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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2021-000793

FAMILY SERVICES, INC., AS CONSERVATOR FOR MURIEL W. CLARKIN, RESPONDENT,

Appellant(s),

v.

PATRICIA CLARKIN SMITH AND WELLS FARGO BANK, NA., DEFENDANTS, OF WHOM PATRICIA CLARKIN SMITH IS THE APPELLANT,

Respondent (s).

FINAL BRIEF OF APPELLANT

DICKSON DAVIS LAW FIRM, LLC

Deborah D. Davis, Esq.
SC Bar No.: 102942
620 Rutherford Street
Greenville, SC 29609
(833) 729-3426 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

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II. **Whether the lower court erred granting a summary judgment when a genuine dispute of legal conclusions, or inferences drawn from the evidentiary facts, existed as a matter of law for awarding Respondent damages pertaining to rent in arrears when no landlord-tenant relationship existed.**

III. **Whether the lower court erred by violating Appellant's constitutional rights of depriving Appellant of Appellant's property without due process.**

STATEMENT OF THE CASE

Respondent Family Services, Inc. ("Family Services"), as the conservator for Muriel Walsh Clarkin ("Mother"), sued Appellant Patricia Clarkin Smith ("Patricia") and Defendant Wells Fargo Bank, N.A. ("Wells Fargo"), for disputed monies and property transfer(s) pertaining to the conservatorship. (R. pp. 50-61, 63-64, 231-236, 238-250). Patricia and her sister, Muriel Clarkin Kennedy ("Muriel"), are the daughters of Muriel Walsh Clarkin. (R. pp. 20-31, 50-61, 63-34, 230-236, 268-269, 285-302). Family Services requested a jury trial and pled the following causes of action against all named defendants: (1) Declaratory Injunctive Relief; (2) Fraudulent Conveyance; (3) Quiet Title; (4) Conversion; (5) Unjust Enrichment; (6) Money had and Received; (7) Promissory Estoppel; and, (8) Quantum Meruit. (R. pp. 56-61, 237-250). Patricia filed an answer that denied Family Services's material allegations aside from establishing parties, publicly recorded legal instruments, and identifying amounts in dispute between the parties and Mother's conservatorship. (R. pp. 50-61, 63-64). Family Services filed an amended complaint with minor changes but no substantive changes overall. (R. pp. 56-61, 72-78). Wells Fargo filed an answer to Family Services's amended complaint. (R. pp. 81-91).

Family Services served Patricia requests for admissions, interrogatories, and production of documents. (R. pp. 116-71, 485-502, 513-532). Family Services deposed Patricia. (R. pp. 252-532). Certain key facts are not disputed and have been admitted. In a sister probate case (Case No. 2014-GC-10-0209), the Honorable Tamara C. Curry in Charleston County Probate Court appointed Family Services as conservator for Mother on March 27, 2015. (R. pp. 24-25, 50, 66). On or around November 1, 2012, Patricia received $6,000.00 from Mother and her late father. (R. pp. 29, 31-33, 236). Pertaining to allegations of damages for a sum uncertain, Family Services never pled damages for this said stipulated amount of $6,000.00 (on November 1,

2012). (R. pp. 29, 31-33, 35, 43-45, 50-61, 66-78, 373-382, 406, 477-478).

As recorded on August 7, 2013, the stipulated deed transfer pertains to the real property, and residence, of both Mother and Patricia that is located on 602 Atlantic Street, Mount Pleasant, Charleston, South Carolina (Book No. 0351, Page No. 348, TMS No. 532-06-00-129). Mother conveyed one-half (1/2) interest in said property to Patricia as joint tenants with rights of survivorship. This deed evidenced both Mother and Patricia as landowners of said property. Also, this deed correctly identifies the subject property in dispute for the above-captioned case with respect to Family Services's allegations of rent in arrears under different legal theories. (R. pp. 33-35, 43-45, 50-51, 66-67, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). On or around August 21, 2013, Patricia received $1,500.00 from Mother. (R. pp. 26, 29, 31-33, 35, 43-45, 52, 68, 135-136, 144-145, 343-346, 373-382, 477-478).

On or around November 18, 2014, Patricia received $6,000.00 from Mother. (R. pp. 28-29, 31-33, 35, 43-45, 69, 145, 156, 270-276, 359-362, 373-382, 517, 522-527). On or around December 23, 2014, Patricia received $10,000.00 from Mother. (R. pp. 29, 31-33, 35, 43-45, 128, 146-147, 157, 373-382, 384-385, 389, 522-527). Patricia concedes that challenging the said stipulated amounts of $6,000.00 (on November 18, 2014) and $10,000.00 (on December 23, 2014) is not preserved upon appeal. Thus, the award for these two stipulated amounts and interest thereupon to Family Services, as conservator for Mother, remain undisturbed upon appeal.

