STATE OF SOUTH CAROLINA **COUNTY OF KERSHAW** **Charles Ives,** **Plaintiff** **v.** **Charles E. Campbell, Vivian C. Gardner, T. Clayter Campbell, Thomas Clayter Campbell and Eddie Harold Goff, Trustees of the Colbert H. Campbell United Trust, Sonja C. Parker, Barry Campbell, and Randy Bowers,** **Defendants.**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT** **DOCKET NO. 2019-CP-28-01137** **ORDER**

This matter came before the Court for a non-jury trial on February 27 and 28, 2023. Plaintiff Charles Ives was represented by Brian Boger, Esq. and Defendants (except Randy Bowers) were represented by J. Paul Porter, Esq. Plaintiff filed this action against the heirs of Thomas E. Campbell (hereinafter "T.E. Campbell") seeking $191,000.00 in reimbursements for alleged improvements to property he leased from Defendants. The improvements occurred between 1982-2008. Plaintiff filed the Summons and Complaint alleging causes of action for an equitable lien, unjust enrichment, and promissory estoppel. Defendant Randy Bowers was dismissed by stipulation on March 2, 2022. Plaintiff's claim for entitlement to reimbursement is based on his past business relationship with Claude E. Campbell (hereinafter "Claude"), a relative of the defendants, who died in 2015.

SUMMARY OF THE EVIDENCE

Based upon pre-trial motions to exclude testimony in violation of the Dead Man's Statute, codified at S.C. Code Ann. § 19-11-20, Plaintiff was restricted from testifying about discussions with Claude to establish these claims. Other witnesses were also restricted from testifying about statements by Claude to establish any agreement with Plaintiff based on the hearsay rule. Rule 802, SCRE. There is no evidence of a written or verbal agreement between Plaintiff and Claude (or any other Defendant) to reimburse Plaintiff for improvements he made to the property leased at 911-931 Highway 1 in Lugoff, South Carolina (Tax Map #0646-00-00-062) (hereinafter "Lugoff

Property") other than Plaintiff's allegations and testimony. The property belonged to T.E. Campbell. Upon his death in 1982, Claude became the administrator of his estate.

The following witnesses testified during the trial: Madelle Lawhorn, John Wells, Wayne Hinson, Sonja Parker (Claude's daughter), Barry Campbell (a son of Claude), Bradley Parsons, Charles Ives (Plaintiff), Gerald Goff, Johnnie Gibbs, Harold Goff, and Vivian Gardner (Claude's sister).

Plaintiff's witnesses had no knowledge and were unable to testify about an agreement to reimburse Plaintiff for improvements made to the Lugoff Property. Madelle Lawhorn, Wayne Hinson, Barry Campbell, Sonja Parker, and Vivian Gardner specifically testified they had no knowledge of any such agreement. Other witnesses testified to general knowledge about business dealings between Claude and Plaintiff over the years and the fact that certain improvements or additions were made to the Lugoff Property. However, the witnesses did not testify regarding any agreement to reimburse Plaintiff for money he spent on the property.

John Wells ("Wells"), an attorney, provided legal services for Claude and Plaintiff, but not with respect to the property at issue in this action. Wells testified that while Claude did not insist on written contracts in his business dealings, he was not an "*aw shucks* handshake is good enough for me" type. According to Wells, Claude's focus in business dealings was ensuring that he had the power in his business relationships irrespective of written contracts.

Wayne Hinson worked in the car business on the Lugoff Property with Plaintiff. Plaintiff invested money preparing the property to operate the car business. According to Hinson, Plaintiff located the property and developed the property, Claude provided the money to finance the vehicle inventory.

Plaintiff testified that he paid for certain improvements to the Lugoff Property. He acknowledged that he and Claude were engaged in several business dealings through the years. Their dealings were rarely reduced to writing. Plaintiff was aware that Claude was the administrator of T.E. Campbell's estate. However, Plaintiff was not aware of any additional authority Claude had regarding ownership of the Lugoff Property after the estate of T.E. Campbell was closed on May 31, 1984.

Plaintiff did not have any receipts or other documents to corroborate the amount of reimbursements he was seeking. He testified that he made improvements to the property he leased and itemized the amounts spent. These improvements occurred between 1982 and 2008. When a

decision was made to sell the property, Plaintiff assisted by publicizing the property as "For Sale by Owner" and he was the contact person. He believed he could recoup the money he spent by assisting in the sale of the property and receiving a fee for his services. He did not have any conversations with the Defendants regarding his claim for reimbursement until April 2018. Plaintiff first sought reimbursement for the improvements to the property after Claude's death and after the Lugoff Property was listed for sale with a commercial real estate agent.

