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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity Charleston County

Case No. 2017-CP-10-5427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,
Of whom Patricia Clarkin Smith is the Appellant.

RESPONDENT’S INITIAL BRIEF

March 6, 2024.

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TABLE OF CONTENTS

STATEMENT OF THE ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....1

STANDARD OF REVIEW.....5

ARGUMENT.....6

Brief Introductory Statement.....6

I. Appellant has Elected Not to Appeal Multiple Rulings Found in the Lower Court’s Order. Those Rulings are Now the Law of the Case and Require Affirmance.....7

II. The Statute of Limitations did not Bar Granting Summary Judgment under Respondent’s Cause(s) of Action Unjust Enrichment and/or Money Had and Received with Regard to the Funds in the Amount of \$7,500.00 which Appellant Obtained from Clarkin in November of 2012 and August of 2013 Collectively. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.....9

III. The South Carolina Landlord Tenant Act Barr the Master from Awarding Damages to Respondent in the amount of \$38,500.00 plus prejudgment interest pursuant Respondent’s cause of action for Promissory Estoppel and/or Unjust Enrichment. Respondent presented evidence that Appellant promised to pay Clarkin monthly payments of \$500.00, and partial performed upon the obligation, in exchange for the benefits Appellant received with regard to the Subject Property. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.....20

IV. With Regard to Appellant’s Third Stated Issue on Appeal: “Whether the lower court erred by violating Appellant’s constitutional rights of [sic] depriving Appellant of Appellant’s property without due process of law.” There can be no error pursuant to Rule 210, SCACR, because the alleged violation was not before the Master, was not ruled on by the Master, and expands beyond information presented to the lower court. The Issue was Waived by Appellant and Not Preserved for Appellate Review.....25

CONCLUSION.....27

TABLE OF AUTHORITIES

CASES

Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 485 SE 2d 371 (1997).....18

Bayle v. S.C. Dept. of Transp., 344 S.C. 115, 123, 542 S.E.2d 736 (Ct. App. 2001).....20

Dema v. Tenet Physician Services-Hilton, 383 S.C. 115, 678 S.E.2d 430 (2009).....15

Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).....14, 23

Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410 (1964).....19

Fields v. Melrose Ltd. Partnership, 312 S.C. 102, 439 S.E.2d 283 (Ct.App.1993).....7

Glasscock, Inc. v. U.S. Fidelity & Guaranty Co.,
348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).....7

Grant v. S.C. Coastal Council, 319 S.C. 348, 461, S.E.2d 388 (1995).....26

I'on, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 421-22, 526 S.E.2d 716.....25

Herron v. Century BMW, 395 S.C. 461, 719 S.E.2d 640, 642 (2012).....7, 13

McLendon v. S.C. Dep't of Highways & Pub. Transp.,
313, S.C. 525, 443 S.E.2d 539, 540 (1994).....16, 17

Mortgage Loan Co. v. Townsend, 156 S.C. 203, 152 S.E. 878 (1930).....12

Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 532 S.E.2d 868 (2000).....15

Okatie River v. Southeastern Site Prep., 353 S.C. 327, 577S.E.2d 468 (Ct. App. 2003).....15

Parker v Shecut, 340 S.C. 460, 489, %31 S.E.2d 546 (Ct. App. 2000).....24

Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E. 2d 432 (2003).....6, 12, 21

SC Tax Comm. v. Metropolitan Life Ins. Co., 266 S.C. 34, 221 SE 2d 522 (1975).....17

Settlemyer v. McCluney, 359 S.C. 317, 320, 596 S.E.2d 514 (2004).....24

Shirley's Iron Works, Inc. v. City Union, 403, S.C. 560, 743 S.E.2d 778 (2013).....7

State v Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003).....7, 13, 22

Thomerson v. Devito, 430 S.C. 246, 844 S.E.2d 378 (2020).....16

Turbeville v. Gordon, 233 S.C. 75, 103 S.E.2d 521 (1958).....24

Wright v. Craft, 372. S.C 1, 21, 640 S.E.2d 486 (Ct. App. 2006).....17

RULES

Rule 8(c), SCRCP.....17

Rule 56(c), SCRCP.....6

Rule 59(e), SCRCP.....14, 23

Rule 208(b)(2), SCACR.....19, 24

Rule 210, SCACR.....1, 25, 27

Rule 220(c), SCACR.....19, 24

STATUTES

S.C. Code Ann. § 62-5-101. Et seq.....26

STATEMENT OF THE ISSUES ON APPEAL

- I. Appellant has Elected Not to Appeal Multiple Rulings Found in the Lower Court's Order. Those Rulings are Now the Law of the Case and Require Affirmance.**

- II. The Statute of Limitations did not Bar Granting Summary Judgment under Respondent's Cause(s) of Action Unjust Enrichment and/or Money Had and Received with Regard to the Funds in the Amount of \$7,500.00 which Appellant Obtained from Clarkin in November of 2012 and August of 2013 Collectively. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.**

- III. The South Carolina Landlord Tenant Act Barr the Master from Awarding Damages to Respondent in the amount of \$38,500.00 plus prejudgment interest pursuant Respondent's cause of action for Promissory Estoppel and/or Unjust Enrichment. Respondent presented evidence that Appellant promised to pay Clarkin monthly payments of \$500.00, and partial performed upon the obligation, in exchange for the benefits Appellant received with regard to the Subject Property. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.**

- IV. With Regard to Appellant's Third Stated Issue on Appeal: "Whether the lower court erred by violating Appellant's constitutional rights of [sic] depriving Appellant of Appellant's property without due process of law." There can be no error pursuant to Rule 210, SCACR, because the alleged violation was not before the Master, was not ruled on by the Master, and expands beyond information presented to the lower court. The Issue was Waived by Appellant and Not Preserved for Appellate Review.**

STATEMENT OF THE CASE

Muriel W. Clarkin (hereinafter "Clarkin") is a ninety one-year-old widow who has four living children, Charles , Michael (incapacitated), Muriel C. Kennedy (hereinafter "Kennedy") and Patricia Clarkin Smith (hereinafter "Appellant" or "Smith") (Am. Ans; Mtn SJ; Ord.; Probate Bate Records provided to the Master 5/10/21). March 27, 2013, Clarkin, through counsel C. Mac Gibson Jr. (hereinafter "Attorney Gibson"), recorded a durable power of attorney in the Charleston RMC Office in BK 0319, PG 644, naming Kennedy attorney in fact for Clarkin and Smith as successor to Kennedy (Am. Comp). July 30, 2013, Clarkin, through Attorney Gibson, deeded a half interest in 602 Atlantic St., as joint tenants in common with right of survivorship to Smith

(Mtn SJ Ex D). November 18, 2014, Smith caused a deed, not drafted by Attorney Gibson, to be recorded in the RMC Office for Charleston County in BK 0441, PG 484, allegedly executed by Clarkin, which conveyed Clarkin's remaining interest in Atlantic to Smith (Mtn SJ Ex A and F; Comp; Ans).