Family Services and Wells Fargo entered into a consent order striking Wells Fargo from the case. (R. pp. 2-3). On August 30, 2019, the Honorable Roger M. Young, Sr., heard Family Services's motion to enforce the settlement agreement and to disqualify Patricia's counsel. (R. p. 11). On June 25, 2020, the Honorable Mikell R. Scarborough heard Family Services's motion to

enforce settlement rendering a decision to hold judgment until Patricia retained counsel and respond to said motion accordingly within fifteen (15) business days. (R. p. 14). Patricia filed a motion in opposition to Family Services's motion to enforce settlement. (R. pp. 214-221). The lower court ruled said settlement negotiations between the parties as invalid and non-binding. (R. pp. 6, 11, 173-204, 214-229). Family Services moved the lower court to transfer the case to Master in Equity, of which the lower court granted the motion. (R. pp. 6, 210-12).

Family Services filed a motion for summary judgment. (R. pp. 230-532). On May 11, 2021, the Honorable Mikell R. Scarborough heard Family Services's motion for summary judgment. Appellant experienced an issue with attending the hearing in a timely manner arriving shortly after the conclusion of said hearing while Family Services was still present in the courtroom and motion hearings were still being heard by the lower court. Judge Scarborough informed Patricia that the hearing on the motion for summary judgment had already been ruled and decided upon in her absence. (R. pp. 20-24, 533-534).

In a separate sister case (Case No. 2022-CP-08-00910), and on November 3, 2022, the Honorable Dale Van Slambrook in Berkley County entered an order withholding $100,000.00 from Patricia in sale proceeds of another related real estate property due to the outcome of this appeal. (R. pp. 537-539).

This appeal followed.

STATEMENT OF FACTS

Context matters. Accuracy matters. When the probate court determines an individual as legally incapacitated and establishes a conservatorship, the conservator does not have carte blanche to arbitrarily pursue all potential sources of income or assets prior to any determination of legal incapacity or to the detriment of another's rights to property. While Mother's demise with the progressive onset of dementia is an unfortunate hardship, Family Services relied upon the allegations made by Muriel against Patricia under the circumstances that were not properly assessed nor investigated before taking further legal action. (R. pp. 26-27, 29-30, 37, 54, 70, 236, 268-303). Muriel's role in Mother's legal incapacitation is questionable as to having unclean hands and exhibiting an underlying motive of instigating sisterly strife over Mother's money and real property. (R. pp. 54, 70, 232, 292-294, 329-330, 354-355).

Patricia's parents had four children, of which the two daughters Patricia and Muriel have been particularly litigious over Mother's finances and care. (R. pp. 24-25, 39-42, 54, 70, 230-236, 246-249). On March 27, 2013, Muriel was established as Mother's attorney in fact (Book No. 0319, Page No. 644) with Patricia being a successor attorney in fact. (R. pp. 27, 29, 52, 68, 233-234, 299-303). After Patricia's father (and Mother's husband) passed away on December 21, 2011, Mother requires assisted living as an elderly woman in her late eighties or early nineties. (R. pp. 25, 50, 66, 423). Mother granted Muriel full interest in real property on Goat Island (Book No. 0271, Page No. 285, TMS No. 571-14-00-007) to Muriel on August 15, 2012. (R. pp. 51, 67, 335). Initially, Mother was living with Muriel at the family home located on 911 South Shem Drive, Mount Pleasant, South Carolina 29464 (Book No. 0380, Page No. 802, TMS No. 535-15-00-043) until the two experienced a falling out on or around March 31, 2014 ("911 South Shem Drive"). (R. pp. 52, 68, 329-330, 394-405). On December 27, 2013, Mother granted one-

third (1/3) of her interest to Muriel and one-third (1/3) of her interest to Patricia in 911 South Shem Drive (Book No. 0380, Page No. 802, TMS No. 535-15-00-043). (R. pp. 52, 68).

Subsequently thereafter on or around April 1, 2014, Mother moved in with Patricia at 602 Atlantic Street, Mount Pleasant, Charleston, South Carolina (Book No. 0351, Page No. 348, TMS No. 532-06-00-129) ("602 Atlantic Street"). (R. pp. 329-330, 405). Then, as the sole owner, Mother granted half of her full interest in 602 Atlantic Street to Patricia as joint tenants with rights of survivorship on August 7, 2013. (R. pp. 33-35, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506).

