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SC Court of Appeals

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

Appellate Case No. 2024-002176

John R. Nicks, Respondent,

v.

Emily Prioleau, Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the trial court erred in finding no enforceable agreement between the parties despite clear evidence of mutual assent and reliance?
- II. Whether the trial court erred in failing to find a resulting trust in favor of Appellant based on substantial and unrefuted contributions?
- III. Whether the trial court erred in rejecting Appellant's claims of equitable and promissory estoppel despite clear reliance and detriment?
- IV. Whether the trial court's ruling results in unjust enrichment and violates principles of equity and good conscience?
- V. Whether the trial court erred by failing to consider Appellant's equitable claims raised in Magistrate Court and preserved in the Record?
- VI. Whether the trial court erred in rejecting Appellant's claim as barred by the Statute of Frauds despite clear evidence of part performance?
- VII. Whether the trial court proceeded without affording Appellant a fair opportunity to present her case due to trial counsel's failures?

STATEMENT OF THE CASE

This matter arises from a bench trial held on October 28, 2024, before the Honorable Jessica Salvini in the Charleston County Court of Common Pleas (Case No. 2023–CP–10–00305).

Respondent filed suit seeking possession of 5528 Flanders Avenue. Appellant defended on the basis of equitable ownership, asserting an oral agreement, substantial financial contributions, and long-term exclusive possession. Final judgment was entered for Respondent on November 26, 2024, and Appellant filed a timely Notice of Appeal on December 20, 2024.

The parties' relationship was governed by a 2008 oral agreement in which Respondent would purchase and rehabilitate the Flanders Avenue property using funds loaned by Appellant, then transfer title to Appellant upon completion (R. pp. 233–234) Between 2002 and early 2009, Appellant provided significant financial support, including:

- \$50,000 and \$30,000 in cash loans in 2002, as testified to at trial (R. p. 206 [\$50,000 and \$30,000 loans])
- A \$29,000 loan in 2006 (R. p. 210)
- A \$22,600 official check dated January 7, 2009, made out to Nick's Auto Sales and marked "Bus Loan" (R. pp. 206, 303 [D-3])
- A \$20,000 check in June 2010 to defense attorney Andrew Savage on Respondent's behalf (R. pp. 225, 305 [D-4])

These contributions were in addition to Appellant's full financing of the gutting and reconstruction of the Flanders Avenue property, which was redesigned to accommodate her disabled grandson. As Appellant testified in her October 3, 2024, deposition, the home was substantially renovated at her sole expense, including disability accommodations for her grandson. (R. pp. 192–193). These improvements reflect both reliance and valuable

consideration sufficient to warrant equitable relief (R. pp. 212–213). While Respondent oversaw construction, Appellant managed Nick’s Auto Sales and continued to provide financial support. (R. pp. 227–232).

In January 2010, Appellant reimbursed herself \$80,000 from Nick’s Auto Sales—an amount acknowledged at trial by Respondent (R. pp. 223–224). This reimbursement occurred more than six years before Respondent’s incarceration in 2016 and approximately six months before Appellant moved into the Flanders Avenue property in June 2010 (R. p. 184). It was made during the normal course of business and treated as a partial repayment of prior loans, including the \$50,000 and \$30,000 contributions made in 2002 (R. p. 206 [\$50,000 and \$30,000 loans]). Respondent did not raise any objection at the time. The allegation that the reimbursement was improper was first raised after litigation commenced in 2022. Appellant continued to provide financial support and manage the business until its closure in February 2016. A few months after the reimbursement, Appellant issued a \$20,000 check to defense attorney Andrew Savage from her South Carolina Federal Credit Union account (R. pp. 225, 305 [D-4]). Appellant also issued a \$10,000 check to Nick’s Auto Sales on July 27, 2013 (R. pp. 222, 304 [D-3]). From 2008 through 2021, Appellant paid the property taxes on 5528 Flanders Avenue using personal funds (R. pp. 241–42, 329–333 [D-8])). Trial testimony reflected that Respondent began making tax payments only after litigation commenced in 2022, in an effort to obscure Appellant’s longstanding role as steward of the property (R. pp. 247–248). Appellant moved into the property in June 2010 and has maintained exclusive possession ever since, without lease, rent, or contribution from Respondent (R. pp. 249–251). Appellant has been solely responsible for all utilities, maintenance, and property obligations (R. pp. 239–242)

