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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable Daniel D. Hall
Circuit Court Judge

Appellate Case No. 2023-001398

Sherry Killian Duncan,
Appellant,

vs.

Gurdip S. Gill a/k/a Gary Gurdip a/k/a Gary Gurdip Gill,

Respondent.

RESPONDENT'S INITIAL BRIEF

May 17, 2024

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STATEMENT OF THE CASE

Appellant commenced this action with the filing of a summons and complaint, alleging breach of contract, breach of contract by fraudulent act, quantum meruit, action to reform title – fraud and fraudulent inducement, foreclosure of a mechanics lien and action for temporary and permanent injunction. (Pleadings, filed June 18, 2019). The Appellant did not serve the Respondent with the pleadings but served some other person at another business. Appellant then moved before the court and obtained a judgment of default against the Respondent and the court entered a judgment in the monetary amount of \$65,525 and ordered the clerk of court to issue a deed conveying ½ interest in the property, 445 Rainbow Circle, Clover, S.C. to the Appellant. The Appellant did not serve the Respondent and asserted proper service at a business, and wrongfully relied on substitute service, all of which was improper. When Respondent discovered what had occurred, Respondent hired counsel and filed a motion, pursuant to rule 60(b) SCRPC, to set aside the judgment and to have the property re-conveyed. (Motion) The Appellant’s counsel consented to an order, reconveying the property nunc pro tunc to the Respondent, and setting aside the judgment. (Order)

The Appellant then filed a new complaint on September 14, 2020 alleging breach of contract, breach of contract by fraudulent act and quantum meruit. (Complaint, September 14, 2020). The allegations of the complaint alleged the Respondent did not pay the Appellant for her services and labor on the property. Respondent filed an answer to the complaint on October 2, 2020, denying the allegations of the complaint and asserting the affirmative defenses of payment, accord and satisfaction, estoppel and statute of frauds. (Answer, October 2, 2020). Respondent filed a motion to amend the answer on September 10, 2021, to assert an

additional affirmative defense and attached a copy of his proposed amended answer. (Motion filed September 10, 2021). The court granted the Respondent's motion to amend, and the order was filed November 11, 2021. Respondent filed and served the amended answer to the amended complaint on November 12, 2021, now including that the action was barred pursuant to the S.C. Residential Builder's Statute requiring the Appellant to have a specialty contractor's license pursuant to S.C. Code 40-59-20. The Appellant filed an order of substitution of counsel on November 3, 2021. Respondent filed a proposed second amended complaint on December 9, 2021, alleging breach of contract, breach of contract by fraudulent act, constructive trust and recovery of betterments. The new lawsuit set forth different facts than the original lawsuit and different theories of recovery, as well as similar theories of recovery. (Second Amended Complaint). Respondent then filed a motion to allow the second amended complaint on January 11, 2022.

The court allowed the second amended complaint in an order filed March 25, 2022 (Order). The Respondent filed an answer and counterclaim on April 4, 2022. The answer and counterclaim included denials, affirmative defense of accord and satisfaction, a bar pursuant to the South Carolina Residential Builder's Statute as it relates to a specialty contractors licensure requirement, statute of frauds and lack of consideration. (Answer and Counterclaim). The Appellant filed a reply to the counter claim on April 4, 2022, and asserting a general denial. (Reply).

Respondent filed a motion for summary judgment on October 19, 2022. (Motion for Summary judgment) The Respondent requested a judgment asserting that the evidence which had been produced, failed to establish the existence of a contract, which included a

meeting of the minds. The Respondent further asserted that there was no evidence of a breach of contract by fraudulent act. Respondent further asserted that the alleged third cause of action, constructive trust, is a remedy and not a cause of action. The Respondent further asserted that the evidence which the Appellant provided did not fall within the betterment statute. After a hearing on November 16, 2022, the court issued a slip order, denying the motion for summary judgment. (Order, 2/10/20)

The case came before the court for a trial on July 10 to 12, 2023. (Transcript of trial). Respondent provided the court with a pre-trial brief. (Respondent's pretrial brief). The court took testimony from the Appellant and her witnesses, and at the end of the Appellant's case, Respondent made a motion for a directed verdict on the record. (Transcript pp 296 to 328). The court granted the motion for a directed verdict on the record and issued a slip order which was filed on July 12, 2023. Appellant filed a motion to alter or amend, and after hearing arguments on August 7, 2023, the court denied the motion and issued the Form 4 Order. (Transcript, pages 1-17 and Order of August 7, 2023).

