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Jun 19 2026
SC Court of Appeals

Case No. 2024-CP-10-02016

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell Scarborough, Master-in-Equity

Appellate Case No. 2026-000649

Calfran Properties, A South Carolina Limited Partnership, Respondent,

v.

Thomas D. Calcote, Appellant.

INITIAL BRIEF OF APPELLANT THOMAS D. CALCOTE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

JURISDICTIONAL STATEMENT

This is an appeal from the Order Granting Plaintiff's Motion for Summary Judgment entered by the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, on February 2, 2026, in Case No. 2024-CP-10-02016 in the Court of Common Pleas, Ninth Judicial Circuit, County of Charleston, State of South Carolina. This Court has jurisdiction over this appeal pursuant to S.C. Code § 14-8-200.

STATEMENT OF DEFENDANT-APPELLANT'S ISSUES ON APPEAL

Appellant Thomas D. Calcote respectfully submits that the Master-in-Equity erred in granting summary judgment in favor of Respondent Calfran Properties on the following grounds:

I. Whether the Master-in-Equity erred in granting summary judgment where genuine issues of material fact existed as to whether Respondent, by an extended time of knowingly accepting reduced and irregular monthly payments without contemporaneous enforcement action, waived its right to strict compliance with the Promissory Note's payment terms and to accelerate the Note.

II. Whether the Master-in-Equity erred in granting summary judgment where genuine issues of material fact existed as to whether the parties, through a course of dealing spanning multiple years of accepted short payments, modified the payment terms of the Promissory Note, thereby precluding acceleration based on such payments.

III. Whether the Master-in-Equity erred in granting summary judgment on Appellant's equitable estoppel defense where Respondent's repeated acceptance of reduced payments without declaring default may have induced Appellant's reasonable belief that such payments were acceptable, thereby precluding strict enforcement of the acceleration clause.

IV. Whether the Master-in-Equity erred in ruling that Respondent's election to accelerate the Note was proper and timely as a matter of law, rather than submitting to the factfinder the question of whether acceleration—exercised only after an extended period of silent acceptance of reduced payments—was inequitable, untimely, or barred by waiver and laches.

V. Whether the Master-in-Equity erred by resolving disputed issues of intent, consent, and credibility on summary judgment, including the disputed circumstances of the April 2024 lunch meeting between Appellant and Dr. Clarence Calcote, the characterization of Appellant's statements at that meeting, and the parties' understanding regarding the course of payment conduct.

VI. Whether the Master-in-Equity erred in accepting without genuine dispute Respondent's forensic accountant's calculations of amounts owed, including the characterization of all payments as interest-only with no reduction of principal, where Appellant disputed the allocation and application of payments—including the May 2022 reconciliation payment of $20,000—and the underlying assumptions driving the damages calculation.

VII. Whether the Master-in-Equity erred in invoking the unclean hands doctrine against Appellant for the purpose of defeating Appellant's equitable affirmative defenses, where the factual findings underlying that determination—including characterizations of false statements under oath and non-compliance with discovery orders—involved disputed credibility determinations that were inappropriate for resolution at the summary judgment stage.

VIII. Whether the Master-in-Equity erred in granting summary judgment on Appellant's defenses of accord and satisfaction and/or condonation, where the May 2022 payment of $20,000 accepted by Respondent as bringing the account "current" raised a factual question as to whether that payment constituted a recognized reconciliation of prior defaults, thereby resetting the parties' obligations and precluding reliance on those prior defaults as a basis for acceleration.

STATEMENT OF THE CASE

This matter arises from a collection action brought by Respondent Calfran Properties, a South Carolina Limited Partnership ("Calfran" or "Respondent"), against Appellant Thomas D. Calcote ("Appellant" or "Defendant") upon a note dated March 26, 2014, in the original principal amount of $600,000.00 (the "Note"). (R. p. x; Complaint). The Note, a boilerplate one-page document which references at several points "principal and interest", provided for monthly payments of $4,250.00 for a term of 180 months, with the entire principal balance due as a balloon payment on the 180th month. (R. p. x; Note). The Note contains an optional acceleration clause exercisable upon default. (R. p. x; Clarence Calcote Affidavit at ¶ 12).

