

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

RECEIVED

Oct 09 2023

S.C. SUPREME COURT

Appellate Court Case No.:

Terrance "Terry" Carrol, ... Appellant,

v.

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

APPENDIX

VOLUME I

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October 9, 2023.

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The South Carolina Court of Appeals

Terrence "Terry" Carroll, Appellant,

v.

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

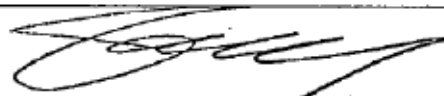
Appellate Case No. 2020-000396

ORDER

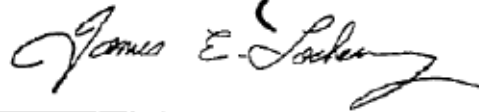
After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



A.J.

Columbia, South Carolina

cc:

Luke Anthony Burke, Esquire

Bruce Wyche Bannister, Esquire

J. Falkner Wilkes, Esquire

FILED
Sep 18 2023

Marcelo Torricos, III, Esquire
The Honorable Charles B. Simmons, Jr.

FILED
Sep 18 2023

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Terrence "Terry" Carroll, Appellant,

v.

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

Appellate Case No. 2020-000396

Appeal From Pickens County
Charles B. Simmons, Jr., Special Referee

Unpublished Opinion No. 2023-UP-274
Submitted June 1, 2023 – Filed July 26, 2023

AFFIRMED

J. Falkner Wilkes, of Oakland, Mississippi, for
Appellant.

Bruce Wyche Bannister, Luke Anthony Burke, and
Marcelo Torricos, III, all of Bannister, Wyatt & Stalvey,
LLC, of Greenville, for Respondents.

PER CURIAM: Terrence "Terry" Carroll appeals the special referee's order
denying him relief and dismissing his causes of action for constructive fraud,

breach of trust, breach of contract, interest in and for real estate, quantum meruit, unjust enrichment, and restitution against Debra Mowery; TD Realty; Upstate RE Group; Hawk Shadow Business Services, LLC (Hawk Shadow); and Debra Mowery in her professional capacity as a realtor (collectively, Respondents). On appeal, Carroll argues the special referee erred in dismissing his causes of action against Respondents under Rule 41(b) of the South Carolina Rules of Civil Procedure. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2018, Carroll filed a complaint against Mowery alleging causes of action for unjust enrichment, interest in and for real estate, intentional infliction of emotional distress, specific performance of contract, breach of contract, temporary injunction, restitution, constructive fraud, breach of trust, and quantum meruit. Carroll alleged he and Mowery entered into a series of contracts to renovate and rent properties in Maryland and South Carolina, which they purchased using joint funds while in a romantic relationship. Carroll requested an equal division of all real estate and funds acquired during their relationship, as well as \$100,000 in damages.

On December 17, 2019, the special referee held a trial on the merits. Carroll testified Mowery purchased a house for them in Maryland (the Maryland property) that he renovated extensively. Carroll recalled that in 2010 he received a \$117,000 settlement for injuries he suffered in a car accident. He indicated he used the settlement proceeds to pay off the mortgage on the Maryland property and also gave money to Mowery's tax preparation and accounting business, Hawk Shadow.

Carroll stated he and Mowery decided to buy a house in Easley, South Carolina—the Linda Lane property—which Mowery paid for by taking out a second mortgage on the Maryland property and with a loan she deposited into their joint checking account. Carroll maintained he was not involved in the financial aspects of buying the property. Carroll explained Mowery continued to live in Maryland while he moved to Easley to renovate the Linda Lane property. He testified he and Mowery decided to move to the Linda Lane property in 2015, and they lived there until the end of their relationship in 2018.

Carroll recalled he and Mowery made a \$71,000 profit from the sale of the Maryland property after paying off the second mortgage, which they deposited into their joint account. Carroll testified he and Mowery decided to use these proceeds to purchase a second house in Easley, the South 9th Street property, for rental purposes. He recalled Mowery purchased the South 9th Street property before she

became a licensed realtor. Carroll stated he and several family members renovated the property with money from his and Mowery's joint account.

Carroll testified that shortly after buying the South 9th Street property, Mowery bought a third home in Easley, the Pope Field Road property, for \$42,000 with money from their joint account. He explained they decided to put the three properties located in Easley and the Maryland property (collectively, the properties) in Mowery's name to ensure she would not require his signature on any paperwork related to the properties.

Carroll stated that when they decided to end their relationship in 2018, Mowery agreed to split their assets equally. Carroll testified he discovered that Mowery cancelled his credit cards and took his name off their joint bank account the day after they decided to end their relationship. He stated Mowery also continued to drive a Jaguar convertible he bought at auction. Carroll indicated he wanted the properties to be equally divided as he and Mowery originally discussed. He stated he put his own money into the renovation of the properties, including \$2,500 from the sale of his boat, which they used to buy windows for the Linda Lane property.

On cross-examination, Carroll acknowledged he and Mowery never married but he stated they acted like a married couple. He confirmed that the properties and the convertible were all titled in Mowery's name. He testified he did not have any written agreement or contract with Mowery regarding how they planned to manage the properties because their agreement changed day to day. Carroll stated he believed he held the title of vice president of Upstate RE Group, Mowery's real estate business, and was vice president and part owner of TD Realty until he received discovery for this case. He explained that the "TD" in the name TD Realty stood for Terry and Debra. Carroll stated he contributed the \$42,000 he made from the sale of his boat to the joint account they used to buy the properties and pay their living expenses. Carroll acknowledged he filed a mechanic's lien on the Pope Field Road property to prevent Mowery from selling it without paying him for his renovation work.

John Noel Quinn, Carroll's brother-in-law, testified Carroll renovated the Easley properties, as well as the Maryland property. He stated Carroll and Mowery acted as a couple and as partners in a business until their relationship ended. Constance Fern Quinn, Carroll's sister, also testified Carroll and Mowery were a couple and stated they discussed their plan to run a rental business together to fund their retirement with her and John.

At the close of Carroll's case, Mowery renewed her motion for partial summary judgment as a motion for a directed verdict, which the special referee treated as a motion for involuntary nonsuit. The special referee granted Mowery's motion for involuntary nonsuit as to Carroll's claims for intentional infliction of emotional distress, specific performance of a contract, constructive fraud, and breach of trust and denied the motion as to Carroll's claims for constructive trust and breach of contract.

Mowery testified Carroll did not have a full-time job when they met. She stated she supported them with the money she made from Hawk Shadow. Mowery indicated she took a mortgage out on the Maryland property to pay for the Linda Lane property and stated Carroll had no responsibility for the mortgage payments. Mowery acknowledged she gave Carroll access to her credit cards, which he used to pay for living expenses and supplies while making repairs to the Linda Lane property. Mowery testified she and Carroll never opened a joint bank account, but she indicated she gave him signatory authority on her accounts. According to Mowery, she spent \$201,000 supporting Carroll between 2006 and 2018.

Mowery stated only her name appeared on the titles to the properties. Mowery testified she never received an invoice from Carroll indicating he expected payment for his work prior to him filing a mechanic's lien on the Pope Field Road property. She testified that the articles of organization for TD Realty listed her as the organizer of the company, and she denied ever discussing making Carroll an officer of the company. Mowery stated Carroll was not involved in the operation of Upstate RE Group. She testified she paid the taxes on the earnings from TD Realty and Upstate RE Group. Mowery also confirmed only her name appeared on the title for the Jaguar convertible and she paid the insurance for the vehicle.

Mowery stated she decided to end her relationship with Carroll in 2018 because she had no more work available for him and she could not afford to continue paying his expenses. She denied having any ongoing business agreement with Carroll in which he renovated houses in exchange for compensation. Mowery testified she believed paying his living expenses was fair compensation for Carroll's work. She indicated she did not deceive Carroll about the fact that the properties were in her name.

On cross-examination, Mowery stated she was not aware of what Carroll did with the money he received from his car accident settlement. Although Mowery acknowledged Carroll wrote a check for \$30,752 after the settlement, she stated she did not know the purpose of the check and denied it was written to pay the first

mortgage on the Maryland property. She testified Carroll worked on the properties during their relationship but he did not pay for the properties or the materials required for the renovations. She stated she purchased the Linda Lane property for \$61,000 and believed it was now worth approximately \$169,000 but she did not know what the proceeds of the sale of the house would be considering the money she put into the renovations.

In rebuttal, Carroll testified he wrote Mowery a check for \$30,712.45 to pay the first mortgage on the Maryland property after Mowery told him she could not afford to pay it. He indicated he also wrote her a check for \$5,000 to put into Hawk Shadow. Carroll stated he did not file taxes in his name between 2006 and 2018 because the only income he had to report was "the few jobs that [he] did between friends." He stated Mowery claimed him as a dependent during several years of their relationship to maximize her tax returns. Carroll testified their living expenses were paid out of their joint bank account, which he contributed to, and therefore Mowery did not completely support him financially during their relationship.

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.¹ Carroll filed a motion for reconsideration, arguing unjust enrichment occurred because Mowery profited from his financial

¹ The order stated Carroll argued the special referee "should enforce a marriage-like contract between the parties even though no marriage existed." This reflected the special referee's belief that Carroll sought equitable distribution, which was not available to him.

contributions and labor during their relationship.² The special referee denied the motion, finding the arguments raised in the motion had been considered during the trial. This appeal followed.

ISSUES ON APPEAL

1. Did the special referee err in dismissing Carroll's cause of action for constructive fraud?
2. Did the special referee err in dismissing Carroll's cause of action for breach of trust based on a finding that no evidence was offered to prove a fiduciary relationship existed between the parties?
3. Did the special referee err in denying Carroll's causes of action for unjust enrichment, interest in and for real estate, breach of contract, restitution, and quantum meruit?

STANDARD OF REVIEW

"After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRPC. "Rule 41(b) allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992).

"When legal and equitable actions are maintained in one suit, the court is presented with a divided scope of review, and each action retains its own identity as legal or equitable for purposes of review on appeal." *Wright v. Craft*, 372 S.C. 1, 17, 640 S.E.2d 486, 495 (Ct. App. 2006). "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "[An appellate court] will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* "In an action at equity, a reviewing court can find facts in accordance with its own view of the preponderance of the evidence." *Wright*, 372 S.C. at 19, 640 S.E.2d at 496. "However, this broad scope of review does not require the appellate court to

² Carroll's reconsideration motion was not included in the record on appeal.

disregard the findings made [by the special referee]." *Goldman v. RBC, Inc.*, 369 S.C. 462, 465, 632 S.E.2d 850, 851 (2006).

LAW AND ANALYSIS

I. Constructive Fraud

Carroll argues the special referee erred in dismissing his claim for constructive fraud based on the finding that he knew Mowery titled the properties in her name. He contends Mowery used her extensive business knowledge and position as a realtor to mislead him in regard to the ownership of the properties and TD Realty. We disagree.

"To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Ardis v. Cox*, 314 S.C. 512, 516, 431 S.E.2d 267, 269 (Ct. App. 1993).

In order to prove [actual] fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its 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 on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

Id. at 515, 431 S.E.2d at 269. "Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud while intent to deceive is an essential element of actual fraud." *Id.* at 516, 431 S.E.2d at 269-70. "[I]n a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely." *Id.* at 516, 431 S.E.2d at 270. "This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Id.* at 516-17, 431 S.E.2d at 270.

"A confidential or fiduciary relationship exists when one imposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794

(1990). "To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing." *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004).

We hold the special referee properly dismissed Carroll's cause of action for constructive fraud. See *Ardis*, 314 S.C. at 516, 431 S.E.2d at 269 ("To establish constructive fraud, all elements of actual fraud except the element of intent must be established."). We find Carroll failed to establish his right to rely on Mowery's alleged representations because he did not present evidence showing a confidential or fiduciary relationship existed between him and Mowery. See *SSI Med. Servs., Inc.*, 301 S.C. at 500, 392 S.E.2d at 794 ("A confidential or fiduciary relationship exists when one imposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence."); *Ardis*, 314 S.C. at 516, 431 S.E.2d at 270 ("[I]n a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely."). Carroll did not present evidence a business transaction took place between him and Mowery. Although Mowery owned a real estate business and an accounting and tax preparation business, Mowery did not act as a realtor or accountant for Carroll during their relationship. Carroll testified he did not file taxes during their relationship and the properties purchased during their relationship were titled in Mowery's name. See *Hendricks v. Clemson Univ.*, 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003) ("Historically, [our supreme c]ourt has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters."). Accordingly, we find Carroll failed to show he had a right to rely on Mowery's alleged representations because he did not present evidence showing he and Mowery had a confidential or fiduciary relationship or that a business transaction took place between them.

In addition, Carroll did not present sufficient evidence showing Mowery made false representations about the ownership of the properties and TD Realty. See *Ardis*, 314 S.C. at 515, 431 S.E.2d at 269 (listing the elements of actual fraud, including that the plaintiff must establish the defendant made a false representation). Although Carroll believed Mowery planned to transfer ownership of the properties to TD Realty, he testified he knew Mowery titled the properties solely in her name. Mowery testified she did not deceive Carroll about the fact that she titled the properties in her name and she denied ever discussing making

Carroll an officer of TD Realty. The deeds to the properties listed her as the sole owner of the properties. The articles of organization for TD Realty, the company Carroll believed he and Mowery owned together, listed only Mowery as the organizer of the business. Based on the foregoing, we find Carroll failed to show Mowery made affirmative representations to him regarding the ownership of the properties and TD Realty. Accordingly, we hold the special referee did not err in dismissing Carroll's constructive fraud claim.

II. Breach of Trust

Carroll argues the special referee erred in dismissing his claim for breach of trust because evidence supported a finding that he and Mowery had a fiduciary relationship. He asserts Mowery owed him a duty of disclosure and honesty regarding the properties she bought and he renovated based on her position as a realtor and broker. We disagree.

We hold the special referee did not err in dismissing Carroll's cause of action for breach of trust because, as discussed above, he failed to present evidence showing he and Mowery had a fiduciary relationship. *See SSI Med. Servs., Inc.*, 301 S.C. at 500, 392 S.E.2d at 794 ("A confidential or fiduciary relationship exists when one imposes a special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence."); *Moore*, 360 S.C. at 251, 599 S.E.2d at 472 ("To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing."); *Hendricks*, 353 S.C. at 459, 578 S.E.2d at 716 ("Historically, [our supreme court] has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters."). Carroll had no fiduciary relationship with Mowery related to her work as a real estate agent or accountant. Mowery did not perform any tax preparation or accounting work for Carroll because he did not file taxes during their relationship. Mowery also did not act as Carroll's realtor because the properties purchased during their relationship were titled in her name and she was not a licensed realtor at the time the properties were purchased. Therefore, we hold the special referee did not err in dismissing Carroll's claim for breach of trust.

III. Breach of Contract and Interest in and for Real Estate

Carroll argues the special referee erred in dismissing his claims for breach of contract and interest in and for real estate because he provided sufficient evidence an agreement existed between the parties. He contends the record shows he and Mowery had an agreement in which she arranged the purchase of the properties and handled the paperwork associated with the purchases while he renovated the properties. We disagree.

"The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012). "The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct. App. 1997). "[I]n 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). "The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and subsequent acts are relevant to show whether a contract was intended." *Wright v. Trask*, 329 S.C. 170, 178, 495 S.E.2d 222, 226 (Ct. App. 1997) (quoting *Caulder v. Knox*, 251 S.C. 337, 345, 162 S.E.2d 262, 266 (1968)).

Under the Statute of Frauds, contracts for the sale of real property must be reduced to a signed writing in order to be enforceable. S.C. Code Ann. § 32-3-10(4) (2007). "To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled." *Fici v. Koon*, 372 S.C. 341, 346, 642 S.E.2d 602, 604 (2007).

"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.* "Fraud is an essential element, although it need not be actual fraud." *Id.* "In order to establish a constructive trust, the evidence must be clear and convincing." *SSI Med. Servs.*, 301 S.C. at 500, 392 S.E.2d at 794.

We affirm the special referee's denial of Carroll's causes of action for breach of contract and interest in and for real estate. First, we find Carroll was not entitled to relief based on a breach of contract because he failed to present evidence proving the existence of contract between him and Mowery. See *S. Glass & Plastics Co.*,

399 S.C. at 491-92, 732 S.E.2d at 209 ("The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach."). Although Carroll testified he and Mowery had an agreement that he would renovate the properties, he stated he and Mowery did not have a contract concerning how they planned to manage the properties. Mowery testified she never agreed to compensate Carroll in exchange for his work on the properties and she believed the financial support she offered Carroll during their relationship was fair compensation for his work. *See Player*, 299 S.C. at 105, 382 S.E.2d at 893 ("[I]n 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."). Although the testimonies of Carroll's sister and brother-in-law suggested Carroll and Mowery agreed to run the business together, the articles of organization for TD Realty did not list Carroll as an organizer of the business and his name was not included on the deeds for any of the properties. Based on the foregoing, we find Carroll failed to present evidence proving an offer and acceptance occurred to form a contract between him and Mowery. *See Roberts*, 327 S.C. at 483, 486 S.E.2d at 773 ("The necessary elements of a contract are an offer, acceptance, and valuable consideration."). Accordingly, we hold the special referee did not err in dismissing Carroll's breach of contract cause of action.

Second, we find Carroll was not entitled to relief based on his interest in and for real estate claim. We find no agreement granting Carroll ownership interest in the properties can be upheld under the Statute of Frauds, which requires contracts for land to be in writing. *See S.C. Code Ann. § 32-3-10(4)* (2007) (codifying the Statute of Frauds and requiring that contracts for the sale of real property be reduced to writing to be enforceable). Carroll testified he and Mowery did not have a written agreement regarding the ownership of the properties and the deeds to the properties were titled in Mowery's name. Additionally, we find Carroll failed to present evidence supporting a constructive trust cause of action because he did not prove Mowery's actions amounted to fraud. *See Lollis*, 291 S.C. at 529, 354 S.E.2d at 561 ("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."); *id.* ("Fraud is an essential element[of constructive trust], although it need not be actual fraud."). Carroll testified he knew Mowery titled the properties in her name and he failed to present evidence showing he and Mowery had a confidential or fiduciary relationship requiring Mowery to inform him she did not transfer the titles to the properties to TD Realty. Based on the foregoing, we hold the special referee did not err in dismissing Carroll's interest in and for real estate cause of action.

IV. Quantum Meruit, Unjust Enrichment, and Restitution

Carroll argues the special referee erred in dismissing his claims for quantum meruit, unjust enrichment, and restitution because Mowery benefited financially from the renovation work he completed on the properties. He asserts he contributed financially to the renovation of the properties and any difficulty in calculating the contributions each party made was a result of Mowery's failure to properly maintain her records. We disagree.

"Restitution is a remedy designed to prevent unjust enrichment." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). "The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi-contracts." *JASDIP Props. SC, LLC v. Est. of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011) (quoting *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988)). "[Q]uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." *Id.* (alteration in original) (quoting *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004)).

"Implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution which permits recovery of that amount the defendant has been benefitted at the expense of the plaintiff in order to preclude unjust enrichment." *Costa & Sons Constr. Co. v. Long*, 306 S.C. 465, 468 n.1, 412 S.E.2d 450, 452 n.1 (Ct. App. 1991). "[Our supreme c]ourt has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment." *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). "Absent an express contract, recovery under quantum meruit is based on quasi-contract." *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616, 703 S.E.2d 221, 225 (2010).

To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.

Sauner, 354 S.C. at 409, 581 S.E.2d at 167; *see also Earthscapes Unlimited, Inc.*, 390 S.C. at 616-17, 703 S.E.2d at 225 (providing the elements to recover on a theory of restitution apply to claims seeking to recover under the doctrine of quantum meruit).

We hold the special referee did not err in dismissing Carroll's causes of action for unjust enrichment, quantum meruit, and restitution because Carroll failed to present evidence showing Mowery received a benefit from his renovation work. *See Columbia Wholesale Co.*, 312 S.C. at 261, 440 S.E.2d at 130 ("[Our supreme c]ourt has recognized quantum meruit as an equitable doctrine to allow recovery for unjust enrichment."); *Sauner*, 354 S.C. at 409, 581 S.E.2d at 167 ("Restitution is a remedy designed to prevent unjust enrichment."); *id.* (enumerating the elements of a restitution claim, including that the defendant must realize some value from the benefit conferred by the plaintiff); *see also Earthscapes Unlimited, Inc.*, 390 S.C. at 616-17, 703 S.E.2d at 225 (providing the elements to recover on a theory of restitution apply to claims seeking to recover under the doctrine of quantum meruit). Carroll did not present evidence detailing how his personal and financial contributions to the renovation of the properties raised the value of the properties. Although Carroll testified he and Mowery used the money from the sale of his boat and his car accident settlement to pay for their living expenses and to renovate the properties, he did not present evidence demonstrating how his money was used in a way that increased the profit Mowery made from the sale and rental of the properties. Both parties claim to have contributed to the value of the properties and Mowery's real estate business; however, neither could provide sufficient evidence for the court to ascertain the values of their contributions exceeded those of the other. Therefore, we find insufficient evidence was presented to allow the special referee to determine how much money each party contributed to the renovation projects and their living expenses during the relationship. Accordingly, we hold the special referee did not err in dismissing Carroll's claims for unjust enrichment, quantum meruit, and restitution.

CONCLUSION

Based on the foregoing, the special referee's order dismissing Carroll's causes of action for unjust enrichment, interest in and for real estate, breach of contract, restitution, constructive fraud, breach of trust, and quantum meruit is

AFFIRMED.³

KONDUROS and VINSON, JJ., and LOCKEMY, A.J., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

May 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Court Case No.: 2020-000396

Terrance "Terry" Carrol,..... Appellant,

v.

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

BRIEF OF APPELLANT

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March 10, 2021.

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STATEMENT OF THE ISSUES

- I. Did the trial court err in dismissing the plaintiff's claim for constructive fraud?
- II. Did the trial court err in dismissing the plaintiff's cause of action for breach of trust based on a finding that no evidence was offered as to a fiduciary relationship between the parties?
- III. Did the trial court err in denying the plaintiff's claims unjust enrichment, interest in and for real estate, breach of contract, restitution, and quantum meruit?

STATEMENT OF THE CASE

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 (I) 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. At the call of the case, Plaintiff was present with his attorney, James P. O'Connell, and Defendant Debra Mowery was present with her attorneys, Bruce W. Bannister and Luke A. Burke. Plaintiff was denied relief on his claims and the Defendant denied relief on her claims. A timely notice of appeal was filed and J. Falkner Wilkes was substituted as counsel for Appellant.

STATEMENT OF FACTS

The parties 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 paperwork with the Maryland house. 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 that mortgage was paid off leaving the parties with the Linda Lane home in Easley, no mortgages, and \$71,000 in their joint bank account. R. 157-158; 281. Around the same time Carroll also put the proceeds from the \$42,000 sale of his 53 foot Hatteras motoryacht into the 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 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 in the Linda property home 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, bathroom, added closets, finished the basement, added a new exterior door. 155-156. He also put in a full 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 home 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 the 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 house 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.

In addition to buying and improving real property the parties had several businesses they ran together. TD Realty was formed with the intent to hold future purchases under the parties' retirement plan. R. 169. TD Realty was short for Terry/Debra. R. 207. 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 he believed that he was the vice-president and 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 also a vice president and 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, and most of his 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 housing. R. 176. Carroll estimated he should get somewhere around \$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 if at some point did she make a determination that she didn't want to be in a romantic relationship 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 that 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 for 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 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 contrary to her testimony about Carroll at trial. R. 328-329.

ARGUMENT**I. THE COURT ERRED IN DISMISSING THE PLAINTIFF’S CLAIM FOR CONSTRUCTIVE FRAUD.*****Standard of Review***

In an appeal from the granting of an involuntary nonsuit the appellate court must review the evidence and all inferences reasonably deducible therefrom in the light most favorable to [the non-moving party.] Winburn v. Insurance Company of North America, 287 S.C. 435, 339 S.E. (2d) 142 (Ct. App. 1985). If there is any evidence supporting a verdict for Carroll the judgment must be reversed and the case remanded for a new trial. *See* Ringer v. Graham, 286 S.C. 14, 331 S.E. (2d) 373 (Ct. App. 1985) *and* Seigler v. Yeargin Constr. Co., 290 S.C. 383, 384, 350 S.E.2d 518, 519 (Ct. App. 1986).

The well-established rule in this state is that if there is any testimony whatever to go to the jury on an issue involved in a cause, or even if more than one inference can be drawn from the testimony, then it is the duty of the judge to submit the cause to the jury. This is true, even if witnesses for the plaintiff contradict each other, or if a witness himself in his testimony makes conflicting statements. The credibility of witnesses is entirely for the jury. *Id.* at 61, 80 S.E. (2d) at 744; *see also* Collum v. Southern Ry. Co., 189 S.C. 336, 1 S.E. (2d) 234 (1939); Kizer v. Woodmen of the World, 177 S.C. 70, 180 S.E. 804 (1935). [***4]

Seigler v. Yeargin Constr. Co., 290 S.C. 383, 385, 350 S.E.2d 518, 520 (Ct. App. 1986).

Discussion

The Court granted the defense motion for involuntary nonsuit and dismissed the Plaintiff’s claim for constructive fraud based on a finding that Carroll “knew that all real property and other titled property were titled in Defendant Debra Mowery’s name.” This was clearly error.

In deciding on a motion for a nonsuit, the trial judge must consider the evidence in the light most favorable to the party resisting the motion. If more than one reasonable inference can

be drawn from the evidence, the judge must submit the case to the jury. Dunsil v. Jones Chevrolet, 268 S.C. 291, 233 S.E. (2d) 101 (1977). Rycroft v. Gaddy, 281 S.C. 119, 122, 314 S.E.2d 39, 42 (Ct. App. 1984). Here Carroll repeatedly testified that Mowery and he discussed having the South Carolina properties held under TD Realty which, as Carroll testified, was established specifically for that purpose. While Carroll admitted knowing that the Maryland property was put in Mowery's name, that was done with his knowledge to facilitate Mowery handling the property paperwork. However, Carroll testified that he was unaware that the real properties in South Carolina had not been titled under TD Realty until he received discovery in the present action.

In Greene v. Brown, 199 S.C. 218, 223, 19 S.E. (2d) 114, 116 (1942), our Supreme Court defined constructive fraud as follows:

Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.

Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud. An intent to deceive is an essential element of actual fraud. The presence or absence of such an intent distinguishes actual fraud from constructive fraud.

(*citation omitted*); accord, O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E. (2d) 734 (1978).

Giles v. Lanford & Gibson, Inc., 285 S.C. 285, 287-88, 328 S.E.2d 916, 918 (Ct. App. 1985). In applying constructive fraud to a realtor this Court said:

A breach of a legal or equitable duty, irrespective of moral guilt of the tort feisor, is a constructive fraud in the eyes of the law. An intent to deceive is an essential element of "actual fraud" but neither actual dishonesty of purpose nor intent to deceive is an essential element of "constructive fraud," and the presence or absence of such an intent distinguishes actual fraud from constructive fraud.

Greene v. Brown, 199 S.C. 218, 19 S.E.2d 114 (1942). Moreover, constructive fraud has the same legal effect as actual fraud. State ex rel Daniel v. Strong, 185 S.C. 27, 192 S.E. 671 (1937).

Designer Showrooms v. Kelley, 304 S.C. 478, 480-81, 405 S.E.2d 417, 419 (Ct. App. 1991).

