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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

Steven C. Kirven, Master-In-Equity

Lower Court Case Number 2023-CP-04-0846

James C. Sitton, II, individually and as Personal Representative of the Estate of John D. Sitton, and Betty A. Sitton, Appellants,

v.

John D. Sitton, Jr., individually and as Former Trustee of the John D. Sitton Trust, and Brian K. James, as Personal Representative of the Estate of Ruth R. Sitton, Defendants,

Of whom John D. Sitton, Jr. is the Respondent.

Appellate Case No. 2025-002061

FINAL BRIEF OF APPELLANT

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Whether the Master-In-Equity erred by finding that Appellants' claims were time-barred by the statute of limitations, laches, waiver, and estoppel?

STATEMENT OF THE CASE

This is an appeal from a final order of the Master-In-Equity dismissing Appellants' claims against Respondent with prejudice.

John D. Sitton (John Sr.) died testate on February 16, 1993, and his estate was probated in Pickens County. (R. pp. 280–281). John Sr. was survived by his wife, Ruth, his sons, John Sitton Jr. (John Jr.), James Sitton II, and his daughters, Betty, Dorothy, and Dale. The Co-Personal Representatives of John Sr.'s estate were Ruth and John Jr. His Last Will and Testament created a residual trust which also appointed Ruth and John Jr. as Co-Trustees. (R. p. 282).

Ruth died on May 25, 2013, and continuous litigation over her estate began in the Pickens County Probate Court. (R. p. 288). Important to this case, one aspect of the litigation in Probate Court was over the validity of a deed executed by John Sr. in 1987 where he attempted to convey his half-interest in their family home to "Dorothy Sitton Ashley, Trustee for Ruth R. Sitton, with authority to convey." The issue regarding the validity of this deed was referred to the Pickens County Circuit Court which found that the deed was void because the attempted conveyance was to a "non-existing grantee." (R. p. 290). Although John Sr.'s estate had been closed in 1994, the voiding of this deed resulted in the reopening of his estate on December 9, 2021. (R. pp. 281 & 290). James was appointed as successor Personal Representative of John Sr.'s reopened estate. (R. p. 290).

James and Betty Sitton (Plaintiffs/Appellants) filed a summons and complaint and lis pendens on April 17, 2023, in Anderson County. The lawsuit brought causes of action for an accounting and breach of fiduciary duty by John Jr. in his capacity as the former Co-Trustee of John Sr.'s Trust. (R. pp. 1, 6). John Jr. filed his answer and counterclaim on Jun 14, 2023, raising

defenses that the claims were time barred by the statute of limitations, laches, waiver, and estoppel. (R. p. 19).

The case proceeded to a bench trial before the Honorable Steven C. Kirven, Master-In-Equity, on January 29, 2025. (R. p. 33). Betty Sitton died prior to the hearing. James was represented by James C. Alexander. John Jr. was represented by James S. Eakes. (R. p. 34).

The Master concluded that the claims were time barred and dismissed Appellants' claims with prejudice. (R. p. 273).

STANDARD OF REVIEW

"Trusts have long and broadly been a field for the jurisdiction of equity." *Epworth Orphanage v. Long*, 199 S.C. 385, 389, 19 S.E.2d 481, 482 (1942). "On appeal from an action in equity, tried by a judge alone, this Court has jurisdiction to find facts in accordance with our view of the preponderance of the evidence." *Floyd v. Floyd*, 365 S.C. 56, 93, 615 S.E.2d 465, 485 (Ct. App. 2005). However, an appellate court is "not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

STATEMENT OF FACTS

Testimony of John Jr.

John Jr, James, Betty, Dorothy, and Dale were siblings. Their parents were John Sr. and Ruth. (R. p. 57, ll. 18 – 25).

