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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

Hon. Jocelyn Newman, Circuit Court Judge

Appellate Case No.: 2025-001398

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

vs.

Rochelle Graham & Dennis Graham……..Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

On October 2, 2024, Appellant filed a Summons and Complaint seeking: (1) a judgment of specific performance as to an alleged oral land sale installment contract and an order requiring Respondents to execute a general warranty deed conveying the property which is the subject of the instant case, as a First Cause of Action and (2) Attorney's fees as a Second Cause of Action. Respondents timely answered Appellant's Complaint on October 14, 2024, subsequently filing an amended Answer, Counterclaim, and Third-Party Complaint on December 5, 2024. (R. pp.15-28).

On December 16, 2024, Respondents filed their Motion for Summary Judgment as to First and Second Causes of Action. (R. pp.47-133). A hearing on Respondent's Motion was held April 17, 2025. The Parties were informed that the presiding judge ruled for Respondent's via Form 4 Order filed May 28, 2025. The formal Order under consideration in the instant appeal was filed on June 11, 2025. (R. pp. 1-12).

STATEMENT OF FACTS

Plaintiff is the Personal Representative of the Estate of Richard Timothy Calhoun, Jr. by virtue of a Certificate of Appointment as Personal Representative. (*See* Probate Case No. 2024-

ES-40-01166 & R. p.3).[1] Richard Timothy Calhoun, Jr. was the son of Appellant and nephew of Respondents.

The real property which is the subject of the instant case is located in Richland County (the "Property" or "Subject Property" hereinafter). Respondents Rochelle Graham and Dennis Graham were deeded said Property as joint tenants with the right of survivorship and not as tenants in common by that Deed to Real Estate recorded with the Richland County Register of Deeds on July 22, 2014 in Book 1960 at Page 1784. Prior to said deed, Respondent Rochelle Graham and purchased the Subject Property at a judicial sale. (R. pp. 56-61).

Respondent Rochelle Graham entered into an Installment Contract of Sale for the Subject Property with non-party Matthew Graham on or about December 24, 2014. Said instrument was recorded in the Richland County Register of Deeds on December 30, 2014 in Book 1996 at Page 312. Respondent Dennis Graham was not a signatory to said Installment Contract. (R. pp. 50; 63-66; 110; 114-116).

The aforesaid Matthew Graham is also a nephew of Respondents, was the brother of the Decedent Richard Timothy Calhoun, Jr., and is the son of the Appellant Christine Ingrid Funk, individually. Respondents Rochelle and Dennis Graham played a large role in raising Matthew Graham and remain in a close, loving relationship with him. (R. p. 50).

For a time, Matthew Graham and the Decedent, Richard Timothy Calhoun, Jr, resided together in the Subject Property. During that period, Mr. Calhoun paid rent unto Mr. Graham, and was considered a sub-tenant of Mr. Graham's, as evidenced by rental agreements between the two. (R. pp. 50; 111; 118-127).

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

[1] Note: The Appellant in the instant appeal is indicated as "Christine Ingrid Funk as Personal Representative of the Estate of Timothy Calhoun, Jr." In the matter on appeal said party is indicated as "Christine Ingrid Funk as Personal Representative of the Estate of Richard Timothy Calhoun, Jr." Upon information and belief, this variance is merely a scrivener's error.

rescission of record had been filed of record. The aforesaid installment contract between Respondents and Matthew Graham was never satisfied nor assigned. (R. pp. 50 & 111).

To formalize and finalize the rescission of the Respondent Rochelle Graham's installment contract with Matthew Graham, a "Cancellation & Rescission of an Installment Contract of Sale (Payment Unsatisfied)" was executed by Respondents Rochelle Graham and Dennis Graham along with Matthew Graham. Said Cancellation and Rescission was recorded with the Richland County Register of Deeds on December 16, 2024, in Book 2980 at Page 1286. (R. pp. 79-83; 129-131).

As with Matthew Graham, Respondents cared a great deal about Mr. Calhoun. Following Matthew Graham's departure from the Subject Property, Mr. Calhoun remained therein as a tenant. (R. p. 51).

