BRIEF OF APPELLANT/RESPONDENT

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Grace Gilchrist Knie, Circuit Court Judge

Trial Court Case No. 2017CP4202374

Appellate Case No. 2025-002050

Richard Lewis and Walter
Lewis,
Respondents/Appellants

v.

Robert M. Errato, Quinnipiac Associates,
Inc. and Upwards Builders, Inc.,
Defendants

of which Robert M. Errato is the
Appellant/Respondent

<u>OPPOSITION BRIEF OF APPELLANT/RESPONDENT, ROBERT M. ERRATO</u>

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STATEMENT OF THE CASE

Appellant/Respondent, Robert Errato ("Appellant") hereby incorporates by reference the Statement of the Case as set forth in his Initial Brief in this appeal, filed on April 23, 2026.

ARGUMENT

I. RESPONDENTS/APPELLANTS HAVE FAILED TO DEMONSTRATE REVERSIBLE ERROR IN THE DENIAL OF CONSTRUCTIVE TRUST AND INJUNCTIVE RELIEF

The threshold problem with the brief filed by Respondents/Appellants ("Respondents") is not merely the weakness of their underlying claims, but it is their failure to demonstrate that the trial court committed reversible error.

Respondents appealed from orders denying a constructive trust and injunctive relief concerning property owned by Quinnipiac Associates, Inc. Respondent's briefing, however, devotes remarkably little attention to the actual grounds upon which the trial court denied relief. Instead, Respondents largely reargue the history of the parties' business relationship, allegations concerning project accounting, and alleged discovery disputes, while failing to explain why the trial court's reasoning in denying the constructive trust and injunction was legally incorrect.

Most importantly, Respondents never meaningfully address the trial court's repeated findings that they failed to present new facts, new law, or any basis for a different result. Nor do they establish how the extraordinary remedies of constructive trust and injunction are justified where ownership remains disputed and where their claims ultimately concern alleged profits and disputed accounting issues.

The issue before this Court is not whether Respondents disagree with the trial court. The issue is whether Respondents have demonstrated reversible error. The answer to this is clear: they have not. The threshold problem with Respondents' appeal is not merely the weakness of their underlying claims. It is their failure to demonstrate that the trial court committed reversible error. For that reason alone, the orders denying constructive trust and injunctive relief should be affirmed.

II. RESPONDENTS/APPELLANTS HAVE FAILED TO ESTABLISH ANY PRESENT ENTITLEMENT TO PROFITS OR OTHER EQUITABLE INTEREST REQUIRING EXTRAORDINARY RELIEF

Even assuming this Court elects to reach the merits, Respondents cannot establish any present entitlement to profits or other equitable interest warranting extraordinary intervention from this Court. Thus, the trial court's denial of Respondents' motion should be upheld.

A recurring theme throughout Respondents' brief is the assertion that Appellant admitted the existence of a "50/50 partnership" and acknowledged that profits would ultimately be shared. Respondents repeatedly rely upon isolated portions of deposition testimony while overlooking the condition attached to those statements. Appellant has never denied that the parties agreed to split the profits of the project after expenses were paid. The problem has always been that expenses still remain outstanding and there have been no profits to share with Respondents.

Indeed, Respondents' own Complaint recognizes that any profit-sharing arrangement was contingent upon repayment of project obligations. In Paragraph 62 of the Complaint, Respondents expressly allege that the parties would "ultimately split profits when any loan and costs were paid." That allegation is significant because it establishes a condition precedent prior to any obligation to distribute the profits.

Under Respondents' own theory of the case, Quinnipiac was entitled to recover loans, advances, capital contributions, and project costs before any profit-sharing obligation arose. Thus, before Respondents can establish entitlement to profits, they must first establish that the prerequisite event identified in their own pleading actually occurred. The problem is that

Respondent have failed to do so. Rather than identifying any judicial finding, certified accounting, audited financial statement, or undisputed financial calculation establishing that all loans and costs were repaid, Respondents simply assume that condition has been satisfied. The record, however, reflects otherwise.

Appellant produced financial records during discovery reflecting outstanding balances and unrecovered project obligations extending beyond 2010 and continuing thereafter. Respondents have not identified any court finding establishing that those balances were fully satisfied. Nor have Respondents established through undisputed evidence that Quinnipiac recovered all capital, loans, costs, and advances that Respondents themselves acknowledge must be repaid before any profit-sharing obligation arises.

Instead, Respondents rely heavily upon a forensic accounting report that purports to calculate amounts allegedly owed to them. Even assuming, however, solely for purposes of argument, that Respondents' expert report is admissible and entitled to consideration, the report does not establish ownership of the Property, ownership of Quinnipiac Associates, or entitlement to a constructive trust. At most, the report reflects one side's interpretation of disputed financial records and presents an opinion concerning alleged damages.

That distinction is critical. The existence of competing accounting positions demonstrates precisely why extraordinary equitable relief was inappropriate. Respondents rely upon an expert's interpretation of the financial records. Appellant relies upon financial records showing unrecovered balances and project obligations. The resulting dispute concerns accounting methodology, project expenses, capital recovery, loans, reimbursements, and the calculation of profits. These are classic issues of fact for a trial. They are not, however, the type of undisputed facts that justify the imposition of a constructive trust, an injunction, or any type of judicial control over property before the merits of the case have been determined.