On or around November 1, 2012, Patricia received a gift from Mother and her late father in the amount of $6,000.00. (R. pp. 29, 31-33, 236). This stipulated sum of $6,000.00 (on November 1, 2012) was never included in any of Family Services's pleadings. (R. pp. 29, 31-33, 35, 43-45, 50-61, 66-78, 373-382, 406, 477-478). Hence, an award on this amount is outside the scope of the pleadings and void. On or around August 21, 2013, Patricia received a secondary gift from Mother in the amount of $1,500.00. (R. pp. 26, 29, 31-33, 35, 43-45, 52, 68, 144-145, 343-346, 373-382, 477-478). Both gifts occurred prior to Mother being diagnosed and declared legally incapacitated (collectively referred to as "Gifts").

On or around November 12, 2014, Dr. Jacob Mintzer of Alzheimer's Research Center of Roper St. Francis Hospital found that Mother lacked the mental capacity to give informed consent to for a standard clinical assessment. (R. pp. 27, 37). On or around November 26, 2014, Dr. Michael Mikola of Roper St. Francis Hospital wrote a certified letter diagnosing Muriel Walsh Clarkin with Alzheimer's dementia. (R. pp. 26-27, 30, 37). However, Mother was not actually declared mentally incapacitated until on or around December 22, 2014. (R. pp. 25, 29, 37, 231, 234, 268, 306-307). The lower court invalidated transactions or declared Mother under a

disability effective as of November 12, 2014. (R. pp. 22, 27, 37). Initially, Muriel was the temporary conservator on or around December 22, 2014. (R. pp. 26, 41-42, 236, 248-249, 303-314). Temporarily on January 7, 2015, and permanently on March 27, 2015, Family Services became the conservator for Mother. (R. pp. 24-25, 50, 66).

When Family Services filed its complaint against Patricia on October 20, 2017, Family Services's allegations of claims on these Gifts occurred well after the three-year statute of limitations tolled. The statute of limitations for these Gifts tolled under the three-year statute of limitations on November 1, 2015, and August 21, 2016, respectively. Family Services did not present any documentation in writing of Patricia assuming the debt after the statute of limitations was tolled. Family Services did not present any documentation in writing that Family Services made a demand for repayment of these Gifts. Thus, Family Services is not entitled to these Gifts in the amount of $7,500.00 and said interest thereupon.

On or around November 18, 2014, Patricia received $6,000.00 from Mother. (R. pp. 28-29, 31-33, 35, 43-45, 69, 145, 156, 270-246, 359-362, 373-382, 517, 522-527). Subsequently thereafter, and on or around December 23, 2014, Patricia received $10,000.00 from Mother. (R. pp. 29, 31-33, 35, 43-45, 128, 146-147, 157, 373-382, 384-385, 389, 522-527). For these two stipulated sums, Patricia has previously stated that the award of these amounts and interest thereupon are not in dispute. (R. pp. 29-30, 43-45). As the appropriate objections were not preserved and then waived on appeal, challenges to these stipulated sums may not be heard on appeal. This appeal will not address the enforceability of upholding these two stipulated sums. Moreover, in the demands made for repayment by Family Services to Patricia, Family Services only sent requests to Patricia for these two stipulated sums concerning the $6,000.00 (on November 18, 2014) and the $10,000.00 (on December 23, 2014). (R. pp. 289-295). Family

Services does not provide any other documentation that Family Services made a demand to Patricia for other funds such as the Gifts or rent in arrears. Family Services does not establish having a right to said personal or real property for these monetary damages.

Since March 27, 2015, Family Services asserted a claim of rent in arrears in the amount of $500.00 in rent per month for Patricia to reside with Mother at 602 Atlantic Street. (R. pp. 33-36, 241-242, 305-306, 382). Despite acknowledging Patricia as a landowner of 602 Atlantic Street, Family Services extorted a total of rent in arrears for $38,500.00 encompassing 77 monthly rent payments of $500.00 per month since January of 2015. (R. pp. 33-36). Interest thereupon said rent in arrears amounted to $8,255.88. (R. pp. 33-36). Total rent in arrears with interest amounted to $46,755.88. (R. pp. 33-36, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). A landowner residing on the real property in question, and in possession of the same, may not be charged for nonpayment of rent or rent in arrears. Because, the prerequisite landlord-tenant relationship is necessary to charge for rent in a residential home. Thus, charging an owner of real property rent to live on said real property is an obsequious, legal impossibility.