Respondents never entered into any rent-to-own or land sale installment contract or agreement with Mr. Calhoun. Mr. Calhoun was at all times considered to be a tenant at the Subject Property by the Defendant and, correspondingly, Respondents never received any indication from Mr. Calhoun that he considered himself to be anything more than a tenant. Respondents presented evidence indicating that, because of their relationship with Mr. Calhoun, he was allowed to remain in the Subject Property as a tenant despite an inability to always pay rent on time or in full. (R. p. 51). Respondents have produced text messages between Respondent Dennis Graham and Mr. Calhoun regarding rent payments and some missed or late rent payments due to an injury sustained in an accident. At all times Mr. Calhoun refers to said payments as being "rent." (R. pp. 85-101).

Respondents had considered gifting the Subject Property to Mr. Calhoun, but no gift was consummated prior to his passing. Further, Mr. Calhoun had expressed interest in purchasing a separate property of his own, and Respondents had engaged in discussions with Mr. Calhoun as to how they may assist him in purchasing a home. Such discussions included, but were not limited to, possibly selling the Subject Property and gifting him the proceeds to facilitate his purchase of another property. (R. pp. 51; 85-101).

Less than a week following Mr. Calhoun's passing on April 14, 2024, Christine Ingrid Funk, traveled from Ohio and began staying in the Subject Property. This was initially done with Respondents' implied consent. Ms. Funk was granted access to the subject property by those who were Mr. Calhoun's roommates prior to his passing. Though Respondents did not

expressly grant Ms. Funk access, they tacitly allowed her to remain in the property for a short time so that she could attend Mr. Calhoun's funeral and related family events. (R. pp. 51-53; 103-104).

Christine Ingrid Funk, despite holding no lease or color of title to the Subject Property, refused to vacate the premises and paid no rent or other payment unto Defendants throughout her stay. (R. pp. 51-53; 103-104).

Because of Appellant's absolute refusal to leave, Respondents were forced to file a Notice to Quit to regain possession of the Subject Property. (*See* C/A No. 2024CV4010302887 & R. p. 6).

Following a hearing in C/A No. 2024CV4010302887, Christine Ingrid Funk was adjudged a trespasser and a Writ of Ejectment was issued as to the Subject Property. It was only after this finding that Christine Ingrid Funk vacated the Subject Property. The Court's findings in C/A No. 2024CV4010302887, including a finding that Appellant was a trespasser upon the Subject Property, remains a final, unappealed Order. (*See* C/A No. 2024CV4010302887 & R. pp.6 & 8).

In support of its Motion, Respondents submitted an Affidavit of Respondents Rochelle Graham and Dennis Graham that included as exhibits thereto Deeds proving ownership of the Subject Property; the Installment Contract of Sale entered into by Respondent Rochelle Graham and non-party Matthew Graham; Copies of Rental Agreements Between Matthew Graham and Richard Timothy Calhoun, Jr.; a copy of the Cancellation & Rescission of the Installment Contract of Sale entered into by Respondent Rochelle Graham and non-party Matthew Graham; text messages between Respondent Dennis Graham and Mr. Calhoun regarding rental payments for the Subject Property as well as discussions between the two concerning properties that Mr. Calhoun might possibly purchase; text messages between Appellant and Respondent Dennis Graham in which Appellant makes an offer to purchase the Subject Property from Respondents, and; correspondence related to an incident that occurred while Appellant was illegally residing in the Subject Property wherein dogs she was walking were allowed to attack the dog of a neighbor.[2] (R. pp. 49-109). In addition to the above-

[2] *See* 2025-CP-40-01344, in which Respondents were sued as a result of the actions of Appellant. This matter was dismissed without prejudice as to Respondents by stipulation on September 4, 2025.

described facts Respondents testify that their kindness towards their nephews has been manipulated and taken advantage of by Appellant. (R. p. 53).

In further support of its Motion, Respondents submitted an Affidavit of nonparty Matthew Graham, who as stated above is the son of Appellant and nephew of Respondents. Matthew Graham testifies as to the existence of the installment contract for the Subject Property, explaining that satisfaction of the contract never occurred, that the contract was never assigned, and that the contract was rescinded. Matthew Graham goes on to testisfy as to the sub-tenancy of Timothy Calhoun, Jr. and related sub-lease agreements, and that he never heard his brother Timothy Calhoun, Jr. express any "feeling, impression, or belief that he was anything but a tenant at the [S]ubject [P]roperty." (R. p. 111). Attached as Exhibits to the Affidavit of Matthew Graham were copies of the Installment Contract of Sale; Rental Agreements between Matthew Graham and Timothy Calhoun, Jr., and; the Cancellation and Rescission of said Installment Contract of Sale. (R. pp.114-133).

