

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY COURT OF COMMON PLEAS
H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2023-CP-33-00472

RECEIVED

MAY 16 2024

SC Court of Appeals

Angela D. Young, as Personal
Representative for the Estate of
Chellie Nixon,

Appellant,

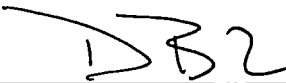
v.

Carolyn Johnson, as Personal
Representative for the Estate of
Samuel L. Davis,

Respondent.

BRIEF OF APPELLANT

May 13, 2024



Danny V. Butler, Esq.
4420 Oleander Drive, Ste 203
Myrtle Beach, SC 29577
(843) 808-9224
Attorney for Appellant

J. Rene Josey, Esq.
Jeffrey L. Payne, Esq.
Post Office Box 5478
Florence, SC 29502-5478
(843) 662-9008
Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities.....1

Statement of Issues on Appeal.....2

Statement of the Case.....4

Standard of Review.....5

Statement of the Facts.....6

Arguments.....9

 I. THE CIRCUIT COURT **ERRED** IN AFFIRMING THE PROBATE COURT’S GRANT OF SUMMARY JUDGMENT BECAUSE IT FAILED TO CONSIDER, OR EVEN REFERENCE, THE SPOILATION OF EVIDENCE AND OTHER EVIDENCE PRESENTED AT THE ORIGINAL HEARING.....9

 II. THE CIRCUIT COURT **ERRED** IN AFFIRMING THE PROBATE COURT’S GRANT OF SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST AS TO LEGAL OWNERSHIP OF THE FUNERAL HOME.....12

 III. THE CIRCUIT COURT **ERRED** IN AFFIRMING THE PROBATE COURT’S GRANT OF SUMMARY JUDGMENT BECAUSE RESPONDENT WAS NOT ENTITLED TO A JUDGMENT AS A MATTER OF LAW IN LIGHT OF THE EVIDENCE PRESENTED TO THE PROBATE COURT THAT GENUINE ISSUES OF MATERIAL FACT EXIST.....16

Conclusion.....17

TABLE OF AUTHORITIES

CASES

<u>Gadson v. Hembree</u> , 364 S.C. 316, 613 S.E.2d 533 (2005).....	5
<u>Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison</u> , 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).....	5
<u>MacFarlane v. Manly</u> , 274 S.C. 392, 264 S.E.2d 838 (1980).....	5
<u>George v. Fabri</u> , 345 S.C. 440, 548 S.E.2d 868 (2001)	5
<u>Fleming v. Rose</u> , 350 S.C. 488, 567 S.E.2d 857 (2002).....	5
<u>Bayle v. South Carolina Dept of Transp.</u> 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	5
<u>Regions Bank v. Schmauch</u> , 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003).....	5
<u>SSI Med. Servs., Inc. v. Cox</u> , 301 S.C. 493, 392 S.E.2d 789 (1990).....	6
<u>QZO, Inc. v. Moyer</u> , 358 S.C. 246, 594 S.E.2d 541 (Ct.App 2001).....	11
<u>Cole Vision Corp. v. Hobbs</u> , 394 S.C. 144, 714 S.E.2d 537 (2011).....	11

