

**RECEIVED**

**Jul 22 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM KERSHAW COUNTY  
ALISON RENEE LEE, CIRCUIT COURT JUDGE

---

Appellate Case No. 2023-001193

---

Charles Ives,.....Appellant,

v.

Charles E. Campbell, Vivian C. Gardner, T. Clayter Campbell,  
Thomas Clayter Campbell, and Eddie Harold Goff, Trustees of the  
Colbert H. Campbell United Trust, Sonja C. Parker, Barry Campbell,  
and Randy Bowers, Defendants,

of Whom Charles E. Campbell, Vivian C. Gardner, T. Clayter Campbell,  
Thomas Clayter Campbell, and Eddie Harold Goff, Trustees of the  
Colbert H. Campbell United Trust, Sonja C. Parker, Barry Campbell,  
are the ..... Respondents,

---

**INITIAL BRIEF OF APPELLANT**

---

Desa Ballard (S.C. Bar No. 498)  
Harvey M. Watson III (S.C. Bar No. 74053)  
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON  
226 State Street  
West Columbia, South Carolina 29169  
Telephone 803.796.9299  
Facsimile 803.796.1066  
desab@desaballard.com  
harvey@desaballard.com  
haley@desaballard.com

COUNSEL FOR APPELLANT

**TABLE OF CONTENTS**

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

Statement of the Case .....2

Factual Background .....3

Standard of Review .....7

Argument .....8

    I. IVES DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE OR A PREPONDERANCE OF THE EVIDENCE THAT HE WAS ENTITLED TO JUDGMENT AGAINST RESPONDENTS FOR EQUITABLE LIEN, UNJUST ENRICHMENT, AND PROMISSORY ESTOPPEL.....8

        A. EQUITABLE LIEN .....8

        B. UNJUST ENRICHMENT.....9

        C. PROMISSORY ESTOPPEL.....11

    II. THE TRIAL COURT ERRED BY MISAPPLYING THE DEADMAN’S STATUTE AND EXCLUDING ADMISSIBLE WITNESS TESTIMONY ..... 13

    III. THE TRIAL COURT ERRED IN FINDING THAT IVES’ CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES.....16

Conclusion ..... 17

**TABLE OF AUTHORITIES**

**CASES**

*Barnes v. Johnson*,  
402 S.C. 458, 466, 742 S.E.2d 6,10 (S.C. Ct. App. 2013)..... 9,10,11,12

*Colombia Wholesale Co. v. Scudder May N.V.*,  
312 S.C. 259, 261, 440 S.E.2d 129, 130 (S.C. 1994) ..... 9

*First Fed. Sav. and Loan Ass’n of Charleston v. Bailey*,  
316 S.C. 350, 356, 450 S.E.2d 77,81 (S.C. Ct. App. 1994)..... 8

*Gheen v. Gheen*,  
276 S.C. 404, 408, 279 S.E.2d 361, 363 (S.C. 1981) ..... 10,11

*Hallums v. Hallums*,  
296 S.C. 195, 198, 371 S.E.2d 525,527 (S.C. 1988) ..... 16

*Higgins Constr. Co. v. S. Bell Tel. and Tel. Co.*,  
276 S.C. 663, 655-66, 281 S.E.2d 469, 470 (1981)..... 11

*Johnson v. J.P. Stevens & Co.*,  
308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) ..... 7

*Regions Bank v. Wingard Properties, Inc.*,  
394 S.C. 241, 250, 715 S.E.2d 348,353 (S.C. Ct. App. 2011)..... 8

*Satcher v. Satcher*,  
351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002)..... 8

*Waterpointe I Prop. Owner’s Ass’n, Inc. v. Paragon, Inc.*,  
342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000)..... 7

**STATUTES**

S.C. Code Ann. § 19-11-20 (1976)..... 13,14

**OTHER AUTHORITIES**

Rule 41(b), SCRCP..... 1,2,7

51 Am. Jur. 2d *Creation of Equitable Lien by Implication*, generally § 45 (2024)..... 8

*Limitations Period and Laches did not prevent transferee liability* 66 Prac. Tax. Strategies 241 16

## **STATEMENT OF ISSUES ON APPEAL**

- I. Did the Trial Court err in dismissing Ives's causes of action for equitable lien, unjust enrichment, and promissory estoppel pursuant to Rule 41(b), SCRCPC, when Ives demonstrated at trial by clear and convincing evidence or a preponderance of the evidence that he was entitled to judgment against Respondents?
  
