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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master in Equity

Case No. 2022-CP-02-02654

(Appellate Case No. 2024-001367)

William T. Hurley, Jr.,
as Trustee of the Aiken Property Trust,

Respondent,

vs.

Linda Donovan,

Appellant.

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Contents2

Table of Authorities3

Statement of Issues on Appeal4

Statement of the Case5

Statement of Facts7

Standard of Review12

Argument13

 1. The uncontradicted evidence presented shows that it was the intention of the parties that Linda Donovan be vested with some interest in the Subject Property, and the Master-in-Equity therefore erred in deeming her a trespasser13

 2. The uncontradicted evidence presented showed that Linda Donovan was entitled to the equitable remedy of unjust enrichment for the \$217,264.51 in financial contributions she made to the property between 2015 and 2024.....18

Conclusion.....21

Proof of Service22

TABLE OF AUTHORITIES

Cases

<i>Chase Home Fin., LLC v. Risher</i> , 405 S.C. 202, 746 S.E.2d 471 (Ct. App. 2013).....	18
<i>Dema v. Tenet Physician Servs.-Hilton Head, Inc.</i> , 383 S.C. 115, 678 S.E.2d 430 (2009)	18
<i>Donnan v. Mariner</i> , 339 S.C. 621, 529 S.E.2d 754 (Ct. App. 2000).....	13
<i>Graham v. Town of Latta, S.C.</i> , 417 S.C. 164, 789 S.E.2d 71 (Ct. App. 2016).....	16
<i>Hayne Federal Credit Union v. Bailey</i> , 327 S.C. 242, 489 S.E.2d 472 (1997)	13
<i>J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC</i> , 441 S.C. 642, 896 S.E.2d 328 (Ct. App. 2023).....	12
<i>JASDIP Properties SC, LLC v. Est. of Richardson</i> , 395 S.C. 633, 720 S.E.2d 485 (Ct. App. 2011).....	18
<i>Jocoy v. Jocoy</i> , 349 S.C. 441, 562 S.E.2d 674 (Ct. App. 2002).....	14

Secondary Sources

ALBERT C. TODD, III, ET AL., 9 S.C. JUR. GIFTS § 18.....	13-14
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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly held that Linda Donovan had no claim to title and possession of the property at issue in the underlying dispute as a consequence of a resulting trust, or whether she was a true trespasser.

2. Whether the uncontradicted evidence presented showed that Linda Donovan was entitled to the equitable remedy of unjust enrichment for the \$217,264.51 in financial contributions she made to the property between 2015 and 2024.

STATEMENT OF THE CASE

This appeal arises from a case filed by William T. Hurley, as Trustee of the Aiken Property Trust (“Hurley”) against Linda Donovan (“Donovan”) in the Aiken County Court of Common Pleas on November 17, 2022. Hurley filed a three-count complaint seeking (1) a declaratory judgment that Linda Donovan had no right or title in a parcel of property located in Aiken County; (2) trespass damages; and (3) ejectment of Donovan from the property. Donovan filed an answer and counterclaims, seeking *inter alia*, unjust enrichment, a constructive or resulting trust, and a declaratory judgment that she was at least a partial owner of the property.

The parties filed several motions, and obtained substantive rulings on those motions. Hurley filed a motion for judgment on the pleadings and a motion for summary judgment, both of which were denied. Donovan filed a motion to dismiss, which was also denied.

The parties referred the case to the Master-in-Equity, Judge Griffith, and a final trial occurred on June 26, 2024 before Judge Griffith. On July 22, 2024, Judge Griffith issued his final order, granting partial judgment in favor of Hurley and partial judgment in favor of Donovan.

Specifically, Donovan was awarded a judgment of \$19,974.24, but was deemed a trespasser, and an order for ejectment was issued against her in favor of Hurley. Donovan filed a timely notice of appeal on August 21, 2024.

STATEMENT OF FACTS

“William T. Hurley, Jr. Trustee of Aiken Property Trust U/D January 14, 2015” received two limited warranty deeds for his purchase of the property located at 3320 Banks Mill Road in Aiken County on January 16, 2015 (hereinafter the “Subject Property”). Tr. Exs., Pl.’s Exs. 1 & 2. (R., p. ___, line __). The Aiken Property Trust was created on January 14, 2015 by William T. Hurley, Jr., and its sole beneficiary is “Trust One JJD, whose sole beneficiary is John J. Donovan, II.” Tr. Exs., Pl.’s Ex. 6. (R., p. ___, line __). John J. Donovan, II is Appellant Donovan’s husband—they are still married. Trial Tr., 44. (R., p. ___, line __). A copy of Trust One JJD is in the record, and it was created on January 12, 2010. Tr. Exs., Pl.’s Exs. 4 & 5. (R., p. ___, line __).