John Sr. died on February 16, 1993. (R. p. 72, ll. 1 – 4). His Will established a residual trust after making specific bequests. He appointed John Jr. and Ruth to serve as Co-Trustees of the Trust. (R. p. 58, l. 22 – p. 59, l. 3). The Trust named Betty as the primary beneficiary. (R. p. 60, ll. 10 – 18; R. p. 156). During his testimony, John Jr. initially denied that the Trust named James as a secondary beneficiary despite being confronted with the language of the Will. (R. p. 60, l. 19 – p. 61, l. 8). Upon further questioning, John Jr. agreed that the Will specifically directed the Trustees to "provide support for my son, James C. Sitton, II, if and when the need arises for food, shelter, clothing and medical expenses." (R. p. 63, ll. 7 – 24; R. p. 156). Although John Jr. again equivocated, he admitted that the only specifically named beneficiaries under the Trust were Betty and James II, at least until Betty and Ruth both died. (R. p. 64, ll. 1 – 19).

John Jr. and Ruth deeded to themselves the real estate that was owned by John Sr. at his death. (R. p. 59, ll. 14 – 23; R. p. 174). Portions of this real estate, amounting to approximately 9.69-acre tracts each, were later distributed to each of the siblings. (R. p. 59, l. 24 – p. 60, l. 4). The real estate that remained after these equal distributions to the siblings remained under the control of John Jr. and Ruth. (R. p. 60, ll. 5 – 8).

John Jr. and Ruth sold four tracts of the real estate that was held in the Trust to other parties. (R. p. 64, ll. 21 – 25; R. pp. 176, 178, 180, 181). John Jr. admitted to receiving money from the sales of these tracts but said he gave the money to his mother Ruth. (R. p. 65, ll. 5 – 14). John Jr. admitted that he did not know whether the money was spent for the benefit of Betty or James as

was required under the Trust. (R. p. 65, ll. 15 – 22). John Jr. also admitted that he had no records to show how the money was spent. (R. p. 66, ll. 8 – 17).

John Jr. and Ruth, as Co-Trustees of the Trust, deeded another piece of the property held in Trust to John Jr. (R. p. 68, ll. 13 – 16; R. p. 183). When asked why he did this, John Jr. said that he didn't know he was doing anything wrong. (R. p. 68, ll. 17 – 20). John Jr. sold the property that he deeded to himself while serving as Trustee for a Trust established for the benefit of Betty and James. (R. p. 69, ll. 9 – 11). Part of it was sold for $29,500 and the other part was sold for $14,000. (R. p. 69, ll. 14 – 20; R. pp. 188, 197).

John Jr. admitted that none of the money that he received from the sales of the property that he deeded to himself while serving as Co-Trustee was used for the benefit of Betty or James. (R. p. 69, ll. 21 – 23). When asked why he didn't use the money for the benefit of the Trust beneficiaries, John Jr. testified that "[he] just didn't." (R. p. 69, l. 24 – p. 70, l. 3). *John Jr. agreed that this was a breach of his fiduciary duty*. (R. p. 70, ll. 8 – 11). John Jr. further admitted that he did not have any of the money left that he received from the sales he made in breach of his fiduciary duty. (R. p. 70, ll. 12 – 14).

John Jr. was questioned by his Counsel about why property was deeded to him while he was serving as Trustee. John Jr. testified that he "asked [Ruth] to give that property to me." (R. p. 84, ll. 1 – 6). John Jr. explained: "I'm the one that always took care of my daddy and my mother and Betty and I always would have to check on her." (R. p. 84, ll. 7 – 10). John Jr. admitted that none of the other siblings received in-kind distributions like the deed he made to himself under (R. p. 183). John Jr. said that he "was the only one that asked [Ruth] to give [him] that property and didn't know [he] was doing wrong." (R. p. 92, ll. 4 – 11). John Jr. claimed that James found out about this deed in September of 2012 and was furious about it. (R. p. 85, ll. 12 – 17).