December 22, 2014, Kennedy filed a petition for order of protection and appointment of a conservator for Clarkin. December 22, 2014, by Ex Parte Order, the Honorable Tamara C. Curry, Probate Judge, declared Clarkin incapacitated and appointed a temporary guardian. January 7, 2015, Family Services, Inc. was appointed temporary conservator (hereinafter "Respondent"). March 27, 2015, by order in case number 2014-GC-10-0209 (hereinafter "Probate Matter"), Appellant was permanently appointed conservator (Ord; Probate Records Provided to the Master 5/10/21).

Respondent filed the summons and complaint in this matter on October 20, 2017, asserting causes of action for Conversion, Unjust Enrichment, Money Had and Received, Promissory Estoppel, Quantum Meruit, Declaratory Judgment, Fraudulent Conveyance, and Quiet Title. (Sum & Comp). Appellant filed an answer on November 28, 2017, which did not assert any defenses, claims or counterclaims. (Ans) November 29, 2017, Respondent served through mail an Amended Complaint. (Am Comp). Respondent served Appellant with Discovery Requests on or about January 25, 2018 (Mtn Compel). Respondent, with all parties present deposed Appellant on July 25, 2018 (Mtn SJ. Ex. A). Defendant Wells Fargo Bank N.A. ("Wells Fargo"), filed an answer on August 15, 2018 (WF Ans). Appellant's counsel Alan Toporek filed a motion to be relieved as counsel on April 4, 2019 (Mtn to be Relieved). By consent order filed May 23, 2019, Karen DeJong was substituted as counsel for Appellant and Wells Fargo Bank, N.A. was dismissed from the matter without prejudice. The order further provided that the matter should be called for trial

on or after July 31, 2019 (consent order sub att.). Respondent moved to enforce a settlement agreement by motion filed July 10, 2019 (Mtn Settle). By Order of the Honorable Roger M. Young, Sr., filed October 10, 2019, Karen DeJong was disqualified as counsel for Appellant and Respondent's motion to enforce settlement was continued to give Appellant an opportunity to find new counsel. (Ord. Disqual). November 1, 2019, Appellant filed a letter to the court informing the court she would be proceeding pro se (Smith Ltr 11/1/19). The Motion to enforce settlement was scheduled to be reheard on December 16, 2019 but continued upon the motion of Appellant filed November 27, 2019 (Smith Mtn Cont. 11/27/19). The Motion was scheduled to be heard on January 27, 2020 but continued upon the motion of Appellant filed January 27, 2020 (Smith Mtn Cont 1/27/20).

Respondent moved to refer the matter on February 11, 2020 (Mtn Refer). By order filed February 12, 2020 the matter was referred to the Master in Equity (Order of Ref.). On February 18, 2020 Appellant filed a motion to continue the motion to enforce settlement (Smith Mtn Cont. 2/18/20). Respondent's motion to enforce settlement was heard remotely by the lower court on June 25, 2020. The lower court filed a form four order on June 25, 2020, which stated this Court would take the matter under advisement and that Appellant had ten days to retain counsel who would then have five days to file a written response to the motion on Appellant's behalf (6/25/20 Ord). Appellant retained M. Richardson Hyman, Jr. who filed a limited notice of appearance on behalf of Appellant for purposes of filing Appellant's written response to the motion Notice of Appearance (6/30/20). The Court filed an order denying Respondent's motion to enforce settlement on July 8, 2020 (Ord. Deny Settle). The Order further provided Mr. Hyman was relieved as counsel for Appellant and Appellant had 30 days to obtain new counsel and the matter shall proceed to trial within 90 days of the order.

October 6, 2020, Respondent filed a motion for summary judgment (Mtn SJ). December 24, 2020, Respondent filed a notice of hearing to Appellant and certificate of service for the notice of hearing (12/24/20 Notice of Hearing). On December 28, 2020, Appellant emailed this Court and requested that the hearing on Respondent's motion for summary judgment be continued. At the request of the Appellant the lower court continued the motion (Ord). On March 31, 2021, Respondent's counsel emailed the lower court's office attaching Appellant to the email and requested that the motion be rescheduled. On March 31, 2021, Appellant responded to the email requesting the motion not be rescheduled at this time. On April 1, 2021, the lower court responded to Respondent and Appellant's emails stating the motion for summary judgment would be scheduled to be heard on May 11, 2021 at 12:00 p.m. (Ord., Emails 3/31, 4/1). On April 16, 2021, Respondent's counsel emailed Appellant and the Master's Office and attached a notice of hearing to Appellant. (Ord.; 4/16/21 email, Notice of Hearing). On April 16, 2021 Respondent filed a notice of hearing to Appellant along with a certificate of service which stated the notice was provided to Appellant by first class mail and electronic mail (4/16/21 Notice of Hearing). On Friday May 7, 2021, at 5:07 p.m., Appellant emailed this Court's office requesting the motion hearing be continued for medical reasons. (Ord; 5/7/21 email) On Monday 10, 2021, the lower court responded to Appellant's email stating that the hearing would proceed forward on May 11, 2021, and that Appellant was welcome to appear either remotely or in person. (Ord.; 5/10/21 email). On May 10, 2021, Respondent's Counsel emailed the lower court's office and Appellant attaching copies of probate court records referenced in Respondent's Motion for Summary Judgment (5/10/21 Probate Records Email and Response; 5/11/21 Trans pg. 9). On May 10, 2021, the lower court's office spoke with the Appellant by telephone and to accommodate Appellant, switched the scheduled format of the hearing from remote to in person. (Ord, 5/11/21 Trans) On

May 11, 2021, prior to the hearing scheduled to be heard at 12:00 p.m., the lower court's office again spoke with the Appellant, by telephone (Ord.; 5/11/21 Trans).

