THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
CHARLESTON COUNTY

Jessica A. Salvini, Presiding Judge

Trial Case No.: 2023-CP-10-00305

Appellate Case No.: 2024-002176

JOHN NICK,

Respondent,

vs.

EMILY PRIOLEAU,

Appellant.

RESPONDENT'S INITIAL BRIEF

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STATEMENT OF THE CASE

Procedural History

This is an appeal from the November 26, 2024 Order of Circuit Court Judge Jessica A. Salvini, Presiding Judge in the Charleston County Court of Common Pleas, over a bench trial held on October 28, 2024. This trial concerned the determination of Plaintiff John Nick's ("Nick" or "Respondent") original October 17, 2022 application for a Writ of Ejectment directed against Defendant Emily Prioleau ("Prioleau" or "Appellant"), to whom Nick issued a 30-day written notice of termination of Prioleau's month-to-month tenancy of Nick's residential single family property located at 5528 Flanders Avenue, North Charleston, S.C. 29406 (the "Property"). [Rule to Vacate or Show Cause (Eviction) Dated October 17, 2022].

Prioleau appeared and defended Nick's application for ejectment by fling a Motion to Dismiss arguing that the landlord tenant court lacked subject matter jurisdiction due to lack of landlord tenant relationship. [Prioleau Motion to Dismiss, dated October 27, 2022, including Exhibit "A"]. Prioleau also asserted a Counterclaim that she had acquired an equitable interest in the Property. Id. Nick filed a Reply to the Prioleau Counterclaim, denying its factual allegations and asserting, inter alia, the Affirmative Defense that Prioleau's claims were barred by application of the S.C. Statute of Frauds, S.C. Code Ann. § S.C. Code Ann. § 32-3-10(4). [Nick Reply to Counterclaims, dated Nov. 8, 2023].

On November 9, 2022, a hearing on Prioleau's Motion was held before Magistrate Amy Mikell, who heard testimony and argument from Prioleau, appearing *pro se*, and Nick, represented by counsel. On November 15, 2023, Judge Mikell issued an Order

denying Prioleau's Motion to Dismiss. Judge Mikell's findings and rationale was as follows:

> "While most of the facts of this case are disputed by the parties, the undisputed facts are as follows: (1) in or about 2008, Plaintiff [Nick] purchased the home located at 5528 Flanders Avenue, and title vested solely in Plaintiff's name. Defendant [Prioleau] was aware of this transaction and did not object to the property being titled solely in Plaintiff's name. (2) In or about June or July of 2010, Defendant moved into the property and has resided there since that time. As such, Defendant is a tenant at will. See, S.C. Code Ann. § 27-33-10(3) (1976) ("Every person other than the owner of real estate, excepting a domestic servant and farm laborer, using or occupying real estate without an agreement, either oral or in writing, shall be deemed a 'tenant at will[.]' Pursuant to section 22-3-10(10) of the South Carolina Code Annotated, magistrates have concurrent civil jurisdiction in all matters between landlord and tenant and possession of lands as provided in Chapters 33 through 41 of Title 27.
>
> For these reasons, it is, therefore, ordered and adjudged that Defendant's Motion to Dismiss is **denied.**"

[November 15, 2022 Order of Hon. Amy Mikell, Magistrate].

Previously, on November 9,. 2022, Nick filed a Motion for Summary Judgment to dismiss a Counterclaim by Prioleau which claimed ownership of the property at issue on the basis that Prioleau's claim was barred by the application of the South Carolina Statute of Frauds, S.C. Code Ann. § 32-3-10(4). [Nov. 9, 2022 Notice of Motion]. After requesting briefing from the parties on the issue of whether the doctrine of equitable estoppel set forth in the 2004 Supreme Court decision *of Springbob v. University of South Carolina*, 407 S.C. 490 (2004) was applicable to the case at bar, Magistrate Judge Mikell

transferred this case to the Charleston County Court of Common Pleas on the stated basis that Prioleau was "seeking damages in excess of the current civil jurisdiction in magistrate court. [Order of Hon. Amy Mikell, dated Jan. 13, 2023].

Before the Charleston Court of Common Pleas, Nick propounded requests for Interrogatories and Production to Prioleau, who was now represented by counsel. [Nick's Requests for Interrogatories and Production dated September 17, 2024]. Nick took Prioleau's deposition on October 3, 2024. [Excerpts of Prioleau Deposition Testimony, attached as part of October 8, 2024 Affirmation of William B. Jung, Esq., submitted in support of Nick's Motion for Summary Judgment].

On October 15, 2024, Nick's renewed Motion for Summary Judgment to dismiss the Prioleau Counterclaim by application of the S.C. Statute of Frauds came before Circuit Judge Dale Van Slambrook for hearing. In advance of the hearing on his Motion for Summary Judgment, Nick filed a Memorandum summarizing the uncontested facts and legal authorities, dated October 5, 2024, which, inter alia, summarized his position regarding the uncontested facts as follows:

1. Plaintiff John Nick purchased the Property solely with his own funds in 2028 for approximately $40,000.00 (The price reflects a prior uninsured fire loss).