STATE OF FACTS

The Respondent purchased property of 445 Rainbow Circle, Clover, South Carolina on November 30, 2018. The Respondent paid \$93,000 for the purchase of this property. (Deed, Appellant Ex. 1, R. p 189, lines 3 -6). Respondent subsequently hired Havana contractors to make renovations to the home. After they began working, it became apparent that their work was deficient, and Respondent fired Havana. (R. p. 82, line 3 to p. 84, line 20) Respondent hired the Appellant to paint the home and hired and paid numerous other individuals to perform work on the property. Those individuals included Quintin Deal, Scott Falls, Joe Litten, Robert

McGill. (R. pp. 101, line 7 0 p. 102, line 3; l 110 line 20 to p 111, line 4; 112 line 17 to 115, line 2; 119, line 23 to p. 120, line 2; 120, lines 8-18; 162 line 19 to p. 163, line 22; 168, lines 2 to 11 and lines 16-24; 170, lines 9 to p. 171, line 6; p. 244 line 25 to p. 246, line 19). Respondent hired and paid each one of these individuals and others as well as paid the Appellant. (R. pp. 204 to 217) Respondent also reimbursed Appellant pursuant to her requests. Respondent paid Appellant on April 23, 2019, \$2000.00 and on May 20, 2019 \$1100.00. Appellant wrote on the May 20, 2019 check "Second Draw work for Rainbow house." Respondent did not put that in the memo line. (R. P. 210, line 14 to p. 211, line 2)

Respondent paid the purchase price for the home and all monies for all improvements to the property. Appellant also sought Respondent's permission before she bought anything for the home and used the Respondents credit card for the purchase of items. (R pp. 214- 215) Appellant acknowledged that anything she did needed to be cleared with the Respondent beforehand because he had total control. (R. p. 214, line 25 to p 215, line 6). Appellant asserts that she did all these various improvements to the home but on cross-examination, it became clear that Respondent hired individuals to do the work. Appellant was taking photos of the work.

The Appellant asserts that a joint venture existed but did not produce any evidence of a meeting of the minds which created a joint venture. Appellant called Jessica Killian and her testimony did not establish any meeting of the minds. In fact, Killian testified that Appellant wanted to look at the house first. (R. p. 286, line 24 to p. 287, line 6). Ricky McGill substantiated the fact that he performed work with his equipment on the property, saw Respondent at the property and Respondent paid him for the work. (R. p. 247, lines 10-11).

Scott Killan, who was another witness for Appellant, did not have any information or testimony relating to any agreement between the parties. The only testimony about an alleged agreement came solely from the Appellant. Appellant did not have any documentation or evidence of any agreement. Appellant did not have any emails or text messages to substantiate an agreement of a joint venture or acknowledging the existence of the same. Respondent had Appellant's text messages marked for identification and Appellant acknowledge there was nothing in writing to substantiate her claims. (R. 189, line 20 – p. 190, line 9)

After her deposition, Respondent filed the motion to amend the pleadings to assert the Appellant did not hold a South Carolina residential specialty license, and therefore was barred pursuant to the statutes from bringing any action at law or in equity, as it relates to compensation for providing labor or services for the improvement of real estate. At trial, Appellant acknowledged not having a license. (Tr. p. 200, line 17 -21).