STATUTES

S.C. Code Ann. §62-3-101.....	12
-------------------------------	----

RULES

Rule 56(c), SCRCP	5, 6
-------------------------	------

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE CIRCUIT COURT **ERRED** IN AFFIRMING THE PROBATE COURT'S GRANT OF SUMMARY JUDGMENT WHEN THE PROBATE COURT FAILED TO CONSIDER, OR EVEN REFERENCE, THE FOLLOWING EVIDENCE PRESENTED AT THE ORIGINAL HEARING:
 - A. The **Spoilation of Evidence** by Carolyn Johnson of Funeral Home records which would have included documents relevant to the legal ownership of the Funeral Home, a genuine issue of material fact in this case;
 - B. The **Spoilation of Evidence** occurred during the pendency of a lawsuit in which a subpoena issued to Respondent was outstanding that sought all documents relevant to the ownership of the Funeral Home, a genuine issue of material fact in this matter;
 - C. Included in the records destroyed by Carolyn Johnson were financial records and ledgers for the Funeral Home prior to 2013, which would have included information relevant to the legal ownership of the Funeral Home, a genuine issue of material fact in this case;
 - D. The reasonable **inferences** to be deduced from the Spoilation of Evidence;
 - E. The **lack of any documentation** signed by Chellie Nixon evidencing the transfer of any interest in the Funeral Home to Samuel L. Davis;
 - F. The **lack of any documentation of net distributions** to Chellie Nixon or Samuel L. Davis from 1980 through 1982 when they were purported co-owners of the Funeral Home;
 - G. The **sworn admission by Payton Warren**, CPA for the Funeral Home, that though he had been involved with the preparation of tax returns for the Funeral Home since 1972, he had never heard of Chellie Nixon, nor was he aware of any net distributions made to her from the Funeral Home;
 - H. The **lack of documentation** to corroborate the alleged **loan** taken out Samuel L. Davis for the purchase of Chellie Nixon's 65% interest in the Funeral Home for \$ 65,000, and lack of documentation evidencing Chellie Nixon's receipt of such funds;
 - I. The **lack of documentation** to corroborate the alleged meeting held March 19, 1982 regarding the purported sale by Chellie Nixon of her 65% interest in the Funeral Home to Samuel L. Davis for \$65,000;

- J. The **sworn admissions by Ernestine Boston** that she had no recollection of the March 19, 1982 meeting, that she had never been to the law offices of Saleeby Law Firm where the meeting allegedly took place, and that she had not seen any documentation to corroborate Samuel L. Davis' ownership interest in the Funeral Home;
 - K. The **sworn admission by Ernestine Boston** that she was **pressured into signing an Affidavit under duress** in which the Affidavit contained representations regarding her attendance of the alleged March 19, 1982 meeting and Samuel L. Davis purported purchase of Chellie Nixon's 65% interest in the Funeral Home for \$65,000;
 - L. The "corporate records" of the Funeral Home, including Stock Certificates therein, contained no documents signed by Chellie Nixon wherein she transferred any interest in the Funeral Home to Samuel L. Davis;
 - M. The **sworn admission by Payton Warren**, the CPA for the Funeral Home, that any and all information reflected on the tax returns for the Funeral Home, including ownership thereof, were provided **solely by Samuel L. Davis**, which information was accepted by Mr. Payton without independent corroboration;
 - N. The **sworn admission by Angela D. Young**, daughter of Chellie Nixon, confirming her mother's ownership of the Funeral Home.
2. WHETHER APPELLANT PRESENTED SUFFICIENT EVIDENCE THAT GENUINE ISSUES OF MATERIAL FACT EXISTS AS TO THE FOLLOWING:
- A. Whether Chellie Nixon did, in fact, assign an initial 35% interest in the Funeral Home to Samuel L. Davis for no consideration; and
 - B. Whether Samuel L. Davis did, in fact, purchase the remaining 65% in the Funeral Home from Chellie Nixon for \$ 65,000.
3. WHETHER RESPONDENT IS ENTITLED TO A JUDGMENT AS A MATTER OF LAW IN LIGHT OF THE SUBSTANTIAL EVIDENCE PRESENTED TO THE PROBATE COURT DISPUTING THE LEGAL OWNERSHIP OF THE FUNERAL HOME.

STATEMENT OF THE CASE

On **November 11, 2021**, Appellant brought this action seeking a Declaratory Judgment as to the ownership of Young and Young Funeral Home, Inc., a company that operates a funeral home in Hartsville, SC. The Complaint also alleged a claim for Fraud against Samuel L. Davis for representing that he was the sole owner of the company.

Samuel L. Davis answered the Complaint denying the allegations and claiming he was the sole owner of the company.

Samuel L. Davis died on **October 2, 2022** and his estate was substituted as a party in his place.

Respondent filed a Motion for Summary Judgment on **November 23, 2022**.

The Motion was heard by the Honorable T. Carroll Atkinson, III, Probate Judge for Marion County, on **June 1, 2023**. As a result of the hearing, the Motion was granted by Order dated **July 17, 2023**.

Appellant filed a Motion to Reconsider, which was denied by Order dated **August 9, 2023**.

Appellant timely filed a Notice of Appeal on **August 20, 2023**, appealing the Probate Court's ruling to the Marion County Circuit Court.

