

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Charles B. Simmons, Master in Equity

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Oct 09 2023

S.C. SUPREME COURT

Appellate Court Case No.: 2023-_____

Terrance "Terry" Carroll, Appellant,

v.

Debra Mowery, TD Realty, Upstate RE Group,
Hawk Shadow Business Services, LLC, and Debra Mower Realtor, Respondents.

PETITION FOR CERTIORARI

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October 9, 2023.

PETITION

Pursuant to Rule 242, SCACR, the Appellant hereby moves this Court to issue a writ of certiorari to review the decision of the court of appeals in this case.

STATEMENT OF THE CASE

PROCEDURAL BACKGROUND

Plaintiff initiated this case on May 16, 2018, by filing a Lis Pendens Notice of Pendency of Action, Summons and Notice with Complaint attached, and Complaint. Defendant was properly served with same. On June 15, 2018, Defendants filed an Answer and Counterclaim of Defendants. On June 18, 2018, Plaintiff filed an Amended Complaint alleging causes of action for (1) Unjust Enrichment, (2) Interest in and for Real Estate, (3) Intentional Infliction of Emotional Distress, (4) Specific Performance of Contract, (5) Breach of Contract, (6) Temporary Injunction, (7) Restitution, (8) Constructive Fraud, (9) Breach of Trust, and (10) Quantum Meruit. On June 26, 2018, Defendant filed an Answer to Amended Complaint and Counterclaim of Defendants denying Plaintiff's requests for relief, stating affirmative defenses of (1) Statute of Frauds, (2) Statute of Limitations, and (3) Laches, and alleging causes of action for (1) Interference with Contractual Relationship, (2) Abuse of Process, (3) Slander of Title, (4) Conversion, (5) Eviction, and (6) Offset.

This case was referred to the Master by an Order of Continuance and Order of Reference to Special Referee filed October 16, 2019, to act as special referee for Pickens County for final, non-jury adjudication of the matter and related motions. This matter was heard on December 17, 2019, for a hearing on Plaintiffs Motion to Compel Discovery, Defendants' Motion for Partial Summary Judgment, and a trial on the merits. In the order denying relief to Mowery and Carroll,

the special referee dismissed Carroll's action for constructive fraud, finding Carroll failed to present evidence of falsity on Mowery's part or that he reasonably relied on such a falsity. The special referee dismissed Carroll's breach of trust action, finding Carroll failed to present any evidence of a fiduciary relationship between him and Mowery. The special referee also denied Carroll relief based on his causes of action for interest in and for real estate, which the special referee considered as a constructive trust claim, and breach of contract. Additionally, the special referee denied Carroll relief based on unjust enrichment, quantum meruit, and restitution because he found there was insufficient evidence to determine what financial contributions each party made to the relationship or to the expenses related to the real estate transactions that occurred during their relationship. The special referee stated that likely neither party contributed significantly more or less money and time to the relationship but if one party did contribute more than the other, any such contribution should be considered a gift to the other party.

FACTUAL BACKGROUND (* Page references are to ROA page numbers bottom right of the page beginning on Appendix page 75.)

The Petitioner, Terry Carroll, and Respondent, Debra Mowery, met in 2006 in Hartford County, Maryland. R. 148. While in Maryland the parties agreed that they would invest in property by Mowery purchasing a house that Carroll would “fix it up”. R. 149. While in Maryland, Mowery and Carroll told Carroll's brother-in-law John Quinn about their business plans. R. 222. Quinn’s wife Fern Quinn testified that Mowery had talked about her and Carroll's plans to buy and fix-up houses as a retirement plan. R. 226-R. 230. The parties discussed and agreed to put the Maryland house in Mowery's name to facilitate the paperwork. R. 169. While the parties still lived together in Maryland Carroll bought materials and completely renovated the

Maryland house. R. 150; 221. The parties purchased the Maryland home for \$61,000 and as a result of Carroll's renovations were able to sell it for \$169,000. R. 160. Mowery admitted that a \$100,000 profit from the Maryland house came in part from Carroll's work. R. 308.

After Carroll paid off the mortgage on the Maryland property the parties agreed to buy another house as a continuation of their retirement plan. R. 153. They looked and made offers on houses in Maryland and Florida but ended up buying a house at 109 Linda Lane in Easley, South Carolina. R. 154. Mowery obtained another mortgage on the Maryland home for the purchase of the Linda Lane home. R. 157. When the Maryland home was sold the mortgage was paid off leaving the parties with the Linda Lane property, no mortgages, and \$71,000 in their joint bank account. R. 157-158; 281. Around the same time Carroll also put \$42,000 from the sale of his 53 foot Hatteras motor-yacht into a joint account which was used to purchase materials used in the renovation of the Linda Lane property. R. 177; 209-210.