At 12:15 p.m. May 11, 2021 the lower court began hearing Respondent's motion for summary judgment (Ord; Aff Kelly Evans filed 6/10/21). Respondent and Respondent's counsel were present; however, Appellant did not timely appear either remotely or in person. (Ord.; 5/11/21 Trans.) Upon hearing Respondent's motion, the Court issued an order from the bench granting the motion for summary judgment. (Ord.; Trans. 5/11/21) The motion hearing was concluded and thereafter Appellant appeared for the first time in the court room (Ord.; Trans. 5/11/21). The lower court stated to Appellant at that time the court had already heard the motion, the hearing had concluded, the court had granted Respondent's motion for summary judgment and that Respondents' counsel would be submitting a proposed order to the Court for review. The lower court then instructed Respondent's counsel who was still present in the court room to provide the Appellant with a copy of the proposed order at the same time Respondent provided it to the lower court. Appellant was aware that the hearing was scheduled for 12:00 p.m. and further understood at that time the importance of the hearing and the importance of timely appearing at the hearing. (Ord; 5//11/21 Trans.; Aff. Kelly Evan's filed 6/10/21). On June 10, 2021, Respondent's counsel email a copy of the proposed email to the lower courts office and Appellant (6/10/21 email and response). June 21, 2021, the Master filed the Order (Ord.). Appellant did not file a motion to reconsider the Order (Case Index). Appellant noticed this Appeal on July 22, 2021.

STANDARD

“In reviewing the grant of a summary judgment motion, this court applies the same standard which governs the trial court: summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Under Rule 56(c), SCRCF, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432 (2003)

ARGUMENT

Brief Introductory Statement

In this matter, Appellant over the course of the last six years, has established a pattern and practice of acting for the purpose of delay and failing to take affirmative steps to defend against Respondent’s prosecution of this action. Appellant elected not to assert any affirmative defenses in her answer to the complaint. Appellant failed to make any arguments of opposition, written or oral, to the lower court, in opposition to Respondent’s Motion for Summary Judgment. Prior to Appellant noticing this appeal, Appellant failed to file a motion for reconsideration, to raise any defense or alleged issue of error with lower court’s Order.

Appellant has not preserved ANY issue or argument for appellate review by this Court. The only pleading, memorandum, affidavit and/or document which Appellant filed in this matter which relates in any way to the Order on appeal, is Appellant’s answer to the complaint, filed November 28, 2017. The Order granting Respondent’s Motion for Summary Judgment was filed June 21, 2021. Respondent would respectfully assert these facts alone are grounds for this Court to affirm the lower court’s order in total. Respectfully, this Court’s appellate review of this matter need not go beyond determining the answer to one question: whether Appellant has preserved any issue, or

error of ruling by the lower court, for appellate review. See *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012).

I. Appellant has Elected Not to Appeal Multiple Rulings Found in Many of the Lower Court's Order. Those Rulings are Now the Law of the Case and Require Affirmance.

“An unappealed ruling is the law of the case and requires affirmance...The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right...” *Shirley's Iron Works, Inc. v. City Union*, 403, S.C. 560, 573, 743 S.E.2d 778 (2013). South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review... [A] one sentence paragraph raised in an appellant's brief was insufficient to preserve the issue for appeal...Additionally, even though [Appellant may] more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief. *Glasscock, Inc. v. U.S. Fidelity & Guaranty Co.*, 348 S.C. 76, 81, 557 S.E.2d 689 (Ct. App. 2001). "An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct.App.1993). “No point will be considered which is not set forth in the statement of issues on appeal.” *State v Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691 (2003).

Appellant elected not to assert any affirmative defenses in her answer to the complaint. Appellant failed to make any arguments of opposition to the lower court in opposition to Respondent's Motion for Summary Judgment. Prior to Appellant noticing her appeal of the Order Appellant failed to file a motion for reconsideration, raising any defenses or alleged issues of error with lower court's Order. Therefore, the only insight into which rulings, within the lower court's Order, Appellant takes issue with on appeal, must be gleaned from Appellant's initial brief.

Appellant's initial brief asserts three statements of issue on appeal. The first is an assertion that the statute of limitations bars the lower courts awarded of damages under Respondent's causes of action for money and received, or in the alternative for unjust enrichment, regarding two amounts of money Appellant obtained from Clarkin, namely \$6,000.00 received in or around November of 2012 and \$1,500.00 obtained from Clarkin in August of 2013. Appellant's second stated issue of appeal is an assertion that the South Carolina Landlord Tenant Act bars the lower courts awarded of damages under Respondent's causes of action for promissory estoppel, or in the alternative for unjust enrichment, where in the lower court awarded respondent damages of \$38,500.00 plus prejudgment interest, regarding Appellant promise and obligation to pay Clarkin \$500 a month in relation to the benefits Clarkin received regarding the Subject Property. Finally, Appellant's third stated issue on appeal is a very vague and generic statement the Respondent violated Appellant's substantive due process rights.

In this case Appellant, in her initial brief, has elected not to raise issue with numerous rulings found in the Master's Order which must now be deemed the law of the case, requiring affirmance. Appellant's initial brief is silent as to the rulings of the lower court found in the Order on appeal including but not limited to following¹:

- 1) Appellants Brief is entirely silent as to recitation of the elements or rulings upon causes of action found in the Order regarding every cause of action Respondent asserted in this matter;
- 2) Appellant Brief is entirely silent as to the lower court's ruling of an award of prejudgment interest to Respondent under any of Respondent's causes of actions;
- 3) Appellant's Brief does not raise issue with the lower court's ruling awarding damages of \$16,000 plus prejudgment interest regarding sums Appellant obtained from Clarkin in fall and winter of 2014;

¹ Appellant's initial brief may make reference to some of these rulings by name or short conclusory statement, but such statements were made without supporting authority and should be deemed abandoned on appeal and therefore not presented for review.

4) Appellant's Brief does not raise issue with the lower court's ruling in Section III of the Order regarding deeds to the Subject Property; and

5) Appellant's Brief does not take issue with the lower's court's award of legal costs to Respondent.

Respondent would respectfully assert that all of the identify rulings of the lower court as well as any ruling or finding of the lower court found in its order filed June 21, 2021, which the Appellant does not specifically take issue with by specific statement found in Appellant's Statement of Issues on Appeal in her initial brief are rulings which Appellant has now abandoned the right to seek judicial review of and said rulings are now the law of the case.