Indeed, Respondents' reliance upon a forensic accounting report ultimately reinforces the trial court's decision. If expert analysis is required to determine whether profits exist, whether loans were repaid, whether costs were recovered, and whether any distributions are owed, then the parties are engaged in a disputed accounting case. These facts make it clear that this is not a case involving a clear and established ownership interest in real property.

In addition, it should be noted that Respondents' reliance upon alleged discovery violations does not demonstrate entitlement to any type of extraordinary equitable relief. Respondents devote substantial portions of their Brief to the assertion that Appellant repeatedly ignored discovery orders and therefore should have been subjected to extraordinary equitable relief. That characterization, however, is inconsistent with the actual rulings entered by the circuit court.

Following extensive hearings on Respondents' Rule to Show Cause, the Honorable R. Keith Kelly dismissed the Rule to Show Cause in its entirety. In doing so, the court expressly rejected Respondents' request that Appellant's pleadings be stricken as a discovery sanction and concluded that Respondents had failed to make the showing necessary for such relief under Rule 37, SCRCP. The court specifically observed that striking pleadings constitutes "harsh medicine" that should not be imposed absent the required showing of bad faith, willful disobedience, or gross indifference, and expressly found that Respondents failed to make such a showing here.

The circuit court further found that Appellant had produced significant accounting and other requested records, including profitability calculations, tax returns, banking authorizations, accountant authorizations, divorce records, and other financial documentation. The court also recognized that Appellant had submitted sworn testimony that all documents in his possession had been produced. After reviewing the production, the court concluded that the documents answered at least some of the questions raised by Respondents and specifically referenced Appellant's accounting records concerning the calculation of profits and losses for the development.

Rather than finding discovery abuse warranting sanctions, the circuit court recognized that Appellant utilized a particular accounting methodology, observing that Appellant "compartmentalizes his accounting," while directing that discovery continue and that Appellant explain his accounting methodology through deposition testimony. The court therefore chose continued discovery, rather than sanctions or any other extraordinary equitable relief, as the appropriate remedy.

Respondents now attempt to transform those same discovery disputes into proof that a constructive trust and injunction should have been granted. The trial court has already rejected that argument. Had the court concluded that Appellant engaged in willful disobedience of discovery orders, Rule 37 provided ample authority to impose sanctions, strike pleadings, or grant other appropriate relief. The court did none of those things. Instead, it dismissed the Rule to Show Cause and permitted discovery to continue.

The trial court was not required to resolve disputed accounting questions or disputed discovery questions through the extraordinary remedies of injunction and constructive trust. To the contrary, the existence of unresolved financial disputes strongly supports the trial court's conclusion that such relief was inappropriate. Thus, the trial court's decision should be upheld on appeal.

III. RESPONDENTS/APPELLANTS CANNOT ESTABLISH THE LEGAL REQUIREMENTS FOR A CONSTRUCTIVE TRUST OR INJUNCTIVE RELIEF

Throughout this litigation, Respondents have attempted to transform allegations concerning development work, anticipated profits, and business expectations into ownership rights in property owned by Quinnipiac Associates. The trial court repeatedly rejected that theory and consistently recognized that this dispute concerns alleged profits rather than ownership of real property. That distinction is fundamental. Respondents may believe they are entitled to compensation. They may believe they contributed labor, services, expertise, or resources to the development project. They may ultimately pursue claims seeking monetary recovery. None of those allegations, however, establishes ownership of the Property itself.

The Property was acquired and held by Quinnipiac Associates. Respondents have never produced stock certificates, shareholder records, corporate resolutions, K-1 forms, ownership agreements, deeds, or any other documentary evidence establishing ownership of either Quinnipiac Associates or the Property. Without ownership, Respondents' equitable claims necessarily fail.

South Carolina law recognizes that a constructive trust is an extraordinary equitable remedy imposed only where property has been acquired or retained through fraud, abuse of confidence, breach of fiduciary duty, or other unconscionable conduct. *See, e.g., SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 500 (1990) ("A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty."); *Halbersberg v. Berry*, 302 S.C. 97, 106 (Ct. App. 1990) ("A constructive trust arises against one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of a wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means and against good conscience, either has obtained or holds the right to property which he ought not in equity and good conscience hold and enjoy.").

Respondents never establish those elements in order to prove they are entitled to a constructive trust. They identify no fraudulent transfer of title. They identify no wrongful conveyance of ownership. They identify no abuse of confidence resulting in Quinnipiac obtaining title. They identify no breach of fiduciary duty through which Quinnipiac acquired ownership of the Property. Most importantly, they identify no evidence that Quinnipiac wrongfully acquired title in the first place.

Instead, Respondents repeatedly return to allegations concerning work performed and profits expected. Those allegations may support a claim for damages, but they do not support a constructive trust, which is why the trial court denied the request for a constructive trust over and over again. The trial court's ruling should be upheld as legally correct.