Respondent filed the initial Complaint in or about April 17, 2024. Defendant filed an Answer asserting affirmative defenses including waiver, estoppel, and limitations. (R. p. x; Answer). Respondent filed an initial Motion for Summary Judgment, which was denied. (R. p. x; Summary Judgment Order filed Feb. 21, 2025). Defendant was thereafter permitted to amend his Answer, and the parties participated in discovery. (R. p. x; Amended Answer). Following the close of discovery, Respondent filed a renewed Motion for Summary Judgment in November 2025. (R. p. x; Motion for Summary Judgment and Memorandum of Law in Support with Exhibits). Appellant filed a return with a supporting affidavit of Thomas Calcote and excerpts from depositions. (R. p. x; Opposition to Plaintiff's Motion for Summary Judgment with Exhibits). Plaintiff filed a Reply. (R. p. x; Reply Memo). The motion was heard on January 14, 2026. By Order entered February 2, 2026, the Master-in-Equity granted summary judgment in favor of Respondent and awarded judgment in the amount of $677,398.94 as of January 31, 2026, and directed further proceedings on the question of attorney's fees, costs, and expenses. (R. p. x; Order granting Summary Judgment). This timely appeal followed.

STATEMENT OF THE FACTS

On March 26, 2014, Appellant executed a promissory note in favor of Calfran Properties in the amount of $600,000.00, bearing interest at the rate of 8.5% per annum. (R. p. x; Note). The Note required "principal and interest" monthly payments of $4,250.00 with the full principal balance due at the end of 180 months. *Id.* The Note also contained a prepayment restriction requiring written consent of the Holder for any principal prepayment. *Id.* The Note holds a 15-year term and was not due for five more years from the date of the purported default called by the Respondent.

Appellant is a real estate developer with a finance degree from Clemson University and a Master's degree in real estate and finance from Georgia State University. He holds professional designations including Certified Commercial Investment Member (CCIM) and Senior Certified Leasing Specialist (CLS). (R. p. x; Affidavit of Thomas Calcote, ¶ 3). Calfran is a limited partnership of which the general partner, Dr. Clarence E. Calcote ("Dr. Calcote"), is Appellant's father. *Id.* at ¶ 2.

For a number of years following execution of the Note, Appellant made the required payments. (R. p. x; Defendant's Opposition Memo; Affidavit of Thomas Calcote; Thomas Calcote Depo. pp. 71 – 73, 74; Affidavit of Melissa Johnson; Plaintiff's Exhibit C to Motion for Summary Judgment). Beginning in approximately January 2021, Appellant began remitting $4,000.00 per month rather than the required $4,250.00. *Id.* In May 2022, Appellant tendered a lump-sum payment of $20,000.00, which brought the account to a current status and reconciled the then-existing arrearage. *Id.* Respondent accepted this payment without declaring a formal default or accelerating the Note. *Id.*

Thereafter, from June 2022 through April 2024—a period of approximately twenty-three months—Appellant again remitted monthly payments of $4,000.00 rather than the contractually specified $4,250.00. (R. p. x; Affidavit of Thomas Calcote at ¶ 7). During this extended period, Respondent accepted each and every payment without declaring a default, without providing Appellant with formal notice of acceleration, and without filing suit. (R. p. x; Affidavit of Thomas Calcote at ¶ 9). Although Dr. Calcote communicated mild annoyance with the short payments in correspondence to Appellant's property manager, Drew Burris, and on other occasions, Respondent did not formally declare a default or accelerate the Note during this multi-year period of accepting short payments. (R. p. x; Plaintiff's MSJ; Exhibit C).

In mid-April 2024, Appellant met with Dr. Calcote. The circumstances and precise communications at that meeting are subject to dispute. Dr. Calcote testified in his deposition that Appellant expressed an intent to default and delivered an unsigned check. (R. p. x; Clarence Calcote Deposition p. 126, line 16 – 127, line 2). Appellant has disputed the characterization of those events and the significance of any statements made. (R. p. x; Thomas Calcote Affidavit). This factual dispute, involving only the two parties and no other witnesses, implicates credibility issues that are the exclusive province of the finder of fact.

