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**SC Court of Appeals**

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

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**APPEAL FROM YORK COUNTY  
William A. McKinnon, Circuit Court Judge**

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**Case No. 2023-001715**

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**Mary M. Crouch, Trustee of the Samantha D. Delpozo Trust, ..... Respondent,**

**v.**

**Angela Crouch Delpozo, Lino Homero Delpozo, Andrew Oliver, Samantha D. Delpozo, and all other persons unknown claiming any right, title, estate, interest in or lien upon the real estate described int the complaint herein, of whom ANGELA CROUCH DELPOZO, LINO HOMERO DELPOZO, ANDREW OLIVER, and SAMANTHA D. DELPOZO are the ..... Appellants.**

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**RESPONDENT'S INITIAL BRIEF**

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**FACTUAL AND PROCEDURAL STATEMENT OF THE CASE**

On June 25, 1999, Mary M. Crouch (“Respondent”) and her husband Buck W. Crouch (“Buck”), Grantors, created the Samantha D. Delpozo Trust (the “Trust”) (Exhibit A). The purpose of the Trust was “to provide care, support, and general welfare of Samantha Delpozo” (“Samantha”), their granddaughter. Buck was the initial Trustee, and Respondent was the successor Trustee. Contemporaneously with the execution of the Trust, Respondent and Buck deeded 1162 Reservation Road, Rock Hill, SC 29730 (the “Real Property”) into the Trust. Exhibit B.

While the Trust is irrevocable, the Trust gives the Grantors and Trustees broad discretion to deal with the Trust assets as any owner would be able to do in their own right, including the power to hold the Real Property as an investment, to rent or lease the Real Property, to sell or convey the Real Property, to consent to the liquidation, sale, mortgage, or lease of the Real Property, and to make distributions in kind or in money, in the Trustee’s absolute discretion. Exhibit A. The Trust further gives the Grantors and Trustees the power to freely act under all or any of the powers given to them in the Trust in all matters concerning the Trust, after forming their judgment, based upon all the circumstances as to any particular situation as to the wisest and best course to pursue in the interest of the Trust and the beneficiary, without obtaining permission of any interested person or the approval of a Court. Exhibit A.

In or about 1999, because Angela Crouch Delpozo (“Angela”) and Lino Homero Delpozo (“Lino”), Samantha’s parents, did not have sufficient funds to provide a home for Samantha,

Respondent and Buck allowed Angela and Lino, who were raising Samantha, to place a mobile home on the Real Property so that Samantha would have a place to live. On April 1, 2019, Buck died, and by virtue of the language in the Trust, Respondent became Trustee. Angela, Samantha, and Lino have all periodically resided in the mobile home on the Real Property for approximately 22 years.

In or about June 2020, Respondent asked Angela and Lino to vacate the Real Property, and they refused. On March 11, 2021, Respondent exercised her right pursuant to the Trust terms to extend the time of asset distribution until Samantha's fortieth birthday. Exhibit C. Contemporaneously, Respondent deeded the Real Property into her name, as Trustee. Exhibit D. Since June 2020, Respondent has consistently requested that Angela and Lino to vacate the Real Property so that Respondent can use the Real Property solely for Samantha's benefit, and they have consistently refused. In approximately October 2021, Andrew Oliver ("Andrew"), Samantha's boyfriend, also began living on the Real Property with Angela, Lino, and Samantha.

On May 9, 2022, Respondent filed an Affidavit and Application for Notice to Quit Premises for Angela, Lino, and Andrew to vacate the Real Property, and Respondent had the Notice served on Angela, Lino, and Andrew. At no time has Respondent attempted to evict Samantha. A hearing was scheduled for May 23, 2022. Prior to the hearing, Appellants asserted a claim to the title of the Real Property, without any basis. Thereafter, the magistrate dismissed Respondent's Notice, without prejudice, for lack of jurisdiction.

On June 20, 2022, Respondent filed her Complaint in Circuit Court. Appellants timely answered the Complaint, alleging Counterclaims. Respondent timely replied to the Counterclaims. Respondent moved for summary judgment in her favor as to all claims and counterclaims. On August 28, 2023, the Circuit Court granted partial summary judgment, in Respondent's favor, on

Respondent's cause of action for Quiet Title and on Appellants' counterclaims for breach of fiduciary duty. Appellants filed a Motion to Reconsider which the Circuit Court denied. This appeal followed.