STANDARD OF REVIEW

1. Questions of law and mixed questions of law and fact—such as whether an oral agreement satisfies the Statute of Frauds—are reviewed de novo, with no deference to the trial court’s conclusions.
2. Findings of fact are reviewed for clear error and will not be disturbed unless, on the entire evidence, this Court is left with the firm conviction a mistake has been made.
3. Equitable issues—resulting trusts, estoppel, unjust enrichment—are reviewed under this Court’s own view of the preponderance of the evidence, allowing independent assessment of the fairness and justice of the result.
4. Discretionary rulings, including evidentiary and procedural orders, are reviewed for abuse of discretion—i.e., whether the trial court’s ruling is supported by evidence and free of legal error.
5. Denials of a jury trial, including whether a demand was waived, are reviewed de novo. *Moore v. McKelvey*, 221 S.C. 780, 72 S.E.2d 232 (1952).

SUMMARY OF ARGUMENTS

This appeal challenges the trial court's refusal to recognize an oral agreement that was extensively performed, reasonably relied upon, and never contradicted until litigation began. Appellant contributed over \$130,000 in direct funds, rebuilt the Flanders Avenue residence, paid property taxes for more than a decade, and maintained exclusive possession of the home—living there for 12 years before litigation was ever filed, and now for over 15 years in total. Despite this enduring pattern of reliance and contribution, the trial court found no enforceable agreement, no trust, and no equitable basis to prevent Respondent from retaining both the full benefit of Appellant's investment and sole legal title. That conclusion conflicts with South Carolina law, which recognizes oral agreements through doctrines of part performance, equitable and promissory estoppel, resulting or constructive trust, and unjust enrichment. Appellant's equitable claims were first asserted in Magistrate Court—where she also requested a jury trial—and were preserved in the Record on Appeal. Her defenses were not manufactured on appeal, but consistently raised and documented across both courts. At trial, Appellant's ability to be fully heard was compromised by trial counsel's serious failures: contacting witnesses—including key corroborating witness DeWitt Lamar—only the day before trial; declining to move a handwritten document by Respondent into evidence; preventing real-time communication during a virtual hearing; and advising Appellant not to fully testify, while Respondent was permitted to speak at length and even ask to testify again. Together, these legal and procedural failures denied Appellant a meaningful opportunity to present her case and led to a decision that contradicts equity, precedent, and common sense. This Court should reverse or remand to remedy those errors and enforce the fairness the law requires.

ARGUMENTS

I. The Trial Court Erred in Finding No Enforceable Agreement Between the Parties Despite Clear Evidence of Mutual Assent and Reliance

Whether a binding agreement exists is a question of law, reviewed de novo on appeal. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 581 S.E.2d 161 (2003). When the facts are undisputed, the court determines as a matter of law whether an enforceable contract was formed. An enforceable agreement may arise absent a written document if there is mutual assent—an offer, an acceptance, and valuable consideration. *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Courts may enforce oral contracts where the terms are definite and both parties act on them. Here, the record demonstrates a consistent course of dealing between Appellant and Respondent anchored in mutual understanding: Appellant would finance the complete reconstruction of 5528 Flanders Avenue, and Respondent would ultimately transfer title. This agreement was never reduced to writing—but both parties acted upon it. Appellant paid substantial amounts toward Respondent’s business and property, beginning as early as 2002 and continuing through 2013, with no expectation of repayment, interest, or tenancy (R. pp. 206–208, 210, 221–222). Respondent allowed Appellant to take exclusive possession of the home in June 2010, immediately after its completion. She remained in continuous, undisputed occupancy for over 14 years, paid property taxes, made improvements, and was never asked to pay rent. (R. pp. 239–241, 246–247, 251–252). . These facts are incompatible with a casual licensee arrangement or gratuitous gift. Moreover, Respondent’s conduct confirms the existence of an agreement:

- Appellant reimbursed herself \$80,000 in 2010—an amount acknowledged at trial by Respondent, acknowledging the prior contributions (R. pp. 182, 192–195, 197–198).