In the light most favorable to Carroll the record contained sufficient evidence to show that Mowery, having extensive business knowledge and being in the position of a realtor, misled Carroll into believing that the real property would be titled under TD Realty in which he had an ownership interest. The record was therefore sufficient to require the denial of the defense motion for nonsuit.

II. THE COURT ERRED IN DISMISSING THE PLAINTIFF’S CAUSE OF ACTION FOR BREACH OF TRUST BASED ON A FINDING THAT NO EVIDENCE WAS OFFERED AS TO A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES.

Standard of Review

As more fully set forth above, in an appeal from the granting of an involuntary nonsuit the appellate court must review the evidence and all inferences reasonably deducible therefrom in the light most favorable to [the non-moving party]. Winburn v. Insurance Company of North America, 287 S.C. 435, 339 S.E. (2d) 142 (Ct. App. 1985).

Discussion

The trial court dismissed Plaintiff’s breach of trust cause of action based on a finding that the Plaintiff failed to offer any evidence of a fiduciary relationship between Carroll and Mowery. That was error.

The record shows that Mowery did all of the paperwork for the parties, ran a tax service, and later obtained her real estate license to further the parties’ efforts in acquiring and renovating

property in an effort to build equity for their retirement. As a realtor Mowery owed Carroll a duty of disclosure and honesty in relation to the property which they were buying and renovating. A broker owes a duty to its principal to keep it fully and properly informed of all material facts.

Vacation Time of Hilton Head, Inc. v. Lighthouse Realty, Inc., 286 S.C. 261, 332 S.E.2d 781 (Ct. App. 1985). This is especially true where Mowery was involved in the purchase and ownership of the properties. See Designer Showrooms v. Kelley, 304 S.C. 478, 481, 405 S.E.2d 417, 419 (Ct. App. 1991).

III. THE COURT ERRED IN DENYING THE PLAINTIFF’S CLAIMS OF UNJUST ENRICHMENT, INTEREST IN AND FOR REAL ESTATE, BREACH OF CONTRACT, RESTITUTION, AND QUANTUM MERUIT.

Discussion and Standard of Review

The Court dismissed the Plaintiff’s claim on all other claims based on a finding that there was insufficient proof of amounts contributed by either party to enable the Court to determine any “profit” made on any of the real estate dealings between the parties. This was error.

The record shows clearly that the parties’ investment in real property was based on a plan where Mowery arranged for the purchase of the properties and handled all of the paperwork. Carroll’s contribution to the plan was to renovate the properties and thus create equity. In addition to the labor involved in the renovations the record shows that Carroll also contributed funds to the purchase of some of the materials used in the renovations. Despite whether or not the record allows a to the penny calculation of the costs, any difficulty in such a calculation is the direct result of Mowery’s failure to maintain accurate records and should therefore, not result in a windfall to her in this case.

The record is sufficient to make a reasonable calculation of the parties' equity in the properties at issue. The parties' plan for purchasing and renovating real property began with the Maryland house which was completely renovated by Carroll. The subsequent sale of the Maryland house ultimately resulted in the parties' making \$100,000 which was used to continue their investments. Despite Mowery's repeated attempts to avoid answering questions about Carroll's direct monetary contributions to the properties, the record is clear that Carroll also used \$30,000 from his injury settlement to pay off the original mortgage on the Maryland house. The 9th Street property was purchased for \$10,000 and after a complete renovation by Carroll was rented for \$800 a month. The Pope Field property which was purchased for \$42,000 from money out of the parties' joint BB&T account, was contracted for sale at \$61,000. While Carroll testified that this was grossly underpriced, its value is clearly no less than the contracted price. The Linda Lane property was purchased for \$61,000 cash. Carroll estimated the value of the Easley home to be \$220,000 and Mowery at \$169,000.

The record is clear that Carroll was the major contributor in the renovations of the properties at issue. And regardless of any dispute over other money contributed by Carroll under their plan the record is clear that he directly contributed \$30,000 of his personal injury funds directly into the process which ultimately allowed for the purchase of the Linda Lane property. As a direct result of his work the Maryland property increased in value by \$100,000, the Linda Lane property by no less than \$108,000 (by Mowery's own testimony) and the Pope Field property by \$19,000. Although the record is unclear on the exact value of the 9th Street property after renovation it does show that after renovation it was renting at \$800 a month, which given the \$10,000 purchase price would mean that the investment would be fully recovered in a single

year. Not even counting the 9th Street rental property or the \$30,000 of money that Carroll directly injected into the process the record shows an increase in equity of no less than \$127,000 in the South Carolina property alone by Mowery's own testimony. Nor does that include the fact that the initial investments in these properties were the direct result of Carroll's work on the Maryland property. As a result the record contains ample evidence of Carroll's contributions as well as the corresponding value of those contributions. The Court therefore erred in dismissing the Carroll's claims based on a finding that record failed to show sufficient proof of any "profit" on the parties' real estate dealings.

Breach of Contract. Interest in and for Real Estate***Standard of Review***

When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal. Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 268, 705 S.E.2d 73, 75 (Ct. App. 2010). In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law. The trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.

Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 268, 705 S.E.2d 73, 75 (Ct. App. 2010).

Discussion

A contract may arise from oral or written words or by conduct. Prescott v. Farmers Tel. Co-op., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999). "[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of

the agreement." Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005); Allegro, Inc. v. Scully, 418 S.C. 24, 34, 791 S.E.2d 140, 145 (2016). Although the record contains conflicting testimony over the issue of an agreement between the parties to share in the benefits of the investment plan the evidence overwhelmingly supports the existence of an agreement. The course of conduct by the parties in the repeated purchase of properties followed by renovations by Carroll, combined with Carroll infusing the process with \$30,000 of his personal injury money leads to no other reasonable conclusion. Especially when combined with the testimony of two witnesses that actually heard Mowery discuss the parties' agreement and plan to accumulate equity through the purchase and renovation of property. When compared to Mowery's evasive testimony, the corroborating testimony and course of conduct clearly establish the existence of a contract between Mowery and Carroll.

Quantum Meruit, Unjust Enrichment, and Restitution

Standard of Review

In an action in equity tried by a judge alone, the appellate court may find facts in accordance with its view of the preponderance of the evidence. However, this broad scope of review does not require the appellate court to disregard the findings made below. Fountain v. Fred's, Inc., 429 S.C. 533, 540, 839 S.E.2d 475, 479 (Ct. App. 2020)

Discussion

This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment. See Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989). Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that

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. Webb v. First Federal Savings and Loan Ass'n., 300 S.C. 507, 388 S.E.2d 823 (Ct. App. 1989); Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (Ct. App. 1988). Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994).

"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, [**691] 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) ("Restitution is a remedy designed to prevent unjust enrichment."). 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. Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988).

"A cause of action for restitution is a type of the broader cause of action for money had and received, and generally the object to be attained in proceedings for restitution is the prevention of unjust enrichment of defendant and the securing for plaintiff of that to which he is justly and in good conscience entitled. A person who has been unjustly enriched at the expense of another is required to make restitution to the other, and if one obtains the property or the proceeds of property of another, without a right to do so, restitution in a proper case can be compelled. .

.. "It is not necessary, in order to create an obligation to make restitution, that the party unjustly enriched should have been guilty of any tortious or fraudulent act; the question is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled? In such cases the simple, but comprehensive, question is whether the circumstances are such that equitably

defendant should restore to plaintiff what he has received." 77 *C.J.S. Restitution* at 322-323.

Harper v. McCoy, 276 S.C. 170, 172-73, 276 S.E.2d 782, 783-84 (1981).

The general law is that when, as here, an express contract fails because there is no meeting of the minds as to the essential terms, the laborer or contractor may still recover the reasonable value of the labor and materials furnished under an implied in law or quasi-contractual theory. See Costa & Sons Constr. Co. v. Long, 306 S.C. 465, 468, 412 S.E.2d 450 & n.1, 306 S.C. 465, 412 S.E.2d 450, 452 & n.1 (Ct. App. 1991) (*citing* 66 Am. Jur. 2d *Restitution and Implied Contracts* §§ 7 and 21 (1973)) (stating implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution, which permits recovery of the amount the defendant has benefitted at the expense of the plaintiff in order to preclude unjust enrichment); Braswell v. Heart of Spartanburg Motel, 251 S.C. 14, 18, 159 S.E.2d 848, 850 (1968) (finding under the theory of implied contract, when there is no agreement as to the price to be paid for services, one is entitled to recover the fair or reasonable value of the services rendered); Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000) ("[*Q*uantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy."). This quasi-contractual right of recovery, also known as *quantum meruit*, has been defined by *Black's Law Dictionary* as follows: "1. The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship. 2. A claim or right of action for the reasonable value of services rendered." *Black's Law Dictionary* 1006 (7th ed. 2000).

Our courts have also held that 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." Stringer Oil Co. v. Bobo, 320 S.C. 369, 372, 465 S.E.2d 366, 369 (Ct. App. 1995); *see also* Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., *concurring in result in part and dissenting in part*) (citing Stringer, 320 S.C. at 372-73, 465 S.E.2d at 368-69) (stating "[t]he proper measure of damages for an unjust enrichment claim is the amount of increase in the fair market value of the subject property due to the improvements made by the plaintiff").

Here Mowery has clearly benefitted personally from Carroll's renovations of the properties by their increase in value. Carroll is therefore entitled to the amount by which Mowery has been unjustly enriched. Even if the record fails to show an express contract or meeting of the minds as to a plan to jointly build equity for their retirement through the purchase and renovation of property, Carroll is entitled to recovery of the reasonable value of his labor and materials. *See* Boykin Contracting, Inc. v. Kirby, 405 S.C. 631, 637, 748 S.E.2d 795, 798 (Ct. App. 2013). Not including the \$30,000 direct infusion of cash into the process the value of Carroll's labor and materials in this case is limited as a matter of law to the increase in the value brought about by his construction and renovations. *See* Barrett v. Miller, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App. 1984).

The record shows an increase of no less than \$127,000 in the South Carolina properties to which Carroll is entitled to recover. In addition Carroll is entitled recover for the value added to the 9th Street rental property which is currently rented at \$800 per month as well as the \$30,000 of money that Carroll directly injected into the parties' equity building process. The

Court therefore erred in dismissing Carroll's claims based on a finding that record failed to show sufficient proof of any "profit" on the parties' real estate dealings. The Court further erred in failing to award Carroll damages based on one or more of the grounds alleged.

Conclusion

Based on the foregoing the decision of the trial court should be reversed and the case remanded for a finding as to damages or in the alternative that damages be awarded by this Court based on the record presented.

Respectfully submitted,

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March 10, 2021.

Mar 02 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS

CHARLES B. SIMMONS, MASTER IN EQUITY

C. A. NO. 2018-CP-39-00585

APPELLATE CASE NO. 2020-000396

Terence “Terry” Carroll.....Appellant

vs.

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

BRIEF OF RESPONDENT

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February 25, 2021

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE COURT PROPERLY DISMISSED PLAINTIFF'S CAUSE OF ACTION FOR CONSTRUCTIVE FRAUD.
2. WHETHER THE COURT PROPERLY DISMISSED PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF TRUST.
3. WHETHER THE COURT PROPERLY DENIED PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF CONTRACT AND INTEREST IN AND FOR REAL ESTATE.
4. THE COURT PROPERLY DENIED PLAINTIFF'S CAUSE OF ACTION FOR QUANTUM MERUIT, UNJUST ENRICHMENT, AND RESTITUTION.

STATEMENT OF THE CASE

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. (R. pp. 12-13; pp. 16-37). Defendant was properly served with same. On June 15, 2018, Defendants filed an Answer and Counterclaim of Defendants. (R. pp. 38-49). 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. (R. pp. 50-69). 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. (R. pp. 70-81).

This case was referred to the Honorable Charles B. Simmons, Master-in-Equity 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. (R. pp. 1-3).

A trial on the merits was heard on December 17, 2019. (R. p. 4). An Order (“Order”) deciding all claims of the parties was filed on January 6, 2020. (R. pp. 4-9). On January 17, 2020, Plaintiff filed a Motion for Reconsideration Alteration and or Amendment pursuant to Rules 52(b) and 59(e) SCRPC. On February 18, 2020, an order denying Plaintiff’s Motion to Reconsider was filed. (R. pp. 10-11). On February 20, 2020, Plaintiff filed a notice of appeal.

SUMMARY OF FACTS

Debra Mowery (“Debra” or “Mowery”) and Terry Carroll (“Terry” or “Plaintiff”) met in Maryland in late 2005. (R. p. 148, lines 1-20; p. 246, line 25-p. 247, line 12). Debra was in the process of getting a divorce and she and Terry quickly grew close. (R. p. 148; p. 247, lines 8-12). In 2006, Terry moved in with Debra in a house she was renting. (R. p. 273, lines 13-18).

The parties never married, (R. p. 182, lines 1-22; p. 245, line 19-p. 246, line 5), but mostly lived together between 2006 and 2018. (R. p. 160, lines 21-25; R. p. 273, lines 13-18). In 2016, the parties moved to South Carolina. (R. p. 274, lines 15-16).

In 1995, Debra had started a business named Hawk Shadow Business Services (Hawk Shadow). (R. p. 285, line 25-p. 286, line 3). The business was organized as an LLC on January 4, 2006 before the parties started cohabitating. (R. p. 285, line 25-p. 286, line 9; p. 533). Debra also started two businesses in South Carolina: TD Realty, LLC (“TD Realty”) on August 10, 2016 and Upstate RE Group, Inc. (“Upstate RE Group”) on April 11, 2017. (R. pp. 399-400; pp. 531-532). Debra also became a licensed Realtor after moving to South Carolina. (R. p. 288, lines 3-4).

During the parties' relationship, Debra continued earning income from operating Hawk Shadow and from her work as a realtor. (R. pp. 405, 410, 415, 422, 426, 431, 439). Terry did not file a tax return or report any income between 2003 and 2018. (R. p. 201, line 23-p. 202, line 11; p. 352, lines 5-18).

Debra purchased three properties in South Carolina after Terry submitted bids on the properties at auctions. (R. p. 161, lines 22-24; pp. 550-559). The first property, located at 109 Linda Lane in Pickens, ("Linda Lane Property") was purchased on January 26, 2015. (R. pp. 554-559). The second property, located at 204 South Ninth Street in Easley ("Ninth Street Property"), was purchased on June 17, 2016. (R. pp. 552-553). The third property, located at 539 Pope Field Road in Easley, ("Pope Field Property") was purchased on July 21, 2016. (R. pp. 550-551). All of the properties were deeded in Debra's name with Terry's full knowledge and consent. (R. p. 168, lines 17-21; p. 184, lines 18-25).

Debra broke up with Terry in early 2018. (R. p. 160, lines 21-25). On May 16, 2018, Terry filed this case. (R. p. 16).

ARGUMENT

I. THE COURT PROPERLY DISMISSED PLAINTIFF'S CAUSE OF ACTION FOR CONSTRUCTIVE FRAUD WHERE PLAINTIFF DID NOT PRESENT EVIDENCE OF FRAUD BY DEFENDANTS.

Standard of Review

"After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRPC. Rule 41(b) "allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." *Johnson v. J.P. Stevens &*

Co., 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992). In reviewing the rulings of a trial judge on motions for involuntary nonsuit, the appellate court must review the evidence and all inferences in the light most favorable to the nonmoving party. *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C. 40, 41–2, 348 S.E.2d 173, 174 (1986). If more than one reasonable inference can be drawn from the evidence, the motion for nonsuit should be denied. *Id.*

Discussion

To establish constructive fraud all elements of actual fraud except the element of intent must be established. *Woods v. State*, 314 S.C. 501, 506, 431 S.E.2d 260, 263 (Ct. App. 1993) (citing *O'Quinn v. Beach Assocs.*, 272 S.C. 95, 249 S.E.2d 734 (1978)). As such, a plaintiff must prove the following elements to recover in an action for constructive fraud: (1) a representation; (2) its falsity; (3) the speaker ought to have known its falsity; (4) materiality; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Id.*; see also *M. B. Kahn Const. Co., Inc. v. S.C. Nat'l Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980).

Constructive fraud could not exist in this case because Plaintiff explicitly knew and agreed to title the properties in Mowery's name. Plaintiff testified that it was the parties' conscious and deliberate decision to title the property in Mowery's name. (R. p. 168, lines 17-21; p. 184, lines 18-25). In response to the question, "So you knew about [the properties being titled in Mowery's name]," Plaintiff responded, "All the settlements I was there at every one of them." (R. p. 184, line 18-p. 185, line 2).

Further, even if Plaintiff did not actually know that the deeds were in Mowery's name, he would still have had constructive notice of this fact because the deeds are public record. (R. p.

550-559). The properties were purchased between almost two and more than three years before the parties broke up and Plaintiff filed this action. So, Plaintiff had ample time to insist that the properties be deeded to TD Realty, LLC if that was actually the agreement of the parties. As such, Plaintiff did not have a right to reasonably rely upon any representation contrary to the public record.

Finally, Plaintiff's testimony that he believed the properties would eventually be titled in the name of TD Realty, LLC is irrelevant because Plaintiff did not submit any evidence that he was an owner of TD Realty. Further, Plaintiff admitted that he is not an owner of the business. (R. p. 169, lines 11-17).

Therefore, Defendants respectfully request that this Court affirm the trial court's dismissal of Plaintiff's cause of action for constructive fraud.

II. THE COURT PROPERLY DISMISSED PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF TRUST WHERE PLAINTIFF DID NOT PRESENT EVIDENCE OF A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES.

Standard of Review

"After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, . . . may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." Rule 41(b), SCRC. Rule 41(b) "allows the judge as the trier of facts to weigh the evidence, determine the facts and render a judgment against the plaintiff at the close of his case if justified." *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992). In reviewing the rulings of a trial judge on motions for involuntary nonsuit, the appellate court must review the evidence and all inferences in the light most favorable to the nonmoving party. *Rewis v. Grand Strand Gen. Hosp.*, 290 S.C.

40, 41–2, 348 S.E.2d 173, 174 (1986). If more than one reasonable inference can be drawn from the evidence, the motion for nonsuit should be denied. *Id.*

Discussion

One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from breach of duty imposed by the relation. Restatement (Second) of Torts § 874 (1979). A fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987)).

Plaintiff did not present any evidence of a fiduciary relationship between Plaintiff and Defendants. The parties are adults without any legal incapacity who have no legal relationship. Plaintiff's witness testified, "Terry has proven that he can take care of himself and others very well." (R. p. 135, lines 12-18). The parties were never married, and Plaintiff did not seek a determination that they were married. (R. p. 182, lines 14-18). Further, Mowery running a tax service or having a real estate license does not create a fiduciary duty between Mowery and Plaintiff because Mowery was not Plaintiff's accountant or realtor.

First, Mowery's tax service, Hawk Shadow, could not have filed taxes on behalf of Plaintiff because Plaintiff did not file taxes between 2003 and the 2018. (R. p. 201, line 23-p. 202, line 11; p. 352, lines 5-18). Further, Plaintiff's decision not to file taxes was made in 2003 before he met Mowery in 2005.

Second, it is clear from the record that Mowery did not act as Plaintiff's realtor in any real estate transaction. This is primarily because Plaintiff did not purchase any real estate.

Further, Mowery was not the realtor when she sold the Maryland Property -- Plaintiff testified that the Realtor and Mowery came to look at the house together. (R. p. 160, lines 17-20). She was not a Realtor for the Linda Lane and Ninth Street Properties because those were purchased before Mowery earned her license. (R. p. 161, line 22-p. 162, line 15). The Linda Lane Property was purchased before the Ninth Street Property and at the time the Ninth Street Property was purchased, Plaintiff testified that “Gary” was his Realtor because Mowery did not yet have a license. (R. p. 162, lines 4-17).

Although the record does not directly confirm that Mowery did not have her license before the Pope Field Property was purchased approximately a month after the Ninth Street Property purchase, Plaintiff’s testimony does not mention her acting as his Realtor in that transaction. (R. p. 168, line 4-21). Plaintiff testified that he found the house a week after the parties purchased the Ninth Street Property. (R. p. 168, lines 6-9). Plaintiff then registered and bid on the Pope Field Property at auction, and deliberately titled it in Mowery’s name. (R. p. 168, lines 6-21).

Finally, even if Mowery has gained her license in the intervening weeks between the Ninth Street Property purchase and the Pope Field Property purchase, she could not have been a broker prior to this case being filed. Plaintiff testified that a Realtor must work for a broker for two years before she can be a broker. (R. p. 147, lines 14-18). As such, the earliest Mowery could have been a broker is June 17, 2018 (two years after the Ninth Street Property was purchased) and this case was filed on May 16, 2018. (R. p. 16).

Therefore, Defendants respectfully request that this Court affirm the trial court’s dismissal of Plaintiff’s cause of action for breach of trust.

III. THE COURT PROPERLY DENIED PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF CONTRACT AND INTEREST IN AND FOR REAL ESTATE WHERE NO WRITTEN CONTRACT EXISTED BETWEEN THE PARTIES AND PLAINTIFF FAILED TO PRESENT CLEAR TERMS OF ANY ALLEGED CONTRACT.

Standard of Review

“In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law.” *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599–600, 675 S.E.2d 414, 415 (2009). The appellate court will not disturb the trial court's factual findings unless they are without evidence reasonably supporting those findings. *Id.*

Discussion

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 . . . 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 (Statute of Frauds).

To recover for breach of contract, the plaintiff must prove:

- (1) A binding contract entered into by the parties;
- (2) Breach or unjustifiable failure to perform the contract; and
- (3) Damage suffered by the plaintiff as a direct and proximate result of the breach.

Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

Plaintiff admitted that the parties did not enter into any written agreement regarding ownership of the real property titled in Mowery's name. (R. p. 185, line 16-p. 186, line 13). As such, any alleged contract between the parties for an interest in the real property is barred by the Statute of Frauds.

Further, Plaintiff failed to present any evidence of the terms of any alleged contract between the parties. For example, Plaintiff did not testify as to:

1. when the alleged contract became effective or when it would terminate;
2. whether there was one global contract or each property had its own contract;
3. what the parties agreed would happen if one died;
4. what the parties agreed would happen if one party wanted to sell a property and the other party objected; or
5. what the parties agreed would happen if one party wanted to terminate the contract and the other did not.

Plaintiff also did not testify about what term Defendants were alleged to have breached. Finally, Plaintiff testified that it was impossible for the parties to have a written contract because their agreement changed every day. (R. p. 185, line 16-p. 186, line 13). The only term Plaintiff testified to was that Mowery allegedly agreed to give him half of her property if they ever broke up. (R. p. 176, lines 22-25).

On the other hand, Debra testified clearly and unequivocally that there was no agreement between the parties. (R. p. 297, lines 13-20).

Here, the trial judge was well within his right as fact-finder to determine that Plaintiff's lack of clarity about the terms of the alleged oral contract along with his testimony that the contract changed day-to-day meant that no oral contract actually existed. The trial judge properly weighed the testimony of the parties and found that Plaintiff had not met his burden of proving that an oral contract existed between the parties.

Therefore, Defendants respectfully request that this Court affirm the trial court's denial of Plaintiff's causes of action for breach of contract and interest in and for real estate.

IV. THE COURT PROPERLY DENIED PLAINTIFF’S CAUSE OF ACTION FOR QUANTUM MERUIT, UNJUST ENRICHMENT, AND RESTITUTION WHERE DEFENDANTS DID NOT RECEIVE BENEFITS AND BOTH PARTIES BESTOWED GIFTS ON THE OTHER.

Standard of Review

In equitable actions, an appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). However, the appellate court is not required to disregard the findings made by the trial court. *Goldman v. RBC, Inc.*, 369 S.C. 462, 465, 632 S.E.2d 850, 851 (2006). Although not bound by the trial judge’s findings, the appellate court may give deference to his conclusions because he could judge the credibility and candor of the witnesses firsthand. *Malpass v. Hodson*, 309 S.C. 397, 400, 424 S.E.2d 470, 472 (1992).

Discussion

The equitable doctrine of quantum meruit may allow recovery for unjust enrichment. *See Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994) (citing *Player v. Chandler*, 299 S.C. 101, 107, 382 S.E.2d 891, 895 (1989)).

Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that 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.

Id. (citing *Webb v. First Fed. Sav. & Loan Ass’n*, 300 S.C. 507, 388 S.E.2d 823 (Ct. App. 1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct. App. 1988)).

Another 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. *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988).

A. Defendants Did Not Receive a Benefit from Plaintiff

Plaintiff is not entitled to recovery under his equitable claims because Defendants have not received a benefit from Plaintiff or his work. Plaintiff asserts that “[t]he record shows an increase of no less than \$127,000 in the South Carolina properties” Br. of App. 16. Plaintiff also asserts that he is entitled to recover for rental value added to the Ninth Street Property as well as \$30,000 he “injected into the parties’ equity process.” Br. of App. 16.

However, any value added to the Ninth Street Property and any value created from the \$30,000 allegedly injected into the properties would be included in the value of the South Carolina properties. As such, assuming Plaintiff’s assertions were proven by a preponderance of the evidence, which Defendants deny, the value he has added to Mowery’s properties is \$127,000.

Plaintiff requested that the trial court, and is now requesting that this Court, accept the additions he made to the properties but ignore the costs Defendants were paying towards the properties and Plaintiff’s expenses. Plaintiff reported no income between 2003 and 2018. (R. p. 201, line 23-p. 202, line 11; p. 352, lines 5-18). When asked whether he checked to make sure his income was being reported, Plaintiff testified: “The only income that I actually had to show were the few jobs that I did between friends. So, no, there was no tax return filed in my name.” (R. p. 353, lines 10-16).

While Plaintiff worked on her properties, Mowery was the only individual in the parties' relationship earning actual monetary income. (R. pp. 402, 407, 413, 420, 424, 428, 437). As such, all materials for the houses, living expenses, gifts, etc. had to be paid from Mowery's funds. (R. p. 275, line 21-p. 278, line 1; pp. 386-398). Plaintiff's 50% share of just the parties' living expenses was approximately \$201,000. (R. p. 276, line 24-p. 277, line 3). Without accounting for materials purchased using Mowery's funds, the amount paid for Plaintiff's living expenses is greater than any value his work may have added to the properties.

Plaintiff's testimony confuses this issue because he believes that funds deposited into a joint account automatically become equally owned by all parties to the account.¹ (R. p. 198, lines 16-18). Mowery's testimony was that the parties never held a joint account and Plaintiff simply had signing privileged on her account. (R. p. 276, lines 5-19). However, even assuming that a joint account existed, the funds deposited into that account from Mowery's income would still be Mowery's property. S.C. Code Ann. § 62-6-201(A) ("During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent."). As such, when Plaintiff testified that he purchased property, (R. p. 155, lines 7-9; p. 165, lines 20-25; p. 170, lines 17-19; p. 198, lines 16-22), paid expenses, (R. p. 354, lines 15-24), or bought materials, (R. p. 164, lines 13-15), using joint funds, he was actually using Mowery's funds with her permission.

¹ Plaintiff's misconception is exemplified by his testimony regarding the purchase of Pope Field Property where he stated: "I paid for – I paid – the purchase price came out of the joint account so I paid for half of it. . . . Your Honor, the purchase price from our joint account. It was my name on it and her name on it. The money came out of there." (R. p. 198, lines 16-21).

As such, there was no benefit conferred by Plaintiff upon Defendants because Plaintiff was actually a drain on the finances of Defendants.

B. Any Funds or Monies Exchanged Between the Parties were Gifts

In every gift, like in well-nigh every human act, there exists two elements. One of these involves the intent of the donor's mind; the other of these involves the act of the donor's hand. If a donor intends to confer on another ownership of his property, and if he proceeds so far as to do it, then the gift is complete.