## **ARGUMENT**

### ***I. Initial Statement***

Appellants' brief includes multiple factual inaccuracies which will be specifically identified and corrected below. Additionally, in Appellants' brief, they make reference to their "equitable counterclaims"; however, Appellants' counterclaims are for Partition and Betterments, only one of which (Betterments) is equitable in nature. Finally, Appellants also appear to be arguing, for the first time on appeal, a claim to equitable title, which was never asserted in Circuit Court. In Appellants' Amended Answer, and in their Brief in Opposition to Summary Judgment, Appellants assert equitable estoppel and waiver only. Equitable estoppel and waiver are different from, and require different elements than, a claim for equitable title. Finally, Appellants do not seem to be challenging the Circuit Court's grant of summary judgment in Respondent's favor on Respondent's First Cause of Action for Quiet Title. Rather, Appellants simply allege that their "equitable counterclaims" prevent eviction, a claim for relief that was not before the Circuit Court.

### ***II. Corrections***

Corrections of Factual Inaccuracies in Appellants' Brief

1. The Real Property consists only of 1 acre, not 2.3 acres. The Real Property was conveyed to the Trust contemporaneously with the Trust's creation, not subsequently to the Trust's creation.
2. Neither Angela nor Samantha has ever paid the property taxes on the mobile home. Only Lino paid the property taxes.

3. Samantha is not and never has been disabled, and she does not receive and has never received any governmental income or any disability check.
4. Respondent has never attempted to evict Samantha.
5. Respondent did not extend the Trust for an additional forty years, until Samantha is sixty-five and Respondent is one-hundred seventeen. Rather, Respondent extended the Trust until Samantha's fortieth birthday, which will take place in approximately 18 years.

**III. Responses to Appellants' Statement of Issues on Appeal and Specific Allegations of Error**

**1. IS SUMMARY JUDGMENT PROPER BEFORE DISCOVERY IS COMPLETED?**

Appellants argue that Summary Judgment is not proper before discovery is completed, but Appellants misstate the law. No legal authority supports that summary judgment is not proper before discovery is completed. Rather, the law holds that summary judgment is not proper before the non-moving party has had a full and fair opportunity to conduct discovery. "Summary judgment 'must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.'" *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 677 S.E.2d 32, 35-36, 383 S.C. 48 (S.C. App. 2009), quoting *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (quoting *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 544 (S.C. 1990)). "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 677 S.E.2d 32, 36, 383 S.C. 48 (S.C. App. 2009).

The Complaint was filed on June 20, 2022. Appellants' were served with the Summons and Complaint on June 22, 2022. Exhibit M. Respondent's Motion for Summary Judgment was filed on April 3, 2023. The hearing on the Motion for Summary Judgment occurred on August 16, 2023. Appellants had from June 22, 2022 through August 16, 2023, a time frame of 14 months, to conduct discovery in this case. In this matter, the parties have exchanged written discovery, including interrogatories and requests for production of documents, and Appellants have deposed Respondent. While Respondent initially attempted to depose both Angela and Samantha, neither Angela nor Samantha would willingly appear for their depositions due to alleged medical needs or illnesses. Respondent requested proof of the medical conditions and illnesses and was never provided any documentation pertaining to Samantha's illness<sup>1</sup>. Respondent then decided depositions were not necessary and declined to pursue further attempts at deposing the Appellants. In support of their assertion that discovery has not been completed, Appellants assert that they have not been deposed; however, Appellants do not need their own depositions to discover any information, which is already within their knowledge and possession, and could have been presented to the Circuit Court by way of affidavits. No further depositions have been sought or scheduled by any party. No further discovery requests have been served by any party. Appellants have had a fair and full opportunity to conduct discovery in this case, and they have failed to obtain support for their allegations and defenses. Appellants have also failed to specifically explain how further discovery would be helpful.

***2. DO EQUITABLE COUNTERCLAIMS PRECLUDE THE APPELLANTS' EVICTION?***

**Eviction**

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<sup>1</sup> Respondent did receive documentation supporting Angela's illness.

