

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

Christine Ingrid Funk, as Personal  
Representative of the Estate of Timothy  
Calhoun, Jr.,

Plaintiff,

-vs-

Rochelle Graham & Dennis Graham,

Defendant(s).

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Rochelle Graham & Dennis Graham,

Third-Party Plaintiffs,

-vs-

Christine Ingrid Funk, Individually,

Third-Party Defendants.

**IN THE COURT OF COMMON PLEAS  
C/A No.: 2024-CP-40-05925**

**ORDER GRANTING SUMMARY  
JUDGMENT**

**RECEIVED**  
JUL 11 2025  
SC Court of Appeals

0252-24-0001

This matter comes before me upon Motion of Defendants Rochelle Graham and Dennis Graham pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, seeking an Order Granting Summary Judgment and striking the Plaintiff's Complaint in this matter. This action concerns the ownership of real property located in Richland County, specifically, Plaintiff has alleged the existence of a parol contract for the sale of said real property.

On December 16, 2024, Defendants' counsel filed and served its Motion for Summary Judgment with supporting affidavits and verified exhibits. A Memorandum in Opposition and counter-affidavits were filed by Plaintiff's counsel on April 8, 2025. An additional Memorandum in Opposition was filed by counsel for the Plaintiff on May 2, 2025.

The hearing on the Defendant's Motion was held before me on April 17, 2025, at the Richland County Courthouse. Present and participating in the hearing was Jason M. Hunter of the

law firm Crawford & von Keller, LLC for the Defendants Rochelle Graham and Dennis Graham. The Plaintiff Christine Ingrid Funk, as Personal Representative of the Estate of Timothy Calhoun, Jr., was represented by William E. Booth, III of the Booth Law Firm, LLC.

Based upon the proof made of the facts and circumstances alleged in the pleadings, through the affidavits in support of summary judgment, and the verified exhibits thereto, I find, conclude and order as follows:

#### **SUMMARY JUDGMENT STANDARD**

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.” Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent must come forward with specific facts showing there is a genuine issue for trial.” Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003). “It is a gratuitous cruelty to the parties and their witnesses to put them through the emotional ordeal when the outcome is foreordained” and in such cases summary judgment is appropriate. Mason v. Continental Illinois National Bank, 704 F.2d 361, 367 (7th Cir. 1983).

#### **STANDARD AS TO PAROL CONTRACTS FOR THE SALE OF REAL PROPERTY**

Where a party seeks to avoid the Statute of Frauds (S.C. Code Ann. § 32-3-10) and seek enforcement of an alleged parol contract for the sale of real property, the following considerations must be made:

First, a determination must be made as to whether a parol or oral contract existed. If not, then there is nothing to enforce. *The alleged contract must be proven with clear, definite,*

and certain evidence. Courts scrutinize such parol contracts carefully, requiring a higher standard of proof than in typical civil cases. The terms of the agreement must be established unambiguously and to a reasonable certainty to avoid reliance on guesswork or conjecture. *See Aust v. Beard*, 230 S.C. 515

Provided the existence and terms of an alleged parol contract are established by satisfactory proof, the alleging party must demonstrate sufficient part performance to remove the contract from the operation of the Statute of Frauds. Acts of part performance must be unequivocally referable to the alleged agreement and cannot be explained by any other relationship between the parties. Examples of such acts include taking possession of the property, making valuable and permanent improvements, or paying the purchase price. Payment alone is considered the weakest form of evidence and is insufficient by itself to remove the contract from the Statute. *See Aust v. Beard*, 230 S.C. 515; *Bradshaw v. Ewing*, 297 S.C. 242.

The nature and extent of any improvements made to the property are critical. Improvements must be substantial, permanent, and made with the knowledge or consent of the legal owner. Minor or temporary improvements are generally insufficient to support a claim of part performance *Aust v. Beard*, 230 S.C. 515, *Knight v. Stroud*, 214 S.C. 437.

The principle of equitable estoppel may apply, preventing a party from invoking the Statute of Frauds if the other party has acted in reliance on the oral agreement to such an extent that denying enforcement would be unconscionable. For instance, if the party alleging the contract has made significant improvements or incurred expenses based on the agreement, equity may intervene to prevent fraud. *See Parr v. Parr*, 268 S.C. 58; *Scurry v. Edwards*, 232 S.C. 53.

#### **FINDINGS OF FACT**

1) The Summons and Complaint were filed by the Plaintiff on October 2, 2024, seeking a judgment of specific performance as to an alleged installment sales contract, ordering Defendants to execute a general warranty deed conveying the property which is the subject of the instant case, and requesting attorneys fees and costs.