Appellant thereafter made five more payments of $4,000.00 from June through October 2024, following the April 2024 meeting, which payments Respondent also accepted. (R. p. x; Affidavit of Clarence Calcote at ¶ 18; Exhibit B to Plaintiff's MSJ). Without demand or a right to cure, Appellant then ceased making payments in November 2024, at which point Respondent accelerated the Note and pursued summary judgment. (R. p. x; Affidavit of Clarence Calcote at ¶ 18; Exhibit B to Plaintiff's MSJ).

The lower court, in granting summary judgment, found that Appellant had made false statements in prior affidavits and had failed to comply with discovery obligations, all without a full evidentiary hearing. (R. p. x; Master's Order). The Master's findings – essentially finding the

Appellant guilty of perjury without a hearing. The court applied the doctrine of unclean hands to foreclose Appellant's equitable defenses. *Id.* The court further found that no genuine issues of material fact existed as to Appellant's defenses of waiver, estoppel, and consent. *Id.* Judgment was entered against Appellant in the amount of $677,398.94, and the matter was set for further proceedings on attorney's fees, costs, and expenses. (R. p. x; Master's Order). This appeal followed.

SUMMARY OF THE ARGUMENT

The lower court committed reversible error in granting summary judgment. Summary judgment is a drastic remedy that should be granted only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. In this case, several genuine issues of material fact—each independently sufficient to preclude summary judgment—remained unresolved.

First, Respondent's multi-year course of accepting short and irregular payments without contemporaneous enforcement gives rise to genuine issues of fact regarding waiver and modification. South Carolina law has long recognized that repeated acceptance of deficient payments may constitute waiver of strict compliance, and whether such conduct rises to waiver or modification is a question for the factfinder, not the court on summary judgment.

Second, the lower court improperly resolved the equitable estoppel defense at the summary judgment stage. Appellant's continued partial performance in reliance upon Respondent's pattern of acceptance raised genuine fact issues as to reasonable reliance and prejudice that should have been reserved for trial.

Third, the lower court impermissibly resolved credibility disputes and questions of intent on summary judgment. The pivotal events in this case—the April 2024 lunch meeting and the father-son communications over many years—involve contested testimony and disputed inferences that are the exclusive province of the finder of fact.

Fourth, the lower court's application of the unclean hands doctrine to categorically bar all equitable defenses—without an evidentiary hearing—itself constituted an improper factual determination at the summary judgment stage.

ARGUMENT

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING WAIVER AND MODIFICATION BY COURSE OF CONDUCT

A. Standard of Review

The South Carolina Court of Appeals reviews the grant of summary judgment *de novo*: "As a conclusion of law, we review the trial court's grant of summary judgment de novo." *Meredith v. Stoudemayer*, No. 2004-UP-012, 2004 S.C. App. Unpub. LEXIS 158, at *4 (Jan. 14, 2004). *See Wells v. City of Lynchburg*, 331 S.C. 296, 301, 501 S.E.2d 746, 749 (Ct. App. 1998). "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Brockbank v. Best Cap. Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000)

Summary judgment is appropriate only "if 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(c), SCRCP. In ruling on a motion for summary judgment, the court must view the evidence and all reasonable inferences therefrom in the light most favorable to the nonmoving party:

> In reviewing a grant of summary judgment, we apply the same standard as the circuit court. *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

> Summary judgment is appropriate "if 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(c), SCRCP. "The evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *Osborne*, 346 S.C. at 7, 550 S.E.2d at 321.

Byrd v. City of Hartsville, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). Summary judgment "should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." *Singleton v. Sherer*, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008).

The nonmoving party need only demonstrate the existence of a genuine issue of material fact through reasonable inferences drawn from the evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 461, 892 S.E.2d 297, 300 (2023). The existence of a "scintilla" may not suffice, but the Court of Appeals must independently examine whether the lower court improperly resolved factual questions that belonged to the finder of fact. *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

> The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.

Rife, 363 S.C. at 215, 609 S.E.2d at 568.

B. The Record Contains Evidence from Which a Reasonable Factfinder Could Find Waiver.

Waiver under South Carolina law is the 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) Critically, waiver "[can] be implied from circumstances indicating an intent to waive," including acts "inconsistent with the continued assertion of a right." *Provident Life & Accident Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994); *Bonnette v. State*, 277 S.C. 17, 282 S.E. (2d) 597 at 598 (1981); *Freeman v. McBee*, 280 S.C. 490, 493, 313 S.E.2d 325, 326 (Ct. App. 1984).