Barnwell v. Barnwell, 323 S.C. 548, 556, 476 S.E.2d 492, 497 (Ct. App. 1996) (quoting *Meyerson v. Malinow*, 231 S.C. 14, 25–26, 97 S.E.2d 88, 94 (1957)).

Although Plaintiff does not contend that the parties were married, (R. p. 182, lines 14-18), Plaintiff's causes of action attempt to recreate a marital contract and request equitable division of a quasi-marital estate where none exists. Plaintiff testified that he wanted his "fair share" and "a fair and equal split." (R. p. 215, line 5-p. 216, line 5). However, equitable division is not an available cause of action to unmarried parties; otherwise, every cohabitant would have a cause of action for equitable distribution.

Instead, Plaintiff's equitable causes of action would require the court to perform an accounting of every transaction that occurred between two individuals in a romantic relationship to determine which party came out ahead financially. This is both impossible and unnecessary here because it is clear from Plaintiff's testimony that his intent was to give his property and efforts to Defendants. Only after Mowery broke up with Plaintiff was his intent regarding these gifts retroactively changed.

Plaintiff testified that he "gave [Mowery] money all the time because she didn't have any money," (R. p. 340, lines 14-19), and "was always giving her money." (R. p. 342, lines 19-21). Two witnesses testified that Plaintiff gave Mowery jewelry. (R. p. 231, line 19-p. 232, line 1; p.

248, lines 8-18). Plaintiff also gave Mowery's daughter a horse. (R. p. 232, lines 2-9). There was no testimony or evidence presented that these gifts from Plaintiff were loans or that Plaintiff expected Mowery to pay him back. That is because the present intent of Plaintiff when he gave the property to Mowery was that they were gifts and he did not intend any repayment of said gifts.

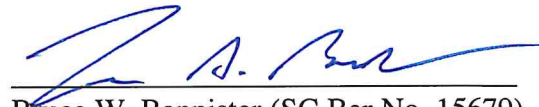
Therefore, Defendants respectfully request that this Court affirm the trial court's denial of Plaintiff's causes of action for quantum meruit, unjust enrichment, and restitution.

CONCLUSION

For the reasons stated above, Respondents respectfully request that this Court affirm the order of the master-in-equity acting as special referee.

Respectfully submitted,

February 25, 2021



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Mar 02 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY COURT OF COMMON PLEAS

CHARLES B. SIMMONS, MASTER IN EQUITY

C. A. NO. 2018-CP-39-00585

APPELLATE CASE NO. 2020-000396

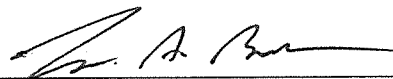
Terence "Terry" Carroll,.....Appellant,

vs.

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

Certificate Of Counsel

The undersigned certifies that the final Brief of Respondent in the above-captioned case complies with Rule 211(b) of the *South Carolina Appellate Court Rules* and with Supreme Court Order dated April 15, 2014 regarding personal identifiers and sensitive information.



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May 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Court Case No.: 2020-000396

Terrance "Terry" Carroll, ... Appellant,

v.

Debra Mowery, TD Realty, Upstate RE Group,

Hawk Shadow Business Services, LLC, and Debra Mower Realtor, ... Respondents.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT**I. SUFFICIENT EVIDENCE OF CONSTRUCTIVE FRAUD EXISTS TO OVERCOME NON-SUIT.**

Respondent's argument is misleading as to Carroll's testimony about titles to the investment properties in South Carolina. While the testimony shows that Carroll was aware that at closings that properties were placed in Mowery's name at the closings, it also shows that he was led to believe by Mowery that they would then be transferred into the name of TD Realty which had been formed by the parties for that purpose. (R. 169, 11-17). Carroll testified that the purchase of the properties followed by his renovations were part of a joint plan to build retirement equity for the parties, and that after their purchase the properties would then be transferred to TD Realty. Carroll's testimony also indicates that he believed that the properties had actually been transferred as he testified that he only learned that they had not during the litigation. (R. 169, l. 15-17; R. 207).

Respondent's argument is also misleading in stating that Carroll "admitted that he is not an owner of the business." Carroll's testimony to which Respondent cites actually reads: "And that was 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 to be put in that company name. And I was 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. p. 169, l. 12-17). It was not until Carroll received discovery in the present case that he learned he was held no interest or position with TD Realty. So at all times relevant to Mowery's deception Carroll was unaware that the titles had not been transferred into a company he was led to believe he in part owned. And while true that the deeds were part of

public record Carroll relied on Mowery's representations and therefore would have had no reason to search the public records.

As to Respondent's constructive notice argument the Respondent has cited no law, and Appellant submits there is none, to support Respondent's argument that there was any legal duty on the part of Carroll to inspect the public records that would override his unfortunate reliance on Mowery's misrepresentations. Mowery was in a position of trust and confidence such that Carroll's reliance on her can not be shown to be unreasonable. *See Designer Showrooms v. Kelley*, 304 S.C. 478, 480-81, 405 S.E.2d 417, 419 (Ct. App. 1991).

II. RECORD SHOWS APPELLANT EARNED SUBSTANTIAL INCOME

Respondent's claim that Carroll had no income and was supported by Mowery are unsupported by the record. The record shows that Carroll had substantial income during the relevant period. Carroll put the proceeds from the \$42,000 sale of his 53 foot Hatteras motoryacht into the joint account which was used to purchase materials used in the renovation of the Linda Lane property. R. 177; R. 209-210. 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. 17. Carroll used the remaining funds from his settlement to pay off the \$31,000 mortgage on the Maryland home. (R. 157; 341). Carroll also purchased windows for the addition to Linda Lane property from the proceeds from the sale of a boat. (R. 177, l. 8-11). He also put \$5,000 into Hawk Shadow and \$5,000 into his boat rental business. 22; 206. Quinn testified that most of Carroll's money went into the parties' businesses. 87. The parties had a joint account at

BB&T (8910) in the name of "Debra Mowery and Terence Carroll, that they used to purchase South Carolina properties. (R. 161; 224; 343-345; 360; 367). Respondent's claim as to Carroll's lack of income is therefore contrary to the record.

In addition to the foregoing, Mowery's claims that during the relevant period the parties' had joint living expenses of \$402,000, of which the Carroll's equal share would have been \$201,000 and that she paid all of that. (Resp. Brief pg. 12). The record however shows that Mowery's disposable income from all of her claimed sources show that she did not have disposable income sufficient to pay over \$402,000 as she alleges. (R. 275-277; 402). Mowery's allegations, and the trial court's findings are there unsupported by the record.

Conclusion

Based on the foregoing the decision of the trial court should be reversed and the case remanded for a finding as to damages or in the alternative that damages be awarded by this Court based on the record presented.

Respectfully submitted,

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RECEIVED

Aug 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Court Case No.: 2020-000396

Terrance "Terry" Carroll, ... Appellant,

v.

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

PETITION FOR REHEARING

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August 22, 2023.

PETITION

Pursuant to Rule 221, SCACR, the Appellant hereby moves this Court to reconsider its opinion and grant a rehearing based on the points overlooked or misapprehended by the court as set forth below.

I. CONSTRUCTIVE FRAUD, BUSINESS FIDUCIARY AND FALSE REPRESENTATION

The Court's decision is based on a finding that the Appellant failed to present evidence that a business transaction took place between he and the Respondent. This finding is in error as the record shows that the Respondent was in the business of providing all aspects of business administration to businesses and individuals. Regardless of whether the Respondent 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 and Carroll relied on Mowery's business experience to handle all of the administration of the venture while he provided for 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 and that Mowery led him 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. Taken in light most favorable to Carroll 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 Court’s opinion is further in error as its finding that Carroll did not present sufficient evidence showing 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. Carroll’s testimony, when taken in the light most

favorable to Carroll shows that the parties discussed and formed a plan to invest in properties and share the benefits from their efforts. Carroll's testimony shows that part of their plan was to transfer the properties to TD Realty and in which he would have an interest and a degree of control. The record shows that Mowery set up TD Realty without Carroll having any ownership or control. The record further shows that Mowery never transferred the properties in a way that provide Carroll with any interest in the properties. The record is therefore sufficient to create an inference that Carroll's expectations were made in reliance on representations made by Mowery.

II. BREACH OF TRUST

This Court's affirmance of 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 requirement between Carroll and Mowery. 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

This Court's affirmance is based on a finding that Carroll failed to present evidence

proving a contract between him and Mowery. In its analysis the Court's relies on Mowery's testimony that she never agreed to compensate Carroll in exchange for his work on the properties. This is error as this indicates a preponderance analysis rather than viewing the evidence in light most favorable to Carroll. The Court's opinion further overlooks relevant evidence that, when viewed in light most favorable to Carroll, is sufficient show that a contract existed 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). 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 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. 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 where there is evidence showing that deeds

were to be subsequently 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 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 an ownership or control interest in TD to Carroll. There Court therefore erred finding that there was no evidence supporting a constructive trust.

IV. QUANTUM MERUIT, UNJUST ENRICHMENT, AND RESTITUTION

This Court's 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 overlooks evidence, when taken in light most favorable to Carroll, shows that the value of the properties were increased by the renovations done by Carroll. 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 bsedment 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 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 Court's finding that Carroll failed to present evidence showing Mowery received a benefit from his renovation work is 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 if 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. The decision of the Court affirming the special referee's dismissal of these claims is therefore in error.

CONCLUSION

Based on the foregoing, as well as the arguments set forth in the Appellant's Brief, this Court should reconsider its opinion, grant a rehearing, and reverse the decision of the lower court.

Respectfully submitted,

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Aug 22 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM PICKENS COUNTY
Court of General Sessions
Charles B. Simmons, Master in Equity

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Terrance "Terry" Carroll, ... Appellant,

v.

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

CERTIFICATE OF SERVICE

I certify that on August 22, 2022, I filed and served electronically served and filed
the Appellant's Petition for Rehearing by AIS email to counsel of record and to the
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Court Case No.: 2020-000396

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Feb 18 2021

SC Court of Appeals

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v.

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

RECORD ON APPEAL

VOLUME I

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February 18, 2021.

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Terence "Terry" Carroll,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT**ORDER OF CONTINUANCE AND
ORDER OF REFERENCE TO
SPECIAL REFEREE**

C.A. No. 2018-CP-39-00585

This matter came before the Court on September 25, 2019, for a hearing on Defendants' Motion for Partial Summary Judgment and a trial on the merits. At the call of the case, Plaintiff was present with his attorney, James P. O'Connell, and Defendant Debra Mowery was present with her attorneys, Bruce W. Bannister and Luke A. Burke.

At the outset of the hearing, Plaintiff's counsel moved for a continuance due to an injury that counsel suffered the day before the hearing. Plaintiff's counsel advised the Court that he had been prescribed medication for his injury and did not believe he could effectively represent his client at this hearing. Plaintiff consented to dismiss the Lis Pendens and Amended Lis Pendens filed in this case and cancel the Certificate of Mechanics and or Materialman's Lien filed May 18, 2018, so long as any proceeds from the sale are held in escrow by Bannister, Wyatt & Stalvey, LLC, until trial or resolution of this case.

Defendants did not object to the continuance due to Plaintiff's agreement to dismiss the Lis Pendens and cancel the Mechanics Lien and Defendants agreed to hold any proceeds from the sale of any of the property subject to the Lis Pendens and Amended Lis Pendens is held in escrow until trial of this case.

The parties further agreed to refer this case to Judge Charles B. Simmons, Jr. to act as special referee. The parties further agreed that Judge Simmons will hear any motions and hold trial of this case in the Greenville County Courthouse.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The hearing on Plaintiff's Motion for Partial Summary Judgment is CONTINUED.
2. Trial of this case is CONTINUED.
3. The Lis Pendens filed in this case on May 16, 2018, and the Amended Lis Pendens filed in this case are DISMISSED.
4. Within ten days after this Order is filed, Plaintiff shall cancel the Notice and Certificate of Mechanics and or Materialman's Lien filed on May 18, 2018, by filing appropriate documents with the Pickens County Register of Deeds.
5. If any of the properties previously subject to the Lis Pendens and Amended Lis Pendens are sold, then any proceeds from the sale shall be held in escrow by Bannister, Wyatt & Stalvey, LLC, until trial or resolution of this case.
6. The above-captioned action is referred to Judge Charles B. Simmons, Jr. to act as special referee for final, non-jury adjudication, and Judge Simmons may hear any motions and hold trial of this case in the Greenville County Courthouse.

IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW

Judge Edward W. Miller
Thirteenth Judicial Circuit



Pickens Common Pleas

Case Caption: Terence Carroll VS Debra Mowry , defendant, et al

Case Number: 2018CP3900585

Type: Order/Other

So Ordered

s/ Edward W. Miller

Electronically signed on 2019-10-16 10:07:13 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Terence "Terry" Carroll,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT**ORDER**

C.A. No. 2018-CP-39-00585

This matter was before the Court on December 17, 2019, for a hearing on Plaintiff's Motion to Compel Discovery, Defendants' Motion for Partial Summary Judgment, and a trial on the merits.

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 me 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. At the call of the case, Plaintiff was present with his attorney, James P. O'Connell, and Defendant Debra Mowery was present with her attorneys, Bruce W. Bannister and Luke A. Burke.

At the outset of the hearing, the Court heard argument regarding Plaintiff's Motion to Compel Discovery and reviewed the exhibits presented with the motion. The motion was filed on November 25, 2019. Defendant filed a Return to Motion to Compel Discovery on December 16, 2019. Based on the argument of counsel and a review of the file and exhibits presented related to this motion, the Court finds that, based upon the timing and the substance of the motion, Plaintiff's Motion to Compel Discovery should be denied.

At the outset of the hearing, the Court considered Defendants' Motion for Partial Summary Judgment and reviewed the exhibits presented with the motion. The motion was filed on September 20, 2019. Plaintiff filed a Return to Motion for Summary Judgment on October 15, 2019, and a Return to Motion for Summary Judgment as Amended on November 19, 2019. Based on a review of the file and exhibits presented related to this motion, the Court finds that Defendants' Motion for Summary Judgment should be denied at this time and the matter proceed to trial on the merits.

Plaintiff called three witnesses in his case in chief: Plaintiff, his sister, and his brother-in-law. After Plaintiff's case was presented, Defendants renewed their Motion for Partial Summary Judgment as a Motion for Involuntary Non-suit pursuant to Rule 41(b) SCRPC. Based on the argument of counsel and the evidence presented in Plaintiff's case, the Court finds that:

2 

- (1) Plaintiff's cause of action for Intentional Infliction of Emotional Distress should be dismissed because Plaintiff did not present any evidence that he suffered emotional distress so severe that no reasonable man could be expected to endure it or any evidence that Defendants' conduct was so extreme and outrageous as to exceed all possible bounds of decency which must be regarded as atrocious and utterly intolerable in civilized community. *See Ford v. Hutson*, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). Further, even had the same been established, there was no proof of any amount of damages.
- (2) Plaintiff's cause of action for Specific Performance of Contract should be dismissed because Plaintiff did not present clear evidence of a valid agreement and did not present clear evidence of the terms of any alleged agreement. *See Campbell v. Carr*, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004). Further, the alleged agreement concerns the sale or transfer of real property and Plaintiff admitted that there was never a written agreement between the parties. Therefore, suit upon the alleged agreement is barred by the Statute of Frauds. *See* S.C. Code §32-3-10.
- (3) Plaintiff's cause of action for Constructive Fraud should be dismissed because Plaintiff did not present any evidence of fraud by Defendants. Plaintiff testified that he knew that all real property and other titled property were titled in Defendant Debra Mowery's name. Therefore, Plaintiff was aware of the facts and was not entitled to reasonably rely upon any representation to the contrary. *See, e.g., Woods v. State*, 314 S.C. 501, 506, 431 S.E.2d 260, 263 (Ct. App. 1993).



(4) Plaintiff's cause of action for Breach of Trust should be dismissed because Plaintiff did not present any evidence that a fiduciary relationship existed between the parties. *See SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990).

(5) Defendants' Motion should be denied as it relates to Plaintiff's causes of action for Interest in Real Estate (Constructive Trust) and Breach of Contract.

Defendants called three witnesses in their case in chief: Defendant Debra Mowery, her friend, and a home inspector who was qualified over Plaintiff's objection as an expert in home inspections and residential construction.

After Defendants case was presented, Plaintiff was called in rebuttal.

Upon the conclusion of trial, the parties agreed that they would exchange the following personal property at a time and place mutually agreeable to the parties and communicated through their attorneys. Therefore, Defendant shall give Plaintiff the riding mower, tiller, croquet set, and fireplace from Pope Field garage at a time within the next 30 days and at a place arranged through the parties' attorneys.

Based upon the obvious animosity and hurt feelings, the Court finds that Plaintiff and Defendant Debra Mowery should be mutually restrained from contacting, harassing, coming around, molesting, or otherwise bothering the other party in any way whatsoever. The only exception to this restraining order is that the parties may meeting to exchange personal property as noted above.

I have reviewed and considered all testimony and exhibits presented by the parties. The thrust of Plaintiff's argument is that the Court should enforce a marriage-like contract between the parties even though no marriage existed. Further, Plaintiff requests that the Court



enforce an alleged oral contract that he testified the parties entered into over a decade ago; however, he does not present clear terms of the alleged contract other than to claim that he is entitled to half of Defendant Debra Mowery's property.

Both parties testified that they were the sole income producer in their relationship while the other party had little to no income. However, it is more likely that both parties contributed money and time to the relationship. As such, it is more likely that neither party contributed significantly more or less than the other party. Further, in the event that either party did contribute more than the other party, such contribution should be considered a gift to the other party. There is insufficient proof of amounts contributed by either to the relationship or to the expenses related thereto and any "profit" made on any of the real estate dealings between the parties.

Therefore, based on a preponderance of the evidence, the Court finds that Plaintiff's causes of action for (1) Unjust Enrichment, (2) Interest in and for Real Estate, (3) Breach of Contract, (4) Restitution, and (5) Quantum Meruit should be denied. Further, Plaintiff's cause of action for Temporary Injunction should be denied as moot. The Court also finds by a preponderance of the evidence that Defendants' causes of action for (1) Interference with Contractual Relationship, (2) Abuse of Process, (3) Slander of Title, (4) Conversion, and (5) Offset should be denied. Defendant's cause of action for Eviction is denied as moot because Plaintiff willingly relocated from the property.

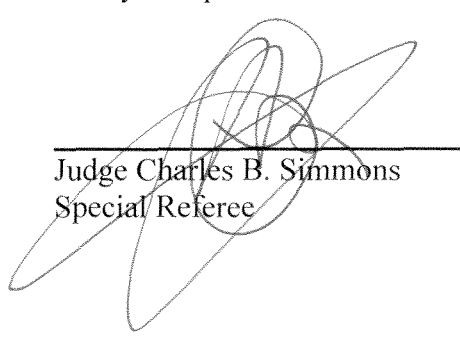
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:



1. I have jurisdiction to hear this case and related motions as special referee pursuant to the Order of Continuance and Order of Reference to Special Referee filed October 16, 2019.
2. Plaintiff's Motion to Compel Discovery is DENIED.
3. Defendants' Motion for Partial Summary Judgment is DENIED.
4. The relief requested by Plaintiff is DENIED.
5. The relief requested by Defendant is DENIED.
6. Plaintiff and Defendant Debra Mowery are mutually restrained from contacting, harassing, coming around, molesting, or otherwise bothering the other party in any way whatsoever.
7. The parties shall exchange personal property at a time and place arranged through their attorneys and this exchange is the only exception to this restraining order.

IT IS SO ORDERED.

1/6/2020



Judge Charles B. Simmons
Special Referee

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Terence "Terry" Carroll,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT**ORDER
(PLAINTIFF'S MOTION FOR
RECONSIDERATION ALTERATION
AND OR AMENDMENT)**

C.A. No. 2018-CP-39-00585

This matter was before the Court on December 17, 2019, for a trial on the merits. An Order was filed on January 6, 2020, determining all issues in this case. On January 17, 2020, Plaintiff filed a Motion for Reconsideration Alteration and or Amendment pursuant to Rules 52(b) and 59(e) SCRCF. On January 28, 2020, Plaintiff filed an Affidavit in support of Plaintiff's motion.

On February 7, 2020, the Court held a conference call to hear argument of counsel regarding Plaintiff's motion. James P. O'Connell was present on the call representing Plaintiff and Luke A. Burke was present on the call representing Defendants.

Plaintiff argued that Defendant Debra Mowery has been unjustly enriched by money invested and labors performed by Plaintiff. Specifically, Plaintiff argued (1) the parties equally contributed money and time to the relationship for profit; (2) there is insufficient proof of amounts contributed by either party to the relationship or to the expenses related thereto and any profit made on any of the real estate dealings between the parties; and, (3) therefore, Plaintiff should recover one half of the value of the real estate properties, the same as Defendant because Plaintiff has conferred a benefit on Defendant, Defendant knows of the



benefit conferred, and retention of the benefit would be inequitable without paying for its value.

Defendants argue that the law is tailored in the areas of marital contracts and real property transfers and ownership to specifically avoid claims of equitable division between unmarried parties and disputes of ownership of real property like the claims raised by Plaintiff. The parties have never been married or held themselves out to be married and the real property disputed by Plaintiff has always been titled solely in Defendant Debra Mowery's name.

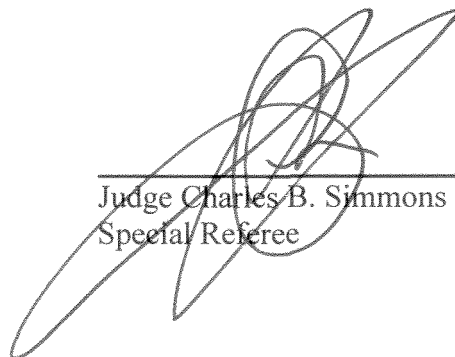
The Court has considered the arguments of counsel and finds that the arguments raised in support and opposition to this motion are similar to those raised and previously considered at trial. Therefore, the Court finds that Plaintiff's motion should be denied.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff's Motion for Reconsideration Alteration and or Amendment is DENIED.

IT IS SO ORDERED.

Date 2/17/20



Judge Charles B. Simmons
Special Referee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
TERENCE "TERRY" CARROLL,	)	Civil Action No. 2018-CP-39-
PLAINTIFF,	)	
-VS-	)	LIS PENDENS NOTICE OF
	)	PENDENCY OF ACTION
DEBRA MOWERY and	)	
T D REALTY,	)	
DEFENDANT.	)	Jury Trial Requested

NOTICE IS GIVEN AND GRANTED, that an action or suit has been begun and is now pending or Order issued, in the above referred to Court or the Office of the Master in Equity or Special Referee: UPON THE COMPLAINT of the named, PLAINTIFF, against the named DEFENDANTS, for a Complaint for Plaintiff, named above as shown by the Complaint filed herewith this date and in the Office of the Clerk of Court and concerning the charges as reported in the Complaint and hereinbelow: The real estate and or premises, owned of record by Defendants, is at the time of filing and of this Notice, is described as: ALL THAT certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens as shown as:

REAL PROPERTY ONE:

Description All that certain piece, parcel or lot of land, with all improvements there, Situate, lying and being as shown Lot No. 5 of Cherry Dale Subdivision on plat prepared for Robin D. Lawson and Pam B. Lawson, dated November 7, 1990 recorded In Plat Book 40 at page 61, reference is made to plat for a more particular description.

Property sold at public sale deed dated September 3, 2014 and recorded September 22, 2014 in Deed Book 1632 at page 2369, Pickens County Register of Deeds Office, From Special Referee, R. Murray Hughes, to Ocwen Loan Servicing LLC and Federal Home Loan Mortgage Corporation, which then assigned it's bid to Federal National Mortgage Corporation, then the same real property was conveyed to Debra Mowery By deed dated January 26, 2015 recorded January 28, 2015 in Deed Book 1658 at page 224 in the Register of Deeds Pickens County SC. See Corrective Deed recorded July 27, 2017 Deed Book 1882 at page 30.

TMS 5028-17-12-4119/ physical&Grantees address 109 Linda Lane, Easley SC 29642

REAL PROPERTY TWO:

Description, all that piece, parcel or lot of land, with all improvements, lying and being in Woodside Mills Village in the Town of Easley, SC Pickens SC and being more particularly described as Lot No. 241 as shown on a plat entitled A Subdivision Of Woodside Mills Easley SC December 1951 and recorded in the Register of Deeds Office Pickens County SC in Plat Book 1920 at page 136 & 137. Lot is shown as NO. 415 Ninth Street fronting 97.8 ft.

Deed Book 1827 page 215 recorded 12-29-2016, Grantor US Bank National Assoc. As Indenture Trustee for CSMC Trust 2014-CIMI Mortgage Backed Notes, Series 2014-CIMI, to Debra Mowery, previously by Deed of Special Referee Pickens County (misnamed Easley County SC) recorded May 9, 2016 Deed Book 1768 page 10 in the ROD Office Pickens County SC.

TMS 5019-19-60-4852, physical address 204 South Ninth Street Easley SC 29640

REAL PROPERTY THREE:

All that piece, parcel or lot of land in State of South Carolina, County of Pickens, About one mile south of Easley SC on Pope Field Road, known and designated at Tract No. Three(3) on plat of lands of T. D. Wade plat by JC Smith February 3, 1950, Beginning at iron pin on highway at the line of Home Maulding, then along Highway North 58-15 West 221.9 ft to iron pin; then North 24 East 225 ft to iron pin on land of Reeves Estate then South 70 East 37.7 ft to a stone, then with lands of Reeves Estate And Home Mauldin South 12 East 315.4 ft to iron pin on the road.

This is the same real property conveyed to USBank National Association as Indenture Trustee for Springleaf Mortgage Loan Trust 2013-1, by and through Nationstar Mtg. LLC as Attorney in Fact by Deed of Daniel Hunt Special Referee for Pickens County South Carolina recorded on July 15, 2016 in Deed Book 1785 page 261 ROD Office Pickens County SC. Then by Grantor to Debra Mowery by Deed recorded in Deed Book 1796 page 188 8-30-2016.

TMS 5028-09-16-6537/Physical address 539 Pope Field Road Easley SC grantees address 109 Lind Lane Easley SC 29642.

Easley, SC

_____,
 s/JAMES P. O'CONNELL
 Attorney for the Plaintiff
 James P. O'Connell #4259
 139 Grace Drive
 Easley, South Carolina 29640
 Phone/Fax: (864) 220-0005
aellenburgjpocoffice@yahoo.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
TERENCE "TERRY" CARROLL,	)	Civil Action No. 2018-CP-39-585
	)	
PLAINTIFF,	)	AMENDED
-VS-	)	LIS PENDENS
	)	NOTICE OF PENDENCY
	)	OF ACTION
DEBRA MOWERY and	)	
T D REALTY, and	)	
UPSTATE RE GROUP, and	)	
HAWK SHADOW BUSINESS SERVICES, LLC.	)	
And	)	
DEBRA MOWER REALTOR	)	
DEFENDANTS.	)	

NOTICE IS GIVEN AND GRANTED, that an action or suit has been begun and is now pending or Order issued, in the above referred to Court or the Office of the Master in Equity or Special Referee: UPON THE COMPLAINT of the named, PLAINTIFF, against the named DEFENDANTS, for a Complaint for Plaintiff, named above as shown by the Complaint filed herewith this date and in the Office of the Clerk of Court and concerning the charges as reported in the Complaint and hereinbelow: The real estate and or premises, owned of record by Defendants, is at the time of filing and of this Notice, is described as: ALL THAT certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens as shown as:

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_____, _____
Easley, SC

_____/s/JAMES P. O'CONNELL #4259
Attorney for the Plaintiff
James P. O'Connell #4259
139 Grace Drive
Easley, South Carolina 29640
Phone/Fax: (864) 220-0005
aellenburgjpocoffice@yahoo.com

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT

TERENCE "TERRY" CARROLL,) Civil Action No. 2018-CP-39-

PLAINTIFF,) SUMMONS and NOTICE with
-VS-) COMPLAINT
attached

DEBRA MOWERY and
T D REALTY,

DEFENDANT.