Testimony of James

James testified that he did not know he was a beneficiary of the Trust until he was informed by his Counsel. Prior to that, he thought his sister Betty was the only beneficiary. (R. p. 97, l. 24 – p. 98, l. 17). After their father's death, James gave his mother a file cabinet to keep up with her finances but recalled that he was "absolutely . . . forbidden" from helping her with her finances. James testified that John Jr. was in charge of the property and that his mother was in charge of her finances and that "she did not want to hear anything from [James] about it." (R. p. 102, l. 11 – p. 103, l. 5). However, James did later become Ruth's power of attorney in February of 2012. (R. p. 119, ll. 18 – 22).

During the probate court proceedings regarding Ruth's estate, the circuit court was asked by the probate court to determine the validity of a deed by John Sr. of his half interest in the family home to his daughter Dorothy as "Trustee for Ruth R. Sitton." (R. p. 201). The circuit court determined the deed was void which resulted in this half-interest reverting to John Sr.'s estate. James then petitioned to reopen John Sr.'s estate and for himself to be appointed as Personal Representative. (R. p. 107, l. 2 – p. 108, l. 4; R. p. 165). James was appointed PR of John Sr.'s reopened estate on December 9, 2021. (R. p. 133, ll. 7 – 12).

James testified that to his knowledge, the money that John Jr. and Ruth received for the sales of the four tracts of property documented in (R. pp. 176, 178, 180, 181) was used to purchase a tractor and a truck for John Jr. (R. p. 109, l. 14 – p. 110, l. 12). James also recalled that John Jr was not working during that time period and the money was used by him to eat out and buy expensive clothes. (R. p. 110, ll. 14 – 19). James did not find out about the deed in (R. p. 183) in which John Jr. deeded property to himself for his own benefit until he was represented by his trial counsel. (R. p. 111, l. 18 – p. 112, l. 14).

Arguments of Counsel

At the close of the evidence, Counsel for James argued that the evidence established that John Jr. had breached his fiduciary duty by deeding property to himself while serving as Trustee for his own benefit. (R. p. 145, ll. 9 – 25). Counsel for John Jr. responded by arguing that James had not joined the Estate of Ruth Sitton even though Ruth was Co-Trustee and John Jr. did not and could not have deeded property to himself without her authorization. (R. p. 146, ll. 5 – 13). Additionally, Counsel for John Jr. argued that the length of time between the last deed transfer from the Trust which occurred in 2011, that the claims by James were time barred and should be dismissed. (R. p. 147, ll. 1 – 18).

The Master indicated that he was "very concerned" about the length of time that had passed between the deed transfers and the filing of the lawsuit. (R. p. 147, l. 20 – p. 148, l. 7). The Master gave the lawyers time to submit written arguments and legal authority to support their respective positions. (R. p. 151, l. 17 – p. 153, l. 2).

Counsel for James pointed out in his written memorandum that the Will imposed a duty on the Trustees to provide the beneficiaries with an accounting every year which the Trustees never did. (Pl.'s Mem. at 7). This yearly requirement was a continuing obligation on the part of the Trustees which affected the timeliness of the claims. Specifically, Counsel for James maintained that the statute of limitations would not have begun to run until December 9, 2021, which is when James was appointed as Personal Representative of the Estate, or September 27, 2022, which is when the Trust was terminated by court order and John Jr.'s obligations as Trustee ended. (Pl.'s Mem. at 8 – 9). Accordingly, Counsel argued that the cause of action for an accounting by John Jr. was brought within the three-year statute of limitations. (Pl.'s Mem. at 9 – 10).

Counsel for James also pointed out that while John Jr. deeded property to himself in September 2011, he did not sell that property until October 9, 2020, and March 31, 2021. (R. pp. 188, 197). And it was the sale of the property for his personal benefit that constituted the breach of his fiduciary duty. Accordingly, James' claim for breach of fiduciary duty by John Jr. was filed within the three-year statute of limitations. (R. p. 237). Counsel further argued that John Jr. could not invoke the equitable defenses of laches and estoppel because he had unclean hands due to his breach of fiduciary duty. (R. p. 238).