For its part, Appellant failed to produce any writing whatsoever to establish the alleged installment contract of sale of the Subject Property between the Decedent and Respondents. As such, Plaintiff's allegations regarding the alleged installment contract do not satisfy the requirements as dictated by S.C. Code Ann. § 32-3-10 (the "Statute of Frauds").

As Appellant failed to submit evidence meeting the standard of proof demanded by the Statute of Frauds, the alleged installment contract of sale must be considered under the paradigm of an oral or parol contract for the conveyance of real estate.

Prior to the hearing on Plaintiff's Motion for Summary Judgment, Plaintiff filed two sworn affidavits, one from Christine Ingrid Funk and another from non-party and brother of Ms. Funk, Steven Graham. The affidavit of Ms. Funk consists almost entirely of inadmissible hearsay. For example, Ms. Funk makes allegations regarding statements allegedly told to her by the decedent Richard Timothy Calhoun, Jr.:

My son Richard, prior to his death, told me on several occasions that after his brother moved into a new home … he remained in the condominium as his personal residence. Richard told me that the Grahams had allowed him to remain in the condominium as his personal residence and that they also gave him the opportunity to purchase the condominium. (R. p. 137).

&:

Richard was [sic] told me that the Defendants had agreed to sell him the the [sic] condominium for $25,000.00 and that he would make a payment of $600.00 per month, and that this payment would also pay for the HOA monthly dues. He also told me that the interest rate was 3.25%. (R. p. 137).

Appellant's Affidavit also includes hearsay as to statements allegedly made by Respondent Dennis Graham:

At Thanksgiving, on November 23, 2023, I talked with my brother, Dennis Graham, regarding the purchase of the condominium by Richard. Dennis told me that he and his wife, as owners of the condominium, understood and agreed that Richard was purchasing the condominium by installment payments. My brother also told me that he understood that Richard had already paid all the necessary payments and that a deed would need to be signed by him and his wife for the conveyance of the condominium to Richard. (R. p. 138).

Attached as Exhibits to Appellant Funk's Affidavit was a Deed for unrelated real property located in Lexington County into Matthew Graham; a copy of the Installment Contract for Sale of the Subject Property between Rochelle Graham; a paid tax receipt as to the Subject Property, and; a ledger compiled by the Appellant allegedly showing payments related to the Subject Property. Said Ledger was allegedly produced using bank records of the deceased Mr. Calhoun but no such actual bank records were submitted by Appellant. (R. pp. 140-149). No averment was made as to the business records exception or some other reason for the admissibility of this document and no explanation was given as to why the bank records themselves were not produced. Appellant's ledger is entirely unsubstantiated.

As to the Affidavit of Steven Graham, the only testimony of consequence therein consisted of inadmissible hearsay:

On multiple occasions, Ricky told me that he was purchasing the condominium and shortly before his death he told me he had already paid all the necessary payments to acquire ownership of the condominium. | encouraged him many times to make sure he got the deed to the property but, of course, he died in April of 2024. (R. p. 151).

Appellant failed to provide any evidence indicating that a parol or oral contract existed between the Parties, much less any evidence that would point to the terms of such a contract. Appellant failed to provide any evidence as to the nature and extent of any repairs or improvements to the Subject Property. Finally, Appellant failed to provide any evidence whatsoever that the

decedent Richard Timothy Calhoun, Jr. acted in reliance upon any oral or parol contract between the Parties. For these reasons, the trial court rightly granted Respondent's Motion for Summary Judgment, temporarily halting what constitutes an ongoing, brazen attempt at a theft of real property.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT APPEALS

When reviewing a grant of summary judgment, the South Carolina Court of Appeals applies the same standard applied by the trial court pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP). DD Dannar, LLC v. SC LAUNCH!, Inc., 431 S.C. 9, 16, 846 S.E.2d 883, 887 (Ct. App. 2020). Under this rule, summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Rule 56, SCRCP.

In reviewing 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. Marlowe v. S.C. DOT Scdot, 446 S.C. 309, 315, 919 S.E.2d 553, 556 (2025). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Id.*

When a circuit court grants summary judgment on a question of law, the Court of Appeals will review the ruling *de novo*. DD Dannar, LLC v. SC LAUNCH!, Inc., 431 S.C. 9, 16, 846 S.E.2d 883, 887 (Ct. App. 2020). Courts have established that questions of law are reviewed *de novo*. Ziegler v. Dorchester Cty., 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019).