The hearing on the Appeal was heard by the Honorable H. Steven DeBerry, IV, Circuit Court Judge for Marion County, on **January 29, 2024**. As a result of the hearing, by Form 4 Order dated **February 8, 2024**, the Circuit Court affirmed the Probate Court's granting of the Motion for Summary Judgment.

Appellant served Respondent with the underlying Notice of Appeal on **March 7, 2024**, which Notice was subsequently filed with the Court of Appeals on **March 15, 2024**.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Rule 56(c), SCRCP. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison, 320 S.C. 470, 465 S.E.2d 765 (Ct.App. 1995). Further, summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusion to be drawn therefrom. MacFarlane v. Manly, 274 S.C. 392, 264 S.E.2d 838 (1980). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court. George v. Fabri, 345 S.C. 440, 548 S.E.2d. 868 (2001).

In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002); see also Bayle v. South Carolina Dept of Transp., 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001)(all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponents case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354

S.C. at 660. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Rule 56(c), SCRPC.

STATEMENT OF THE FACTS

Young and Young Funeral Home (hereinafter the “Funeral Home”) was founded in 1947 by Harold L. Young (hereinafter “Harold”) who was the original proprietor thereto. (**Sam Depo, p. 14, l. 17-22**). The Funeral Home operates a funeral home in Hartsville, South Carolina and has operated from such location since its inception.

Samuel L. Davis (hereinafter “Sam”) was previously employed by the Funeral Home and had worked at the Funeral Home since he was ten years old. (**Sam Depo, p. 9, line 13-16**). Sam became assistant Funeral Director in 1974, and after Harold’s death in 1979, became the Funeral Director, a position he retained until his retirement in 2018. (**Sam Depo, p. 10, line 14-17; p. 12, line 25 thru pg. 13, line 4**).

Harold died **intestate** in December 1978 and was survived by his spouse Dorothy J. Young (hereinafter “Dorothy”) and daughter Chellie Nixon f/k/a Chellie Y. Mack (hereinafter “Chellie”). No probate estate was opened for Harold.

Dorothy died **intestate** on January 16, 1979 and was survived solely by her daughter Chellie. A probate estate was opened for Dorothy in February 1979 (the “Dorothy Young Estate”), with Chellie being the **sole heir** to the Dorothy Young Estate. (**Sam Depo, Exh. 2**).

Chellie died **intestate** on **February 14, 2017** and was survived by her spouse John Williams and five (5) children: Harold L. Young, II, Angela D. Young, Tracey Mack Jackson, Lance D. Mack and Larry Mack, Jr. (**Compl., # 17**).

A probate estate for Chellie was opened in Marion County, South Carolina in April 2017 (the “Nixon Estate”), with Harold L. Young, II being appointed as the Personal Representative for the estate. The sole asset of the Nixon Estate is the Chellie’s interest in the Funeral Home, including the assets of the Funeral Home. **(Compl, #2)**

After being appointed as Personal Representative, Harold L. Young, II did attempt to obtain information regarding the Funeral Home for purposes of administering the Nixon Estate. **(Angela Affid, #8)**. Despite repeated requests, Sam denied Harold L. Young, II access to the property and records of the Funeral Home on the basis that that Sam was the sole shareholder of the Funeral Home. This was the first time Sam had ever represented to any of Chellie’s children that he had an ownership interest in the Funeral Home. **(Id)**.

On **February 22, 2018**, a Subpoena Duces Tecum was issued by the Nixon Estate to Sam seeking “All documents which evidence the transfer of ownership of Young and Young Funeral Home, Inc: from Harold Young to Samuel L. Davis or the current owner(s) of Young and Young Funeral Home, Inc.” **(Angela Affid., Exh C)**

Due to Sam’s non-response to the Subpoena, the Nixon Estate filed a Motion Seeking Order and Rule to Show Cause against Mr. Davis. **(Angela Affid., Exh D)**.

The hearing on the Rule to Show Cause was scheduled **December 14, 2020**.