Counsel for John Jr. argued that James was simply too late to bring his lawsuit. Counsel maintained that the last action taken by the Trustees was in September 2011 and the Trust was dormant after that. (R. p. 262). Counsel argued that it was Ruth's decision to deed the property to John Jr. and that James found out about this deed in September of 2012. (R. p. 263). Counsel cited to section 62-7-1005 of the South Carolina Code which provides for either a one-year or three-year statute of limitations for actions against trustees and argued that because James allegedly knew of the breach of fiduciary duty as early as 2012, he was required to bring the lawsuit within three years of that date. (R. pp. 264 – 267).

In addition to arguing that James' claims were barred by the statute of limitations, Counsel for John Jr. also argued that his claims were barred by laches. Again, Counsel asserted that James had notice of the actions which formed the basis for John Jr.'s breach of fiduciary duty twelve years before bringing the lawsuit. Counsel argued that the delay prejudiced John Jr. because of the death of witnesses, including Co-Trustee Ruth, and the loss of records. (R. pp. 268 – 269). Counsel made identical arguments in support of his position that James' claims were barred by the doctrines of equitable estoppel and waiver. (R. p. 270).

Master-In-Equity Ruling

The Master agreed with John Jr. and found that James' claims for an accounting and breach of fiduciary duty were time barred by the statute of limitations. (R. pp. 295–296). Specifically, the Master found that James "had constructive notice of the deed from the Trustees to [John Jr.] when it was recorded on September 23, 2011," and that James had actual notice of the deeds "when he found it at his Mother's home in 2012." (R. p. 296). The Master further found that the Trustees' failure to provide the annual accounting required by the terms of the Will meant that James could have brought an action for an accounting at any time over the life of the Trust but failed to do so until 2023. (R. p. 296).

The Master found that James' claims were barred by the doctrine of laches, equitable estoppel, and waiver, because he "neglected for an unreasonable and unexplained length of time to file his action resulting in a loss of records, witnesses, the death of a co-trustee, and loss of evidence." (R. pp. 296–297). As to the accounting, the Master found that even if the claim was not time-barred, John Jr.'s testimony provided for as complete an accounting as possible given the extended passage of time. (R. p. 297). The Master dismissed James' claims with prejudice. (R. p. 301).

ARGUMENT

The Master-In-Equity erred by finding that Appellants' claims were time-barred by the statute of limitations, laches, waiver, and estoppel.

A. The current lawsuit was filed within three years of the termination of the Trust and therefore within the statute of limitations outlined in section 62-7-1005(c) of the South Carolina Trust Code.

The South Carolina Trust Code "establishes either a one or three year statute of limitations, depending on the extent of disclosure, within which a beneficiary is required to initiate a lawsuit against the trustee for mismanagement of the trust accounts." *Mayer v. M.S. Bailey & Son, Bankers*, 347 S.C. 353, 359-60, 555 S.E.2d 406, 409 (Ct. App. 2001). And of course, before the court can know when the statute of limitations ends, the court must first determine when it begins. "The statute of limitations begins to run at the time the cause of action accrues." *King v. James*, 388 S.C. 16, 26, 694 S.E.2d 35, 40 (Ct. App. 2010). "A cause of action accrues at the moment when the plaintiff has a legal right to sue on it." *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct. App. 1991).

Section 62-7-1005(a) of the Trust Code provides that: "a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." In this case, Appellants were *never provided a report*—even though the terms of the Trust required the Trustees to do so—which would have disclosed the existence of a potential claim. (R. p. 66, ll. 8 – 17; R. p. 160). Accordingly, this one-year limitation period is inapplicable to this case.

If, as in this case, the one-year limitation period under section 62-7-1005(a) does not apply, section 62-7-1005(c) provides for a three-year limitation "after the first to occur of: (1) the

removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." Here, the first of these events to occur was the termination of the Trust which happened on September 27, 2022 when the Probate Court ordered the Trust be terminated. (R. p. 168). Accordingly, the statue of limitations as set forth in section 62-7-1005(c) began to run on September 27, 2022. Appellants filed the current lawsuit on April 17, 2023, well within the three-year period from when the Trust was terminated. (R. p. 6).