Appellants' argue that their "equitable counterclaims" preclude their eviction; however, their argument has several fatal flaws. First, Appellants seem to be asking this Court to rule on an eviction matter, but eviction was not a cause of action before the Circuit Court, was not ruled upon by the Circuit Court, and it is therefore not an issue on appeal before this Court. See *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010) (holding, for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court). Further, while the issue of eviction is raised as a statement of issues on appeal, Appellants fail to argue why their counterclaims prevent eviction, and Appellants provide no authority supporting that their counterclaims preclude eviction. Accordingly, this issue should be deemed abandoned. *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283, 285 (S.C. App. 1993). See also *Atkins v. George*, 2016-UP-207 (S.C. App. May 11, 2016); *Wright v. Craft*, 640 S.E.2d 486, 372 S.C. 1 (S.C. App. 2006); *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008); *State v. Porter*, 389 S.C. 27, 35-36, 698 S.E.2d 237, 241 (Ct. App. 2010); *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

### **Equitable Title vs. Equitable Estoppel**

Second, the issue of equitable title was not before the Circuit Court and is therefore not before this Court. *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010). Appellants assert "equitable title" for the first time on appeal. In Appellants' pleadings and in response to Respondent's Motion for Summary Judgment, Appellants' argued equitable estoppel and waiver, not equitable title. Equitable estoppel prevents a party from taking a position contrary to a previous position when the previous position was relied upon to the detriment of the party pleading estoppel. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). The elements of equitable estoppel for "the party claiming the estoppel are: (1) lack of

knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). “The elements as to the party estopped are: (1) conduct by the party estopped amounting to a false representation or concealment of material facts; (2) the intention such conduct be acted upon by the other party; and (3) actual or constructive knowledge of the true facts.” *Id.*, 346 S.C. at 589. “The burden of proof is upon the party who asserts an estoppel.” *Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 122, 145 S.E.2d 922, 927 (1965); *Town of Kingstree v. Gary W. Chapman, Jr., Terilyn J. McClary, Waccamaw Hous., Inc.*, 405 S.C. 282, 747 S.E.2d 494, 510 (S.C. App. 2013).

Equitable title, on the other hand, is a theory that South Carolina courts have recognized in only limited circumstances. Even if Appellants had successfully alleged equitable title, the circumstances in which South Carolina recognizes this equitable remedy are not applicable in this case. For example, South Carolina has recognized the possibility of equitable title under a parol contract theory, where two parties agreed to purchase real property together as co-owners, with only one party receiving legal title, but the other party having financially contributed toward the purchase. *Feaster v. Kendall*, 80 S.C. 30, 61 S.E. 200 (S.C. 1908). Additionally, South Carolina recognizes that the vendee to a contract to purchase real property obtains equitable title pending the closing and execution of the deed. *Levi v. Gardner*, 53 S.C. 24, 30 S.E. 617 (S.C. 1898), *Wilkes v. Horry County*, 2014-UP-074 (S.C. App. Feb 26, 2014); *Parrott v. Dickson*, 151 S.C. 114, 148 S.E. 704 (S.C. 1929). South Carolina courts have also recognized equitable title in situations where a party is under an honest but mistaken belief of ownership. *Mimnaugh v. Baker*, 98 S.E. 337 (S.C. 1919). Finally, South Carolina has recognized equitable title where an insurance policy denied coverage for fire damage to a party in possession of real property, after that party had orally agreed

to obtain ownership of the real property, evidenced by a drawing on the plat. *Dunning v. Firemen's Ins. Co. of Newark, N. J.*, 8 S.E.2d 318, 194 S.C. 98 (S.C. 1940). In all cases, the party holding equitable title has intended to become a legal owner of the real property.

Neither in Appellants' pleadings nor in Appellants' Memorandum in Opposition to Summary Judgment do Appellants ever allege any facts sufficient to support a claim of equitable title. Appellants never allege and discovery has not produced any evidence of a contract or intent to purchase, a contract or intent to share ownership, an honest belief of ownership, or financial contribution toward the purchase price by any of the Appellants. Appellants do not even cite the issue of equitable title in their Statement of Issues on Appeal. Accordingly, this Court should not consider any argument pertaining to equitable title. *First Sav. Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513, 514 (S.C. 1993). Additionally, to prove equitable title, Appellants must prove their claim by clear and convincing evidence, and Appellants do not have and cannot obtain any evidence supporting their contention. *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (S.C. App. 2002).