The original complaint alleged the contract and the breach of contract is based upon the Respondent not paying the Appellant for her services. The Appellant also alleged in the original complaint that the Respondent secretly acquired title to the property, excluding the Appellant from the deed and unbeknownst to her. Appellant also sought to foreclose on a mechanics lien she had filed against the property. (Complaint) The default judgment originally granted was a judgment for a monetary amount and included a clerk's deed. (Order) The judgment was set aside. (Order) The Appellant's second complaint again alleged that the breach of contract was failure to pay the Appellant for labor and services. (Amended Complaint) After the Respondent amended the defenses to include the lack of a license as a bar to this action, the Appellant filed the second amended complaint changing the theory, although still alleging a breach of contract

but made the breach the joint venture agreement. The Appellant's theory in the second amended complaint focuses on the breach being the joint venture in real estate and not the failure to pay for labor and services. The Appellant also added a claim for recovery pursuant to South Carolina's betterment statute. (Second Amended Complaint)

At trial, the Appellant focused on the amount of work she allegedly performed on the property. She did not call the Respondent as a witness. The Appellant presented no evidence of any joint venture outside of her own assertions, unsupported by documents or testimony of any third-party. The Respondent moved at the end of the Appellants testimony, for the court to direct the verdict, and specifically set forth that there was no evidence of a joint venture, the Appellant failed to demonstrate damages, failed to demonstrate the terms of any alleged contract, that her claims were barred by the South Carolina Code section 40-59-20, et seq. Further, Appellant did not qualify as an individual who is entitled to relief pursuant to the South Carolina betterment statute. (Tr. p 200). After allowing the parties to argue, the court did grant the motion and set forth on the record the reasoning for granting the directed verdict as to each cause of action. (Tr. pp 323 to 328).

As it relates to the appeal, in the pre-trial motion in limine, the Appellant objected to the contract she presented to the Respondent. During her cross-examination, she did not object to the contract or questions about the contract. (R. p. 191, line 1 to p. 193, line 18) The Appellant prepared the contract for the Respondent to pay Appellant for her services and not for a joint venture or any interest in the land. The court further found that, considering all the evidence in light most favorable to the Appellant, there was insufficient evidence for the jury to find that a joint venture existed. In addition, the trial court further found that the issue of

damages was not sufficiently demonstrated to the jury and the amount of damages would be conjecture based upon the evidence in the record at that time. (Tr. pp. 325-327) Although the Appellant set forth she was entitled to ½ of the net profit, she testified that Respondent paid everything including multiple subcontractors, herself, all upkeep but never presented any evidence as to what the net amount would be or how to calculate the net amount. (TR. pp. 203, line 23 to P. 217, line 19). Appellant testified that she wanted to get paid for her labor. (R. 185, lines 6 -12). Appellant filed the motion to alter and for a new trial, arguing the same things. The court upheld the decision directing a verdict.

STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly grant a directed verdict on all the causes of action, finding that the evidence appellant provided failed to raise a reasonable inference that she was entitled to relief on any theory as she failed to provide proof of elements of each cause of action?
2. Did the appellant preserve for review any alleged Rule, 408 evidence, having not objected to the evidence during the trial?
3. Did the appellant preserve or argue any evidentiary issues relating to hearsay testimony, having failed to identify and brief any specific alleged erroneous ruling?

STANDARD OF REVIEW

Appellant is seeking the reversal of a directed verdict in the case and requesting a new trial. "When considering a motion for a directed verdict, the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion, and [must] deny the motion when either the evidence yields more than one inference or its inference is in doubt. Estate of Carr ex rel Bolton v. Circle S Enters, Inc., 379 S.C. 31, 38, 664 S.C.2d 83, 86 (Ct. App. 2008). When reviewing the [circuit] court's decision on a motion for directed verdict, this court must employ

the same standard as the [circuit] court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” McKaughan v. Upstate Lung & Critical Care Specialists, P.C., 421 S.C. 185, 189, 805 S.E.2d 212, 214, (Ct. App. 2017).” The appellate court will reverse the circuit court’s ruling on a directed verdict motion only when there is no evidence to support the ruling or when the ruling is controlled by an error of law. Estate of Carr, 379 S.C. t 39, 664 S.E.2d at 86. As the court set forth in Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006), the court must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party’s favor. An appellate court will affirm the granting of a directed verdict in favor of a Respondent when there’s no evidence on any one element of the alleged cause of action.