Instead of adhering to the language of section 62-7-1005(c), the Master applied the discovery rule as it is generally understood in the civil context. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996) ("According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct"). Specifically, the Master found that Appellants "had constructive notice of the deed from the Trustees to Defendant when it was recorded on September 23, 2011" and that Appellant "learned of th[e deed] when he found it at his Mother's home in 2012."

The Master's error is two-fold. First, discovery of the breach only serves to trigger the statute of limitations where the trustees have provided the beneficiaries with a report that adequately disclosed the breach. S.C. Code § 62-7-1005(a). But where no report is provided, discovery of the breach is not the triggering event for the statute of limitations. To the extent the discovery rule applies under section 62-7-1005(c), the relevant discovery would be the discovery of either "(1) removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." The Master's application of the discovery

rule to the discovery of the breach as beginning the statute of limitations was inconsistent with section 62-7-1005(c).

Secondly, the Master's conclusion erroneously finds that John Jr.'s deeding of the property to himself constituted the breach, as opposed to when he sold that property for his own financial gain. As Counsel for Appellants pointed out in his written memorandum, while John Jr. deeded property to himself in September 2011, he did not sell that property until October 9, 2020, and March 31, 2021. (R. pp. 188, 197). And it was the sale of the property for his personal benefit that constituted the breach of his fiduciary duty. (R. p. 237).

Under section 62-7-1001(a) of the South Carolina Code, a breach of trust occurs when a trustee violates a duty that the trustee owes to a beneficiary. Accordingly, whether a breach of trust has occurred can only be discovered by reviewing the terms of the trust itself. *See Deborah Dereede Living Tr. v. Karp*, 427 S.C. 336, 342, 831 S.E.2d 435, 439 (Ct. App. 2019) ("The trust instrument has been likened to a map on which the settlor has set the course the trustee must faithfully follow, and from which the trustee departs at his peril"). The terms of the Trust in this case did not prohibit the Trustees from deeding property to themselves. Instead, the Trust simply provided that the proceeds from any sales of property be used for the benefit of Ruth, Betty, and James. The Will specifically provided:

> I [John Sr.] . . . authorize and empower my Trustees . . . to sell at public or private sale any and all property, both real and personal, falling under this Trust, make good titles for same, *and use the proceeds of sale as hereinafter directed*. I direct my said Trustees to *provide support for my daughter, Betty* Sitton; and secondly to *provide support for my son, James* Sitton II if and when the need arises for food, shelter, clothing and medical expenses.

(R. p. 167) (emphasis added). Accordingly, even if the Master were correct that the discovery of the breach is the triggering event for the statute of limitations, the breach did not occur until

October 9, 2020, the first time John Jr. sold property and retained the proceeds for his own benefit. The current lawsuit was filed on April 17, 2023, well within three years from the events which gave rise to a cause of action for breach of trust.

The Master erred in finding that Appellants' claims were barred by the statute of limitations and this Court should reverse.

B. The defense of laches is inapplicable to this case because there is a governing statute of limitations, and even if laches did apply, the Master erred in finding that Appellants delayed for an unreasonable length of time without an explanation.

As an initial matter, laches does not apply to this case because there is an applicable statute of limitations that governs. "[T]he doctrine of laches may bar an action . . . where there is no applicable statute of limitations." *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002); *see also Byrd v. King*, 245 S.C. 247, 259-60, 140 S.E.2d 158, 163 (1965) (noting that in cases where the statute of limitations is not applicable, a claim may be barred by laches)."Laches within the period of the statute of limitations is no defense at law." *Crotwell v. Whitney*, 229 S.C. 213, 223, 92 S.E.2d 473, 478 (1956); *see also Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (Ct. App. 1999) (finding that because an action was filed within the applicable statute of limitations there could be no "unreasonable" delay). Because there is an applicable statute of limitations that governs this case, this Court should reverse the Master's ruling that Appellants' claims were barred by the inapplicable doctrine of laches.