- He did not assert any ownership claims, rental terms, or limitations until September 2022, when he issued a Notice to Quit (R. p. 292 [P-2]).
- He testified to receiving Appellant’s money on “a few occasions” and did not offer evidence that her contributions were gifts or loans (R. pp. 182, 192–195). The trial court rejected Appellant’s claim by concluding that “*no enforceable agreement existed between the parties for the conveyance of real estate.*” (Order and Judgement, R. p. 22). But that finding ignored both parties’ course of conduct, the specificity of Appellant’s actions, and the absence of any contradictory agreement. The fact that title remained solely in Respondent’s name does not preclude enforcement where the agreement was partially performed.

This appeal does not rest on mere expectation—it rests on executed reliance, sustained over years. Respondent received the full benefit of Appellant’s financial, personal, and managerial investment without formal repayment or disavowal until litigation began. An enforceable oral agreement existed between the parties, as evidenced by their mutual conduct and performance. The trial court erred in finding otherwise. Reversal is warranted to reflect the agreement the parties carried out in fact and equity.

II. The Trial Court Erred in Failing to Find a Resulting Trust in Favor of Appellant Based on Substantial and Unrefuted Contributions

The existence of a resulting trust is a matter in equity and reviewed de novo on appeal. While appellate courts defer to the trial court’s factual findings when based on credibility, they are free to determine facts based on the entire record. A resulting trust arises when one party provides consideration for property that is titled in another’s name. *Bradshaw v. Ewing*, 297 S.C. 242, 376 S.E.2d 264 (1989). South Carolina courts recognize resulting trusts as tools to prevent unjust enrichment and honor the intent of parties who furnish value with the

understanding of ownership, even in the absence of a written agreement. Here, the record reflects uncontroverted evidence that Appellant, provided substantial funds, services, and reliance in exchange for equitable ownership of 5528 Flanders Avenue, while title remained in Respondent's name. Her contributions include:

- A \$50,000 loan in 2002 while Respondent was constructing a separate residence at 5438 Halfway Creek Road, Huger, South Carolina (R. p. 206).
- A subsequent \$30,000 loan in 2002 (R. p. 206).
- A \$29,000 loan in 2006. (R. p. 210)
- A \$22,600 official check dated January 7, 2009, marked "Bus Loan," prior to possession of the Flanders property (R. pp. 221, 303 [D-3]).
- Management of Nick's Auto Sales while Respondent oversaw demolition and full reconstruction of the Flanders home. (R.p. 209)
- An \$80,000 reimbursement in January 2010, which covered only part of her total financial outlay (R. p. 206).
- A \$20,000 check in June 2010 to defense attorney Andrew Savage on Respondent's behalf. (R. pp. 205, 225-226).
- A \$10,000 check to Nick's Auto Sales dated July 27, 2013 (R. pp. 236, 304 [D-3])
- Property tax payments from 2008 to 2021 from Appellant's personal accounts (R. pp. 329-333 [D-8]).
- Exclusive possession for over 14 years without lease, rent, or reimbursement (R. pp. 116, 240-241).

These facts meet the standard set in *Bradshaw v. Ewing*, 297 S.C. 242, 376 S.E.2d 264 (1989) and similar cases. Appellant's performance was not symbolic or incidental—it was