In this case, the court properly granted a directed verdict on all of the causes of action. An analysis of the pleadings from the inception as well as the evidence at trial is important as will be set forth below. The court, considering all the evidence in light most favorable to the Appellant, properly concluded that the Appellant did not establish and present facts as to all the elements of each of her claims.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED A DIRECTED VERDICT ON ALL CAUSES OF ACTION

Before analyzing each cause of action as existed at trial, it is also important to analyze the prior pleadings which existed in this case which also supports the Respondents position that the case should have been dismissed. The Appellant’s first complaint alleged breach of contract and based the breach upon failure to pay for labor, services and materials to the real property.

The Appellant asserted that the Respondent secretly acquired title to the property and unilaterally excluded her from the deed. The second cause of action for breach of contract by fraudulent act alleged the fraudulent act was acquiring the property without the Appellant's knowledge. The third cause of action was for quantum meruit dealing with Appellant's labor and services allegedly improving the property. Her fourth cause of action was to reform the title, and then she brought a fifth cause of action to foreclose on a mechanics lien. The Appellant obtained a default judgment for damages on those pleadings, but she agreed to have it set aside because she never served it on the Respondent. The theories of recovery rested upon not being paid for labor and services.

The Appellant's second complaint alleged a joint venture but alleged that the breach was to not properly pay her for her services. The second cause of action was for breach of contract a fraudulent act and she again alleged that the acquisition of the property and failing to pay her for her services constituted the breach of contract by fraudulent act. She also included a claim for quantum meruit for her services. All claims were based upon being paid for her labor and services when the property sold and not an interest in the property.

When Respondent asserted a bar to recovery pursuant to South Carolina Code Section 40-59-20, et seq which required her to have a license before bringing any action at law or in equity for the recovery of labor and services, Appellant hired new counsel, and revamped her theory.

In the second amended complaint, the Appellant focuses on an allegation that the breach was failure to title the property and to proceed with a joint venture. The second amended complaint alleges the Appellant now knew she did not have title to the property. The

Appellant then attempts to frame an alleged agreement by saying she worked on the property and her work establishes a joint venture where the two parties were to split net profits. The Appellant never set forth any specific terms of the alleged joint venture upon which the first and second cause of action relied. The third cause of action is a remedy wherein the Appellant sought to impose a constructive trust on the sales proceeds. The Appellant then attempts to assert a claim under the South Carolina betterment statute, 27-27-10 to try to obtain monies allegedly for the value of the improvements.

Respondent raises this issue directly because it is contrary to the facts the Appellant presented prior to the Respondent's affirmative defenses foreclosed recovery. The Appellant hired different counsel and replead the case trying to avoid the affirmative defenses and the law which would bar recovery. The Appellant tries to rewrite the facts to fit a theory of recovery.

A. The Appellant failed to present elements for the breach of contract causes of action as there was no evidence to support the existence a joint venture or the amount of damages.

The Appellant's first and second causes of actions are dependent upon proof of a joint venture. To establish a joint venture, the Appellant had to show an agreement between two parties, wherein each enjoys an equal right of control as to the conduct of the other, regarding their common purpose. **Golson v. Thorne**, 288 S.C. 463, 343 S.E.2d 451 (Ct. App. 1986). In **Golson**, the trial court found the element of control absent in the agreement between the two parties. The Court of Appeals set forth that the record supported the trial judge's findings. One party testified the agreement in no way limited the other party as to how he wants to proceed

or develop sales. Similarly, the court in Peoples Federal Savings and Loan Association v. Myrtle Beach Golf and Yacht Club, et. al., 310 S.C. 132, 425 S.E.2d 764 (Ct. App. 1992), discusses the issue of a joint venture. The court set forth a joint venture exists “where there are two or more persons united in a joint prosecution of a common purpose under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means and the agencies employed to execute such common purpose. Further, in order to constitute a joint enterprise, there must be a common purpose and community of interest in the object of the enterprise, and an equal right to direct and control the conduct of each other with respect thereto.” Id. at 147 and at 774.