As explained above, Appellants filed this lawsuit within the three-year statute of limitations provided for in section 62-7-1005(c). Accordingly, the defense of laches cannot apply in this case. Put simply, there can be no unreasonable delay when a lawsuit is filed within the applicable statute of limitations. *See Crotwell*, 229 S.C. at 223, 92 S.E.2d at 478.

However, even if this Court finds that laches does apply, the Master erred in concluding that Appellants waited for an unreasonably long time without explanation to file the current lawsuit. "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Chambers of S.C., Inc. v. Cty. Council*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993).

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (citing *Byars v. Cherokee County*, 237 S.C. 548, 118 S.E.2d 324 (1961)). "Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches." *Hallums*, 296 S.C. at 198-99, 371 S.E.2d at 527. "In general, one with a remainder interest in a trust is not guilty of laches if he sues promptly after his interest vests in possession, even though there was a long delay before his interest became possessory." *Bonney v. Granger*, 292 S.C. 308, 320, 356 S.E.2d 138, 145 (Ct. App. 1987).

James testified that he did not even know he was a beneficiary of the Trust until he was informed by his Counsel. Prior to that, he thought his sister Betty was the only beneficiary. (R. p. 97, l. 24 – p. 98, l. 17). Furthermore, it wasn't until the circuit court voided the deed by John Sr. of his half-interest in the marital home that resulted in a reopening of John Sr.'s Estate when James was appointed as Personal Representative of John Sr.'s Estate. The appointment of James as Personal Representative did not occur until December 9, 2021. (R. p. 133, ll. 7 – 12). Additionally, James did not find out about the deed in (R. p. 183) in which John Jr. deeded property to himself

for his own benefit until he was represented by his trial Counsel. (R. p. 111, l. 18 – p. 112, l. 14). Finally, as previously indicated, John Jr. did not sell the property for his own benefit until October 9, 2020, and March 31, 2021, and therefore those were the dates on which he breached his fiduciary duty. (R. pp. 188, 197).

Appellants did not unreasonably delay in bringing the current lawsuit nor was their delay unexplained. Accordingly, the Master erred in finding that their claim was barred by laches and this Court should reverse.

C. The doctrine of waiver has no application to this case because Appellants filed their lawsuit for an accounting and for breach of trust within the statute of limitations and therefore did not intentionally abandon a known right.

"A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). "[T]he party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Id*. at 344, 415 S.E.2d at 387-88.

In *King v. James*, this Court considered whether a plaintiff had waived her right to sue to set aside a tax sale of her property. 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010). King's property had been sold at a tax sale to James without King's knowledge. *Id*. at 22, 694 S.E.2d at 38. In fact, James was unaware that the tax sale included King's property until several years later when she had a survey conducted. *Id*. After the survey, James offered to lease the property back to King, and King agreed. *Id*. After they entered into a lease agreement, King brought a lawsuit to set aside the tax sale. *Id*. at 23, 694 S.E.2d at 38. This Court determined that King's agreement to lease the property was "a strategic maneuver made in anticipation of litigation" as a means of "preventing James from selling the property to a third party" while King pursued counsel to bring

her legal claim. *Id*. at 30, 694 S.E.2d at 42-43. Accordingly, this Court found that even though King had agreed to lease property from James that King believed she was the rightful owner of, she had not waived her right to sue to set aside the tax sale.

As previously indicated, John Jr. did not sell the property for his own benefit until October 9, 2020, and March 31, 2021. (R. pp. 188, 197). James did not become the Personal Representative of John Jr.'s Estate until December 9, 2021, (R. p. 133, ll. 7 – 12), and the Trust wasn't terminated until September 27, 2022, (R. p. 168). James did not intentionally relinquish a known right but instead brought this action within the proscribed statute of limitations for breaches of Trust. Accordingly, the Master erred by finding Appellants' claims were barred by the doctrine of waiver and this Court should reverse.