STANDARD OF REVIEW

I. Motion for summary judgment. Rule 56(c), SCRCP.

A motion for summary judgment should ripen after preliminary discovery in litigation begins and pleadings are closed because the motion typically involves a variety of pleadings, including the complaint, answer, and preliminary discovery; affidavits; depositions; and, admissible evidence. Rule 56, SCRCP; *see Hooper v. Ebenezer Senior Servs. & Rehab. Ctr.*, 386 S.C. 108, 114, 687 S.E.2d 29, 32 (2009). A motion for granting summary judgment under Rule 56(c) typically occurs "*after adequate time for discovery* and upon motion, against a party who

fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24, 106 S. Ct. 2548, 2552-53 (1986) (emphasis added). The moving party bears the burden to show the court the basis for a motion for summary judgment by identifying portions of the pleadings, discovery, and affidavits to "demonstrate the absence of a genuine issue of material fact." *Id*. at 323; *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Therefore, a motion for "[s]ummary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69-71, 580 S.E.2d 433, 438-39 (2003); *see George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citing *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980)).

In a Rule 56(c) motion for summary judgment, the court must determine "whether any triable issues of fact exist." *Bloom v. Ravoira*, 339 S.C. 417, 421-22, 529 S.E.2d 710, 712 (2000). Similar to the standard for a motion for directed verdict, the legal issue before the court is whether disposing of a case as a matter of law against a non-moving party would be reasonably possible based on the facts of the case. *Id*. at 422. A Rule 56(c) motion for summary judgment must fail when the evidence and reasonable inferences therefrom construed in the light most favorable to the non-moving party shows a genuine disputed issue exists regarding any material fact for each essential element in the claim that "might affect the outcome of the lawsuit under governing substantive law." *Hyman v. Ford Motor Co.*, 142 F. Supp. 2d 735, 737-38 (D.S.C. 2001); *Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 628, 799 S.E.2d 318, 322 (Ct. App. 2017). By contrast, even when no dispute of the evidentiary facts exits, a Rule 56 motion for summary judgment must fail when a dispute exits as to the legal conclusions "or inferences to

be drawn from [the evidentiary facts]." *Bloom*, 339 S.C. at 422.

ARGUMENTS

When a plaintiff lacks subject matter jurisdiction, the defendant may raise lack of subject matter jurisdiction at any time before or after the case has been adjudicated. Rule 12(a)-(b), SCRCP. Rule 12(b)(1) pertains to dismissing a case or defending any cause of action in any pleading based upon a lack of subject matter jurisdiction over the case. Rule 12(b)(1), SCRCP. A court must have subject matter jurisdiction to enforce its own decrees. *Hallums v. Bowens*, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct. App. 1993). Subject matter jurisdiction refers to the power of the court to adjudicate cases with the proceedings in question belonging to a general class. *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 599-600 (1994). By contrast, compared to a claim for improper venue, "[a] court lacking subject matter jurisdiction, however, has no authority to act regardless of the geographical location or consent of the litigants." *Dove*, 314 S.C. at 238; *Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 389 n.1, 242 S.E.2d 430, 431 (1978) (opining that "consent has no bearing on the question of subject matter jurisdiction since such jurisdiction is not waivable"). Subject matter jurisdiction is "a court's constitutional or statutory power to adjudicate a case." *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007). Subject matter jurisdiction confers "the power of a court to hear and determine cases of the general class to which the proceedings in question belong . . . ." *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005). *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). While subject matter jurisdiction may not be waived by the parties or consented to by the parties, the issue of subject matter jurisdiction may be raised at any time upon the following condition as to "if it appeared that the lower court did not possess subject matter jurisdiction." *Johnson*, 372 S.C. at 284; *Gentry*, 363 S.C. at 100.

The term subject matter has a broad and various definition related to the right one party claims against another for the relief sought. *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121 n.10, 463 S.E.2d 600, 605 (1995) (citations omitted). First, if the defense for statute of limitations prevails, then so does the defense for lack of subject matter jurisdiction because a court's subject matter jurisdiction rests upon whether a plaintiff is entitled to sue on a cause of action. *See McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994). The laws in effect at the moment a cause of action accrued is the controlling law over parties' legal relationships and rights. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 371, 585 S.E.2d 292, 297 (2003). A cause of action accrues at the moment when plaintiff is entitled to sue on it. *Id*. at 381. The effect of the statute of limitations is substantive in nature foreclosing a claim. Because, the statute of limitations (as codified and amended) operates like a time capsule as to whether a claim is barred. Whether a claim is barred is based upon the controlling law (for the statute of limitations) that surrounds a cause of action at the time the said cause of action accrued.