Importantly, South Carolina law recognizes that a creditor's repeated acceptance of non-conforming payments may create a factual issue regarding waiver. In *General Motors Acceptance Corp. v. Herlong*, 248 S.C. 55, 60, 149 S.E.2d 51, 53 (1966), the Supreme Court explained:

> **Repeated waivers of default by accepting delayed payments may lull the vendee into making late payments**, **relying on the expectation that they will be accepted as compliance with his contract**. Such a course of conduct will bar the vendor's right to assert a forfeiture for any payment not made at the time stipulated in the original contract, unless prior thereto he has given notice to the vendee that he will hold him to the original terms and the vendee has had a reasonable opportunity to comply therewith.

Id. (emphasis added, citations omitted).

The question before the Master was not whether Appellant ultimately would prevail on his waiver defense. Rather, the question was whether the record contained evidence from which a reasonable factfinder could conclude Respondent waived strict compliance with the payment provisions of the Note. The record contains ample evidence of such.

Respondent accepted deficient monthly payments of $4,000.00 rather than the required $4,250.00 over two distinct extended periods: first from approximately January 2021 through April 2022 (reconciled by lump-sum payment in May 2022), and again from June 2022 through October 2024.. (R. p. x; Thomas Calcote Affidavit pp. 2 – 3; Thomas Calcote Deposition pp. 71 –74). During the second period alone, Respondent also accepted consecutive short payments without declaring a formal default or accelerating the Note. This extended course of conduct squarely raises the question—reserved for the factfinder—whether Respondent voluntarily and impliedly waived strict compliance with the payment terms.

The lower court unduly focused on Respondent's repeated communications to Appellant and his property manager seeking to bring the account current and concluded this one detail negated any waiver. However, this conclusion itself involves an assessment of competing inferences and factual determinations that are reserved for the finder of fact. Whether Respondent's occasional inquiries, in the face of continued acceptance of short payments for years, constituted an effective revocation of any implied waiver—or whether Respondent's pattern of acceptance was so entrenched that no adequate notice was given to Appellant before acceleration—are genuinely disputed factual questions. Under Rule 56, the court must determine whether a genuine issue of material fact exists, not which side's evidence is more persuasive.

Indeed, the Master recognized that waiver is ordinarily a question of fact. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a question of fact for the finder of fact."). Yet the Order proceeds to evaluate the significance of Respondent's conduct, determine the effect of the parties' communications, and conclude that Respondent's acceptance of reduced payments did not constitute waiver as a matter of law.

Reasonable minds could differ regarding the effect of Respondent's years-long acceptance of reduced payments. A factfinder could conclude that Respondent merely exercised patience while preserving its contractual rights. A factfinder could also conclude that Respondent's conduct was inconsistent with strict enforcement and therefore constituted waiver. Because competing inferences may reasonably be drawn from the evidence, Rule 56 required a denial of summary judgment.

Again, the issue before this Court is not whether waiver occurred. The issue is whether a reasonable factfinder could find that waiver occurred based upon the evidence presented. Because the record contains evidence supporting that inference, summary judgment was improper and the matter should be remanded for trial.

C. At a Minimum, the Parties' Course of Conduct Created a Triable Issue Regarding Modification by Course of Dealing.

Even if the evidence ultimately proves insufficient to establish waiver, the record nevertheless contains evidence from which a fact finder could conclude that the parties modified their performance obligations through a longstanding course of conduct. South Carolina courts recognize that the intent of contracting parties and the effect of their conduct are generally factual matters not suitable for summary disposition. *Lyles v. BMI, Inc.*, 292 S.C. 153, 157, 355 S.E.2d 282, 284 (Ct. App. 1987) (holding summary judgment is improper where questions concerning the parties' intent present genuine issues of fact).

The evidence before the Master reflected that Appellant tendered reduced monthly payments over an extended period of years and that Respondent repeatedly accepted those payments. The record further reflects that after Appellant tendered a $20,000 reconciliation payment in May 2022, the parties continued operating under the same pattern of reduced monthly payments for approximately two additional years. A reasonable fact finder could conclude from this conduct that the parties had reached an accommodation concerning the manner and timing of payment performance, notwithstanding the original terms of the Note.