ARGUMENT

I. Did the trial court properly grant summary judgment in favor of Respondents where there was no genuine issue of material fact, and the defendant was entitled to judgment as a matter of law pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure?

a) Regarding the Statute of Frauds and the Standard of Proof Required to Remove an Agreement from the Statute:

Contracts for the sale of real property, including land sale installment contracts, are included in the Statute of Frauds in South Carolina. The Statute explicitly requires that such contracts be in writing and signed by the party to be charged or their authorized agent. This requirement is codified in S.C. Code Ann. § 32-3-10, which states that no action may be brought to enforce a contract for the sale of land unless the agreement or a memorandum thereof is in writing and signed by the party to be charged. "The [S]tatute requires not only that the agreement, or 'some memorandum or note thereof,' shall be 'signed by the party to be charged,' etc., but that the memorandum or note shall be 'in writing.' That the memorandum so required to be in writing must contain all the essential elements of a contract is too well settled in this and other jurisdictions to require the citation of authority." McCathern v. O'Donnell & Co., 181 S.C. 76, 79, 186 S.E. 659, 660 (1936) *citing* Ruff v. Hudspeth, 122 S.C. 391, 395, 115 S.E. 626, 627 (1923).

The purpose of including contracts for the sale of real property in the Statute of Frauds is to prevent fraud and perjury by ensuring that agreements involving significant transactions, such as the sale of land, are documented in writing. This requirement protects parties from false claims and misunderstandings by providing clear evidence of the terms of the agreement. Courts have emphasized that the statute is designed to safeguard against fraud while not being used as a tool to perpetrate fraud. For instance, equity may intervene to enforce oral agreements in cases of part performance to prevent unjust outcomes, but the general rule remains that such contracts must be in writing to be enforceable. *See* Bolen v. Smith, 223 S.C. 39 (1953).; Gardner v. Nash, 225 S.C. 303 (1923).

Given the purpose of the Statute of Frauds, it follows that the standard of proof required to remove an alleged agreement from the Statute is quite high. The initial bar to clear for a party

alleging a parol or oral agreement for the sale of real property is to establish the existence of such a contract in a way that the genuineness of it is nearly unquestionable. Such an alleged agreement must be shown "by competent and satisfactory proof, such as is ***clear, definite, and certain***.' * * * '***The degree of certainty required is reasonable certainty***, having regard to the subject-matter of the contract'…The terms of a contract must be so clear, definite, certain, and precise, and free from obscurity or self-contradiction that neither party can reasonably misunderstand them, and the court can understand and interpret them, without supplying anything'." Aust v. Beard, 230 S.C. 515, 521, 96 S.E.2d 558, 561 (1957) *citing* Hammassapoulo v. Hammassapoulo, 134 S.C. 54, 57, 131 S.E. 319, 320 (1926); Carson v. Coleman, 208 S.C. 406, 408, 38 S.E.2d 147, 149 (1945); White v. Felkel, 222 S.C. 313, 324, 72 S.E.2d 531, 536 (1952) (*Emphasis added*). The inquiry into an alleged oral agreement for the sale of land stops if the claimant fails to produce clear evidence of a contract. *See* Settlemeyer v. McCluney, 359 S.C. 317, 321, 596 S.E.2d 514, 516 (Ct. App. 2004). The elevated standard of proof as to such agreements is in accord with both the purpose of the Statute of Frauds and also the concept that: "[t]he courts have no power to make contracts and then require their performance. They can only require parties to contracts to specifically perform such contracts as they themselves make." White v. Felkel, 222 S.C. 313, 324, 72 S.E.2d 531, 536 (1952) *citing* Fairey v. Strange, 112 S.C. 155, 159, 98 S.E. 135, 135 (1919).

Should a party clearly establish the existence and terms of a parol or oral agreement for the sale of real property, they must then demonstrate sufficient part performance of the oral agreement. The evidence required to establish part performance includes:

-*Possession of the Property*: Actual possession of the property is considered the most satisfactory evidence of part performance. *See* Bradshaw v. Ewing, 297 S.C. 242, 244, 376 S.E.2d 264, 266 (1989); Scurry v. Edwards, 232 S.C. 53, 61, 100 S.E.2d 812, 816 (1957); Stackhouse v. Cook, 271 S.C. 518, 522, 248 S.E.2d 482, 484 (1978).