2) Plaintiff is the Personal Representative of the Estate of Richard Timothy Calhoun, Jr. by virtue of a Certificate of Appointment as Personal Representative. *See Case No. 2024-ES-40-01166*.

3) Defendants are residents of the State of South Carolina in Lexington County.

4) The real property which is the subject of the instant case is located in Richland County and is more thoroughly described as being:

*Building Number 24, Apartment 1800 in the Carnaby Square Horizontal Property Regime, a horizontal property regime established by Carnaby Square – Joint Venture pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq. 1976 Code of Laws South Carolina by Master Deed dated January 25, 1980, recorded on March 19, 1980, in the ROD Office for Richland County in Deed Book D-534 at Page 232 which apartment is shown on the survey and site plan prepared by B.P. Barber and Associates, Inc., dated July 12, 1979, revised February 19, 1980 and being Exhibit A of the said Master Deed and being recorded in Plat Book Y at page 7004 and 7004A and Floor Plans of Apartment Buildings prepared by McNair, Gordon, Johnson and Karasiawicz, being Exhibit B, of said Master Deed and being recorded in Plat Book Y, Page 7005 through 7115,*

*This being the identical property conveyed to Rochelle Graham and Dennis Graham as joint tenants with right of survivorship, and not as tenants in common, by Deed of Rochelle Graham, dated July 14, 2014 and recorded in the Office of the ROD for Richland County in Book 1960 at Page 1784.*

TMS No. 07482-02-07

("Subject Property" hereinafter).

5) This Court has jurisdiction over the instant matter pursuant to South Carolina Code of Laws Ann. §§ 15-7-10 & 36-2-802.

6) Defendants Rochelle Graham and Dennis Graham were deeded the Subject Property as joint tenants with the right of survivorship and not as tenants in common by that Deed to Real Estate recorded with the Richland County Register of Deeds on July 22, 2014 in Book 1960 at Page 1784.

7) Defendant Rochelle Graham entered into an Installment Contract of Sale for the Subject Property with non-party Matthew Graham on or about December 24, 2014. Said instrument was recorded in the Richland County Register of Deeds on December 30, 2014 in Book 1996 at Page 312. Defendant Dennis Graham was not a signatory to said Installment Contract.

8) The aforesaid Matthew Graham is a nephew of Defendants, was the brother of the Decedent Richard Timothy Calhoun, Jr., and is the son of the Plaintiff Christine Ingrid Funk, individually. Defendants played a large role in raising Matthew Graham and remain in a close relationship with him.

9) For a time, Matthew Graham and the Decedent, Richard Timothy Calhoun, Jr, resided together in the Subject Property. During that period, Mr. Calhoun paid rent unto Mr. Graham, and was considered a sub-tenant of Mr. Graham's, as evidenced by rental agreements between the two.

10) At some point, Matthew Graham indicated to the Defendants that he no longer wished to remain in the Subject Property and vacated the premises, subsequently purchasing a separate property for himself. Both the Defendants and Mr. Graham considered the Installment Contract of Sale to be mutually rescinded, void, and of no effect. Defendants also requested that prior counsel rescind and cancel the Installment Contract of Sale and had been of the belief that a rescission of record had been filed of record.

11) The aforesaid installment contract between the Defendants and Matthew Graham was never satisfied nor assigned.

12) To formalize and finalize the rescission of the Defendants' installment contract with Matthew Graham, a Cancellation & Rescission of an Installment Contract of Sale (Payment Unsatisfied) was executed by Defendants and Matthew Graham and was recorded with the Richland County Register of Deeds on December 16, 2024, in Book 2980 at Page 1286.

13) Following Matthew Graham's departure from the Subject Property, Mr. Calhoun remained therein as a tenant.

14) Defendants never entered into any rent-to-own or land sale installment contract or agreement with Mr. Calhoun. Mr. Calhoun was at all times considered to be a tenant at the Subject Property by the Defendant and, correspondingly, Defendants never received any indication from Mr. Calhoun that he considered himself to be anything more than a tenant. Defendants have presented evidence indicating that, because of their relationship with Mr. Calhoun, he was allowed to remain in the Subject Property as a tenant despite an inability to always pay rent on time or in full.

15) Defendants had considered gifting the Subject Property to Mr. Calhoun, but no gift was consummated prior to his passing. Further, Mr. Calhoun had expressed interest in purchasing a separate property of his own, and Defendants had engaged in discussions with Mr. Calhoun as to how they may assist him in purchasing a home. Such discussions included, but were not limited to, possibly selling the Subject Property and gifting him the proceeds to facilitate his purchase of another property.

