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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2019-CP-28-01137
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 RESPONDENTS

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STATEMENT OF THE CASE

This is an appeal of the Circuit Court's order dismissing Appellant's case with prejudice on June 27, 2023. (06/27/23 Order).

Appellant filed this case on November 12, 2019, alleging equitable lien and unjust enrichment. (Compl.). Appellant filed an amended complaint on January 26, 2022, to add a claim for promissory estoppel. (Am. Compl.). Appellant's claims are premised on an allegation that Claude Campbell, a deceased part-owner of property leased by Appellant, promised Appellant reimbursement for improvements he claims to have made to the leased property between 1982 and 2008. (*Id.* ¶¶ 13-14). Appellant alleges that these modifications cost him approximately $191,000.00. (*Id.* ¶ 23). Appellant claims Respondents, who own the property at issue, are liable to reimburse him. (*Id.* ¶ 27).

Respondents filed a Motion to Dismiss on April 13, 2020, which was denied by the Honorable Alison Lee through a Form 4 Order dated June 24, 2020. (04/13/2020 Motion to Dismiss); (06/24/2020 Order). Respondents filed a motion for summary judgment on July 28, 2021. (07/28/21 Motion for Summary Judgment). However, that motion, which addressed the timeliness and lack of evidence, was also denied by Judge Robert Hood through a Form 4 Order dated March 7, 2022. (03/07/2022 Order).

This case was called to trial, non-jury, on February 27 and 28, 2023, before the Honorable Alison R. Lee. At trial, Respondents argued three motions in limine: a motion to exclude any testimony inadmissible under the Deadman's statute (S.C. Code Ann. § 19-11-29) (granted); a motion to exclude testimony of conversations with Claude Campbell under the hearsay rule (held in abeyance); and a motion to exclude third-party witness testimony about any agreement under the parol evidence rule (held in abeyance). (Trial Transcript pp. 6:6-17:16).

After trial, Judge Lee dismissed all three of Appellant's claims in an Order issued on June 27, 2023. (06/27/23 Order). This appeal followed.

STATEMENT OF THE FACTS

Thomas Edward Campbell died in 1982. After his death, a 3.4-acre parcel of land in Lugoff, South Carolina (hereafter the "Lugoff Property") came to be owned in undivided one-fifth interests by T.E. Campbell's five children: Claude, Colbert, Clayter, Charles, and Vivian. (Def. Ex. 1: Estate of T.E. Campbell Documents). T.E. Campbell's son, Claude, served as the administrator of T.E. Campbell's estate. (*Id.*). That estate was closed in May 1984.

After T.E. Campbell's death, Respondents rented the Lugoff Property to Appellant. (Trial Transcript: pp. 83:2-14; 85:16-20). Appellant ran a used car lot on that property. (*Id.*). In furtherance of his car lot business, Appellant made modifications to the Lugoff Property between the years of 1982 and 2008 with his own funds. (Trial Transcript: pp. 123:18-21; 128:6-7). These modifications included placing a building on the property to act as a clean-up shop to detail cars, buying a mobile office building, and installing a concrete parking lot. (Trial Transcript: pp. 84:24-85:5; 124:10-22). Appellant claims that these modifications to the Lugoff Property cost him nearly $200,000. (Trial Transcript: pp. 127:25-128:3).

Claude Campbell died in 2015 and his one-fifth ownership of the Lugoff Property passed to Respondents Barry Campbell and Sonja Parker. (Def Ex. 2: Claude Campbell Obituary); (Def. Ex. 4: Deed of Distribution).

In April of 2018, Respondents decided to sell the Lugoff Property. (Trial Transcript: p. 171:2-5). Because Appellant ran his business from the property, Respondents asked Appellant serve as point of contact on the properties listing. (Trial Transcript: p. 172:10-15). Appellant agreed, and a "For Sale" sign was placed on the property with Appellant's phone number listed on the sign. (*Id.*). Asking Appellant to assist in selling the property was not an acknowledgement of an alleged agreement Appellant claimed to have with Claude Campbell, who had been deceased for three years; in fact,

Barry Campbell testified he was unaware Charles Ives claimed he was entitled to reimbursements until Ives sent a letter saying so in 2019. (Trial Transcript: p. 143:1-6).

The property's listing referenced a preexisting brick building on the property, upon which Ives claimed to have made limited repairs, but listed none of the modifications Appellant sought reimbursement for. (Def. Ex. 6: Property Listing).

A year later, in April of 2019, the property had not yet been sold. (Trial Transcript: p. 172:16-21). Because the property was still for sale after a year on the market, Respondents asked Eddie Harold Goff to take over the listing.[1] (*Id.*).