- II. Did the Trial Court err in excluding witness testimony pursuant to The Deadman's Statute when the witness had no vested legal interest that would be directly impacted by judgment in this action?
  
- III. Did the Trial Court err in finding that Ives' action was barred by the doctrine of laches when Ives demonstrated a reasonable explanation for the delay in seeking reimbursement and bringing this action against Respondents?

## STATEMENT OF THE CASE

This matter was initiated on November 12, 2019, by Appellant Charles Ives' (hereinafter "Ives") filing of a Summons and Complaint against Respondents Charles E. Campbell, Vivian C. Gardner, T. Clayter Campbell, Thomas Clayter Campbell and Eddie Goff, Trustees of the Colbert H. Campbell United Trust, Sonja C. Parker, Barry Campbell, and Randy Bowers<sup>1</sup> (hereinafter collectively referred to as "Respondents"). In this action, Ives sought reimbursement for substantial improvements he made to certain property he leased from Respondents located at 921 Hwy 1 South, Lugoff, South Carolina, TMS 296-00-00-091 (the "property"). Respondents are heirs and devisees of T.E. Campbell who owned the property before his death on June 12, 1982, and Respondents all have an interest or claim to the property. Pursuant to a verbal promise between Ives and Claude E. Campbell (hereinafter "Claude"), another heir of T.E. Campbell who became owner of the property following his death, Ives made significant improvements to the property with the expectation that he would be reimbursed for those improvements once the property had been sold. In the Complaint, Ives asserted causes of action against Respondents for equitable lien, unjust enrichment, and promissory estoppel. (Complaint filed November 12, 2019). Respondents filed an Answer, Motion to Dismiss, and Memorandum in Support of their Motion to Dismiss on or about April 13, 2020.

This matter came before the trial court for a non-jury trial on February 27 and 28, 2023, with the Honorable Alison Lee presiding. Following the trial, Judge Lee issued an Order dismissing the action pursuant to Rule 41(b), SCRCF on or about June 27, 2023. (Order filed June 27, 2023). On July 26, 2023, Ives served the Notice of Appeal in this matter.

---

<sup>1</sup> The lawsuit, originally filed in 2019, listed Randy Bowers as a Defendant. Mr. Bowers was dismissed as a defendant while the case was still pending as the trial court on March 2, 2022. (See Stipulation of Dismissal filed March 2, 2022).

## FACTUAL BACKGROUND

T. E. Campbell took title in fee simple to a 3.4-acre tract in Lugoff (hereafter “the real property” by deed dated January 16, 1967. (Book HR, page 1929, Kershaw County) T. E. Campbell died intestate on June 12, 1982. The deed of distribution, done in 1984, from the personal representative of T. E. Campbell’s estate, his son Claude, and signed by the then-current probate judge, identifies the transfer of the 3.4 acres in undivided one-fifth interests to Claude and his siblings T. Clayter Campbell, Colbert Harold Campbell, Vivian C. Gardner, and Charles E. Campbell. (Book 444, page 11909, Kershaw County).<sup>2</sup>

The personal administrator of T. E. Campbell’s estate, Claude H. Campbell, and Ives were long-time friends since the 1960s. (T. p. 80, line 8 – p. 81, line 5). They began doing business together in 1974 when they opened a finance company together, selling it three years later. (Tr. p. 81, lines 6-12). Claude and Ives loaned money to each other their entire lives. (Tr. p. 82, lines 12-22).

Claude and Ives did several real estate development projects together throughout their lives, according to attorney John W. Wells, who represented them both starting in the 1990s. (Tr. p. 44, line 3 – p. 45, line 10). Wells described Claude’s way of doing business to be “[u]sually, [Claude] would be responsible for providing the capital, the money to do the project and his business partners generally were doing the work, providing skills and expertise to get the projects done.” (Tr. p. 45, lines 20-25). According to Wells, Claude rarely had written agreements with

---

<sup>2</sup> The form of the deed of distribution properly identifies the transfer as either a devise or an inheritance. The property description in the deed of distribution erroneously uses the reference “devised” in describing the method by which each of the intestate heirs received their 1/5 each interest in the 3.4 acres. However, since T. E. Campbell died intestate, the transfer was by inheritance.

his business partners, he preferred “leverage” and used that if he (Claude) “was not satisfied with the performance of the business.” (Tr. p. 45, lines 13-25).

