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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

Jocelyn Newman, Circuit Court Judge

Case No. 2024-CP-40-05925

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

v.

Rochelle Graham and Dennis Graham, Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in granting summary judgment where evidence showed genuine issues of material fact regarding the existence and performance of an installment land contract?
- II. Did the trial court err in applying the Statute of Frauds without considering exceptions for part performance and equitable relief?
- III. Should equity enforce the oral agreement for sale of real property to prevent unjust enrichment and unconscionable results?

STATEMENT OF THE CASE

This appeal arises from an action filed by Christine Ingrid Funk, as Personal Representative of the Estate of Richard Timothy Calhoun, Jr., seeking specific performance of an alleged installment sales agreement for real property located at 1800 Ashford Lane, Columbia, South Carolina (the "Subject Property"). The Subject Property is described as Building Number 24, Apartment 1800 in the Carnaby Square Horizontal Property Regime and is identified by Richland TMS No. 07482-02-07. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 1-A, filed December 16, 2024).

On July 22, 2014, Rochelle Graham and Dennis Graham acquired fee simple title to the Subject Property as joint tenants with right of survivorship by deed recorded in the Richland County Register of Deeds. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 1-A, filed December 16, 2024).

On December 24, 2014, Rochelle Graham entered into an Installment Contract of Sale with non-party Matthew Graham, the brother of the decedent and son of the Appellant. This installment contract was recorded on December 30, 2014, in Book 1996 at Page 312. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 2-A, filed December 16, 2024). Dennis Graham was not a signatory to the contract. On December 16, 2024, the parties executed and recorded a Cancellation and Rescission of the installment contract. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 2-C, filed December 16, 2024).

On or about May 15, 2020, Matthew Graham purchased a house and moved out of the Subject Property as evidenced by a deed dated and filed May 15, 2020, and recorded in Record Book 20871 at Page 3129. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A" to Exhibit "A", Filed April 8, 2025). Following Matthew Graham's departure from the Subject Property, the decedent, Richard Timothy Calhoun, Jr. (hereinafter referred to as "Richard"), continued to reside there. On April 14, 2024, Mr. Calhoun passed away. Shortly thereafter, Appellant traveled from Ohio and began staying in the Subject Property. Appellant then was appointed the personal representative of the estate of her son. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A", Filed April 8, 2025).

On October 2, 2024, Appellant filed the present action seeking specific performance of an alleged oral installment sales agreement between the decedent and Respondents, requesting conveyance of the Subject Property and related relief. (Complaint filed October 2, 2024). Respondents moved for summary judgment on December 16, 2024, asserting that no written agreement existed and that the Statute of Frauds barred Appellant's claims. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action). After a hearing on April 17, 2025, the trial court granted summary judgment by order dated June 10, 2025, dismissing Appellant's complaint and confirming Respondents' fee simple ownership of the Subject Property. (Order Granting Summary Judgment filed June 11, 2025).

Appellant filed her Notice of Appeal on July 11, 2025.

STATEMENT OF THE FACTS

Evidence from Appellant's Affidavits.

The Affidavit of Christine Ingrid Funk states that she was appointed as the personal representative of her late son's estate by Certificate of Appointment dated August 8, 2024. She further states that her son Richard and her other son, Matthew Calhoun, lived in the subject property for several years and that they both helped rehabilitate the condominium through providing labor and funds. The affidavit further states that Richard, prior to his death (he died on April 14, 2024), told her several times that after Matthew moved out that Richard agreed to purchase the condominium from the Grahams for the payment of \$25,000.00. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A", Filed April 8, 2025).

Her affidavit provides statements made by Richard to her stating that on June 24, 2019, the parties hereto entered into an installment contract of sale by which Seller sold to Richard the Subject Property. Payment for said property was made by monthly payments with an initial purchase price of \$25,000.00 at an interest rate of 3.25%. In addition to the monthly payments, Richard, as owner of the Subject Property, was required to pay all property taxes, all regime fees, and the insurance on the property. Again, Richard was also responsible for all repairs to the property. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A", Filed April 8, 2025).