II. The Statute of Limitations did not Bar Granting Summary Judgment under Respondent's Cause(s) of Action Unjust Enrichment and/or Money Had and Received with Regard to the Funds in the Amount of \$7,500.00 which Appellant Obtained from Clarkin in November of 2012 and August of 2013 Collectively. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.

Statement of Relevant Facts

On or about November 1, 2012, Appellant obtained \$6,000.00 (hereinafter "11/1/12 \$6,000") from Clarkin which Appellant has acknowledged she has an obligation to repay but has not repaid said funds. (Mtn SJ Exhibit "A" pg. 105, ln. 22 – pg. 108, ln. 12; Ex. "B"; Ex. "C"). On or about August 21, 2013, Appellant obtained \$1,500.00 (hereinafter "8/21/13 \$1,500") from Clarkin which she agreed to repay Clarkin and has acknowledged that she had an obligation to do so but has not done so. (Ans ¶¶ 11-12; SJ Mtn Ex. B pg. 21) Further on November 18, 2014, Appellant also obtained \$6,000.00 (hereinafter "11/18/14 \$6,000") from Clarkin. Appellant has acknowledged that she has an obligation to pay back Clarkin for the \$6,000.00 (Mtn SJ Ex. "A" pg. 105, ln. 22 – pg. 108, ln. 12, pg. 126, lns. 11-16; Ex. "C"; Ex. "G" Response to Interrogatory #9). On December 23, 2014, the police came to Appellant's residence to see Clarkin who was there at the time and informed Clarkin and Appellant that Clarkin had been declared incompetent by the

Court. Thereafter, on December 23, 2014, Appellant as an alleged authorized user of a Wells Fargo Credit Card account owned by Clarkin, signed for and received a \$10,000 (hereinafter “12/23/14 10,000”) cash advance upon Clarkin’s account. (Mtn. SJ. Ex. “A” pg 37, ln 2-25, pg. 55, ln 19 – pg. 57, ln. 12). Clarkin was the sole owner of the credit card account. Respondent incurred significant damages in the form of interest upon the December 23, 2014, \$10,000 advance (Mtn SJ Ex. “A” pg. 136, ln 18 - pg. 138, ln. 20). On January 9, 2015, Appellant attended a formal hearing in the Probate Matter, wherein the Court reconfirmed Ms. Clarkin’s incapacitation and appointed Respondent as conservator by temporary order. Then on January 27, 2015, Appellant again charged Ms. Clarkin’s visa credit card to pay her counsel Alan Toporek an additional \$7,500.00 retainer fee (Mtn SJ. Ex. “A” pg. 116, ln. 116 – pg. 118, ln. 20). Respondent sent Appellant multiple communications requesting that Appellant repay the funds, referenced herein, which she obtained from Clarkin but Appellant refused (Mtn SJ Ex. “H”). Respondent filed the summons and complaint in this matter on October 20, 2017, asserting causes of action for Conversion, Unjust Enrichment, Money Had and Received, Promissory Estoppel, Quantum Meruit, Declaratory Judgment, Fraudulent Conveyance, and Quiet Title. Appellant through her then-counsel filed an answer on November 28, 2017, which did not assert any defenses, claims or counterclaims. On October 6, 2020, Respondent filed its motion for summary judgment. (Mtn SJ). Appellant never filed with the lower Court a response in opposition to the motion, a memorandum opposition to the motion or an affidavit in opposition to the motion. (Case Index).

On April 1, 2021, the Court emailed Respondent’s Counsel and Appellant stating the motion for summary judgment would be scheduled to be heard on May 11, 2021 at 12:00 p.m. (Ord.; 4/1/21 emails) On April 16, 2021, Respondent’s counsel emailed Appellant and the Master’s Office and attached a notice of hearing to Appellant. (Ord.; 4/16/21 email, Notice of Hearing) On

April 16, 2021 Respondent filed a notice of hearing to Appellant along with a certificate of service which stated the notice was provided to Appellant by first class mail and electronic mail (4/16/21 Notice of Hearing). On Friday May 7, 2021 at 5:07 p.m., Appellant emailed this Court's office requesting the motion hearing be continued for medical reasons. (Ord; 5/7/21 email) On Monday 10, 2021, the lower court responded to Appellant's email stating that the hearing would proceed forward on May 11, 2021, and that Appellant was welcome to appear either remotely or in person. (Ord.; 5/10/21 email). On May 10, 2021, Respondent's Counsel emailed the lower court's office and Appellant attaching copies of probate court records referenced in Respondent's Motion for Summary Judgment (5/10/21 Probate Records Email and Response; 5/11/21 Trans pg. 9). On May 10, 2021, the lower court's office spoke with the Appellant by telephone and to accommodate Appellant, switched the scheduled format of the hearing from remote to in person. (Ord, 5/11/21 Trans) On May 11, 2021, prior to the hearing scheduled to be heard at 12:00 p.m., the lower court's office again spoke with the Appellant, by telephone (Ord.; 5/11/21 Trans). At 12:15 the lower court began hearing Respondent's motion for summary judgment (Ord; Aff Kelly Evans filed 6/10/21). Respondent and Respondent's counsel were present; however, Appellant did not timely appear either remotely or in person. (Ord. 5/11/21 Trans.) Upon hearing Respondent's motion, the Court issued an order from the bench granting the motion for summary judgment. (Ord.; Trans. 5/11/21) The motion hearing was concluded and thereafter Appellant appeared for the first time in the court room (Ord.; Trans. 5/11/21). The lower court stated to Appellant at that time the court had already heard the motion, the hearing had concluded, the court had granted Respondent's motion for summary judgment and that Respondents' counsel would be submitting a proposed order to the Court for review. The lower court then instructed Respondent's counsel who was still present in the court room to provide the Appellant with a copy of the proposed order at the same

time Respondent provided it to the lower court. Appellant was aware that the hearing was scheduled for 12:00 p.m. and further understood at that time the importance of the hearing and the importance of timely appearing at the hearing. (Ord; 5//11/21 Trans.; Aff. Kelly Evan's filed 6/10/21). On June 10, 2021, Respondent's counsel email a copy of the proposed email to the lower courts office and Appellant (6/10/21 email and response). June 21, 2021, the Master filed the Order (Ord.). Appellant did not file a motion to reconsider the Order (Case Index). Appellant noticed this Appeal on July 22, 2021.