Deft. Answer, Par. 10; Prioleau Deposition.

2. Plaintiff renovated the Property with his own funds.

Deft. Answer, Par 10.

3. In 2009, Defendant wrote two checks to herself from Plaintiff's business, Nicks Auto Sales, forging Plaintiff's signature in the amount of $80,000.00

to reflect repayment of an alleged indebtedness1 owed by Nick which pre-dated the 2008 purchase of the Property. (Prioleau Statement Exhibit "A" dated 27 October 2022 to Prioleau Answer). According to Prioleau, she lent money to the Plaintiff in 2002 and 2003 for the Plaintiff's construction costs in building a different residence located on Half Creek Road in Huger, S.C.

Exhibit "A" to Prioleau Answer; Prioleau Deposition.

4. Plaintiff subsequently moved into the Property in 2010 and has lived there with two disabled/special needs grandchildren thereafter.

[Mikell Finding; Prioleau Answer].

5. Prioleau paid the real property taxes on the Property between 2010 and 2021.

[Prioleau Answer, Par. 12].

6. Prioleau is not in possession of any lease (oral or written) from Nick for her use and occupancy of the Property, nor does she believe any lease was ever made by Nick to her.

[Prioleau Answer, Par. 11; Prioleau Deposition].

7. Prioleau is not in possession of a signed writing or any writing from Nick conveying an interest or contract right in the Property to her, nor does she believe that any such writing exists.

[Prioleau Deposition].

8. Prioleau has never paid any rent or other consideration to Nick for her use and occupancy of the Property.

(Prioleau Answer, Par. 11).

In opposition to Nick's Summary Judgment Motion, Prioleau filed an October 8, 2024 Affidavit in opposition. [Emily Prioleau Affidavit, sworn to Oct. 8, 2024]. By Rule 4 Judgment dated October 15, 2024, Judge Van Slambrook denied Nick's Motion for Summary Judgment. [Rule 4 Judgment dated Oct. 15, 2024]. Thereafter, a bench trial was scheduled before the Hon. Jessica A. Salvini, Circuit Judge, to proceed on October 28, 2024. In advance thereof, the parties submitted Pre-Trial Memoranda. [Nick Pre-trial Memorandum dated October 24, 2024; Prioleau Pre-Trial Brief, dated October 25, 2024].

RESPONDENT'S STATEMENT OF FACTS

The October 24 2024 Trial

Evidence By Respondent Nick

At trial, Nick introduced two exhibits: (1) the October 21, 2008 Deed conveying title to the Property to "John Nick" in consideration of his payment of $38,000.00 to Four Eagle Enterprises, Inc. and (2) Nick's November 7, 2022 Notice of Termination of month to month tenancy to Prioleau. [Id].

Nick's trial testimony was that he had purchased vacant land on Halfway Creek Road in Huger, S.C. in 2001 and eventually built a 3,600 square foot residence on that property over the course of 18 months. Trial Transcript ("Tr.") at 10. Nick testified that the funds to finance the construction of the Halfway Creek home partly came from his savings from his work at the Charleston Naval Shipyard, where he worked for 25 years after serving in the United Marine Corps between the early 1970s and 1977. Tr. at 8. Nick further testified that additional funds to construct the Halfway Creek residence came

from his operation of a used car business, Nicks Auto Sales. Tr. at 11. Nick moved into the Halfway Creek home, which is his current residence, in 2023. *Id.* Nick testified that her did not borrow any funds from Prioleau that he used in his construction of the Halfway Creek residence. *Id.*

With respect to the Property at issue in the case at bar, Nick testified that he was acquainted with the seller, an Annabelle Singleton, who wanted to sell the property after a house fire had gone unrepaired. Tr. at 12. Nick paid $38,000 and approximately $3,000.00 in closing costs by his cash or check to purchase the Property, taking title in his individual name. [Tr. at 12-13, 14; Trial Exh. 1]. Nick testified that no funds or contributions came from Prioleau to purchase the Property at 5528 Flanders Avenue, North Charleston, S.C. Tr. at 13. After taking title, Nick did "major repairs" either himself or by subcontractor he hired to renovate the Property. Tr. at 14. Nick testified that he personally spent $42, 000.00 in renovation costs on the Property before anyone began occupying the Property. Tr. at 15.

Nick further testified that before Nick had completed his renovations in 2010, Prioleau took an interest in the house and expressed wanting to purchase the Property from Nick. Tr. at 21-22. Nick testified that he allowed Prioleau to hire a friend of hers, Thomas Vandross, to make improvements, including plumbing, to the Property. Tr. at 22. Nick testified that he accepted funds from Prioleau toward improvements that Nick was making to the Property. Tr. at 22. Although Nick testified that Prioleau did initially express an general interest in buying the Property from Nick after his renovations were finished,

he was clear that they never discussed or agreed to a sales price or date for a closing no actual terms were discussed much less agreed:

Q: Did you and Emily ever agree on a price whereby you would sell the property to her?