Second, a party must have justiciability to bring forth a claim and have standing to do so for a court to have subject matter jurisdiction. *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 769-70 (2016). As a question of law, the court may construe the statutes in question for determining a plaintiff's justiciability without deference to the lower court. *Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011); *see also McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) (discussing court's construction of legislative intent permissible for substantive due process). A party must have a personal stake in the lawsuit in which said claim, of which is the subject matter of the lawsuit, is ripe to be heard. *Joseph*, 417 S.C. at 449. The plaintiff must

establish three required elements to meet the prerequisites to have standing in a lawsuit: (1) the plaintiff suffers an injury in fact; (2) a causal connection exists between the injury in fact and the conduct complained of that is traceable to the defendant; and, (3) the likelihood is high that a decision by the court will favorably redress the plaintiff's injury that is not merely speculative in nature. *Joseph*, 417 S.C. at 449; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992). An injury in fact is the defendant's invasion of plaintiff's legal right, or interest, which is concrete and personalized harm whether actualized or imminent in nature. *Lujan*, 504 U.S. at 560-61; *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639-40, 528 S.E.2d 647, 649-50 (1999) (explaining that the injury in fact must be ripe or plaintiff faces imminent danger of sustaining injury). The injury must be of a personal nature that directly impacts the plaintiff and is not generalized in nature with the common public. *Joytime Distribs.*, 338 S.C. at 639-40.

I. The lower court erred granting Respondent's Motion for Summary Judgment against Appellant Patricia Clarkin Smith for monetary damages in the amount of $7,500.00 pertaining to gifts made by Mother to Patricia barring Family Services from recovery under the three-year statute of limitations.

The lower court erred because the lower court lacks subject matter jurisdiction when Family Services lacks standing to assert claims on disputed funds after the statute of limitations tolled. As a matter of law, Family Services *does not present* a genuine undisputed issue of material fact, or of legal conclusions drawn from material facts, as to Family Services being entitled to collect Mother's Gifts to Patricia (instead of loans) *after* the statute of limitations has tolled and *before* Mother was declared legally incapacitated. Ultimately, collections on $7,500.00 for these Gifts also warrants violating Patricia's substantive due process rights as discussed below in Section III. As enacted on January 1, 2019, the South Carolina Probate Code

does not abridge the effect of other statutes on rights acquired, extinguished, or barred. S.C. Code Ann. § 62-5-100(C). Once the probate court adjudicates an individual to be incapacitated, a conservator will be granted powers to assist managing the incapacitated individual's physical and financial well-being. S.C. Code Ann. § 62-5-101(1) to -(19).

With respect to standing for collections purposes and asset tracing for the incapacitated person's estate, conservators must adhere to the appropriate statute of limitations under the circumstances as to when the right of action accrued. S.C. Code Ann. §§ 15-3-40 (tolling statute of limitations for persons with disability), 15-3-50 (limitations on tolling statute of limitations based on when disability existed at the time of when the right accrued). The statute of limitations is three years for "an action upon a contract, obligation, or liability, express or implied." S.C. Code Ann. §§ 15-3-530(1), 15-3-530(4) (three-year statute of limitations for claim and delivery). For older promises to pay from more than three years ago, acknowledgments or renewed promises to pay will not be charged against the promisor unless signed in writing by the promisor or the promisor pays a part of the debt or interest thereon. S.C. Code Ann. §§ 15-3-120, 15-3-130.

Here, Mother was only diagnosed as mentally incapacitated on or around November 26, 2014. However, the probate court made findings that the mental incapacitation for Mother was identified at the earliest on November 14, 2014. Hence, all repossessions of Mother's assets prior to November 14, 2014, are not subject to the statute of limitations tolling for a person under disability. Additionally, prior to November 14, 2014, the conservator must adhere to when the right accrued to pursue said assets or disputed sums. The statute of limitations abridges Family Services's rights to exercise its powers as conservator for Mother; and, at the time of and after Family Services filed this lawsuit, the statute of limitations still governed under these

circumstances in conjunction with the South Carolina Probate Code as codified and amended.

Prior to filing the lawsuit against Patricia, Family Services's demands to Patricia for repayment pertained only to the $6,000.00 (on November 18, 2014) and $10,000.00 (on December 23, 2014). For these two demands, both fall within the statute of limitations and tolling the statute of limitations for a person with disability. Prior to November 14, 2014, Mother only had three years statute of limitations for Family Services's other allegations pertaining to Patricia's promises to pay or conversion of the Gifts in the amounts of $6,000.00 (on November 1, 2012) and $1,500.00 (on August 21, 2013). Family Services only filed the lawsuit against Patricia on October 20, 2017. Thus, the three-year statute of limitations barred Family Services's claims related to Patricia's Gifts. At the time Patricia received these Gifts from Mother, Mother's rights accrued at that time with no tolling of the statute of limitations for a person with disability. Family Services cannot seek to enlarge its rights beyond what the South Carolina code allows for Mother. Family Services's self-perceived rights to these Gifts were extinguished before Family Services ever filed this lawsuit against Patricia. If Family Services lacked standing to bring claims against Patricia for these Gifts at the time of filing this lawsuit, then Family Services also lacked standing to receive an award from the lower court for said claims because the lower court lacked subject matter jurisdiction to do so.