transformative. The home had to be fully gutted and rebuilt to accommodate her disabled grandson, and she occupied it continuously from June 2010 onward. Respondent himself testified that the “whole purpose of the house” was to provide a home for me and my disabled grandson. (R. p. 192–195). This admission underscores the intent behind my financial contributions and supports imposition of a resulting trust to prevent unjust enrichment. The trial court’s Final Order nonetheless concluded: “The Court finds no resulting trust has been established by clear and convincing evidence” (Order and Judgement R. pp. 23–25). That finding contradicts the unrefuted record. Respondent offered no receipts, leases, or countervailing evidence to contradict Appellant’s documentation of performance and reliance. Further, Respondent did not assert a landlord-tenant relationship until September 2022, when he served a Notice to Quit—after 12 years of silence and benefit. (R.pp. 292–293, Exhibit). Where the record shows that Appellant paid consideration, improved the property, and relied upon an oral understanding, South Carolina courts are clear:

equity will not allow one party to retain title unjustly. *Stackhouse v. Todd*, 299 S.C. 552, 386 S.E.2d 258 (Ct. App. 1989); *Miller v. Miller*, 301 S.C. 307, 391 S.E.2d 456 (Ct. App. 1990).

The evidence established a resulting trust by clear and convincing proof. The trial court erred in failing to impose it. Appellant respectfully requests reversal and recognition of her equitable interest.

III. The Trial Court Erred in Rejecting Appellant’s Claims of Equitable and Promissory Estoppel Despite Clear Reliance and Detriment

Whether equitable or promissory estoppel applies is a question of law, reviewed de novo.

Springob v. Univ. of S.C., 407 S.C. 490, 757 S.E.2d 384 (2014). Estoppel may bar a party from asserting the Statute of Frauds or denying an agreement where the other party has relied to their

detriment. South Carolina recognizes both equitable estoppel and promissory estoppel as doctrines to prevent injustice where one party reasonably relies on another's conduct or promises.

Equitable estoppel applies when a party, by words or conduct, induces another to change position to their detriment

Promissory estoppel applies when a promise, reasonably expected to induce reliance, does so—and injustice can only be avoided by enforcement. *Thomerson v. DeVito*, 432 S.C. 190, 851 S.E.2d 46 (2020).

In *Springob*, the South Carolina Supreme Court reversed summary judgment where the University made repeated oral promises about premium seating rights, and the plaintiffs relied on those promises by making substantial payments. The Court held that even absent a written contract, a genuine issue of material fact existed as to estoppel, and equity could bar the University from denying the agreement.

Here, Respondent repeatedly promised Appellant that the Flanders Avenue property would be hers. Appellant relied on those promises by:

- Paying over \$150,000 in direct contributions (R. p. 209).
- Managing Respondent's business during incarceration (R. p. 180)
- Paying property taxes for over a decade (R. pp. 242, 329–333 [D–8]).
- Rebuilding the home and relocating her family there in 2010 (R. pp. 214–215, 239–242, 271–276).

This reliance was not speculative, it was substantial, foreseeable, and **irreversible**. Respondent testified that he accepted my funds specifically because I needed disability-accessible features for my grandson, including 36-inch bedroom doors and accessible bathrooms (R. pp. 192–194).

His recognition that these improvements were made for my family's use reinforces that my contributions were not gratuitous but were made in reliance on his promise. Respondent accepted the benefits of Appellant's performance for over 14 years without objection, reimbursement, or assertion of tenancy. Only in 2022 did he attempt to evict her, after the value of her investment had fully matured. The trial court mischaracterized Respondent's promises as vague and unenforceable. But under *Springob*, the question is not whether the promise was written—it is whether Appellant reasonably relied and suffered harm. The record answers that unequivocally. Appellant's reliance on Respondent's repeated promises was substantial and detrimental. The trial court erred in failing to apply estoppel to prevent injustice. Reversal is warranted to enforce the agreement Respondent induced and Appellant fulfilled.

Appellant's continued financial support of Respondent and his business—including payments for business expenses, operational costs, and personal loans—was made in reliance on the parties' longstanding agreement that Respondent would transfer the Flanders Avenue property to Appellant. (R. pp. 233–234). This understanding governed their course of dealing for over a decade. Appellant's contributions were not acts of charity or informal support; they were part of a sustained pattern of reliance on Respondent's repeated assurances. The trial court's failure to recognize this reliance as a basis for estoppel was legal error and permitted Respondent to retain the benefit of Appellant's performance while denying the promised result.