Shortly before the December 14, 2020 hearing on the Rule to Show Cause, Carolyn Cranford Johnson (hereinafter “Carolyn”), then manager of the Funeral Home, did cause thousands of pages of Funeral Home records to be shredded and otherwise destroyed. **(Carolyn Depo, p 52, lines 4-15; p 54, lines 15-17)**. The records destroyed included ledgers, financial records, receipts, agreements, etc. that were dated prior to 2013. **(LaTonia Affid, #18; Sam Depo, p. 18, l. 2-7;**

Ernestine Depo., p. 39, l. 20 thru p. 40, l. 3). Carolyn also instructed other employees of the Funeral Home to assist her in the destruction of such records. (**LaTonia Affid. #18-21**). At the time these records were destroyed, there was a pending Subpoena that had sought the production of documents relating to the ownership of the Funeral Home, which would have been included in the records destroyed by Carolyn. (**Angela Affid., Exh C**)

The Summons and Complaint was filed **November 16, 2021** and asserts two (2) causes of action: (i) Declaratory Judgment as to the ownership of the Funeral Home; and (ii) claim of Fraud against Samuel L. Davis for falsely asserting sole ownership of the Funeral Home.

In mid to late-2022 (2 years after the original Subpoena was issued asking for evidence of ownership), Respondent produced a corporate book which contained **unsigned** Stock Certificates purporting to reflect the transfer of stock in the Funeral Home from Chellie Nixon to Samuel L. Davis. None of the corporate documents are signed by Chellie Nixon.

During the litigation, depositions of the following individuals were taken:

- Samuel L. Davis – the Respondent;
- Ernestine Boston – Former spouse of Samuel L. Davis;
- Carolyn Johnson – Current manager of the Funeral Home; and
- Payton Warren – Accountant for the Funeral Home.

To date, there exists **no** documents signed by Chellie Nixon assigning or transferring any interest in the Funeral Home to Samuel L. Davis.

ARGUMENT

I. THE COURTS FAILED TO CONSIDER, OR EVEN REFERENCE, THE SPOILATION OF EVIDENCE AND OTHER EVIDENCE PRESENTED AT THE ORIGINAL HEARING

The primary issue in dispute in this matter is the ownership of the Funeral Home as of the date of Chellie Nixon's death (**February 14, 2017**). Appellant contends that Chellie was the sole owner of the Funeral Home at the time of her death, while the Respondent contends that Sam was the sole owner at the time of Chellie death. (**Complaint; Answer**).

By subpoena dated **February 22, 2018**, Samuel L. Davis was requested to produce "All documents which evidence the transfer of ownership of Young and Young Funeral Home, Inc. from Harold Young to Samuel L. Davis or the current owner(s) of Young and Young Funeral Home, Inc." (**Angela Affid., Exh C**)

Due to Samuel L. Davis non-response, the Nixon Estate filed a Motion Seeking Order and Rule to Show Cause. (**Angela Affid., Exh D**).

The hearing on the Rule to Show Cause was scheduled to be heard by the Probate Court on **December 14, 2020**. Prior to the hearing date, a letter was received from James C. Cox, Jr., attorney for the Funeral Home, which letter enclosed the following documents:

- Certificate of Dissolution of Young Funeral
- Young Funeral Balance Sheet as of 3/31/1982
- Affidavit of Frank Hough
- Affidavit of Iva Hodge
- Affidavit of Sam Davis

(**Sam Depo, Exh. 6**). The corporate documents for Young and Young Funeral Home, Inc.

were **not** produced.¹

Prior to the December 14, 2020 hearing, Carolyn Cranford Johnson, as manager of the Funeral Home, along with other employees of the Funeral Home, did shred and otherwise destroy thousands of pages of Funeral Home records, which included ledgers, financial records, receipts, agreements, etc. that were dated prior to 2013. (**Carolyn Depo, p 52, lines 4-15; p 54, lines 15-17; LaTonia Affid, #18; Sam Depo, p. 18, l. 2-7; Ernestine Depo., p. 39, l. 20 thru p. 40, l. 3**). According to Sam's daughter, LaTonia M. Davis (hereinafter "LaTonia"), an employee of the Funeral Home, the records that were destroyed included "...documents for the Funeral Home dating as far back as the 1950s, and included corporate records, receipts, agreements, etc. for the Funeral Home and its operations." (**LaTonia Affid, #19**). At the time these records were destroyed in 2020, there was a **pending Subpoena** that had sought the production of documents relevant to the ownership of the Funeral Home, which would have been included in the financial records that were destroyed. (**Angela Affid., Exh C**)