The Appellant in her brief references numerous times to the record as to the work she performed on the property. In cross-examination, Appellant acknowledged that most of the work, other than the painting and preparation for painting, was performed by third parties. (Tr. pp 205-217; pp. 81-85; pp. 102- 122; 136; 138; 139; 162- 170). The Appellant further acknowledged that before she made any decisions, she had to receive and get approval for everything from Respondent. (Tr. pp 214- 215) She had to get permission on what to buy even though she had Respondent’s credit card. Respondent paid for all the materials, reimbursed Appellant for everything even for her gas, paid for the purchase of the property, paid all the contractors who worked on the home. (Tr. pp 205- 211) Finally, Appellant testified that she only wanted to be paid for her labor. (Tr. p. 185)

Appellant had no interest in the real estate. She is attempting to assert an interest in the real estate by claiming a joint venture, and this is barred as a matter of law, pursuant to the statute of frauds. An agreement relating to title to property must be in writing, pursuant to the

Statute of Frauds, and cannot be enforced. This entire transaction revolves around the claim that Appellant has an interest in the real estate. The first complaint alleged she did not know Respondent had purchased and titled the property in his name. This was not true as Appellant knew before doing any work that the Respondent owned the property in fee. The second amended complaint tries to avoid this issue of the Statute of Frauds by stating it is not an interest in the real estate but an interest in a joint venture which really is the real estate. Appellant has not produced any evidence to demonstrate performance of any agreement on the part of Respondent. The evidence which Appellant relies upon are her self-serving statements. In today's world of technology, all of her text messages failed to have one reference to the joint venture or the joint venture agreement. (Respondent's Exhibit 1; Tr. pp 189-191). The only reference to an agreement is the contract which Appellant submitted to the Respondent and Respondent never signed. The contract was for payment for services and not as to a joint ownership or venture. (Tr. pp 191-194 and Respondent's Exhibit 2).

As set forth above, the failure of any element of a cause of action supports the trial court's decision to grant a directed verdict. The first and second causes of action are dependent upon the existence of a joint venture and since there is no proof of a joint venture, the trial court did not err in dismissing and directing a verdict as to those causes of action.

In addition to the inability to demonstrate any agreement to create a joint venture, the Appellant further fail to present evidence of damages. Although damages do not need to be proven to a mathematical certainty, they cannot be left to conjecture or speculation. See Collins Entertainment, Inc. v. White et al. 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005) cert denied 8/15/2006. (Generally, in order for damages to be recoverable, the evidence should be

such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Well, neither of the existence, causation, nor amount of damages, can be left to conjecture, guess, or speculation, proof with mathematical certainty of the amount or loss of damages is not required). In this case, Appellant testified at length of the Respondent paying not only her but others in addition to paying the purchase price. Appellant testified that Respondent paid various subcontractors, including Havana, Linton, McGill, Falls, for a new HVAC system for the climate control system, for new garage doors, for carpet to name a few. (Tr. pp 205-217; pp. 81-85; pp. 102- 122; 136; 138; 139; 162- 170) In addition, Respondent paid property taxes, utilities, and insurance on the property. Appellant presented no evidence of any of the amounts for these expenses. If she had an agreement and the agreement was to split the net profit, the Appellant did not present evidence to demonstrate the net profit. Damages are an element of both causes of action and therefore the directed verdict was proper as failure to demonstrate those damages.

Appellant further claims that she wanted to be paid for the value of her labor. (Tr. p. 185). Appellant presented no evidence to demonstrate the value of her labor. She did not present any evidence to quantify her labor or what her labor was worth. Appellant obviously knew that pursuant to South Carolina code section 40-59-20, she was required to have a specialty contractor's license to perform the services of drywall, carpentry, painter/wallpapers, and the other things to which she testified. The failure to have a license barred her from bringing an action at law or in equity to collect for any of her alleged services. See S.C. Code Section 40-59-30(B). Appellant acknowledge she did not have a license. (Tr. p. 200)

Appellant was paid for her services and her labor and was reimbursed for all of her expenses. Her attempts to obtain additional monies from the Respondent were just that, an attempt to obtain monies to which she was not entitled. The Appellant had no money invested in this property. Appellant knew before she did any work on the property that her name was not on the title. (Tr. p 189). Appellant attempted to get a contract signed but that contract was not for a joint venture, it was for payment for labor and services.