In 2010 Carroll was involved in a motor vehicle accident. R. 151. In approximately 2012 Carroll received a settlement close to \$118,000 for his injuries. R. 152. Carroll deposited half of the settlement money into his checking account and half into a savings account, both in his name. R. 152. Within a month Carroll withdrew about \$60,000 cash which he put into a joint safety deposit box at MBRS. R. 152. Carroll used the remaining funds from his settlement to pay off the \$31,000 mortgage on the Maryland home. R. 157; 341. He also put \$5,000 into Hawk Shadow, LLC, and \$5,000 into his boat rental business. R. 157; 341. Quinn testified that most of Carroll's money went into the parties' businesses. R. 222. The parties had a joint account at BB&T (8910) in the name of "Debra Mowery and Terence Carroll, 109 Linda Lane" that they used to purchase all of the South Carolina properties. R. 161; 343-345; 360; 367.

The parties resided at the Linda Lane property from 2015 until Mowery kicked Carroll out in 2018. 160. The Linda Lane property was purchased with loan money from AgFirst that was deposited into the parties' joint account at MBRS. R. 155. After the purchase Mowery stayed in Maryland and Carroll moved down to South Carolina to begin renovation work on the house. R. 155. Carroll completely renovated the house. 155; 420. Carroll installed new plumbing, a bathroom, added closets, finished the basement, and added a new exterior door. 155-156. He also put in a 14 by 14 foot addition along with a 14 by 25 foot deck. R. 166. The parties purchased the home for \$61,000 cash. 156. Carroll's work increased the home's equity over 100 percent. R. 156. Carroll estimated the value of the Linda Lane property to be \$220,000. 166. Mowery estimated its value at \$169,000. R. 321.

The parties later purchased an additional property at 204 South 9th Street with the intention of making it a rental. R. 162. The property was purchased for \$10,000 that came from the sale of the parties' Maryland house proceeds which were deposited into the parties' joint BB&T account. R. 161-162. With the help of some of his family Carroll totally renovated the 9th Street property. R. 161-163; 220-221. The house was purchased with funds from the parties joint account. R. 200. Most of the money spent on the house came out of the parties' joint account. R. 164. That house was rented at \$800 a month. R. 164. Every month the rent was deposited into a TD account. R. 165. Carroll did all of the showings and dealt with the tenants. R. 165.

Shortly after purchasing the 9th Street property the parties purchased another property at 539 Pope Field Road. R. 168. The Pope Field property was also purchased with funds from the parties' joint account. R. 168-170. The purchase price on the property was \$42,000. R. 323. Carroll performed \$61,000 to \$75,000 worth of work in renovating the Pope Field property. R.

200; 220-221. Without discussing it with Carroll, Mowery entered into a contract to sell the Pope Field house for \$61,000 despite it being worth at least \$90,000. R. 200.

When asked about their parting ways, Mowery answered: "I no -- I no longer had any work available for him and actually we had not been romantic for many years, so it was just an end. It was an end." R. 295, l. 9-11. Mowery repeatedly described their relationship as a business relationship ending because she no longer had any work available for him to do. R. 295-296. Carroll testified that in addition to buying and improving real property the parties had several other joint ventures. TD Realty was formed with the intent to hold future purchases under the parties' retirement plan. R. 169. Mowery led Carroll to believe that she had made him a part owner of TD Realty and that all of the South Carolina properties were held under TD Realty. R. 169. Hawk Shadow Business Services, LLC was a business started by Mowery as a tax preparation business. R. 146. Debra Mowery Realtor was a business started by the parties so that they would have access to the MLS system in buying rental houses. R. 147. That allowed them to find houses as soon as they came on the market. R. 147. Carroll's settlement money paid for Mowery getting her real estate license. R. 147; 204-205. Mowery had to work for a broker for two years before she could go out on her own as a real estate agent. R. 147. During that time Mowery worked at Charter Realty where she met realtor Cole Reynolds. R. 205-207.