During Carolyn's sworn deposition taken **February 17, 2023**, Carolyn admitted to the destruction of the Funeral Home records, but claimed they did not include financial records. (**Carolyn Depo, p. 52-55**). However, this was disputed by various employees of the Funeral Home who had personal knowledge of the records being maintained at the warehouse where the Funeral Home records were being stored. (**LaTonia Affid, #18; Sam Depo, p. 18, l. 2-7; Ernestine Depo., p. 39, l. 20 thru p. 40, l. 3**). There were so many documents destroyed that a utility van had to be rented in order to remove the numerous trash bags of documents to be taken offsite for shredding. (**Carolyn Depo., p, 86, lines 10-19**). Carolyn admitted that she was aware of the subpoena prior to

¹ The corporate book for the Funeral Home was not produced until mid to late 2022.

her destruction of these records. (**Carolyn Depo p., 70, l. 5-10; p. 71, lines 2-4**).

A **Motion for Sanctions for Spoilation of Evidence** was filed **February 21, 2023** after discovery of Carolyn's actions. (**Motion for Sanctions**). As set forth in the Motion, in light of the intentional spoilation of evidence relevant in this matter, which records were subject to a legally issued subpoena, Appellant requested an inference be made by the Court that the records destroyed **included** evidence and/or information that would have supported Appellant's contention that the Funeral Home as solely owned by Chellie] at the time of her death, or in the alternative, that Sam had never owned, nor received, any ownership interest in the Funeral Home. Appellant requested the Respondent's pleading be stricken in its entirety which was consistent with prior South Carolina rulings. *See QZO, Inc. v. Moyer*, 358 S.C. 246, 258 (Ct.App.2004)(affirming the circuit court's decision to strike appellant's pleadings after appellant destroyed relevant evidence); *Cole Vision Corp. v. Hobbs*, 394 S.C. 144 (S.C. 2011)(recognizing remedies available to parties for spoilation of evidence, including striking of pleadings).

During the original hearing held June 1, 2023 on Respondent's Motion for Summary Judgment, Appellant discussed in detail the intentional destruction of Funeral Home records by Carolyn and the inferences necessarily to be drawn from such action. (**6/1/23 Hearing Transcript, p. 26, l. 22 thru p. 28, l. 17; p. 33, l. 1 thru p. 35, l. 8**). Despite Appellant's arguments, the Probate Court did not even mention the issue of spoilation of evidence in its final Order granting Respondent's Motion for Summary. (**Order dated July 17, 2023**).

This spoilation of evidence was again raised, and emphasized, during the appeals hearing before the Marion County Circuit Court on January 29, 2024. (**1/29/24 Hearing Transcript, p. 7, l. 19-25; p. 11, l. 8 thru p. 13, l. 4; p. 18, l. 11-21; p. 19, l. 8-16; p. 19, l. 25 thru p. 20, l. 9; p. 25, l.**

11 thru p. 26, l. 5). The Circuit Court affirmed the Probate Court's ruling without discussion of the basis for the ruling. **(Order dated February 8, 2024).**

In failing to take into account the spoliation of evidence and the negative inference arising therefrom, each of the Probate Court and Circuit Court erred in their respective rulings. At a minimum, the negative inferences arising from the spoliation of evidence e.g. that there existed evidence to support Appellant's claim or refute Respondent's claim, or both, creates a genuine issue of material fact as to the legal ownership of the Funeral Home sufficient to overcome Respondent's Motion for Summary Judgment.

II. GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER CHELLIE NIXON DID, IN FACT, ASSIGN AN INITIAL 35% INTEREST IN THE FUNERAL HOME TO SAMUEL L. DAVIS FOR NO CONSIDERATION.

According to the South Carolina Probate Code, a Decedent's interest in real estate "...devolves to the persons to whom it is devised by his last Will...or in the absence of testamentary disposition, to his heirs..." S.C. Code Ann. §62-3-101.

Harold L. Young, founder of the Funeral Home, died December 1978, and was survived by a spouse Dorothy J. Young, and one child Chellie Nixon. No probate estate was opened for Harold, however, he did execute a Last Will and Testament leaving his entire estate to his spouse, Dorothy. **(Sam Depo, Exh. 1).** Notwithstanding, under the intestate provisions of South Carolina Probate Code, Harold's interest in the Funeral Home devolved to his surviving spouse and daughter, in equal shares. Therefore, after Harold's death, the Funeral Home was owned by Dorothy and Chellie, as 50/50 owners therein.

