THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable 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 RESPONDENT

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ATTORNEYS FOR RESPONDENT

December 16, 2024

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court properly held that Linda Donovan did not hold any legal or equitable interest in the Aiken Trust Property and was therefore a trespasser not entitled to possession.

II. Whether the trial court properly held that Linda Donovan was not entitled to any equitable remedy for financial expenditures during her time residing rent-free at the Aiken Trust Property before her permission terminated and she became a trespasser after refusing to vacate.

STATEMENT OF THE CASE

This case concerns a dispute over the possession of certain real estate in Aiken County, South Carolina, with TMS numbers 139-19-01-002 and 140-08-04-001 ("Aiken Properties") between Respondent, William T. Hurley, Jr. ("Respondent"), in his capacity as Trustee of the Aiken Property Trust ("Aiken Trust"), the record title holder, and Appellant Linda Donovan ("Appellant"). Appellant's husband, John J. Donovan, Sr. (aka, "Professor Donovan" or "John J. Donovan II") (hereinafter, "Donovan, Sr."), was the beneficiary of a trust that was the sole beneficiary of the Aiken Trust until his trust interest was terminated. Neither Appellant nor her husband has ever had any interest in the Aiken Trust.

On October 18, 2022, after litigation in Massachusetts terminated Donovan, Sr.'s trust interest, Respondent filed a petition in the New Ellenton Magistrate's Court to eject Appellant as a trespasser. *Petition for Summary Ejectment of Trespasser*. Appellant denied the allegations and asserted various counterclaims, including a claim to some ownership interest in the Aiken Properties, which destroyed the magistrate's jurisdiction. *Appellants Magistrate Answer and Counterclaim*. *See* S.C. Code Ann. 22-3-20.

On November 17, 2022, Respondent filed this action in the Aiken County Court of Common Pleas against Appellant, asserting three causes of action: (1) a First Cause of Action for Declaratory Judgment that Appellant has no right or interest to possess, use, or occupy the Aiken Properties; (2) a Second Cause of Action for Trespass; and (3) a Third Cause of Action for Ejectment of Trespasser. *Respondent's Complaint*. Appellant answered and asserted Counterclaims for (1) Constructive or Resulting Trust; (2) Breach of Fiduciary Duty[1]; (3) Unjust

[1] Appellant conceded this claim by withdrawing it at trial and it has not been addressed on appeal. *Trial Tr. p. 163, line 15–21* ("THE COURT: So we're withdrawing the breach of fiduciary duty counterclaim? MR.

Enrichment; and (4) Declaratory Judgment, which counterclaims were denied by Respondent. *Appellant's Answer and Counterclaim Complaint*; *Reply of Respondent*.

Appellant then moved to dismiss Respondent's complaint under Rule 12(b), SCRCP, and Respondent moved under Rule 12(c), SCRCP, for judgment on the pleadings. *Appellant's Rule 12(b)(6) motion; Respondent's Rule 12(c) motion*. On March 29, 2023, these motions were denied via Form 4 orders. *2023.03.29 Form 4 Orders*. Respondent moved for summary judgment, which was denied on July 24, 2023. *Respondent's Motion for Summary Judgement*; *2023.07.24 Order on PL Motion for SJ*.

On April 4, 2024, the parties referred the matter by consent to the Honorable M. Anderson Griffith, Master in Equity for Aiken County, "to make findings of fact and conclusions of law, to take testimony and to direct entry of final judgment in this action" with "[a]ny appeal from the final judgment entered by the Master in Equity shall be directly to the Supreme Court or Court of Appeals as appropriate." The Court set trial for June 26, 2024.

On June 21, 2024, non-party Donovan, Sr. filed a motion to intervene, which motion was denied on June 25, 2024. *2024.06.21 Motion to Intervene*; *2024.06.25 Order on Motion to Intervene*.

On June 26, 2024, the parties proceeded to the scheduled bench trial before Judge Anderson. *Trial Tr. p. 1*.