Finally, Appellants failed to specifically plead estoppel as an affirmative defense. “[E]stoppel must be affirmatively pled as a defense and cannot be bootstrapped onto another claim.” *Collins Entm't, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct.App.2005). “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, 497 (Ct.App.2006); *Town of Kingstree v. Gary W. Chapman, Jr., Terilyn J. McClary, Waccamaw Hous., Inc.*, 405 S.C. 282, 747 S.E.2d 494, 510 (S.C. App. 2013).

### **Quiet Title**

Fourth, it is unclear whether Appellants intend, through their arguments pertaining to eviction, to challenge the Circuit Court's grant of summary judgment on Respondent's first cause of action for Quiet Title. If so, Appellants have failed to specifically assert this issue in their

Statement of Issues on Appeal, and have failed to argue this issue in their brief, and it is therefore not preserved for appeal. *Tirado v. Tirado*, 339 S.C. 649, 655, 530 S.E.2d 128, 131 (Ct. App. 2000).

**Equitable Theories are Matters of Law**

Finally, equitable theories are not questions for juries. *Ex Parte Qualls.*, 71 S.C. 87, 50 S.E. 646 (S.C. 1905); *City Council of Greenville v. Ormand et al.*, 44 S. C. 116, 21 S. E. 642; *Pratt v. Timmerman*, 69 S. C. 186, 48 S. E. 255; *McLaurin v. Hodges*, 43 S. C. 187, 20 S. E. 991; *Parker v. Victoria Real Estate Co.*, 105 S.C. 375, 89 S.E. 1068 (S.C. 1916).

**The Circuit Court correctly granted Summary Judgment in Respondent’s favor as to Respondent’s first cause of action for Quiet Title, in Respondent’s favor as to Appellants’ affirmative defenses of equitable estoppel and waiver, and in Respondent’s favor as to Appellants’ counterclaims for Partition and Betterments.**

The parties agree that the title to the Real Property is, and at all times since 1999 has been, in the name of the trustees or the trustee of the Trust. Under South Carolina law, the title owner has the right as title owner to evict Appellants’ from the property. S.C. Code § 27-37-10.<sup>2</sup> Appellants’ argue that Respondent is barred by estoppel, specifically equitable estoppel, from asserting her right to eject them from the Property because of alleged “actions and inactions” on her part with respect to the Property (Appellants’ Amended Answer, par. 28.) Respondent was and remains entitled to summary judgment as granted by the Circuit because the undisputed facts show that no conduct on the part of Respondent amounted to a false representation or concealment of material fact and, therefore, Appellants’ cannot prevail on their defenses of equitable estoppel or waiver.

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<sup>2</sup> See S.C. Code § 62-7-815, providing that a trustee has “all powers over trust property which an unmarried competent owner has over individually owned property.”

The party asserting estoppel bears the burdens of proving all of its elements. *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 659 S.E.2d 263 (S.C.App. 2008), citing *Estes v. Roper Temp. Servs.*, 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct.App.1991). Here, Appellants' cannot meet the first requirement of equitable estoppel – a false representation or conduct calculated to deceive. In Appellants' Amended Answer, Appellants assert that they made modifications to the mobile home, to the Real Property, that they have lived on the Real Property since 1999, and that they paid the taxes associated with the mobile home and Real Property. (Appellants' Amended Answer, par. 11, 27, 30, 37, 68). They never assert that Respondent led them to believe that the Real Property had been transferred to them or that they, or any one of them, came to own some interest in the Real Property, or that they held an honest belief of ownership of the Real Property, or that Respondent made any false representation, or that Respondent engaged in any deceptive conduct whatsoever. Even if Appellants made the appropriate allegations for a claim of equitable estoppel, which they failed to do, the evidence fails to support that Respondent ever engaged in any conduct which amounted to a false representation or which was calculated to convey the impression that title to the Real Property was at any times in Appellants', collectively or individually. "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 15, 532 S.E.2d 876, 878 (2000).