Dorothy subsequently died intestate on January 16, 1979 and was survived solely by her daughter Chellie. **(Sam Depo, Exh. 2).** Under the intestate provisions of South Carolina Probate

Code, Dorothy's interest in the Funeral Home devolved unto her only child, Chellie. Therefore, Chellie became **sole** owner of the Funeral Home after her mother's death.

During Sam's sworn deposition taken May 4, 2022, Sam admitted the following:

- Harold executed a Last Will and Testament that left everything to his spouse, Dorothy (**Sam Depo, p. 19, l. 14 thru p. 20, l. 5**);
- As a result of Dorothy's death, Chellie, as sole heir to Dorothy's estate, inherited the Funeral Home (**Sam Depo, p. 23, l. 21-24; p. 28, l. 8-11**);
- When asked to explain how he received 35% interest in the Funeral Home, Sam referenced a meeting in which he overheard Harold and others discussing transferring ownership of 35% to Sam. However, Harold died before executing the transfer. (**Sam Depo, p. 33, l. 16 thru p. 34, l. 4**);
- Sam later changed his story to state that it was Chellie who voluntarily transferred the 35% to Sam. However, Sam acknowledged that there was nothing signed by Chellie reflecting this transfer and that he was not aware of any document signed by Chellie transferring the 35% to Sam. (**Sam Depo, p. 35, l. 6 thru p. 36, l. 1; p. 41, l. 2-11.**)

To date, there exists no documents signed by Chellie purporting to transfer any interest in the Funeral Home to Sam. In addition, according to Chellie's family, at no time had Chellie ever represented to anyone, including her own children, that she had transferred any interest in the Funeral Home to anyone, much less Sam (**Angela Affid, #4**). As such, by and through her inheritance, Chellie was sole owner of the Funeral Home at the time of her mother's death in January 16, 1979, which continued through her death on February 14, 2017 (**Angela Affid., #5-6, 12-14**).

Based upon the evidence produced by the parties thus far, at a minimum, there exists a genuine issue of material fact as to the **initial 35%** that Sam claims he received from the “Young Family”. While Sam subsequently changed his story as to how he received the 35% (first, via overhearing Harold speak about it in a meeting which was never legally completed, then by Chellie voluntarily transferring the 35% to Sam), there exists no documents signed by Chellie confirming such transfer. Furthermore, evidence exists to contradict this uncorroborated claim. At a minimum, there exists evidence to create a genuine issue of material fact as to the initial 35% purportedly received by Sam from Chellie sufficient to overcome Respondent’s Motion for Summary Judgment.

III. GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO WHETHER SAMUEL L. DAVIS DID, IN FACT, PURCHASE THE REMAINING 65% IN THE FUNERAL HOME FROM CHELLIE NIXON FOR \$ 65,000

There also exists a genuine issue of material fact as to the subsequent transfer of Chellie Nixon’s remaining 65% interest in the Funeral Home to Samuel L. Davis.

According to Sam, his purchase of Chellie Nixon’s 65% interest occurred during a special meeting held March 19, 1982 attended by Sam, Chellie and Ernestine Boston (Sam’s spouse). **(Sam Depo, p. 49, l. 19 thru p. 50, l. 25)**. It was at this meeting that Chellie allegedly agreed to accept the sum of \$65,000 from Sam for the purchase of her 65% interest in the Funeral Home. According to Sam, a “certified check payable to Chellie Y. Mack were given to Saleeby. Saleeby, in turn, gave it to her, and her to sign...” . **(Id.)**

To date, no documents exist reflecting actual receipt by Chellie Nixon of the \$65,000 payment, **nor any document signed by Chellie** evidencing the transfer of the 65% interest in the Funeral Home to Sam. Instead, Respondent relies upon an alleged “corporate book” that was

produced in mid to late-2022 (2 years after the original Subpoena was issued asking for evidence of ownership), which corporate book contained **unsigned** Stock Certificates purporting to transfer interest in the Funeral Home from Chellie to Sam.

