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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

G.D Morgan, Jr. Circuit Court Judge

Case No. 2024-CP-23-0312

Appeal Case No 2024-000731

D & B Real Estate Ventures, LLC.

Darius Jones, Bradley Robinson,

Respondents

v.

Christopher Jones ,

Appellant.

INITIAL BRIEF OF APPELLANT

s/ Christopher Jones
Christopher Jones
309 Perry Avenue
Greenville, South Carolina 29601
(864) 371-0989
Appellant

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STATEMENT OF THE CASE

On October 31, 2023 Christopher Jones and Darius Jones entered into a South Carolina Purchase Contract with Joshua Dial as the Registered South Carolina Real Estate Agent. The terms of the Purchase Contract was that Christopher Jones would pay \$113,000 for the property and would be permitted to make repairs in order to secure financing. Christopher, the Appellant invested more than \$45,600 into the property. The closing was to take place on December 30, 2023. Darius Jones of D&B Real Estate Ventures, LLC was supposedly the owners of the property, yet D&B Real Estate Investments LLC was the name of the entity on the South Carolina Purchase contract as owner of the property.

Once the Appellant secured the financing for the purchase of the property from D&B Real Estate Investment LLC thinking it was Respondents' D&B Real Estate Ventures LLC, a title search was ordered. Upon the conclusion of the title search, attorney Andrew Jones informed the Appellant that the title was in fact not clear. Once Appellant informed the Respondents, a full dispute ensued. As discussions were had to remedy the problem, Bradley Robinson and Darius Jones approached the Appellant and stated that they would pay Appellant for the work, but only on a draw system. Appellant refused and filed suit. The Appellant filed a mechanic's lien with Greenville County Registered of Deeds.

The facts are undisputed and are established by the well pleaded allegations in Appellants' Complaint. By filing their Motion to Dismiss or in the alternative, Motion for Summary judgment, Defendants admits that the improvements were made to the property and did not object or resist the improvement to the property. Thereby, Respondents seeks to be unjustly enriched by Appellants paid for improvements. Theses facts are undisputed. The parties agree they entered a written, valid, and enforceable contract. D&B Real Estate agent wrote the purchase contract, to include the terms and conditions for either party to terminate the contract. The Purchase Contract was allowed to expire after the breach by the Defendants and Respondent Darius Jones proposed an option to compensate Appellant and agreed to purchase the Contract, property and improvements from Appellant. Appellant filed this

action alleging after Respondents failed to reimburse him for the wrongful termination and breach of that purchase contract. Respondents responded to the Complaint with Motions for Dismissal and Summary Judgment Defendants breached the contract by failing to deliver a good, clean, clear and marketable title.

1. WHETHER THE COURT ERRED IN APPLYING SECTION 40-11-370(C) TO THE REAL ESTATE PURCHASE CONTRACT(BREACH OF CONTRACT CLAIM).....2

BRIEF IN OPPOSITION TO THE APPLICATION OF S.C. CODE § 40-11-370(C) TO REAL ESTATE PURCHASE CONTRACTS

I. STATEMENT OF THE CASE

This appeal concerns the improper application of South Carolina Code Section 40-11-370(C), the unlicensed contractor statute, to a transaction involving solely a real estate purchase contract. No construction contract was involved in the underlying transaction.

II. STATEMENT OF FACTS

The facts establish that the only contract involved in this matter was a real estate purchase contract. In this contract was a provision that allowed for the owner, an individual to make the necessary repairs for himself. No construction contract, no contract for construction work, or construction services were contracted for or provided.

III. QUESTION PRESENTED

Whether South Carolina Code Section 40-11-370(C) applies to bar enforcement of a real estate purchase contract where no construction contract or construction services were involved.

IV. ARGUMENT

A. S.C. Code § 40-11-370(C) Does Not Apply to Real Estate Purchase Contracts

1. Plain Language of the Statute

South Carolina Code Section 40-11-370(C) provides:

"An entity which does not have a valid license as required by this chapter may not bring an action either at law or in equity to enforce the provisions of **a contract**. An entity that enters into **a contract to engage in construction** in a name other than the name that appears on its license may not bring an action either at law or in equity to enforce the provisions of the contract."

S.C. Code Ann. § 40-11-370(C) (emphasis added).

The statute contains two distinct prohibitions: (1) enforcement of "a contract" by an unlicensed entity, and (2) enforcement of "a contract to engage in construction" by an entity using a name other than that on its license. The critical distinction is that the first prohibition applies only to contracts requiring licensure under Chapter 11, while the second explicitly references "contracts to engage in construction."