IV. The Trial Court's Ruling Results in Unjust Enrichment and Violates Principles of Equity and Good Conscience

Claims sounding in equity are reviewed de novo. *Doe v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 347 S.C. 642, 557 S.E.2d 670 (2001). The appellate court may determine facts based on the record where no credibility determinations are at issue. Equity abhors unjust

enrichment. When one party receives the benefits of another's labor, funds, or reliance and fails to compensate in accordance with their understanding, South Carolina courts will intervene to prevent injustice. *Easley v. Richland Memorial Hosp.*, 324 S.C. 19, 23, 481 S.E.2d 487, 489 (1997). Here, Respondent received:

- Over a decade of property tax payments by Appellant (R. pp. 242, 329–333 [D-8])
- Multiple loans totaling over \$150,000 without promissory notes or repayment terms (R. p. 209).
- Business management services before and during incarceration (R. pp. 192)
- A fully rebuilt residence funded and overseen by Appellant, customized to meet her family's needs (R. pp. 212–215)

Respondent admitted three times that Appellant paid for the improvements (R. pp. 182, 192–194). His testimony confirms that I conferred value on the property that he retains title to—without consideration or conveyance—entitling Appellant to relief under unjust enrichment principles. Respondent has retained both the benefit of the property and nearly all of Appellant's financial contributions, while denying her the one thing the parties agreed upon: title and ownership (R. pp. 209, 214–226, 233–234, 249–250; Dep. Tr. pp. 133, 135, 137–138, 141, 143, 150). To affirm the trial court's ruling would be to allow Respondent to keep the house and the money. That result contravenes South Carolina's longstanding commitment to fairness in equity. *Haselden v. Atkins*, 332 S.C. 182, 503 S.E.2d 105 (Ct. App. 1998). Moreover, Respondent's conduct was not consistent with that of a landlord. For 14 years he accepted possession without lease, rent, or eviction—until serving a Notice to Quit in 2022. (R. pp. 246–247; R. p. 292 [P-2]). Respondent delay and silence, coupled with acceptance of benefits, only deepens the inequity. Appellant acted in reliance, not charity. Appellant left her own home, moved in, cared for the

property, paid taxes, and sustained this living arrangement based on Respondent's assurances (R. pp. 209, 215–226, 233–234, 242, 249–250). For a court of equity to now ignore those facts would result in a windfall that equity cannot condone. The trial court's ruling permits Respondent to retain both Appellant's contributions and full ownership of the property. This outcome is inequitable and constitutes unjust enrichment. The judgment should be reversed to restore fairness and prevent further harm.

V. The Trial Court Erred by Failing to Consider Appellant's Equitable Claims Raised in Magistrate Court and Preserved in the Record

Whether an issue is preserved for appellate review is a question of law, reviewed de novo.

Nelson

v. McMillan, 427 S.C. 240, 831 S.E.2d 76 (Ct. App. 2019) Issues fairly raised in the pleadings and addressed in the record must be considered on appeal, even where a party appears pro se. From the outset, Appellant asserted equitable ownership and defenses rooted in trust, reliance, and financial contribution. These issues were not raised for the first time on appeal—they were foundational to her case beginning in Magistrate Court. After receiving a Notice to Quit in September 2022, Appellant responded in Magistrate Court by contesting the eviction and asserting non-tenant status based on her contributions and right to possession. Importantly, Appellant timely requested a jury trial at that stage. The case was not dismissed, but rather transferred to the Court of Common Pleas, where Appellant—now represented—continued to assert the same equitable defenses (Magistrate Court Answer to Rule to Vacate or Show Cause & Counterclaim, R. pp. 41–43; Magistrate Court Order Transferring Case to the Court of Common Pleas, R. p. 11). At trial, Appellant reintroduced those same theories through:

- Live testimony regarding her financial contributions and reliance (R. pp. 207–212)

- (Documentary exhibits showing performance, possession, and payments [D–3, D–4, D–5, D–6, D–7, D–8])
- Legal argument invoking resulting trust, part performance, and estoppel (R. pp. 285–287)