Jury Trial Requested

TO DEFENDANTS NAMED ABOVE, YOU ARE SUMMONED AND REQUIRED TO ANSWER OR OTHERWISE PLED to the pleading of the party issuing this Summons and Notice, in this action above captioned, which is this date served upon you with the pleading attached to the Summons and Notice, YOU ARE DIRECTED to serve your responding pleading to this pleading at the following address: Party's attorney, James P. O'Connell, Attorney at Law, 139 Grace Drive, Grace Office Park, Easley, South Carolina (SC) 29640 or by Certified Mail at this address.

Within thirty (30) days after the day of service, not to include the day of service, if served by Certified Mail Return Receipt Requested, addressee only, the addition of five (5) days is added to the time to Answer or otherwise plead, and IF YOU FAIL TO ANSWER or otherwise plead or respond in writing, within the time noted, the party serving will apply to the Court for the relief requested in the pleading and JUDGMENT will be entered against you by DEFAULT.

IF YOU ARE A MINOR, INCOMPETENT OR A PRISONER a personal Guardian ad Litem may be or will be appointed for you by law, IF YOU DO NOT APPLY, for a Guardian ad Litem to be appointed. IF YOU are currently in the service of any armed forces of the USA, advise Promptly.

May 15, 2018

Easley, SC

s/James P. O'Connell

Plaintiff's Attorney
James P. O'Connell
139 Grace Drive
Easley, South Carolina 29640
Phone 864-220-0005 FAX 498-7210
jpatrickoconnell@yahoo.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
TERENCE "TERRY" CARROLL,	)	Civil Action No. 2018-CP-39-
	)	
PLAINTIFF,	)	
-VS-	)	COMPLAINT
	)	
DEBRA MOWERY and	)	
T D REALTY,	)	
	)	
DEFENDANT.	)	Jury Trial Requested

The Plaintiff named above Complaining of the Defendants named above would respectfully show and allege to the Court:

A. Reserving any and all rights to any and all Motions to include that of an Injunction.

STATEMENT OF FACTS OF THE CAUSES OF ACTION

1. The parties are citizens of the United States of America, residents of the State of South Carolina and residing in Pickens County. The Defendants business T D Realty is a business organized under the laws of South Carolina and operating principally in Pickens County South Carolina.

2. The parties entered into contract and a series of contracts starting in the State of Maryland and then moving to and continuing in the South Carolina County of Pickens.

3. The contracting was and continued in Pickens County South Carolina, to acquire real estate for the purposes of repair and or renovations then resale and for other personal property, to include vehicles.

4. The parties have over the course of their agreement and contract conducted business to have acquired real estate, using funds from both parties and the parties have acquired personal property to include cash and vehicles.

5. The parties have over the course of the agreement and contract have acquired other properties to include the establishment of businesses and companies, for example the Defendant T and D Realty.

6. Plaintiff is a co-partner, co-owner, and the like of any and all property and properties, to include checking accounts, savings accounts, pension accounts, company accounts, safe deposit boxes, cash held privately and held by others for Defendants.

7. Plaintiff states that the current actions of the Defendants are intended to have caused Plaintiff to be penniless and homeless and or fear the same as Plaintiff came to understand and discover that no real and or personal property so acquired by the parties was legally titled in and to the Plaintiff, but only in the Defendant Mowery.

8. Plaintiff and Defendants had a contract agreement of each party, Plaintiff and Defendants to share and share alike in the real estate and property of the parties; and

a history of the relationship would show that the parties intended to have an equal Partnership and or ownership of the properties, real and personal the parties acquired.

9. Recently Defendants have removed cash monies and personal property from the parties accounts, cash held in safes and at the residence the parties shared, and other properties, to include Plaintiff being informed a real property of the parties is to be sold or is being sold. Further, Defendants have entered into and have started another business and or company, using the funds, property and labors of the Plaintiff.

**FOR A FIRST CAUSE OF ACTION
Unjust Enrichment**

10. The Statement of Facts for the Causes of Action is repeated here by incorporation by reference.

11. Plaintiff is due and owed from Defendants any and all funds and monies due for any and all work and the like done for the acquisition of the properties acquired by the plaintiff and defendants.

12. Plaintiff by and with the contract and agreement of the Defendants did certain labors and constructions and investments in and to the acquiring of and the use of any and all properties acquired by the parties, Plaintiff and Defendants.

13. Plaintiff as part of the labors and work under the parties agreement and contract did fix and rebuild Defendant Mowery daughter's vehicle, Plaintiff did completely rebuilt

rebuild and rehab the parties first investment real property 4548 Church St. Whiteford Maryland. The parties used funds from Defendant Mowery's settlement and other funds but used the labors of Plaintiff for the renovations and rebuilding for all the real estate the parties purchased as partners, co-owners, co-shareholders, etc., real estate and businesses in South Carolina.

14. Plaintiff has been and continues to be the party providing the labor for the rehab, rebuilding, renovating and the like of all real estate the parties have purchased together.

15. Plaintiff was informed by Defendants that Defendants did not want to support Plaintiff recently and the parties did agree and contract to equally divide any and all Property, both real and personal, and that is when Plaintiff discovered Defendants had Withdrawn and removed all cash from the safe and the accounts. Defendants informed Plaintiff that Defendants would no longer provide and cash to Plaintiff and also the Plaintiff would have no access to any and all property.

16. Defendants informed Plaintiff that the real property at 539 Pope Filed was being sold and Plaintiff had no rights. Defendant informed Plaintiff that Plaintiff had no rights title or interest in anything. Defendants phoned the police to have Plaintiff removed, but the police informed Defendants that the matter was civil and Defendants could not remove Plaintiff and can not lock Plaintiff out of the property.

17. Defendants have all keys to all property including vehicles and refuses to give to Plaintiff any keys. Defendants also removed and have confiscated Plaintiff's cell phone. Plaintiff is requesting the immediate return of the Plaintiff's work truck and the ownership of the jaguar vehicle, and equal division of the real estate, cash and any other property.

18. Plaintiff also did labors and construction on other property of the Defendants and the Defendants family without any compensation.

19. The above noted labors and construction work is sometimes known as sweat Equity, which Plaintiff must be compensated for by the Defendants.

20. Plaintiff requests the Court to ascertain the valuation of the real and personal property of the parties, Plaintiff and Defendants, and to equally divide that property into equal shares of value, because Plaintiff did and was conferring upon Defendants benefits, which were not gifts, as is shown above in the Complaint, and Defendants have received those benefits for Defendants own use to include the selling and or sale of real property for profits; and that Plaintiff is not receiving any of the profits and or funds or assets from any of the selling and or sale of the parties property, which would not only be inequitable but also completely in violation of the parties understood and agreement upon agreement and contract.

FOR A SECOND CAUSE OF ACTION
Interest in and for Real Estate

20. The First Cause of Action are repeated here by incorporation by reference.

21. Plaintiff states the Defendants and Plaintiff acquired the ownership and or any interests in and to the following described real estate and personal properties:

REAL PROPERTY ONE:

Description All that certain piece, parcel or lot of land, with all improvements there, Situate, lying and being as shown Lot No. 5 of Cherry Dale Subdivision on plat prepared for Robin D. Lawson and Pam B. Lawson, dated November 7, 1990 recorded In Plat Book 40 at page 61, reference is made to plat for a more particular description.

Property sold at public sale deed dated September 3, 2014 and recorded September 22, 2014 in Deed Book 1632 at page 2369, Pickens County Register of Deeds Office, From Special Referee, R. Murray Hughes, to Ocwen Loan Servicing LLC and Federal Home Loan Mortgage Corporation, which then assigned it's bid to Federal National Mortgage Corporation, then the same real property was conveyed to Debra Mowery By deed dated January 26, 2015 recorded January 28, 2015 in Deed Book 1658 at page 224 in the Register of Deeds Pickens County SC. See Corrective Deed recorded July 27, 2017 Deed Book 1882 at page 30.

TMS 5028-17-12-4119/ physical&Grantees address 109 Linda Lane, Easley SC 29642

REAL PROPERTY TWO:

Description, all that piece, parcel or lot of land, with all improvements, lying and being in Woodside Mills Village in the Town of Easley, SC Pickens SC and being more particularly described as Lot No. 241 as shown on a plat entitled A Subdivision Of Woodside Mills Easley SC December 1951 and recorded in the Register of Deeds Office Pickens County SC in Plat Book 1920 at page 136 & 137. Lot is shown as NO. 415 Ninth Street fronting 97.8 ft.

Deed Book 1827 page 215 recorded 12-29-2016, Grantor US Bank National Assoc. As Indenture Trustee for CSMC Trust 2014-CI MI Mortgage Backed Notes, Series 2014-CIMI, to Debra Mowery, previously by Deed of Special Referee Pickens County (misnamed Easley County SC) recorded May 9, 2016 Deed Book 1768 page 10 in the ROD Office Pickens County SC.

TMS 5019-19-60-4852, physical address 204 South Ninth Street Easley SC 29640

REAL PROPERTY THREE:

All that piece, parcel or lot of land in State of South Carolina, County of Pickens, About one mile south of Easley SC on Pope Field Road, known and designated at Tract No. Three(3) on plat of lands of T. D. Wade plat by JC Smith February 3, 1950, Beginning at iron pin on highway at the line of Home Maulding, then along Highway North 58-15 West 221.9 ft to iron pin; then North 24 East 225 ft to iron pin on land of Reeves Estate then South 70 East 37.7 ft to a stone, then with lands of Reeves Estate And Home Mauldin South 12 East 315.4 ft to iron pin on the road.

This is the same real property conveyed to USBank National Association as Indenture Trustee for Springleaf Mortgage Loan Trust 2013-1, by and through Nationstar Mtg. LLC as Attorney in Fact by Deed of Daniel Hunt Special Referee for Pickens County South Carolina recorded on July 15, 2016 in Deed Book 1785 page 261 ROD Office Pickens County SC. Then by Grantor to Debra Mowery by Deed recorded in Deed Book 1796 page 188 8-30-2016.

TMS 5028-09-16-6537/Physical address 539 Pope Field Road Easley SC grantees address 109 Lind Lane Easley SC 29642.

22. Plaintiff had and has an ownership interest in and to the above noted real estate properties, as Plaintiff funds were used to purchase the real properties and that the Plaintiff has been and was the only party performing labor and construction on and for the real properties to improve, rebuild, renovate and or refurbish all the real estate owned by, acquired by and in the possession of the Defendants.

23. The interest claimed by the Plaintiff is sometimes referred to a a constructive Trust.

FOR A THIRD CAUSE OF ACTION
For the Intentional Infliction of Emotional Distress

24. The First and Second Causes of Action are repeated here by incorporation by reference.

25. Plaintiff alleges that Defendant intentionally and recklessly inflicted severe emotional distress to the Plaintiff, as Defendants did in a grossly painful and disrespectful method deny the Plaintiff any and all rights and interests in and to the real and personal property the parties had attained and acquired during the agreement and contract to the point of attempting illegally to disenfranchise Plaintiff of any and all rights Plaintiff has in and to the properties so acquired by the parties.

26. Plaintiff alleges the actions of the Defendants by themselves and any agent or agents have and are intending to cause Plaintiff severe emotional distress, because Defendants are claiming Plaintiff has no rights, title and interest in an to any real property. Defendants are have intended as a consequence of Defendants actions the break down of the Plaintiff and to have Plaintiff become destitute, homeless and without any property real and or personal.

27. Plaintiff alleges Defendants by their conduct and by it's agents conduct was and is both extreme and outrageous, as the same conduct was intended to evoke from the Plaintiff fear and dread and the same conduct is not to be tolerated in a civilized society. The Plaintiff alleges Defendants conduct continues to cause emotional distress to the Plaintiff. The Plaintiff alleges Defendant's conduct is severe in that the conduct continues to this date, and, Plaintiff still has fears, nightmares of the circumstances,

of being homeless and penniless. The Plaintiff alleges that no other person could or would be expected to endure the same acts of the Defendants and their agents.

Plaintiff alleges Defendants conduct did and continues to cause severe emotional distress, and Defendant should compensate the Plaintiff for the causing of the same, in the amount of One Hundred Thousand (\$100,000.00) Dollars, after the equal division of the real estate and personal property of the Plaintiff and Defendants.

**FOR A FOURTH CAUSE OF ACTION
For the Specific Performance of Contract**

28. The prior Causes of Action are repeated here by incorporation by reference.

29. As has been reported above the parties have and have had a contract for the Purchase of and reselling of real estate and that contract must be enforced as the parties have intended over the course of the parties agreement of at least ten years.

30. The parties intended to be and are equal partners, co-owners and the like of The properties the real estate and equipment and other personal property so bought and purchased as above written in this Complaint.

31. There is and will be very clear evidence of a ongoing contract and agreement as above stated in this Complaint.

32. The parties agreement and contract has been and is continuing to be carried out by the parties, as one aspect of the agreement and contract the receiving or rents

and or other payments from the purchased property to include proceeds from and sale and or any other transfer.

33. The Plaintiff has and continued to perform the Plaintiff's part of the parties Contract and agreement and until the blocking and unilateral ending and termination Of the parties contract and agreement, Plaintiff was performing Plaintiff's part of the agreement and contract of the parties and was and is attempting to continue the parties agreement and contract.

34. Plaintiff requests the specific performance of the parties contract and agreement by the equal division of the parties properties, real and personal, as is found by the Court.

**FOR A FIFTH CAUSE OF ACTION
For the Breach of Contract by Defendants**

35. The prior Causes of Action are repeated here by incorporation by reference.

36. The parties had and have a contract agreement and the Defendants have breached the contract and agreement as is stated above in this Complaint; as any contract has an implied covenant of good faith and fair dealing.

37. Plaintiff has been fulfilling Plaintiff's rights, duties and obligations by and under the parties agreement and contact, but that the recent actions of Defendants have breached the parties agreement and contract, as Defendants have terminated

the agreement and contract and not allowed Plaintiff any rights under the contract.

38. Defendants are liable to Plaintiff for any and all valuation of the property of the Parties agreement and contract to include any recent sells or sales of the real property, which Plaintiff is informed and believes is occurring.

39. Defendants should and must be accountable for the breach of the parties Contract in the amount of an equal division of the parties assets in all property To include any and all accounts and the like and any cash and or monies held Privately and or in the possession of others on behalf of Defendants.

FOR A SIXTH CAUSE OF ACTION
For the A Temporary Injunction against Defendants

40. The prior Causes of Action are repeated here by incorporation by reference.

41. Plaintiff is advised that Defendant could be and or are selling, have sold and have hidden funds of the Plaintiff and Defendants.

42. Plaintiff will request of the Court for an injunction as to the Defendants to Hold any and all sales and or if already sold or being sold that the funds and or Proceeds from any and all sells and or sales of any property that could be and or is that of the Plaintiff and Defendants, be held in escrow or by the Court; to be divided equally by the Court at any future date and time.

43. Plaintiff understands Defendants are removing and have removed property

of the Plaintiff and the property is required to be preserved pending the rights of parties during this action.

44. Plaintiff will suffer most irreparable harm if the injunction is not granted as the funds, monies and properties of the parties contract and agreement will forever be not available to the Court to divide equally, as is the intent of the Defendants.

45. Plaintiff knows that the parties have an equal ownership of any and all assets of the parties and that Plaintiff will have a one half equal ownership of any and all property which includes any proceeds and or funds from any sale of the parties property in any manner whatsoever.

46. Plaintiff believes there is no other adequate remedy at law other than this Injunction. The Plaintiff requests the Court issue an injunction to prevent any sale and or transfer of any property of the parties.

FOR A SEVENTH CAUSE OF ACTION
For Restitution by Defendants

46. The prior Causes of Action are repeated here by incorporation by reference.

47. Plaintiff requests the restitution of any and all funds from Defendants that would be and are due and owing to the Plaintiff.

48. Plaintiff did as Plaintiff contracted, by placing Plaintiff's funds into the Possession of the Defendants for the benefit of the Plaintiff and Defendants.

49. Plaintiff did as Plaintiff contracted, by performing labors and work on the properties of the parties to include the repair, renovations and upgrading of the properties for resale and for renting and or the providing of additional funds to the parties.

50. The parties both the Defendants and the Plaintiff have been and were realizing benefits from the parties actions. The benefits included money, cash, living expenses, and other compensations. Defendants have come to remove the properties of the parties from the Plaintiff by denying Plaintiff any rights to any of the property and or funds of the parties, to include the denying Plaintiff any rights and interests in and to the properties of the parties.

51. That the allowing of the Defendants to retain any and all profits, funds, and other property of the Plaintiff would be and is inequitable.

52. Plaintiff is requesting the valuation of the entire properties of the parties and the payment to the Plaintiff of an equal one half share of any and all property.

FOR A EIGHTH CAUSE OF ACTION
Constructive Fraud by Defendants

53. The prior Causes of Action are repeated here by incorporation by reference.

54. Defendants informed and Plaintiff operated by the representations of the Defendants that the parties would be and were equal parties and the parties by their

Payments and Plaintiffs labors would share equally as to all property and sales.

55. Defendants have now shown that Defendants did not at intend to share equally with Plaintiff the property of the parties nor any assets and or cash or other values of the agreement and contract.

56. Plaintiff and Defendants have and had this agreement and and contract for years and operated under the agreement and contract, except that all properties were placed into the name of the Defendants and not the Plaintiff, which was not made known to the Plaintiff with reasonable certainty. The providing of funds by the Plaintiff and the providing of labors and work by Plaintiff were material to the parites agreement and contract.

57. Defendants did know that after a period of time that Defendants were not operating upon the same agreement and contract as Defendants have been and are removing and transferring property of the parties for the benefit of Defendants and not for Plaintiff.

58. Plaintiff has been over the years acting on the representations of Defendants that the agreement and contract are in effect and that the parties have been using the funds of the parties for living expenses and operating expenses and also for the materials for the labors of the Plaintiff as to the properties of the parties.

59. Plaintiff has known nothing of the Defendants actions to remove cash, funds, and the like from the parties and that the Defendant have and are terminating the Plaintiff to the agreement and contract for the purpose of denying Plaintiff the Plaintiff's equal one half share.

60. Plaintiff has been and was relying on the representations of the Defendants To continue to labor and perform actions for the benefit of the parties agreement And contract, without Plaintiff knowing of the Defendants false promises of the Parties sharing equally in and to the property, profits and assets of the parties.

61. Plaintiff not only relied upon the representations of the Defendants and acted upon those representations in reliance of the statements of the parties equally sharing in all, Plaintiff rightfully relied upon the statements but that the Plaintiff is now being injured by and from those statements and representations.

62. Plaintiff requests the Court to grant to Plaintiff one half of all property In whatever form or shape and wherever held and by any other parties, and to Order Defendants to pay over to Plaintiff One Hundred Thousand (\$100,000.00) Dollars for the Defendants constructive fraud, as the funds obtained by Defendants Did not belong entirely to Defendants, and are being withheld from Plaintiff to Cause irreparable harm to Plaintiff as noted above in this Complaint; and those Funds are being withheld from Plaintiff due to Defendants fraud, breach of trust

and breach of fiduciary duty as here stated and above in this Complaint. The Defendants did rely on the Plaintiff having confidence in Defendants to equitably And in good conscience divide equally all properties in whatever form. Defendants Unconscionable conduct of taking any and all funds and then leaving Plaintiff Homeless and penniless, should have the Court grant to Plaintiff any further Damages the Court would deem fair and equitable.

FOR A NINTH CAUSE OF ACTION
Breach of Trust by Defendants

63. The prior Causes of Action are repeated here by incorporation by reference.

64. Plaintiff as reported above in this Complaint, states Defendant have been And are committing breach of trust.

65. Defendants have been and removing funds and assets the rightfully are in the possession of the Plaintiff and Defendant, without any approval of Plaintiff.

66. Plaintiff states that assets of the parties, including to but not limited to, Real property, have been and are being transferred to include by selling, without Plaintiff receiving Plaintiff's just and equal share.

67. All property of the Plaintiff and Defendants was deeded to, titled to, and in any other means or ways granted to Defendants for the benefit of the Plaintiff and Defendants. The trust thereby created by and between Plaintiff and Defendants

66. Plaintiff states that assets of the parties, including to but not limited to, Real property, have been and are being transferred to include by selling, without Plaintiff receiving Plaintiff's just and equal share.

67. All property of the Plaintiff and Defendants was deeded to, titled to, and in any other means or ways granted to Defendants for the benefit of the Plaintiff and Defendants. The trust thereby created by and between Plaintiff and Defendants was that any and all assets, were to be held by both parties for the benefit of both parties, and each party was to act accordingly in a fiduciary relationship, with the Defendants and Plaintiff using the funds from the sale and or rental or otherwise for the benefit of both parties, for example living expenses, materials, and payment for labor and work provided.

68. Plaintiff requests the equal division of the parties assets, including any and all real estate and funds wherever held and by whoever has those funds. Plaintiff requests One Hundred Thousand (\$100,000.00) Dollars in damages, as is also reported and stated in this Complain.

FOR A TENTH CAUSE OF ACTION
Quantum Meriut

69. The Statement of Facts and the prior Causes of Action is repeated here by incorporation by reference.

70. Plaintiff is due and owed from Defendants any and all funds and monies due For any and all work and the like done for the acquisition of the properties acquired by the plaintiff and defendants.

71. Plaintiff by and with the contract and agreement of the Defendants did certain labors and constructions and investments in and to the acquiring of and the use of any and all properties acquired by the parties, Plaintiff and Defendants.

72. Plaintiff as part of the labors and work under the parties agreement and contract did fix and rebuild Defendant Mowery daughter's vehicle, Plaintiff did completely rebuilt rebuild and rehab the parties first investment real property 4548 Church St. Whiteford Maryland. The parties used funds from Defendant Mowery's settlement and other funds but used the labors of Plaintiff for the renovations and rebuilding for all the real estate the parties purchased as partners, co-owners, co-shareholders, etc., real estate and businesses in South Carolina.

73. Plaintiff has been and continues to be the party providing the labor for the rehab,

rebuilding, renovating and the like of all real estate the parties have purchased together.

74. Plaintiff was informed by Defendants that Defendants did not want to support Plaintiff recently and the parties did agree and contract to equally divide any and all property, both real and personal, and that is when Plaintiff discovered Defendants had withdrawn and removed all cash from the safe and the accounts. Defendants informed Plaintiff that Defendants would no longer provide and cash to Plaintiff and also the Plaintiff would have no access to any and all property and for labors performed.

75. Defendants informed Plaintiff that the real property at 539 Pope Filed was being sold and Plaintiff had no rights. Defendant informed Plaintiff that Plaintiff had no rights title or interest in anything. Defendants phoned the police to have Plaintiff removed, but the police informed Defendants that the matter was civil and Defendants could not remove Plaintiff and can not lock Plaintiff out of the property. Defendants had not and continue to not be paying Plaintiff for the labor and work of the Plaintiff.

76. Defendants have all keys to all property including vehicles and refuses to give to Plaintiff any keys. Defendants also removed and have confiscated Plaintiff's cell phone. Plaintiff is requesting the immediate return of the Plaintiff's work truck and the ownership of the jaguar vehicle, and equal division of the real estate, cash and any other property and payments for any and all labor and work for the properties.

77. Plaintiff also did labors and construction on other property of the Defendants and the Defendants family without any compensation.

78. The above noted labors and construction work is sometimes known as sweat Equity, which Plaintiff must be compensated for by the Defendants.

79. Plaintiff requests the Court to ascertain the valuation of the real and personal property of the parties, Plaintiff and Defendants, and to equally divide that property into equal shares of value, because Plaintiff did and was conferring upon Defendants benefits, which were not gifts, as is shown above in the Complaint, and Defendants have received those benefits for Defendants own use to include the selling and or sale of real property for profits; and that Plaintiff is not receiving any of the profits and or funds or assets from any of the selling and or sale of the parties property, which would not only be inequitable but also completely in violation of the parties understood and agreement upon agreement and contract, to include any and all labors and work done and being done for the benefit of the parties on the properties of the parties. Plaintiff is informed and believes that Plaintiff is due and owed at the minimum \$300,000.00 for all labors and work.

THE PLAINTIFF REQUESTS THE COURT TO GRANT TO FOLLOWING
RELIEF:

1. The amount due the Plaintiff as noted above, for each cause of action as requested from the Defendants.
2. The amount of reasonable attorney fees and the costs of this action, from the Defendants.
3. The Plaintiff to recover judgment against the Defendants in the amount requested for each cause of action as requested and the Plaintiff should also recover not only for the damages noted but also for punitive damages for the likelihood the Defendant's conduct is continuing and was done with the reason to destroy the Plaintiff.
4. For such other relief as the Court deems just.

_____, 2018

s/James P. O'Connell
ATTORNEY FOR THE PLAINTIFF
JAMES P. O'CONNELL
139 Grace Drive
Easley, SC 29640
Phone 864-220-0005 Fax 220-0005 & 498-7210
jpatrickoconnell@yahoo.com

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	
Terence "Terry" Carroll,	)	ANSWER AND COUNTERCLAIM OF
	)	DEFENDANTS
Plaintiff,	)	
	)	
vs.	)	C.A. No. 2018-CP-39-00585
	)	
Debra Mowery and TD Realty,	)	
	)	
Defendants.	)	
	)	

The defendants, Debra Mowery and TD Realty, ("Defendant") answering the Complaint of the plaintiff, Terrence "Terry" Carroll, ("Plaintiff") would respectfully show unto this Court:

FOR A FIRST DEFENSE
(Dismissal Pursuant to Rule 12(b)(6) SCRCP)

1. Plaintiff's Complaint fails to assert a claim against Defendant, or facts sufficient to constitute a cause of action against Defendant upon which relief can be granted.
2. Therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A SECOND DEFENSE
(General Denial)

3. Defendant denies each and every allegation contained in the Complaint not hereinafter specifically admitted, qualified, or explained and demands strict proof thereof.
4. Defendant denies that Plaintiff is entitled to an injunction as suggested in Paragraph A of the Complaint.
5. Defendant admits the allegations of Paragraph 1; but asserts that the proper name of the business is TD Realty, LLC.
6. Defendant denies the allegations of Paragraphs 2 and 3.

7. Defendant denies the allegations of Paragraph 4 and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

8. Defendant denies the allegations of Paragraphs 5 and 6.

9. Defendant denies the allegations of Paragraph 7; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

10. Defendant denies the allegations of Paragraph 8.

11. Defendant denies the allegations of Paragraph 9 and specifically denies that Plaintiff has contributed any funds or property to Defendant's business ventures.

FIRST CAUSE OF ACTION

12. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 10 of the Complaint.

13. Defendant denies the allegations of Paragraphs 11 – 15.

14. Defendant denies the allegations of Paragraph 16; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

15. Defendant denies the allegations and requests for relief contained in Paragraph 17.

16. Defendant denies the allegations of Paragraphs 18 and 19.

17. Defendant denies the allegations and requests for relief contained in Paragraph 20.

SECOND CAUSE OF ACTION

18. Defendant incorporates the previous Paragraphs of this Answer in response to the second Paragraph 20 (misnumbered) of the Complaint.