The reason that John J. Donovan, II was sole beneficiary of the trust was that it was primarily his assets that were being held in trust. Trial Tr., 67; see also Pl.’s Ex. 14.1 (R., p. ___, line __) (arbitrator characterizing the trust assets as “derived from [John Donovan Sr.’s] efforts.”). Donovan is a college professor, and was once a successful businessman in Massachusetts having made millions forming 60 or so startup companies over his lengthy career. Trial Tr., 24, 117-118. (R., p.

___, line ___). He has been engaged in litigation with his children for years, which is related, but not directly binding, on this litigation. Trial Tr., 77. (R., p. ___, line ___).

The Subject Property was purchased with funds from three sources: John J. Donovan II wired \$8,000.00 personally, Linda Donovan wired \$19,974.24, and Trust One JJD wired \$1,282,953.49 (for a total of \$1,310,927.73). Trial Exs., Def's. Exs. 1 & 2. (R., p. ___, line ___). Linda Donovan has resided in the Subject Property since its purchase, and has been the sole caretaker of the property. Trial Tr. 120. (R., p. ___, line ___). “[Plaintiff Hurley] agrees that Linda Donovan has maintained the Aiken property” at all times relevant. Order, 3. (R., p. ___, line ___). Indeed, Hurley believes the property is now worth \$1,950,000.00. Aff. of William T. Hurley, Jr., ¶ 8. (R., p. ___, line ___).

In the time that she has resided on the Subject Property, she has contributed \$217,264.51 of her personal funds to the property, which can be broken down into three categories: (1) property taxes, (2) property insurance, and (3) improvements. Trial Exs., Def.'s Exs. 3 & 4 (R., p. ___, line ___); Trial Tr., 122, (R., p. ___, line ___). At trial she did not put forth evidence of her numerous repair costs, as she had horse boarders on the

property that contributed rents which offset the costs of maintenance. Trial Tr., 154-155. (R., p. ____, line __). Indeed, she testified she has “spent every penny [she] ha[s] in just maintaining it.” Trial Tr., 154. (R., p. ____, line __). She never accounted to the trustee for the rents and maintenance expenses on the property. Trial Tr., 153. (R., p. ____, line __). Plaintiff did not contest the amounts proffered by Donovan, and at trial, Hurley’s counsel stated: “This is your day in court, ma’am. And these are - these are your – this is your proof ***that I did not object to***. And this is your proof of what you’re claiming you put into the property and you’re claiming that will – that will cause you to have a – resulting trust as a result of this. . . I’m just going to accept them. We could – we can parse them – we could have parsed them, but we’re not. ***I’m going to accept them. You put in that money...***” Trial Tr., 155:6-18. (R., p. ____, line __). (emphasis added).

On April 27, 2015, shortly after the property was purchased, John Donovan executed a life estate deed, granting Appellant Donovan a life estate in the property. Trial Exs., Pl.’s Ex. 7. (R., p. ____, line __).

On April 1, 2019, John J. Donovan signed a stipulation in his arbitration proceedings stating that he “did not and do[es] not have the

right or authority to transfer, assign or pledge any assets held by or for the benefit of Trust one.” Trial Exs., Pl.’s Ex. 8. (R., p. ___, line ___). On January 28, 2020, Donovan and her husband jointly executed a quitclaim deed conveying back the life estate to “William T. Hurley, Jr., Trustee of Aiken Property Trust” and releasing any interest that “may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate dated April 27, 2015.” Trial Exs., Pl.’s Ex. 11. (R., p. ___, line ___).

On November 10, 2021, the arbitrator of John J. Donovan, II’s dispute with his children entered an order terminating all of John J. Donovan’s interest in Trust One JJD. Trial Exs., Pl.’s Ex. 12, p. 6. (R., p. ___, line ___). That arbitral award was adopted by the Superior Court of Massachusetts on August 17, 2022, Trial Exs., Pl.’s Ex. 13 (R., p. ___, line ___), and was affirmed by the Massachusetts Appeals Court on March 8, 2024. Trial Exs., Pl.’s Ex. 14.3. (R., p. ___, line ___). The trial of this case occurred three months later, though it had been pending for nearly two years. (R., p. ___, line ___).

Linda Donovan is a retired professional who is 70 years old and dying of lung cancer. Trial Tr., 116. (R., p. ___, line ___). At the time the

property was purchased, it was her husband's intention and the trustee's intention that Linda Donovan remain in the property until her death. Trial Tr., 123:17-19. (R., p. ____, line __). Morris Rudnick is an attorney who has practiced law for 42 years, and served as the closing attorney for the purchase of the Subject Property. Order, 2. (R., p. ____, line __). "It was Mr. Rudnick's understanding the property would be the primary residence of Linda Donovan." Order, 2. (R., p. ____, line __).