When Appellant learned that he would no longer sell the land for Respondents and thus no longer receive a commission fee, he claimed to Barry Campbell and Sonja Parker that they owed him money for the modifications made to the property. (Trial Transcript: pp. 117:8-118:11). Appellant also sent a letter to the members of the Campbell family, alleging that Claude Campbell (then deceased four years) had orally promised to reimburse Appellant for those modifications as a part-owner of the property and said that Respondents were responsible for reimbursing him. (Def. Ex. 5: 4/24/19 Letter).[2]

Before 2019, Appellant had never told Respondents about this alleged oral promise from Claude, nor had any of Respondents ever heard of any such agreement. (Trial Transcript: pp. 118:24-119:4). Regardless, Appellant claimed he was owed approximately $191,000.00. (Def. Ex. 5: 4/24/19 Letter).

Appellant has not introduced receipts or other records to substantiate the amount he allegedly spent on modifications to the property. (Trial Transcript: pp. 123:16-124:25; 126:8-127:7; 207:19-22).

[1] Goff is a respondent in his capacity as a trustee for Colbert Campbell's estate.
[2] A portion of the letter was stricken/redacted under the Dead Man's Statute.

Appellant, when asked, at trial, if he had documentary evidence to corroborate an agreement to reimburse him for alleged improvements to the property, conceded that he did not. (Trial Transcript: p. 112:11-14). Additionally, despite Appellant's claim that the modifications increased the value of the property, the modifications Appellant made to the Lugoff Property were not even included in the listing for the property's sale. (Trial Transcript: pp. 122:15-123:7); (Def. Ex. 6: Property Listing).[3]

STANDARD OF REVIEW

This is an appeal of a post-trial order dismissing with prejudice Appellant's three claims of an equitable lien, unjust enrichment, and promissory estoppel. As Appellant's three claims are actions that lie in equity, the applicable standard of review is de novo. ((*Matter of Est. of Crosby,* No. 2020-000853, 2024 WL 2048903, at *3)(S.C. Ct. App. May 8, 2024)). ("In an action at equity, tried by a judge alone, [the court's] standard of review is de novo.") A de novo standard of review allows an appellate court to "find facts in accordance with [its] own view of the preponderance of the evidence." (*Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC*), 435 S.C. 109, 199, 866 S.E.2d 542, 548 (2020). However, this standard of review does not mean that an appellate court must disregard the findings of the trial court. (*Id*). Instead, an appellate court may take the trial court's findings of fact into consideration as "the trial court sits in a better position to assess witness credibility." (*Id*).

ARGUMENT

I. THE CIRCUIT COURT PROPERLY DISMISSED APPELLANT'S CLAIMS.

[3] These are the relevant facts to this dispute. Much of the factual description by Appellant (e.g., discussion of familial disputes, etc.) is not pertinent to this case or the legal issues. The factual description here is based on the trial record and the facts pertinent to the lower Court's decision.

The Circuit Court found that Appellant had failed to meet his burden of proof on any claim. (06/27/23 Order, p. 10). Thus, the Circuit Court dismissed, with prejudice, all three of Appellant's claims. (*Id.*).

A. The trial court properly dismissed Appellant's claim for an equitable lien.

An equitable lien exists if there exists (1) a debt; (2) "specific property to which the debt attaches"; and (3) "an express or implied intent that the property serves as security for payment of the debt." *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 209, 746 S.E.2d 471, 475 (Ct. App. 2013) (quoting *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011)). A plaintiff stating a claim for an equitable lien must satisfy each of these three elements. *Chase*, 405 S.C. at 209. If a plaintiff fails to establish even one of these requirements, an equitable lien as a remedy is not available. *Id.*

The Circuit Court dismissed Appellant's claim for an equitable lien on the grounds that Appellant failed to introduce any evidence of a debt or an express or implied intent for the Lugoff Property to be used as security for payment of an alleged debt. (06/27/23 Order, p. 10). Indeed, no evidence establishing either of those elements was introduced by Appellant at trial or exists on the record.

Appellant's counsel says on brief that Appellant successfully demonstrated by a preponderance of the evidence his entitlement to an equitable lien because Appellant introduced evidence at trial that Appellant improved Respondents' property using his own money and that this was done with the knowledge and consent of Claude Campbell, a part-owner of the property. (Appellant's Brief, pp. 8-9). However, even if true, that does not establish a debt owed to Appellant. Instead, it simply shows that the Appellant made modifications to the property he rented to further his business, a used car lot.

Appellant's counsel argues testimony regarding Appellant's placement of a mobile office trailer/building on the property, paving a parking lot, and testimony that Appellant and Claude generally conducted business orally and rarely wrote down any of their agreements is enough to give rise to an equitable lien. (Appellant's Brief, p. 9). However, none of that testimony proves in any way that there was a debt owed to Appellant from Respondents or that the property Appellant leased was intended to serve as security for that alleged debt.

Conversely, there was evidence at trial that suggested the alleged debt simply did not exist. On cross-examination, Appellant was shown the last will and testament of Claude Campbell. (Trial Transcript: p. 113:17-21); (Def Ex. 3: Claude Campbell Will). Within his will, Claude left money to numerous other people that he did business with. (Trial Transcript: pp. 113: 24-114:19). In fact, Appellant offers up that one such person Claude left money to in his will was a person who had allegedly stolen money from Claude. (Trial Transcript: p. 114:8-16). Notably, Appellant was left nothing in Claude Campbell's will, and Claude Campbell's will made no mention of any alleged debt owed to Appellant. (Trial Transcript: pp. 114:21-115:6).