The same defect that undermines a constructive trust also undermines Respondents' request for injunctive relief. Injunctive relief is intended to protect legally cognizable rights from irreparable harm. It is not a mechanism for securing payment of alleged debts or preserving speculative future recoveries. In order to prove that Plaintiffs should be entitled to an injunction, they would have needed to show the following: "(1) [they] will suffer immediate, irreparable harm without the injunction; (2) [they have] a likelihood of success on the merits; and (3) [they have] no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366 (2011). Respondents failed in this argument, as they have not and cannot prove any of these elements.

Respondents' claims remain fundamentally claims for money and a split in the profits of the project, if any and can be proven. If Respondents ultimately prevail, monetary damages remain available. Because an adequate remedy at law exists, and because Respondents lack a legally cognizable ownership interest requiring protection, the trial court correctly denied injunctive relief.

Respondents also argue that an injunction was necessary because Appellant allegedly sold lots and may dissipate assets before final judgment. That argument likewise fails. The possibility that a defendant may spend or transfer assets before judgment does not automatically convert an ordinary accounting or contract dispute into irreparable injury. Were that rule otherwise, nearly every commercial dispute involving alleged unpaid money would justify prejudgment restraints upon a defendant's property. South Carolina law has never adopted such a rule, and the circuit court correctly concluded that an injunction concerning the Property was "too drastic" under the circumstances presented.

Thus, the trial court's ruling to deny the constructive trust and injunctive relief should be upheld on appeal. Not only did Respondents fail to provide any arguments in favor of their appeal, but Respondents could also not provide any reason why the trial court erred in denying their request continuously through the years. The denial should be affirmed.

IV. THE TRIAL COURT REPEATEDLY FOUND THAT RESPONDENTS/APPELLANTS PRESENTED NO NEW FACTS, NO NEW LAW, AND NO BASIS FOR A DIFFERENT RESULT

The procedural history independently supports affirmance. This Court is not reviewing a single denial of equitable relief. Rather, it is reviewing multiple rulings issued by multiple judges over multiple years, all reaching the same conclusion.

When Respondents renewed their request for equitable relief, Judge Curtis expressly found: "I find the current motion is nearly identical to the previous motion filed by Plaintiffs and denied by this court on May 14, 2021. Plaintiffs have failed to show any new or different grounds that would compel another result." That finding goes directly to the heart of this appeal. The court was not presented with newly discovered evidence. The court was not presented with newly discovered ownership rights. The court was not presented with newly developed legal authority. Instead, the court was presented with the same request for relief based upon substantially the same allegations.

The same conclusion was reached again when Respondents sought reconsideration. Judge Knie found that the Court was "unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered."

These findings deserve substantial weight. Two separate circuit court judges independently concluded that Respondents had presented no new facts, no new law, no overlooked authority, and no basis for disturbing prior rulings. Respondents never meaningfully addressed those findings because the record does not permit them to do so.

The principle of finality exists to prevent precisely this type of repetitive litigation. Judicial decisions must eventually become final. Litigants cannot repeatedly file substantially identical motions, receive substantially identical rulings, and then use the latest denial as a vehicle to relitigate issues that could have been appealed years earlier. Nothing material changed between the original denial and the orders now before this Court. The Property remained owned by Quinnipiac Associates, and Respondents still lack ownership rights in the Property. The legal theories and the facts remained unchanged with every filing of the motions by Respondents. Respondents' disagreement with the result has continued through the years, but that disagreement does not provide a basis for reversal. The trial court's ruling must be upheld.

CONCLUSION

In light of the foregoing, Appellant/Respondent Robert M. Errato respectfully requests that this Court uphold the denial of the Motion for Injunction filed by Respondents/Appellants.

Respondents failed to demonstrate reversible error. Their own Complaint recognizes that the repayment of loans and costs was a prerequisite to any profit-sharing obligation, yet they failed to establish that condition through undisputed evidence. Their reliance upon a forensic accounting report confirms the existence of unresolved accounting disputes rather than ownership rights warranting extraordinary equitable relief.

Respondents cannot establish ownership of the Property, cannot satisfy the elements of a constructive trust, cannot satisfy the requirements for injunctive relief, and cannot overcome the trial court's repeated findings that no new facts, no new law, and no basis for relief existed.

Most importantly, the trial court repeatedly rejected Respondents' requests for extraordinary relief, dismissed their Rule to Show Cause after finding that they failed to establish grounds for discovery sanctions, denied the requested constructive trust, denied the requested injunction as "too drastic," later found Respondents had presented no new facts or law warranting reconsideration, and consistently permitted the underlying accounting issues to proceed toward trial. Respondents have demonstrated no reversible error in any of those rulings.

For these reasons, Appellant respectfully requests that this Court affirm the denial of Respondents' motions for injunction and constructive trust, reject Respondents' appeal in its entirety, reverse the denial of Appellant's motion concerning the conservators (as stated in Appellant's initial brief previously filed), and remand this matter for further proceedings consistent with South Carolina law.

Dated: June 30, 2026

Respectfully submitted:
DEFENDANT-APPELLANT:
ROBERT M. ERRATO

/s/
Robert Errato
Pro Se