The Master-in-Equity determined that Linda Donovan was a trespasser, but characterized the case as one presenting "unusual facts." Order, 7. (R., p. ____, line __). "Prior to the demand to leave the property, the Plaintiff presented no contract for rent even though it is undisputed that [he k]new of the Defendant living on the property." Order, 7-8. (R., p. ____, line __).

STANDARD OF REVIEW

“In equity actions, an appellate court can review the record and make findings based on its view of the preponderance of the evidence. However, this court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility.” J & W Corp. of Greenwood v. Broad Creek Marina of Hilton Head, LLC, 441 S.C. 642, 664, 896 S.E.2d 328, 340 (Ct. App. 2023).

ARGUMENT

- 1. The uncontradicted evidence presented shows that it was the intention of the parties that Linda Donovan be vested with some interest in the Subject Property, and the Master-in-Equity therefore erred in deeming her a trespasser.**

“A resulting trust arises to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another. Donnan v. Mariner, 339 S.C. 621, 628, 529 S.E.2d 754, 758 (Ct. App. 2000). Generally, when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised in his behalf. Id. (citing Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997)). The presumption may be rebutted and the actual intention shown by parol evidence. Id. An action to impose a constructive or resulting trust is one in equity. Id. at 339 S.C. 627, 529 S.E.2d at 757.

At the core of the purchase of this property, John Donovan II was attempting to care for his wife, for whom he had a legal duty to care. “When a purchaser of property titles the property in the name of a relative, the presumption is that the purchaser intended a gift or

advancement, not the creation of a resulting trust.” ALBERT C. TODD, III, ET AL., 9 S.C. JUR. GIFTS § 18 (citing Jocoy v. Jocoy, 349 S.C. 441, 562 S.E.2d 674 (Ct. App. 2002)). This is different situation—the purchaser titled the property in the name of his trust, with the intention that his wife had a bona fide interest in the property, and shortly thereafter executed a life estate deed effectuating that gift. Appellant Donovan raised this issue in her pleadings, in her motion to dismiss, asserted it in response to Plaintiff’s motion for summary judgment, and asserted it at trial; and it was ruled upon by the Master-in-Equity: “Linda Donovan has no right or interest in either tract owned by Aiken Property Trust.”

The Master-in-Equity erred when he concluded that she had failed to establish her interest in the property. There was a lot of conflicting testimony at trial regarding who was the original owner of the funds contained in the Aiken Property Trust, but the Master-in-Equity rightly detailed the history of those funds, and how all of them had been contributed initially by John Donovan II. Hurley submitted several orders the Massachusetts arbitrator at trial, and those orders confirm that the trust funds were the result of John Donovan’s efforts. The Donovans were so confident in their own intentions, that they both

contributed additional funds at closing to ensure that the Aiken property could be purchased. The closing attorney also testified that it was his understanding that this home would be Linda Donovan's primary residence for life. Going into the transaction, everyone understood that while Hurley would retain title as trustee, this was in name only—this was Linda Donovan's home.

As stated above, the theory of a resulting trust may be shown by parol evidence, which is exactly what Linda Donovan did at trial. Not only was it the parties' intentions when the property was purchased that she remain in the property as her personal residence, that intention remained for nearly a decade. Between January of 2015, when it was purchased, and June of 2024, when the action was tried, Hurley took no issue with the fact that Donovan (1) paid all of the property taxes, (2) provided for all of the insurance for the property, (3) paid for improvements, (4) collected rents from boarders, and (5) otherwise maintained the property in saleable condition. Indeed, due to her efforts, the value of the property increased from the initial \$1.3 million purchase price to now nearly \$1.95 million. At no point did the trustee ever visit the property or inquire as to its condition, nor did he present Donovan

with any demand for the payment of rent. It was quietly understood by all involved that this was her property for life, and that she should remain on the property and care for it.

Despite the foregoing, the Master-in-Equity determined that this set of facts constituted an “invasion.” “The historical requirements for recovery under the common-law action of trespass include ‘*an invasion* (a) which interfered with the right of exclusive possession of the land, and (b) which was the direct result of some act committed by the Defendant.’ See generally *Prosser and Keeton on Torts*, section 13, *Graham v Town of Latta, South Carolina*, 417 S.C. 164, 789 S.E.[2d] 71 (Ct. App. 2016).” Order, 7. (R., p. ___, line __). (emphasis added) (citations in original). However, the case cited by the Master-in-equity goes on: “To constitute actionable trespass, however, there must be an affirmative act, invasion of land must be intentional, and harm caused must be the direct result of that invasion.” Graham v. Town of Latta, S.C., 417 S.C. 164, 193, 789 S.E.2d 71, 86 (Ct. App. 2016). Appellant Donovan contributed to the purchase of the property, moved into it, maintained it, and even substantially improved it. The preponderance of the evidence showed that it would be unjust and inequitable to simply cast her aside from the