Respondent offered evidence supporting a different interpretation of the parties' conduct. Specifically, Respondent relied upon communications requesting that the account be brought current and argued that it never intended to relinquish or alter its contractual rights. That evidence may ultimately prevail at trial. However, Rule 56 does not permit the court to choose between competing interpretations of the evidence. Whether the parties' conduct constituted mere indulgence by Respondent, an implied waiver, or a modification of performance expectations presents a factual question upon which reasonable minds could differ. Because multiple reasonable inferences may be drawn from the parties' course of dealing, summary judgment was improper.

Whether characterized as waiver, modification, or some combination of the two, the evidence presented competing factual inferences concerning the legal effect of Respondent's years-long acceptance of reduced payments. Those questions should have been resolved by the fact finder rather than on summary judgment.

II. THE LOWER COURT ERRED IN FINDING NO GENUINE ISSUE OF MATERIAL FACT AS TO EQUITABLE ESTOPPEL

For many of the same reasons that summary judgment was improper on the issue of waiver, summary judgment was likewise improper on Appellant's equitable estoppel defense.

Equitable estoppel arises when one party, by words or conduct, induces another to believe certain facts exist, and the other party reasonably relies upon that belief to his detriment. *Strickland v. Strickland*, 375 S.C. 76, 85–86, 650 S.E.2d 465, 471 (2007). Whether the elements of equitable estoppel have been established ordinarily depends upon the particular facts and circumstances of the case. South Carolina appellate courts have repeatedly recognized that summary judgment is inappropriate where reasonable minds could differ regarding the inferences to be drawn from a party's conduct. *Springob v. Univ. of S.C.*, 407 S.C. 490, 495, 757 S.E.2d 384, 386 (2014). In determining whether a genuine issue of material fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Id.*

Equitable estoppel exists where a party induces another party to rely upon assertions and thus bars the inducing party from later asserting a contrary position to the detriment of the relying party:

> Given their derivation from the legal doctrine of waiver, we note that the doctrines of laches and equitable estoppel may be similarly indistinct at times. For example, **one who delays unreasonably could be said to be estopped from asserting a claim if another has relied on that delay to his detriment**. *See* 7 S.C. Jur. *Estoppel and Waiver* § 28. Thus, it is possible to assert only one of these equitable defenses - yet have successfully pled both.

Strickland, 375 S.C. at 86, 650 S.E.2d at 471 (emphasis added).

The elements of equitable estoppel as applied to the party to be estopped are: (1) conduct amounting to a false representation or concealment of material facts; (2) the intention or expectation that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Rushing v. McKinney*, 370 S.C. 280, 291, 633 S.E.2d 917, 923 (Ct. App. 2006). Prejudice to the relying party is an essential element. *Driver*, 317 S.C. at 479, 451 S.E.2d at 929.

> As to the party claiming estoppel, the essential elements are: (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Id. Unlike waiver, the estopped party need not intend to relinquish or change any existing right for estoppel to arise. *Janasik v. Fairway Oaks Villas*, 307 S.C. 339, 415 S.E.2d 384 (1992). The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. *Southern Dev.* [*Land & Golf Co. v. S.C. Pub. Serv. Auth.*, 311 S.C. 29], 426 S.E.2d 748 [(1993)]; *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584 (1942).

Driver, 317 S.C. at 477, 451 S.E.2d at 928.

The *Rakestraw* court also recognized that even where a note or mortgage contains an acceleration clause, equitable defenses including estoppel may be raised against the mortgagee where the election to accelerate was not made within a reasonable time or where prior conduct has misled the debtor. "Since an action to foreclose a mortgage is in equity, the election to accelerate must be made within reasonable time or the equitable defenses of laches, waiver and estoppel may be raised against the mortgagee." *Rakestraw v. Dozier Assocs., Inc.*, 285 S.C. 358, 360, 329 S.E.2d 437, 438 (1985) (same); *c.f., Coleman v. Coleman*, 208 S.C. 103, 37 S.E.2d 305 (1946).