The trial court’s Final Order nonetheless addressed only limited portions of Appellant’s equitable defenses, concluding vaguely that “Appellant failed to establish any ownership interest.” (Order and Judgment, R. p. 22). This ruling gave no meaningful consideration to the consistent, documented claims raised across both courts and preserved in the Record on Appeal. South Carolina law does not allow courts to disregard pro se pleadings or procedural rights—especially where, as here, the litigant timely requested a jury, articulated her defenses, and sought relief based on longstanding equitable doctrines. See *Springob v. Univ. of S.C.*, 407 S.C. 490, 757 S.E.2d 384 (2014) (issues fairly raised in pleadings must be addressed on the merits); *Nelson v. McMillan*, 427 S.C. 240, 831 S.E.2d 76 (Ct. App. 2019) (pro se filings are to be construed liberally). Appellant’s equitable defenses were clearly and consistently asserted, both in Magistrate Court—where she also demanded a jury—and in the Court of Common Pleas. The trial court’s failure to meaningfully address these claims constituted reversible error.

VI. The Trial Court Erred in Rejecting Appellant’s Claim as Barred by the Statute of Frauds

Despite Clear Evidence of Part Performance

Whether the Statute of Frauds bars enforcement of an oral agreement is reviewed de novo. *Cash v. Maddox*, 265 S.C. 480, 220 S.E.2d 121 (1975). When equitable relief is sought based on part performance, the appellate court may find that the Statute does not apply where performance is unequivocal and clearly referable to the alleged agreement. *Cash v. Maddox*, 265 S.C. 480, 482, 220 S.E.2d 121, 122 (1975). South Carolina’s Statute of Frauds requires contracts involving the

sale of land to be in writing. *S.C. Code Ann. § 32–3–10*. However, courts will enforce an oral agreement if the party seeking enforcement has partially performed in a manner that is “inconsistent with any other hypothesis than the existence of the alleged oral agreement.” *Stackhouse v. Todd*, 299 S.C. 552, 553, 386 S.E.2d 258, 259 (Ct. App. 1989). Appellant’s financial and practical contributions meet—and exceed—that threshold. Her part performance was not casual or minor; it was deliberate, substantial, and long-term:

- Appellant provided over \$150,000 in funds to Respondent prior to occupancy, including a \$22,600 check explicitly marked “Bus Loan” and issued before she moved into the property (R. pp. 209, 212–214, 221–222, 242; [D–3, D–6, D–8]).
- Appellant managed Respondent’s business during his incarceration and reconstruction efforts (R. pp. 209, 212–226, 233–234, 249–250; Deposition Transcript R. pp 133, 138–141).
- Appellant paid property taxes from 2008 through 2021 using her personal funds (R. p. 242, 329–333 [D–8]).
- Appellant lived in the home continuously from June 2010 onward, without a lease or rent, and with full knowledge and consent of Respondent (R. pp. 172–182, 214, 251).

These acts are not explainable by friendship, tenancy, or altruism. They are consistent only with the existence of the oral agreement: that Appellant would fund the renovation and, in return, Respondent would convey title. The trial court rejected Appellant’s equitable claims, stating in its Final Order that “*no written agreement for conveyance existed*” and therefore the Statute of Frauds barred relief. (Order and Judgement, R. p.22). But the court failed to consider that the absence of a written agreement is not conclusive where unequivocal acts of part performance are present. *Hodge v. Pittman*, 384 S.C. 240, 681 S.E.2d 275 (Ct. App. 2009) (finding oral real estate

agreement enforceable under part performance exception). Moreover, Respondent's conduct supports enforcement: Appellant reimbursed herself \$80,000 in 2010—Respondent testified (R. p. 184) at trial he had knowledge of acknowledging the agreement's existence—and made no claim of rent due or tenancy until 2022, when he served her a Notice to Quit. (R. pp. 119, 292 [P-2]). That notice, delivered after years of silence, further underscores that both parties operated under the assumption that Appellant was not a tenant, but the owner awaiting title transfer. This Court has long held that when equity compels it, oral agreements concerning land may be upheld to prevent injustice. *Durkin v. Davis*, 218 S.C. 429, 63 S.E.2d 879 (1951). The trial court's mechanical application of the Statute of Frauds ignores a decade of investment, reliance, and residence. Appellant's actions satisfy the part performance exception. The trial court erred in failing to recognize that equity required enforcement of the oral agreement notwithstanding the Statute of Frauds. The judgment should be reversed.