A: No.

Q; Did you ever agree to a time that could approximate like a June of 2014 or you know, an approximate time as to when this transfer was going to take place?

A: No, sir.

Q: Did you ever ... have any kind of a meeting of a I guess, for lack of a better term, a meeting of the minds as how much the value – the property was worth after you've completed those improvements?

A: No.

Tr. at 27.

At trail, Nick admitted that he and Prioleau, who worked as the office manager for Nicks Auto Sales, had previously entered into a romantic relationship and that he allowed Prioleau's daughter, who had a special needs child, to move into the Property in 2010. Shortly thereafter, Nick testified that he allowed Prioleau herself to move into the Property. Tr. at 15-17. Nick testified that after Prioleau began occupying the Property, he also allowed her to make repairs to the Property, including installing a wheelchair ramp for her special needs grandson. Tr. at 17.

In 2010, Nick was charged with violations of federal law in not filing a IRS Form 8300[1] for a cash sale of a vehicle by Nicks Auto Sales. Nick retained defense counsel, and Prioleau contributed payment from her individual funds of $20,000.00 to Nick's counsel[2]. Nick was sentenced to one (1) year in prison, and her gave Prioleau a Power of Attorney to operate Nicks Auto Sales during his incarceration. Tr. at 20. During this time, Prioleau was receiving a salary of $52,000.00 per year. Tr. at 21. While Nick's criminal case was pending, Prioleau paid herself $80,000.00 from Nick Auto Sales business account. Tr. at 23-24. Nick testified that Prioleau was reimbursing herself for loans she had previously made to the business, as well as, to refurbish her out-of-pocket outlays to improve the Property. Tr. at 23.

Nick served his time in prison in 2016 and went into a halfway house program in 2017. Tr. at 24. When he was released, Nick testified that he could not return to operating Nicks Auto Sales, because Prioleau had put the business in the name of her LLC, Vogue Enterprises, and had " lost a lot of money trying to make the business hers." Tr. at 25, Nick testified that when he was released from his parole, Prioleau told him that "I can't work for you. This is my business ... Vogue Enterprise [and] I didn't have the authority ... to do anything." Tr. at 25. Nick testified that because Prioleau had the ability to "destroy"

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[1] A business is required to file an IRS Form 8300 when it has a cash transaction in excess of Ten Thousand ($10,000.00) Dollars. Https://www.irs.com/en/form-8300.

[2] A receipt from Savage and Savage for $20,000.00 on behalf of "Nicks Auto Sales" was offered by Prioleau at trial and received in evidence at Defendant's Exhibit 4. Tr. at 65, 20.

Nick's family by disclosure of their affair, he did not take further action at that time. Tr. at 23.

In 2022, Nick testified that approached Prioleau and asked her to pay $1,500.00 a month in rent. Tr. at 26. Although he and Prioleau discussed a rental payment, Nick testified that Prioleau refused to pay rent: "But I requested rent from her and she never paid and that's why I tried to get her out (of} there so I can get my property back." Tr. at 26. Q: Did she agree to pay $1,500? A: No ... she just was adamant about just staying there and keeping the property." Tr. at 26. In the closing testimony on direct examination, Nick testified that he believed he had helped the Prioleau family for many years and, since Prioleau had contacted his wife about their previous relationship, he in effect believed it was now time for them to end the mutual chapter of their lives and she should return his Property. Tr. at 27-28.

Cross-examination by Prioleau's counsel largely confirmed Nick's direct testimony. Nick testified that he allowed Prioleau to reimburse him for improvements made to the Property for Prioleau's special needs grandson to have the bathroom accommodations to his needs. Tr. at 32-33. However, Nick reiterated that he and Prioleau never came to any agreement, specific or otherwise, over the sale or transfer of the Property to Prioleau, nor did they ever discuss the price of such a transfer. Tr. at 33, 34. Nick's testimony on this point was not further challenged by Prioleau's counsel.

Nick further testified that that he paid the real estate taxes on the property when he had the funds and that Prioleau paid the real property taxes on the Property when he

was unable to make the payment[3]. Nick further admitted that Prioleau made loans to Nicks Auto Sales from time to time, for example, to purchase used car inventory, when Nick lacked funds. Tr. at 37. Finally, Nick testified that a partial reason Prioleau paid the $20,000.00 retainer to Nick's criminal defense attorney was that she feared prosecution herself for having been responsible, as office manager, for the lack of paperwork filed on the cash sale of a vehicle in excess of $10,000.00. Tr. at 37-38. However, Nick acknowledged that it was his ultimate responsibility as the owner of the business and he accepted the responsibility for that crime. *Id*

Evidence By Appellant Prioleau

Prioleau's trial testimony was that she loaned Nick $80,000.00 in 2002-2003 when was Nick building the Halfway Creek home in Huger. Tr. at 46. She further testified she made loans to Nicks Auto Sales from time to time when cash was needed for business operations. Tr. at 47. Prioleau also testified that "our agreement was that he was going to help me either find a house or help me build a house. We were gonna build a house me too because I stayed in his business while he was away. I ran his business so he would have free time to work on his house or whatever side project." Tr. at 49. Prioleau testified that based on this belief, "My understanding, from the time the house [the Property at 5528 Franders Avenue] it was my home. There was no discussion about anything else surrounding it ..." . Tr. at 50.