The Affidavit of Christine Ingrid Funk further states that she knew about the installment sales contract and that Richard was allowed to remain in the condominium even though there was no rental agreement provided. The Affidavit of Christine Ingrid

Funk further states that on November 23, 2023, at a family gathering for Thanksgiving the Respondent Dennis Graham confirmed that Richard was purchasing the condominium by installment payments and that he had already made all the necessary payments and that a deed needed to be signed by him and his wife. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A" , Filed April 8, 2025).

The arrangement of an installment sales contract with Seller holding title was similar to a previously written installment sales contract on the same property with Matthew Graham, the son of the Appellant and the brother of Richard, but this installment sales contract was terminated by mutual agreement at the time that Richard entered into the installment sales contract with Seller. Richard stayed in the property as his primary residence until his death on April 14, 2024.

Prior to the death of Richard, he had made all payments of real estate taxes and had made all payments for regime fees. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A" , Filed April 8, 2025)

Prior to the death of Richard, he had paid the cost of improvements to the Property, including the installation of new windows. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A" , Filed April 8, 2025)

Prior to his death, Richard had paid in full all installment payments required by the installment sales contract with Respondents entitling him, and now his estate, to receive a deed from Seller conveying good and marketable title to the Property, free and clear of all liens and encumbrances. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "A" , Filed April 8, 2025)

The affidavit of Steven Graham, who is the brother of Appellant, supports her statements about Richard purchasing the condominium unit and that he knew he would be able to get a deed soon. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "B" , Filed April 8, 2025)

The affidavit of Steven Graham states that Richard visited him often over the last few years and told him that he was buying the condominium located at 1800 Ashford Lane. (Memorandum in Opposition to the Granting of Motion for Summary Judgment of Defendants, Exhibit "B" , Filed April 8, 2025)

Evidence from Respondents' Affidavits.

The Affidavit of Rochelle and Dennis Graham admits that the installment sales contract with Matthew was signed on December 24, 2014, and that he had made payments until he purchased a new home and moved out of the condominium. The Affidavit of the Grahams states that the recorded installment sales contract should have been terminated, or rescinded, but that a previous lawyer had failed to follow through. The Affidavit of the Grahams only talks about a rental arrangement with Richard, but there was never a written lease agreement made. The Affidavit of the Grahams contains as attachments several text messages between them and Richard and there is shown on these text messages an intent for Richard to sell the property for use in the purchase of a new home. The Affidavit of the Grahams says they contemplated gifting him the proceeds from the sale of the condominium for use in the purchase of a new home. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 1, filed December 16, 2024).

ARGUMENT

I. Did the trial court err in granting summary judgment where evidence showed genuine issues of material fact regarding the existence and performance of an installment land contract?

The requirements for granting summary judgment under Rule 56, SCRCP are often stated and according to the decision in Osborne v. Adams, 346 S.C. 4 550, S.E.2d 319 (2001), the standard is:

In reviewing the grant of a summary judgment motion, this Court applies the same standard which governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976).

Id. at 7.

Here, the record contains substantial evidence creating genuine issues of fact regarding the existence of an agreement for the sale of the subject property to Richard Timothy Calhoun, Jr. The affidavits of Christine Ingrid Funk and Steven Graham attest that Richard entered into an installment arrangement with Respondents, paid monthly sums, paid property taxes, and made improvements to the property. These facts, if proven, support the existence of an enforceable agreement or, at minimum, equitable relief. The trial court improperly disregarded these sworn statements and supporting

documentation, including a payment ledger and tax receipts, which corroborate performance under the alleged agreement.

The trial court's order dismisses Appellant's affidavits as "inadmissible hearsay" and discounts corroborating exhibits without affording the non-moving party the benefit of all reasonable inferences. (Order Granting Summary Judgment filed June 11, 2025, Paragraph 22). This constitutes an impermissible weighing of evidence. Whether Richard's payments and improvements were made in reliance on an agreement to purchase the property is a quintessential question of fact for the jury. By resolving these factual disputes against the non-moving party, the trial court exceeded the scope of Rule 56, SCRCP.