On July 22, 2024, the Court entered its order making findings of fact and conclusions of law. *2024.07.22 Order*. Among other things, the Court concluded Appellant was a trespasser upon the Aiken Properties and ordered her to vacate within 60 days. *Id.*

BRODIE: Yeah. I believe that is -- belongs to her husband, and I didn't want you to spend the time. You understand. I believe, you know, there's been breaches to her husband, but that's not before the Court."

On August 21, 2024, Appellant timely filed this appeal.[2]

STATEMENT OF FACTS

The Aiken Properties at issue were purchased by the Aiken Trust in 2015 following and pursuant to a settlement in long-running litigation amongst Donovan, Sr. and his children, John J. Donovan, III ("Donovan Jr."), Rebecca (Donovan) Brown, Carolyn Donovan, James Donovan, and Maureen McLaughlin. **Trial Exs. 3; 5**. The settlement involved the transfer of certain real estate owned by Donovan, Sr.'s children to a series of trusts to be created as part of the settlement. The Aiken Properties replaced one of these properties given by the children to Trust One (defined below) at the request of Donovan, Sr.

Since its creation to purchase the Aiken Properties, the Aiken Trust has had a sole beneficiary—a separate trust called "Trust One – JJD" ("Trust One"). **Trial Ex. 6.** Trust One was established by a Final Settlement Agreement dated March 26, 2007 ("FSA"), between Donovan Sr. and his children. **Trial Ex. 3.**[3] An arbitrator ("Arbitrator")[4] was previously appointed in 2004 by court order and with the consent of the settlement parties, and the Arbitrator was permanently empowered by the FSA and the Trust Agreement to oversee aspects of Trust One's administration and resolve disputes concerning Trust One. **Trial Exs. 3**, **4**. The FSA specifically provided the Arbitrator had the "discretion to award any remedy including sanctions, damages, attorneys' fees." **Trial Exs. 3** at ¶ 8, **4**. The FSA and the Trust Agreement restricted Donovan Sr.'s beneficiary

[2] On October 7, 2024, the Court entered an order staying enforcement of the judgment pending appeal, leaving Appellant in possession of the Aiken Properties. Respondent asked the Court to reconsider this order by motion dated October 16, 2024, which motion remains pending before the trial court as of the date of this filing.

[3] Donovan Jr. served as the initial trustee of Trust One. Respondent became the successor trustee upon the death of Donovan Jr.

[4] The Honorable John S. Martin ("Arbitrator"), retired judge of the United States District Court for the Southern District of New York, was originally appointed in 2004 by the Massachusetts Superior Court as the permanent arbitrator.

interest, including by prohibiting any transfer, assignment, or pledge of such interest. **Trial Exs. 3 at** ¶ 2**, 4** at ¶ 2.1. Appellant joined in the settlement agreement reached in the FSA, releasing any claim that she could have had to the defined properties to be held in multiple trusts. **Trial Ex. 17.** As part of that settlement, Appellant released any interest or claim she could have had to those properties. **Trial Ex. 17, p. 8.**

A Trust Agreement, dated January 12, 2010 ("Trust Agreement"), settled Trust One with certain properties owned by the Donovan children, and named Donovan Sr. as the beneficiary of Trust One. **Trial Ex. 4.** In December of 2014, Donovan Sr. and his children executed an Amendment to the Trust Agreement ("2014 Amendment"), which among other things, provided for the sale of certain Trust One properties and the purchase by Trust One of replacement property in the form of the Aiken Properties. **Trial Ex. 5.** The 2014 Amendment provided that the Aiken Properties "shall be owned solely by Trust 1-JJD." **Trial Ex. 5** at ¶ 9.

On January 14, 2015, the Aiken Trust was formed by a Declaration of Trust to facilitate the purchase of the Aiken Properties, naming Respondent its Trustee and Trust One its sole beneficiary. **Trial Ex. 6.** That same day, the Aiken Properties were purchased for $1,042,500 and $457,500, respectively, by the Aiken Trust pursuant to limited warranty deeds of that same date ("2015 Deeds"), recorded in the Aiken County Register of Deeds on January 16, 2015, in Book 4536, Pages 786 and 790. **Trial Exs. 1, 2.** The executed and recorded 2015 Deeds named the Aiken Trust as the sole title holder of the Aiken Properties, in accordance with the 2014 Amendment. **Trial Exs. 1, 2; *cf.* Trial Ex. 5** at ¶ 9 (the Aiken Properties "shall be owned solely by Trust 1-JJD."). At the time of the $1,500,000.00 purchase, Donovan Sr. gave $8,000.00 by wire, and Appellant gave $19,974.24 by wire. **Def. Trial Ex. 1**. They both advanced these wires when the

2014 provided express agreement that the property would be titled solely in the Aiken Trust. **Trial Ex. 5** at ¶ 9 (the Aiken Properties "shall be owned solely by Trust 1-JJD.").