Claude and Ives started a car lot together in 1980 in Elgin. (Tr. p. 82, line 21 – p. 83, line 2). When T. E. Campbell died in 1982, Claude, as personal representative, made an agreement with Ives for Ives open a car lot on the 3.4 acres in Lugoff. (Tr. p. 83, lines 6-24; Plaintiff’s Exhibit 4). Ives always treated Claude like a stockholder in the car lot and he and Claude made a lot of money together on the car lot. (Tr. p. 103, lines 1 – 18). Claude was aware that Ives spent money improving the 3.4 acres where the car lot over the next years. (Tr. p. 103, lines 12-18). Claude’s son Barry also was aware that Ives invested money in improving the 3.4 acres. (Tr. p. 140, line 15 – p. 142, line 13). Barry also confirmed the long-term friendship and business relationship between his father Claude and Ives, and confirmed that Barry himself continued to do business with Ives after Claude’s death. (Tr. p. 142, line 14 – p. 144, line 3; p. 145, lines 20-23). Barry even purchased a car from Ives after Claude’s death. (Tr. p. 146, lines 12-23).

Ives moved a mobile home onto the lot to serve as the office for the car lot after a fire destroyed a structure previously in place. (Tr. p. 84, line 13 –p. 85, line 5). Ives took a full-time job and rented the mobile home out for ten (10) years, giving the rental income to Claude, since the real property was his. (Tr. p. 85, line 8 – p. 86, line 2). In 1999, Ives purchased a building that used to be a veterinarian’s office for \$35,000.00. (Tr p. 87, lines 2-12). Ives moved the building from Elgin to the 3.4-acre lot and he ran a car sales lot from that site. Ives began paying \$750.00 a month to Claude for the use of the real property. At that time, Ives had income from another source that paid him \$2,500.00 per month, which Ives split with Claude. (Tr. p. 86, line 2 – p. 87, line 1).

Ives had a portion of the lot paved in the mid-1980s at his own expense. (Tr. p. 87, lines 13-22). After Ives moved the building onto the real property in 1999, he remodeled the building, and between then and the time of trial, Ives spent approximately \$200,000.00 in improvements to the lot and acreage where he ran the car lot. (Tr. p. 88, lines 8 -14). Claude died in 2015. (Plaintiff's Exhibit 4). Claude's 1/5 interest in the 3.4 acres by will through Claude's residuary clause to Barry Campbell and Sonja Parker. (Defendant's Exhibit 4).

Ives spoke with Barry Campbell and Sonja Parker about an existing oral agreement Ives had with Claude Campbell that, should the 3.4 acres ever be sold, Ives would be reimbursed for the expenses he incurred in improving it. Ives proposed to Barry and Sonja, instead of honoring his agreement with Claude, Barry and Sonja arrange for Ives to receive a commission on the sale of the property, if and when it occurred. It initially appeared Barry and Sonja were honoring the agreement, because they erected a "for sale" sign on the property and put Ives' telephone number on it. (Tr. p. 89, line 2 – p. 90, line 12).

Ives learned that Barry and Sonja had not told the other members of the Campbell family who had the remaining 4/5ths of the interest in the 3.4 acres of real property, about their plan, or about Claude's or their agreement with Ives. (Tr. p. 90, lines 1-17). The real estate sign was removed from the property and the sale of the land was listed with a realtor who used to be married to Sonja. (Tr. p. 90, lines 9-12).

Ives did not know the other members of the Campbell family well. Claude and Ives had done real estate developments together over the years, and he had met Claude's sister Vivian Gardner (hereafter "Vivian") (when Claude became ill. (Tr. p. 92, lines 2 – 10). Vivian Gardner complained to him about how Barry and Sonja had "screwed them out of \$1.2 million in [Claude's] will" so Ives suggested Vivian seek legal advice.