2. The Statute's Scope is Limited to Construction Contracts

The plain language of § 40-11-370(C) must be read in context with the entire Chapter 11, which governs contractor licensing. The definitional section, S.C. Code § 40-11-20, makes clear that the chapter regulates "general construction" and "mechanical construction":

- **"General construction"** means "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property." *S.C. Code Ann. § 40-11-20(10)*.
- **"Mechanical construction"** means "the installation, replacement, or repair of plumbing, heating, air conditioning, process piping, refrigeration, lightning protection equipment, or electrical components, fixtures, or devices of any kind." *S.C. Code Ann. § 40-11-20(17)*.

A real estate purchase contract does not involve the "installation, replacement, or repair" of anything. It is a contract for the transfer of ownership of real property, not for construction services.

3. Legislative Intent and Purpose

The purpose of Chapter 11 is "to protect the health, safety, and welfare of the public through the regulation of businesses and individuals who identify, assess, and provide contract work" related to construction. *S.C. Code Ann. § 40-11-10(A)*.

The legislative intent behind § 40-11-370(C) is to prevent unlicensed contractors from enforcing construction contracts, thereby encouraging compliance with licensing requirements and protecting the public from unqualified construction work. This protective purpose does not extend to real estate purchase agreements, which involve property transfer, not construction services.

4. The Statute Must Be Strictly Construed

Statutes that bar access to courts are in derogation of common law and must be strictly construed. The General Assembly chose specific language limiting the application of § 40-11-370(C) to contracts requiring licensure under Chapter 11. Had the legislature intended to bar all contract enforcement by any entity that might need a contractor's license for other activities, it could have used broader language.

B. Application of § 40-11-370(C) to Non-Construction Contracts Would Be Unreasonable and Contrary to Public Policy

1. Overbroad Application Would Create Absurd Results

If § 40-11-370(C) applied to all contracts entered into by entities that might need contractor licensing for other activities, it would create absurd results. For example:

- A licensed real estate agent who also does construction work could not enforce real estate sales contracts

- A property developer could not enforce financing agreements
- A construction company could not enforce equipment leases or supply contracts

Such broad application would far exceed the statute's purpose and create unreasonable barriers to legitimate business transactions.

2. Real Estate Purchase Contracts Serve Different Public Interests

Real estate purchase contracts are governed by different statutes and serve different public policy interests than construction contracts. Real estate transactions are regulated under Title 40, Chapter 57 (Real Estate Brokers and Salespersons) and involve consumer protections related to property disclosure, financing, and title transfer—not construction safety and workmanship.

C. No Construction Contract or Pay For Construction Services Were Involved

In this case, the underlying transaction involved only a real estate purchase contract. There was no:

- Agreement to perform construction work
- Provision of construction services for pay or otherwise
- Installation, replacement, or repair of any building or structure
- Contract requiring licensure under Chapter 11

The complete absence of any construction-related contract or services removes this matter from the scope of § 40-11-370(C).

See also where in *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993), the Supreme Court acknowledged the general rule that courts will not enforce a contract which is violative of public policy, statutory law, or provisions of the constitution. See also *Grant v. Butt*, 198 S.C. 298, 17 S.E.2d 689 (1941); *Rountree v. Ingle*, 94 S.C. 231, 77 S.E. 931 (1913).

In *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276, 437 S.E.2d 168, (1993) the Court of Appeals reasoned that “it is a well-founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. This rule applies at both law and in equity and whether the cause of action is in contract or in tort....” *Id.* at 170.

South Carolina Code Section 40-11-370(C) is a licensing enforcement mechanism limited to construction contracts and construction services. It does not apply to real estate purchase contracts, which involve property transfer rather than construction work. The statute should be strictly construed according to its plain language and legislative purpose.

Where, as here, no construction contract or construction services were involved, § 40-11-370(C) cannot bar enforcement of a real estate purchase contract. To hold otherwise would improperly expand the statute beyond its intended scope and create unreasonable barriers to legitimate real estate transactions. For these reasons, this Court should hold that S.C. Code § 40-11-370(C) does not apply to real estate purchase contracts and does not bar enforcement of the contract at issue in this case.