On April 27, 2015, despite having no transferable interest in the Aiken Properties, Donovan Sr. executed certain documents including a "Life Estate, Will, Option to Purchase" ("2015 Aiken Filings") and secretly recorded the 2015 Aiken Filings in the Aiken County Register of Deeds. **Trial Ex. 7**. The 2015 Aiken Filings purported to convey to Appellant (A) an option to purchase the Aiken Properties for well below fair market value; (B) an exclusive life estate; and (C) clear title to the Aiken Properties upon his death. **Trial Ex. 7**.

Upon discovering Donovan Sr.'s clandestine execution and recording of the 2015 Aiken Filings, Donovan Sr.'s children brought sanction proceedings before the Arbitrator, and on May 1, 2019, Donovan Sr. executed a "Stipulation by John J. Donovan, Sr.," in which he admitted that: the 2015 Aiken Filings are "invalid, of no force and effect, and are void ab initio" (¶ 1); as beneficiary of Trust One, he did not "have the right or authority to transfer, assign or pledge any assets held by or for the benefit of Trust One" (¶ 5); and he would not in the future attempt to, among other things, transfer, convey, or assign his beneficial interest in Trust One or Trust One assets" (¶ 6). **Trial Ex. 8.** The Arbitrator's resulting order found that Donovan Sr. had violated the FSA and the Trust Agreement, and ordered, among other things, that the fraudulent 2015 Aiken Filings be corrected. **Trial Ex. 9** ("October 1, 2019 Arbitral Order"). On October 30, 2019, the October 1, 2019 Arbitral Order was confirmed and adopted as a Final Order of the Massachusetts Superior Court. **Trial Ex. 10**.

On January 10, 2020, in compliance with the October 1, 2019 Arbitral Order, Donovan Sr. and Appellant executed a Quitclaim Deed recorded on January 28, 2020 in the Aiken County Register of Deeds in Book 4824, Page 1247 ("2020 Corrective Deed"), by which Appellant and

Donovan Sr. conveyed any right or interest they may have had in the Aiken Properties to Respondent as Trustee of the Aiken Trust. **Trial Ex. 11**. Appellant specifically agreed to "grant, bargain, sell and release" her interest in the Aiken Properties:

> That John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, and Linda Donovan, for and in consideration of the sum of One and xx/100 ($1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate:

Trial Ex. 11.

On November 10, 2021, Donovan Sr.'s beneficiary interest in Trust One (the sole beneficiary of the Aiken Trust) was extinguished by an arbitral award issued by the Arbitrator ("November 10, 2021 Arbitral Award") as a result of his repeated commission of fraud, forgery, and filing false documents in registries of deeds, among other unlawful conduct.[5] **Trial Ex. 12**. On August 18, 2022, that Award was confirmed and adopted as a Final Judgment of the Massachusetts Superior Court. **Trial Ex. 13**. Respondent initiated this litigation in Aiken shortly thereafter. *October 18, 2022 Petition for Summary Ejectment of Trespasser*; *see also November 17, 2022 Complaint by Respondent*.

On March 8, 2024, the Massachusetts Appeals Court affirmed the Arbitral Award and Final Judgment in their entirety ("Appeals Decision") after Donovan Sr. appealed. **Trial Ex. 14**.