For the final three years of Claude's life, he was at a facility called National Healthcare, but Ives continued to work with Claude as they always had. By way of example, Ives would purchase property Claude wanted at a tax sale. On average, Ives bought "three to four hundred thousand dollars' worth of property every year" for Claude using Claude's money. (Tr. p. 94, line 1 – p. 95, line 6). Ives was not separately compensated for his work, but it was all a part of the relationship Claude and Ives had.

While Ives and Claude were selling cars together, there was a period of time when Claude lost some money through the investment. Claude said "just forget about it" but Ives knew Claude had an interest in some property in Boykin on which Ives held an option. (Tr. p. 96, line 1 – p. 98, line 25). Ives wrote a check to Claude for \$230,000.00 dated January 29, 2004. (Plaintiff's Exhibit 5). While the check "memo" line references "lot fees" for B&B Auto Sales, the check was actually Ives paying money to Claude that Claude had generated from selling from real estate over an approximate ten-year period. (Tr. p. 99, line 1 – p. 100, lines 25). Claude and Ives got a tax credit when they sold a large tract of land to County Council. (Tr. p. 101, line 1 – p. 102, line 20). Ives and Charles always did business without anything being in writing, they were always fair with each other. (Tr. p. 102, lines 20 – 24).

Ives described his relationship with Claude as "basically like a father to me. . . I trusted him . . . he trusted me. . ." (Tr. p. 103, line 20 – p. 104, line 1). Vivian and Ives got to know each other some when Claude was in National Healthcare, and that was why Ives suggested Vivian consult an attorney about her concerns about Barry and Sonja. (Tr. p. 104, lines 5 -21). Ives took Vivian to see Lewis Cromer. (Tr. p. 104, lines 16-18). Ives did not tell Vivian about his agreement with Claude to be reimbursed for the improvements to the 3.4 acres because Claude discouraged it, saying "you can't do business with [my] family." (Tr. p. 93, line 2 – 23).

Ives continued to do business with Barry and Sonja, who inherited Claude Campbell Properties LLC, Claude's real estate company. (Plaintiff's Ex. 3). On June 13, 2017, Claude Campbell Properties, LLC, Barry Campbell and Sonja Parker hired Ives to serve as develop several tracts of land. *Id.*

As time passed, Ives attempted to explain to Barry and Sonja and other members of the Campbell family about the agreement he had with Claude, and wrote them a letter dated April 24, 2019, asking to be reimbursed for the improvements he had made on the 3.4-acre tract of real property. (Plaintiff's Exhibit 4). Ives laid out the agreement he had with Claude about the property and the details of his investment in the 3.4 acres. *Id.*

Barry and Sonja put the 3.4 acres on the market, Ives filed this lawsuit to enforce his agreement with Claude or recover the value of his improvements to the land. (Tr. p. 90, line 1 – p. 91, line 1). The real estate listing described the 3.4 acres with the improvements that Ives had made with an asking price of \$1.1 million dollars. (Defendant's Exhibit 6). Defendants' motion for summary judgment was denied by order dated March 7, 2022. (trial court record).

The case was tried non-jury. This appeal followed.

### **STANDARD OF REVIEW**

“After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant...may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief.” Rule 41(b), SCRPC; *Waterpointe I Prop. Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 458, 536 S.E.2d 878, 880 (Ct. App. 2000). Rule 41(b) allows the judge as fact finder to weigh the evidence and determine the facts. *Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992).

In actions of equity, appellate courts “may review the record and make findings based on its view of the preponderance of the evidence.” *Satcher v. Satcher*, 351 S.C. 477, 570 S.E.2d 535 (Ct. App. 2002).

## ARGUMENT

### **I. Ives’s demonstrated by clear and convincing evidence or a preponderance of the evidence that he was entitled to judgment against Respondents for equitable lien, unjust enrichment, and promissory estoppel.**