Furthermore, Eddie Harold Goff, who was present for the initial discussion between Appellant and Respondents regarding the sale of the Lugoff Property, offered testimony that Appellant told Respondents they did not owe him anything:

> Q: Tell us about those discussions in April of 2018.
> A: […] So that's when Mrs. Gardner asked [Appellant], he said, "I know I (indiscernible) every month, but I'm going to ask you, does the family owe you anything for what you're doing?" **And he said, "No, you don't owe me anything."**

(Trial Transcript: p. 171:6-25).

There is additionally no absence of evidence that the property was meant to serve as security for the alleged debt. In fact, Appellant's counsel does not even attempt an argument in brief on this element. That is because no such testimony or evidence exists.

The Trial Court properly dismissed Appellant's claim for an equitable lien due to a lack of evidence.

B. The trial court properly dismissed Appellant's claim of unjust enrichment.

The equitable doctrine of unjust enrichment allows a plaintiff to recover the amount in which the defendant was enriched at the plaintiff's expense. *Chase Home Fin, LLC*, 405 S.C. at 212 (quoting *Regions Bank*, 394 S.C. at 256-57). To establish a claim of unjust enrichment, there are three elements that a plaintiff must prove: "(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Regions Bank*, 394 S.C. at 257.

Appellant's counsel, without citing to the record, argues on this claim that Appellant proved all elements of unjust enrichment because Appellant had placed a mobile building on the property that Appellant says improved the property's value. (Appellant's Brief, pp. 10-11).

The analysis in *Barnes v. Johnson* undercuts Appellant's position. (402 S.C. 458, 467, 742 S.E.2d 6, 10 (Ct. App. 2013), abrogated on other grounds by *Cruz v. City of Columbia*, No. 2022-001494, 2024 WL 3435968 (S.C. July 17, 2024)). In *Barnes*, the appellant bought several acres of bare land, save for a dilapidated house on one of the tracts. The respondents, who were cousins of the appellant, agreed to move to the property to live there, pay for all taxes, repairs, mortgages, and insurance costs, improve the house and surrounding land, with the understanding that they would purchase the property when they could get financing. While living there, a lightning strike caused the house to burn down. The Court ruled that the measure of recovery for improvements is the increase in fair market value before and after the improvements. (*Id.*) The crux of this requirement is the ability to prove that the improvements caused the value of the property to increase more than mere inflation and market reactions, "This modest increase in selling price did not result from Barnes' labors; rather, it is a

corollary to the modest inflation the trial court found existed within the surrounding area." (*Id.* at 268). Crucially, the value of the improvements must be established from the record:

> Nothing in the record supports any claim by the Barnes that this increase in value [$4,266.39] was due to their efforts. The barn built by the Barnes was torn down by the new owners and given to the Barnes to remove. The fences were taken down and also given to the Barnes to remove. In conclusion, the **record is bare of any improvements upon which a value has been placed and the lack of any such value leaves the Court to simply speculate**.

(*Id.*). (emphasis added). Similarly, here, there is no evidence in the record to suggest that Appellant improved the value of the property. There is, however, evidence that the modifications either had no effect on the property's value or in fact detract from its value. (Trial Transcript: pp. 131:4-6; 133:18-25; 174:5-21).

The sole party who benefited from Appellant's asserted improvements is Appellant who benefited from the modifications because they helped him run his used car lot. (Trial Transcript: pp. 84:8-10; 84:18-20; 84:24-85:2). Appellant ran a used car lot on the property he rented from Respondents. (Trial Transcript: pp. 82:24-83:16). The modifications made, such as the building, mobile home, and parking lot, were done to help Appellant run his business. (Trial Transcript: pp. 84:8-10; 84:18-20; 84:24-85:2). For example, the building Appellant put on the property was used as a clean up shop and used to detail cars, and the concrete was paved to create the car lot itself. (Trial Transcript: pp. 124:10-15; 131:4-6). In fact, Appellant testified that many of the modifications he made were necessary to run the car lot. (Trial Transcript: p. 133:18-25). While there is ample evidence to suggest the modifications benefited Appellant as he ran his business, there is no evidence that the Respondents gained or will gain a benefit from the modifications.

On this point, Harold Eddie Goff, who relisted the property for sell, testified at trial that none of the modifications to the property would benefit Respondents as they tried to sell the property. (Trial Transcript: p. 174:5-21). This is because Respondents were selling the property as raw land. (Trial Transcript: p. 174:8). As such, the building and the concrete paving would likely have to be

demolished by any buyer of the property, unless that buyer wanted to operate the same kind of business that Appellant had. (Trial Transcript: p. 174:5-21). Goff explained that the likely demolition would be a cost incurred by potential buyers and could have detracted from the value of the property instead of improving it as Appellant asserts. (*Id.*).