It appears, although never specifically stated, that Appellants may intend to argue estoppel by silence. In Appellants' Brief, they argue, "when a complainant stood by and allowed the other party to expend sums in improving the property, equity will not allow the party to be without relief," citing several cases in support. (Appellants' Brief Pg 8). Appellants also reference "inactions of Plaintiff" in their Amended Answer. (Appellants' Amended Answer Par. 27, 30, 37, 38, 40, 41, 42). The cases cited by Appellants deal with situations in which the party estopped had

a duty to speak and did not do so, and unique circumstances, none of which are similar to the facts of this case.<sup>3</sup> Further, estoppel by silence arises where a person who owes a duty to speak refrains from so and thereby leads the other to believe in the existence of an erroneous state of facts.

*Southern Development Land and Golf Co., Ltd. v. South Carolina Public Service Authority*, 311 S.C.29, 426 S.E.2d 748, 751 (S.C. 1992). If there is a duty on the party charged with estoppel by silence to disclose the true facts, the party charging estoppel must prove intent to deceive. *Id.* In the absence of such duty, a negligent failure to disclose may suffice. *Id.* In either case, there must first be a duty to speak the true facts to each party claiming estoppel, and there must be an intent to deceive.

Whether a duty to speak exists is a question of law for the courts. *Doe v. Greenville County Sch. Dist.*, 375 S.C. 63, 72, 651 S.E.2d 305, 309 (S.C. 2007). Further, a motion for summary judgment on the basis of an absence of duty is also a question of law for the court. *Id.*, citing *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). Here, Respondent owed no duty whatsoever to any Appellant other than Samantha. Initially, Respondent is statutorily charged with administering the Trust *solely* in the best interests of Samantha, as the sole beneficiary. *Yates v. Yates*, 292 S.C. 49, 51, 354 S.E.2d 800, 801 (S.C.App. 1987). Angela and Lino may be the natural parents of Samantha but they enjoy no legal or equitable relationship with the Trust or with Respondent, as trustee. It goes without saying that Andrew enjoys no legal or equitable relationship to the Trust or trustee.

“A duty to disclose arises from a pre-existing, definite relationship between the parties.” *Turpin v. Lowther*, 404 S.C. 581, 591, 745 S.E.2d 397, 402 (S.C.App. 2013); *see also Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319, 333, 574 S.E.2d 502 (S.C.App. 2002) (because no

fiduciary relationship existed between applicant for insurance and insurance company, insurance company had no duty to disclose to applicant the fact that she might qualify for a better policy). Because no legal relationship existed at any time between Respondent and the other Appellants, Respondent owed them no duty to say anything to them about their modifications or the ownership of the Real Property and they have no basis for a claim to ownership of the Real Property based on estoppel by silence.

With respect to Samantha, Respondent, as Trustee, owed and continues to owe her only the duty to disclose “all known information that is significant and material.” *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (S.C.App. 2004). If Samantha’s interest in the Real Property had changed in any way during the existence of the Trust, including the diminution in her ownership interest by transfer of partial ownership to any of the other Appellants, information of such change would have been “significant and material.” Samantha, as the Trust beneficiary, would have been entitled to notice from Respondent of such a diminution in interest. No such change, however, occurred; the Trust as originally created entitled her to 100% ownership of the Real Property upon attainment of her twenty-fifth birthday and under the Respondent’s extension of the Trust, she will gain ownership upon her fortieth birthday. Since Respondent did not fail to disclose to Samantha any “significant and material” information, Samantha cannot prevail on her claim for estoppel by silence.

The undisputed facts show that Respondent has never taken any action or failed to take any action that amounts to a false representation concerning ownership of the Real Property. These facts also conclusively establish the absence of any conduct on Respondent’s part which was taken to convey the impression that ownership of the Real Property had transferred to any of the Appellants. The undisputed evidence similarly fails to establish the other two elements of equitable

estoppel: (1) an intent on Respondent's part that Appellants act as if the Real Property belonged or would belong to them and (2) actual or constructive knowledge by Respondent that the Real Property belonged to or would belong to Appellants. Therefore, Respondent is entitled to summary judgment on Appellants' defense of equitable estoppel.