#### **A. Equitable Lien**

An equitable lien arises when there is a (1) debt; (2) specific property to which the debt attaches; and (3) an expressed or implied intent that the property serves as security of the debt. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348,353 (S.C. Ct. App. 2011). An equitable lien may be imposed as security for when a person whose money, materials, or services have benefited the property of another, entitling that person to restitution. 51 Am. Jur. 2d *Improvement of Property Belonging to Another as Supporting Equitable Lien by Implication* § 50 (2024). Moreover, unjust enrichment may be the basis for an equitable lien where a person has provided funds with the knowledge and consent of the owner. *Id.* A lien may be implied by equity if there is some obligation or duty to be enforced that arose from the relationship of the parties and the circumstances of their dealings. 51 Am. Jur. 2d *Creation of Equitable Lien by Implication, generally* § 45 (2024). So, an equitable lien relates back to the time it was created by the parties’ conduct. *First Fed. Sav. and Loan Ass’n of Charleston v. Bailey*, 316 S.C. 350, 356, 450 S.E.2d 77, 81 (S.C. Ct. App. 1994).

In the instant matter, Ives demonstrated by a preponderance of the evidence that he is entitled to an equitable lien by implication. There is substantial evidence in the record that Ives,

with his own funds, improved Respondents' property with the knowledge and consent of one of the owners, Claude. (Tr. p. 38, lines 5-25; p. 58, lines 7-12; p. 84 lines 1-25). As testified to during the trial, the property was originally just a soybean field, which Ives improved by paving a portion of the lot between 1985-1986 and putting a new building on the property in 1999 after the previous structure was destroyed by fire in 1989. (Tr. p. 84, lines 1-25). These improvements totaled about \$191,000 and gave rise to an equitable lien by implication. Ives established that there is a debt of \$191,000, and the specific property to which the debt attaches is the property Ives leases from Respondents located at 921 Hwy 1 South, Lugoff, South Carolina. For over 30 years, Claude and Ives had a trusted relationship where they did business transactions orally and never had written agreements. In fact, multiple witnesses testified to the nature of Claude and Ives' business relationship and dealings, noting that they were unaware of any written agreements between Claude and Ives. (Tr. p. 45, lines 1-18; p. 59, lines 16-25). The Car City property improvements were based on their trusted relationship that Ives would get reimbursed. Thus, based on the conduct of Ives and Claude, their relationship, and the circumstances surrounding the transaction, an equitable lien by implication exists, and the trial court erred in dismissing this cause of action.

### **B. Unjust Enrichment**

A plaintiff must recover for unjust enrichment, through the remedy of quantum meruit, when he proves: (1) a benefit conferred upon the defendant by the plaintiff; (2) a realization of the benefit by the defendant; (3) it is unjust for the defendant to retain the benefit without paying its value. *Barnes v. Johnson*, 402 S.C. 458, 466, 742 S.E.2d 6,10 (S.C. Ct. App. 2013) (citing *Colombia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (S.C. 1994)). When property is involved, a plaintiff is entitled to the fair market value of the property before and after the improvements. *Barnes*, 402 S.C. at 467, 742 S.E.2d at 10.

When the value of the property is increased through the plaintiff's efforts and the defendant utilizes the benefit of the increased value, then the plaintiff is entitled to recover for unjust enrichment. See, *Id.* In *Barnes*, the plaintiff and defendant conducted informal business together where the defendant agreed to repay the plaintiff later for all maintenance and repairs to improve the property. *Id.* at 463, 742 S.E.2d at 8. The court ruled that the plaintiff conferred no benefit, and the defendant retained no benefit because the fire in the building consumed any existing potential benefit to the defendant that was traceable to the plaintiff. *Id.* at 467, 742 S.E.2d at 10. Therefore, unless the defendant does not retain a benefit attributable to the plaintiff, the plaintiff can recover for unjust enrichment.

When a tenant makes improvements to the leasehold with the knowledge and consent of the landlord, then the tenant is entitled to reimbursement for the value of his improvements. *Gheen v. Gheen*, 276 S.C. 404, 408, 279 S.E.2d 361, 363 (S.C. 1981). In *Gheen*, the tenants rented the property, with a right-to-purchase option, and went through great expense to improve the house for their family—with the landlord's knowledge and acquiescence. *Id.* at 406, 279 S.E.2d at 362. The court ruled in favor of the tenant, entitling him to reimbursement for the improvements because he made them in good faith, and the landlord knew and consented to the improvements. *Id.* at 408, 279 S.E.2d at 363. Thus, even when there is a landlord-tenant relationship, the landlord may be required to reimburse the tenant for valuable improvement added during his lease. *Id.*