However, even if the modifications did not detract from the property's value, there is evidence that the modifications simply did not affect the value of the property whatsoever. On cross examination, Appellant was shown a copy of the listing of the Lugoff Property. (Trial Transcript: pp. 121:6-122:1). Within this listing of the property, absent is any mention of the modifications by Appellant such as the building, mobile home, or concrete paving. (Trial Transcript: pp. 122:21-123:7).

Appellant's counsel additionally argues in brief that although Appellant and Claude Campbell had a landlord-tenant relationship, Appellant is not precluded from reimbursement for the modifications. (Appellant's Brief, p. 11). Appellant's landlord-tenant argument is discussed in greater detail in the additional sustaining grounds below. (See, discussion of *Gheen v. Gheen*, 276 S.C. 404, 408, 279 S.E.2d 361, 363 (1981), at pp. 18-20 below). Irrespective of that discussion, which comes down in Respondents' favor, Appellant failed to produce sufficient evidence that would allow him to recover under this claim of unjust enrichment because his evidence simply does not establish the elements.

Notably, there is no evidence in the record that the alleged improvements have any present value whatsoever. The record also lacks evidence that there was a benefit conferred from Appellant to Respondents, that was or will be realized by the Respondents. Therefore, the Circuit Court's dismissal of Appellant's claim was proper and should be affirmed.

C. The trial court correctly ruled that Appellant's promissory estoppel claim should be dismissed with prejudice.

Promissory Estoppel is an equitable remedy, allowing for a plaintiff to obtain relief if four elements are met: "(1) an unambiguous promise by the promisor; (2) reasonable reliance on the promise by the promisee; (3) reliance by the promisee was expected by and foreseeable to the

promisor; and (4) injury caused to the promise by his reasonable reliance." *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 379-80, 769 S.E.2d 237, 241 (2014).

The Circuit Court dismissed Appellant's claim of promissory estoppel on the grounds that Appellant failed to introduce any evidence that there was an unambiguous promise from Respondents that they would reimburse Appellant for the modifications he made to the Lugoff Property. (06/27/23 Order, pp. 7-8). Without evidence of this promise, the Circuit Court found that Appellant failed to establish his claim. (*Id.*). Further, the Circuit Court held that even if such a promise was made, Appellant did not suffer any injury because Appellant used the modifications to run the car lot he had established on the property. (*Id.*).

Appellant's counsel argues in brief that Appellant met all elements of promissory estoppel and the Circuit Court erred in dismissing his claim. (Appellant's Brief, pp. 12-13). Specifically, Appellant's counsel asserts, without citing to the record, that Appellant can establish this promise made to him from Claude and the terms of that promise through Appellant's own testimony. (Appellant's Brief, p. 12). However, Appellant's counsel fails to cite evidence or testimony from any witness other than Appellant himself and Appellant was properly precluded from testifying to statements by Claude Campbell under the Dead Man's Statute. (S.C. Code. Ann § 19-11-29). Appellant did not object to that before and does not appeal that here. As such, there is no evidence of a promise to reimburse.

This claim was properly dismissed by the Circuit Court on similar grounds as it dismissed Appellant's claims for unjust enrichment and for an equitable lien. As much as Appellant wishes to assert otherwise, it is insufficient for Appellant to meet his burden of proof by simply asserting conclusively the satisfaction of the elements of his claims without offering any substantiating evidence. While Appellant claims Claude Campbell promised to reimburse him for modifications Appellant made to the property, there is simply no evidence establishing an unambiguous promise to this effect.

Appellant produced no witnesses who had knowledge of this agreement, nor did Appellant produce any documentation showing such an agreement ever existed.

On the contrary, Harold Goff testified that he had knowledge that Claude Campbell told Appellant that Appellant would not be reimbursed for the improvements to the property:

> Q: […] Do you know for a fact that [Appellant] wasn't going to get paid for those improvements?
> A: Yes, Mr. Campbell told him he wasn't.

(Trial Transcript: pp. 165:25-166:2). Additionally, Appellant offered no evidence or testimony at trial that conclusively proved how much he paid for any improvements or that they added any value to the property above mere inflation. See, *Barnes v. Johnson*, 402 S.C. 458, 467, 742 S.E.2d 6, 10 (Ct. App. 2013).

The only evidence Appellant attempted to offer at trial was testimony regarding other business dealings he had with Claude Campbell that were premised on oral promises and not written contracts. (Trial Transcript: p. 102:16-24). However, the existence of separate immaterial oral promises between Appellant and Claude Campbell does not establish the existence of an unambiguous promise necessary to assert a claim of promissory estoppel. As such, the Circuit Court properly dismissed Appellant's claim of promissory estoppel for lack of evidence.