[3] Prioleau's trail exhibit shows that Prioleau and her LCC, Vogue Enterprises, LLC (created out of assets owned by Nicks Auto Sales), paid the taxes between 2016 and 2021, commencing with the time Nick was incarcerated and up to the time that Nick sought recovery of his Property by commencing an ejectment case.

Prioleau testified that she had a voice in the renovation of the Property between 2008 and June of 2010, when she moved into the house. Tr. at 53-54. She testified to contributing to payment of business taxes for Nicks Auto and having Nicks Auto Sales sell her Cadillac Escalade so she could acquire a new vehicle. Tr. at 55-56. Prioleau's testimony was that "at some point, our money just intertwined." Tr. at 57. Prioleau offered testimony to loaning $22,600.00 to Nicks Auto Sales in 2009 for the purchase of used car inventory. Tr. at 61. In January of 2010, Prioleau admitted paying herself $80,000.00 from the Nicks Auto Sales bank account, which Nick, she admitted testified, did not discuss with her nor authorize. Tr. at 63-64. According to Prioleau, Nicks Auto Sales had received money (loans) that belonged to her and she was entitled to repayment of those loans. Tr. at 64.

Prioleau testified that she paid $20,000.00 to Nick's criminal defense retainer, for which the notation states "Nicks Auto Sales care of Emily Prioleau". Tr. at 65; Deft. Trial Exhibit 4. Prioleau testified she continued to fund the business operations of Nicks Auto Sales when needed between 2010 and 2016. Tr. at 68-72. When Nick reported to federal prison at the start of 2016, armed with a power of attorney from Nick (Tr. at 32), Prioleau "disbanded" Nicks Auto Sales in February of 2016, restarting the business as her LLC, Vogue Enterprises, LLC. Tr. at 75, 25.

Prioleau further testified that she inquired of Nick about transferring the Property to her in 2010, after Nick received notice of the IRS Investigation; however, "At that point, he didn't want to do it, because of the investigation with the CID, that he didn't want it to appear he was hiding assets." Tr. at 73-74.

Between 2010 and 2015, Prioleau was asked if she kept "bothering [Nick] about giving you ... the property ...", to which she answered "No." Tr. at 74. She testified that she raised the subject again after Nick was sentenced in 2015 and "At that time he told me he would have his wife sign over the property to me" by a power of attorney she had on Nick's real property[4]. Tr. at 75, 83. Prioleau offered evidence of her maintenance of the Property over the years, and her direct testimony closed with her allegation that she "honestly believed" that the Property was hers until she received the eviction proceedings in 2022. Tr. at 89.

On cross-examination, Prioleau made a number of clarifications to her allegations. The $80,000.00 she gave to Nick in 2002-2003 was in cash, for which she repaid herself in January 2010 by writing checks to herself from Nicks Auto Sales. Tr. at 96-97. She maintained that his repayment of $80,000.00 was not for any funds she lent Nick for his 2002-2023 construction of the house at Halfway Creek Road in Huger but, rather, for "just a general portion of the money he owed me up to that period." Tr. at 97. When questioned about her alleged loans to Nick for his costs of constructing the Halfway Creek Road residence, her testimony was "yes," she loaned him funds for that purpose, but "I loaned him money after that – during that – before 20 – that 2010 payment. There was additional funds." *Id.*

On further examination, Prioleau admitted that the only collaborating evidence of any alleged "loans" she made to Nick were her checks all actually written to or on behalf

[4] No further evidence was offered on the alleged existence of a power of attorney held by Nick's wife.

of the business, "Nicks Auto Sales," (opposed to Nick individually) that were introduced as Defendant's Trial Exhibits 1-6. Tr. at 48, 58, 61-62, 67-68. As a consequence, according to Prioleau, she never received repayment of the funds allegedly lent Nick for Nick's construction expenses in building the Halfway Creek Road property.

With respect to the 5528 Flanders Avenue Property, Prioleau testified that she did not attend the closing and did not give Nick any funds prior to or at the closing whereby Nick purchased said Property. Tr. at 98; *see also*, Prioleau Deposition, page 42 ("Q: [D]id you give him any specific consideration that you understand went to the purchase of 5528 Flanders ... other than the indebtedness you allege? A: No."). According to Prioleau, Nick "already had it [her money]" from her alleged prior loans to his business, Nicks Auto Sales. When questioned whether she understood that it is by a deed that ownership of real estate is transferred from one person or entity to another, Prioleau claimed to only learn this in "later years" – notwithstanding her alleged conversation with Nick on the of closing whereby she testified it was agreed that only Nick would be received title to the Property. Tr. at 98-99.