During the sworn deposition of Ernestine Boston (hereinafter “Ernestine”) taken **February 17, 2023**, Ernestine testified that she had no knowledge or recollection of the alleged March 1982 meeting, nor of Sam’s purchase of Chellie’s 65% interest for 65,000. (**Ernestine Depo, p. 43, l. 5-9; p. 50, l. 4-7; p. 54, l. 2 thru p. 56, l. 14; p. 59, l. 18 thru p. 60, l. 11**) When asked about “Meeting Minutes” she allegedly signed regarding the March 1982 meeting, she testified that while the document looked like it contained her signature, Ernestine did not recall signing the Minutes, attending the meeting, nor even being present when the purported transaction occurred. (**Id.**) Furthermore, Ernestine testified that it was possible that the meeting did not occur at all, and that the transaction never happened, notwithstanding the documents she signed in this matter. (**Id.**) As an explanation of why she signed these documents, Ernestine testified that, during the pendency of this lawsuit, she was forced to sign documents, including her Affidavit, **under duress** and that statements contained in the documents she has signed, including her Affidavit, were not, in fact, true. (**Ernestine Depo, p. 43, l. 12 thru p. 44, l. 12; p. 46, l. 9 thru p. 47, l. 1**).

According to Chellie’s daughter, Angela D. Young (hereinafter “Angela”), Chellie had never represented to her, or anyone else, at any time, that she had transferred or sold her interest in the Funeral Home to anyone, much less Sam. (**Angela Affid., #4-6, 12-14**).

It is undisputed that Chellie became sole owner of the Funeral Home after her late mother’s death in January 1979, thus, the burden shifted to the Respondent to prove Sam’s legal ownership of the Funeral Home. As set forth above, the evidence simply do not support his position that he

was the sole owner of the Funeral Home at the time of Chellie's death. At a minimum, Appellant presented evidence to create a genuine issue of material fact as to the purported purchase of Chellie's 65% interest by Sam sufficient to overcome Respondent's Motion for Summary Judgment.

IV. RESPONDENT IS NOT ENTITLED TO A JUDGMENT AS A MATTER OF LAW IN LIGHT OF THE EVIDENCE PRESENTED

By and through the intestacy laws of South Carolina, Chellie became sole owner of the Funeral Home after her late mother's death on January 16, 1979.. As such, the legal ownership of the Funeral Home as of Chellie's death is the primary issue of material fact in this case, which involve the initial purported gift of 35% by Chellie to Sam, followed by Sam's purchase of the remaining 65% from Chellie.

The original hearing on Respondents' Motion for Summary Judgment was held **June 1, 2023**. At the hearing, Petitioner presented the above arguments in opposition to Respondent's Motion for Summary Judgment, making specific reference to, and discussion of, the following evidence in support of its argument:

- Deposition of **Payton Warren** taken January 28, 2022;
- Deposition of **Samuel Davis** taken May 4, 2022;
- Deposition of **Carolyn Johnson** taken February 17, 2023;
- Deposition of **Ernestine Boston** taken February 17, 2023;
- Affidavit of **LaTonia M. Davis** dated January 2, 2023;
- Affidavit of **Angela D. Young** dated January 6, 2023
- Exhibits attached to Memorandum in Opposition to Defendant's Motion for Summary

Judgment dated February 21, 2023

By Order dated July 17, 2023, Judge Atkinson granted Respondent's Motion for Summary Judgment. (**Order dated July 17, 2023**). The Order failed to consider, or even reference, **most** of the evidence presented by Respondent at the hearing, which evidence related directly to the issue of legal ownership of the Funeral Home. The Probate Court did not even mention the Spoilation of Evidence by and through Respondent's intentional destruction hundreds of thousands of pages of Funeral Home records during the pendency of this action, which documents likely included information relevant to the issues in dispute in this matter. The spoilation of evidence was extensively discussed and highlighted not only at the original hearing, but was also discussed extensively at the appeals hearing before the Circuit Court. (**6/1/23 Hearing Transcript, p. 26, l. 22 thru p. 28, l. 17; p. 33, l. 1 thru p. 35, l. 8**); (**1/29/24 Hearing Transcript, p. 7, l. 19-25; p. 11, l. 8 thru p. 13, l. 4; p. 18, l. 11-21; p. 19, l. 8-16; p. 19, l. 25 thru p. 20, l. 9; p. 25, l. 11 thru p. 26, l. 5**).