2. WHETHER THE COURT ERRED IN GRANTING SUMMARY JUDGMENT ON ALL CLAIMS, SOME THAT WERE NOT DEFENDED BY RESPONDENTS ON DEMURR (Quantum Meruit and Unjust Enrichment)

I. STATEMENT OF THE CASE

This appeal arises from a breach of purchase contract in which the trial court erroneously denied Appellant's claims for quantum meruit and unjust enrichment. The trial court granted summary judgment in favor of Respondents, finding that a contract for construction existed and that Appellant was not entitled to equitable relief. This appeal challenges that ruling.

II. STATEMENT OF FACTS

- The nature of the purchase contract and the circumstances of its breach
- Services, goods, or benefits provided by Appellant to Respondent
- Respondent's acceptance and retention of such benefits
- The value of benefits conferred and circumstances making retention inequitable

III. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred in denying Appellant's claim for quantum meruit when Appellant conferred valuable benefits upon Respondents, Respondents realized and retained those benefits, and retention of such benefits without compensation would be inequitable.

2. Whether the trial court erred in denying Appellant's claim for unjust enrichment when Respondent was enriched at Appellant's expense under circumstances making such enrichment unjust.

IV. STANDARD OF REVIEW

Questions of law, including the proper application of legal standards for quantum meruit and unjust enrichment claims, are reviewed de novo. *Quality Towing, Inc. v. City of Myrtle Beach*, Op. No. 25103 (S.C. Sup. Ct. filed April 3, 2000). Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

V. ARGUMENT

A. The Trial Court Erred in Failing to Find That Appellant Is Entitled to Recovery Under the Theory of Quantum Meruit

1. South Carolina's Three-Part Test for Quantum Meruit

South Carolina recognizes quantum meruit as an equitable remedy designed to prevent unjust enrichment. In *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 358 S.C. 172, 595 S.E.2d 13 (2004), the South Carolina Supreme Court clarified that "quantum meruit, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy." *Id.* at 181, 595 S.E.2d at 18.

To recover on a theory of quantum meruit, a claimant must prove three elements:

- (1) A benefit conferred by the plaintiff upon the defendant;
- (2) Realization of that benefit by the defendant; and
- (3) Retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. *Myrtle Beach Hosp.*, 358 S.C. at 181, 595 S.E.2d at 18 (adopting the test from *Scudder May Corp. v. S.C. State Dev. Bd.*, 115 S.C. 335, 105 S.E. 576 (1921)).

This test superseded the four-part test previously used by the Court of Appeals, which the Supreme Court expressly overruled. *Id.* at 182, 595 S.E.2d at 18 (overruling *Bonaparte v. Bonaparte*, 317 S.C. 256, 452 S.E.2d 836 (1995) and related cases).

2. Application to the Present Case

Element One: Benefit Conferred by Appellant

Appellant conferred substantial benefits upon Respondent through the improvements of the burned-out property to be suitable for financing. These benefits included substantially improving the value of the property. The value of these benefits is evidenced by the lien under Quantum Meruits.

Element Two: Realization of Benefit by Respondent

Respondent clearly realized and accepted these benefits, as evidenced by their retention of the improvements to the property under the falsity of ownership by D&B Real Estate Investment LLC for which there is no D&B Real Estate Investment LLC nor does any D&B Real Estate Investment LLC own the subject property at 331 Loop St Greenville South Carolina. Respondent's actions demonstrate conscious acceptance and utilization of the benefits provided by Appellant.

Element Three: Inequitable Retention Without Payment

Under the circumstances of this case, it would be inequitable for Respondent to retain these benefits without compensation. The reliance by Appellant was predicated upon Respondents' assertion that they owned the property and that the title to the property was free and clear. Absent any title search of the property within the last twenty years, Respondents could not have been certain that the title was clear. In fact, Respondents knew the title was not and is not clear, per Attorney Andrew Jones, who conducted a prior title search. See Exhibit B.

Respondent's conduct suggesting they retain an undeserved windfall is absurd. The doctrine of quantum meruit exists precisely to prevent such unjust enrichment.

3. Quantum Meruit Applies Despite Contract Dispute

South Carolina law recognizes that quantum meruit may apply even when there are contractual disputes. As the Court explained in *Myrtle Beach Hospital*, quantum meruit serves as an equitable remedy when strict contractual enforcement would be unjust. *Id.* The failed or disputed contract in this case does not bar recovery under quantum meruit principles.