When questioned about her dissolution of Nicks Auto Sales in 2016 while Nick was incarcerated, Prioleau admitted to being a "creditor" of Nicks Auto Sales due to her loans to Nicks Auto Sales. Tr. at 99-100. Nonetheless, Prioleau maintained that he did not repay herself for these loan when she winded up the affairs of Nicks Auto Sales because "there was no money to pay me" after a fire had allegedly destroyed "everything," including all vehicles, all of which were uninsured. Tr. at 100.

In conclusion of cross-examination, Prioleau denied that Nick ever intended to gift the 5528 Flanders Avenue Property to her: Q: "Your testimony ... essentially is that Mr. Nick promised to basically gift his house to you at some point in the future? Is that your position in this case? A: No, I wouldn't say Mr. Nick was gifting me the house because, I , I bought the house. The house was purchased with my money. The repairs -- .. was my money." Tr. at 101. When asked if there was a single text message, email, ordinary letter, any document memorializing this alleged agreement, Prioleau admitted there was no independent writing or evidence of the alleged parol agreement besides her testimony. Tr. at 101.

Testimony of Other Witnesses Called by Prioleau

Counsel for Prioleau called Thomas Vandross, who testified that he improved the plumbing at Property, addressed squirrel intrusions in the attic and made other repairs, for which Prioleau paid for his services. Tr. 109-114. No cross-examination was conducted.

Counsel for Prioleau also called a James Jenkins, who testified to doing HVAC work at the Property before anyone moved in later in June of 2010 for which he was paid by Prioleau. Tr. at 115-116. When asked by Prioleau's counsel if he had any knowledge from conversations with the parties about who owned the house, Jenkins testified, "No, it never came up, directly, no." Tr. at 117. There was no cross-examination of Mr. Jenkins.

Re-Direct Testimony of John Nick

John Nick was recalled for re-direct testimony without objection by Prioleau. Tr. at 118. On re-direct, Nick testified that he viewed Prioloeau's unauthorized withdrawal of

$80,000.00 from Nicks Auto Sales' account as being material to his consideration of whether to sell the Property to Prioleau:

> "But some time around the first month of 2010, she lost confidence in the situation and withdrew the money. In my opinion, she took the deal off the table. I didn't react then because of the fact that my family was in jeopardy. So, she just used that as a weapon to stay in the property.
>
> Q: ... You are referring to the ...payment of $80,000.00 that was taken out of Nicks Auto Sales?
>
> A: Yes, my recollection was that it was $93,000.00. It was two different checks.
>
> Q: ... And you're saying that that was material to your opinion about whether you were going to sell this Property to her?
>
> A: Yes.

Tr. at 121-22.

On re-direct by Prioleau counsel, Nick confirmed that he had purchased the Property in 2008 for $38,000.00 plus closing costs and he had been recently offered $250,000.00 for it. Tr. at 122-23. The trial concluded by the trial judge noting that it was a bench trial and she thought "I think I know exactly where we are" before offering counsel to the opportunity to make closing argument. Tr. at 123. After argument by Prioleau's counsel, the trial judge stated that the matter would be taken under advisement. Tr. at 127.

DISPUTE OF APPELLANT'S FACTUAL STATEMENTS

Nick disputes Prioleau's contentions that her payments in Appellant's Statement of the Case (Appellant's Initial Brief at Page 2) are payments toward the Property at issue. Rather, all of these cited payments were (1) made many years before Nick purchased the Property at issue; and (2) were loan payments Prioleau made to Nick's business, Nicks Auto Sales, and not to Nick, in his individual capacity.

Furthermore, it is Nick's position Prioleau's citation to her payments to contractors to improve the property or make it suitable for her special needs grandson all were made well after Nick had already purchased the 5528 Flanders Avenue Property and no payment of the $41,000 purchase price for the Property was contributed by Prioleau at or prior to Nick's closing on the Property.

RESPONDENT'S COUNTER-STATEMENT OF THE STANDARD OF REVIEW

"In an action in equity tried by the judge alone, this Court can make findings of facts in accordance with our own view of the preponderance of the evidence. However, this does not require us to ignore the fact that the special referee was in a better position to assess the credibility of witnesses." QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. Appeals 2004) (Citations omitted).

Additionally, Nick disputes that Appellant's citation to an alleged standard of review of an appeal from a denial of a Demand for Jury Trial on the initial basis that no right to a jury trial attaches to claims or defenses which are equitable, as opposed to, legal in nature. *Defender Properties, Inc. v. Doby*, 307 S.C. 336, 415 S.E.2d 383 (1992) (Citations omitted). Secondly, Prioleau did not assert or claim prior to or during the trial that she

had a right to a jury trial on the issues under consideration by the trial court. Accordingly, Nick respectfully submits that the standard of review for an appeal involving denial of a Demand for Jury Trial is not applicable to this appeal or was otherwise waived at trial by Prioleau and thus is not preserved on appeal.

ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT UNDER THE FACTS OF THIS CASE, PRIOLEAU CANNOT MAINTAIN A CLAIM OF OWNERSHIP OR FOR TRANSFER OF THE PROPERTY BY APPLICATION OF THE THEORIES OF PROMISSORY OR EQUITABLE ESTOPPEL, RESULTING TRUST OR PART PERFORMANCE OF AN ORAL AGREEMENT.

A. The Doctrine of Equitable and Promissory Estoppel (as Means of Barring Application of Statute of Frauds) Are Not Applicable as Matter of Law to this Case, Nor Would Facts of This Case Apply to these Doctrines.

In *Springbob v. The University of South Carolina*, 407 S.C. 490 (2014), the Supreme Court upheld previous case law holding that the doctrine of equitable estoppel can bar the application of the statute of frauds as a defense to an oral contract that was not otherwise capable of being performed within one year. *Id*, *citing*, *Collings Music Co. v. Cook*, 281 S.C. 580, 583 (Ct. App. 1984); *Florence Printing Co. v. Parnell*, 178 S.C. 119, 127 (1935).

To take a contract that otherwise could not be performed within one year outside the purview of the S.C. Statute of Frauds, the Court noted that the "party asserting estoppel 'must show that he has suffered a definite, substantial, detrimental change of position in reliance on the contract, and that no remedy except enforcement of the bargain is adequate to restore his former position [and] "it is not sufficient to show merely that he has lost an expected benefit under the contract. *Id*, *citing Collins Music Co., supra*. In

addition, "Before the estoppel can be invoked, however, there must be **competent proof of the existence of the oral contract.**" *Id* (Emphasis supplied).

Since its March 12, 2014 date of decision, upon information and belief, *Springbob* has been cited in four subsequent reported cases: *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640 (2108); *Wilson v. Willis*, 416 S.C. 395 (S.C. App. 2016); *Rodarte v. Univ. of South Carolina*, 419 S.C. 592 (2017); and *Coves Draden, LLC v. Ibanez*, App. Case 2014-000339 (Unpub. Dec. Aug. 17, 2916). All of these subsequent cases involved contracts that otherwise could not be performed within one year – none involved real estate. Moreover, Respondent has not identified any decision that has applied the collateral estoppel doctrine cited in *Springbob* or its progeny to cases involving lands, tenements and hereditaments, as is the case at bar involving Prioleau's alleged claim to have an equitable interest or an indefinite tenancy in the Nick Property. Accordingly, the collateral estoppel doctrine enunciated in *Springbob* is distinguishable and thereby inapplicable to the case at bar as a matter of law.

Secondly, as a matter of fact, there is no dispute that the Prioleau has failed to and cannot establish "competent proof of the existence of an oral contract" (*Springbob*, *citing Atl. Wholesale Co. v. Solondz*, 283 S.C. 36, 40 (Ct. App. 1984)), which is absolutely necessary to invoke the doctrine of collateral estoppel to bar the otherwise application of the South Carolina Statute of Frauds. Both parties have testified that no terms, i.e., price or date for transfer, was discussed much less agreed for transfer of the Property from Nick to Prioleau.

All that Prioleau offered a trial was uncollaborated and self-serving testimony referencing a vague and ambiguous future expectation that Nick would transfer title to the Property at an unknown, unagreed and unspecified future date under unknown, unagreed and unspecified terms, such as a payment price. None of the necessary terms of an actual contract that meets the requirements under South Carolina law to establish an enforceable contract were offered into evidence at trial by Prioleau by refence to her expectations or beliefs. Therefore, Prioleau cannot establish the existence of a valid or parol contract of her alleged right to have a transfer of title to the Property from Nick at some future date and under unknown terms.

Even assuming, *arguendo*, that the Defendant was claiming a perpetual l tenancy by oral agreement, S.C. Code Ann. § 27-35-20 expressly prohibits the creation of tenancies in excess of one year by oral agreement: "Any agreement for the use or occupation of real estate for more than one year **shall be void unless in writing.**" *Id* (Emphasis added). It is clear that Prioleau's occupancy of the Property has been ongoing for over a decade. Indeed, for such reason, Magistrate Mikell found that Prioleau to be a tenant at will aa defined by S.C. Code Ann. § 27-33-10(3) (1976) . Mikell Order dated November 15, 2022. Prioleau has occupied the Property under a month-to-month tenancy, for which proper advance written notice was given on September 9, 2022 that Nick was terminating said month-to-month tenancy. For such reasons, Nick respectfully submits that the trial court's Order that Prioleau cannot overcome the requirements of the South Carolina Statute of Frauds under a theory of equitable or promissory estoppel should be affirmed.