-*Improvements to the Property*: Permanent and valuable improvements made to the property by the alleged purchaser, which are clearly referable to the oral agreement, are strong evidence of part performance. However, such improvements must be substantial and not merely incidental . *See* Bradshaw v. Ewing, 297 S.C. 242, 244, 376 S.E.2d 264, 266 (1989); Scurry v. Edwards, 232 S.C. 53, 61, 100 S.E.2d 812, 816 (1957); Stackhouse v. Cook, 271 S.C. 518, 522, 248 S.E.2d 482, 484 (1978).

-*Payment of the Purchase Price*: While payment of the purchase price may be considered, it is generally regarded as the weakest form of evidence and is insufficient on its own to remove an agreement from the Statute of Frauds. *See* Bradshaw v. Ewing, 297 S.C. 242, 244, 376 S.E.2d 264, 266 (1989); Scurry v. Edwards, 232 S.C. 53, 61, 100 S.E.2d 812, 816 (1957); Stackhouse v. Cook, 271 S.C. 518, 522, 248 S.E.2d 482, 484 (1978).

Additionally, the "acts of performance or part performance by him which relate clearly and unequivocally to such agreement, exclusive of any other relation between the parties touching the said premises." Aust v. Beard, 230 S.C. 515, 523, 96 S.E.2d 558, 562-63 (1957). The party seeking to enforce the agreement must also demonstrate that they have performed or are willing to perform their obligations under the agreement . *See* Player v. Chandler, 299 S.C. 101, Settlemeyer v. McCluney, 359 S.C. 317.

Courts of equity will grant specific performance of an oral agreement if the application of the Statute of Frauds would otherwise result in an unconscionable outcome. This requires that the acts of part performance be clearly referable to the agreement and that the terms of the agreement are established with sufficient clarity and certainty. *See* Scurry v. Edwards, 232 S.C. 53, § 5.04 South Carolina Statute of Frauds.

b) Motions for Summary Judgement and the Demise of the "Scintilla" Standard.

The "mere scintilla" standard for summary judgment has been eliminated in South Carolina by caselaw. The South Carolina Supreme Court in *Kitchen Planners, LLC v. Friedman* explicitly clarified that the "mere scintilla" standard does not apply under Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRCP). 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). Instead, the proper standard is the "genuine issue of material fact" standard as set forth in the text of Rule 56(c). The Court stated that it is insufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. To the extent that the Court's prior decision in *Hancock v. Mid-South Mgmt. Co.* was inconsistent with this clarification, it was expressly overruled . 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009).

Previously, in , *Hancock v. Mid-South Mgmt. Co*. the South Carolina Supreme Court had held that in cases applying the preponderance of the evidence burden of proof, the non-moving party was only required to submit a mere scintilla of evidence to withstand a motion for summary judgment. (381 S.C. 326 (2009)). However, it also recognized that in cases requiring a heightened burden of proof or applying federal law, more than a mere scintilla of evidence was

necessary . *Id*. at 330. This created some inconsistency in the application of the standard.

Subsequent cases, including *Marlowe v. SCDOT* and , *Isaac v. Onions* reaffirmed the elimination of the "mere scintilla" standard, emphasizing that the proper standard is whether there exists a genuine issue of material fact under Rule 56(c). 446 S.C. 309, 315, 919 S.E.2d 553, 556 (2025); 445 S.C. 525, 533, 915 S.E.2d 492, 496 (2025) These cases clarified that summary judgment is appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. The courts also emphasized that all evidence and reasonable inferences must be viewed in the light most favorable to the non-moving party. Thus, the "mere scintilla" standard has been definitively replaced by the "genuine issue of material fact" standard in South Carolina summary judgment proceedings under Rule 56(c).

c) Application to the Instant Matter on Appeal.

As outlined in detail above, Appellant's evidence at the hearing on the Motion for Summary judgment consisted of an affidavit executed by the Appellant with a ledger produced by Appellant as an exhibit and an affidavit executed by the Appellant's brother claiming that he was told by the Decedent Richard Timothy Calhoun, Jr. that he was purchasing the Subject Property and had in fact paid for the Property in full prior to his death. The only evidence presented to the Court as to the terms of the alleged oral contract consists of hearsay. (R. p. 137). Nothing further was presented pointing to the terms of the alleged agreement.