TD Realty was started by the parties as a real estate company to buy rental houses and collect rental income. R. 146. Carroll testified that he had been given and signed the paperwork to make him vice-president of TD Realty. R. 207. Carroll testified that was led to believe that he was the vice-president and a part owner in TD Realty. R. 207-208. TD stands for "Terry/Debra". R. 207. Upstate RE Group was started by the parties as a real estate brokerage firm. R. 146.

Carroll was also led to believe that he was the vice president and a part owner of Upstate Real Estate Group. R. 205-208. As a result Carroll invested money in Upstate. R. 205-206. Carroll remodeled the basement of the Linda Lane house as an office for Upstate. R. 146. The parties paid for Cole Reynolds to get his brokerage license. R. 146. Once Reynolds obtained his license he acted as the broker in charge of Upstate RE Group. R. 146. It was not until this litigation that Carroll discovered that the business records Mowery kept for the parties' businesses failed to show him as a part owner of any of the businesses. R. 207.

When Mowery broke off the relationship with Carroll she initially told him that they would split all of their assets 50/50. R. 171. The next day she cancelled his credit cards, took his name off the bank accounts, took all of the cash out of the safe along with and most of Carroll's belongings. R. 172-173. She also took the keys to everything, including a Jaguar that the parties' purchased while still in Maryland. R. 173-174. Carroll was forced to pay for hotels, rent, and housing. R. 176. Carroll estimated his damages at approximately \$300,000 for the lack of use of the Jaguar, damages, and mental anguish. R. 177.

At trial Mowery denied any agreement that Carroll would receive any money from the sale of the houses or receive any compensation for the work he put into any of the houses. R. 297. She claimed that she paid for all of his living expenses which she thought was a fair trade for his work on the properties. R. 297. When asked about her breakup with Carroll, Mowery responded that they had not been romantic for many years and that it came to an end because she "no longer had any work available for him". R. 295. On cross-examination Mowery testified that now she has another man living with her at Linda Lane who doesn't pay rent. R. 306. When asked if he is living there for free Mowery testified: "He's working. He takes care of some things

for me." R. 306, l. 14-16. When asked if he's doing the same thing Mr. Carroll did she responded "yes". R. 306, l. 14-16.

While claiming earlier in her testimony that she was not buying houses with Carroll, when asked if Pope Field was the last one "you-all" bought together Mowery responded: "That is correct." R. 323. When asked if Carroll ever deposited any of his money, boat proceeds, personal injury money, into any of the various accounts Mowery said: "Not that I know of. Not that I recall." R. 314, l. 6-21. When asked how the Jaguar was paid for Mowery said: "That was paid with cash out of the box." R. 315, l. 4-5. Although Mowery had testified that Carroll had never paid for anything she could not explain how the mortgage on the Maryland house was paid off and denied knowing what Carroll paid \$30,000 dollars for or where he got the money. R. 319. Mowery later admitted that Carroll wrote her checks. R. 320. When asked where she thought he got the money from to write her checks she responded: "He had a settlement." R. 320, l. 5-13. But then when asked a follow up question on what she thought Carroll did with the settlement proceeds she claimed that she had no idea. R. 320. Mowery was so evasive in her testimony that the judge called her out repeatedly, and only then did she admit that Carroll paid the \$30,000 to satisfy the mortgage on the Maryland house. R. 324; 384-385. In cross-examination Mowery admitted to having written a birthday card to Carroll that extolled his virtues, in clear contrast to her testimony about Carroll at trial. R. 328-329.

ISSUES

The court of appeals affirmed the decision of the Master denying relief to Carroll on all grounds. The courts' opinion overlooked and/or misperceived facts relevant to the case.

I. CONSTRUCTIVE FRAUD, BUSINESS FIDUCIARY AND FALSE REPRESENTATION

The decision of the court of appeals is based on a finding that the Appellant failed to present evidence that a business transaction took place between he and the Respondent. The business nature of the relationship between Carroll and Mowery is clear. When asked about having made a determination of that she no longer wanted to be in a romantic relationship with Carroll, Mowery answered: "I no -- I no longer had any work available for him and actually we had not been romantic for many years, so it was just an end. It was an end." R. 295, l. 9-11. Mowery repeatedly described their relationship as a business relationship and that it ended when she no longer had any work available for him to do. R. 295-296. The court of appeals' decision as to there being a lack of evidence establishing a business relationship is therefore in error.