II. THE CIRCUIT COURT APPROPRIATELY LIMITED WITNESS TESTIMONY UNDER THE HEARSAY RULE.

A. The trial court properly excluded certain witness testimony as inadmissible hearsay.

Appellant's counsel argued in brief that the Circuit Court erred in prohibiting a non-party witness named Maedele Lawhorn from testifying about oral communications with Claude Campbell. (Appellant's Brief, p. 14). However, Appellant's argument in brief misstates Judge Lee's rulings on the aforementioned witness testimony and misstates the grounds for those rulings. (Appellant's Brief, pp. 14-15).

Before trial, Respondents filed three Motions in Limine. The first motion requested that Appellant be precluded from using evidence from conversations he had with Claude Campbell on the grounds that the testimony would violate the Dead Man's Statute. (02/23/23 Motion in Limine – Dead Man's Statute). The Court granted this motion as applied to Appellant, "to the extent that Mr. Ives is the person who may stand to benefit from some testimony relating to what he says was the agreement between the parties, I would think that the Deadman's Statue would apply." (Trial Transcript: p. 12:7-11).

The Dead Man's statute, S.C. Code Ann. § 19-11-29 (1976), excludes testimony concerning communications or transactions with a deceased person if the testimony could affect the testifying person's interest. As Appellant is a party in the action and thus has an interest in the case, Respondents' counsel requested that the Circuit Court preclude Appellant from testifying about communications he had with Claude. (02/23/23 Motion in Limine – Dead Man's Statute).

In a separate Motion in Limine, Respondents moved to preclude any testimony regarding conversations with or about Claude Campbell under the hearsay rule because Claude is deceased and not a party to this action. (02/23/23 Motion in Limine – Hearsay). Under SCRE 801, hearsay is defined as: A statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement. Subsequently, SCRE 802 provides that hearsay is not admissible unless there is an exception that applies to the statement elicited. The Court opted to address this motion when raised via contemporaneous objection during testimony.

During trial, Respondents objected to the testimony of Maedele Lawhorn, Kenneth Wayne Hinson, and Bradley Parsons upon Appellant's counsel asking all three witnesses about conversations with Claude Campbell. (Trial Transcript: pp. 40:1-13; 61:6-24; 152:2-16). While Appellant argues in brief that the testimony of these witnesses was limited under "hearsay based on the Dead Man's

statute", that is a mischaracterization. (Appellant's Brief, pp. 14-15). Essentially, Appellant conflates Respondents' two separate Motions in Limine. Judge Lee properly excluded third-party witness testimony about alleged statements by Claude Campbell to non-party witnesses under the hearsay rule, not the Dead Man's Statute. (Trial Transcript: pp. 40:1-13; 61:6-24; 152:2-16). Thus, the Circuit Court's ruling on that testimony was proper.

B. Appellant's counsel's argument in brief on the exclusion of witness testimony is a new argument that was not preserved for appeal.

Appellant's argument on brief that the Circuit Court incorrectly ruled that the testimony of Lawhorn, Hinson, and Parsons was limited on the grounds of "hearsay based on the Dead Man's statute" is not only incorrect and a misstatement of Judge Lee's ruling, but it is also a brand-new argument and, as such, not preserved for appellate review. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 372, 628 S.E.2d 902, 919 (Ct. App. 2006) ("In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court.").

During the initial proceedings at trial, Respondents' counsel and Appellant's counsel made arguments to Judge Lee regarding Respondents' Motions in Limine. (Trial Transcript: pp. 6:6-14:25). Respondents moved to exclude any testimony that would be inadmissible under the Dead Man's statute. (Trial Transcript: p. 6:6-9). Namely, testimony from Appellant regarding his communications with Claude Campbell as well as testimony from Bradley Parsons, on the grounds that Parsons' sole place of employment was the Appellant's car lot and as such, likely had an interest in the case. (Trial Transcript: p. 6:16-21). Appellant's counsel argued that Parsons' testimony should not be excluded under the Dead Man's statute as an exception – that a witness may testify to a transaction between the deceased and a third party. (Trial Transcript: p. 8:15-25). At that time, Judge Lee ruled that the Dead Man's statute would bar applicable testimony of Appellant, but that other witnesses who do not have an interest in the case would be able to testify. (Trial Transcript: p. 12:4-16).

As for the second Motion in Limine, Respondents asked the Court to limit the testimony of witnesses regarding conversations with Claude Campbell as inadmissible under the hearsay rule. (Trial Transcript: p. 12:20-23)[4]. On this matter, Appellant's counsel argued that the ruling on hearsay should be made as it comes up during trial instead of excluding all witness testimony on those grounds in the pretrial proceedings. (Trial Transcript: p. 14:8-18). Judge Lee agreed and decided that she would rule on the admissibility of the witness testimony as it came up during trial. (Trial Transcript: p. 14:19-24).