Here, Ives conferred a benefit to Respondents by improving the property over the years for which it would be unjust to let them retain the benefit they will realize upon selling the property without pay reimbursing Ives for the value of the improvements he made. The facts in *Barnes* are different than the facts in the instant matter. While both plaintiffs were seeking reimbursement for repairs, maintenance, and improvements, the property in *Barnes* burned down leaving no benefit

to the defendant. Since the defendant received no benefit, the court in *Barnes* did not allow the plaintiff to recover for unjust enrichment. Similarly, Ives built a building on what was originally a dirt lot, and that building burned down in 1999. If the facts were limited to that, then this case would be like the facts in *Barnes*—however, Ives rebuilt the building on that lot with his funds, so the fire did not consume any potential benefit. Thus, the Defendant's retained a benefit that is traceable to Ives because of the improvements he made after the fire.

Additionally, the fact that Ives and Claude had a landlord-tenant relationship does not preclude Ives from getting reimbursement for the valuable improvements he made to the property. Ives and Claude had a landlord-tenant relationship just as the plaintiff and defendant in *Gheen* had a landlord-tenant relationship. Likewise, the landlord consented to the improvements the tenant made in *Gheen* just as Claude consented to the improvements Ives made to the Car City lot. The Supreme Court of South Carolina has held that tenants are entitled to reimbursement if the improvements were in good faith, with the knowledge and consent of the owner, thus Ives is entitled to reimbursement for the value of the improvements just as the tenant in *Gheen* was entitled to reimbursement. Accordingly, the trial court erred in ruling that a tenant is not entitled to compensation absent a written agreement. Ives has shown all three elements of unjust enrichment by a preponderance of the evidence or clear and convincing evidence, and his recovery is not precluded by the landlord-tenant relationship between himself and Respondents.

### **C. Promissory Estoppel**

An estoppel may arise when a promise was made, even without consideration, if it was intended that the promise be relied upon, it was relied upon, and a refusal to enforce it would result in fraud or other injustice. *Barnes*, 402 S.C. at 468-69, 742 S.E.2d at 11 (citing *Higgins Constr. Co. v. S. Bell Tel. and Tel. Co.*, 276 S.C. 663, 655-66, 281 S.E.2d 469, 470 (1981)). In other words,

to assert promissory estoppel, a party must show (1) a promise with unambiguous terms; (2) reasonable reliance on the promise; (3) foreseeability of the promisee's reliance; and (4) injury was sustained in relying on the promise. *Barnes*, 402 S.C. at 469, 742 S.E.2d at 11. Although promissory estoppel has its limitations, it is a flexible doctrine that aims to achieve equitable results. *Id.* at 469, 742 S.E.2d at 11. The inability to clearly articulate the terms of an alleged oral contract would render an agreement ambiguous. *Id.* at 471, 742 S.E.2d at 12.

When the promise has definite key terms, then the promise is unambiguous for promissory estoppel purposes. *Id.* at 470-71, 742 S.E.2d at 12. In *Barnes*, the plaintiff and defendant made a promise that the plaintiff would pay for all maintenance and improvements of the home if he could later purchase the home from the Defendant. *Id.* at 463, 742 S.E.2d at 8. The court ruled that the promise was ambiguous because of the lack of a definite selling price and the record did not reveal how or when the defendant intended to repay the plaintiff. *Id.* at 472, 742 S.E.2d at 13. Therefore, unless the parties are unable to “clearly articulate the terms of an alleged contract,” the promise is ambiguous and satisfies the first element of promissory estoppel. *Id.* at 471, 742 S.E.2d at 12.

Here, the elements of promissory estoppel are met. The facts in this case differ from the facts in *Barnes*. Unlike the parties in *Barnes*, who did not have a definite selling price or a timeline on when the defendant would pay the plaintiff, the promised reimbursement to Ives is the costs of the improvements he made on the property and Claude was to repay Ives when he sold the property. Unlike the court in *Barnes*, who declared the promise made was ambiguous, Ives can clearly articulate the terms of their oral contract which makes the promise unambiguous. The promise Claude and Ives made—“Let’s put a car lot up there...I’ll [Ives] put the improvements on it if you’ll [Claude] pay me back when – if you ever sell it”—is unambiguous and clearly satisfies the first element of promissory estoppel. Next, Claude could reasonably expect Ives to rely on this