[5] Donovan, Sr. was incarcerated for his fraudulent conduct. In an April 3, 2023, Summary Decision and Order, the Massachusetts Superior Court denied Donovan Sr.'s emergency motion to stay his sentence on the basis of, among other things, "Donovan has proven himself to be nothing short of a charlatan. He cannot be believed; either about his health, where he would live, or that he would somehow abandon his twenty-year quest to destroy his family." **Trial Ex. 15.**

On May 16, 2024, the Massachusetts Supreme Judicial Court[6] denied Donovan Sr.'s application for further appellate review, thereby foreclosing any further challenge by Donovan Sr. with respect to his rights and interests in Trust One.

Appellant Linda Donovan has never been a beneficiary of the Aiken Trust. **Trial Ex. 6.** Appellant Linda Donovan has never been a beneficiary of Trust One. **Trial Ex. 4.** Appellant Linda Donovan has never paid any rent for her occupation of the Aiken Properties, although she surreptitiously charged and collected rents from portions of the property and she claims to have maintained the Aiken Properties while living there since 2015 without knowledge of the Trustee. **Trial Tr. p. 60, line 10–12 (no rent); Trial Tr. p. 151, lines 22–25.**

STANDARD OF REVIEW

In an action in equity, this Court "may determine the facts in accordance with [its] own view of the preponderance of the evidence . . ." but "will not disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Donnan v. Mariner*, 339 S.C. 621, 626, 529 S.E.2d 754, 757 (Ct. App. 2000); *see also Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997).

ARGUMENT

A. THE TRIAL COURT CORRECTLY HELD APPELLANT IS A TRESPASSER BECAUSE SHE NEVER HELD A LEGAL OR EQUITABLE INTEREST IN THE AIKEN PROPERTIES, WAS NEVER A BENEFICIARY OF THE AIKEN TRUST, AND NO RESULTING TRUST WAS CREATED.

1. Appellant did not preserve the resulting trust argument on appeal because the trial court did not rule upon the resulting trust arguments presented by Appellant.

Despite rejecting each claim raised by Appellant and determining that she has no interest

[6] The Massachusetts Supreme Judicial Court is the highest court in Massachusetts. https://www.mass.gov/info-details/about-the-supreme-judicial-court.

in the Aiken Properties under any theory, the trial court order does not specifically address Appellant's resulting trust argument. South Carolina requires that issues be raised to the trial court and ruled upon to preserve them on appeal. Accordingly, Appellant was required to file a motion to reconsider to give the trial court an opportunity to rule upon this argument and to preserve this issue on appeal, which she did not do.

"When an issue is raised to but not ruled upon by the trial court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion." *Chastain v. Hiltabidle*, 381 S.C. 508, 515, 673 S.E.2d 826, 829 (Ct. App. 2009).

The trial court order did not specifically address the resulting trust arguments raised by Appellant in this appeal, only holding that "Linda Donovan contributed $19,974.24 towards the purchase of the property;" "[b]ased on the pleadings, testimony, exhibits, and case law, Linda Donovan has no right or interest in either tract owned by Aiken Property Trust;" and "[Respondent] is awarded the requested declaratory relief that the [Appellant] has no legal or equitable claim of ownership, or any right to remain on the Aiken property." *July 22, 2024 Order*, p. 7. Accordingly, the trial court did not address Appellant's resulting trust arguments presented here, and it was incumbent on her to raise these same arguments to the trial court in a motion to reconsider. She did not do so, and these resulting trust arguments are not preserved for appellate review.

2. Even if this issue were preserved, the unambiguous 2020 Corrective Deed conveyed to the Aiken Trust all legal and equitable rights or interests Appellant may have had in the Aiken Properties.

In January 2020, Donovan Sr. and Appellant executed and recorded the 2020 Corrective Deed, which provides in relevant part (emphasis added):

> KNOW ALL MEN BY THESE PRESENTS:
>
> That ***John J. Donovan, Sr.***, individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, ***and Linda Donovan***, for and

> in consideration of the sum of One and xx/100 ($1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, ***hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate*** . . . .[description of the metes and bounds of the Aiken Properties with references to the corresponding Registry Plat Books and Tax Parcel Numbers].

Trial Ex. 11 (emphasis added). Accordingly, Appellant released any hypothetical resulting trust interest she had by the 2020 Corrective Deed.

When a deed is unambiguous, any attempt to determine the grantor's intent must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper. *See Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013); *Springob v. Farrar*, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct. App. 1999). Ambiguity exists when the language of the deed is reasonably susceptible to more than one interpretation. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001).