B. The Appellant's cause of action for the betterment is not supported by the law.

The trial court directed a verdict against the Appellant as to the South Carolina betterment statute, 27-27-10, et. seq. The statute is not applicable to the facts of this case as a matter of law. A plain reading of the statute sets forth as follows:

That after final judgment, in favor of the Plaintiff, in an action to recover lands and tenements, if the Defendant has purchased or acquired lands or tenements recovered in such action or taken a lease thereof, or those under whom he holds, have purchased, or acquired title to such lands and tenements, or taking a lease thereof, supposing at the time of such purchase or acquisition, such title, to be good in theory, or such lease to convey and secure the title and interest there in expressed, such Defendant shall be entitled to recover of the Plaintiff in such action, the full value of all improvements made upon such land by such Defendant, or those under whom he claims, in the manner provided in this chapter. S.C. Code 27-27-10.

The Appellant does not fall within the class of individuals protected under the statute. First, the Appellant is the Plaintiff in this action, not the Respondent. In addition, in order to fall within the province of those individuals protected, it requires that she should have held title to the property and then been sued and divested of title to the property. In the case of hand, Appellant acknowledge that she never had title to the property. She is claiming a joint venture, which failed a set forth above. If she is

claiming ownership or title to the property, that fails due to the Statute of Frauds. The trial judge addressed this in the motion for directed verdict.

Even if the Appellant were part of the class, she also failed to demonstrate the value of the improvements. Pursuant to 27-27-20, damages are measured as follows:

The sum which such land shall be found at the time of the rendition of such judgment, to be worth more, and consequence of the improvements, so made, then it would have been had no such improvement or betterments been made, shall be deemed to be the value of such improvement or betterments.

As it relates to this valuation, the Appellant testified that multiple other subcontractors performed labor on the property. The Appellant also acknowledged that the Respondent paid for everything associated with the purchase, the upkeep and the improvements.

The entire statutory scheme for betterments it is to protect a defendant who has title to the property and believed he validly had title to the property, is sued and the title to the property is taken from that Defendant. The statute protects a Defendant for improvements he makes while in possession thinking he had a good title while in possession and making the improvements. The Appellant does not fit within the statutory scheme as she knew she did not have title to the property while working on the property. In fact, this claim for betterments was added after the Respondent asserted the defense of lack of licensure as a bar to recovery.

As such, the trial judge did not air in directing a verdict as to the betterment statute, as the Appellant does not fit within the class of individuals protected, and the Appellant failed to present evidence to give rise to a reasonable inference that Appellant would be entitled to recovery under this claim.

- C. The Appellant failed to demonstrate that a constructive trust should be imposed.**

The Appellant failed to present evidence to support a joint venture which were his first and second theories for relief. Having failed to present evidence of a joint venture, the court cannot reach the issue of a constructive trust. The constructive trust depends upon a partnership (joint venture) existing and fiduciary duty existing. As the Appellant argues, a constructive trust is used to vindicate rights and justice, or to frustrate fraud. The Appellant has not demonstrated any fraud nor that her rights have been violated. She knew the property was not in her name. She did not have any agreement, written or verbal upon which she can assert a claim to title to the property. She was paid for her work. The Appellant must prove the Respondent obtained property through some fraudulent or bad act. This case really is a simple breach of contract claim and when Appellant filed her initial lawsuit, seeking compensation for labor and materials and a mechanics lien to try to foreclose upon the property, it was a claim for breach of contract. The remedy for a breach of contract is a monetary judgment not a constructive trust. Appellant did not present any evidence to support the imposition of a constructive trust. There was no fraud or misrepresentation. There was a disagreement on the compensation and the Appellant's initial theories of relief were barred and she is attempting to find a way around the statutes barring her recovery.

In Appellants brief, she sets forth that the "evidence before the court established, not only a partnership relationship, but a breach of the duties of the highest degree of good faith and actions of bad faith by Respondents, obtaining the property in his name, alone, and without notice to his partner." The Appellant does present any evidence to establish a partnership and/or fiduciary duty or relationship prior to Respondent acquiring the property. Viewing the evidence in light most favorable to the Appellant, Respondent purchased the

property on his own after the Respondent asked her what she thought of the property. The Respondent allegedly offered to put up the money but the Appellant never accepted the alleged offer. The Appellant had no money invested and there was no consideration she provided to bind the Respondent to include her in the purchase of the property. Appellant had no money or time associated with the property prior to Respondent buying the property. Respondent paid the entire purchase price. Appellant gave no consideration, time, effort, money, or anything prior to Respondent buying the property. As such, there was no fiduciary relationship between them.