B. Alternatively, the Trial Court Erred in Failing to Find That Respondent Was Unjustly Enriched at Appellant's Expense

1. Unjust Enrichment as Equivalent to Quantum Meruit in South Carolina

Under South Carolina law, "the terms contract implied-in-law, quantum meruit, quasi-contract, restitution, and unjust enrichment have often been used interchangeably to refer to the same type of claim for equitable relief." *Myrtle Beach Hosp.*, 358 S.C. at 180, 595 S.E.2d at 17. The South Carolina Supreme Court has clarified that these terms are "equivalent" and governed by the same three-part test. *Id.* at 181, 595 S.E.2d at 18.

2. Historical Development of the Doctrine

The Court has long recognized that the purpose of both quantum meruit and unjust enrichment is to restore equity when one party receives a benefit "which would be unjust for him to retain without paying for it." Prior to *Piedmont Premium Serv., Inc. v. S.C. Ins. Co.*, 277 S.C. 99, 283 S.E.2d 828 (1981), South Carolina courts used quantum meruit, quasi-contract, and contract implied by law as equivalent terms to distinguish equitable relief from legal remedies. *Myrtle Beach Hosp.*, 358 S.C. at 179, 595 S.E.2d at 17.

In equity, "the measure of the recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff." *United States Rubber Products, Inc. v. Town of Batesburg*, 183 S.C. 49, 53, 190 S.E. 120, 122 (1937).

3. Application of Unjust Enrichment Principles

Under either characterization—quantum meruit or unjust enrichment—Appellant has satisfied all required elements:

Benefit Conferred: As mentioned above

Realization by Respondent: Respondent's acceptance, retention and use of benefits

Inequitable Retention: The utter unfairness of allowing Respondents to retain these benefits without payment, considering all circumstances is a violation of law as well as a clear violation of public policy and decency. The trial court's failure to recognize these clear elements constitutes reversible error.

4. Measure of Damages

Under South Carolina law, the measure of recovery in quantum meruit/unjust enrichment cases is "the reasonable value of the services rendered" or "the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff." The evidence establishes that the reasonable value of Appellant's services and/or goods is \$45,000+- based on receipts, market rates, and industry standards

5. No Bar to Recovery

Nothing in the record establishes any valid defense to Appellant's equitable claims. Respondent has not demonstrated:

- That Appellant's performance was gratuitous;
- That the benefits were not actually received or utilized;
- That retention of the benefits would be equitable under the circumstances;
- That any statute of limitations bars recovery under S.C. Code Ann. § 15-3-530.

The trial court committed reversible error in denying Appellant's claims for quantum meruit and unjust enrichment. Under the controlling authority of *Myrtle Beach Hospital*, Appellant has established all required elements for recovery under either theory. The evidence clearly demonstrates that

- (1) Appellant conferred valuable benefits upon Respondent,
- (2) Respondent realized and accepted those benefits, and

(3) retention of such benefits without payment would be inequitable.

South Carolina's commitment to preventing unjust enrichment demands that this Court reverse the trial court's judgment and remand for entry of judgment in favor of Appellant, or alternatively, remand for trial on the issue of damages.

4. WHETHER D&B REAL INVESTMENTS LLC IS ERRONEOUSLY LISTED AS OWNER OF PROPERTY AND SIGNED BY DARIUS JONES

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Issue 1: Whether the trial court erred in granting summary judgment in favor of Respondents when the purchase contract was executed in the name of a non-existent entity, rendering the contract void or unenforceable.

Issue 2: Whether the trial court erred in granting summary judgment when genuine issues of material fact existed regarding the validity of the purchase contract where the contracting entity did not legally exist at the time of contract execution.

Issue 3: Whether the trial court erred in granting summary judgment without requiring Respondents to reimburse Appellant's costs when Respondents failed to provide clear title to the property as required under the purchase agreement.

II. STATEMENT OF THE CASE

This appeal arises from the trial court's grant of summary judgment in favor of Respondents in a breach of purchase contract action. Appellant entered into a purchase contract for real property with what appeared to be a legitimate business entity. Subsequently, it was discovered that while the legal property owner executed the contract, the entity name used in the contract did not legally exist at the time of execution. The true property owners could not provide clear title as required under the purchase agreement. Despite these fundamental defects in the contractual relationship and Respondents' failure to perform, the trial court

erroneously granted summary judgment in Respondents' favor without addressing the issues of contract validity and Appellant's entitlement to cost recovery.