Standard of Review

We review factual findings and legal conclusions in an equitable action de novo. However, this de novo review does not require an appellate court to disregard the findings of the trial court or to ignore the fact that the trial court is in the better position to assess the credibility of the witnesses. Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. Consequently, we will affirm the findings of the trial court in an equity case unless the appellant satisfies this court that the preponderance of the evidence is against the findings of the trial court. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C.241, 248-49, 715 S.E.2d 348 (Ct. App. 2011).

Argument

Appellant asserts the lower court erred granting Respondent's Motion for Summary Judgment against Appellant for monetary damages in the amount of \$6,000.00, in relation to funds Appellant obtained from Clarkin in November of 2012² and further in the amount of \$1,500.00

² Appellant asserts that Respondent did not plead requested relief as to the \$6,000.00 Appellant received from Clarkin in November of 2012. Respondent asserted pleadings including but not limited to the following with regard to said amounts: "Plaintiff is informed and believes that it is entitled to recover from Defendant all monies, and any improper benefit received by Defendant" (Am. Comp. ¶178). *Mortgage Loan Co. v. Townsend*, 156 S.C. 203, 152 S.E. 878, 886 (1930). ("[i]f the facts alleged are broad enough to warrant relief, it matters not how narrow the specific prayer may be if the bill contains a prayer for general relief.").

which Appellant obtained from Clarkin on or about August 21, 2013, under Respondent's cause(s) of action for unjust enrichment and/or money had and received.³ Appellant asserts that the court erred in awarding said amounts because the statute of limitations barred said recovery, thus Respondent lacked standing to assert said causes and therefore the court lacked subject matter jurisdiction to hear the matter. (App. Br. Pgs. 11-15). The trial court did not err in awarding Respondent \$7,500.00 in money damages and prejudgment interest for said funds obtained by Appellant from Clarkin for the following reasons: 1) Appellant, failed to preserve the issue of the alleged defense for review, prior to filing this appeal, by failing to raise said defense to the lower court in Appellant's pleading, before the court during the motion hearing and failed to do so through a motion to reconsider; 2) the Statute of Limitations does not apply to a court of equity issuing an equitable ruling; 3) Appellant waived the right to assert the defense(s) by failing to assert such a defense in Appellant's response pleading and/or before the lower court during the hearing; 4) with regard to the \$1,500.00 which Appellant obtained from Clarkin on or about August 21, 2013, Appellant admits she was obligated to repay said amount in her answer and is therefore bound by said admission; and the additional sustaining grounds of quantum meruit and conversion; and 5) the additional sustaining grounds of conversion and quantum meruit.

1) With regard to the first reason the court did not err regarding Appellant's first stated issue on appeal, Appellant failed to preserve the alleged error for review. *See Generally Herron v. Century BMV*, 395 S.C. 461, 719 S.E.2d 640 (2011). "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *State v. Dunbar*, 356 S.C. 138,

³ Appellant concedes that the lower court properly awarded Respondent judgment in the amount \$16,000.00 plus prejudgment interest with regard to funds obtained by Appellant from Clarkin in the amount of \$6,000.00 on November 18, 2014, and \$10,000.00 on December 23, 2014 (App. Brief pg. 4).

142, 587 S.E.2d 691 (2003) “[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court... our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review... South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party... If a party is unsure whether he properly raised all issues and obtained a ruling, he *must* file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review.” *Elam v. South Carolina Dept. of Transp.*, 361S.C. 9, 23-25, 602 S.E.2d 772 (2004) (citations omitted).

In this case, Appellate failed to raise or assert the alleged defense of statute of limitations, or any affirmative defense for that matter, in Appellant’s Answer filed on November 28, 2017 (Ans). Additionally, Appellant did not file a memo in opposition to Respondent’s Motion for Summary Judgment (Court Case Index). Further, Appellant did not make an oral argument in opposition to Respondent’s Motion before the court during the hearing (Trans). Finally, Appellant did not file a motion to reconsider the ruling with the lower court prior to appealing the order (Court Case Index). Under our court rules and case law Appellant failed to preserve for appeal the issue of whether a statute of limitations barred the lower court from awarding a judgment to

Respondent for money damages with regard to the amount of \$6,000.00 Appellant obtained from Clarkin in November of 2012 and further in the amount of \$1,500.00 which Appellant obtained from Clarkin on or about August 21, 2013. Respondent respectfully asserts this court should affirm the lower court's ruling with regard to Appellant's first stated issue upon appeal.

2) With regard to the second reason the court did not err regarding Appellant's first stated issue on appeal, the statute of limitations is not applicable. "A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." *Dema v. Tenet Physician Services-Hilton*, 383 S.C. 115, 123, 678 S.E.2d 430 (2009). "An action for money had and received exists where a defendant has money belonging to the plaintiff which in equity should be repaid to the plaintiff. In order to recover on a count for money had and received, ... the plaintiff must show he has equity and conscience on his side, and that he could recover in a court of equity... Once the requirements of an action for money had and received are proven, the equitable principles of unjust enrichment and restitution provide a remedy. An action for money had and received is based upon a quasi-contract or a contract implied in law. The recent development in the law in regard to an action in this nature is academically reviewed with certitude in *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). Our supreme court, in critiquing prior precedent in this area, concluded "quantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." *Okatie River v. Southeastern Site Prep.*, 353 S.C. 327, 334-35, 577 S.E.2d 468 (Ct. App. 2003) "This Court has long recognized that the statute of limitations now codified in section 15-3-530 applies to actions at law, while the doctrine of laches applies to suits in equity. Although the statute of limitations may be applied by analogy in a court of equity, the

court has the authority to extend that period if it believes a longer period is warranted under the circumstances. This distinction logically flows from the fact that equity transcends the direct application of legal restrictions such as the statute of limitations to provide relief to wronged parties where the law otherwise affords no relief: This Court has held that the statute of limitations does not apply to actions in equity.” *Thomerson v. Devito*, 430 S.C. 246, 250-251, 844 S.E.2d 378 (2020).