The court of appeal's finding is further in error as the record shows that Mowery was in the business of providing all aspects of business administration to businesses and individuals. Regardless of whether the Mowery had obtained her realtor's license prior to or after the purchases of the properties at issue, the purchases of the properties at issue were clearly done as part of Mowery's real estate business. The record is clear that Carroll and Mowery engaged in a plan of investing time and money to purchase and renovate real properties with Carroll relying on Mowery's business experience to handle all of the administration of the venture while he provided money and labor for the renovation of the properties.

The record shows that prior to the purchase of the first property the Respondent was operating Hawk Shadow Business Services, LLC, the stated purpose of which was "to engage in services and support of accounting, bookkeeping, taxes, instruction and all aspects of business

administration and development for all individuals, small to medium size businesses for profit and non-profit.” R. 533. The record has ample evidence that Carroll relied on Mowery’s business expertise to handle the administration of the real estate which included the purchase, titling, and transfer of the properties at issue: “That’s what she does is paperwork. *I mean business services.* When I met her that was her business that she had started and throughout the years I just gave her money and – to put into her business when she –.” R. 169, l. 19-22 (*Emphasis added*).

Carroll testified that when they moved to South Carolina Mowery continued to operate the business (Hawk Shadow) out of an office that Carroll made for her at their house. Carroll also testified that TD Realty, LLC, was set up to ultimately hold the titles to properties at issue. Carroll testified that TD stood for Terry/Debra leading Carroll to believe that he would have an interest and position in TD Realty, and thus the properties at issue. R. 169. Carroll’s testimony shows that he relied on Mowery’s expertise to do all of the business administration and acts necessary to effectuate a business plan for investing in real estate. The record is more than sufficient to establish that Carroll entered into a confidential or fiduciary relationship with Mowery, and that he placed special confidence in her based on her ability to manage all aspects of the administration and development of the venture. Mowery was therefore in a position of trust and responsibility. As a result, Carroll was entitled to rely on Mowery’s representations and Mowery was bound to act in good faith and with due regard to the interests of Carroll. SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (S.C. 1990).

The decision of the court of appeals is further in error as its finding that Carroll failed to present sufficient evidence showing that Mowery made false representations about the administration and ownership of the properties and TD Realty. Carroll testified that “the whole

reason why we put it and we started the TD Realty to put all of these – all of these business houses were supposed – it was Terry/Debra. I was supposed to be on there and I just found out that I’m not even listed as an owner on that business.” R. 169, l. 11-17. The record shows that the parties operated under a plan to invest in properties and share in the benefits from their efforts. Carroll’s testimony shows that part of their plan was to transfer the properties to TD Realty in which Carroll would have an interest and a degree of control. Carroll’s expectations were clearly based on Mowery’s representations and their retirement investment plan.

II. BREACH OF TRUST

The court of appeals’ decision denying Carroll’s cause of action for breach of trust is based on a finding that Carroll failed to present evidence showing that he and Mowery had a fiduciary relationship. As more fully argued above, and incorporated herein, the Court’s opinion overlooks evidence more than sufficient to establish a confidential or fiduciary relationship between Carroll and Mowery. Mowery’s own testimony makes clear that Mowery and Carroll had a business relationship during the renovation of the South Carolina properties and that Carroll’s part of that relationship was to provide work on the properties. Mowery testified that she asked Carroll to leave when she no longer had “work” for him. R. 295-296. Carroll testified that because business management was Mowery’s area of expertise she handled all of the transactions and management of their venture. Because of that relationship a constructive trust was formed. “A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by the one holding the legal title.” Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). “A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an

obligation in equity to make restitution." *Id.* Equity supports Carroll's claim for restitution. The Court's opinion is therefore in error.

III. BREACH OF CONTRACT AND INTEREST IN AND FOR REAL ESTATE.

Breach of Contract

The court of appeals finding as to a lack of evidence proving a contract between Carroll and Mowery is in error. In its analysis the court relied on Mowery's testimony that she never agreed to compensate Carroll in exchange for his work on the properties. In doing so the court overlooked evidence clearly proving the existence of a contract between Carroll and Mowery.

A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). Mowery and Carroll were clearly in business relationship in which Carroll provided money and labor for the renovation of investment properties. R. 295-296. Testimony of Carroll's sister and brother-in-law is sufficient to show that the parties agreed to run the business together. As argued more fully above, under this agreement Carroll was to supply money and labor while Mowery supplied the business administration and management. Carroll testified that he provided \$30,000 to pay off Mowery's line of credit on the Church Street house and another \$5,000 as an infusion into Mowery's business. T. 206. Carroll was to have an ownership interest and a degree of control in the investment properties, this being the compensation for his investment of time and money into the venture. Mowery does not dispute that Carroll renovated the properties while she most other aspects of the venture. When viewed in the light most favorable to Carroll, and taking all favorable inferences from the evidence, the record is sufficient to show an agreement between the parties that included an ownership interest as

compensation for Carroll.