II. Did the trial court err in applying the Statute of Frauds without considering exceptions for part performance and equitable relief?

The argument of the Respondents is that the Statute of Frauds prevents enforcement or recognition of the oral contract or installment sales contract made with Richard. The Respondents assert that Mr. Calhoun was a tenant and that no rent-to-own or land sale agreement existed between them and Mr. Calhoun. They further contend that while they considered gifting the property to Mr. Calhoun, no gift was consummated prior to his death. (Defendant's Motion for Summary Judgment as to Plaintiff's First and Second Causes of Action, Exhibit 1, filed December 16, 2024).

As stated by Justice Rhodes in Young vs. Independent Publishing Co., 273 S.C. 107, 254 S.E.2d 681 (1976):

The Statute of Frauds does not require that memoranda of the contract be contained in one document but permits the essential contractual terms to be gathered from several writings which are connected either expressly or through internal evidence of the subject matter and occasion.

The case of Goodwin v. Hilton Head Co., 273 S.C. 758, 259 S.E.2d 611 (1979), is indistinguishable with the present case. Notwithstanding the fact that a written offer signed and delivered to the property owner for the purchase of Lot 20 in the Port Royal Plantation and of three and one-half acres adjoining Lot 20 was never signed by the property owner, Chief Justice Lewis affirmed the finding of the lower court that the written documents in evidence created after the delivery of the offer and the actions of the property owner after delivery satisfied the requirements of the Statute of Frauds. The written documents and actions included the written offer, the deposit of the buyer's earnest money, and a survey obtained by the seller and mailed to the buyer. Obviously, the depositing of the earnest money check and the preparation of the survey by the seller occurred after delivery of the offer to purchase Lot 20 and the adjoining three and one-half acres.

The first exception to the Statute of Frauds is found in Gibson v. Hryzikos, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987), where the Court of Appeals citing numerous prior South Carolina cases, noted that "Courts of equity will decree the specific performance of [even] an oral agreement for acquisition of an interest in land, despite the statute of frauds, where sufficient part performance has occurred" Id., 293 S.C. at 13. The second exception to the Statute of Frauds is found in the Scurry v. Edwards, 232 S.C. 53, 100 S.E.2d 812 (1957), where over forty years ago, the South Carolina Supreme Court expressly noted that "equity should relieve against the operation of the Statute in cases where it would be unconscionable for the vendor to rely upon it in defense" Id. at 63.

Richard's possession of the property, payment of taxes and regime fees, and substantial improvements—including installation of new windows—constitute acts of part

performance unequivocally referable to the alleged agreement. These actions cannot be explained by a mere landlord-tenant relationship. The trial court's failure to apply these equitable principles was reversible error.

III. Should equity enforce the oral agreement for sale of real property to prevent unjust enrichment and unconscionable results?

Respondents accepted years of payments, taxes, and improvements from Richard while allowing him to occupy the property under the belief that he was purchasing it. To permit Respondents to retain both the property and the benefits of Richard's expenditures without conveying title would result in unjust enrichment and contravene established principles of equity. South Carolina law does not permit a party to invoke the Statute of Frauds as a shield for fraud or inequitable conduct. *Parr v. Parr*, 268 S.C. 58, 231 S.E.2d 695 (1977).

CONCLUSION

The Respondents clearly showed the intent to allow Richard to continue living in the condominium and the arrangement made with him was for him to pay the remaining balance through monthly payments and obtaining a deed to the property after all payments had been made. While the Respondents, as owners, did not require Richard to sign a new installment sales contract, their intent was very clear.

Respectfully submitted,



December 15, 2025

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Initial Brief of Appellant complies with Rule
211(b), SCACR.

December 15, 2025

West Columbia, SC 29169



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