II. The lower court erred granting Respondent's Motion for Summary Judgment against Appellant Patricia Clarkin Smith for rent in arrears and interest thereupon when a landlord-tenant relationship never existed with Appellant Patricia Smith being a landowner thus rendering an award on this basis a legal impossibility.

The lower court's factual findings and legal conclusions to award Family Services rent in arrears is a sham legal process thwarting justice and absolutely violates public policy. Family Services lacks standing to assert claims on rent in arrears because no landlord-tenant relationship

exists to warrant an award for rent in arrears pursuant to its cause of action for promissory estoppel. Because no landlord-tenant relationship exists, Family Services lacks standing under the South Carolina Residential Landlord-Tenant Act with respect to claims of monetary loss from rent in arrears. Family Services lacks a concrete and particularized injury for so-called rent in arrears in the woeful absence of a landlord-tenant relationship. As a matter of law, Family Services does not present a genuine undisputed issue of material fact, or of or of legal conclusions drawn from material facts, as to Family Services being entitled to collect rent (and rent in arrears) from Patricia. By contrast, Patricia has a fee simple interest in 602 Atlantic Street with a remainderman of a right of reentry on the real property as a landowner instead of merely having a tenant's possessory interest. Family Services lacks standing to bring forth any legal claims related to the South Carolina Residential Landlord-Tenant Act or to landlord-tenant law applying to leasehold estates because no landlord-tenant relationship exists. No written lease agreement exists. Even Patricia, as a layman, knew this simple legal concept when she testified in her deposition. As a matter of law, the lower court grossly erred by awarding Family Services $46,755.88 for rent in arrears that is based on a legal impossibility and without merit.

When a lease—as a contract—is not involved in the landlord-tenant dispute, determining the status of the landlord-tenant relationship is a prerequisite before referring to the parties as the landlord and tenant and creating the duty of a tenant to pay rent. *See Simon v. Kirkpatrick*, 141 S.C. 251, 257-65, 139 S.E. 614, 616-19 (1927). A written lease is not always relevant in a landlord-tenant dispute because the written lease may be invalid, expired, or nonexistent. *E.g.*, *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989) (expired lease and unenforceable, oral contract); *Barksdale v. Hinson*, 212 S.C. 1, 3, 46 S.E.2d 170, 171 (1948) (oral lease); *Wilson v. McAbee*, 256 S.C. 211, 217, 182 S.E.2d 313, 315 (1971) (defective,

written lease). The South Carolina Residential Landlord-Tenant Act does not apply when a person's occupancy of real property precedes a conveyance of the same to said person, whether in part or in full. S.C. Code Ann. § 27-40-120; *see also* S.C. Code Ann. § 27-7-40 (creation of joint tenancies with rights of survivorship or in common).

The tenant occupies the lands, or premises, of the landlord with the landlord's assent, whether express or implied, in a manner that is subordinated to the landlord's title to the lands or premises. *Columbia R., G. & E. Co. v. Jones*, 119 S.C. 480, 490, 112 S.E. 267, 271 (1922). The lease for the premises is both a contract and a transfer of estate, which are mutually independent:

> While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves. *Id*.

A breach of contract under the lease will not permit the tenant to vacate as the leasehold estate exists independently and is mutually exclusive from the characterization of the lease as a contract. *See Rowland & Sons v. Bock*, 150 S.C. 490, 493, 148 S.E. 549, 550 (1929). South Carolina law separates legal title to the land from the possession of the land in a leasehold estate, protecting one in possession of the land from "one who enters and takes lands from the possession of another." *See State v. Bates*, 87 S.C. 527, 530-31, 70 S.E. 170, 171 (1911). The South Carolina Code is clear establishing that owners are in possession of real estate being used or occupied by a tenant whereas the tenant is merely holding the real estate thereunder. S.C. Code Ann. § 27-35-30. Failure to pay rent by the tenant upon demand by the landlord terminates the tenant's possessory interest in the real estate, and the tenant must vacate the real estate. S.C. Code Ann. § 27-35-140 (leaving right of entry and remainderman fee simple to landowner).

