the progress, and never ever stopped Plaintiff form the work, however, she knew and was receiving the benefit from the Plaintiff.

Text Messages between Plaintiff and Defendant dated April 26, 2019:

..... I'm (Petty to Biggerstaff) not sure if I want to be responsible for the labor work anymore because of our previous conversation...

Text Messages between Plaintiff and Defendant dated April 26, 2019:....I

(Petty to Biggerstaff) do not agree with me fixing up someone else building and going out of my way to get it back into good conditions using my money to have be thrown away and wasting my time by paying labor cost, materials, cleaning, paying for repairs, and painting..

Text Messages between Plaintiff and Defendant dated May 31, 2019...

(Petty to Biggerstaff) At Southport cleaning..

Text Messages between Plaintiff and Defendant dated June 12, 2019:

Biggerstaff to Petty....I am not going to that – in reference to taking the building away or selling from Plaintiff

Text Messages between Plaintiff and Defendant dated June 21,

2019.....Petty to Biggerstaff....I have asked for reimbursed for my labor, my time, painting, paint, and cleaning...

Text Messages between Plaintiff and Defendant dated June 21, 2019....I

have gave you my invoices to present to Dell that you have not paid for...

Text Messages between Plaintiff and Defendant dated August 28, 2019:

Completion of the building done...Biggerstaff requesting keys back.

Here in the present case, Defendant is fully aware of the benefit of the Plaintiff fixing up her building. Yes, the Court has ruled no contact, however, through all the text messages shows that Defendant knew the benefit and not paying Plaintiff for that work. Plaintiff has shown that Defendant realized the benefit done by the Plaintiff.

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**c. Plaintiff can show retention of the benefit by the defendant under circumstances that make it inequitable for her to retain it without paying its value.**

This one is short and simple to prove. From the pictures, receipts given over to the Defendant, the Defendant came out cheaper allowing the Plaintiff to fix up the building. On April 10, 2020, the Defendant sold the building for \$130,000. From what we were given in discovery and public records the Defendant made a huge profit (\$84,602.13) off of the Plaintiff cleaning and fixing up the Defendant building. Defendant benefitted and did not pay for the

Services of Plaintiff. Yes, there was negotiation of doing a contract, however, the Court ruled no contact – Defendant knew no contract had been formed or signed but allowed Plaintiff to fix up the building anyways with no intent to pay Plaintiff for the work. For the Defendant to not pay would be inequitable to the Plaintiff.

### **CONCLUSION**

The plaintiff has presented evidence of “Unjust Enrichment” and meets her burden of proof. For the foregoing reasons, the Plaintiff, Kesha Petty is entitled to judgment as a matter of law as to Unjust Enrichment.

Respectfully submitted

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| STATE OF SOUTH<br>CAROLINA COUNTY OF<br>SPARTANBURG  | IN THE COURT OF COMMON<br>PLEAS SEVENTH JUDICIAL<br>CIRCUIT<br>CASE NO.: 2019- CP-42-03418                     |
| Kesha Petty,<br>Plaintiff, vs.<br><br>Cathy Biggerstaff, individually and<br>as owner of B&B Amusement, Inc.,<br>Defendants. | PLAINTIFF KESHA PETTY'S<br>MEMORANDUM IN SUPPORT<br>OF MOTION FOR DISMISSIAL<br>OF DEFENDANTS<br>COUNTERCLAIMS |

Plaintiff Kesha Petty respectfully submits this memorandum in support of her motion for dismissal of Defendants Counterclaims.

BACKGROUND<sup>1</sup>

Defendant filed an answer and counterclaim on November 1, 2019. In the Defendant counterclaim she was seeking the following: eviction, trespass, and unjust enrichment. See attachment of Defendants Answer and Counterclaim pleading.