VII. The Trial Court Proceeded Without Affording Appellant a Fair Opportunity to Present Her Case Due to Trial Counsel's Failures

Procedural fairness and the right to be heard are questions of law reviewed de novo. *Doe v. S.C. Dept. of Health & Human Servs.*, 399 S.C. 372, 732 S.E.2d 40 (2012). Even in civil proceedings, courts must ensure both parties are afforded a meaningful opportunity to present their claims. *Hazelwood v. Adams*, 276 S.C. 415, 279 S.E.2d 611 (1981). Although Appellant was represented by counsel in the Court of Common Pleas, multiple failures in preparation and execution undermined her ability to fully present her case and directly impacted the fairness of trial: Failure to Secure and Prepare Witnesses: All three intended witnesses, including DeWitt Lamar, were contacted by trial counsel only the day before the hearing—on a Sunday afternoon.¹ This last-

¹ See Appeal Filing (Appellant's Affidavit and supporting documents detailing trial counsel's preparation, witness contact, virtual setup, and evidentiary decisions).

minute outreach prevented meaningful preparation and jeopardized witness attendance. While two witnesses appeared, Mr. Lamar—Appellant’s most critical corroborating witness—could not be reached in time. Mr. Lamar would have testified to direct conversations with Respondent acknowledging Appellant’s ownership interest regarding the Flanders property. Trial counsel’s lack of timely communication deprived Appellant of critical supporting testimony. Physical Separation and Inability to Confer During Trial: The trial was conducted virtually. Appellant was seated in her attorney’s conference room, while counsel participated from a separate office. During both Respondent’s and Appellant’s testimony, Appellant was unable to communicate with counsel in real time, leaving her unable to clarify facts, respond to inconsistencies, or suggest lines of questioning. Failure to Introduce Critical Exhibit: Appellant gave counsel a handwritten document authored by Respondent that detailed charges for labor, materials, and supplies associated with the property. Counsel declined to offer it into evidence, stating it lacked a signature. However, authentication does not require a signature where the origin is uncontested and corroborated. This document could have corroborated the flow of funds between the parties and substantiated Appellant’s claims. Misguided Limitation of Testimony: Trial counsel advised Appellant that the judge would have already read the documentary record. Relying on this advice, Appellant gave only limited testimony. In contrast, Respondent testified at length and was permitted to speak again after Appellant’s examination concluded. This imbalance unfairly narrowed Appellant’s voice and may have shaped the court’s perception. These deficiencies—taken together—compromised Appellant’s ability to make her case. While ineffective assistance is not generally grounds for reversal in civil matters, South Carolina appellate courts may reverse where a litigant has been denied a full and fair hearing, particularly in equity. See *Hazelwood*, 276 S.C. at 417. Appellant’s right to a fair and meaningful opportunity to be heard was

compromised by trial counsel's failures in preparation, communication, strategy, and advocacy. The resulting prejudice justifies reversal or, at minimum, REMAND for a full and fair proceeding in accordance with equity and due process.