Because both Courts apparently failed to consider the substantial evidence presented to them relating to the genuine issue of material fact, e.g. legal ownership of the Funeral Home, each Court erred in granting, and affirming, Respondent's Motion for Summary Judgment.

CONCLUSION

Based on the evidence presented to the Probate Court, as reiterated and argued again during the appeals hearing before the Marion County Circuit Court, **at a minimum**, Appellant presented sufficient evidence that a genuine issue of material fact exists as to the legal ownership of the Funeral Home. Furthermore, based upon the evidence submitted, the Respondent has not shown that it is entitled to a judgment as a matter of law on the issue of the ownership of the Funeral

Home.

For the reasons stated, this Court should **reverse** the original Order Granting Summary Judgment issued by the Marion County Probate Court and remand this matter to the Probate Court for a final hearing on the merits.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DBL', is written above a horizontal line.

Danny V. Butler, Esq.
SC Bar No. 72791
4420 Oleander Drive, Ste 203
Myrtle Beach, SC 29577
(843) 808-9224
Attorney for Appellant

May 13, 2024

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

H. Steven DeBerry, IV, Circuit Court Judge

Case No. 2023-CP-33-00472

RECEIVED

MAY 16 2024

SC Court of Appeals

Angela D. Young, as Personal
Representative for the Estate of
Chellie Nixon,

Appellant,

v.

Carolyn Johnson, as Personal
Representative for the Estate of
Samuel L. Davis,

Respondent.

PROOF OF SERVICE

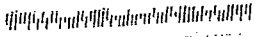
I certify that I have served the **Brief of Appellant** and the **Designation of Matter to Be Included in the Record on Appeal** on the Respondent Carolyn Johnson, as Personal Representative for the Estate of Samuel L. Davis, by depositing a copy of said Brief and Designation in the United States Mail, postage prepaid, on May 13, 2024, addressed to its attorneys of record, J. Rene Josey and Jeffrey L. Payne, Post Office Box 5478, Florence, South Carolina 29502-5478.

May 13, 2024



Danny V. Butler, Esq.
4420 Oleander Drive, Ste 203
Myrtle Beach, SC 29577
(843) 808-9224
Attorney for Appellant

REGISTERED MAIL



7022 2410 0003 3612 4799



BUTLER LAW

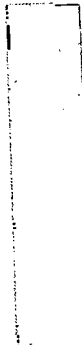
4420 OLEANDER DRIVE, STE 203
MYRTLE BEACH, SC 29577

RECEIVED

MAY 16 2024

SC Court of Appeals

SOUTH CAROLINA COURT OF APPEALS
ATTN: JENNY ABBOTT KITCHINGS, CLERK OF COURT
PO Box 11629
COLUMBIA, SC 29211



May 13, 2024

Danny V. Butler

VIA CERTIFIED MAIL

dbutler@butterlaw.net
T (843) 808-9224
F (843) 781-6870

South Carolina Court of Appeals
Attn: Jenny Abbott Kitchings, Clerk of Court
PO Box 11629 Columbia, SC 29211

Re: Angela D. Young, as Personal Representative for the Estate of Chellie Nixon, Appellant, v. Carolyn Johnson, as Personal Representative for the Estate of Samuel L. Davis, Respondent

Case No. 2023-CP-33-00472

RECEIVED

MAY 16 2024

SC Court of Appeals

Ms. Kitchings -

Enclosed for filing are the following documents in the above case:

1. Brief of Appellant;
2. Designation of Matter to Be Included in the Record on Appeal; and
3. Proof of Service of the same

Thank you kindly for your assistance in this matter.

Respectfully,



Danny V. Butler, Esq.
4420 Oleander Drive, Ste 203
Myrtle Beach, SC 29577
(843) 808-9224
Attorney for Appellant

Enc.

Cc: J. Rene Josey, Esq.
Jeffrey L. Payne, Esq.
Post Office Box 5478
Florence, SC 29502-5478
Attorneys for Respondent

Mailing Address:

Butler Law
4420 Oleander Drive, Ste 203
Myrtle Beach, SC 29577

www.butterlaw.net