Johnnie Gibbs ("Gibbs") poured concrete at the Lugoff Property in the 1980s. He had no recollection of the dollar amount he charged for it. He testified there was no way for him to find that information. He recalls it was a big job and a large amount of concrete was poured.

Gerald Goff was aware of business dealings between Plaintiff and Claude. Based on conversations he observed between them, if Plaintiff made improvements to the Lugoff Property, Plaintiff was responsible for the cost.

Harold Goff ("Goff") is a trustee to the estate of Colbert Campbell, who was an heir to the estate of T.E. Campbell. Goff is retired but sells real estate occasionally. He was involved in listing the Lugoff Property after it was advertised "for sale by owner" for a year without any offers. He was at a meeting with Plaintiff in April 2018 to discuss the initial "for sale by owner" listing for the property. During that meeting Plaintiff said he was "not owed anything" by the Campbell family. The first time Plaintiff claimed he was owed money for improvements occurred when the property was formally listed with a real estate agent. Goff testified the improvements by Plaintiff did not add value to the sale price and, in his opinion, a likely buyer would need to demolish the improvements.

Vivian Gardner testified her ownership interest in the Lugoff Property was the same as her siblings. She assisted Claude by collecting any rent associated with all of the estate property. She would not make any deal with a tenant without consulting her siblings. Gardner also testified that in April 2018, when the family told Plaintiff about the plan to sell the property, Plaintiff explicitly said he was not owed anything. The first time Plaintiff said he was owed anything was after the decision was made to hire a commercial listing agent.

Barry Campbell and Sonja Parker similarly testified that they first learned of Plaintiff's claim that he was owed money for improvements to the property after the decision was made to hire a commercial listing agent.

FINDINGS OF FACT

Based upon the evidence presented, this Court makes the following findings of fact:

1. Plaintiff leased a piece of commercial property previously owned by T.E. Campbell in Lugoff, South Carolina, where he operated a car lot.

2. No written lease was presented. There was no testimony describing the terms of the lease including its duration and the specific date when the agreement was made.

3. Plaintiff states he made $191,000.00 in improvements to the property between 1982 and 2008. Plaintiff described the following improvements for which he sought reimbursement: (1) installing septic tank and grading the lot in 1982 ($12,500); (2) purchasing and setting up a "Hoover" building for the property in 1984 ($14,000); (3) pouring concrete on the lot between 1986-1988 ($120,000); (4) purchasing a mobile office unit in 1999 ($35,000); and (5) renovations in 2008 to a pre-existing building on the property ($9,500).

4. Plaintiff did not present any receipts or other corroborating evidence about the amounts spent on the improvements.

5. Gibbs did not recall the amount he charged for pouring the concrete requested by Plaintiff.

6. The property was originally owned by T. E. Campbell who died in 1982. Defendants (and their predecessors) acquired ownership of the property from the estate of T. E. Campbell. Claude, the oldest son of T. E. Campbell, served as the administrator of the estate until it was closed in 1984.

7. Plaintiff's dealings with property were solely handled with Claude. Plaintiff was unaware of any authority Claude had over the property after the estate of T. E. Campbell was closed in 1984.

8. Upon Claude's death in 2015, his Will did not provide for any remuneration to Plaintiff.

9. Defendants first learned of Plaintiff's claim for reimbursement in 2018.

10. The only person who testified about the existence of an agreement for Claude to reimburse Plaintiff for any improvements made to the Lugoff Property was Plaintiff. There was no corroborating evidence of any agreement between Plaintiff and Claude or that Claude was acting on behalf of all of the owners or heirs of the Lugoff Property.

STANDARD OF REVIEW AND ELEMENTS OF LEGAL CLAIMS

Under Rule 41(b), SCRCP, the standard for dismissal is "that upon the facts and the law the plaintiff has shown no right to relief." "Rule 41(b) allows the judge as fact finder to weigh the evidence and determine the facts." *Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000). The Court, as trier of facts, may decline to render judgment until the close of all the evidence. If the Court renders judgment on the merits against Plaintiff, the Court shall make findings of fact as provided in Rule 52(a). See Rule 41, SCRCP.

The standard of proof is by clear and convincing evidence. *Satcher vs. Satcher,* 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002). In *Satcher*, the plaintiff sought title to property in equity and without a writing based on an alleged parol gift of farmland and a residence by a deceased grandfather to his grandson. The plaintiff in *Satcher* made claims for equitable title, specific performance, and promissory estoppel. The Court of Appeals held:

> To prevail under any of these theories and avoid the application of the Statute of Frauds, [Plaintiff] must prove each element by clear, cogent, and convincing evidence. South Carolina case law provides a requirement of clear and convincing evidence for proving a parol gift of land and a contract to devise.