VIII. The Trial Court's Factual Errors Regarding the Reimbursement and Loan Total

The Final Order contains material factual errors that misstate both the timing and purpose of Appellant's \$80,000 reimbursement. The court incorrectly stated that Appellant reimbursed herself in 2016 when Nick's Auto Sales was dissolved. In fact, Appellant reimbursed herself in January 2010, while the business was still active, for loans made in 2002–2003 to fund construction of Respondent's residence at 5438 Halfway Creek Road. (R. p. 205–206). Nick's Auto Sales was a sole proprietorship, and Respondent and the business were legally indistinguishable. Every dollar Appellant spent on the business directly benefited Respondent. The Final Order also found that Appellant loaned Respondent \$157,097 over the course of their relationship. (Order and Judgement, R. p. 22). This figure did not include the \$80,000 reimbursement, which had already been repaid. Nonetheless, the trial court erroneously deducted the \$80,000 again, reducing the amount owed to \$77,097, and failed to order repayment. These errors materially understated Appellant's contributions and compounded the inequity of denying relief.

Moreover, the \$157,097 total did not include the substantial funds Appellant spent to gut and rebuild the Flanders Avenue property, which was redesigned to accommodate her disabled grandson. (R. pp.192–193, 21–253). Nor did it include additional business-related expenditures Appellant made on behalf of Nick's Auto Sales, many of which were paid in cash or through accounts that have since been closed.

Appellant provided her attorney with bank statements documenting numerous payments made on behalf of Nick's Auto Sales, including business expenses, insurance, and other operational costs. These statements were introduced into evidence as Defendant's Exhibit D-7 and admitted at trial. (R. pp. 229-231). However, the trial court made no findings regarding these records and failed to total or credit the expenditures reflected therein. The statements corroborated Appellant's testimony regarding her financial support of Respondent and his business, and their omission from the Final Order materially understated the scope of her contributions. This failure to account for admitted, relevant evidence distorted the equitable analysis and further supports Appellant's request for relief.

Respondent was fully aware that Appellant reimbursed herself \$80,000 in January 2010 from Nick's Auto Sales, and he raised no objection at the time. This reimbursement was made openly, during the normal course of business, and was consistent with the parties' longstanding financial practices. In later filings, Respondent's counsel attempted to reframe this reimbursement as fraudulent. However, the record contains no evidence of concealment, deception, or misconduct. Appellant's testimony and the business records confirm that the reimbursement was for documented loans made in 2002-2003 to fund construction of Respondent's personal residence. The trial court's acceptance of this post hoc characterization—without addressing the timing, context, or Respondent's prior knowledge—further distorted the factual record and undermined the equitable analysis.

Appellant respectfully seeks the relief that equity demands: transfer of title to the Flanders Avenue property, consistent with the parties' agreement and her sustained performance over more than a decade.

The final Order and Judgement found that Appellant loaned Respondent \$157,097 over the course of their relationship. However, this figure materially understates the total amount loaned. Appellant's actual contributions exceeded that amount, including substantial cash payments, undocumented reimbursements, and business-related expenditures not fully captured in the trial record. Many payments were made through accounts that have since been closed or in cash, and were corroborated by Appellant's testimony and admitted exhibits. The trial court's failure to account for the full scope of Appellant's financial support distorted the equitable analysis and further supports reversal.

Even more critically, the trial court failed to issue any directive for repayment despite acknowledging that Respondent owed Appellant a substantial sum. This omission renders the judgment internally inconsistent: it recognizes a financial obligation but denies relief. South Carolina law does not permit a court to find liability and then refuse to enforce it. The absence of a payment order leaves Appellant without remedy despite the court's own findings, and constitutes reversible error. Equity demands not only recognition of Appellant's contributions, but enforcement of the relief they warrant.

Conclusion

For all the foregoing reasons, Appellant respectfully requests that this Court reverse the judgment of the circuit court and enter judgment recognizing her equitable ownership of 5528 Flanders Avenue. Specifically, Appellant seeks transfer of title consistent with the parties' longstanding agreement and her sustained financial, managerial, and personal investment. In the alternative, Appellant requests remand with instructions to impose a resulting trust, enter a judgment for repayment of unreimbursed contributions—including the out-of-pocket reconstruction costs not included in the trial court's loan total—or conduct a jury trial.

Respectfully Submitted

February 4, 2026

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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing Final Brief of Appellant upon the Attorney William B. Jung by depositing same in the United States Mail, proper postage prepaid and addressed as follows:

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This 4th day of February 2026.

Respectfully submitted,

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