19. Defendant denies the allegations of Paragraph 21.

20. Defendant denies the allegations of Paragraph 22 and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

21. Defendant denies the allegations of Paragraph 23.

THIRD CAUSE OF ACTION

22. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 24 of the Complaint.

23. Defendant denies the allegations of Paragraph 25; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

24. Defendant denies the allegations of Paragraphs 26 and 27.

FOURTH CAUSE OF ACTION

25. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 28 of the Complaint.

26. Defendant denies the allegations and requests for relief contained in Paragraphs 29 - 34.

FIFTH CAUSE OF ACTION

27. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 35 of the Complaint.

28. Defendant denies the allegations of Paragraphs 36 – 39.

SIXTH CAUSE OF ACTION

29. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 40 of the Complaint.

30. Defendant denies the allegations of Paragraph 41 and specifically denies that Plaintiff has any funds in Defendant's possession or control.

31. Defendant denies the allegations and requests for relief contained in Paragraph 42.

32. Defendant denies the allegations of Paragraph 43 and specifically denies that Plaintiff has any property in Defendant's possession or control.

33. Defendant denies the allegations and requests for relief contained in Paragraphs 44 – 46.

SEVENTH CAUSE OF ACTION

34. Defendant incorporates the previous Paragraphs of this Answer in response to the second Paragraph 46 (misnumbered) of the Complaint.

35. Defendant denies the allegations and requests for relief contained in Paragraph 47.

36. Defendant denies the allegations of Paragraphs 48 and 49, and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

37. Defendant denies the allegations of Paragraph 50; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

38. Defendant denies the allegations and requests for relief contained in Paragraphs 51 and 52.

EIGHTH CAUSE OF ACTION

39. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 53 of the Complaint.

40. Defendant denies the allegations of Paragraph 54, and specifically denies that Plaintiff has contributed any payments to Defendant's business ventures.

41. Defendant denies the allegations of Paragraph 55; except Defendant admits that it was never Defendant's intention to share Defendant's assets, cash, or other valuables with Plaintiff.

42. Defendant denies the allegations of Paragraphs 56 and 57; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

43. Defendant denies the allegations and requests for relief contained in Paragraphs 58 – 62.

NINTH CAUSE OF ACTION

44. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 63 of the Complaint.

45. Defendant denies the allegations of Paragraphs 64 – 66.

46. Defendant denies the allegations of Paragraph 67; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

47. Defendant denies the allegations of second Paragraphs 66 (misnumbered).

48. Defendant denies the allegations of second Paragraph 67 (misnumbered); except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

49. Defendant denies the allegations and requests for relief contained in Paragraph 68.

TENTH CAUSE OF ACTION

50. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 69 of the Complaint.

51. Defendant denies the allegations of Paragraphs 70 – 74.

52. Defendant denies the allegations of Paragraph 75; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

53. Defendant denies the allegations and requests for relief contained in Paragraphs 76 – 79.

FOR A THIRD DEFENSE
(Statute of Frauds)

54. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

55. Plaintiff alleges that the parties entered into a contract “at least ten years” ago.

56. Defendant denies that the parties entered into any contract.

57. Plaintiff is estopped from bringing an action upon any agreement that is not to be performed within the space of one year from the making thereof unless such agreement is in writing signed by Defendant.

58. No written agreement exists between the parties.

59. Therefore, Plaintiff’s action should be dismissed.

FOR A FOURTH DEFENSE
(Statute of Limitations)

60. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

61. Plaintiff’s action is wholly or partially barred by the applicable statute of limitations.

62. Therefore, Plaintiff’s action should be dismissed.

FOR A FIFTH DEFENSE
(Laches)

63. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

64. Plaintiff’s equitable causes of action are wholly or partially barred by the equitable doctrine of laches.

65. Therefore, Plaintiff’s action should be dismissed.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Interference with Contractual Relationship)

66. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

67. Defendant owns property located at 539 Pope Field Road, Easley, South Carolina ("Pope Field").

68. Pope Field is solely titled in Defendant's name.

69. Defendant entered into a contract with a prospective buyer to sell Pope Field.

70. Plaintiff knew about Defendant's contract for the sale of Pope Field.

71. The closing of the sale of Pope Field was scheduled for May 18, 2018.

72. On May 16, 2018, Plaintiff wrongfully filed this action.

73. Plaintiff's purpose of filing this action was to wrongfully interfere with Defendant's contract for the sale of Pope Field.

74. On May 17, 2018, Plaintiff wrongfully filed a false mechanic's lien allegedly encumbering Pope Field.

75. Plaintiff is not a licensed contractor; and, therefore, he is not entitled to file a true mechanic's lien on any property.

76. On May 17, 2018, Plaintiff contacted the prospective buyer to inform him that a mechanic's lien had been filed encumbering Pope Field.

77. Plaintiff's purpose of filing the false mechanic's lien and for informing the prospective buyer about the false mechanic's lien was to wrongfully interfere with Defendant's contract for the sale of Pope Field.

78. Due to Plaintiff's actions, the prospective buyer breached the contract and refused to purchase Pope Field.

79. Plaintiff has no legitimate justification for interfering with Defendant's contract.

80. Defendant has suffered damages in an amount to be determined proximately caused Plaintiff's actions.

81. Defendant has suffered mental anguish due to Plaintiff's actions and is entitled to recover damages to compensate her for same.

82. Plaintiff's actions were willful, wanton, or reckless, and therefore, Defendant is entitled to punitive damages.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

83. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

84. As stated previously, Plaintiff's ulterior purpose for filing this action was to gain an objective which is not legitimate in filing this action: to prevent the sale of Defendant's property and to extort money from her to which Plaintiff is not entitled.

85. As stated previously, Plaintiff's ulterior purpose for filing a false mechanic's lien was to gain an objective which is not legitimate in the use of a mechanic's lien: to prevent the sale of Defendant's property and to extort money from her to which Plaintiff is not entitled.

86. This ulterior purpose was Plaintiff's sole and paramount reason for filing this action and the false mechanic's lien.

87. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

88. Plaintiff's actions were willful, wanton, or reckless, and therefore, Defendant is entitled to punitive damages.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Slander of Title)

89. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

90. In conjunction with this action, Plaintiff filed a *lis pendens* falsely asserting that he has an ownership interest in three parcels of real property owned solely by Defendant.

91. Plaintiff filed a false mechanic's lien and asserted that this mechanic's lien encumbered Pope Field.

92. Plaintiff contacted the prospective buyer of Pope Field and notified him of the false mechanic's lien.

93. Plaintiff's publication of the foregoing statements was derogatory to Defendant's title to these properties.

94. Plaintiff took these actions with malice toward Defendant in an effort to disrupt her sale of these properties and extort money from her.

95. The sale of Pope Field was canceled due to Plaintiff's publications.

96. The value of all of Defendant's real property is diminished due to Plaintiff's publications.

97. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

98. Defendant has incurred attorney's fees attempting to counteract Plaintiff's publications.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conversion)

99. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

100. Plaintiff has taken from Defendant and refused to return the keys to Pope Field.

101. Plaintiff has removed numerous items from Pope Field including tools and other equipment that were purchased by Defendant and are Defendant's property.

102. Plaintiff purchased several items, including, but not limited to, gasoline, using Defendant's credit cards and accounts without Defendant's permission.

103. Plaintiff removed an \$800 rent check, which was the monthly rent from Defendant's property, from Defendant's possession and deposited said check without Defendant's permission.

104. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Eviction)

105. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

106. Defendant is the owner of premises located at 109 Linda Lane, Easley, South Carolina ("Linda Lane").

107. Plaintiff has been residing at the above described premises, without a written or oral lease agreement or any writing or agreement evidenced otherwise.

108. Plaintiff has never paid any rent to Defendant for residing at Linda Lane.

109. Plaintiff is a tenant at will and is not a renter, tenant, or holder of any interest in Linda Lane.

110. In April 2018, Defendant demanded that Plaintiff removed himself from Linda Lane.

111. Plaintiff has previously refused to vacate Linda Lane.

112. Grounds for this ejectment are that the occupancy has ended, and Defendant is entitled to immediate possession of the premises

FOR AN ELEVENTH DEFENSE
(Offset)

113. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

114. Defendant has suffered damages due to Plaintiff's conduct and Defendant is entitled to offset any amount owed to Plaintiff by way of damages.

WHEREFORE, Defendant moves for the following relief:

- 1) Dismissal of Plaintiff's Complaint;
- 2) Cancellation of Plaintiff's Notice of and Certificate of Mechanics and or Materialman's Lien;
- 3) Cancellation of Plaintiff's Lis Pendens Notice of Pendency of Action;
- 4) An injunction against Plaintiff disparaging or slandering title to Defendant's real property;
- 5) Eviction of Plaintiff from Defendant's Property;
- 6) A judgment against Plaintiff for all damages caused to Defendant pursuant to Defendant's counterclaims including, but not limited to, actual, consequential, punitive damages, attorney's fees and costs of litigation; and
- 7) Such other relief as the Court deems just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke

Bruce W. Bannister – SC Bar No. 15679

Luke A. Burke – SC Bar No. 100033

401 Pettigru Street (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084

Fax: (864) 298-0146

June 15, 2018
Greenville, South Carolina

*Attorneys for the Defendants Debra Mowery and
TD Realty, LLC*

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT
)
 TERENCE "TERRY" CARROLL,) Civil Action No. 2018-CP-39-585
)

PLAINTIFF,) SUMMONS
 -VS-) AND NOTICE
) AMENDED
) COMPLAINT
) attached

DEBRA MOWERY and)
 T D REALTY, and)
 UPSTATE RE GROUP, and)
 HAWK SHADOW BUSINESS SERVICES, LLC.)
 And)
 DEBRA MOWER REALTOR)
 DEFENDANTS.)

Jury Trial Requested

TO DEFENDANTS NAMED ABOVE, YOU ARE SUMMONED AND REQUIRED TO ANSWER OR OTHERWISE PLED to the pleading of the party issuing this Summons and Notice, in this action above captioned, which is this date served upon you with the pleading attached to the Summons and Notice, YOU ARE DIRECTED to serve your responding pleading to this pleading at the following address: Party's attorney, James P. O'Connell, Attorney at Law, 139 Grace Drive, Grace Office Park, Easley, South Carolina (SC) 29640 or by Certified Mail at this address. Within thirty (30) days after the day of service, not to include the day of service, if served by Certified Mail Return Receipt Requested, addressee only, the addition of five (5) days is added to the time to Answer or otherwise plead, and IF YOU FAIL TO ANSWER or otherwise plead or respond in writing, within the time noted, the party serving will apply to the Court for the relief requested in the pleading and JUDGMENT will be entered against you by DEFAULT.

IF YOU ARE A MINOR, INCOMPETENT OR A PRISONER a personal Guardian ad Litem may be or will be appointed for you by law, IF YOU DO NOT APPLY, for a Guardian ad Litem to be appointed. IF YOU are currently in the service of any armed forces of the USA, advise Promptly both to the Clerk of Court and the attorney above.

_____, 20____

Easley, SC

Plaintiff's Attorney 4259
 James P. O'Connell
 139 Grace Drive
 Easley, South Carolina 29640
 Phone 864-220-0005 FAX 498-7210
 jpatrickoconnell@yahoo.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
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PLAINTIFF,	)	AMENDED
-VS-	)	COMPLAINT
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HAWK SHADOW BUSINESS SERVICES, LLC.	)	
And	)	
DEBRA MOWER REALTOR	)	
DEFENDANTS.	)	Jury Trial Requested

The Plaintiff named above Complaining of the Defendants named above would respectfully show and allege to the Court:

A. Reserving any and all rights to any and all Motions to include that of an Injunction.

STATEMENT OF FACTS OF THE CAUSES OF ACTION

1. The parties are citizens of the United States of America, residents of the State of South Carolina and residing in Pickens County. The Defendants business T D Realty is a business organized under the laws of South Carolina and operating principally in Pickens County South Carolina.
2. The parties entered into contract and a series of contracts starting in the State of Maryland and then moving to and continuing in the South Carolina County of Pickens.
3. The contracting was and continued in Pickens County South Carolina, to acquire real estate for the purposes of repair and or renovations then resale and for other personal property, to include vehicles.
4. The parties have over the course of their agreement and contract conducted business to have

acquired real estate, using funds from both parties and the parties have acquired personal property to include cash and vehicles.

5. The parties have over the course of the agreement and contract have acquired other properties to include the establishment of businesses and companies, for example the Defendant T and D Realty. and UPSTATE RE GROUP, and HAWK SHADOW BUSINESS SERVICES, LLC. And DEBRA MOWER REALTOR, and any new businesses or entities of the Defendants formed without the Plaintiff's knowledge.

6. Plaintiff is a co-partner, co-owner, and the like of any and all property and properties, to include checking accounts, savings accounts, pension accounts, company accounts, safe deposit boxes, cash held privately and held by others for Defendants.

7. Plaintiff states that the current actions of the Defendants are intended to have caused Plaintiff to be penniless and homeless and or fear the same as Plaintiff came to understand and discover that no real and or personal property so acquired by the parties was legally titled in and to the Plaintiff, but only in the Defendant Mowery.

8. Plaintiff and Defendants had a contract agreement of each party, Plaintiff and Defendants to share and share alike in the real estate and property of the parties; and a history of the relationship would show that the parties intended to have an equal Partnership and or ownership of the properties, real and personal the parties acquired.

9. Recently Defendants have removed cash monies and personal property from the parties accounts, cash held in safes and at the residence the parties shared, and other properties, to include Plaintiff being

informed a real property of the parties is to be sold or is being sold. Further, Defendants have entered into and have started another business and or company, using the funds, property and labors of the Plaintiff.

FOR A FIRST CAUSE OF ACTION
Unjust Enrichment

10. The Statement of Facts for the Causes of Action is repeated here by incorporation by reference.

11. Plaintiff is due and owed from Defendants any and all funds and monies due for any and all work and the like done for the acquisition of the properties acquired by the plaintiff and defendants.

12. Plaintiff by and with the contract and agreement of the Defendants did certain labors and constructions and investments in and to the acquiring of and the use of any and all properties acquired by the parties, Plaintiff and Defendants.

13. Plaintiff as part of the labors and work under the parties agreement and contract did fix and rebuild Defendant Mowery daughter's vehicle, Plaintiff did completely rebuilt rebuild and rehab the parties first investment real property 4548 Church St. Whiteford Maryland. The parties used funds from Plaintiff's Mowery's settlement for the purchase Of the first real property and used Defendant's settlement funds for the purchase of the First real estate in South Carolina and other funds from each and used the labors of Plaintiff for the renovations and rebuilding for all the real estate the parties purchased as partners, co-owners, co-shareholders, etc., real estate and businesses in South Carolina.

14. Plaintiff has been and continues to be the party providing the labor for the rehab, rebuilding, renovating and the like of all real estate the parties have purchased together.

15. Plaintiff was informed by Defendants that Defendants did not want to support Plaintiff recently and the parties did agree and contract to equally divide any and all Property, both real and personal, and that is when Plaintiff discovered Defendants had Withdrawn and removed all cash from the safe and the accounts. Defendants informed Plaintiff that Defendants would no longer provide and cash to Plaintiff and also the Plaintiff would have no access to any and all property.

16. Defendants informed Plaintiff that the real property at 539 Pope Filed was being sold and Plaintiff had no rights. Defendant informed Plaintiff that Plaintiff had no rights title or interest in anything. Defendants phoned the police to have Plaintiff removed, but the police informed Defendants that the matter was civil and Defendants could not remove Plaintiff and can not lock Plaintiff out of the property.

17. Defendants have all keys to all property including vehicles and refuses to give to Plaintiff any keys. Defendants also removed and have confiscated Plaintiff's cell phone. Plaintiff is requesting the immediate return of the Plaintiff's work truck and the ownership of the jaguar vehicle, and equal division of the real estate, cash and any other property.

18. Plaintiff also did labors and construction on other property of the Defendants and the Defendants family without any compensation.

19. The above noted labors and construction work is sometimes known as sweat Equity, which Plaintiff must be compensated for by the Defendants.

20. Plaintiff requests the Court to ascertain the valuation of the real and personal property of the parties, Plaintiff and Defendants, and to equally divide that property into equal shares of value, because Plaintiff did and was conferring upon Defendants benefits, which were not gifts, as is shown above in

the Complaint, and Defendants have received those benefits for Defendants own use to include the selling and or sale of real property for profits; and that Plaintiff is not receiving any of the profits and or funds or assets from any of the selling and or sale of the parties property, which would not only be inequitable but also completely in violation of the parties understood and agreement upon agreement and contract.

21. As to Defendant, Upstate RE Group, Inc., Plaintiff is the Vice President, and this is a real estate Brokerage currently with one broker and three agents. Plaintiff did consulting with the President and Broker Cole Reynolds, also, placed and installed signs along with pick up, built the office, hauled furniture, installed appliances for clients attend showings, and was involved with decision makings. The business was supposed to pay the Plaintiff and Defendant Mowery for use of the office space, and that rent was to be used for the growing of the business.

22. As to Defendant Hawk Shadow Business Service, LLC; located at 109 Linda Lane, Easley SC is a tax preparation business and accounting business, of which the Plaintiff invested funds, mainly to purchased tax software. Plaintiff performed general Office work which was billed to clients by Defendant Mowery. Plaintiff built the office. Plaintiff also hauled and placed furniture.

23. As to Defendant Mowery Realtor, located at 109 Linda Lane, Easley SC; that Business was operated from the residence of the Plaintiff and Defendant Mowery, which was for the parties income from that business.

24. As reported above Plaintiff invested funds or cash money, to Defendant Mowery to obtain her real estate license. Plaintiff further did indeed consult with Defendant Mowery as to clients

especially as to the condition of the real estate of the Client. Plaintiff also transported Defendant Mowery to real estate showings.

25. Plaintiff prior to the parties relationship have certain tools and a work trailer. Further, those tools are necessary for Plaintiff to make a living. Plaintiff did acquire a Jaguar XJS, (which upon information and belief Defendant Mowery is not taking care of) Plaintiff requests all lawn tools including a riding mower, weed eater and tiller. Upon Information and belief, Defendant Mowery pays someone to perform the labors that were preformed by Plaintiff. Plaintiff is requesting all keys to all equipment. Further, Plaintiff requests all his guns, ammunition, accessories and sporting goods. Further, The following household goods, equipment, accessories, and the like, to include: the Dresser his sister gave him, all Plaintiff's clothes, Plaintiff's henkels knives with wooden Block he had before the relationship; his cookware, pots and pans, silverware, meat slicer, his barware (from his mother) all pewter plates and other cookware., Plaintiff's Bose stereo system including Onkyo receivers (Plaintiff's before the relationship); his Television, his xbox system and all games, his Klipchs TV speaker system, his wooden Ship model materials, his croquet set, his albums of dvd movies including James Bond Collection; his cabinet which contains the television gifted to Plaintiff by Bob Simi; his Barrels in the game room; all nick-nacks in game room; his pictures in game room and Storage, including the glass enclosed cork 3-d carving in the hall bath (his before the Relationship); everything in his closet; there is other personal property which will be Noted later, but, Plaintiff requests access to the location for inventory.

26. Plaintiff requests that he have at least a few days a week with the Plaintiff And Defendant's

dog. The dog has or suffers from distoid lupus and diarrhea, when Plaintiff is not with the dog for any long periods of time.

27. Plaintiff requests that if Defendant will not allow the personal property to Be returned to Plaintiff then the Court award and grant monetary funds equivalent to The value of those items.

FOR A SECOND CAUSE OF ACTION
Interest in and for Real Estate

28. The First Cause of Action are repeated here by incorporation by reference.

29. Plaintiff states the Defendants and Plaintiff acquired the ownership and or any interests in and to the following described real estate and personal properties:

REAL PROPERTY ONE:

Description All that certain piece, parcel or lot of land, with all improvements there, Situate, lying and being as shown Lot No. 5 of Cherry Dale Subdivision on plat prepared for Robin D. Lawson and Pam B. Lawson, dated November 7, 1990 recorded In Plat Book 40 at page 61, reference is made to plat for a more particular description. Property sold at public sale deed dated September 3, 2014 and recorded September 22, 2014 in Deed Book 1632 at page 2369, Pickens County Register of Deeds Office, From Special Referee, R. Murray Hughes, to Ocwen Loan Servicing LLC and Federal Home Loan Mortgage Corporation, which then assigned it's bid to Federal National Mortgage Corporation, then the same real property was conveyed to Debra Mowery By deed dated January 26, 2015 recorded January 28, 2015 in Deed Book 1658 at page 224 in the Register of Deeds Pickens County SC. See Corrective Deed recorded July 27, 2017 Deed Book 1882 at page 30.
TMS 5028-17-12-4119/ physical&Grantees address 109 Linda Lane, Easley SC 29642

REAL PROPERTY TWO:

Description, all that piece, parcel or lot of land, with all improvements, lying and being in Woodside Mills Village in the Town of Easley, SC Pickens SC and being more particularly described as Lot No. 241 as shown on a plat entitled A Subdivision Of Woodside Mills Easley SC December 1951 and recorded in the Register of Deeds Office Pickens County SC in Plat Book 1920 at page 136 & 137. Lot is shown as NO. 415 Ninth Street fronting 97.8 ft. Deed Book 1827 page 215 recorded 12-29-2016, Grantor US Bank National Assoc. As Indenture Trustee for CSMC Trust 2014-CIMI Mortgage Backed Notes, Series 2014-CIMI, to Debra Mowery, previously by Deed of Special Referee Pickens County (misnamed Easley County SC) recorded May 9, 2016 Deed Book

1768 page 10 in the ROD Office Pickens County SC. TMS 5019-19-60-4852, physical address 204 South Ninth Street Easley SC 29640

REAL PROPERTY THREE:

All that piece, parcel or lot of land in State of South Carolina, County of Pickens, About one mile south of Easley SC on Pope Field Road, known and designated at Tract No. Three(3) on plat of lands of T. D. Wade plat by JC Smith February 3, 1950, Beginning at iron pin on highway at the line of Home Maulding, then along Highway North 58-15 West 221.9 ft to iron pin; then North 24 East 225 ft to iron pin on land of Reeves Estate then South 70 East 37.7 ft to a stone, then with lands of Reeves Estate And Home Mauldin South 12 East 315.4 ft to iron pin on the road. This is the same real property conveyed to USBank National Association as Indenture Trustee for Springleaf Mortgage Loan Trust 2013-1, by and through Nationstar Mtg. LLC as Attorney in Fact by Deed of Daniel Hunt Special Referee for Pickens County South Carolina recorded on July 15, 2016 in Deed Book 1785 page 261 ROD Office Pickens County SC. Then by Grantor to Debra Mowery by Deed recorded in Deed Book 1796 page 188 8-30-2016. TMS 5028-09-16-6537/Physical address 539 Pope Field Road Easley SC grantees address 109 Lind Lane Easley SC 29642.

30. Plaintiff had and has an ownership interest in and to the above noted real estate properties, as Plaintiff funds were used to purchase the real properties and that the Plaintiff has been and was the only party performing labor and construction on and for the real properties to improve, rebuild, renovate and or refurbish all the real estate owned by, acquired by and in the possession of the Defendants.

31. The interest claimed by the Plaintiff is sometimes referred to a a constructive Trust.

FOR A THIRD CAUSE OF ACTION
For the Intentional Infliction of Emotional Distress

32. The First and Second Causes of Action are repeated here by incorporation by reference.

33. Plaintiff alleges that Defendant intentionally and recklessly inflicted severe emotional distress to the Plaintiff, as Defendants did in a grossly painful and disrespectful method deny the Plaintiff any and all rights and interests in and to the real and personal property the parties had attained and acquired during the agreement and contract to the point of attempting illegally to disenfranchise Plaintiff of any

and all rights Plaintiff has in and to the properties so acquired by the parties.

34. Plaintiff alleges the actions of the Defendants by themselves and any agent or agents have and are intending to cause Plaintiff severe emotional distress, because Defendants are claiming Plaintiff has no rights, title and interest in an to any real property. Defendants are have intended as a consequence of Defendants actions the break down of the Plaintiff and to have Plaintiff become destitute, homeless and without any property real and or personal.

35. Plaintiff alleges Defendants by their conduct and by it's agents conduct was and is both extreme and outrageous, as the same conduct was intended to evoke from the Plaintiff fear and dread and the same conduct is not to be tolerated in a civilized society. The Plaintiff alleges Defendants conduct continues to cause emotional distress to the Plaintiff. The Plaintiff alleges Defendant's conduct is severe in that the conduct continues to this date, and, Plaintiff still has fears, nightmares of the circumstances, of being homeless and penniless. The Plaintiff alleges that no other person could or would be expected to endure the same acts of the Defendants and their agents. Plaintiff alleges Defendants conduct did and continues to cause severe emotional distress, and Defendant should compensate the Plaintiff for the causing of the same, in the amount of One Hundred Thousand (\$100,000.00) Dollars, after the equal division of the real estate and personal property of the Plaintiff and Defendants.

FOR A FOURTH CAUSE OF ACTION
For the Specific Performance of Contract

36. The prior Causes of Action are repeated here by incorporation by reference.

37. As has been reported above the parties have and have had a contract for the Purchase of and reselling of real estate and that contract must be enforced as the parites have intended over the

course of the parties agreement of at least ten years.

38. The parties intended to be and are equal partners, co-owners and the like of The properties the real estate and equipment and other personal property so bought and purchased as above written in this Complaint.

39. There is and will be very clear evidence of a ongoing contract and agreement as above stated in this Complaint.

40. The parties agreement and contract has been and is continuing to be carried out by the parties, as one aspect of the agreement and contract the receiving or rents and or other payments from the purchased property to include proceeds from and sale and or any other transfer.

41. The Plaintiff has and continued to perform the Plaintiff's part of the parties Contract and agreement and until the blocking and unilateral ending and termination Of the parties contract and agreement, Plaintiff was performing Plaintiff's part of the agreement and contract of the parties and was and is attempting to continue the parties agreement and contract.

42. Plaintiff requests the specific performance of the parties contract and agreement by the equal division of the parties properties, real and personal, as is found by the Court.

FOR A FIFTH CAUSE OF ACTION
For the Breach of Contract by Defendants

43. The prior Causes of Action are repeated here by incorporation by reference.

44. The parties had and have a contract agreement and the Defendants have breached the contract and agreement as is stated above in this Complaint; as any contract has an implied covenant of good

faith and fair dealing.

45. Plaintiff has been fulfilling Plaintiff's rights, duties and obligations by and under the parties agreement and contract, but that the recent actions of Defendants have breached the parties agreement and contract, as Defendants have terminated the agreement and contract and not allowed Plaintiff any rights under the contract.

46. Defendants are liable to Plaintiff for any and all valuation of the property of the Parties agreement and contract to include any recent sells or sales of the real property, which Plaintiff is informed and believes is occurring.

47. Defendants should and must be accountable for the breach of the parties Contract in the amount of an equal division of the parties assets in all property To include any and all accounts and the like and any cash and or monies held Privately and or in the possession of others on behalf of Defendants.

FOR A SIXTH CAUSE OF ACTION
For the A Temporary Injunction against Defendants

48. The prior Causes of Action are repeated here by incorporation by reference.

49. Plaintiff is advised that Defendant could be and or are selling, have sold and have hidden funds of the Plaintiff and Defendants.