Here, Appellant presented evidence that Respondent knowingly accepted reduced monthly payments over an extended period of years without accelerating the Note, refusing the payments tendered, or immediately pursuing available remedies. Appellant further presented evidence that Respondent accepted a $20,000 reconciliation payment in May 2022 and thereafter continued accepting reduced payments for approximately two additional years. Respondent's years-long acceptance of short payments, (1) without acceleration, (2) without written notice of default, and (3) without filing suit, constitutes conduct from which a reasonable factfinder could conclude that Respondent represented, by its conduct, that the reduced payments were an acceptable form of performance. Appellant's continued remittance of $4,000.00 monthly—and his failure to cure the monthly $250.00 shortfall during that period—may reasonably be viewed as reliance upon that implied representation. Whether such reliance was reasonable, and whether Appellant was prejudiced (in the form of lost opportunities to refinance, sell property, or otherwise remedy the situation), are quintessential questions for the trier of fact that the lower court improperly resolved on summary judgment.

The Master's primary basis for rejecting the estoppel defense was Appellant's deposition testimony in which he stated he had "no clue" what estoppel meant. However, the legal viability of an affirmative defense does not depend upon the defendant's ability to articulate the legal theory in a deposition. Rather, it depends upon whether the facts in the record, viewed in the light most favorable to the nonmoving party, could support the defense. The relevant question on summary judgment was whether a genuine issue of material fact existed as to the elements of estoppel, not whether Appellant could provide a law-school-quality definition of the doctrine under oath.

The Master ultimately concluded that Appellant failed to establish equitable estoppel. In doing so, however, the Order necessarily evaluated the significance of the parties' communications, drew inferences concerning Appellant's understanding of those communications, and determined the reasonableness of any reliance. Those determinations are inherently factual in nature. Whether Respondent's course of conduct gave rise to a reasonable belief that reduced payments would continue to be accepted, whether Appellant relied upon that conduct, and whether such reliance was reasonable under the circumstances are questions that should have been resolved by the factfinder rather than on summary judgment. Accordingly, the Master erred in disposing of Appellant's equitable estoppel defense as a matter of law.

III. THE LOWER COURT IMPROPERLY RESOLVED CREDIBILITY DISPUTES AND WEIGHED COMPETING EVIDENCE ON SUMMARY JUDGMENT.

Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In determining whether a genuine issue of material fact exists, the court must view all evidence and reasonable inferences in the light most favorable to the non-moving party. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that litigants are not deprived of a trial on disputed factual issues. *Singleton v. Sherer*, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008).

Consistent with these principles, South Carolina courts have long recognized that credibility determinations, the weighing of evidence, and the resolution of competing factual inferences are functions reserved for the factfinder. *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 513, 450 S.E.2d 624, 628 (Ct. App. 1994); *Murphy v. Tyndall*, 384 S.C. 50, 56, 681 S.E.2d 28, 31 (Ct. App. 2009). "Matters of credibility should not be determined at the summary judgment stage." *Hiers by Hiers v. Mullens*, 310 S.C. 63, 68, 425 S.E.2d 57, 60 (Ct. App. 1992).

The Order in this case did far more than determine whether genuine issues of material fact existed. Instead, the Order resolved disputed question of material fact, evaluated witness credibility, and determined which version of contested events should be believed. Most notably, the Order relied heavily on Respondent's account of an April 2024 meeting between Appellant and Dr. Calcote. According to the Order, Appellant advised Dr. Calcote that he intended to default on the Note and presented an unsigned check. Those findings derive from testimony concerning a private conversation attended by only two people. The meaning and import of that conversation, the statements allegedly made, and the significance of those statements were all disputed facts. Yet the Master accepted Respondent's account as truth and drew inferences adverse to Appellant.

Accepting that one-sided account as established fact, and drawing all inferences adverse to Appellant, is precisely the error that summary judgment doctrine prohibits. *Bennett v. Carter*, No. 2015-UP-491, 2015 S.C. App. Unpub. LEXIS 627, at *5 (Oct. 14, 2015) (noting that disputes involving notice and one-party testimony raise credibility issues inappropriate for summary judgment).

Additionally, the lower court's finding that Appellant "has made false statements under oath to the Court" is itself a finding on credibility—one that should not be made on motion papers. Whether Appellant's prior affidavit statements regarding the payment mechanism and the amount paid were intentionally false, negligently inaccurate, or the product of a good-faith mis-recollection are questions of intent and credibility. The existence of conflicting evidence about the manner in which payments were processed, and the total amount remitted, does not compel the conclusion that any discrepancy was fraudulent. These are precisely the kinds of contested factual and credibility issues that must go to the finder of fact. *Chappell v. State*, 429 S.C. 68, 79, 837 S.E.2d 496, 502 (Ct. App. 2019).