During the witness testimony of Lawhorn, Hinson, and Parsons, Respondents' counsel objected that the testimony elicited regarding communications of Claude is inadmissible under the hearsay rule. (Trial Transcript: pp. 40:3-5; 61:8; 152:6-14). Judge Lee sustained those objections based on hearsay, not on the basis of the Dead Man's Statute. (Trial Transcript: pp. 40:8-13; 61:12-13, 21; 152:15-16). At no point during trial, either in pretrial proceedings or during the witness testimony, did Appellant's counsel argue an error on behalf of the Trial Court in limiting the testimony of Lawhorn and Hinson under the Dead Man's statute. While Appellant's counsel did argue during the pretrial proceedings that Parsons' testimony should not be excluded under the Dead Man's statute, Appellant's counsel did not reraise their argument when Judge Lee sustained Respondents' hearsay objection to his testimony. (Trial Transcript: p. 8:15-25). This is because neither Parsons', Hinson's, nor Lawhorn's testimony was objected to under the Dead Man's Statute, but instead the objections were made on hearsay grounds. (Trial Transcript: pp. 40:8-13; 61:12-13, 21; 152:15-16).

Nevertheless, Appellant now makes a new argument that Judge Lee excluded testimony from Lawhorn, Hinson, and Parsons based on the Dead Man's statute and that this ruling was improper.

[4] Beginning on Page 12, Line 17 within the Trial Transcript and ending on Page 17, Line 19, the names of Respondents' attorney, Paul Porter, and Appellant's attorney, Brian Boger, are incorrectly switched. Within this section of the Trial Transcript, whenever Mr. Porter speaks, the record reflects that it is Mr. Boger who is speaking, and vice versa. On Page 17, Line 20, the parties' attorneys when speaking are once more accurately reflected within the trial record.

(Appellant's Brief, pp. 14-15). That simply did not happen. That argument is not only incorrect and a misstatement of Judge Lee's ruling, but that argument is unpreserved. *Greenwood Dev. Corp.*, 628 S.E.2d 902, 919 ("Error preservation principles are intended to enable the trial court to rule after it has considered all relevant facts, law, and arguments.") If Appellant's counsel was under the impression that the testimony was improperly limited under the Dead Man's statute and not under the hearsay rule, Appellant had a fair opportunity to address that concern before the trial court. However, he failed to do so and thus failed to preserve this issue for appeal. Appellant is not entitled to a second bite at the apple, and this new argument is neither preserved nor persuasive.

III. THE CIRCUIT COURT APPROPRIATELY APPLIED THE DOCTRINE OF LACHES.

The doctrine of laches is an equitable doctrine and is implicated "upon the failure to assert a known right." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004). Specifically, "[l]aches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Emery*, 361 S.C. at 215. Under this doctrine, if a party is aware of his rights, but unreasonably delays in asserting them, causing "his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Id.* To establish laches, a party must prove: "(1) delay, (2) unreasonable delay, and (3) prejudice." *Id.*

In this case, the Circuit Court found that Respondents successfully asserted the doctrine of laches as a defense. (06/27/23 Order, p. 9). Specifically, the Circuit Court found that Appellant failed to file this action until over three years after the death of Claude Campbell and more than 20 years after Appellant first made any modifications to the property, and that Appellant had "ample opportunity to seek reimbursement for any improvements based upon his lengthy business

relationship with Claude[,]" while Claude Campbell was still alive. (*Id.*). As such, Appellant's claims against Respondents are barred by the doctrine of laches.

Appellant's counsel asserts in brief that although Appellant delayed in filing this action, his delay was not unreasonable, but excusable. (Appellant's Brief, pp. 16-17). Because delay alone is insufficient to constitute laches, as Appellant asserts, the Circuit Court erred in finding that his delay was unreasonable and that Appellant had ample opportunity to seek reimbursement. (*Id.*). Appellant argues that the agreement between Appellant and Claude provided that Appellant would be reimbursed upon the sale of the property. (*Id.*). As such, upon learning of the sale, Appellant timely filed this action. (*Id.*).

However, much like the discussion of Appellant's claims above, there is simply no evidence of this alleged promise at all, much less the terms about when it would come to fruition. Appellant's delay was unreasonable because, as Appellant testified, he did not inform any members of the Campbell family about the alleged promise from Claude until well after Claude died. (Trial Transcript: p. 89:8-13). If Appellant had reason to believe that Respondents had no knowledge of the alleged agreement with Claude before Claude died, Appellant should have immediately filed this action and sought reimbursement upon Claude's death. Instead, Appellant waited greater than three years, until after Respondents placed the property on the market, to file this action.

There is ample evidence to demonstrate that the doctrine of laches was properly applied by the Circuit Court. Appellant had ample opportunity up to and upon Claude Campbell's death to bring this action. Instead, he only claimed that there was a promise for reimbursement when he was removed as a listing agent for the sale of the property. That delay by Appellant is unreasonable and inexcusable.