50. Plaintiff will request of the Court for an injunction as to the Defendants to Hold any and all sales and or if already sold or being sold that the funds and or Proceeds from any and all sells and or sales of any property that could be and or is that of the Plaintiff and Defendants, be held in escrow or by the Court; to be divided equally by the Court at any future date and time.

51. Plaintiff understands Defendants are removing and have removed property of the Plaintiff and the property is required to be preserved pending the rights of parties during this action. If the actions is not granted Plaintiff knows these funds, monies and properties of the parties contract and agreement will forever be not available to the Court to divide equally.

52. Plaintiff knows that the parties have an equal ownership of any and all assets of the parties and that Plaintiff will have a one half equal ownership of any and all property which includes any proceeds and or funds from any sale of the parties property in any manner whatsoever.

54. Plaintiff believes there is no other adequate remedy at law other than this Injunction. The Plaintiff requests the Court issue an injunction to prevent any sale and or transfer of any property of the parties and for the temporary possession of the personal property above stated.

FOR A SEVENTH CAUSE OF ACTION
For Restitution by Defendants

55. The prior Causes of Action are repeated here by incorporation by reference.

56. Plaintiff requests the restitution of any and all funds from Defendants that would be and are due and owing to the Plaintiff.

57. Plaintiff did as Plaintiff contracted, by placing Plaintiff's funds into the Possession of the Defendants for the benefit of the Plaintiff and Defendants.

58. Plaintiff did as Plaintiff contracted, by performing labors and work on the properties of the parties to include the repair, renovations and upgrading of the properties for resale and for renting and or the providing of additional funds to the parties.

59. The parties both the Defendants and the Plaintiff have been and were realizing benefits from the parties actions. The benefits included money, cash, living expenses, and other compensations. Defendants have come to remove the properties of the parties from the Plaintiff by denying Plaintiff any rights to any of the property and or funds of the parties, to include the denying Plaintiff any rights and interests in and to the properties of the parties.

60. That the allowing of the Defendants to retain any and all profits, funds, and other property of the Plaintiff would be and is inequitable.

61. Plaintiff is requesting the valuation of the entire properties of the parties and the payment to the Plaintiff of an equal one half share of any and all property.

FOR A EIGHTH CAUSE OF ACTION
Constructive Fraud by Defendants

62. The prior Causes of Action are repeated here by incorporation by reference.

63. Defendants informed and Plaintiff operated by the representations of the Defendants that the parties would be and were equal parties and the parties by their Payments and Plaintiffs labors would share equally as to all property and sales.

64. Defendants have now shown that Defendants did not at intend to share equally with Plaintiff the property of the parties nor any assets and or cash or other values of the agreement and contract.

65. Plaintiff and Defendants have and had this agreement and and contract for years and operated under the agreement and contract, except that all properties were placed into the name of the Defendants and not the Plaintiff, which was not made known to the Plaintiff with reasonable certainty. The providing of funds by the Plaintiff and the providing of labors and work by Plaintiff

were material to the parties agreement and contract.

66. Defendants did know that after a period of time that Defendants were not operating upon the same agreement and contract as Defendants have been and are removing and transferring property of the parties for the benefit of Defendants and not for Plaintiff.

67. Plaintiff has been over the years acting on the representations of Defendants that the agreement and contract are in effect and that the parties have been using the funds of the parties for living expenses and operating expenses and also for the materials for the labors of the Plaintiff as to the properties of the parties.

68. Plaintiff has known nothing of the Defendants actions to remove cash, funds, and the like from the parties and that the Defendant have and are terminating the Plaintiff to the agreement and contract for the purpose of denying Plaintiff the Plaintiff's equal one half share.

69. Plaintiff has been and was relying on the representations of the Defendants To continue to labor and perform actions for the benefit of the parties agreement And contract, without Plaintiff knowing of the Defendants false promises of the Parties sharing equally in and to the property, profits and assets of the parties.

70. Plaintiff not only relied upon the representations of the Defendants and acted upon those representations in reliance of the statements of the parties equally sharing in all, Plaintiff rightfully relied upon the statements but that the Plaintiff is now being injured by and from those statements and representations.

71. Plaintiff requests the Court to grant to Plaintiff one half of all property In whatever form or

shape and wherever held and by any other parties, and to Order Defendants to pay over to Plaintiff One Hundred Thousand (\$100,000.00) Dollars for the Defendants constructive fraud, as the funds obtained by Defendants Did not belong entirely to Defendants, and are being withheld from Plaintiff To Cause irreparable harm to Plaintiff as noted above in this Complaint; and those Funds are being withheld from Plaintiff due to Defendants fraud, breach of trust and breach of fiduciary duty as here stated and above in this Complaint. The Defendants did rely on the Plaintiff having confidence in Defendants to equitably And in good conscience divide equally all properties in whatever form. Defendants Unconscionable conduct of taking any and all funds and then leaving Plaintiff Homeless and penniless, should have the Court grant to Plaintiff any further Damages the Court would deem fair and equitable.

FOR A NINTH CAUSE OF ACTION
Breach of Trust by Defendants

72. The prior Causes of Action are repeated here by incorporation by reference.

73. Plaintiff as reported above in this Complaint, states Defendant have been
And are committing breach of trust.

74. Defendants have been and removing funds and assets the rightfully are in
the possession of the Plaintiff and Defendant, without any approval of Plaintiff.

75. Plaintiff states that assets of the parties, including to but not limited to, Real property, have
been and are being transferred to include by selling, without Plaintiff receiving Plaintiff's just and
equal share.

76. All property of the Plaintiff and Defendants was deeded to, titled to, and in any other means or ways granted to Defendants for the benefit of the Plaintiff and Defendants. The trust thereby created by and between Plaintiff and Defendants was that any and all assets, were to be held by both parties for the benefit of both parties, and each party was to act accordingly in a fiduciary relationship, with the Defendants and Plaintiff using the funds from the sale and or rental or otherwise for the benefit of both parties, for example living expenses, materials, and payment for labor and work provided.

77. Plaintiff requests the equal division of the parties assets, including any and all real estate and funds wherever held and by whoever has those funds. Plaintiff requests One Hundred Thousand (\$100,000.00) Dollars in damages, as is also reported and stated in this Complaint.

FOR A TENTH CAUSE OF ACTION
Quantum Meriut

78. The Statement of Facts and the prior Causes of Action is repeated here by incorporation by reference.

79. Plaintiff is due and owed from Defendants any and all funds and monies due For any and all work and the like done for the acquisition of the properties acquired by the plaintiff and defendants.

80. Plaintiff by and with the contract and agreement of the Defendants did certain labors and constructions and investments in and to the acquiring of and the use of any and all properties acquired by the parties, Plaintiff and Defendants.

81. Plaintiff as part of the labors and work under the parties agreement and contract did fix and rebuild Defendant Mowery daughter's vehicle, Plaintiff did completely rebuilt rebuild and rehab the

parties first investment real property 4548 Church St. Whiteford Maryland. The parties used funds from Defendant Mowery's settlement and other funds but used the labors of Plaintiff for the renovations and rebuilding for all the real estate the parties purchased as partners, co-owners, co-shareholders, etc., real estate and businesses in South Carolina.

82. Plaintiff has been and continues to be the party providing the labor for the rehab, rebuilding, renovating and the like of all real estate the parties have purchased together.

83. Plaintiff was informed by Defendants that Defendants did not want to support Plaintiff recently and the parties did agree and contract to equally divide any and all property, both real and personal, and that is when Plaintiff discovered Defendants had withdrawn and removed all cash from the safe and the accounts. Defendants informed Plaintiff that Defendants would no longer provide and cash to Plaintiff and also the Plaintiff would have no access to any and all property and for labors performed.

84. Defendants informed Plaintiff that the real property at 539 Pope Filed was being sold and Plaintiff had no rights. Defendant informed Plaintiff that Plaintiff had no rights title or interest in anything. Defendants phoned the police to have Plaintiff removed, but the police informed Defendants that the matter was civil and Defendants could not remove Plaintiff and can not lock Plaintiff out of the property. Defendants had not and continue to not be paying Plaintiff for the labor and work of the Plaintiff.

85. Defendants have all keys to all property including vehicles and refuses to give to Plaintiff any keys. Defendants also removed and have confiscated Plaintiff's cell phone. Plaintiff is requesting the immediate return of the Plaintiff's work truck and the ownership of the jaguar vehicle, and equal division of the real estate, cash and any other property and payments for any and all labor and work for

the properties.

86. Plaintiff also did labors and construction on other property of the Defendants and the Defendants family without any compensation.

87. The above noted labors and construction work is sometimes known as sweat Equity, which Plaintiff must be compensated for by the Defendants.

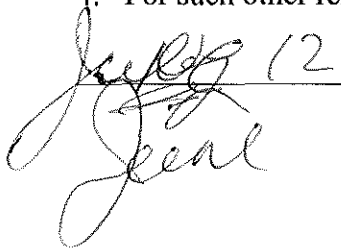
88. Plaintiff requests the Court to ascertain the valuation of the real and personal property of the parties, Plaintiff and Defendants, and to equally divide that property into equal shares of value, because Plaintiff did and was conferring upon Defendants benefits, which were not gifts, as is shown above in the Complaint, and Defendants have received those benefits for Defendants own use to include the selling and or sale of real property for profits; and that Plaintiff is not receiving any of the profits and or funds or assets from any of the selling and or sale of the parties property, which would not only be inequitable but also completely in violation of the parties understood and agreement upon agreement and contract, to include any and all labors and work done and being done for the benefit of the parties on the properties of the parties. Plaintiff is informed and believes that Plaintiff is due and owed at the minimum \$300,000.00 for all labors and work.

THE PLAINTIFF REQUESTS THE COURT TO GRANT TO FOLLOWING RELIEF:

1. The amount due the Plaintiff as noted above, for each cause of action as requested from the Defendants or as calculated by the Court for each Cause of Action, to include reasonable costs for any real and or personal property that is the Plaintiff's or is found to be part of the Plaintiff's.
2. The amount of reasonable attorney fees and the costs of this action, from the Defendants.

2. The Plaintiff to recover judgment against the Defendants in the amount requested for each cause of action as requested and the Plaintiff should also recover not only for the damages noted but also for punitive damages for the likelihood the Defendant's conduct is continuing and was done with the reason to destroy the Plaintiff.

4. For such other relief as the Court deems just.

 12 ____, 2018

s/James P. O'Connell #4259
ATTORNEY FOR THE PLAINTIFF
JAMES P. O'CONNELL

139 Grace Drive

Easley, SC 29640

Phone 864-220-0005 Fax 220-0005 & 498-7210

jpatrickoconnell@yahoo.com

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	
Terence "Terry" Carroll,	)	ANSWER TO AMENDED COMPLAINT
	)	AND COUNTERCLAIM OF DEFENDANTS
Plaintiff,	)	
	)	
vs.	)	C.A. No. 2018-CP-39-00585
	)	
Debra Mowery, TD Realty, Upstate RE	)	
Group, Hawk Shadow Business Services,	)	
LLC, and Debra Mower Realtor	)	
	)	
Defendants.	)	
	)	

The defendants, Debra Mowery, TD Realty, Upstate RE Group, Hawk Shadow Business Services, LLC, and Debra Mower Realtor ("Defendant") answering the Complaint of the plaintiff, Terrence "Terry" Carroll, ("Plaintiff") would respectfully show unto this Court:

FOR A FIRST DEFENSE
(Dismissal Pursuant to Rule 12(b)(6) SCRCP)

1. Plaintiff's Complaint fails to assert a claim against Defendant, or facts sufficient to constitute a cause of action against Defendant upon which relief can be granted.
2. Therefore, Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) SCRCP.

FOR A SECOND DEFENSE
(General Denial)

3. Defendant denies each and every allegation contained in the Complaint not hereinafter specifically admitted, qualified, or explained and demands strict proof thereof.
4. Defendant denies that Plaintiff is entitled to an injunction as suggested in Paragraph A of the Complaint.

5. Defendant admits the allegations of Paragraph 1; but asserts that the proper name of the business is TD Realty, LLC.

6. Defendant denies the allegations of Paragraphs 2 and 3.

7. Defendant denies the allegations of Paragraph 4 and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

8. Defendant denies the allegations of Paragraphs 5 and 6.

9. Defendant denies the allegations of Paragraph 7; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

10. Defendant denies the allegations of Paragraph 8.

11. Defendant denies the allegations of Paragraph 9 and specifically denies that Plaintiff has contributed any funds or property to Defendant's business ventures.

FIRST CAUSE OF ACTION

12. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 10 of the Complaint.

13. Defendant denies the allegations of Paragraphs 11 – 15.

14. Defendant denies the allegations of Paragraph 16; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

15. Defendant denies the allegations and requests for relief contained in Paragraph 17.

16. Defendant denies the allegations of Paragraphs 18 and 19.

17. Defendant denies the allegations and requests for relief contained in Paragraph 20.

18. Defendant denies the allegations of Paragraphs 21 – 24.

19. Defendant denies the allegations and requests for relief contained in Paragraphs 25 – 27.

SECOND CAUSE OF ACTION

20. Defendant incorporates the previous Paragraphs of this Answer in response to the second Paragraph 28 of the Complaint.

21. Defendant denies the allegations of Paragraph 29.

22. Defendant denies the allegations of Paragraph 30 and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

23. Defendant denies the allegations of Paragraph 31.

THIRD CAUSE OF ACTION

24. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 32 of the Complaint.

25. Defendant denies the allegations of Paragraph 33; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

26. Defendant denies the allegations of Paragraphs 34 and 35.

FOURTH CAUSE OF ACTION

27. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 36 of the Complaint.

28. Defendant denies the allegations and requests for relief contained in Paragraphs 37 - 42.

FIFTH CAUSE OF ACTION

29. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 43 of the Complaint.

30. Defendant denies the allegations of Paragraphs 44 – 47.

SIXTH CAUSE OF ACTION

31. Defendant incorporates the previous Paragraphs of this Answer in response to Paragraph 48 of the Complaint.

32. Defendant denies the allegations of Paragraph 49 and specifically denies that Plaintiff has any funds in Defendant's possession or control.

33. Defendant denies the allegations and requests for relief contained in Paragraph 50.

34. Defendant denies the allegations of Paragraph 51 and specifically denies that Plaintiff has any property in Defendant's possession or control.

35. Defendant denies the allegations and requests for relief contained in Paragraphs 52 and 54.

SEVENTH CAUSE OF ACTION

36. Defendant incorporates the previous Paragraphs of this Answer in response to the second Paragraph 55 of the Complaint.

37. Defendant denies the allegations and requests for relief contained in Paragraph 56.

38. Defendant denies the allegations of Paragraphs 57 and 58, and specifically denies that Plaintiff has contributed any funds to Defendant's business ventures.

39. Defendant denies the allegations of Paragraph 59; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

40. Defendant denies the allegations and requests for relief contained in Paragraphs 60 and 61.

EIGHTH CAUSE OF ACTION

41. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 62 of the Complaint.

42. Defendant denies the allegations of Paragraph 63, and specifically denies that Plaintiff has contributed any payments to Defendant's business ventures.

43. Defendant denies the allegations of Paragraph 64; except Defendant admits that it was never Defendant's intention to share Defendant's assets, cash, or other valuables with Plaintiff.

44. Defendant denies the allegations of Paragraphs 65 and 66; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

45. Defendant denies the allegations and requests for relief contained in Paragraphs 67 – 71.

NINTH CAUSE OF ACTION

46. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 72 of the Complaint.

47. Defendant denies the allegations of Paragraphs 73 – 75.

48. Defendant denies the allegations of Paragraph 76; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

49. Defendant denies the allegations and requests for relief contained in Paragraph 77.

TENTH CAUSE OF ACTION

50. Defendant incorporates the previous Paragraphs of this Answer in response to the Paragraph 78 of the Complaint.

51. Defendant denies the allegations of Paragraphs 79 – 83.

52. Defendant denies the allegations of Paragraph 84; except, Defendant admits that Plaintiff has no ownership interest in Defendant's real and personal property.

53. Defendant denies the allegations and requests for relief contained in Paragraphs 85 – 88.

FOR A THIRD DEFENSE
(Statute of Frauds)

54. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

55. Plaintiff alleges that the parties entered into a contract “at least ten years” ago.

56. Defendant denies that the parties entered into any contract.

57. Plaintiff is estopped from bringing an action upon any agreement that is not to be performed within the space of one year from the making thereof unless such agreement is in writing signed by Defendant.

58. No written agreement exists between the parties.

59. Therefore, Plaintiff’s action should be dismissed.

FOR A FOURTH DEFENSE
(Statute of Limitations)

60. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

61. Plaintiff’s action is wholly or partially barred by the applicable statute of limitations.

62. Therefore, Plaintiff’s action should be dismissed.

FOR A FIFTH DEFENSE
(Laches)

63. Defendant incorporates the previous Paragraphs of this Answer where not contradictory with this defense.

64. Plaintiff's equitable causes of action are wholly or partially barred by the equitable doctrine of laches.

65. Therefore, Plaintiff's action should be dismissed.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Interference with Contractual Relationship)

66. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

67. Defendant owns property located at 539 Pope Field Road, Easley, South Carolina ("Pope Field").

68. Pope Field is solely titled in Defendant's name.

69. Defendant entered into a contract with a prospective buyer to sell Pope Field.

70. Plaintiff knew about Defendant's contract for the sale of Pope Field.

71. The closing of the sale of Pope Field was scheduled for May 18, 2018.

72. On May 16, 2018, Plaintiff wrongfully filed this action.

73. Plaintiff's purpose of filing this action was to wrongfully interfere with Defendant's contract for the sale of Pope Field.

74. On May 17, 2018, Plaintiff wrongfully filed a false mechanic's lien allegedly encumbering Pope Field.

75. Plaintiff is not a licensed contractor; and, therefore, he is not entitled to file a true mechanic's lien on any property.

76. On May 17, 2018, Plaintiff contacted the prospective buyer to inform him that a mechanic's lien had been filed encumbering Pope Field.

77. Plaintiff's purpose of filing the false mechanic's lien and for informing the prospective buyer about the false mechanic's lien was to wrongfully interfere with Defendant's contract for the sale of Pope Field.

78. Due to Plaintiff's actions, the prospective buyer breached the contract and refused to purchase Pope Field.

79. Plaintiff has no legitimate justification for interfering with Defendant's contract.

80. Defendant has suffered damages in an amount to be determined proximately caused Plaintiff's actions.

81. Defendant has suffered mental anguish due to Plaintiff's actions and is entitled to recover damages to compensate her for same.

82. Plaintiff's actions were willful, wanton, or reckless, and therefore, Defendant is entitled to punitive damages.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

83. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

84. As stated previously, Plaintiff's ulterior purpose for filing this action was to gain an objective which is not legitimate in filing this action: to prevent the sale of Defendant's property and to extort money from her to which Plaintiff is not entitled.

85. As stated previously, Plaintiff's ulterior purpose for filing a false mechanic's lien was to gain an objective which is not legitimate in the use of a mechanic's lien: to prevent the sale of Defendant's property and to extort money from her to which Plaintiff is not entitled.

86. This ulterior purpose was Plaintiff's sole and paramount reason for filing this action and the false mechanic's lien.

87. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

88. Plaintiff's actions were willful, wanton, or reckless, and therefore, Defendant is entitled to punitive damages.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Slander of Title)

89. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

90. In conjunction with this action, Plaintiff filed a *lis pendens* falsely asserting that he has an ownership interest in three parcels of real property owned solely by Defendant.

91. Plaintiff filed a false mechanic's lien and asserted that this mechanic's lien encumbered Pope Field.

92. Plaintiff contacted the prospective buyer of Pope Field and notified him of the false mechanic's lien.

93. Plaintiff's publication of the foregoing statements was derogatory to Defendant's title to these properties.

94. Plaintiff took these actions with malice toward Defendant in an effort to disrupt her sale of these properties and extort money from her.

95. The sale of Pope Field was canceled due to Plaintiff's publications.

96. The value of all of Defendant's real property is diminished due to Plaintiff's publications.

97. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

98. Defendant has incurred attorney's fees attempting to counteract Plaintiff's publications.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conversion)

99. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

100. Plaintiff has taken from Defendant and refused to return the keys to Pope Field.

101. Plaintiff has removed numerous items from Pope Field including tools and other equipment that were purchased by Defendant and are Defendant's property.

102. Plaintiff purchased several items, including, but not limited to, gasoline, using Defendant's credit cards and accounts without Defendant's permission.

103. Plaintiff removed an \$800 rent check, which was the monthly rent from Defendant's property, from Defendant's possession and deposited said check without Defendant's permission.

104. Defendant has suffered damages in an amount to be determined proximately caused by Plaintiff's actions.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Eviction)

105. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

106. Defendant is the owner of premises located at 109 Linda Lane, Easley, South Carolina ("Linda Lane").

107. Plaintiff has been residing at the above described premises, without a written or oral lease agreement or any writing or agreement evidenced otherwise.

108. Plaintiff has never paid any rent to Defendant for residing at Linda Lane.

109. Plaintiff is a tenant at will and is not a renter, tenant, or holder of any interest in Linda Lane.

110. In April 2018, Defendant demanded that Plaintiff removed himself from Linda Lane.

111. Plaintiff has previously refused to vacate Linda Lane.

112. Grounds for this ejectment are that the occupancy has ended, and Defendant is entitled to immediate possession of the premises

FOR AN ELEVENTH DEFENSE
(Offset)

113. Defendant incorporates the previous Paragraphs of this Answer where not contradictory to this Counterclaim.

114. Defendant has suffered damages due to Plaintiff's conduct and Defendant is entitled to offset any amount owed to Plaintiff by way of damages.

WHEREFORE, Defendant moves for the following relief:

- 1) Dismissal of Plaintiff's Complaint;
- 2) Cancellation of Plaintiff's Notice of and Certificate of Mechanics and or Materialman's Lien;
- 3) Cancellation of Plaintiff's Lis Pendens Notice of Pendency of Action;
- 4) An injunction against Plaintiff disparaging or slandering title to Defendant's real property;
- 5) Eviction of Plaintiff from Defendant's Property;
- 6) A judgment against Plaintiff for all damages caused to Defendant pursuant to Defendant's counterclaims including, but not limited to, actual, consequential, punitive damages, attorney's fees and costs of litigation; and

7) Such other relief as the Court deems just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke

Bruce W. Bannister – SC Bar No. 15679

Luke A. Burke – SC Bar No. 100033

401 Pettigru Street (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084

Fax: (864) 298-0146

June 26, 2018
Greenville, South Carolina

Attorneys for the Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
TERENCE "TERRY" CARROLL,	)	Civil Action No. 2018-CP-39-585
	)	
PLAINTIFF,	)	REPLY TO
-VS-	)	ANSWER and COUNTERCLAIM
	)	
DEBRA MOWERY and	)	
T D REALTY, and	)	
UPSTATE RE GROUP, and	)	
HAWK SHADOW BUSINESS SERVICES, LLC.	)	
And	)	
DEBRA MOWER REALTOR	)	
DEFENDANTS.	)	Jury Trial Requested

The Plaintiff named above Replying to the Answer and Counterclaim of the Defendants named above would respectfully show and allege to the Court:

- A. Reserving any and all rights to any and all Motions to include that of an Injunction.
- B. Plaintiff reports and corrects the Complaint by indicating that the Plaintiff and Defendant had other businesses owned and operated by both parties or one party for the other party the names of those entities is and are known by the Defendant Mowery AND are subject to and party's to this action.
- C. Plaintiff informs the Court that the allegations of the Complaint Paragraph 81., due to a Scriveners error, should have indicated that the Plaintiff's settlement was the basis for the Purchase of the real property and structures located at 109 Linda Lane, Easley SC, not the Defendant's settlement.

PLAINTIFF REPLYING TO THE DEFENSES OF THE DEFENDANTS AND ANY DEFENDANTS

NOT NAMED, ARE MADE PART AND PARCEL PART OF THIS ACTION AND REPLY.

D. Any allegations made by the Answer and Counterclaim which are not replied to are denied to include any and all inferences from those allegations and strict proof is demanded.

1. AS TO THE FOR A FIRST DEFENSE (Dismissal Pursuant to Rule 12(b)(6) SCRCP, As to paragraph 1., these allegations are denied and as is shown by the pleadings, sufficient facts and or allegations were made and are made to join all parties, and constitute each and every cause of action as to Defendants.

2. AS TO THE FOR A FIRST DEFENSE (Dismissal Pursuant to Rule 12(b)(6) SCRCP, As to paragraph 2., these allegations are denied and as is shown by the pleadings, more than enough Information is provided to constitute each and every cause of action as to any and all Defendants.

3. AS TO THE FOR A SECOND DEFENSE (General Denial) As to 3., these allegations denied and as is shown by the pleadings, sufficient facts and or allegations were made and are made to join all parties, and constitute each and every cause of action as to Defendants. As to paragraph 4., these allegations are denied and as is shown by the pleadings, as there is plead sufficient information for a Court to hear and rule as to any injunction. As to paragraph 5., no response of Reply is needed or required, as the name supplied to Plaintiff was as stated. As to paragraph 6., no reply required. As to Paragraph 7., as will be shown, Plaintiff has contributed funds and also labors and equipment, etc., to the acquisitions of the parties and the parties businesses, profits, and any other assets. As to paragraph 9. Defendant admits that Plaintiff has an ownership interest in and to at least the real and personal property Of the Defendant and that admission must sustain this suit and division of all assets of the parties.

As to paragraph 8., Plaintiff states no reply is required as Plaintiff has ownership rights as plead. As to Paragraph 10., no reply is required as Plaintiff has ownership rights and interest in and to the assets of the parties as plead. As to paragraph 11. Plaintiff will be showing and Defendant knows of the funds and labors of the Plaintiff as to the parties properties and businesses.

4. AS TO THE FIRST CAUSE OF ACTION, As to paragraph 12., the replies are as stated by the replies as reported above. As to paragraph 13., no reply required. As to paragraph 14. Plaintiff does have ownership rights in both the real property and the personal property of Defendants. As to paragraphs 15. Through 19., no reply is required, as Plaintiff does have ownership interests in all the real property and personal property of the Defendants, named and unnamed.

5. AS TO THE SECOND CAUSE OF ACTION, As to paragraph 20., the replies are as stated by the replies as reported above. As to paragraphs 21., through 23., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed.

6. AS TO THE THIRD CAUSE OF ACTION, As to paragraph 24., the replies are as stated by the replies as reported above. As to paragraphs 25., AND 26., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed.

7. AS TO THE FOURTH CAUSE OF ACTION, As to paragraph 27., the replies are as stated by the replies as reported above. As to paragraph 28., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and

entities of the Defendants named and unnamed.

8. AS TO THE FIFTH CAUSE OF ACTION, As to paragraph 29., the replies are as stated by the replies as reported above. As to paragraphs 30., no reply is required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed.

9. AS TO THE SIXTH CAUSE OF ACTION, As to paragraph 31., the replies are as stated by the replies as reported above. As to paragraphs 32., through 35., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed and Plaintiff's funds were used.

10. AS TO THE SEVENTH CAUSE OF ACTION, As to paragraph 36., the replies are as stated by the replies as reported above. As to paragraphs 37., through 40., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed and Plaintiff's funds and labors were used..

11. AS TO THE EIGHTH CAUSE OF ACTION, As to paragraph 41., the replies are as stated by the replies as reported above. As to paragraphs 42., through 453., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed, and denied as to never Defendants intention to share with Plaintiff, the inference is that there was by Plaintiff the payment of funds and labors as plead but unknown to Plaintiff the Defendant was not intending to share.