III. STATEMENT OF FACTS

- Purchase Contract was executed October 31, 2023
- Appellant Christopher Jones signed and Darius Jones signed for D&B Real Estate Investment LLC
- Prior to December 30, 2023, the true entity was discovered and the title was discovered unclear
- Title Company could not clear title for title insurance
- Appellant's costs exceed \$45,600
- Procedural history in the trial court

IV. ARGUMENT

A. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHEN THE CONTRACT WAS EXECUTED IN THE NAME OF A NON-EXISTENT ENTITY

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). Here, fundamental questions exist regarding the validity of the purchase contract itself.

Under South Carolina law, a contract executed in the name of a non-existent entity raises serious questions about contract validity and enforceability. When a party purports to contract on behalf of an entity that does not legally exist, the contract may be void for lack

of a proper contracting party. *See Kiawah Island Inn Co. v. State*, 193 S.C. 475, 8 S.E.2d 900 (1940).

The legal principle is well-established that contracts require identifiable and legally capable parties. When an entity name is used in a contract but no such entity exists, courts must determine whether:

- (1) the contract is void ab initio for lack of a proper party;
- (2) the individual executing the contract becomes personally liable; or
- (3) the contract can be reformed to reflect the actual contracting party.

In this case, while the legal property owner executed the contract, the use of a non-existent entity name creates fundamental ambiguity about the contracting party's identity and legal capacity. This defect in contract formation creates genuine issues of material fact that preclude summary judgment.

B. GENUINE ISSUES OF MATERIAL FACT EXISTED REGARDING CONTRACT VALIDITY AND PERFORMANCE

The grant of summary judgment was improper because material facts remained in dispute regarding:

1. **Contract Formation:** Whether a valid, enforceable contract existed when executed in the name of a non-existent entity;
2. **Entity Status:** Whether the purported contracting entity had any legal existence or capacity at the time of contract execution;
3. **Personal Liability:** Whether the individual who executed the contract becomes personally liable when acting for a non-existent entity;
4. **Title Issues:** The extent and nature of the title defects that prevented performance;

5. **Damages and Costs:** Appellant's reasonable reliance and expenditures based on the purported contract.

South Carolina courts have consistently held that summary judgment is inappropriate when factual disputes exist regarding contract formation and validity, particularly involving questions of entity existence and capacity. *See Feldman v. Kritch*, 290 S.C. 34, 348 S.E.2d 233 (Ct. App. 1986).

C. THE TRIAL COURT ERRED IN FAILING TO ADDRESS APPELLANT'S ENTITLEMENT TO COST RECOVERY

Even if the contract were deemed invalid, Appellant is entitled to recovery of costs and expenses reasonably incurred in reliance on Respondents' representations. Under principles of restitution and unjust enrichment, a party who reasonably relies on another's representations regarding property ownership and incurs costs as a result is entitled to recovery when the representations prove false.

See Bambrick v. Bambrick, 304 S.C. 685, 406 S.E.2d 451 (Ct. App. 1991)* (discussing restitution principles in real estate transactions).

The trial court's failure to address this issue or allow discovery on Appellant's damages constituted reversible error.

D. THE RESPONDENTS' CONSTRUCTION CONTRACT ARGUMENT IS INAPPOSITE

The trial court appears to have been influenced by arguments regarding construction contracts, which are not relevant to this case. This matter involves a purchase contract for real property, not a construction agreement. The legal standards and requirements for each type of contract are distinct, and the trial court's apparent confusion on this point further demonstrates the error in granting summary judgment.

ADDITIONAL ISSUE PRESENTED

WHETHER D&B REAL INVESTMENTS LLC IS ERRONEOUSLY LISTED AS OWNER OF PROPERTY AND SIGNED BY DARIUS JONES

I. STATEMENT OF THE CASE

This appeal involves a claim of fraud regarding property ownership where D&B Real Investments LLC is allegedly erroneously listed as the owner of real property through documentation signed by Darius Jones. The central issue concerns whether fraudulent misrepresentation occurred in the establishment of property ownership rights.

II. ELEMENTS OF FRAUD UNDER SOUTH CAROLINA LAW

Under South Carolina law, to establish a claim for fraud, a plaintiff must prove nine essential elements by clear and convincing evidence:

The elements of an action for fraud based on a representation include: (1) a representation; (2) falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

This standard was established in *McDaniel v. Edwards* and remains the controlling precedent in South Carolina fraud cases involving property matters.