The South Carolina Residential Landlord-Tenant Act governs the residential use of the

real estate leased. S.C. Code Ann. § 27-40-210(3). The South Carolina Code defines a tenant as "[a] person *other than the owner* using or occupying real estate" whether under a written or oral agreement. S.C. Code Ann. §§ 27-33-10(3) to -(8) (emphasis added). The South Carolina Residential Landlord-Tenant Act defines a tenant as "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others." S.C. Code Ann. § 27-40-210(15). By contrast, the South Carolina Code defines a landlord "to include the owner or person in possession or entitled to possession of the real estate used or occupied by the tenant. . . ." S.C. Code Ann. § 27-33-10(8). The South Carolina Residential Landlord-Tenant Act defines a landlord as the owner of the premises who comprises of "one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises." S.C. Code Ann. § 27-40-210(8) (owners); *see also* S.C. Code Ann. §§ 27-40-210(6) (landlord), 27-40-210(10) (premises).

Regardless of whether a lease governs the landlord-tenant relationship, South Carolina law governs landlords and tenants separately from the lease itself as mutually independent. *Burbach*, 326 S.C. at 497. Compliance with South Carolina law is mandatory by landlords and tenants alike, unless the statute expressly allows for private agreement to preempt the statute. *Compare Burbach v. Inv'rs Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (holding landlords and tenants to statutory duties), *with* S.C. Code Ann. § 27-35-100 ("unless there be an express agreement to the contrary"), *and* S.C. Code Ann. § 27-35-110 ("[w]hen there is an express agreement, either oral or written"). If no lease exists, or a lease is silent on the subject, then South Carolina law applies as a gap-filling function. S.C. Code Ann. §§ 27-40-30 (supplemental law permissible), 27-40-110 (governing rights, obligations, and

remedies under a lease agreement for a residential dwelling), 27-40-310 (governing terms and conditions of lease agreements), 27-40-330 (prohibiting certain lease provisions), 27-40-920 (preempting inconsistent provisions for residential leasing or renting of any real property in other South Carolina codes). In the absence of a written lease agreement, no oral lease agreement may exceed one year or said oral lease will be void as a matter of public policy. S.C. Code Ann. §§ 27-35-10, 27-35-20.

For Family Services to recover rent in arrears from Patricia pertaining to 602 Atlantic Street, Family Services must determine the existence of a landlord-tenant relationship between Mother and Patricia. While conservators are empowered to enter into a lease agreement and manage real property as rental property for the residential use on behalf of the incapacitated person, conservators must adhere to the South Carolina Residential Landlord-Tenant Act and accompanying law accordingly. S.C. Code Ann. §§ 27-40-920 (application of law), 62-5-101(1)-(19) (definitions), 62-5-107, 62-5-422 (B)(5) (powers). Here, Patricia resides in 602 Atlantic Street as her personal residence and dwelling. Patricia entered and took possession of 602 Atlantic Street on or just before the time Mother conveyed one-half (1/2) of her full interest in said property to Patricia. Hence, Patricia was entitled to occupy 602 Atlantic Street without paying rent when Mother concomitantly granted conveyance to Patricia as joint tenants with rights of survivorship. Patricia is one of the landowners, or owners, of 602 Atlantic Street. Patricia is entitled to the possession of 602 Atlantic Street. Patricia has vested legal title in said real property, whether in part of in full; beneficial ownership of said property; and, the present use and enjoyment of said real property.

Patricia is an owner—not a tenant. Liability for rent in arrears does not apply to owners of the premises who reside on the premises. Instead, liability for rent in arrears applies to tenants

who rent the premises. No written or oral lease agreement exists between Mother and Patricia for 602 Atlantic Street. Failure to pay rent will not terminate Patricia's possession of 602 Atlantic Street. Patricia is not required to pay rent in exchange for possessing 602 Atlantic Street thereunder her vested right of legal title to and present use and enjoyment of said property. The bundle of sticks representing interests in real property do not scatter so. Additionally, Family Services may not impose rent in arrears onto Patricia in excess of a year (or twelve months) without a written lease agreement. Therefore, Family Services may not impose rent in arrears of 77 monthly rent payments of $500.00 per month since January of 2015 that directly violates the statute of frauds and is void against public policy.

III. The lower court violated Appellant's substantive due process rights by depriving Appellant of Appellant's valid legal interest in Appellant's personal and real property.

The lower court violated due process under the Fourteenth Amendment of the Federal Constitution, and corollary rights under South Carolina law, which stands for the proposition that:

> The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form of procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur. *State v. Owens*, 346 S.C. 637, 664, 552 S.E.2d 745, 759 (2001) (*citing S.C. Nat'l Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (internal citations omitted)).