12. AS TO THE NINTH CAUSE OF ACTION, As to paragraph 46., the replies are as stated by the replies as reported above. As to paragraphs 47., through 49., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed and as understood now Defendant had no intention to share even though Defendants used the funds and labors of the Plaintiff.

13. AS TO THE TENTH CAUSE OF ACTION, As to paragraph 50., the replies are as stated by the replies as reported above. As to paragraphs 51., through 53., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed and as replied to above.

14. AS TO THE FOR A THIRD DEFENSE (Statute of Frauds), As to paragraph 54., the replies are as stated by the replies as reported above. As to paragraphs 55., through 59., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed, and that all actions Have been and were on going until Defendants attempted to force out Plaintiff. The month to month And year to year continuation of the parties agreement and agreements is as reported.

15. AS TO THE FOURTH DEFENSE (Statute of Limitations), As to paragraph 60., the replies are as stated by the replies as reported above. As to paragraphs 61., and 62., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; the statute does not Apply here as the parties agreement and agreements were on going and continuous..

16. AS TO THE FIFTH DEFENSE .(Laches), As to paragraph 63., the replies are as stated by the replies as reported above. As to paragraphs 64. And 65., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date..

17. AS TO THE SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM.(Interference with a Contractual Relationship), As to paragraph 66., the replies are as stated by the replies as reported above. As to paragraphs 67. through 82., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date and as to the alleged interference with the prospective sale, the Plaintiff states that Plaintiff was offered a share of the sale proceeds as the real property of Pope Field was owned by Plaintiff and Defendant. There purpose of this filing and the Materialman's Lien were and are to provide Plaintiff with the Plaintiff one half share of proceeds from the sale, to enforce the parties agreement and agreements. There was no and is no wrongful filing as Plaintiffs funds, labors and equipment was used in and for the acquisition of the real property as well as other real properties. The lien was not and is not false as Plaintiff did provide funds and labors for the real property stated. The legal justification for the filing of this action and the lien was to and is to protect the Plaintiff's ownership rights and interests and to be paid for the funds,

and labor and equipment of the Plaintiff as relates to this real property. Defendants did not and could not have suffered any mental anguish as Defendants knowingly were selling the real property without the knowledge of the Plaintiff in violation of the Plaintiffs and Defendants agreement and agreements. Also, if any mental anguish that would be for the Plaintiff as Plaintiff was being forced out without any due compensation and behind Plaintiff's back. At no time were any actions of the Plaintiff, willful, wanton, or reckless as were the Defendants, and it is the Plaintiff that is due punitive damages.

18. AS TO THE FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM (Abuse of Process), As to paragraph 83., the replies are as stated by the replies as reported above. As to paragraphs 84. And 88., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date. Plaintiff has and does have a purpose or many purposes legitimate for filing of the action plus the Materialman's Lien, as reported by the Complaint and this reply, Defendants are and now continuing to deny the interests of the Plaintiff as to share of the proceeds from any sales of all real estate of the parties, and all and any businesses of the parties based on the parties ongoing understanding as to their agreement and or agreements. As reported by the Complaint and this Reply all actions of the Plaintiff are legitimate and those of the Defendants are not and are intended to deny the Plaintiff the interests and proceeds from the parties businesses and properties. Defendants are not suffering any damages from the actions of the Plaintiff but Plaintiff is and is now suffering from the action of the Defendants. Plaintiff denies all the

allegations against the Plaintiff and does repeat that the actions of the Defendants are the reason and reasons for this action and Plaintiff must receive punitive damages for those actions.

19. AS TO THE EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM.(Slander of Title), As to paragraph 89., the replies are as stated by the replies as reported above. As to paragraphs 90. And 98., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on-going and continuous to this date.. There was no false assertion of title, as stated Plaintiff and Defendants have an agreement or agreements as to ownership. The Defendant Mowery placed the real properties in Defendants name for the selling of those properties. There is no false Lis Pendens, no false Mechanic's Lien, all are filed to claim the rights and interests of Plaintiff as the parties agreed. There is and was no malice as will be shown and at no time was there any derogatory to any title(s) as known by Defendants that Plaintiff has ownership rights and rights of interest in and to the titles to the real estate. The valuation of the real property is and has not been diminished except by the actions of the Defendants, by the Defendants actions of removing the Plaintiff from the businesses and entities of the Defendants and the attempts to and attempting to transfer real properties of the parties. Plaintiff is the party that is suffering from the actions of the Defendants. Any attorney fee and costs of Plaintiff should be paid for by the Defendants. The allegations of the Defendants are denied.

20. AS TO THE NINTH DEFENSE AND BY WAY OF COUNTERCLAIM (Conversion)), As

to paragraph 99., the replies are as stated by the replies as reported above. As to paragraphs 100. through 104., all these allegations are denied as it is the Defendants that have converted the interests and ownership of the property noted and other properties of the parties from the Plaintiff, the replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date. The keys to the property were that of the Plaintiff and and Defendants so both would possess the keys. The property removed allegedly from the real estate was that of both parties or the Plaintiffs. As to the check for rent that those funds were used for both parties is an issue before the Court if any. Plaintiff has and is suffering since the forced removal of the Plaintiff from Plaintiffs rightful ownership and interests in and to all property of the parties.

21. AS TO THE TENTH DEFENSE ANY BY WAY OF COUNTERCLAIM (Eviction), As to paragraph 105., the replies are as stated by the replies as reported above. As to paragraphs 106., and 112., replies are not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date.. The allegations are denied, and as Defendants are or is not the sole owner of the real estate 109 Linda Lane, Defendants with the Plaintiff obtained the real property and structures there and are both owners of said property. And any Owner normally and generally may not be evicted from their own property. As the Defendants and the

Plaintiff admitted by the Defendants here resided together for years over ten and by their agreement and agreements have been co-owners of all the properties of the property stated, by ownership, no lease is required of either party. Plaintiff has been supplying funds and labor for years and the Defendants have not been paying any leases or rents neither. As as here stated by Defendants Plaintiff did reside and live at this property and was removed by the illegal actions of the Defendants. As there was no occupancy under the theory of a lease and the parties shared ownership and interest in and to the property neither is able to claim immediate ownership.

22. AS TO THE ELEVENTH DEFENSE (Offset), As to paragraph 113., the replies are as stated by the replies as reported above. As to paragraph 114, reply is not required except as the Plaintiff has ownership and interests in and to the real and personal property of the Defendant and the companies and entities of the Defendants named and unnamed; laches does not apply as the ongoing nature of the parties relationship and agreement and agreements was continuous and on going and continuous to this date.. Here Defendants acknowledge that Plaintiff is owed for Plaintiffs share of funds and labors!

THE PLAINTIFF REQUESTS THE COURT TO GRANT TO FOLLOWING RELIEF:

1. The amount due the Plaintiff as noted above, for each cause of action as requested from the Defendants or as calculated by the Court for each Cause of Action, to include reasonable costs for any real and or personal property that is the Plaintiff's or is found to be part of the Plaintiff's, as requested by the Complaint and this Reply.
2. The amount of reasonable attorney fees and the costs of this action and by the Reply, from the Defendants.

3. The Plaintiff to recover judgment against the Defendants in the amount requested for each cause of action as requested and by the Reply and the Plaintiff should also recover not only for the damages noted but also for punitive damages for the likelihood the Defendant's conduct is continuing and was done with the reason to destroy the Plaintiff.

4. For such other relief as the Court deems just.

 July 7, 2018

s/James P. O'Connell #4259
ATTORNEY FOR THE PLAINTIFF
JAMES P. O'CONNELL
139 Grace Drive
Easley, SC 29640
Phone 864-220-0005 Fax 220-0005 & 498-7210
jpatrickoconnell@yahoo.com

JURY TRIAL REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	
Terence "Terry" Carroll,	)	
	)	MOTION FOR PARTIAL
Plaintiff,	)	SUMMARY JUDGMENT AND
	)	SUPPORTING MEMORANDUM OF LAW
vs.	)	
	)	
Debra Mowery, TD Realty, Upstate RE	)	C.A. No. 2018-CP-39-00585
Group, Hawk Shadow Business Services,	)	
LLC, and Debra Mower Realtor	)	
	)	
Defendants.	)	
	)	

TO: TERENCE "TERRY" CARROLL, PLAINTIFF, BY AND THROUGH HIS ATTORNEY OF RECORD, JAMES P. O'CONNELL, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the defendants ("Defendant"), hereby moves, pursuant to Rule 56 SCRPC, for an Order granting partial summary judgment in favors of Defendant. In support of this Motion, Defendant will show that there are no genuine issues of material fact and the plaintiff's claims for (1) Interest in Real Estate, (2) Intentional Infliction of Emotional Distress, (3) Specific Performance of Contract, (4) Breach of Contract, (5) Constructive Fraud, and (6) Breach of Trust fail as a matter of law.

I. PROCEDURAL BACKGROUND

On May 16, 2018, the plaintiff ("Plaintiff") filed a Lis Pendens Notice of Pendency of Action, a Summons and Notice with Complaint, and a Complaint. On May 17, 2018, these documents were served upon Defendant accompanied by an improper Notice of and Certificate

of Mechanics and or Materialman's Lien.¹ **Exhibit A.** On June 15, 2018, Defendant filed an Answer and Counterclaim of Defendants. On June 18, 2018, Plaintiff filed a Summons and Notice Amended Complaint and Amended Complaint. On June 26, 2018, Defendant filed an Answer to Amended Complaint and Counterclaim of Defendants. On July 11, 2018, Plaintiff filed a Reply to Answer and Counterclaim.

II. STANDARD OF REVIEW

A party is entitled to summary judgment when there is no genuine issue as to any material fact and the party is entitled to judgment as a matter of law. Rule 56(c) SCRPC; *McCune v. Myrtle Beach Shooting Indoor Shooting Range, Inc.*, 364 S.C. 242, 246, 612 S.E.2d 462, 464 (Ct. App. 2005). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

III. INTEREST IN REAL ESTATE (CONSTRUCTIVE TRUST)

Plaintiff's second cause of action is for an interest in real estate by way of a constructive trust. To establish a constructive trust, a plaintiff must establish the following elements:

- (1) The defendant has acquired property or title to property; and
- (2) The defendant used actual or constructive fraud, duress, abuse of confidence, or unconscionable conduct in order to acquire the property.

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 . . . Unless the agreement upon which such action shall be brought or some memorandum or note

¹ Plaintiff admits that he is not a licensed contractor nor is he certified in construction or general contracting. **Exhibit B** (Depo Transcript) 13:16-24; 89:21-24.

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 § 32-3-10 (State of Frauds).

It is clear from the public record that the subject real property is titled solely in Defendant Debra Mowery's name. **Exhibit C** (Deeds). **Exhibit B** 44:1 – 45:2. Further, Plaintiff admitted that there are no written agreements regarding transferring ownership of the subject properties. **Exhibit B** 21:12-15; 23:22 – 24:3; 24:22-24; 54:5-16; 68:1-17; 73:24 – 74:2. Therefore, any direct attempt by Plaintiff to bring an action for an interest in the real property is expressly barred by the Statute of Frauds.

However, Plaintiff attempts to circumvent the Statute of Frauds by alleging that a constructive trust was created because “his funds were used to purchase the real properties” and Plaintiff “was the only party performing labor and construction on and for the real properties.” Am. Comp. ¶ 30. Defendant explicitly denies these allegations, but, viewing the evidence in the light most favorable to Plaintiff, if his allegations are true, this still would not entitle Plaintiff to a constructive trust absent constructive fraud, duress, abuse of confidence, or unconscionable conduct. Here, Plaintiff does not allege and has not provided any evidence of such actions by Defendant. As such, at most Plaintiff's allegations would entitle him to recovery under a theory of unjust enrichment, which could allow him to recover a judgment but would never entitle him to take ownership of Defendant's real property.

Further, constructive fraud, duress, abuse of confidence, or unconscionable conduct could not exist in this case because Plaintiff explicitly knew and agreed to title the properties in Debra Mowery's name. Plaintiff testified that titling the property in Debra Mowery's name was “deliberate,” **Exhibit B** 44:1 – 45:2, and it was intentional to put all of the properties in Debra Mowery's name. **Exhibit B** 60:1-10. The parties specifically discussed the matter with a

closing attorney, who asked, “Do you just want it in her name,” and the parties answered affirmatively. **Exhibit B** 45:3-9. And, even if Plaintiff did not actually know that the deeds were in Debra Mowery’s name, he would still have had constructive notice of this fact because the deeds are a public record.

Therefore, Defendant respectfully requests that Plaintiff’s cause of action for interest in real estate be dismissed with prejudice.

IV. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff’s third cause of action is for intentional infliction of emotional distress. To recover for the intentional infliction of emotional distress, a plaintiff must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused the plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was ‘severe’ so that ‘no reasonable man could be expected to endure it.

Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981). “Initially, the court determines whether the defendant’s conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, and only where reasonable persons might differ is the question one for the jury. *Shupe v. Settle*, 315 S.C. 510, 517, 445 S.E.2d 651, 655-56 (Ct. App. 1994) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 306 S.C. 297, 411 S.E.2d 664 (1991)).

Plaintiff alleges that Defendant:

inflicted severe emotional distress to the Plaintiff, as Defendants did in a grossly painful and disrespectful method deny the Plaintiff any and all rights and interests in and to the real and personal property the parties had attained and acquired during the agreement and contract to the point of attempting to illegally disenfranchise Plaintiff of any and all rights Plaintiff has in and to the properties so acquired by the parties.

Am. Comp. ¶ 33. Despite the extreme language, Plaintiff essentially alleges that Defendant breached its agreement with Plaintiff and deprived him of property. Although Defendant denies that any such agreement existed, viewing the evidence in the light most favorable to Plaintiff, this allegation does not rise to the level of being so extreme and outrageous as to permit recovery.

Therefore, Defendant respectfully requests that Plaintiff's cause of action for intentional infliction of emotional distress be dismissed with prejudice.

V. SPECIFIC PERFORMANCE OF CONTRACT

Plaintiff's fourth cause of action is for specific performance of contract. The elements of a cause of action for specific performance are:

- (1) Clear evidence of a valid agreement;
- (2) Partial execution of the agreement by one party with the approval of the other;
and
- (3) The ability and willingness of the party seeking specific performance to perform his or her obligations under the contract.

Campbell v. Carr, 361 S.C. 258, 264, 603 S.E.2d 625, 628 (Ct. App. 2004).

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 § 32-3-10 (State of Frauds).

Plaintiff alleged that “the parties have and have had a contract for the Purchase of and reselling of real estate and that contract must be enforced as the parties have intended over the course of the parties’ agreement of at least ten years.” Am. Comp. ¶ 37.

Here, there is no evidence of a valid agreement because any alleged agreement between the parties was never written. As such, any such agreement would violate the Statute of Frauds in two ways. First, would be an agreement concerning an interest in land. Second, it would be an agreement that is not to be performed within a year of its making.

Further, the lack of a written document makes it impossible to determine with certainty the terms of the alleged agreement, which, in turn, makes it impossible for the Court to order a party to specifically perform the indefinite terms.

Therefore, Defendant respectfully requests that Plaintiff’s cause of action for specific performance be dismissed with prejudice.

VI. BREACH OF CONTRACT

Plaintiff’s fifth cause of action is for breach of contract. To recover for breach of contract, the plaintiff must prove:

- (1) A binding contract entered into by the parties;
- (2) Breach or unjustifiable failure to perform the contract; and
- (3) Damage suffered by the plaintiff as a direct and proximate result of the breach.

Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

Again, any alleged agreement between the parties would violate the Statute of Frauds.
See Section V, supra.

Therefore, Defendant respectfully requests that Plaintiff's cause of action for breach of contract be dismissed with prejudice.

VII. CONSTRUCTIVE FRAUD

To establish constructive fraud all elements of actual fraud except the element of intent must be established. *Woods v. State*, 314 S.C. 501, 506, 431 S.E.2d 260, 263 (Ct. App. 1993) (citing *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734 (1978)). As such, a plaintiff must prove the following elements to recover in an action for constructive fraud:

- (1) A representation;
- (2) Its falsity;
- (3) The speaker ought to have known its falsity;
- (4) Materiality;
- (5) Intent that the representation be acted upon;
- (6) The hearer's ignorance of its falsity;
- (7) The hearer's reliance on its truth;
- (8) The hearer's right to rely thereon; and
- (9) The hearer's consequent and proximate injury.

Id.; see also *Kahn Construction Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (elements of fraud).

Constructive fraud conduct could not exist in this case because Plaintiff explicitly knew and agreed to title the properties in Debra Mowery's name. Plaintiff testified that titling the property in Debra Mowery's name was "deliberate," **Exhibit B** 44:1 – 45:2, and it was

intentional to put all of the properties in Debra Mowery's name. **Exhibit B** 60:1-10. The parties specifically discussed the matter with a closing attorney, who asked, "Do you just want it in her name," and the parties answered affirmatively. **Exhibit B** 45:3-9.

Further, even if Plaintiff did not actually know that the deeds were in Debra Mowery's name, he would still have had constructive notice of this fact because the deeds are a public record. As such, Plaintiff did not have a right to reasonable rely upon any representation contrary to the public record.

Therefore, Defendant respectfully requests that Plaintiff's cause of action for constructive fraud be dismissed with prejudice.

VIII. BREACH OF TRUST

Plaintiff's ninth cause of action is for breach of trust. One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from breach of duty imposed by the relation. Restatement (Second) of Torts § 874 (1979). A fiduciary relationship exists when one reposes special confidence in another so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence. *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 794 (1990) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987)).

There is no evidence of any fiduciary relationship between Plaintiff and Defendants. The parties are adults who have no legal relationship. Further, there is no legal trust in existence for Defendant to breach. Even if, for sake of argument, the Court ordered that a constructive trust should come into existence based on Defendant's actions, Defendant could not breach that trust until it exists. As such, Plaintiff's cause of action would be premature.

Therefore, Defendant respectfully requests that Plaintiff's cause of action for constructive fraud be dismissed with prejudice.

IX. CONCLUSION

For the reasons set forth above, Defendant is entitled to partial summary judgment and Defendant respectfully requests that Plaintiff's causes of action for (1) Interest in Real Estate, (2) Intentional Infliction of Emotional Distress, (3) Specific Performance of Contract, (4) Breach of Contract, (5) Constructive Fraud, and (6) Breach of Trust be dismissed with prejudice pursuant to Rule 56 SCRPC.

Respectfully Submitted,
BANNISTER, WYATT & STALVEY, LLC

s/Luke A. Burke
Bruce W. Bannister (SC Bar # 15679)
Luke A. Burke (SC Bar # 100033)
P. O. Box 10007 (29603)
401 Pettigru Street (29601)
Greenville, South Carolina
Phone: 864-298-0084
Fax: 864-298-0146

September 20, 2019
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

THIRTEENTH JUDICIAL CIRCUIT

TERENCE "TERRY" CARROLL,

NOTICE OF AND CERTIFICATE OF
MECHANICS AND OR MATERIALMAN'S LIEN

TO:

DEBRA MOWERY and
T D REALTY,

DEFENDANTS,

NOTICE IS HEREBY GIVE THAT: TERENCE "TERRY" CARROLL
109 LINDA LANE
EASLEY SC 29642

IS DUE AND OWED THE SUM OF: ~~\$100,000.00~~ ^{\$66,000.00 Sixty one} (ONE HUNDRED THOUSAND AND NO
CENTS) DOLLARS

FROM: DEFENDANTS DEBRA MOWERY and T D REALTY

ADDRESS OF REAL PROPERTY LOCATED AT: 539 POPE FIELD ROAD, EASLEY SC

A STATEMENT of just and true account of said indebtedness, with all just credits given, being
attached and made part hereof, together with interest (none) except any statutory amount, from
date: MAY 3rd, 2018;

THE DEBT IS DUE THE UNDERSIGNED for: HOURLY WORK INCOME FOR PAINTING,
PREPARING AND COMPLETEING THE JOB THAT WAS AGREED TO AND
CONTRACTED. PLAINTFF STATES THAT THE JOB WAS NOT PAID FOR AS AGREED
AND CONTRACTED DUE TO THE DEFENDANTS FAILING TO PAY FOR WORK
LABOR ALREADY DONE AND RECEIVED.

THE OWNER AND OR CONTRACTOR OR AUTHORIZED PARTY, person or persons so
authorized, or rightfully acting for said owner, or said is due the undersigned because such
improvements and or materials have been provided or completed, for an on any structures,
buildings, houses, etc. located thereon, within the last ninety (90) days of the date hereof, to wit
on or after the date noted above.

THAT BY VIRTUE THEREOF: by the service and filing of this Notice and Certificate and
pursuant to the provisions of the Statutes in such cases made and provided, the undersigned has
or claims a lien to secure the payment of the debt so due and the costs of enforcing said lien upon
the real property and any structures located there located. herein and above mentioned, located
at: address as indicated above and described and stated here:

REAL PROPERTY THREE:

All that piece, parcel or lot of land in State of South Carolina, County of Pickens, About one mile south of Easley SC on Pope Field Road, known and designated at Tract No. Three(3) on plat of lands of T. D. Wade plat by JC Smith February 3, 1950, Beginning at iron pin on highway at the line of Home Maulding, then along Highway North 58-15 West 221.9 ft to iron pin; then North 24 East 225 ft to iron pin on land of Reeves Estate then South 70 East 37.7 ft to a stone, then with lands of Reeves Estate And Home Mauldin South 12 East 315.4 ft to iron pin on the road. This is the same real property conveyed to USBank National Association as Indenture Trustee for Springleaf Mortgage Loan Trust 2013-1, by and through Nationstar Mtg. LLC as Attorney in Fact by Deed of Daniel Hunt Special Referee for Pickens County South Carolina recorded on July 15, 2016 in Deed Book 1785 page 261 ROD Office Pickens County SC. Then by Grantor to Debra Mowery by Deed recorded in Deed Book 1796 page 188 8-30-2016.

TMS 5028-09-16-6537/Physical address 539 Pope Field Road Easley SC
grantees address 109 Lind Lane Easley SC 29642.

THE FORGOING IS TRUE OF MY OWN KNOWLEDGE:

T. J. Williams
signed (with position if corporation)

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS

May 17, 2018

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 3/31/2018

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

STATEMENT OF ACCOUNT

PERSONALLY APPEARED BEFORE ME, the undersigned officer or owner or authorized person: Terence Carroll, AND UPON OATH, I state that the amount this just and correct and due and owing at this time and date is: ~~\$100,000.00~~ 0.00. The same has been adjusted for any lawful offsets, and payments and credits known to me to have been allowed. I am an officer of the corporation noted or I am the person who performed the labor and or provided the materials or both, or I am the owner of the business that has contracted and provide both the labor and the materials as indicated. I am authorized to make this statement Affidavit.

SWORN TO BEFORE ME THIS DATE

T. J. Williams
signed (position & or Ownership)

May 17, 2018
[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 3/31/2018

EXHIBIT B

ELECTRONICALLY FILED - 2019 Sep 20 3:41 PM - PICKENS - COMMON PLEAS - CASE#2018CP3900585

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF PICKENS THIRTEENTH JUDICIAL CIRCUIT

TERENCE "TERRY" CARROLL,
Plaintiff(s),

v

CA No. 2018-CP-39-00585

DEBRA MOWERY, TD REALTY,
UPSTATE RE GROUP, HAWK
SHADOW BUSINESS SERVICES,
LLC, AND DEBRA MOWERY REALTOR,
Defendant(s).

D E P O S I T I O N

WITNESS: TERENCE WADE CARROLL
DATE: Tuesday, August 6, 2019
TIME: 1:04 p.m.
LOCATION: Bannister, Wyatt & Stalvey, LLC
 401 Pettigru Street
 Greenville, South Carolina
TAKEN BY: Attorneys for the Defendants
REPORTED BY: NISHA GORDON, Court Reporter

LEGAL EAGLE

Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

A P P E A R A N C E S

ATTORNEYS FOR THE PLAINTIFF

TERENCE "TERRY" CARROLL:

JAMES P. O'CONNELL

BY: JAMES P. O'CONNELL, ESQUIRE

139 Grace Drive

Easley, South Carolina 29640

(864) 220-0005

jpatrickoconnell@yahoo.com

ATTORNEYS FOR THE DEFENDANTS

DEBRA MOWERY, TD REALTY, UPSTATE RE GROUP,

HAWK SHADOW BUSINESS SERVICES, LLC, AND

DEBRA MOWERY REALTOR:

BANNISTER, WYATT & STALVEY, LLC

BY: LUKE A. BURKE, ESQUIRE

401 Pettigru Street

Greenville, South Carolina 29601

(864) 298-0084

lburke@bannisterwyatt.com

ALSO PRESENT:

Debra Mowery

1 TERENCE WADE CARROLL, being first duly
2 sworn, testified as follows:

3 EXAMINATION

4 BY MR. BURKE:

5 Q. Mr. Carroll, my name is Luke Burke. I'm
6 the attorney for Debra Mowery, as well as her businesses
7 that you've sued in this case.

8 What is your full name?

9 A. Terence Wade Carroll.

10 Q. And what is your current address?

11 A. 109 Linda Lane, Easley, South Carolina
12 29642.

13 Q. Is that your mailing address?

14 A. No. That's where my house is, our house.

15 Q. Okay. And what is your mailing address?

16 A. 81 Audubon Road, Ware Shoals, 29692.

17 Q. Let me start by kind of explaining some of
18 the deposition process. I'm required by the rules to
19 tell you that if you have a question about one of my
20 questions or anything I say, please direct those towards
21 me and not towards your attorney. If you do talk to
22 your attorney during a break or something like that,
23 then I'm allowed to ask you what you spoke about. So I
24 don't want to get into any attorney-client privilege
25 issues, so please just refrain from doing it.

1 Q. Okay.

2 A. And I need three classes for engineering to
3 graduate. So that was a BSAE, and the other one was a
4 BA, a bachelor's of arts, in business. I think it's a
5 BABA, but I'm not -- they changed it, so I'm not sure at
6 this time.

7 Q. Okay. When did you attend St. Mary's?

8 A. I would have been 20 probably. So it would
9 have been right around '82, probably, is when I started.

10 Q. How about the second school?

11 A. I think it was '91. I think.

12 Q. That's when you started, or that's --

13 A. I think '91.

14 Q. I'm sorry. And what was the second school?

15 A. University of Alabama.

16 Q. Okay. Have you taken any certification
17 classes?

18 A. Certification classes? For anything
19 specific?

20 Q. Just off the top of my head, maybe
21 construction, appraisers, appraisals, anything like
22 that? General contracting?

23 A. Reading stuff online. I mean, nothing
24 certified.

25 Q. Okay. Have you ever been arrested?

1 Q. Okay.

2 A. Well, I guess I should clarify that,
3 because one of her sons is moving here.

4 Q. Will he live in Pickens County?

5 A. No.

6 Q. Okay.

7 A. It will be Oconee.

8 Q. When is the last time you filed taxes?

9 A. That would have been before Debra and I
10 met. I was claimed as a dependent on there when she
11 filed her taxes. She claimed me as a dependent, to my
12 knowledge.

13 Q. Okay. When did you meet?

14 A. We've been discussing that, me and my
15 family, because I don't remember the exact date, but I'm
16 pretty sure it was in either 2005 or 2006. I'm pretty
17 certain.