D. Equitable estoppel has no application to this case as none of the elements are met by either John Jr. or James.

The doctrine of equitable estoppel has no application to this case and the Master erred by invoking it to bar Appellants claims against Respondent.

In *Frady v. Smith*, our Supreme Court detailed the essential elements of equitable estoppel:

> [A]s related to the party estopped [the elements] are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts.

247 S.C. 353, 359, 147 S.E.2d 412, 415 (1966) (overruled on other grounds by *Tolemac, Inc. v. United Trading*, 326 S.C. 103, 484 S.E.2d 593 (1997)). The *Frady* Court continued:

> As related to the party claiming the estoppel, [the elements] are: (1) Lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

Id.

"It is of the essence of equitable estoppel that the party entitled to invoke the principle shall have been misled to his injury." *Grady v. Greenville*, 129 S.C. 89, 101, 123 S.E. 494, 498-99 (1924). "Estoppel cannot exist if the knowledge of both parties is equal and nothing is done by one to mislead the other." *Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 20, 532 S.E.2d 876, 878 (2000). "The principle of estoppel in equity stands on the very foundations of right and fair dealing, and it considers and weighs conduct of men in their dealings with each other and gives that effect and meaning to their actions which common sense and justice dictate." *Kelly v. McCray*, 278 S.C. 88, 90, 292 S.E.2d 587, 589 (1982). Furthermore, "[I]t is well settled that one who seeks to apply the doctrine of equitable estoppel must himself be free from wrongdoing." *Premium Inv. Corp. v. Green*, 283 S.C. 464, 473, 324 S.E.2d 72, 77-78 (Ct. App. 1984).

There is no evidence in this case that James made any false representations to John Jr. with the intention of getting John Jr. to act to his own detriment. Furthermore, there is no evidence that John Jr. relied on any such statement by James to John Jr.'s detriment. Accordingly, equitable estoppel does not apply to this case. Furthermore, John Jr. *admitted to breaching his fiduciary duty* by selling property that he deeded to himself while Co-Trustee and retaining the proceeds of the sale for his own benefit. (R. p. 70, ll. 8 – 14). Accordingly, John Jr. cannot assert equitable estoppel to bar Appellants' claims against him.

This Court should reverse the Master's conclusion that Appellants claims were barred by the doctrine of equitable estoppel.

E. John Jr. breached his fiduciary duty to James by selling property held in the Trust for the benefit of Betty and James and retaining the proceeds of the sale for his own benefit.

A "trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [the South Carolina Trust Code]." S.C. Code § 62-7-801. "A trustee shall administer the trust *solely* in the interests of the beneficiaries." S.C. Code § 62-7-802(a) (emphasis added). "A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust." S.C. Code § 62-7-1001.

In this case, the undisputed facts show that John Jr. served as Co-Trustee of a Trust that was for the benefit of Betty, Ruth, and James; John Jr. deeded property to himself as Co-Trustee in September of 2011; John Jr. sold that property to third parties in October 2020 and March 2021; and John Jr. did not use the proceeds of the sale for the benefit of the Trust beneficiaries. John Jr. admitted that this was a breach of his fiduciary duty. *See Ramage v. Ramage*, 283 S.C. 239, 247, 322 S.E.2d 22, 27 (Ct. App. 1984) ("The Trustees' active participation in a transfer of trust property for their own benefit is presumed to be in breach of their fiduciary duty unless clearly proven to be otherwise"). Accordingly, John Jr. breached his fiduciary duty to Appellants and this Court should reverse the Master's dismissal of Appellants' claims.

CONCLUSION

By reason of the foregoing arguments, this Court should reverse the Master's ruling that Appellants' claims were barred by the statute of limitations, laches, waiver, and estoppel and remand for the Master to rule on the merits of Appellants' causes of action.

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