III. RELEVANT SOUTH CAROLINA STATUTES

A. Obtaining Property by False Pretenses

South Carolina General Code Section 16-13-240 makes it a crime to obtain a signature, money, or property from someone under false pretenses or misrepresentation of a fact with

"intent to cheat and defraud a person of that property." SC Code § 16-13-240 makes it a crime to use false pretenses or misrepresentation to 1) obtain someone else's signature to a written instrument (a document transferring title, for example) or 2) to obtain "any chattel, money, valuable security, or other property, real or personal," with the intent to defraud and cheat the person of their property.

B. Fraudulent Document Filing

South Carolina Code § 30-9-30(B)(1) provides statutory guidance for handling fraudulent documents. If the document bears elements indicating a fraudulent filing and the clerk of court or the register of deeds reasonably believes that the document is materially false or fraudulent or is a sham legal process, the clerk of court or register of deeds may refuse to accept the document for filing.

IV. APPLICABLE CASE LAW

A. Turner v. Milliman (2011)

In *Turner v. Milliman*, 392 S.C. 116 (2011), the South Carolina Supreme Court addressed fraud claims involving false statements of fact. The court emphasized that heightened standards apply to fraud claims, requiring clear and convincing evidence that statements were false statements of fact rather than promises of future performance.

B. Estate of Rosa Tucker v. Tucker (2008)

The South Carolina Court of Appeals in *Estate of Rosa Tucker v. Tucker* recognized that fraud can occur in the context of real property transactions where there is a confidential relationship and misrepresentation of material facts. The court noted that "actual fraud need not be shown to warrant imposition of a constructive trust" in appropriate circumstances involving property obtained through fraudulent means.

C. Negligent Misrepresentation Standard

Under *West v. Gladney*, 341 S.C. 127, 133–34 (Ct. App. 2000), to prove negligent misrepresentation in South Carolina, a plaintiff must establish: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representation.

V. ANALYSIS

A. Fraudulent Signature and Property Ownership

When D&B Real Investments LLC is listed as the property owner through documentation signed by Darius Jones, several fraud theories may apply:

1. **False Pretenses in Property Transfer:** If Jones obtained signatures or property ownership through false pretenses, this constitutes a violation of S.C. Code § 16-13-240, which prohibits obtaining "a signature, money, or property from someone under false pretenses or misrepresentation of a fact with 'intent to cheat and defraud a person of that property.'"
2. **Title Defects and Quiet Title Actions:** When fraudulent deeds are used to establish property ownership, this creates title defects that may require a quiet title action to cure. Types of claims may include "possible fraudulent deeds staking claim to the property."

B. Burden of Proof and Standard of Review

South Carolina courts apply a "heightened standard of review regarding fraud," requiring clear and convincing evidence of all elements. The court must find that statements were false statements of fact, not merely broken promises or statements about future events.

C. Remedial Measures

South Carolina Code § 15-67-10 provides the legal framework for quiet title actions to "determine the rights of all parties claiming an interest in the property, clarifying ownership through a court of law" when fraudulent conveyances cloud title.

Based on the applicable South Carolina law and precedent, a finding that D&B Real Investments LLC was erroneously listed as property owner through fraudulent documentation signed by Darius Jones would require clear and convincing evidence of:

1. False representations regarding ownership rights
2. Knowledge of falsity or reckless disregard for truth
3. Intent to defraud the rightful buyer of the property
4. Reliance and resulting damages

The South Carolina Court of Appeals should consider whether the evidence meets the heightened fraud standard established in *Turner v. Milliman* and whether remedial action through quiet title proceedings under S.C. Code § 15-67-10 is appropriate to cure any title defects resulting from fraudulent conveyances.

For the foregoing reasons, the trial court's grant of summary judgment was erroneous. Genuine issues of material fact existed regarding the validity of the purchase contract executed in the name of a non-existent entity, the legal implications of such execution, the nature of the title defects, and Appellant's entitlement to damages. The matter should be remanded for further proceedings consistent with this Court's ruling.

5. WHETHER THE COURT ERRED IN THE CONSIDERATION OF THE DEFECTIVE AFFIDAVIT

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT ERRED IN CONSIDERING THE DEFECTIVE AFFIDAVIT IN VIOLATION OF SOUTH CAROLINA RULE OF CIVIL PROCEDURE 56(e) AND ESTABLISHED PRECEDENT REGARDING AFFIDAVIT REQUIREMENTS.

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

STATEMENT OF THE CASE

This appeal concerns the fundamental requirements for valid affidavits under South Carolina law, specifically addressing whether an affidavit written in third person but signed in first person constitutes a fatal defect requiring exclusion from evidence.