### **Waiver**

Appellants' rely on the same assumed facts – the modifications they made to the Real Property - in support of their affirmative defense of waiver. Waiver is “the voluntary and intentional relinquishment or abandonment of a known right.” *Strickland v. Strickland*, 650 S.E.2d 465, 471, 375 S.C. 76 (S.C. 2007); *Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388, 391 (S.C. 1994). Waiver requires the party, here Respondent, to have known of a right, and known that she was abandoning that right. *Strickland, supra*, 650 S.E.2d at 471. Certainly, Respondent at all times knew of her right, as Trustee, to ownership of the Real Property but there are no facts supporting the conclusion that she has abandoned that right. As noted above, the essential terms of the Trust – the Trust Property, the identity of the Trustees, and the identity of the sole beneficiary – remained at all times, and continue to remain today, the same. Just as with Appellants' defense of equitable estoppel, actions taken by Appellants cannot be construed as action by or knowledge by Respondent of a waiver by Respondent of the Trustee's ownership of the Property.

Because Respondent holds title to the Property, she is not equitably estopped from asserting all rights concomitant with her right of ownership and she has not waived her right to claim ownership of the Property. Accordingly, should she choose to evict Appellants, she has every right to do so.

### ***3. DOES THE EQUITABLE INTEREST OF THE APPELLANTS ALLOW A PARTITION CLAIM?***

With respect to Appellants' claims for partition and betterments, they have failed to plead, and cannot prove, the requisite elements of these causes of action and the claims must fail as a matter of law. Accordingly, the Circuit Court's grant of summary judgment as to this claim should be affirmed.

Appellants cite *Portman v. Garbade*, 337 S.C. 186, 522 S.E.2d 830 (S.C. App. 1999) in support of their argument that a party can, in certain circumstances, have an equitable claim to partition of real property. However, the holding in *Portman* does not support Appellants' position. The Court of Appeals did not address this issue as there were alternate grounds for the dismissal of the Respondents' complaint. *Id.* 337 SC at 190. A claim for partition presupposes that the parties hold joint title to the Real Property. See S.C. Code Ann. § 15-61-10(A) (allowing "joint tenants and tenants in common" to request partition of ". . . lands, tenements and hereditaments"); S.C. Code Ann. § 15-61-50 (allowing the court of common pleas to order the partition of "real and personal estates held in joint tenancy or in common"). Because Appellants hold no cognizable legal interest in the Property, and title has been at all times in the name of the Trust, summary judgment in Respondent's favor was appropriate on Appellants' partition claim.

#### **4. DO THE APPELLANTS HAVE AN ALTERNATIVE CLAIM FOR BETTERMENTS?**

The third counterclaim asserted by Appellants is for betterments, pursuant to S.C. Code Ann. § 27-27-10. In order to prevail on a claim for betterments, Appellants must allege and prove that they were "in possession under an honest belief of ownership." *Shumaker v. Shumaker*, 234 S.C. 421, 425, 109 S.E.2d 682, 685 (S.C. 1959); see also *Reaves v. Stone*, 231 S.C. 628, 633, 99 S.E.2d 729, 732 (S.C. 1957) (party claiming under betterments statute must establish that at the time the betterments were made, he believed that he was the rightful owner of the property). At the time Appellants made the modifications, they were fully aware of the title owner of the Real Property.

Even when Lino paid the Real Property taxes on behalf of the trustee, he was fully aware that the Real Property was titled in the name of the trustee. Appellants cannot establish that they had an honest belief that the Real Property was rightfully theirs at the time they made the modifications and, therefore, Respondent is entitled to summary judgment as to this claim.

### **CONCLUSION**

Because Appellants have not provided and cannot obtain evidence to support their claims and affirmative defenses, and because there remains no genuine issue of material fact on these issues, the Circuit Court correctly granted summary judgment in Respondent's favor on Respondent's first cause of action for Quiet Title, in Respondent's favor on Appellants' affirmative defenses of equitable estoppel and waiver, and in Respondent's favor on Appellants' counterclaims for partition and betterments.

WHEREFORE, Respondent requests that this Court affirm the Circuit Court's grant of partial summary judgment in Respondent's favor.

Respectfully submitted, this 22<sup>nd</sup> day of March 2024.

The Law Office of Rebecca McNerney

**By: /s/ Rebecca McNerney**

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**Mar 22 2024**

**SC Court of Appeals**

CERTIFICATE OF SERVICE

I, Rebecca McNerney, Attorney for Respondent, do certify that on the 22<sup>nd</sup> day of March 2024, I served a copy of the foregoing Respondent's Brief by electronic mail to the following address:

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