promise because they had been in business together before this transaction and they had built a relationship based on trust. Furthermore, Ives relied on the promise because he spent \$190,000 in improvements on the property in reliance on Claude reimbursing him when the property sold. The property was placed on the market for sale by Respondents a few years after Claude died in 2016, and no reimbursement was ever made to Ives for the valuable improvements he contributed to the property. Ives sustained an injury since he spent \$190,000 in improvements and never received the reimbursement, upon sale of the property, he was promised. Thus, Ives has proven the elements of promissory estoppel (promise, reasonable reliance, foreseeability of reliance, and injury) that entitle him to recovery.

## **II. The Trial Court erred by misapplying the Deadman's Statute and excluding admissible witness testimony.**

The Deadman's Statute prevents interested witnesses from testifying about oral communications or transactions with the decedent if that testimony could affect his or her interest. S.C. Code. Ann. § 19-11-20 (1976). Testimony falls within the Deadman's Statute when a person testifying is a party to the action and the testimony he wants to introduce: (1) deals with transactions or communications between the witness and deceased, (2) is against a party prosecuting or defending the action as executor, heir-at-law, legatee, devisee, or survivor of such deceased person; and, (3) will affect the present interest of the witness. S.C. Code. Ann. § 19-11-20 (1976). So, the appropriate question to examine in determining the applicability of the Deadman's Statute is whether the witness has a certain or vested legal interest, and the interest may be affected by the direct, legal operation of the judgment S.C. Code. Ann. § 19-11-20 (1976). However, the statute does not apply when the witness is not a party to the action, has no interest in the event of the action, and cannot be affected by the judgment. S.C. Code. Ann. § 19-11-20

(1976). Also, the benefit of the statute may be waived when the person asserting the Statute “opens the door” by offering testimony that is otherwise excludable. S.C. Code. Ann. § 19-11-20 (1976).

Here, the trial court erred in excluding certain witness testimony concerning conversations those witnesses had with Claude based on the trial court’s misapplication of the Deadman’s Statute. Madelle Lawhorn testified during the trial on behalf of Ives. Ms. Lawhorn lived with Claude for over twelve (12) years and had three (3) children together. (Tr. pp. 29-43; Memo in Support of Directed Verdict). During their relationship together, Claude often discussed with Ms. Lawhorn his business dealings with Ives. Ms. Lawhorn also had conversations with Claude about his ultimate plans for the property, and Claude informed her that he wanted to buy out his family so he could give the land to Ives. *Id.* During Ms. Lawhorn’s direct examination, defense counsel objected to her testimony citing hearsay. (Tr. p. 40, line 3). The trial court erred in sustaining this objection which was based on the Defendant’s second Motion in Limine, hearsay based on the Deadman’s Statute. (Defendant’s Motion in Limine – DMS filed February 23, 2023). The trial court incorrectly ruled that Ms. Lawhorn could not discuss Claude’s intentions for the property. However, the Deadman’s Statute only applies to a witness who has a certain or vested legal interest, and that interest may be affected by the direct, legal operation of the judgment. Ms. Lawhorn was not a party to the action, nor was she a witness who had a legal interest that would be directly affected by judgment in this action. While Ms. Lawhorn and Claude were in a relationship and had children together, Ms. Lawhorn was not listed as an heir in Claude’s will, and she did not make a claim to his estate, making her a disinterested witness. As such, the court erred in excluding Ms. Lawhorn’s testimony concerning her conversations with Claude and misapplied the Deadman’s Statute.

Regarding witness Kenneth Wayne Hinson, the court again erred in sustaining a hearsay objection based on the Deadman's Statute during Mr. Hinson's direct examination. Specifically, Mr. Hinson was asked, "Did you ever talk to Claude about the improvements that Charles made on the property?" (Tr. p. 61, line 17). The trial court improperly prohibited Mr. Hinson from testifying about his conversations with Claude and limited Mr. Hinson to only answering as to whether he had any conversations with Claude. *Id.* Like Ms. Lawhorn, Mr. Hinson was not a party to this suit and did not have a legal interest that would be affected by the judgment in this lawsuit. Thus, the Deadman's Statute does not apply to Mr. Hinson, and the court erred in sustaining the Defendant's objection and limiting his testimony.