16) Less than a week following Mr. Calhoun's passing on April 14, 2024, Christine Ingrid Funk, traveled from Ohio and began staying in the Subject Property. This was initially done with Defendants' implied consent. Ms. Funk was granted access to the subject property by those who were Mr. Calhoun roommates prior to his passing. Though Defendants did not expressly grant Ms. Funk access, they tacitly allowed her to remain in the property for a short time so that she could attend Mr. Calhoun's funeral and related family events.

17) Christine Ingrid Funk, despite holding no lease or color of title to the Subject Property, refused to vacate the premises and paid no rent or other payment unto Defendants throughout her stay.

18) Because of Christine Ingrid Funk's absolute refusal to leave, Defendants were forced to file a Notice to Quit to regain possession of the Subject Property. *See* C/A No. 2024CV4010302887.

19) Following a hearing in C/A No. 2024CV4010302887, Christine Ingrid Funk was adjudged a trespasser and a Writ of Ejectment was issued as to the Subject Property. It was only after this finding that Christine Ingrid Funk vacated the Subject Property.

20) Plaintiff has failed to produce any writing whatsoever to establish the alleged installment contract of sale of the Subject Property between Richard Timothy Calhoun, Jr. and Defendants. As such, Plaintiff's allegations regarding the alleged installment contract fail to satisfy the requirements as dictated by S.C. Code Ann. § 32-3-10 (the "Statute of Frauds").

21) As Plaintiff does not meet the standard of proof demanded by the Statute of Frauds, the alleged installment contract of sale must be considered under the paradigm of an oral or parol contract for the conveyance of real estate.

22) Prior to the hearing on Plaintiff's Motion for Summary Judgment, Plaintiff filed two sworn affidavits, one from Christine Ingrid Funk and another from non-party and brother of Ms. Funk, Steven Graham. The affidavit of Ms. Funk consists almost entirely of inadmissible hearsay, in which Ms. Funk makes allegations regarding things told to her by the decedent Richard Timothy Calhoun, Jr. and Defendant Dennis Graham. Ms. Funk also includes a ledger produced by her which allegedly speaks to payments made by the decedent Mr. Calhoun but is unsubstantiated by any actual bank records. The affidavit of Steven Graham consists entirely of inadmissible hearsay.

23) Plaintiff has failed to provide any evidence indicating that a parol or oral contract existed for the purchase of the Subject Property between Defendants and decedent Richard Timothy Calhoun, Jr., and have unequivocally failed to meet the high evidentiary standard of establishing such a contract by competent and satisfactory proof, such as is clear, definite, and certain.

24) Plaintiff has failed to provide evidence that decedent Richard Timothy Calhoun, Jr. performed in part or in full as to any parol or oral contract for the sale of the Subject Property, or that the decedent acted in any way out of reliance upon any oral or parol contract.

25) Plaintiff has failed to provide evidence that the Statute of Frauds should be avoided in the instant matter. As such, the records of the Subject Property as recorded in the Richland County Register of Deeds should be interpreted as the only documents of consideration as to ownership of the Subject Property.

#### CONCLUSIONS OF LAW

Due to the foregoing, it is therefore ORDERED, ADJUDGED, AND DECREED that:

- a) The Defendant's Motion for Summary Judgment against the Plaintiff is GRANTED.
- b) The Plaintiff's Complaint filed in the instant case on October 2, 2024 is dismissed.
- c) No contract of sale for the Subject Property existed between decedent Richard Timothy Calhoun, Jr. and the Defendants.
- d) The Clerk of Court is hereby ordered to dismiss the *Lis Pendens* filed in the instant case on November 20, 2024. Said *Lis Pendens* is a nullity of no force or effect.
- e) Neither Plaintiff; Christine Ingrid Funk individually; nor the Estate of Richard Timothy Calhoun, Jr. hold any title to or rights in the Subject Property.
- f) Defendants Rochelle Graham and Dennis Graham hold fee simple title to the Subject Property, and that Deed conveying title to them, recorded with the Richland County Register of Deeds on July 22, 2014 in Book 1960 at Page 1784 should be considered uncontradicted.

- g) Defendants/Third-Party Plaintiffs Rochelle Graham and Dennis Graham may proceed with their Third-Party Complaint against Christine Ingrid Funk, Individually.
- h) As to Third-Party Plaintiff's First Cause of Action for Trespass, as Christine Ingrid Funk, Individually has already been adjudged a trespasser in C/A No. 2024CV4010302887. As such, Third-Party Plaintiff's need only to schedule a damages hearing to present evidence as to the amount of damages for which Christine Ingrid Funk, Individually is liable.

**AND IT IS SO ORDERED!**

**\*\*JUDGE'S SIGNATURE PAGE TO FOLLOW\*\***