Before Appellant did anything on the property, she knew Respondent owned 100% in fee simple. Respondent had no duty or obligations to the Appellant. No legal relationship existed between the parties when Respondent closed on the purchase of the property and Appellant knew this as she acknowledged that she knew Respondent had purchased a property, and that it was in his name entirely. Appellant cannot now say there was a breach of a fiduciary duty. As such, the trial court did not err in directing a verdict on the constructive trust claim. No evidence exists in the record to support the elements for the imposition of a constructive trust.

II. THE TRIAL COURT DID NOT ERR IN RULING ON THE ALLEGED 408 EVIDENCE AND THE ISSUE IS NOT PRESERVED FOR APPELLATE REVIEW.

Appellant made a pretrial motion in limine relating to the contract, Respondents Exhibit No. 2. Appellant argues the trial court erred in admitting this document. First, the document has not been admitted into evidence. It was marked for identification purposes. In addition, during the pretrial motion in limine, the court took the time to remind counsel that he would need to object during the trial as to anything that was ruled upon adverse to him in

the motion in limine. In fact, the court directed the Appellant that it would allow Respondent's reference to contract an opening, but Appellant would need to object to it during the trial and the court would deal with it at that time. During cross-examination, Respondent questioned Appellant regarding text messages. The text message referred to the contract. The contract was marked for identification purposes. At no point did a Appellant object to this testimony or cross-examination. The failure to object to it means that any issues associated with this evidence is waived.

The law is clear that a ruling in limine is not final. Unless an objection is made at the time the evidence is offered in a final ruling procured, the issue is not preserved for review. See State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286, (2001). "An exception to this rule is when the motion in limine is made immediately prior to the introduction of the evidence in question. The South Carolina Supreme Court expanded the exception in the case of State v. Wiles, holding that, even when the evidence does not immediately follow the motion in limine, if the trial court clearly indicates its ruling is final, rather than preliminary, the issue is preserved for appellate review." State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. pp. 2012) Rehearing denied, May 24, 2012 and Cert Denied August 21, 2014. In this case, the exception does not apply because the trial judge even advised Appellant's counsel to make the objection during the testimony. No objection was made, and as such, no issue was preserved for review.

III. APPELLANT FAILED TO PRESERVED ISSUES AS IT RELATES TO HEARSAY AS APPELLANT DOES NOT IDENTIFY WHAT OBJECTION HE IS APPEALING.

During the course of the trial, there were multiple evidentiary objections. In her brief, Appellant asserts that the trial judge erred in sustaining hearsay objections. The Appellant then

goes through and sites 401 of the South Carolina Rules of Evidence and Rule 801. The problem which exists is that Appellant is not referring to any specific evidentiary ruling during the trial of this case. Respondent submits that the trial judge did not err in any of the evidentiary rulings. Respondent submits that this court should ignore and disregard Appellant's argument regarding testimony and hearsay. A broad general statement of issues made by an Appellant may be disregarded by the appellate court, pursuant to appellate court rule 207 (b)(1)(B).

Sullivan Co, Inc. v. New Swirl, Inc. 313 S.C. 34, 347 S.E.2d 30 (1993).

The Appellant's argument regarding testimony is a broad statement, asserting that various evidentiary rulings may have been an error. Without knowing and having a basis upon which to argue as to any one decision, Appellant has therefore waived this argument. Respondent cannot go through and should not be required to go through the transcript and address the court's ruling on each objection and the reason why each objection was sustained properly. Appellant has the burden of demonstrating error and Appellant has not sufficiently identified and argued as to any evidentiary decisions.

CONCLUSION

For the foregoing reasons, Respondent requests this court to sustain a trial courts grant of a directed verdict.

May 17, 2024

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/s/ Jacqueline N. Davis

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