Interest in Real Estate

The Court's opinion on the Interest in Real Estate claim turns on the finding that Carroll failed to present evidence showing that he and Mowery had a confidential or fiduciary relationship. As more fully argued above the Court's opinion overlooks relevant evidence establishing the confidential relationship between the parties. Knowing Mowery put the deeds initially in her name only is irrelevant to the analysis since this was unknown to Carroll until the present litigation. Based on Mowery's business expertise Carroll relied on Mowery for all of the transactional and managerial duties of the venture. Mowery represented that the deeds to the investment properties would subsequently be transferred to TD Realty, in which Carroll was supposed to have an ownership interest and a degree of control. Given the confidential or fiduciary relationship created by her accepting the transactional and management role in the venture Mowery owed a duty to Carroll to disclose that she did not transfer the titles to the properties to TD Realty. She further had a duty to disclose that she did not assign Carroll an ownership or control interest in TD. The court's finding that there was no evidence supporting a constructive trust was therefore in error.

IV. QUANTUM MERUIT, UNJUST ENRICHMENT, AND RESTITUTION

The court of appeals' opinion on the issue of quantum meruit, unjust enrichment and restitution rests on a finding that there was no evidence showing Mowery received a benefit from Carroll's renovation work. The court of appeals opinion overlooks evidence that clearly shows that the investment properties were substantially increased by Carroll's contributions of money and labor. The record shows that the 109 Linda Lane property was purchased for \$61,000.

Carroll testified that he completely renovated the house:

... I totally rehabbed it. Everything. New plumbing, all new plumbing. I added all new – a whole new bathroom. I added a whole full closet in the – master bedroom. I added another closet. I redid the basement because the basement was unfinished. I mean it was bad. I completely refinished the basement. I added a new exterior door so that she had a separate, because it had line an in-laws – the basement was set up – it used to be a garage, but it was set up like a living quarters on one side with a separate bathroom, but it didn't have an outside entrance. You could only get in one way. And none of that was finished anyway. It was just set up for it. So I completely redid all that.

R. 155, l. 19 - R. 156, l. 9.

Carroll testified that the profit would then come from the increase in value caused by his work:

It was like 61,000 for a four-bedroom. So that's how we made our money was – was we would pay cash for the house and then I would do all the work to fix them up. And the equity in the house would jump 100 -- you know, over 100 percent. So that was my side of what we were doing. And the money came from that loan that we got.

R. 156, l. 13-19.

As a result of Carroll's work the house sold for \$169,000: "...we bought it for 61,000 and we sold it for 169, so that tells you how much worked I did on it." So the record clearly shows that the value of the properties at issue were increased substantially by Carroll's work. Because Mowery never transferred any interest in the properties to Carroll she received all of the benefit from Carroll's work by way of the increase in value of the properties. The same is true for all of the properties. Whether sold or not Mowery, who held ownership of the properties, benefitted from the benefits provided by Carroll. The Court's finding that Carroll failed to present evidence showing Mowery received a benefit from his renovation work is therefore in error.

The Court's finding that Carroll did not present evidence detailing how his personal and

financial contributions to the renovation of the properties raised the value of the properties is also in error as Carroll's testimony clearly equated the increase in value to his work: "we bought it for \$61,000 and we sold it for 169, so that tells you how much work I did on it." The lack of evidence allowing a determination of Mowery's contribution to the increase in value only supports Carroll's assertion that all of the increase in value is the direct result of his renovations. Carroll also testified that he provided \$30,000 to pay off Mowery's line of credit on the Church Street house and another \$5,000 as an infusion into Mowery's business. T. 206. This evidence establishes not only that Mowery benefitted from Carroll's contributions, but clearly establishes a value for those contributions. The lower courts' analysis as to which party contributed more in the venture is completely irrelevant as Mowery never shared any of the sales proceeds with Carroll. Whatever Mowery received from the sales would have to be in part due to Carroll's contributions. The decision of the lower courts are therefore in error.

CONCLUSION

Based on the foregoing the Petitioner moves this Court to issue a writ of certiorari, review and reverse the decisions of the lower courts.

Respectfully submitted,

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