In this case, the Master, sitting in equity awarded money damages to Respondent, which Appellant has raised issue with within her first stated issue on Appeal. The Master ordered the award under an equitable finding that Respondent should be remedied for its damage under the equitable cause(s) of unjust enrichment, money had and received and/or quasi-contract. (Order). The statute of limitations does not apply in circumstances where courts of equity issue equitable rulings. Under our court rules and case law the statute of limitations did not bar the lower court from awarding a judgment in equity to Respondent for money damages with regard to the amount of \$6,000.00 Appellant obtained from Clarkin in November of 2012 and further in the amount of \$1,500.00 which Appellant obtained from Clarkin on or about August 21, 2013. Respondent respectfully asserts this court should affirm the lower court’s ruling with regard to Appellant’s first stated issue upon appeal.

3) With regard to the third reason the court did not err regarding Appellant’s first stated issue on appeal, Appellant waived the alleged defense. Appellant asserts in her brief the following: “If the defense for statute of limitations prevails, then so does the defense for lack of subject matter jurisdiction. *See McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313, S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994)... The effect of the statute of limitations is substantive in nature foreclosing a claim... Moreover, a party must have a justiciability to bring forth a claim and have standing to

do so...A party must have a personal stake in the lawsuit in which said claim, of which is the subject matter of the lawsuit is ripe to be heard...Family Services lacks standing to assert claims on disputed funds after the statute of limitations tolled. (App. Brief 12-14).

McLendon v. S.C. Dep't of Highways & Pub. Transp., states: "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong. While a question of subject matter cannot be waived, a statute of limitations defense can be waived. Therefore, appellant's assertion that its motion presenting a statute of limitations defense raises a question of subject matter jurisdiction is without merit. 313, S.C. 525, 443 S.E.2d 539, 540 (1994) (citations omitted); *See Also. SC Tax Comm. v. Metropolitan Life Ins. Co.*, 266 S.C. 34, 221 SE 2d 522 (1975) ("To constitute a waiver there need not be a new agreement for a valuable consideration. A simple voluntary relinquishment of a right with knowledge of all the facts — an expression of intention not to demand a certain thing is sufficient to constitute a waiver. Here the facts show conclusively that by its speech, writings and conduct, Metropolitan has waived the defense of the statute of limitations. Such conduct on the part of Metropolitan is wholly inconsistent with its rights to claim this defense against the Commission, and amounted to a waiver of such defense."). "The failure to plead an affirmative defense is deemed a waiver of the right to assert it." *Wright v. Craft*, 372. S.C 1, 21, 640 S.E.2d 486 (Ct. App. 2006). Statute of limitations is an affirmative defense. Rule 8(c), SCRPC.

"[T]he issue of a party's status as real party in interest does not involve subject matter jurisdiction. The purpose of a real party in interest provision is to assure that a defendant is required only to defend an action brought by a proper party and that such an action need be defended only once. The right of a plaintiff to maintain a suit, while frequently treated as going to the question of jurisdiction, goes, in reality, to the right of the plaintiff to relief rather than to the jurisdiction of

the court to afford it. A challenge to a party's status as real party in interest must be made promptly or the court may conclude the point has been waived. Further, this Court has recognized that the failure to raise the issue of "real party in interest" results in waiver. Obviously, if the matter maybe [sic] waived, it cannot involve subject matter jurisdiction... We hold the issue of whether a party is a "real party in interest" does not involve subject matter jurisdiction. Accordingly, the Court of Appeals correctly held the issues raised by Eidolon, not having been timely raised prior to the entry of default, were waived." *Bardoon Properties, NV v. Eidolon Corp.*, 326 S.C. 166, 169-71, 485 SE 2d 371 (1997).

In this case Appellant appears to assert that the Mastered erred with regard to Appellant's first stated issue on appeal because the statute of limitations barred Respondent from asserting its cause(s) of action for unjust enrichment and/or money had and received therefore Respondent was not a real party in interest resulting in a lack of standing which deprived the court of subject matter jurisdiction. Respondent would assert Appellant has erred in her legal conclusions for the reasons stated in this section above. Moreover, Appellant waived the affirmative defenses of statute of limitations and real party in interest by failing to assert said defenses to the lower court. Respondent respectfully asserts this court should affirm the lower court's ruling with regard to Appellant's first stated issue upon appeal.

4) With regard to the fourth reason the court did not err regarding Appellant's first stated issue on appeal, concerning the \$1,500.00, Appellant obtained from Clarkin on or about August 21, 2013, Appellant admitted her obligation to repay Respondent in her answer filed November 28, 2017. Appellant is now judicially barred from asserting a contrary position on appeal.

"We consider the pleadings in this case in the light of the general rule, that the parties to an action are judicially concluded and bound by such unless withdrawn, altered or stricken by

amendment or otherwise. The allegations, statement or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible.” *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410 (1964).

In this case Respondent in its summons and complaint filed October 20, 2017, stated:

“11. On or about August 21, 2013, Defendant obtained \$1,500.00 from Clarkin.
12. Defendant has acknowledged that she had an obligation to pay back Clarkin for the \$1,500.00.” (Comp.)

Appellant in her Answer filed November 28, 2017, admitted the allegations of Paragraphs 11 and 12 of the Complaint (Ans. ¶1). For the reasons stated herein above Respondent respectfully asserts this court should affirm the lower court’s ruling with regard to Appellant’s first stated issue upon appeal.

5) Respondent may brief any argument asking the court to affirm for any ground appearing in the record. *See* Rules 208(b)(2) and 220(c), SCACR. In this case with regard to the funds relevant to Appellant first stated issue on appeal, Respondent in its motion for summary judgment asserted that the lower court should award damages for said funds pursuant to respondent’s asserted causes of action for quantum meruit and conversion (Mtn SJ; Amended Comp.). The Master declined to rule on these causes of action in his Order, because he had already awarded said damages under additional causes of action asserted by Respondent (Ord).

Finally, Respondent asserts that though statute of limitations is not applicable, for the sake of argument, if the statute did apply, Appellant erred in calculating when the statute began to run, by failing to apply the discovery rule. “According to the discovery rule, the statute of limitations

begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.” *Bayle v. S.C. Dept. of Transp.*, 344 S.C. 115, 123, 542 S.E.2d 736 (Ct. App. 2001). Appellant asserts the statute began to accrue when Appellant obtained the funds from Clarkin, i.e. November of 2012 and August of 2013. However, a reasonable person would not have discovered Appellant’s breach of her obligation to make Clarkin whole, until after Clarkin was declared incompetent in November of 2014. The statute therefore had not run when Respondent filed the complaint. Moreover, even if there was error, there is no prejudice to Appellant, she received the funds and acknowledge her obligation to make Clarkin whole.