On June 2, 2020 the parties had a hearing on Defendants motion for summary judgment for the court make a ruling that there was no contract and to dismiss the other causes of action that Plaintiff was asking for besides unjust enrichment. The Court granted Defendants motion for summary judgment stating there was no contract formed. So, basically the court ruled that Plaintiff was a clean up crew/contractor fixing up the building.

On April 10, 2020, the Defendant sold the building for \$130,000. Building is no longer in the possession of the Defendant.

<sup>1</sup> Factual background from discovery produced.

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**RULE 41 (c)**

(c) Dismissal of Counterclaim, Cross-Claim or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of

subdivision (a) of this rule shall be made before a responsive pleading is served

or, if there is none, before the introduction of evidence at the trial or hearing.

## DISCUSSION

The Plaintiff asserts that now the building has been sold and no longer in possession of the

Defendant the Defendant is no longer prosecuting these counterclaims for trespass and eviction or

they are needless since Defendant cannot enforce a judgment awarding either or Defendant no longer

has standing to pursue such action. Furthermore, now that the court granted Defendants summary

judgment stating there was no contact, we seek that the court dismiss the counterclaim for unjust

enrichment.

**I. Defendants counterclaim for Eviction and Trespass fails because building has been sold and no longer in her possession and these actions should be dismissed with prejudice.**

Defendant sold the building on April 10, 2020 for \$130,000. The Defendant is no longer

in possession of the building. The Defendants counterclaim for eviction and trespass should be

dismissed with prejudice. The Defendant is unable to continue with the prosecution of those

counterclaims. See attachment for Sale of Building

**II. Defendants counterclaim for Eviction and Trespass fails because the building has been sold and no longer in possession so Defendant no longer has standing to pursue either counterclaim.**

“The principle of standing under the United States Constitution is "an essential and unchanging part of the case-or-controversy requirement of Article III.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). “The Supreme Court has provided a three-part test to establish standing:

“ First, the plaintiff must have suffered an "injury in fact"—an invasion of a ROA075

legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not `conjectural' or `hypothetical,'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Atc South, Inc. v. Charleston County, 669 S.E.2d 337, 380 S.C. 191 (S.C. 2008).”

Here in the present case, Defendant is not in possession of the property. The building was sold prior to the case ending. Defendant is not able to meet the standard of

Standing. As the Defendant would not meet the third part of the test, that the injury would

be redressed. Therefore, Defendant does not have standing to peruse eviction or trespass

against the Plaintiff.

**III. The Defendants last counterclaim for unjust enrichment must be dismissed now that the Court has granted the Defendant’s motion for Summary Judgment ruling no contact was ever formed.**

The Defendant pleaded for a counterclaim of unjust enrichment for the following reason:

refusing to vacate the Property from April through August having received a benefit and

operating a business, enjoyed the use of utilities paid by defendant, did not pay rent, utilities,

insurance or otherwise.

The Defendant filed for summary judgment for the court to say there was not a contact.

The counterclaim the Defendant pleaded for was based on a contact. The Court ruled the following: the potential contact at issue could not have been performed within 12 months, parties clearly were negotiating potential terms of the contract, no contact was ever signed, thus there was not meeting of the minds.” See Ruling from June 5, 2020.

Here in the present case, with that ruling of no contact, Plaintiff is not responsible for rent, utilities, or insurance. The Plaintiff was fixing up the building from April until August when

Defendant asks for her keys back. The Plaintiff did not have any business being run out the building because Defendant kicked her out prior to that happening. Plaintiff wanted to start Dreamcasters but never had the opportunity too.

Since there was no contact to lease or purchase the building, the Plaintiff is not responsible for rent, etc.

#### CONCLUSION

The Plaintiff respectfully asks the court to dismiss the Defendants counterclaim for eviction, trespass and unjust enrichment. The Court has ruled there is not contact and second Defendant is no longer in possession of the Building. Therefore we ask the court to dismiss the Defendants Counterclaims with prejudice.

Respectfully submitted

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