The 2020 Corrective Deed is facially unambiguous as a matter of law. The language "hereby grant, bargain, sell and release to [the Trustee] the following described real estate" clearly establishes—without qualification or limitation—the contemporaneous intent of the grantors, Defendant and Donovan Sr., to convey to the Aiken Trust the entirety of any right or interest that they had in the Aiken Properties, which are described with particularity by the metes and bounds and with reference to the corresponding Registry Plat Books and Tax Parcel Numbers. *Compare* **Trial Exs. 1, 2** (Vesting Deed legal descriptions) *with* **Trial Ex. 11** (2020 Corrective Deed legal description); *see also Milton P. Demetre Fam. Ltd. P'ship v. Beckmann*, 413 S.C. 38, 55, 773 S.E.2d 596, 605 (Ct. App. 2014) ("A quitclaim deed is a lawful means of conveying title" and "conveys that which the grantor may lawfully convey.") (internal quotation omitted); *Bell v. Bennett*, 307 S.C. 286, 293, 414 S.E.2d 786, 790 (Ct. App. 1992) (*citing* 26 C.J.S. *Deeds* § 104(a)

(1956) (there is a presumption that a grantor intends to convey his entire interest, and a deed will be taken to convey the entire property and interest of the grantor in the premises unless something appears to limit it to a lesser interest); *see generally Reasor v. Marshall*, 359 Mo. 130, 140, 221 S.W.2d 111, 115 (1949) ("Generally a quitclaim deed operates as a conveyance of any right, at law or in equity, the grantor has.").

Moreover, to preempt any potential ambiguity arising from the fraudulent 2015 Aiken Filings, the 2020 Corrective Deed further specifies that any rights or interest that may have been created by those fraudulent 2015 Filings are extinguished. *See* **Trial Ex. 7**. The granting clause of the 2020 Corrective Deed clearly states that Appellant did "hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the [Aiken Properties]." **Trial Ex. 11**. The later qualifying or descriptive language after the grant is unambiguously inclusive or descriptive language to clarify that the fraudulent rights allegedly conveyed by Donovan Sr. were expressly included in the conveyance:

> By this grant, the undersigned hereby release and terminate any and all right, title and 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 and recorded in the Office of the RMC of Aiken County, South Carolina in Book RB 4549, Pages 2386 — 2388.

Trial Ex. 11; *see Bell*, 307 S.C. at 293, 414 S.E.2d at 790 (a deed will be taken to convey the entire property and interest of the grantor in the premises unless something appears to limit it to a lesser interest). There is no language of limitation in the 2020 Corrective Deed.

To be sure, this unambiguous descriptive language about the 2015 Filings could not function as a limitation on the grant of all Appellant's interest earlier in the deed because any such limitation would fail as a matter of law. *See generally Stylecraft, Inc. v. Thomas*, 250 S.C. 495, 498, 159 S.E.2d 46, 47 (1968) ("[W]here the granting clause in a deed purports to convey title in fee simple absolute that estate may not be cut down by subsequent words in the same instrument.");

see also Douglas v. Med. Invs., Inc., 256 S.C. 440, 446, 182 S.E.2d 720, 723 (1971). Accordingly, to the extent Appellant asserts the 2020 Corrective Deed did not release the alleged resulting trust because of the clarifying language about the 2015 Filings, such an argument fails.

The 2020 Corrective Deed conveyed away and released any claim—including any resulting trust claim—held by Appellant. Appellant's resulting trust argument fails, and the trial court correctly held that she was a trespasser with no right or interest in the Aiken Properties.

3. In any event, a resulting trust for Appellant never arose under these facts because no one intended her to have any interest in the Aiken Properties when they were purchased in 2015.

Even if this issue were preserved and there were no quitclaim deed in 2020, no resulting trust was created where Appellant and Donovan, Sr. paid a small portion of the funds spent at closing to facilitate replacement of other Trust One property with the Aiken Properties as requested by Donovan Sr.