18 Q. Okay. Was that around when she was getting
19 divorced from her husband?

20 A. Yes. Her divorce was not complete when we
21 met. She was separated, I guess, is the term.

22 Q. And where were you working at that time?

23 A. I was working for myself. I've worked for
24 myself pretty much all my life. I mean, when I was in
25 college, I worked for a company, but I've always done

1 identification.)

2 BY MR. BURKE:

3 Q. Okay. Do you recognize Exhibit Number 1
4 that you've been handed?

5 A. Yes.

6 Q. Is this the amended complaint that your
7 attorney filed on your behalf?

8 A. Uh-huh, yes.

9 Q. Okay. Let's look at paragraph 2 on page 1
10 of the amended complaint.

11 A. All right. Number 2.

12 Q. It mentions a series of contracts between
13 you and Ms. Mowery and all of her businesses. Were
14 those contracts written down anywhere?

15 A. No.

16 Q. So what were the agreements?

17 A. Well, the initial agreement -- I'll read
18 what it says. Our initial agreement was for the house
19 we bought when we were living on Main Street, and I
20 couldn't see paying rent, 650 a month, to stay there
21 when it was right when all the houses were coming
22 available.

23 I said, "We can get houses a lot cheaper
24 than the rent, and I can do all the work on it and fix
25 it up. Let's find one that we can pay cash for, get it

1 house.

2 I paid 61,000 for the house. The mortgage
3 I paid off was 30,000 and something with NBRS. I asked
4 her where the mortgage was. She said NBRS. I went down
5 to NBRS and asked them how much was the mortgage, and
6 they told me it was 30,000 and change.

7 And I wrote the check right there to NBRS
8 and paid off that mortgage, and I also paid off one of
9 her credit cards. It was 7,600, and a few other things
10 that I paid. Right now I don't remember what they were,
11 but there were a few other things too. And, basically,
12 we had -- well, I had bills, but she didn't have any
13 bills after that.

14 Q. Okay. Was the deed to the Church Street
15 house in her name or --

16 A. Yes.

17 Q. It was not in joint names?

18 A. No.

19 Q. And when you paid these things off, they
20 were paid from your car accident settlement, correct?

21 A. Yes.

22 Q. Okay. When you agreed that she would buy
23 the house and you would work on it, was that agreement
24 ever written down anywhere?

25 A. No.

1 Q. Was there any writing or document ever
2 produced about that agreement?

3 A. No.

4 Q. When -- and help me understand. When you
5 paid everything off, did you say, Okay, now I own 75
6 percent and you owe 25 percent?

7 A. Yes, that's what we talked about. When I
8 told her I was going to go pay off the mortgage --
9 because she told me how much it was, or roughly. She
10 didn't say exactly. She just said what it was and what
11 the interest rate was and the interest on her credit
12 card.

13 When she told me that, I said, "Okay, but
14 you understand that now I'm half owner, more?" You
15 know, I was trying to explain to her how it works.

16 And she said, "Yeah, I agree."

17 Q. Okay.

18 A. She said, "That's fine."

19 I said, "Okay."

20 So I went down and paid it off, \$30,000. I
21 wrote a check.

22 Q. And was that agreement ever written down
23 anywhere?

24 A. No. We had it outside on the porch. I
25 remember outside on the patio. I remember it

1 Q. Did you ever receive any 1099s or any --

2 A. No.

3 Q. -- tax documents for the people you were
4 doing work for?

5 A. No.

6 Q. What was Debra doing at the time? What was
7 her job?

8 A. She was doing Hawk Shadow Business
9 Services.

10 Q. When did she start Hawk Shadow Business
11 Services?

12 A. When did she?

13 Q. Yes.

14 A. I don't know.

15 Q. Was it before she met you?

16 A. Yes.

17 Q. Are you claiming any interest in that
18 company?

19 A. I invested in it.

20 Q. How did you invest in Hawk Shadow Business
21 Services?

22 A. Cash.

23 Q. Where did that cash come from?

24 A. My settlement or from the jobs I did maybe.
25 More than likely from my settlement, because at that

1 A. It was Tony Morella and Connie Morella,
2 and, actually, they had multiple houses that I would
3 just work on. And, actually, they have multiple houses
4 up -- they have beach houses, actually, that we would
5 work on. And she actually worked on that house too.

6 Q. She worked on your house in Maryland?

7 A. The beach house.

8 Q. Okay.

9 A. No, she didn't do anything there.

10 Q. So how much money did you invest in Hawk
11 Shadow Business Services?

12 A. Just every once in a while, I would write
13 her a check. She said she would need money for her tax
14 software and didn't have it. So I wrote her a check.
15 At one point I wrote her a \$5,000 check. I wrote her a
16 \$1,000 check.

17 And I don't remember exactly the other
18 ones, but I do remember those. It's just when she asked
19 me for money.

20 Q. Was there any written documentation of
21 transferring shares or membership interest to you in
22 Hawk Shadow Business Services?

23 A. No.

24 Q. Were there any loan documents wrote out
25 that says Hawk Shadow owes you \$5,000?

1 A. You should be able to, uh-huh.

2 Q. Okay.

3 A. She may have the receipts for them. I
4 don't know. She's got the files.

5 Q. Okay. Were they titled in A Friend with a
6 Boat Rentals, or were they titled otherwise?

7 A. They were titled either to a Friend with a
8 Boat Rentals or to me.

9 Q. Okay.

10 A. And the trailers as well.

11 Q. All right. So when did you buy Linda Lane?

12 A. I don't know the exact date off the top of
13 my head.

14 Q. Okay.

15 A. It was about 2015.

16 Q. Okay.

17 A. I don't know the date. It was right after
18 we moved my sister and brother-in-law here. I have it
19 written down here, but I'm just not good at recalling
20 dates.

21 Q. Is that property, Linda Lane, titled in
22 your name?

23 A. No.

24 Q. Whose name is it titled in?

25 A. Debra's.

1 Q. Is there any --

2 A. That was deliberate.

3 Q. Why was that deliberate? Explain.

4 A. Because she is handling all the paperwork.
5 She's doing all of the business end of our family unit.
6 She was doing all of that. So we titled it specifically
7 for her so that she wouldn't have to come to me if we
8 wanted to do anything. If we wanted to get a mortgage
9 on it, if we wanted to sell it, if we -- whatever we
10 wanted to do, if I was going to be here working on the
11 house and she was going to be in Maryland, which she
12 was, we wanted all of the documentation of everything
13 going to her so that she could handle it and I wouldn't
14 have to travel back and forth to sign documents.

15 To agree, we just did it on the phone.
16 Okay. This is what we're going to do. Okay. Go ahead
17 and do it without me having to transfer -- be there.
18 You know what I mean?

19 That was the main reason we did it; also,
20 for tax reasons. So that was deliberate so that she
21 would have the authority to be up here to do it without
22 me having to transfer -- be there. You know what I
23 mean? So it was deliberate.

24 We discussed it. I was at all the closings
25 and we talked it over, and we decided that it would be

1 better if we titled everything in her name. That's what
2 we did.

3 Q. Did you discuss that with the closing
4 attorney?

5 A. I don't recall.

6 Q. He had to draft the deed?

7 A. I think one of them at the table -- I think
8 one of them said, "Do you just want it in her name?"

9 And we said, "Yes. It's for tax reasons."
10 But I don't recall actually sitting there having a
11 conversation with him saying this is why we're here, you
12 know. I don't recall that. It could have happened, but
13 I don't recall it.

14 Q. What money was used for the down payment on
15 Linda Lane?

16 A. Down payment on Linda Lane?

17 Q. Was there --

18 A. You mean the earnest money?

19 Q. No. I mean --

20 A. We didn't have a down payment. We paid
21 cash for it.

22 Q. Okay. I mean, where did the money come
23 from?

24 A. The cash we mortgaged. We had an equity
25 line on our house in Maryland. So you could say we used

1 I found something that somebody had that was left over,
2 I would buy it and store it until I was ready to use it.
3 So I saved us a lot of money. It didn't cost a lot of
4 money in materials for the houses, relatively speaking.

5 Q. Sure.

6 And for the 4548 Church Street house, is
7 there any writing in existence where Debra signed and
8 said that she would transfer an ownership interest to
9 you?

10 A. Not to my knowledge.

11 Q. For the 109 Linda Lane house, is there any
12 writing in existence that Debra Mowery signed that said
13 or agreed that she would transfer an ownership interest
14 to you?

15 A. No, not to my knowledge. We didn't do
16 things in writing.

17 Q. I understand.

18 A. I mean, we were a couple. We were family.
19 I mean, I don't know anybody that does that with their
20 family.

21 Q. How long did it take you to do this work on
22 the 109 Linda Lane house?

23 A. Well, I was still working, doing things on
24 it, when we split up. So from the time we found it
25 until the end, on and off, because I didn't work on

1 other houses. When I found the -- what we have as a
2 rental house now, I found that online in an auction, and
3 I told her we need to buy it. And so we discussed it.
4 We went and looked at it, and we bought it.

5 I was the one that did all the
6 communications on it. I was the one that we found it at
7 auction. I also went and bid on it at auction. We
8 did -- we bought that, and I started working on that,
9 you know, so we could start generating income from it.

10 So I stopped working on Linda Lane to work
11 on that house. And then there would be other days when
12 I wouldn't work on Linda and went and worked on that
13 Pope Field or -- you know, just one day or the other.
14 So I was still doing things to it because I was still
15 doing the addition when we split up.

16 Q. Okay. So the work on Linda Lane was not
17 completed when you split up?

18 A. The house was mostly done. The only thing
19 really left to do on the house was countertops, and we
20 were contracting those out. So, I mean, there's always
21 little things when you have a house, you know, like
22 adding a door. That came -- for the outside, that came,
23 and when we decided to have -- when we decided to
24 start -- I'm sorry -- Upstate RE Group, when we decided
25 to do that, I added an outside -- I had changed all the

1 locks, put new lights on so that the real estate agents
2 could come in and out this door, but they couldn't come
3 in this door. I put a door between the rooms so they
4 couldn't go between the rooms, to keep our dog out.

5 So there's a lot of things I did, but, you
6 know, it was constantly changing.

7 Q. Right.

8 A. There was always something to do. Always.
9 But the majority of the work, it was less than a year.
10 It was like maybe eight months before we moved in. And
11 that's when the majority of the work was done.

12 Q. So approximately --

13 A. It was very livable. I mean, it was
14 comfortable. It wasn't just a shack.

15 Well, we had the cabinets. We still had to
16 get them done and the tops. So we lived without
17 cabinets for a little while.

18 Q. But the addition behind the house is not
19 complete yet?

20 A. No.

21 Q. And the rental house you're talking about,
22 that's the 9th Street house; is that correct?

23 A. Yes.

24 Q. How did you learn about that house?

25 A. I found it on auction.

1 Q. Was it a foreclosure?

2 A. It was an auction. I don't --

3 Q. Okay.

4 A. -- remember. It was cash only.

5 Q. Okay.

6 A. All of the houses have been cash only.

7 Every one.

8 Q. And how much did you purchase that for, the
9 9th Street house?

10 A. About 10,000. Actually, what happened was
11 we put in a pre-auction offer, which was denied, and
12 that was for 14,000, fourteen-five or something like
13 that. And they denied it, and then they wouldn't let us
14 put in because you can only put in one, but I didn't
15 notice at the time. So I only put in one offer.

16 When I went in to put in another offer,
17 they declined that and said you can only put in one
18 offer. You have to wait for the auction. So we waited
19 for the auction. I think it started -- I can't
20 remember, but it was cheap. It was like 10 bucks or
21 something like that for the whole house.

22 And we ended up getting the house for right
23 full costs of 7,500. That was at the bid, but by the
24 time you pay the premiums and whatever, it came out to
25 exactly 10,000. So we got it for 10,000.

1 Q. Okay. And --

2 A. And I did all the bidding on it. I was the
3 communications guys for all of the closing agents. I
4 was the one that communicated. That was my side of what
5 we did.

6 Q. And where did the money --

7 A. It came out of our joint account.

8 Q. So the BB&T account?

9 A. As far as I know, that's where it came
10 from. I'm pretty sure I just put it on a card. Usually
11 what happened was I'd ask Debra, "Which card do you want
12 me to use? What account do we want to pay for this
13 from? How do we want to use this?" And that's how it
14 worked.

15 So it would have been one of our joint
16 accounts. I don't know which one.

17 Q. Okay.

18 A. But more than likely, it was the BB&T
19 account.

20 (Defendants' Exhibit Number 3, Photocopy of
21 Terence Carroll's Credit Cards with Handwritten Notes,
22 was marked for identification.)

23 BY MR. BURKE:

24 Q. On Exhibit 3, are these the cards you're
25 talking about?

1 A. Yes.

2 Q. Okay.

3 A. One of them got cut off there. That's just
4 the ones I had in my wallet, I think, when I took this.
5 That's our TD Realty account that has my name on it.
6 That's my BB&T account. All of these cards in my name,
7 we shared all of the accounts, to my knowledge.

8 Q. And is this your handwriting on here?

9 A. Yeah. I'm not sure what -- hold on. Yes,
10 it is.

11 Q. But one of these cards were for the money
12 you paid on 9th Street?

13 A. It would have been the BB&T. It wouldn't
14 have been in any of these other ones.

15 Q. Okay.

16 A. It would have been this one or her BB&T
17 account. She had two: one she called the black one, and
18 the other one. I don't know which one. I don't
19 remember which one, what she used actually to open the
20 bidding account.

21 The auction site was my account, but I
22 don't know what card we used. It could have been this
23 one; it could have been one of her two. I'm not sure,
24 but it was one of those three. It wasn't any of these
25 other ones, I can tell you that. I'm fairly certain.

1 Q. Okay. And when you won that auction, who
2 did they deed the property to?

3 A. We put it in Debra's name, like all of
4 them.

5 What was supposed to happen is when we
6 opened up the TD Realty business, we opened that
7 business to handle our rental properties. That's what
8 it was for. This 204 was supposed to be titled in that
9 business name. So we put it in Debra's name so that she
10 could retitle everything.

11 Everything was supposed to go in that
12 business name to protect us from being sued because it
13 was going to be a rental house. We didn't want it in
14 our names. If we got sued, we'd lose everything. So
15 all of that was supposed to go into the business name.
16 It just never happened.

17 Q. So everything eventually was supposed to be
18 in TD Realty?

19 A. It was supposed to go to TD Realty. Terry
20 Debra Realty is what that stands for.

21 Q. And then you purchased another house, Pope
22 Field?

23 A. Yeah. I found that at auction too. And it
24 was right around the corner right behind the other
25 house, and it was in an up-and-coming area. I mean, it

1 Q. That was done by you or by your brothers?

2 A. My brothers.

3 Q. Okay. Is that completed on 9th Street?

4 A. To my knowledge, it is, unless something
5 has broken since. She won't allow me access to it, so I
6 don't know.

7 Q. Is that property rented right now?

8 A. To my knowledge, it is, but like I said,
9 she won't allow me access.

10 Q. Is there any writing in existence where
11 Debra Mowery agreed to grant you any ownership interest
12 in 204 South 9th Street?

13 A. Not to my knowledge.

14 Q. To your knowledge, is there any written
15 agreement between you and Debra Mowery that stated that
16 you would transfer your real property into TD Realty?

17 A. No. It was all done verbally. We were a
18 family unit. We talked about it, discussed it. We
19 agreed on it.

20 It was supposed to be done. My name was
21 supposed to be on TD Realty. That's what TD stands for:
22 Terry Debra. I did not know that my name was not on
23 that business.

24 Q. Let's look at 539 Pope Field. Is this a
25 comprehensive list of everything that has been done at

1 She said, "I want the money now."

2 I said, "Okay."

3 So that's what I did. It sold that
4 weekend. The guy came from Tennessee, I think, to buy
5 it. And what we did was -- so I took him for a test
6 drive. He tried to talk us down, of course, but we said
7 no, and he bought the car.

8 He paid cash. Debra said she wanted to
9 make sure the hundreds were real. We went straight up
10 to BB&T. They went through them with the little pen.
11 The money was deposited in the account right then and
12 there into our joint account, and that was \$13,900.

13 And that will show up on the bank
14 statements when we get them from you guys. You haven't
15 sent them yet or the tax returns. We're still waiting
16 for them.

17 Q. And what is Debra's brother's name?

18 A. Michael Cavanaugh.

19 Q. Okay. Okay.

20 A. And he says he's paid it all, but like I
21 said, all that money, she collected it all. I was here.
22 She was down there, and she went to pick the money up.
23 Where she deposited it, you'll have to ask her.

24 Q. And is there any written document signed by
25 Debra Mowery agreeing to transfer ownership from

1 539 Pope Field to you?

2 A. Not to my knowledge.

3 Q. And you've talked a little bit about being
4 a family unit, so let's talk about that a little bit.

5 Have you ever proposed to Ms. Mowery?

6 A. Once. She said it was a joke and said no.

7 Q. When was that?

8 A. I don't remember when that was. We were
9 here. We acted like we were married, though. I mean, I
10 gave her a ring, and she wore that on her left hand. I
11 gave her three rings probably, actually.

12 We talked about getting married many times,
13 actually going through the ceremony, but we were going
14 to do it in the islands after we got some money saved
15 up.

16 Q. So you bought her a ring, and she wore that
17 on her left ring finger?

18 A. Yes. Different ones. I mean, like I said,
19 I think I bought her three. One of them got stolen when
20 we got robbed.

21 Q. Was it a diamond ring, or what kind of ring
22 was it?

23 A. One of them had diamonds in it. I think
24 one was jade. I think one was a ruby. I don't remember
25 what the other was, like a green, a real nice green.

1 Pendens Notice of Pendency of Action, Filed June 18,
2 2018, was marked for identification.)

3 BY MR. BURKE:

4 Q. You've been handed Exhibit 4. Do you know
5 what a lis pendens is?

6 A. Yes, I do.

7 Q. What is your understanding of the reason
8 you filed a lis pendens?

9 A. I am not sure I understand what you mean.

10 Q. Well, you understand that when you file a
11 lis pendens, it gives notice to people that may purchase
12 the property that there's litigation pending?

13 A. Right.

14 Q. And do you understand that that makes them
15 less likely to want to purchase the property?

16 A. Yes. I mean, we wouldn't buy a house that
17 had a lien on it.

18 Q. And you also filed a mechanics lien; is
19 that correct?

20 A. Yes, I did.

21 Q. Are you a licensed contractor?

22 A. No.

23 Q. Are you licensed in anything?

24 A. No.

25 (Defendants' Exhibit Number 5, Settlement

1 CERTIFICATE OF REPORTER

2 I, Nisha Gordon, Court Reporter and Notary Public
3 for the State of South Carolina at Large, do hereby certify:

4 That the reading and signing of the foregoing
5 deposition by the witness is not waived.

6 That the foregoing deposition was taken before me on
7 the date and at the time and location stated on page 1 of this
8 transcript; that the deponent was duly sworn to testify to the
9 truth, the whole truth, and nothing but the truth; that the
10 testimony of the deponent and all objections made at the time
11 of the examination were recorded stenographically by me and
12 were thereafter transcribed; that the foregoing deposition as
13 typed is a true, accurate, and complete record of the testimony
14 of the deponent and of all objections made at the time of the
15 examination to the best of my ability.

16 I further certify that I am neither related to nor counsel
17 for any party to the case pending or interested in the events
18 thereof.

19 Witness my hand, I have hereunto affixed my official
20 seal this 23rd day of August, 2019, at Simpsonville,
21 Greenville County, South Carolina.

22 _____
23 Nisha Gordon

24 Notary Public for S.C.

25 My Commission Expires: 6/14/2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
TERENCE "TERRY" CARROLL,	)	Civil Action No. 2018-CP-39-585
	)	
PLAINTIFF,	)	RETURN TO
-VS-	)	MOTION for SUMMARY JUDGMENT
	)	
DEBRA MOWERY and	)	
T D REALTY, and	)	
UPSTATE RE GROUP, and	)	
HAWK SHADOW BUSINESS SERVICES, LLC.	)	
And DEBRA MOWERY, REALTOR	)	
DEFENDANTS.	)	

The Plaintiff named above Returning to the Motion for Summary Judgment would inform the Court:

- A. Plaintiff states the parties were and until Defendant’s actions and the denial of Plaintiff’s interest in the real properties acquired with Plaintiff’s money and labor, and based upon the trust of Plaintiff in Defendant by the parties relationship which was both a personal and a business venture.
- B. As reported there was no formal written contract, but as has been plead and will be shown to the Court, there had been and was an ongoing relationship, that like a marriage, was renewed every day by the parties, until Defendant’s actions, which included informing Plaintiff that Plaintiff had no rights to and no division of the sale of Pope Road real Property, which Defendant was selling.

As to I. Procedural Background:

1. Upon learning of the sale, Plaintiff filed a Complaint and filed a Materialman’s Lien to protect

Plaintiff's rights and interests in the real property of their relationship and that Defendant did file both a Restraining Order and an Eviction action to remove Plaintiff from the home both parties were living in and residing at, Linda Lane, Easley SC. Plaintiff filed a responsive pleading to the Eviction action. Plaintiff had filed an action in the Court of Common Pleas, with a Lis Pendens, for the purposes of notifying anyone of the Plaintiff's interest in the three real properties.

2. The Court is advised that Defendants were attempting to sell the Pope Field real property and were not including Plaintiff in the division of the proceeds. The Disposition Notice from the Magistrate Court is attached as to the Eviction notice as is the Disposition Notice of the Magistrate as to the Restraining Order.

II. As to Standard of Review:

1. Plaintiff has reasonably plead, many issues of material fact to the Court. Plaintiff advises the Court that the relationship of the parties was both personal and business, that no written agreement was made as would have been as if the parties were in a marriage.

2. Defendant appears to leave out Plaintiff's monetary contributions, especially as to the acquisition of property, especially real property; and the Plaintiff's labor for repairing, restoring, renovating and adding value to the acquired real property.

3. Plaintiff was not served with Defendants last over 700 pages of Discovery until emailed Monday September 16, 2019 of which to download of the attachment was not operable and receipt by DVD Happened September 19, 2019.

4. Plaintiff understands the Court is supposed to resolve in the nonmoving parties favor if there is any

Factual basis plead for the court to hear the facts of the case.

As to III. Interesse in Real Estate (Constructive Trust):

1. The three real properties are deeded to Defendant but the facts would show that Plaintiff had been The party finding the properties, engaging in the acquisition and had believed Defendant Mower was placing the real property title in both parties names as he trusted the Defendant because of the parties relationship.
2. Defendants used Plaintiff's funds to acquire the real properties and used Plaintiff's labor to Improve and add value to the real property.
3. The parties agreement was based on Plaintiff's expertise on repair, renovation and remodeling and Defendants knowledge of taxes and use of taxes to reduce any taxes.
4. As shown, Defendant Mowery used the abuse of confidence and trust by Plaintiff and as now shown unconscionable conduct to have Plaintiff supply money for purchasing and labor for improving the real properties for sale, as will be shown starting with the first house in Maryland.
5. The properties were placed in Defendants name, unknown to Plaintiff, but, as all times by Defendants knowledge of the tax laws, so there would be no tax consequences on the sale of the properties and or use of the properties for rentals.
6. The Court is advised to review the Safe Deposit Box Entry Card to indicate Plaintiff did have a Signature authority as to the funds received and used for the properties, which is attached.
7. Also, the Court's attention is called to the case of Beckham v. Short, 298SC349(1989) 380SE2d826, For the view that a constructive trust was in the case a matter of fact.

As to IV. Intentional infliction of Emotional Distress:

1. Defendant did file an action for eviction as to Plaintiff, who, was living and residing with Mowery was being evicted from the home the parties had been residing in almost like husband and Wife.
2. The action, stunned Plaintiff, who at first only understood that Defendant Mowery was sleeping in a Separate bed and had started acting differently, and Defendant attempted to remove Plaintiff from their Home by an Eviction action and a request for a Restraining Order.
3. Defendants Eviction attempt made Plaintiff leave the parties home, stay with others, and wonder Why, Defendant was doing this to Plaintiff, as Plaintiff had been believing the parties were a couple.
4. Likening the eviction to a partner throwing the other partner out without any explanations, Defendant was very much stunned and did suffer severe anxiety and if the actions of Defendant did not exceed the Bounds of decency what would?

As to V. Specific Performance of Contract:

1. The parties for ten years or more adhered to their agreement, just like a marriage, each party did contribute, Plaintiff with money and labor and Defendant with Defendants knowledge of taxes and operation of business.
2. Plaintiff did supply money to purchase the properties, and was even the party that found and selected the properties; the same would show the existence of a contract.
3. Plaintiff has until the filing of the eviction, always contributed funds and labor to the parties union per their unwritten agreement, as is shown by the signature card and the Bank Account which had Plaintiff's name.

4.The existence of the relationship for over ten years, the residing together for over ten years, and the facts that Plaintiff's funds and labors were used, proves the existence of a contract.

As to VI. Breach of Contract:

- 1.Repeating earlier responses, and the parties adhering to their agreement for ten years, until the Actions of the Defendant Mowery shows a binding contract.
- 2.The actions of Defendants, prior to the filing of this action show the breach of contract.
- 3.Plaintiff's damages are the loss of rental income, the loss of return on the value of any sale of any property all come from the breach by Defendants.
4. Find attached the "A Birthday Letter to Terry" which shows the depth of the contract.

As to VII. Constructive Fraud:

- 1.Plainiff did not know of any breakdown or cancelation of the parties relationship, both the personal and the business, until the advising of the sale of Pope Field and that Plaintiff was to receive nothing.
2. Representation, for ten years Defendant by word and deed kept the existence of the agreement.
- 3.Unknown to Plaintiff, at sometime during the last months of the relationship, Defendant did change the agreement which was based on the truthfulness of the agreement and relationship, thereby Defendant was hiding Defendants true intents, which is the falsity of keeping Plaintiff believing in the parties.
- 4.Defendant knew at time or point of the advising Plaintiff that there was no longer an agreement or relationship but Plaintiff was to receive nothing even though there had been the expression of the love trust of Defendant Mowery to Plaintiff Terry Carroll.

5. Defendants actions effect the Plaintiff understanding of the parties agreement, especially as here Defendant requests everything with nothing to Plaintiff, which is material to the parties agreement.

6. Plaintiff did not know, did act on the Defendants statements and action as shown, Plaintiff did especially rely on those statements and action which Plaintiff believed to be true, Plaintiff had a right to rely on the Defendants actions and statements, as part of the ten years together, and the Plaintiff is being injured because Defendant states Plaintiff is entitle to nothing.

7. Construction fraud occurred here as Plaintiff had believed the properties would be title in his name with Defendant or that the reason for titling in Defendants name was for tax purposes.

8. Plaintiff has no reasons to check the recording of the deeds as Plaintiff believed the parties had the relationship and agreement., and Plaintiff had a right to rely on the Defendant being honest in the actions of Defendant to Plaintiff. Plaintiff did not know any of actions of Defendant until the sale of the Pope Field real estate.

As to VII. Breach of Trust:

1. Plaintiff believed in Defendant, as Defendant has specialized knowledge of tax laws as Defendant Informed Plaintiff, and Defendant advisement of Defendants business knowledge of real estate..

2. The financial relationship was shown during the ten years together by the party's keeping money in a cash box at their home.

3. Until the attempted sale of the Pope Field property Plaintiff has complete trust in the Defendant.

4. As reported, the relationship of the parties was like that of husband and wife, there is no written Contract. The parties lived together, cohabitated together, bought properties together, used their funds

Together, and acted like a partnership for approximately ten years. See again "A Birthday Letter to Terry" attached.

Respectfully submitted:

September 25, 2019

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