IV. ADDITIONAL SUSTAINING GROUNDS AND/OR THE TWO ISSUE RULE SUPPORT AFFIRMING THE LOWER COURT'S RULING.

"The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

"Under the two-issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." (*Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012)). When an issue is not preserved, the Court cannot rule on it, "While it may be good practice for us to reach the merits of an issue when error preservation is doubtful, we should follow our longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved." (*Id. at 330).*

Judge Lee found in Respondents' favor for several reasons. Appellant's appeal does not address each separate ground for ruling in favor of the Respondents. Under the two-issue rule, appellants must appeal **all** grounds supporting the decision, if more than one ground exists. If appellants fail to do so, the unpreserved issue serves as an independent basis for affirming the lower court's ruling. (*Atl. Coast Builders* at 329–30). ("However, this is not a "gotcha" game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function."). The Circuit Court's decision can and should be affirmed due to Appellant's failure to appeal the decision on every ground based on the additional sustaining grounds detailed below.

A. A tenant is not entitled to compensation from his landlord for improvements he made to his landlord's property.

"It is a well settled principle of property law that [a] tenant is not entitled to compensation for improvements made to the leasehold in the absence of an agreement that the landlord pay therefor." *In re Huffman*, 171 B.R. 649, 657 (Bankr. W.D. Mo. 1994.). Without a contract or agreement between

a landlord and tenant, a landlord has no obligation to reimburse its tenant for improvements made by the tenant to the landlord's property. *Id.* Permanent improvements made to a landlord's property by a tenant "become the property of the landlord upon termination of the tenancy." *In re Emerald Outdoor Advert.*, 348 B.R. 552, 557 (Bankr. E.D. Wash. 2006). Thus, a tenant assumes the risk upon improving his landlord's property that he is doing so out of his own funds and is not entitled to reimbursement for the value of those improvements. *In re Driscoll*, 401 B.R. 512, 519 (Bankr. S.D. Fla. 2009).

Because of this fundamental concept in property law, the Circuit Court properly found that Appellant "assumed the risk that his improvements would not be reimbursed by undertaking to pay for the improvements without written documentation that he would be reimbursed." (06/27/23 Order, p. 7).

Appellant, however, attempts to assert in brief that if a landlord is aware of and consents to the improvements made to his property by his tenant, then the tenant is entitled to reimbursement for those improvements. (Appellant's Brief, p. 10). To support this argument, Appellant's counsel cites *Gheen v. Gheen*, 276 S.C. 404, 408, 279 S.E.2d 361, 363 (1981). Appellant's counsel argues that under *Gheen*, a residential tenant with an option to purchase is entitled to reimbursement for improvements made to his landlord's property if the tenant made the improvements in good faith and if the landlord knew or and gave him consent for the improvements. (Appellant's Brief, p. 10). Appellant failed to include in their summation of *Gheen*, that the tenant in that case intended to enjoy the benefit of the improvements "in the event he becomes owner." *Gheen*, 279 S.E.2d at 362 ("As a further agreement, the parties executed a 'lease agreement and option to buy' on the house covering one year from October 30, 1974. Respondents were to pay $100 rent per month with a right to purchase the property on exercise of the option.").

Here, Appellant had no option to purchase or other reason to believe that he would one day own the property because any alleged oral promise he had with Claude Campbell cannot bind his

siblings, and even if an oral promise was made, ownership of the property was not a condition of the promise. In no version of events would Ives come to own the property.

The *Gheen* holding, relied upon heavily by Appellant's counsel, outlines three circumstances which must be present for a tenant to be entitled to receive reimbursement from his landlord: consent, intent, and good faith. Indeed, *Gheen* makes clear that "a tenant who in good faith makes improvements to the leasehold, with knowledge and consent of the lessor, with the intent of enjoying them in the event he becomes the owner, is entitled to reimbursement for the value of his improvements to the estate." *Gheen*, 276 S.C. at 408. However, Appellant's counsel fails to cite to any evidence which would establish any of these required circumstances. Specifically, there is no evidence cited by Appellant's counsel that Appellant had consent to make the modifications to the property, with the requisite understanding that he would one day own the property.

Furthermore, the *Gheen* court's holding is the adoption of the holding from an earlier South Carolina case, *Coggins v. McKinney*, 112 S.C. 270, 99 S.E. 844 (1919). In *Coggins*, the South Carolina Supreme Court held that "[i]t is plain that the improving occupier may be recompensed at all *only when* the improvements he has made have added value to the land . . ." *Coggins*, 112 S.C. at 272-73 (emphasis added). As already discussed, Appellant failed to offer any evidence which can substantiate his claim that the modifications he made to the property increased the property's value and instead, trial testimony suggests that the modifications made by Appellant either did not affect the property's value or detracted from its value. (Trial Transcript: p. 174:5-21). It is more likely than not that the alleged improvements add no value (Def. Ex. 7-10: Photos of Property).

Whether or not Claude, as a part-owner of the property, had the authority to bind his siblings who were also part-owners of the property, is discussed in further detail below. Nevertheless, Appellant's argument that the necessary circumstances exist in this case to allow for an exception to the general rule that tenants are not entitled to reimbursement lacks merit and is without evidence. As

such, the Circuit Court's finding that Appellant assumed the risk that he would not be reimbursed for his improvements to a leased property should be affirmed.