Because the alleged oral contract was supported solely by inadmissible hearsay, the trial court properly discounted the proffered statements and records and correctly granted summary judgment in Respondent's favor. A party opposing summary judgment must "set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If he does not so respond, summary judgment should be entered against him. Dickert v. Metro. Life Ins. Co., 306 S.C. 311, 313-14, 411 S.E.2d 672, 673 (Ct. App. 1991). Here the purported evidence consisted entirely of out-of-court statements offered for the truth of the matters asserted and a ledger lacking any applicable hearsay exception or foundation. In the absence of establishing the existence or terms of an oral agreement for the sale of real property, no genuine issue of material fact existed, and the trial court's ruling was not only permissible but compelled by settled law. As such, a finding that no oral contract existed is a cogent conclusion for one to make in considering the assertions made by Appellant.

Although a determination that no oral contract existed between Respondents and the decedent is proper in this matter, and as such there is no need for further analysis, Appellant has also failed to introduce any evidence which would create a genuine issue for trial when considering the factors of part performance under an oral contract for real property:

-*Possession of the Property*: Though the decedent Richard Timothy Cahoun did hold possession of the property at the time of his death, all credible evidence points to him being there as a tenant with the express permission of Respondents. Possession such as this is not the type contemplated in an analysis of a parol contract removing an alleged agreement from the statute of frauds. "As a rule, possession sufficient to constitute an act of part performance of a contract to purchase realty must be exclusive possession such as manifests definitely and clearly that the person holding the property is asserting a right therein or title thereto which is inconsistent with right of possession or ownership in any other person." Stackhouse v. Cook, 271 S.C. 518, 522, 248 S.E.2d 482, 484 (1978). Possession such as that of a tenant does not constitute part performance (*See Id*.)

-*Improvements to the Property*: In her affidavit, Appellant alleges that "Richard (the decedent) and Matthew (who did at one time have an installment contract with Respondents) both helped rehabilitate the condominium through providing labor to repair items and funds to purchase materials and new windows." (R. p. 137). Aside from the fact that there is no evidence corroborating the allegation that improvements were made and were referable to an oral contract for the Subject Property's sale, one cannot determine what portion of the alleged improvements are attributable to the decedent. These allegations, even when viewed in a light most favorable to Appellant, do not meet the evidentiary standard of permanent and valuable improvements made to the property by the alleged purchaser, which are clearly referable to the oral agreement.

-*Payment of the Purchase Price*: Appellant has attempted to bolster her convenient claim that the decedent paid the alleged agreed upon purchase price for the Subject Property with a ledger that consists entirely of inadmissible hearsay. The business records exception to the hearsay rule, codified in *Rule 803(6) of the South Carolina Rules of Evidence* and *S.C. Code Ann. § 19-5-510* allows for the admission of records made in the regular course of business if certain conditions are met. Specifically, the record must be made at or near the time of the event by someone with knowledge, kept in the regular course of business, and supported by testimony from a custodian or qualified witness regarding its preparation. Additionally, the court must find

the record trustworthy. As the Appellant's ledger does not meet such criteria, the trial court correctly discounted the document.

Moreover, Appellant has failed to show how any of the alleged actions of the decedent are directly and unequivocally referable to an oral contract. The overwhelming evidence presented by Respondents indicates that all payments and any other acts of the decedent were entirely attributable to his status as a tenant at the Subject Property.

Finally, the heightened standard of proof for an alleged oral contract for the sale of real property is arguably enhanced even further given the facts of the case under appeal. As the alleged purchaser is deceased, cannot provide testimony, and has left no writing that indicates any of the allegations being made about his intent with the Subject Property are true. *See* Caulder v. Knox, 251 S.C. 337, 342, 162 S.E.2d 262, 264 (1968).

In short, Appellant has done nothing more than rest on speculation, conclusory assertions, and inadmissible materials, none of which is sufficient to create a genuine issue of material fact. The record contains no evidence that would permit a reasonable factfinder to rule in Appellant's favor, and Appellant's arguments amount to a request that this Court disregard the governing summary judgment standard. Because Appellant failed to meet its burden under Rule 56, the trial court correctly entered judgment as a matter of law, and its order should be affirmed.