Both the Federal Constitution and the South Carolina Constitution extend protection to individuals from any state actor who deprives any citizen of the United States "under [the] color of any statute, ordinance, regulation, custom, or usage, of any State." 42 U.S.C. § 1983; U.S. CONST. amend. 1, XIV; S.C. CONST. art. I, § 2; *see also Denene, Inc. v. City of Charleston*, 359

S.C. 85, 96, 596 S.E.2d 917, 923 (2004). The Fourth Amendment vests to the people "[t]he right . . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. The physical trespass of property by the government is not necessary to affect a seizure of property because unlawful seizure may occur "a seizure of property occurs, not when there is a trespass, but "when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 1656, 80 L. Ed. 2d 85 (1984).

Under a substantive due process claim, the aggrieved party must show the unlawful, arbitrary, and capricious deprivation of a cognizable property interest under South Carolina law. *Denene, Inc.*, 359 S.C. at 96; *Worsley Cos. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000) (discussing that the aggrieved party must have a legitimate claim or entitled to a property interest in a benefit with respect to agencies). To use other law that is not controlling based on when the cause of action accrued may result in harsh and oppressive results that violates a party's substantive due process rights. *See Tilley*, 355 S.C. at 370-72. The standard of review for substantive due process claims under the color of state law is whether the state law or ordinance "ordinance bears a reasonable relationship to any legitimate interest of government." *Denene, Inc.*, 359 S.C. at 96.

Here, Family Services is court-appointed by the probate court and acting under the color of the law with respect to tracing, collecting, and repossessing assets of protected persons adjudicated as legally incapacitated. The application of retrospective civil legislation may produce harsh and oppressive outcomes when a conservator, in fact, does not limit its activities in asset tracing, collections, or repossession within the same scope and manner as prescribed by the statute of limitations and as an equitable matter. The role of conservators is not to go on a

wild goose chase to nickel and dime any potential party in possession of or owing funds. Such conduct is a cost-ineffective endeavor for the protected person and eats up precious resources for said protected person. At some point, the conservator's efforts fail to represent the best interests of the protected person under these circumstances. Such a result is harsh and oppressive to victims harangued by Family Services as well as to protected persons left with little to no funds due to Family Services capricious management of funds allocated to protected persons in unnecessary litigation and legal fees. The outcome does not bear a reasonable relationship to the original intent of protecting legally incapacitated persons physically and financially.

Patricia has an outstanding $100,000.00 as her personal property from the sale proceeds of 911 South Shem Drive. These funds are tied up in a sister case because of this case, which also involves Family Services. The carte blanche approach to pursue assets for the protected person regardless of the prescribed statute of limitations leaves Patricia in open season to lose real and personal property. Patricia has a legitimate, cognizable right to her money and interest in property. Here, Family Services had no legal basis to collect over $45,000.00 for rent in arrears. Family Services's conduct is absolutely arbitrary and capricious to the detriment of Patricia's rights to said funds. Instead, Patricia has not had access to the full amount of these sale proceeds of approximately $100,000.00 since November 3, 2022. Patricia is entitled to these sale proceeds. However, because of Family Services's arbitrary and capricious claims made in this case, and the lower court upholding said claims, Patricia has been substantially deprived of approximately $100,000.00.

CONCLUSION

Patricia seeks relief from the Court to reverse, remand, and modify the lower court's order granting Family Services motion for summary judgment. For the reasons previously stated,

this Court should reverse, remand, and modify the judgment on damages from the circuit court. To uphold substantive due process rights for Patricia under these circumstances, Patricia is entitled to the reduction of Family Services's award for monetary damages with total damages in the amount of only $16,000.00 with the appropriate interest thereupon.

Respectfully submitted this 18 day of April , 2024 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis

Deborah D. Davis, Esq.
SC Bar No.: 102942
620 Rutherford Street
Greenville, SC 29609
(833) 729-3426 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

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CERTIFICATE OF COMPLIANCE FOR APPELLANT'S FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2021-000793

FAMILY SERVICES, INC., AS CONSERVATOR FOR MURIEL W. CLARKIN, RESPONDENT,

Appellant(s),

v.

PATRICIA CLARKIN SMITH AND WELLS FARGO BANK, NA., DEFENDANTS, OF WHOM PATRICIA CLARKIN SMITH IS THE APPELLANT,

Respondent (s).

CERTIFICATE OF COMPLIANCE

I certify Appellant's Final Reply Brief complies with Rules 211 and 267 of the South Carolina Appellate Court Rules.

Respectfully submitted this 18 day of April , 2024 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.
SC Bar No.: 102942
620 Rutherford Street
Greenville, SC 29609
(833) 729-3426 t
(864) 752-1424 f
d.davis@dicksondavislaw.com
www.dicksondavislaw.com

ATTORNEY FOR APPELLANT

The Law Office David Conor Keys, LLC
D. Conor Keys, Esq.
P.O. Box 14225
Charleston, SC 29422
(843) 906-3998

ATTORNEY FOR RESPONDENT