The problem is that the conclusions made by the Master required the Master to evaluate credibility, assess intent, and choose between competing interpretations of the evidence. The distinction is critical. A fact finder may ultimately determine that Appellant's testimony is not credible. A fact finder may ultimately conclude that Respondent's version of events is more persuasive. Those determinations, however, can be made only after the parties have had an opportunity to present evidence and have their credibility assessed through the ordinary fact-finding process.

The purpose of summary judgment is not to determine which side should prevail. Rather, it is to determine whether factual disputes requiring resolution by a factfinder exist. Here, the Order repeatedly resolved disputed factual issues concerning the parties' communications, intentions, conduct, and credibility. Because those issues lie at the heart of Appellant's defenses, they could not properly be decided on summary judgment. Accordingly, reversal is required.

IV. THE LOWER COURT ERRED IN IN RELYING UPON DISPUTED FACTUAL FINDINGS TO APPLY THE DOCTRINE OF UNCLEAN HANDS.

The doctrine of unclean hands provides that a party seeking equity must not have acted inequitably with respect to the subject matter of the litigation. *Emery v. Smith*, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004); *Ingram v. Kasey's Assocs*., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). The doctrine is properly applied as a matter requiring careful factual analysis; it is not a categorical bar to all equitable defenses based upon contested prior conduct.

Appellant does not dispute that the doctrine may, in an appropriate case, bar equitable claims or defenses. The issue presented here is whether the doctrine could properly be applied on summary judgment where its application depended upon the resolution of disputed factual issues and credibility determinations. The Order relied heavily upon findings that Appellant made false statements under oath, failed to comply with discovery obligations, and otherwise engaged in litigation misconduct. Based upon those findings, the Master concluded that Appellant came before the court with unclean hands and therefore could not rely upon equitable defenses such as waiver and estoppel.

Those findings, however, were disputed. Whether Appellant's prior statements were intentionally false, mistaken, incomplete, or the product of misunderstanding required an assessment of credibility and intent. Likewise, whether Appellant's conduct during discovery reflected willful misconduct, negligence, misunderstanding, or some other explanation involved factual determinations that could not properly be resolved on summary judgment.

The issue before the Master was not whether Appellant ultimately should prevail on the question of unclean hands. Rather, the issue was whether the evidence permitted only one reasonable conclusion. It did not. By applying the doctrine of unclean hands as a threshold basis for rejecting Appellant's equitable defenses, the Order necessarily accepted one version of disputed events, rejected Appellant's competing explanations, and made credibility determinations adverse to the non-moving party. In doing so, the Master went beyond determining whether genuine issues of material fact existed and instead resolved those factual disputes.

South Carolina law requires that all evidence and reasonable inferences be viewed in the light most favorable to the non-moving party. *Byrd v. City of Hartsville*, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). Likewise, credibility determinations are reserved for the factfinder and may not be resolved at the summary judgment stage. *Hiers by Hiers v. Mullens*, 310 S.C. 63, 68, 425 S.E.2d 57, 60 (Ct. App. 1992). Whether Appellant's conduct justified application of the doctrine of unclean hands presented factual questions that could not properly be resolved as a matter of law on the record before the court. Because the Master relied upon disputed factual findings and credibility determinations to defeat Appellant's equitable defenses, summary judgment was improper and should be reversed.

CONCLUSION

For all of the foregoing reasons, Appellant Thomas D. Calcote respectfully requests that this Honorable Court:

(1) **REVERSE** the Order Granting Plaintiff's Motion for Summary Judgment entered by the Master-in-Equity on February 2, 2026;

(2) **REMAND** this matter to the lower court for trial on the merits of all disputed factual issues, including (1) waiver, (2) modification by course of dealing, (3) equitable estoppel, and (4) the propriety of acceleration;

(3) In the event of reversal, **VACATE** the award of attorney's fees and direct that any attorney's fee proceedings be deferred pending the outcome of trial; and

(4) **GRANT** such other and further relief as this Court deems just and proper.

Dated: June 18, 2026

Respectfully submitted,

s/ John E. Robinson

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