"Equity devised the theory of resulting trust 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." *Bowen v. Bowen*, 352 S.C. 494, 499, 575 S.E.2d 553, 556 (2003). Generally, when real estate is conveyed to one person and the consideration is paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself and a resulting trust is raised on his or her behalf. *Lollis v. Lollis*, 291 S.C. 525, 528, 354 S.E.2d 559, 561 (1987). However, this presumption may not be in accord with the truth and *must be supported by clear, definite, and convincing evidence*. *See Green v. Green*, 237 S.C. 424, 426, 117 S.E.2d 583, 584 (1960).

"[W]hen the conveyance is taken to a spouse or child, or to any other person for whom the purchaser is under legal obligation to provide, no such presumption attaches. *Bowen*, 352 S.C. at

499, 575 S.E.2d at 556. "On the contrary, the presumption in such a case is that the purchase was designated as a gift or advancement to the person to whom the conveyance is made." *Id.*

Appellant must establish by *clear, definite, and convincing evidence* that she was intended to receive an interest in the Aiken Properties; however, the evidence is to the contrary. She gave merely $19,974.24 towards a purchase to replace Trust One property, of which her husband, Donovan Sr., was then the beneficiary. **Def. Trial Ex. 1.** The 2014 Amendment,[7] authorizing the purchase of the Aiken Properties by Trust One (the sole beneficiary of the Aiken Trust), expressly provides that such Properties "shall be owned solely by Trust 1-JJD;" that "[Trust One] shall use only its available liquid funds available as of December 10, 2014 toward the purchase price for the Replacement Property;" and that "[Trust One] shall not borrow funds, incur debt or mortgage, pledge or collateralize any assets to pay for the purchase price of the [Aiken Properties]." **Trial Ex. 5.** The 2014 Amendment described the Aiken Properties as "Replacement Property" for Trust One property in which Appellant already agreed she had no interest. *See* **Trial Ex. 17** (agreeing to FSA and releasing any interest in certain properties); **5** at ¶ 9 (describing purchase of replacement property in Aiken County, South Carolina). The 2015 Deeds to the Aiken Properties are consistent and named only the Aiken Trust as the sole title-holder of the Aiken Properties. **Trial Exs. 1, 2.**

Moreover, Donovan Sr.'s 2015 Aiken Filings purporting to convey an interest to Appellant indicate that Donovan Sr. and Appellant knew she did not have the interest they both desired. Donovan Sr.'s admittedly false documents attempted to create an interest for Appellant like what she asserts in this case—some interest entitling her to stay in the property for life.

Accordingly, no one, including Donovan Sr. or Appellant, was ever intended to have any

[7] The 2014 Amendment amended the 2010 Trust Agreement that established Trust One with the Arbitrator's approval specifically to allow the purchase of the Aiken Properties by Trust One.

right or interest in the Aiken Properties other than Trust One (as sole beneficiary of the Aiken Trust). Thus, the clear, definite, and convincing evidence in the record shows Appellant was *not* intended to own any interest in the Aiken Properties based on her contribution of just $19,974.24 to a $1,500,000.00 purchase.

B. THE TRIAL COURT CORRECTLY HELD APPELLANT WAS NOT ENTITLED TO THE CLAIMED MAINTENANCE AND IMPROVEMENT EXPENSES BECAUSE APPELLANT SPENT THOSE SUMS GRATUITOUSLY FOR HER OWN PURPOSES AND DID NOT OFFER EVIDENCE OF THE VALUE OF HER IMPROVEMENTS.

Appellant failed to prove a non-gratuitous benefit because Respondent never induced her to spend the money alleged, and Appellant never proved the value of the expenditures, only the out-of-pocket costs. Accordingly, this Court should affirm the trial court on this ground.

"A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." *See generally Inglese v. Beal*, 403 S.C. 290, 297, 742 S.E.2d 687, 690–91 (Ct. App. 2013). The remedy for unjust enrichment is restitution. *Id.* Unjust enrichment may exist as an equitable remedy when 1) a person confers a ***non-gratuitous*** benefit; 2) the person receiving the benefit realizes some value from the benefit; and 3) it would be inequitable for the person receiving the benefit to retain said benefit without paying the person for its value. *Id.*

The benefit must be non-gratuitous, either because it was conferred at the recipient's request, or because the circumstances were such that the conveyor could reasonably rely on the other for repayment. *See id.* at 298. "It is not enough that the defendant has knowledge of the plaintiff's conduct; he must have induced the plaintiff to confer the benefit." *Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc.*, 296 S.C. 530, 533, 374 S.E.2d 507, 509 (Ct. App. 1988).