ISSUES PRESENTED

Whether the trial court erred in admitting an affidavit that was written in third person narrative form but signed by the affiant in first person, creating an internal inconsistency that violates South Carolina's affidavit requirements under S.C. Code Ann. § 26-1-5 et seq.

STATEMENT OF FACTS

The affidavit filed by the employee of the South Carolina Labor, Licensing and Regulatory Board is written in third person but signed in first person. The Appellant raised this issue in court; however the Court refused and allowed the affidavit to stand

ARGUMENT

I. SOUTH CAROLINA LAW REQUIRES AFFIDAVITS TO BE INTERNALLY CONSISTENT TO SATISFY THE JURAT REQUIREMENT

A. Statutory Framework for Affidavits in South Carolina

South Carolina Code Ann. § 26-1-5(6) defines a "Jurat" as "a notary's certificate evidencing the administration of an oath or affirmation." The statute further defines an oath as "a notarial act that is legally equivalent to an affirmation and in which a notary certifies that at a single time and place all of the following occurred: (a) an individual appeared in person before the notary; (b) the individual was personally known to the notary or identified by the notary through satisfactory evidence; and (c) the individual made a vow of truthfulness on penalty of perjury while invoking a deity or using a form of the word 'swear'."

B. Notarial Requirements and the Personal Appearance Standard

Under S.C. Code Ann. § 26-1-160(B), "A notary is guilty of a misdemeanor if the notary takes: (1) an acknowledgment or administers an oath or affirmation without the principal appearing in person before the notary." The statute makes clear that the person making the oath must personally appear and swear to the truth of the statements.

C. The Traditional Affidavit Format Requires First Person Declaration

South Carolina Affidavit forms are written in the first or third person depending on who drafted the affidavit document. However, when the affiant personally swears to the contents, the jurat and signature requirements demand consistency with the personal oath being taken.

II. AN AFFIDAVIT WRITTEN IN THIRD PERSON BUT SIGNED IN FIRST PERSON CREATES A FATAL INCONSISTENCY

A. The Inconsistency Undermines the Oath Requirement

When an affidavit is written in third person (e.g., "John Doe states that he witnessed...") but signed in first person (e.g., "I swear the above is true"), it creates a fundamental disconnect between the narrative and the oath. The affiant cannot logically swear in first person to statements written about themselves in third person, as this violates the personal nature of the oath requirement.

B. South Carolina Courts Strictly Enforce Affidavit Requirements

If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective.

This statutory provision in S.C. Code Ann. § 15-36-100(E) demonstrates the General Assembly's recognition that affidavit defects can be fatal to claims and must be taken seriously by the courts.

C. The Good Faith Standard Does Not Cure Fundamental Defects

While South Carolina courts have recognized that minor technical defects in affidavits may sometimes be overlooked, fundamental inconsistencies that go to the heart of the oath requirement cannot be cured by good faith analysis. The Supreme Court's approach in other contexts, such as in search warrant cases, demonstrates that fundamental procedural defects require reversal even when made in good faith.

III. POLICY CONSIDERATIONS SUPPORT STRICT ENFORCEMENT OF AFFIDAVIT CONSISTENCY REQUIREMENTS

A. Preventing Perjury and Ensuring Accountability

A notary is guilty of a misdemeanor if the notary takes an acknowledgment or a verification or proof or administers an oath or affirmation if the notary knows it is false or fraudulent. Allowing inconsistent affidavits undermines the perjury deterrent effect that affidavits are designed to provide.

B. Maintaining the Integrity of the Notarial Process

The following wording for an oath or affirmation in an affidavit or other sworn document is prescribed by the "Notary Public Online Manual": "Do you solemnly swear that the contents of this affidavit (or other document) are known to you and that the information is true and correct, so help you God?" (for an oath); "Do you solemnly affirm that the contents of this affidavit (or other document) are known to you and that the information is true and correct, under the pains and penalties of perjury?" (for an affirmation).

This prescribed language emphasizes that the affiant must personally know and attest to the contents, which is inconsistent with a third-person narrative.

IV. FEDERAL AND SISTER STATE PRECEDENT SUPPORTS REQUIRING CONSISTENCY

While South Carolina law controls, federal courts and sister states have consistently held that affidavits must be internally consistent to satisfy due process requirements. The fundamental principle that an affiant must personally swear to facts they are asserting in their own voice is well-established across jurisdictions.