B. A Resulting Trust in Prioleau's Favor Cannot be Established as a Matter of Law under the Facts of this Case.

At trial, Prioleau argued that she had an equitable interest in the Property by operation of the equitable remedy of a resulting trust. Prioleau Pre-Trial Memo at page 4l Defendant's Memo in Opposition to Summary Judgment, page 5. However, the undisputed facts of this case, the requirements to impose a resulting trust cannot be met by Prioleau under the facts of this case.

In 1977, the South Carolina Supreme Court ruled that "In order to establish a resulting trust, it was necessary that respondent show by definite, clear unequivocal and convincing evidence that she paid a definite portion of the purchase money at the time of the transaction." *Glover v. Glover*, 234 S.C.433 (1977). In 2002, the Court of Appeals noted that "The general rule is that 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 in his behalf." *Jocoy v. Jocoy*, 349 S.C. 441 (2002), quoting, *Lollis v. Lollis*, 291 S.C. 525, 528 (1987).

Therefore, it is well established that the party seeking to create a resulting trust **must transfer funds to the party taking title to real estate at or before the time of closing**: "[I]n order for a resulting trust to arise, such must arise, if at all, at the time of the purchase is made. The funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Moore v. McKelvey*, 221 S.C. 780 (1976), *citing Green v. Green*, 237 S.C. 424; *Hodges v. Hodges*, 243 S.C. 299. As set

forth above, Prioleau did not contribute any funds to the cash purchase that Nick made of the Property in 2008.

In *Hutto v. Hutto,* 196 S.C. 369 (1938), the Supreme Court gave extensive consideration to the requirement that the party seeking to establish a resulting trust must demonstrate that he or she must prove by **clear, convincing, definitive and unequivocal evidence the contribution to a property's purchase price at or before the time of closing**:

> "It is well settled in this state that, in order to establish a resulting trust in lands conveyed to the grantee, it is necessary and indispensable that an actual payment of the purchase money, or some definite portion of it, should be clearly proved to have been made by the cestui que trust, at the time of the purchase. (Citations omitted
>
> Mr. Pomeroy says (3 Pom.Eq.Jur., § 1037) that, in order for a resulting trust to arise, 'it is absolutely indispensable that the payment should be actually made by the beneficiary, or that an absolute obligation to pay should be incurred by him as a part of the original transaction to purchase, at or before the time of the conveyance; no subsequent and entirely independent conduct, intervention, or payment on his part would raise any resulting trust.'
>
> The rationale upon which this principle is based is thus clearly stated by Chief Justice McIver in *Ex parte Trenholm,* supra:
>
> > "In the leading case *of Botsford v. Burr*, 2 Johns.Ch. [(N.Y.) 405] at page 408, Chancellor Kent says: 'If A. purchases an estate with his own money, and takes the deed in the name of B., a trust results to A. because he paid the money. The whole foundation of the trust is the payment of the money. *Willis v. Willis*, 2 Atk. 71. If, therefore, the party who sets up a resulting trust made no payment, he cannot be

> permitted to show by parol proof that the purchase was made for his benefit or on his account.' Again he says: 'Nor would a subsequent advance of money to the purchaser, after the purchase is thus complete and ended, alter the case. It might be the evidence of a new loan, or be the ground of some new agreement, but it would not attach by relation a trust to the original purchase; for the trust arises out of the circumstance that the money of the real, and not of the nominal, purchaser formed at the time the consideration of that purchase, and became converted into the land.'

Hutto v. Hutto, 187 S.C. 36, 196 S.E.2d 369 (1936)[5].

In the case at the bar, Prioleau offered no evidence that she contributed any actual funds to Nick's cash closing on the 5528 Flanders Avenue Property[6]. In fact, she conceded that she did not make any actual contribution to the cash funds that Nick paid at closing:

"Q: And you did not contribute any specific funds, and I'm not talking about your previous alleged indebtedness that he may owe to you, but did you give him any funds immediately prior to or closing to purchase this property for approximately $41,000.00?

A: No, he already had it."

Tr. at 98.

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[5] The *Hutto* decision continues to recount the development of the law in equity governing a resulting trust under English and early American common law.

[6] As set forth above, Nick's testimony that Prioleau did not contribute any actual funds prior to or at the closing for his purchase of the Property (Tr. at 13) was unrebutted.

However, herein, the alleged prior indebtedness owed by Nick to Prioleau actually refers to allegations that she contributed funds to Nick's construction costs in 2002 and 2003 when Nick was building a home on a different property on Halfway Creek Road in Huger, S.C. Prioleau Answer, Exh. "A". Moreover, the other alleged indebtedness that Prioleau testified and offered supporting documentation all referred to her loans to Nick's business, Nicks Auto Sales – not Nick personally and certainly not for Nick to buy the 5528 Flanders Avenue Property. Any funds that Prioleau paid for improvements at the property were made contemporaneously or after she moved into the Property in June of 2010.

These distinctions are critically important and ultimately fatal to Prioleau's' attempt to acquire an equitable interest in the Property under a resulting trust theory. For these reasons, Nick respectfully submits that the trial court's well-reasoned determination that Prioleau cannot invoke a resulting trust to create an equitable interest in the Property to avoid ejectment is proper and should be affirmed.