Lastly, the trial court erred in sustaining an objection during Bradley Parson's direct examination. Mr. Parsons was an employee of Car City who knew Ives and Claude well, including the nature of their relationship and conversations between the two about Car City and the improvements made to the property. Mr. Parsons was not a party to this action, nor did he have any legal interest that stood to be impacted by a judgment in this action. Again, the objection to Mr. Parson's testimony was hearsay based on the Deadman's Statute when he was asked, "Tell me what you know, if anything, about the improvements made to the property where Car City is now." (Tr. p. 151, line 25-p. 152, line 1). Mr. Parson started to describe a conversation with Claude regarding the improvements, to which defense counsel objected. (Tr. p. 152, lines 2-16). As previously explained, the Deadman's Statute only applies to a witness who has a certain or vested legal interest, and that interest may be affected by the direct, legal operation of the judgment. Mr. Parson should have been able to testify as to his conversations with Claude about the improvements made to the property. Thus, the court erred in sustaining the hearsay objection and limiting Mr. Parson's testimony based on a misapplication of the Deadman's Statute.

**III. The Trial Court erred in finding that Ives' claims are barred by the doctrine of laches.**

Unless there is neglect for an unreasonable and unexplained length of time to make a lawful claim, the Doctrine of Laches will not bar a claim. *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525,527 (S.C. 1988). Delay alone in the assertion of right does not constitute laches, but there must be injury, prejudice, or disadvantage to the other party. *Id.* at 198-99, 371 S.E.2d at 527. The Doctrine of Laches bars a claim if three elements are satisfied: (1) there was a delay in asserting a right or claim; (2) the delay was inexcusable/unreasonable; (3) there was undue prejudice to the party against whom the claim was asserted. *Limitations Period and Laches did not prevent transferee liability* 66 Prac. Tax. Strategies 241. A delay is not unreasonable unless the claiming party has been afforded numerous opportunities to make the claim. *Hallums*, 296 S.C. at 200, 371 S.E.2d at 528.

Here, the trial court found that the doctrine of laches was a defense to Ives' claims because Ives did not file this action until November 2019, which is three years past Claude's death and twenty years after he first made any alleged improvements. (Order filed June 27, 2023). However, the Supreme Court of South Carolina made clear in *Hallums* that delay alone does not constitute laches—so a delay of three to twenty years is not enough alone to constitute laches.

The trial court further asserted that Ives had ample opportunity to seek reimbursement for any improvements based on his lengthy business relationship with Claude, which makes the delay unreasonable. However, the promise Claude made to Ives was that Ives would be reimbursed upon the sale of the property, which has not yet occurred. Ives attempted to work with Barry and Sonja to receive a commission since he was selling the property for the family, and he told Respondents Barry and Sonja about the agreement he had with Claude. (Tr. p. 89, lines 8-15, 20-23). Ives could

not have brought this lawsuit prior to 2019 because that is when he discovered that Barry and Sonja had not told the rest of the Campbell family about Ives' claim for reimbursement. Thus, when he discovered that the family would not recognize or uphold his claim for reimbursement in 2019, he wrote a letter and filed suit in 2019 (Tr. pp. 90-91). Accordingly, there was no unreasonable or unexplained delay in Ives bringing this action, nor was it possible for him to assert his claim prior to 2019 when the property was placed on the market for sale. Furthermore, in its Order, the trial court failed to address any injustice or undue prejudice to the Respondents as a result of Ives' alleged delay in asserting his claim.

### **CONCLUSION**

For the reasons set forth above, this Court should reverse the judgment of the trial court and remand to the circuit court for a new trial. Alternatively, the Court of Appeals can make its own findings and grant judgment in favor of Ives.

Respectfully submitted,

s/ Haley Hubbard

Desa Ballard (S.C. Bar No. 498)

Harvey M. Watson III (S.C. Bar No. 74053)

Haley Hubbard (S.C. Bar No. 103195)

**BALLARD & WATSON**

226 State Street

West Columbia, SC 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

harvey@desaballard.com

haley@desaballard.com

**ATTORNEYS FOR APPELLANT**

July 22, 2024