II. Did the trial court properly conclude that the Statute of Frauds barred Appellant's claim and that no exception for part performance or equitable relief was supported by the evidence or the law?

Despite Appellant's assertions otherwise, there is every indication that the trial court did consider the exceptions which would remove an oral contract from the Statute of Frauds in its deliberation of the instant case. The "Standard as to Parol Contracts for the Sale of Real Property" is included in the relevant judgment order. (R. pp. 2-3). As is outlined herein, the trial court instead found the evidence put forth by the Appellant to be lacking and insufficient to show that an oral contract for the Subject Property existed. (R. pp. 5-7)

Appellant's contention that the facts of this matter are indistinguishable from *Goodwin v. Hilton Head Co.* is simply incorrect. 273 S.C. 758, 762, 259 S.E.2d 611, 614 (1979). In *Goodwin*, a number of writings existed evidencing a contract for sale of real property that the court found in aggregate to satisfy the Statute of Frauds. *See Id*. The instant case contains no

such writings whatsoever for the court to consider. Additionally, *Goodwin* has been overruled in part by *Fici v. Koon*, in which the Supreme Court noted that in *Goodwin*, "the buyer sent an offer, including a description of the property, with a check. The seller deposited the check and then had the property surveyed and sent a copy of the plat to the buyer. The Court held, with no analysis, that the written documents satisfied the Statute of Frauds. Presumably, the seller's endorsement on the check attached to the offer was the signed writing that supported this conclusion. To the extent Goodwin may be read to hold otherwise, it is overruled." 372 S.C. 341, 347, 642 S.E.2d 602, 605 (2007). In the instant case on appeal, no allegation has been made that the Respondents signed any document indicating an assent to an agreement to sell the Subject Property and there has been no assertion that documents exist in this matter that would in aggregate somehow satisfy the Statute of Frauds.

Regarding Appellant's assertions of part performance in furtherance of an oral agreement to sell the Subject Property, these issues are addressed at length above, but it bears repeating that Appellant failed to introduce evidence sufficient to create a genuine issue as to the alleged oral agreement's existence. Further, even if an oral agreement is assumed, which it should not be, the evidence put forth by Appellant fails to suggest part performance under even the most charitable review.

III. Should equity enforce an alleged oral agreement in a matter where no evidence has been put forth which would remove the alleged agreement from the Statute of Frauds?

The doctrine of equitable estoppel may be invoked to enforce an oral agreement for the sale of real property. This doctrine applies when a party has suffered a substantial, detrimental change of position in reliance on the agreement, and no remedy other than enforcement of the agreement would restore the party to their former position. The party asserting estoppel must provide competent proof of the existence of the oral contract. *See* Atl. Wholesale Co. v. Solondz, 283 S.C. 36, 41, 320 S.E.2d 720, 723 (Ct. App. 1984).

In the instant case, Appellant has failed to put forth any evidence indicating that the decedent suffered any substantial, detrimental change of position. In reviewing Appellant's assertions it is unclear whether any change in position has been alleged at all. All competent evidence points to the decedent having been a tenant of Respondents, and Respondents providing

the decedent with a place to reside as a tenant despite the decedent's ability to always remit payment for rent on time. (R. pp. 85-101). It is true that the Statute of Frauds cannot be presented as a shield to those who act inequitably, but there is no evidence in the record of this case that suggests inequitable conduct on the part of Respondents.

Under South Carolina law, unjust enrichment is not explicitly recognized as a basis for granting specific performance of an oral agreement to sell real property. Instead, specific performance of such agreements is generally governed by the principles of equity and the doctrine of part performance, which may remove an oral contract from the operation of the Statute of Frauds under certain circumstances.

CONCLUSION

For the foregoing reasons, the trial court correctly granted summary judgment in favor of Respondents. Appellant failed to produce competent, admissible evidence establishing the existence of any enforceable oral contract, much less evidence sufficient to create a genuine issue of material fact. To the contrary, the record reflects only speculation and inadmissible assertions, which cannot defeat summary judgment or circumvent the Statute of Frauds. Because Appellant failed to meet her burden to demonstrate a triable issue, the trial court’s ruling was proper. Accordingly, this Court should affirm the Order Granting Summary Judgment and remand this matter to allow Respondents to schedule a hearing to determine their damages.

RESPECTFULLY SUBMITTED

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