An affidavit written in third person but signed in first person creates a fundamental inconsistency that violates South Carolina's statutory requirements for valid affidavits. Such inconsistency undermines the oath requirement, creates confusion about what the

affiant is actually swearing to, and violates the personal appearance and knowledge standards set forth in S.C. Code Ann. § 26-1-5 et seq.

III. STATEMENT OF FACTS

IN CONSIDERING THE DEFECTIVE AFFIDAVIT BECAUSE IT FAILED TO MEET THE MANDATORY REQUIREMENTS OF RULE 56(e), SCRCF

A. Standard of Review

This Court reviews questions of law de novo.

B. Requirements for Valid Affidavits Under South Carolina Law

Under South Carolina Rule of Civil Procedure 56(e), affidavits used in summary judgment proceedings must meet three mandatory criteria:

1. **Personal Knowledge:** The affidavit must be made on personal knowledge;
2. **Admissible Facts:** It must set forth such facts as would be admissible in evidence; and
3. **Competent Affiant:** It must show affirmatively that the affiant is competent to testify to the matters stated therein.

See S.C.R.Civ.P. 56(e); *Dawkins v. Fields*, Opinion No. 3310 (S.C. Ct. App. Feb. 26, 2001).

The South Carolina Court of Appeals has held that "for summary judgment purposes, a verified pleading is equivalent to an affidavit, provided it meets the requirements of Rule 56(e)." *Dawkins v. Fields*, Opinion No. 3310 (S.C. Ct. App. Feb. 26, 2001). The court emphasized that "Under Rule 56(e), an affidavit or verified complaint must meet three criteria to be considered by the court: (1) it must be made upon personal knowledge; (2) it must set forth facts admissible in evidence; (3) it must show that the affiant is competent to testify to the matters stated therein." *Id.*

C. Professional Negligence Cases Require Strict Compliance with Affidavit Requirements

In cases involving professional negligence, South Carolina Code Section 15-36-100 imposes additional requirements for expert affidavits. The statute provides:

"If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim..."

S.C. Code Ann. § 15-36-100(E) (2023).

The South Carolina Supreme Court has emphasized strict compliance with these requirements. In *Eades v. Palmetto Cardiovascular and Thoracics, P.A.*, Opinion No. 27770 (S.C. Feb. 28, 2018), the Court addressed whether an expert affidavit satisfied the statutory requirements of Section 15-36-100.

D. Courts Must Strictly Scrutinize Affidavit Defects

South Carolina courts have consistently held that affidavits with procedural defects cannot cure jurisdictional or substantive deficiencies. In *Belle Hall Plantation v. Keys*, Opinion No. 5467 (S.C. Ct. App. 2017), the Court of Appeals "confirmed the requirements...that a foreclosing plaintiff must meet" and found that "the publication Order obtained by the plaintiff was based upon an affidavit that was on its face defective."

Similarly, in *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 583 (Ct. App. 2013), the Court established "that affidavits requesting service by publication that are defective and do not meet the requirements of the publication statute will not be sustained even in the absence of fraud or collusion."

E. The Specific Defects in the Affidavit

The affidavit in question fails to meet the requirements of Rule 56(e) because:

1. **Lack of Personal Knowledge:** Affiant did not write the affidavit in first person
2. **Inadmissible Evidence:** Someone other than the affiant wrote the affidavit in third person
3. **Incompetent Affiant:** The affiant is competent, however strict compliance with South Carolian law regarding verified affidavit is mandatory.
4. If the affidavit is stricken, then Respondent motion is without proof even if those statements are true, the affidavit is fatal.

F. The Trial Court's Error Requires Reversal

The trial court's consideration of the defective affidavit was reversible error because:

1. The affidavit failed to meet the mandatory requirements of Rule 56(e);
2. Courts have no discretion to consider affidavits that do not comply with procedural requirements;
3. The consideration of the defective affidavit materially affected the outcome of the motion.

See S.C.R.Civ.P. 56(e); S.C. Code Ann. § 18-7-160 ("Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits").

For the foregoing reasons, this Court should reverse the trial court's grant of motion to dismiss/summary judgment and remand for proceedings consistent with this opinion. Furthermore, this Court should reverse the trial court's decision to admit the defective affidavit and direct entry of judgment in favor of Appellant.

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Respectfully submitted

s/ Christopher Jones
Christopher Jones
309 Perry Avenue
Greenville, SC 29601
864-371-0989

Other Counsel of Record

M. Stokely Holder
Raford Bussey
Joye Coleman
Attorney For Respondents
800 E. North Street
Greenville, SC 29601
864-335-8808
sholder@hplplaw.com