Satcher, 570 S.E.2d at 538.[1]

Equitable Lien

"For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serves as security for payment of the debt." *Chase Home Finance, LLC v. Risher*, 405 S.C. 202, 209, 746 S.E.2d 471, 475 (Ct. App. 2013) (quoting *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011)(quoting *First Fed. Sav. & Loan Ass'n of S.C. v. Finn*, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989)). "If a party seeking an equitable lien cannot satisfy any one of these requirements, this remedy is not available." *Chase Home Finance, LLC v. Richer*, 405 S.C. at 209.

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[1] If the clear and convincing burden of proof is not applicable, then Plaintiff must prove each of the elements of his claims by a preponderance of the evidence. "A preponderance of the evidence is evidence which convinces the fact finder as to its truth." *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016). Under either standard, Plaintiff has failed to carry the burden of proof.

Unjust Enrichment

"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.'" *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 257, 715 S.E.2d 348, 356 (Ct. App. 2011). "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) "Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." *Id.; citing Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988).

Promissory Estoppel

The elements of promissory estoppel are: (1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the promisor; and (4) injury caused to the promisee by his reasonable reliance. *N. Am. Rescue Prod., Inc. v. Richardson*, 411 S.C. 371, 379–80, 769 S.E.2d 237, 241 (2015). For promissory estoppel to apply, "the promise to be enforced must be unambiguous with clearly articulated, definite terms, while the sustained injury must result from an inconsistent disposition by the promisor." *Barnes v. Johnson*, 402 S.C. 458, 470, 742 S.E.2d 6, 11 (Ct. App. 2013).

DISCUSSION

There is no recorded evidence of a debt in this case owed by Defendants, or a debt which attaches to a specific property. Additionally, there is no evidence of expressed or implied intent that the property will serve as security for payment. If the Court were to allow Plaintiff, unilaterally, to create a debt linked to the leased property based upon making improvements; there is still no evidence of "an expressed or implied intent" that the Lugoff Property serve as security for reimbursement for those improvements. Plaintiff's claim is premised on an alleged oral contract. "Equity will not impose an equitable lien where there is an adequate remedy at law." *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 146, 337 S.E.2d 244, 247 (Ct. App. 1985). Therefore, Plaintiff failed to establish the right to an equitable lien.

Additionally, Plaintiff did not confer any benefit to the Defendants. Plaintiff failed to produce evidence that the improvements he made benefited Defendants in any way. The evidence clearly shows those improvements benefited the Plaintiff because they helped him run his car business. The only evidence about the present value of those improvements is that they did not factor into the commercial sales price for the Lugoff Property. "In a case involving improvements to realty, the measure of recovery in restitution is the difference in the fair market value of the property before and after the improvements." *Barnes v. Johnson*, 402 S.C. 458, 467, 742 S.E.2d 6, 10 (Ct. App. 2013) *quoting*, *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.,* 296 S.C. 530, 533, 374 S.E.2d 507, 509 (Ct. App. 1988). Plaintiff failed to prove the value of the improvements to the property.

"It is well established that a landlord has no duty to its tenant to make repairs or improve the premises absent a contract to do so." *Edwards, Inc. v. Arlen Realty & Dev. Corp.*, 466 F. Supp. 505, 509 (D.S.C. 1978). "Fundamentally, a tenant who elects to improve a property does so at his or her own peril. Should a relevant lease provide for reimbursement commensurate with such improvements, this element of peril is removed." *In re Driscoll*, 401 B.R. 512, 519 (Bankr. S.D. Fla. 2009). "It is a well settled principle of property law that the tenant is not entitled to compensation for improvements made to the leasehold in the absence of an agreement that the landlord pay therefor." *In re Huffman*, 171 B.R. 649, 657 (Bankr. W.D. Mo. 1994.). "[P]ermanent improvements made to real property become the property of the landlord upon termination of the tenancy." *In re Emerald Outdoor Advert.,* 348 B.R. 552, 557 (Bankr. E.D. Wash. 2006). Plaintiff assumed the risk that his improvements would not be reimbursed by undertaking to pay for the improvements without written documentation that he would be reimbursed.

The claim for promissory estoppel fails because there is no evidence of any unambiguous promise by the Defendants to the Plaintiff about reimbursement for improvements; thus, there is no claim. *See Barnes,* 402 S.C. at 471, 742 S.E. 2d at 12. Even if there was a promise, Plaintiff did not suffer any injury. Plaintiff was able to use the alleged improvements to benefit his own business interests at the Lugoff Property for at least 20 or more years.

There is no evidence in the record about a promise from Claude to reimburse the Plaintiff for improvements to the Lugoff Property. Claude did not have any authority to bind his siblings. The evidence presented failed to establish any agreement by or with other family members giving Claude the authority to bind his siblings to reimburse Plaintiff for improvements to the leased property.