C. Prioleau Cannot Enforce an Agreement to Transfer the Property under a Theory of Part Performance of an Oral Contract.

As discussed by Judge Salvini, "A party seeking to enforce an oral contract can show part performance of the oral contract. *See, Beckham vs. Short*, 294 S.C. 415 (Ct. App. 1988). 'Performance may be proved by evidence of (1) improvements to the real estate; (2) possession of the real estate; and (3) payment of the purchase price.' *Bradshaw v. Ewing*, 297 S.C. 242, 245 (1989), *citing Stackhouse v. Cook*, 271 S.C. 518 (1973)." Salvini Decision at Page 5-6. ... However, in applying a part performance claim, 'In order

to overcome the Statute of Frauds, [a party] must establish the parol contract by competent and satisfactory proof, which is clear, definitive and certain.'". Salvini Decision at 5-6 of 8,.

As Judge Salvini noted that Prioleau did take possession of the property in 2010 two years after Nick's 2008 purchase and made "some improvements" to it, "the record before this court does not support a finding that the parties had an oral contract for Nick to transfer the Property to Prioleau because 1) the record is void of the terms and provisions the parties agreed to for the transfer of the Property from Nick to Prioleau; 2) there was no definitive agreement between the parties on a purchase price for the Property; 3) the parties had not agreed on a date Nick would transfer the property to Prioleau; and 4) the funds Prioleau loaned to Nick were for other reasons (i.e., business loans or business expenses, Nick's attorney's fees, etc.) and not specifically for the purchase price or improvements made to the Property and spanned the course of several years. The parties did not have a meeting of the minds regarding this Property and its transfer from Nick to Prioleau." Salvini Decision, Page 6 of 8.

The above four (4) findings of fact cited by the trial court are more than amply supported by the record before this Court and the trial court. Indeed, these findings are all based on undisputed and admitted facts. In the interest of brevity and economy, Nick references his prior arguments and evidentiary citations set forth in Argument A *infra,* regarding equitable and promissory estoppel as further support herein. For such reasons, Nick respectfully submits that the trial court's well-reasoned determination should be affirmed.

II. PRIOLEAU'S ARGUMENTS OBJECTING TO THE MANNER OF TRIAL ARE WITHOUT MERIT AND ARE UNSUPPORED BY THE RECORD ON APPEAL.

Without citation to any actual evidence in the Record on Appeal (or elsewhere), Prioleau offers a host of arguments concerning alleged witnesses who did not appear for trial, alleged insufficient preparation by her trial counsel, Prioleau being in a separate virtual room from that of her trial counsel, her testimony being allegedly limited upon the advice of her counsel, the alleged failure to offer a "handwritten document" detailing certain charges for labor and materials on the property, among other unspecific objections. Appellant Initial Brief at 15-16.

As an initial matter, Prioleau enunciated no objection to the manner and nature of a bench trial being conducted remotely before or at the commencement of the trial at issue. Secondly, any issue concerning the inability to produce a witness should have been raised to the trial judge before trial – none was made. Further, on this point, Prioleau had well over a year to memorialize the testimony of witnesses she believed to be critical to her case by deposing said witnesses in advance to have the transcripts of their testimony available for introduction in the event said witnesses were "unavailable" at trial. Prioleau cannot be heard to complain or cite her lack of preparation over the 19 to 20 months that this case was pending between January of 2023 and October of 2024. More importantly, no proffer of the testimony which these allegedly unavailable witnesses would offer was made to the trial court, and Appellant's citation to such testimony is beyond the Record on Appeal. For such reasons, Prioleau's argument concerning these alleged witnesses is not preserved for review and appeal and must be dismissed.

Secondly, the record does not show that Appellant's counsel was unprepared or that Appellant was prejudiced in any manner by the conduct of her trial. Even, *arguendo*, these allegations are not chargeable to the Respondent. Respondent. If Appellant was not ready to proceed on October 28, 2024, her remedy was to seek a continuance. Post trial, of Appellant believed the trial was somehow improper or unfair, Appellant's remedy was to file a Motion for a New Trial under Rule 59 of the South Carolina Rules of Civil Procedure or perhaps a Motion for Reconsideration. Appellant made such motions. Therefore, Appellant's objections to the manner of trial were waived, are not persevered for review on this appeal and should be dismissed as either a matter of fact or law and for being unsupported by any actual evidence in the Record on Appeal.

Conclusion

For the foregoing reasons, it is respectfully submitted that the decision of the Circuit Court should be affirmed.

Dated: Mount Pleasant, S.C.
August 26, 2025

Respectfully submitted,

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PROOF OF SERVICE

I, William B. Jung, Esq., certify under penalty of perjury that I served a copy of the Respondent's Initial Brief upon the Appellant on August 26, 2025 by mailing and emailing a true and complete copy thereto to Appellant Emily Prioleau:

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August 26, 2025

s/William B. Jung