Additionally, establishing the value of alleged improvements to real estate requires showing the value of the improvements, not their costs. *Id.* ("In a case involving improvements to

realty, the measure of recovery in restitution is the difference in the fair market value of the property before and after the improvements.") (citing *Barrett v. Miller,* 283 S.C. 262, 321 S.E.2d 198 (Ct.App.1984)).

Appellant did not even allege facts that would meet the elements necessary to support a cause of action for unjust enrichment and did not offer evidence of each element at trial. Appellant's allegations and evidence at trial are only that she has "expended well over $200,000.00 in making improvements to the [Aiken Properties], including renovations, building of structures and other improvements." *See Answer of Appellant*, ¶ 44; **Def. Trial Exs. 3, 4**. Appellant did not present evidence to establish that these alleged improvements were made at Respondent's request or that Appellant reasonably relied upon anything Respondent said or did to expect repayment. There is no evidence that such improvements were carried out at the request of Respondent or for the benefit of anyone other than Appellant herself. Appellant concedes this fact in her brief. *See Appellant's Brief*, p. 19 ("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."). Indeed, it is undisputed that during the period of her possession, Appellant has paid absolutely no rent to the Trust for the Aiken Properties. Whatever "renovations, building of structures and other improvements" allegedly made by the Appellant cannot be considered "non-gratuitous," and Appellant's unjust enrichment claims fails because the facts do not establish a non-gratuitous benefit.

Appellant apparently asserts a trust provision allowing discretionary expenses to Donovan, Sr., subject to approval from Judge Martin, which was a right ultimately terminated when Donovan Sr.'s trust interest was terminated. *See* **Trial Ex. 5, ¶ 5**. However, this fact is completely inapposite. Donovan Sr. was required to submit expense requests subject to the approval of Judge

Martin at his sole discretion. *See* **Trial Ex. 5, ¶ 5**. Appellant did not offer evidence of a request for expenses from Donovan, Sr. at trial. Moreover, Respondent never had and does not now possess the ability to pay funds to *Appellant* because she has never been a beneficiary of Trust One of the Aiken Trust. And certainly Appellant cannot now assert rights for Donovan, Sr. on appeal that were extinguished in 2022, *see* **Trial Exs. 14.1, 14.2, 14.3**. Accordingly, this discretionary authority under the trust amendment does not save Appellant's deficient unjust enrichment claim.

Independently, Appellant's claim for restitution and unjust enrichment also fails because she did not offer any evidence of value at the time of trial or of the amount of any increase in value from her improvements. The failure to establish facts showing the value of the alleged improvements is fatal to her claim and appeal on this ground. *See Niggel Associates*, 296 S.C. at 533, 374 S.E.2d at 509. Appellant only offered evidence of her expenditures and sought their recovery dollar for dollar without presenting evidence of before and after value attributed to the alleged improvements. She cites a post-trial affidavit related to motions concerning the execution of the judgment to assert the value is now $1,950,000.00. *See Appellant's Designation of Matter* (September 9, 2024 affidavit of William Hurley). However, this affidavit was not presented at the time of trial and is not part of the trial record. There is no evidence to show how her expenditure affected the property value, if at all. Without evidence to show the value and not costs, Appellant's claim for restitution and unjust enrichment fails as a matter of law on this alternative ground. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.").

This Court should reject Appellant's claim for unjust enrichment based on expenses to suit her own purposes at a property she knew she did not own and for which she made on her own volition admittedly without contacting Respondent or the Aiken Trust. Accordingly, Appellant's

claim for restitution and unjust enrichment fails, and this Court should affirm the trial court's ruling on this ground.

CONCLUSION

For these reasons, Respondent asks that this Court affirm the order by the Master in Equity in its entirety.

Respectfully submitted,

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