The executor or administrator of an estate is merely a trustee for preserving and securing the rights of heirs and beneficiaries. *Lawton v. Hunt*, 23 S.C. Eq. 1, 22 (S.C. App. Eq. 1850); see also, *O'Neall v. Herbert,* 16 S.C. Eq. 495, 498 (S.C. App. Eq. 1837) (noting that the duties of executors and administrators are the same). Following the death of T.E. Campbell, the tract of land passed by testate succession to T.E. Campbell's heirs-at-law, who held equal shares in the property as tenants in common. See *State v. Singley*, 392 S.C. 270, 276, 709 S.E.2d 603, 606 (2011) (internal citations omitted) (stating when multiple beneficiaries inherit property of an intestate, they hold it as tenants in common). As the administrator of the estate, Claude had no authority to enter into an agreement on behalf of all owners without their consent. Claude's duties were limited to overseeing the administration of the estate and ensuring all heirs received the property to which each was entitled. Claude's temporary role as administrator of the estate ended when the estate closed in 1984.

Plaintiff failed to establish that the heirs of T.E. Campbell accepted or had knowledge of Claude's agreement to reimburse Plaintiff for improvements to the property and to also bind the heirs. None of the heirs, as co-tenants, testified they were aware of the alleged agreement. As a co-tenant, Claude had no authority to bind the other co-owners of the land to any agreement without consent. *Fender v. Heirs at Law of Smashum*, 354 S.C. 504, 511, 581 S.E.2d 853, 857 (Ct. App. 2003) (quoting 20 Am.Jur.2d *Cotenancy & Joint Ownership* § 106 (1995)("In the absence of authorization or ratification, any attempted conveyance of the common property by one cotenant is not binding upon his cotenants and operates to pass title to nothing more than the seller's own interest.").

Defendants raise a defense regarding the Statute of Frauds. The Statute of Frauds states in part:

> No action shall be brought whereby:
> ...
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or
> (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.

S.C. Code Ann. § 32-3-10. In order to satisfy the statute of frauds, there must be a writing signed

by the party against whom enforcement is sought, and "the writings must establish the essential terms of the contract without resort to parol evidence." *Springob v. Univ. of S.C.*, 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014). Here, Plaintiff seeks reimbursement for improvements made to land he leased between 1982 and 2008. Plaintiff's claim is subject to, and fails under, the Statute of Frauds. There is no writing as required by the Statute of Frauds. Further, Plaintiff cannot establish an agreement to reimburse him without referring to inadmissible parol evidence.

Defendants also assert laches as a defense. Laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums,* 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Robinson v. Estate of Harris,* 388 S.C. 630, 642, 698 S.E.2d 222, 228 (2010), *citing Chambers of S.C., Inc. v. County Council for Lee Cty.,* 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). Thus, the predicate for laches is an unreasonable and unexplained delay. *Eldridge v. Eldridge*, 398 S.C. 113, 121–22, 728 S.E.2d 24, 28 (2012). Plaintiff did not file this action until November 2019, over three years after Claude Campbell's death and more than 20 years after he first made any of the alleged improvements. Plaintiff had ample opportunity to seek reimbursement for any improvements based upon his lengthy business relationship with Claude.

"As a general rule, the evidence should allow the court or jury to determine the amount of damages with reasonable certainty or accuracy." *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 151, 810 S.E.2d 41, 45 (Ct. App. 2018) (quoting *Gauld v. O'Shaugnessy Realty Co.,* 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008)). However, "[n]either the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Id.* (quoting *Piggy Park Enters., v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968)).

Plaintiff seeks extraordinary damages for work performed between 1982 and 2008. Plaintiff does not provide any receipts or records but bases the amount on imprecise estimations and recollections of what he believed the work cost or what he paid. Further, the appropriate measure of damages is the value of the improvements. Plaintiff failed to present any evidence showing the enhanced value of the Lugoff Property from the improvements he made. *See Barnes v. Johnson*, 402 S.C. 458, 467, 742 S.E.2d 6, 10 (Ct. App. 2013) ("In a case involving

improvements to realty, the measure of recovery in restitution is the difference in the fair market value of the property before and after the improvements."); *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 533, 374 S.E.2d 507, 509 (Ct. App. 1988) (The contractors neglected to prove the value of the leasehold before and after the work; therefore, there was no proof that the defendant realized value from the benefit conferred.). The damages sought by Plaintiff are speculative.

CONCLUSION

Based on the foregoing, Plaintiff failed to carry his burden of proof by clear and convincing evidence, or a preponderance of the evidence, to demonstrate that he is entitled to judgment against Defendants. Therefore, this case is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

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Kershaw Common Pleas

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IT IS SO ORDERED!

s/ Alison Renee Lee