Respondent asserts additional sustaining grounds for which this Court could sustain the damages awarded by the Master in regard to the \$7,500 of awarded damages plus prejudgment interest awarded which Appellant raises issue with in Appellant’s first stated issue on appeal.⁴

III. The South Carolina Landlord Tenant Act Barr the Master from Awarding Damages to Respondent in the amount of \$38,500.00 plus prejudgment interest pursuant Respondent’s cause of action for Promissory Estoppel and/or Unjust Enrichment. Respondent presented evidence that Appellant promised to pay Clarkin monthly payments of \$500.00, and partial performed upon the obligation, in exchange for the benefits Appellant received with regard to the Subject Property. Additionally, Alternative Sustaining Grounds do not Warrant Reversal.

Statement of Relevant Facts

In or around the second half of 2012 Appellant separated and/or divorced her ex-husband and moved out of their marital home (Mtn SJ. Ex. A pg. 88). On July 30, 2013, a deed was recorded in the RMC office of Charleston County in Book 0351 at Page 348 (hereinafter “First Deed”) wherein Clarkin conveyed a half interest in real property she owned at 602 Atlantic St., Mt.

⁴ Respondent incorporates herein by reference hereto Respondent’s arguments with regard Conversion and Quantum Meruit as set forth in Respondent’s Motion for Summary Judgment filed on October 7, 2020 (Mtn SJ)

Pleasant, SC 29464 (hereinafter “Subject Property”) to Appellant as Joint Tenant with rights of survivorship (Mtn SJ. Ex. “D”). The First Deed on its face does not show that Appellant paid valuable consideration to Clarkin at the time of the transfer in exchange for a half interest in the Subject Property. Appellant stated the principle reason for the transfer occurring was to reduce the amount of the tax obligation which Clarkin was obligated to pay on the Property from 6% to 4% percent (Mtn. SJ pg. 3; Mtn SJ Ex. A pg. 88,89,100). On August 2, 2013, Appellant provided Clarkin a check for five hundred dollars which states on the memo line “Aug. Rent” (Mtn. SJ. Ex. E). Beginning on August 2, 2013, immediately following the execution of the First Deed by Clarkin and continuing until Clarkin was declared incapacitated and Appellant made monthly payments to Clarkin in exchange for the benefit Appellant received by Appellant residing in the Subject Property. On multiple occasions Appellant acknowledged that she had agreed, promised and was obligated to make these monthly payments to Clarkin (Mtn. SJ, Mtn. SJ Ex. A, B, E). On December 22, 2014, Kennedy, sister of Appellant filed a petition for a protective order and appointment of conservator making statements, including but not limited to “Daughter Patricia Clarkin Smith was supposed to pay Rent to Mrs. Clarkin in the amount of \$600.00 per month. Petitioner has not received the money and cannot find it being deposited in any account and Mrs. Clarkin does not know where the rental money goes.” (Probate Records, 12/22/14 Petition Prot.) Appellant knew in 2014 that Clarkin’s funds were being dissipated quickly (Mtn. SJ. Ex. A and B) Clarkin relied upon receiving monthly payment from Appellant to pay for and supplement her monthly expenses (Mtn. SJ. Ex. A and B; Probate Records, 12/22/14 Petition Prot.). Appellant ceased paying Clarkin monthly payments as previously agreed. Appellant did so contemporaneously with the Clarkin being declared incapacitated and Respondent being appointed conservator (Am. Compl).

Standard of Review

We review factual findings and legal conclusions in an equitable action de novo. However, this de novo review does not require an appellate court to disregard the findings of the trial court or to ignore the fact that the trial court is in the better position to assess the credibility of the witnesses. Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings. Consequently, we will affirm the findings of the trial court in an equity case unless the appellant satisfies this court that the preponderance of the evidence is against the findings of the trial court. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C.241, 248-49, 715 S.E.2d 348 (Ct. App. 2011).

Argument

Appellant asserts the lower court erred granting Respondent's Motion for Summary Judgment against Appellant for monetary damages in the amount of \$38,500.00 plus prejudgment interest pursuant Respondent's cause of action for Promissory Estoppel and/or Unjust Enrichment, because no landlord-tenant relationship existed and Respondent lacks standing under the South Carolina Residential Landlord-Tenant Act, it violates the statute of frauds (App. Brief Pg. 16, 20).

The trial court did not err in awarding Respondent \$38,500.00 plus prejudgment interest pursuant Respondent's cause of action for Promissory Estoppel and/or Unjust Enrichment for the following reasons: 1) Appellant, failed to preserve the alleged issue for review, prior to filing this appeal, by failing to raise said defense to the lower court in Appellant's pleading, or other filed document or memorandum, before the court during the motion hearing and failed to do so through filing a motion to reconsider; 2) Appellant waived the right to assert the defense of statute of frauds by failing to assert such a defense in Appellant's response pleading and/or before the lower court during the hearing; and 3) and the additional sustaining grounds of quantum meruit.

1) With regard to the first reason the court did not err regarding Appellant's second stated issue on appeal, Appellant failed to preserve the alleged error for review. "In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691 (2003) "[A] great number of reported cases in South Carolina for at least four generations, and more recently the appellate court rules and rules of civil procedure, have emphasized the importance and absolute necessity of ensuring that all issues and arguments are presented to the lower court for its consideration. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court... our rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review... South Carolina appellate courts do not recognize the "plain error rule," under which a court in certain circumstances is allowed to consider and rectify an error not raised below by the party... If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review." *Elam v. South Carolina Dept. of Transp.*, 361S.C. 9, 23-25, 602 S.E.2d 772 (2004) (citations omitted).

In this case, Appellate failed to raise or assert the alleged issue of failure to comply with the South Carolina Landlord Tenant Act or the defense of statute of frauds, or any affirmative defense for that matter, in Appellant's Answer filed on November 28, 2017 (Ans). Additionally, Appellant did not file a memo in opposition to Respondent's Motion for Summary Judgment

(Court Case Index). Further, Appellant did not make an oral argument in opposition to Respondent's Motion before the court during the hearing (Trans). Finally, Appellant did not file a motion to reconsider the ruling with the lower court prior to appealing the order (Court Case Index). The Master in his order never stated whether or no a landlord tenant relations existed between the parties nor did he ever reference the South Carolina Landlord Tenant Act. Under our court rules and case law Appellant failed to preserve for appeal the alleged issue(s) for appeal. Respondent respectfully asserts this court should affirm the lower court's ruling with regard to Appellant's second stated issue upon appeal.