B. There is no evidence that Claude Campbell had the authority to bind other siblings to an alleged promise.

Even absent the lack of evidence to support Appellant's claim that Claude Campbell had promised to reimburse Appellant for the modifications to the Lugoff Property, Appellant's claims fail on the grounds that Claude did not have the authority to bind his siblings to that promise, if it existed.

Claude and his siblings held equal shares in the Lugoff Property upon the death of their father. (Def. Ex. 1: Estate of T.E. Campbell Documents). Claude's only special position was that of administrator to the estate, which closed in May 1984. The Circuit Court concluded that "[a]s the administrator of the estate, Claude had no authority to enter into an agreement on behalf of all owners without their consent." (06/27/23 Order, p. 8).

"It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms. Furthermore, the assent must be as to all of the terms of the contract." (*Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978)). All parties must have a meeting of the minds as to the essential terms of a contract in order to be bound by it and if their testimony shows otherwise, there is no contract. (See *Id.*).

Despite Appellant's insistence, without evidence, that Claude promised to pay Appellant for the modifications made to the Lugoff Property, Appellant fails to cite to any evidence or legal argument that Claude, as a part-owner of the property, would have any authority to bind his siblings to an alleged promise that they were not aware of nor gave their consent to be bound to. Absent any evidence to bestow such authority onto Claude, Respondents are not bound to a promise from Claude to Appellant, if any such promise existed at all. Thus, the Circuit Court's finding, that Claude lacked the necessary authority to bind Respondents to an alleged promise to pay Appellant, should be affirmed. Appellant also did not cite to any testimony that any of Claude's siblings or children

consented to be bound by an alleged contract or even knew about the improvements. In fact, they merely state that Appellant "improved Respondents' property with the knowledge and consent of one of the owners, Claude." (Appellant's Brief, p. 9).

C. There is no writing in this case to satisfy the Statute of Frauds.

"The Statute of Frauds requires that a contract that cannot be performed within one year be in writing and signed by the parties." *Springbob v. Univ. of S.C.*, 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2013) (quoting *Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005)). For a contract to satisfy the Statute of Frauds, "there must be a writing signed by the party against whom enforcement is sought, and 'the writings must establish the essential terms of the contracts without resort to parol evidence.'" *Springbob*, 407 S.C. at 496 (quoting *Cash v. Maddox*, 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975)).

In this case, the Circuit Court found that Appellant did not introduce into evidence a writing that would satisfy the Statute of Frauds, which Respondents asserted as a defense. (06/27/23 Order, p. 9). Because Appellant is seeking reimbursement from Respondents for improvements to land between the years of 1982 and 2008 based on an alleged oral contract, Appellant's claims are subject to the Statute of Frauds. Appellant failed not only to introduce a writing to satisfy the Statute of Frauds and was unable to establish that the alleged agreement for reimbursement existed at all. Because Appellant failed to satisfy the elements of the Statute of Frauds, of which his claims are subject to, the Circuit Court's ruling on this defense is proper and should be affirmed.

D. Appellant offered no proof of damages.

Despite the lack of evidence of Appellant's claims against Respondents, Appellant seeks a large amount of damages as reimbursement for the modifications he made to the Lugoff Property. Specifically, Appellant alleges and thus seeks as compensation, approximately $191,000.00 in damages.

(Am. Compl.). However, it is insufficient for Appellant to allege this amount in damages based on mere conjecture and guesswork.

The evidence presented by Appellant at trial should be of such an amount and should be persuasive enough to "allow the court or jury to determine the amount of damages with reasonable certainty or accuracy." *D.R. Horton, Inc. v. Builders FirstSource-Se. Grp., LLC*, 422 S.C. 144, 151, 810 S.E.2d 41, 45 (Ct. App. 2018) (quoting *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008)). Indeed, "[n]either the existence, causation nor amount of damages can be left to conjecture, guess or speculation." *Id.* (quoting *Piggy Park Enters., v. Schofield*, 251 S.C. 385, 391, 162 S.E.2d 705, 708 (1968)).

Appellant failed to provide the court with any documentation of the damages he seeks. Appellant could not offer receipts, records, or any similar documents which establish a monetary amount for the cost of the modifications to the property. Not only was Appellant unable to substantiate through documentation his estimate of the damages he seeks, but Appellant was unsuccessful in producing any evidence to establish how much these alleged improvements increased the value of the property. The substantial amount of damages sought by Appellant is nothing more than speculation unsupported by actual evidence. The Circuit Court's finding that Appellant failed to substantiate his damages is proper.

CONCLUSION

The Circuit Court's Order dismissing Appellant's case with prejudice was not only proper, but necessary and just. Appellant failed to meet his burden of proof to establish his claims, and they are otherwise legally insufficient.

The Circuit Court's ruling should be affirmed based on the lack of evidence, legal conclusions of the Circuit Court, the two issue rule, and the additional sustaining grounds asserted herein.

Respectfully Submitted,

s/J. Paul Porter

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