property without recognizing her legitimate claim to at least a partial interest in the property—as the holder of some sort of life estate or partial ownership. Indeed, the Master-in-Equity noted it in his findings: “. . . under these unusual facts, the trespasser appears to have always maintained the property, helped to maintain the value, and the Plaintiff has established no damages for an award of actual or punitive damages. The Defendant has even paid over \$35,000.00 in property taxes. Prior to the demand to leave the property, the Plaintiff presented no contract for rent even though it is undisputed that [he k]new of the Defendant living on the property.” Order, 7-8. (R., p. ____, line __). Perhaps seeing it would be wholly inequitable to throw the baby out with the bathwater, the Master-in-Equity specifically required Hurley to reimburse her the \$19,974.24 she had contributed to the purchase price.

The Master-in-Equity erred in deeming Linda Donovan a trespasser when he had determined she met all of the elements of a de facto constructive trust claim. For these reasons, the Order of the Master-In-Equity should be reversed.

2. The uncontradicted evidence presented showed that Linda Donovan was entitled to the equitable remedy of unjust enrichment for the \$217,264.51 in financial contributions she made to the property between 2015 and 2024.

“[U]njust enrichment is an equitable doctrine.” Chase Home Fin., LLC v. Risher, 405 S.C. 202, 208, 746 S.E.2d 471, 474 (Ct. App. 2013) (quoting Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009)). “A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The doctrine “permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.” Id. “Restitution is a remedy designed to prevent unjust enrichment.” JASDIP Properties SC, LLC v. Est. of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011). “To recover on a theory of restitution, the plaintiff must show (1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.” Id.

Applying the three factors announced in JASDIP Properties above, the Master-in-Equity erred in holding that Appellant Donovan was

entitled to restitution in the amount of only \$19,974.24. Donovan believed that she owned the Subject Property, and thus was not making a gratuitous benefit in paying property taxes, providing for insurance, and paying for valuable improvements. She believed she was investing in property she owned. Hurley has recognized a clear benefit from these non-gratuitous contributions, as the property is well-maintained and has witnessed a claimed \$639,000 increase in value. And it is wholly inequitable that he should be allowed to retain the benefit of these contributions, in light of the fact that he, never once, asked Ms. Donovan for an update as to the property, or sought out any rents for her stay. He allowed her to go on believing that she had a legitimate interest in the property that rose significantly above a mere tenant at sufferance, and then sought her summary ejection from the property after her husband was terminated as a beneficiary from the trust.

At trial, Hurley's counsel cross-examined Donovan with her list of receipts for improvements to the property, and stated on the record: "This is your day in court, ma'am. And these are - these are your – this is your proof *that I did not object to*. And this is your proof of what you're claiming you put into the property and you're claiming that will – that

will cause you to have a – resulting trust as a result of this. . . I’m just going to accept them. We could – we can parse them – we could have parsed them, but we’re not. ***I’m going to accept them. You put in that money...***” Trial Tr., 155:6-18. Hurley was not in a position to impeach or otherwise call into credibility Donovan’s claim for unjust enrichment, as he knew that he had done nothing for the benefit of the property in nearly a decade. And this was all in spite of the fact that the trust agreement itself called for Hurley to provide Donovan and her husband with up to \$200,000 per year for “ordinary personal and customary living expenses” related to the properties, Trial Exs., Pl.’s Ex. 5, p. 2, (R., p. ____, line __), and the trust arbitrator specifically authorized Hurley to make payment for “real estate taxes” and “expenses” from trust assets to the property. Order, 4. (R., p. ____, line __). Hurley chose not to make any of those payments, and instead quietly relied on Appellant Donovan to fund the maintenance and improvements to the property from her own pool of resources. This is a classic case of unjust enrichment. While the Master-in-Equity did award her \$19,974.24 on her claim for unjust enrichment, he erroneously disregarded the additional \$217,264.51 she proved she was owed.

CONCLUSION

The final judgment of the Master-in-Equity is subject to review by this Court for its findings as to the preponderance of the evidence. While the Master-in-Equity considered the correct law, he erroneously concluded that Donovan was a mere trespasser when she has a bona fide claim to at least some sort of legal interest in the property she helped purchase. Moreover, the Master-in-Equity erred in awarding her only \$19,974.24 on her claim for unjust enrichment. If she has no legal interest in the property, she is entitled to at least her fair contributions to the property, which is an additional \$217,264.51.

Respectfully submitted,

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Proof of Service

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