2) With regard to the second reason the court did not err regarding Appellant's second stated issue on appeal, Appellant waived the affirmative defense of statute of frauds.⁵ Statute of Frauds may not be raised for the first time on appeal *Turbeville v. Gordon*, 233 S.C. 75, 103 S.E.2d 521 (1958). The assertion of the affirmative defense of statute of frauds is waived if it is not raised and set forth in a responsive pleading. *Parker v Shecut*, 340 S.C. 460, 489, 31 S.E.2d 546 (Ct. App. 2000). Here Appellant failed to raised the affirmative defense of statute of frauds. Respondent respectfully asserts this court should affirm the lower court's ruling with regard to Appellant's second stated issue upon appeal.

3) Respondent may brief any argument asking the court to affirm for any ground appearing in the record. *See* Rules 208(b)(2) and 220(c), SCACR. In this case with regard to Appellant's obligation to make monthly payments to Clarkin in the amount of \$500.00, relevant to Appellant's

⁵ Additionally, as an alternative sustaining ground there is evidence in the record of partial performance on the part of Appellant in making monthly payments to Clarkin in 2013 and 2014 as part of her promise to pay for the benefits received, such that specific performance should be compel. *See Settlemeyer v. McCluney*, 359 S.C. 317, 320, 596 S.E.2d 514 (2004) (" To compel specific performance of an oral agreement where part performance is alleged to remove the contract from the statute of frauds, a court of equity must find: 1) clear evidence of an oral agreement; 2) the agreement had been partially executed; and 3) the party who requested performance had completed or was willing to complete his part of the oral agreement.")

second stated issue on appeal, Respondent in its motion for summary judgment asserted that the lower court should award damages for said funds pursuant to respondent's asserted cause of action for quantum meruit (Mtn SJ; Amended Comp.). The Master declined to rule on these causes of action in his Order, because he had already awarded said damages under additional causes of action asserted by Respondent (Ord). Respondent now asserts these causes of action as additional sustaining grounds for which this Court could sustain the damages awarded by the Master in regard to the \$7,500 of awarded damages plus prejudgment interest awarded which Appellant raises issue with in Appellant's first stated issue on appeal.⁶

IV. With Regard to Appellant's Third Stated Issue on Appeal: "Whether the lower court erred by violating Appellant's constitutional rights of [sic] depriving Appellant of Appellant's property without due process of law." There can be no error pursuant to Rule 210, SCACR, because the alleged violation was not before the Master, was not ruled on by the Master, and expands beyond information presented to the lower court. The Issue was Waived by Appellant and Not Preserved for Appellate Review.

Statement of Relevant Facts

Appellant appears to vaguely assert, without any specific factual references, that prior to Appellant appealing the order of the Honorable Mikell R. Scarborough filed June 21, 2021, Respondent breached some unspecified duty to an unspecified person(s) while acting as a conservator for Clarkin. However, Appellant never presented this alleged issue to Judge Scarborough in filed pleading or open court, and Judge Scarborough never made a ruling in response to Appellant raising such alleged issue. (Case Index; Ord. 5/11/21 Trans.)

Standard of Review

"The Record shall not, however, include matter which was not presented to the lower court or tribunal... the appellate court will not consider any fact which does not appear in the Record on

⁶ Respondent incorporates herein by reference hereto Respondent's arguments with regard Quantum Meruit as set forth in Respondent's Motion for Summary Judgment filed on October 7, 2020 (Mtn SJ)

Appeal.” Rule 210, SCACR. “An appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has [sic] ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments.” *I’on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 421-22, 526 S.E.2d 716.

Argument

“Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal.” *Herron*, at 465 (citing *Grant v. S.C. Coastal Council*, 319 S.C. 348, 461, S.E.2d 388 (1995) (holding that a due process claim raised for the first time on appeal was not preserved).

In this case, Respondent is not entirely clear what Appellant is claiming is at issue with regard to Appellant’s third stated issue on Appeal. Appellant appears to be claiming the Master substantively violated the due process rights of Appellant with regard to Appellant’s real and personal property. Appellant makes statements that are generic and unsupported by factual allegations. As best Respondent can interpret Appellant’s third issue appears to address two concerns neither of which are an issue raised by any party before the Master in this matter, nor ruled upon by the Master.

It appears first, that Appellant is asserting that Respondent has abused its powers as a court appointed conservator by capriciously managing Clarkin’s funds resulting in unnecessary litigation and legal fees, resulting in damage to Appellant. If this is Appellant’s issue, it is not one that was ever raised before the Master in this matter. Moreover, the Probate Court has exclusive

jurisdiction to make determinations regarding the administration of a conservatorship by a conservator. S.C. Code Ann. 62-5-101, et seq.

It appears that Appellant's second alleged issue of error with regard to the Charleston County Master in Equity, the Honorable Mikell R. Scarborough's Order filed June 21, 2021, in case number 2017-CP-10-5427, is that Appellant was deprived of her substantive due process rights as the result of an order filed on November 3, 2022, in Berkeley County, in case number 2022-CP-08-00910 by the Honorable Dale Van Slambrook. On its face this alleged grievance of Appellant is the result of a different judge, in a different case, issuing an order which is separate and distinct from the order on appeal, and which on its face was an order which was not filed until after the order on appeal was filed in this matter.

Appellant's third stated issue on appeal clearly appears to complain of an order which temporally could have never been presented to the lower court and which should not be considered by this Court as relevant to making a determination of Appellant's appeal of the June 21, 2021 Order in this case. Appellant's inclusion of this information in its brief and request for inclusion of these documents in its Designation of matter violates the South Carolina Appellate rules including but not limited to Rule 210. Respondent respectfully asserts Appellant's third stated issue on Appeal is frivolous.

CONCLUSION

Based upon the allegations, facts and arguments set forth herein above, and those set forth in the Record on Appeal, including but not limited to Respondent's Motion for Summary Judgment, Respondent respectfully requests this Court issue an opinion affirming in total the lower court's Order granting respondent's Motion for Summary Judgment.

RESPECTUFLY SUBMITTED,

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