

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

---

APR 23 2014

Case No. 2008-CP-40-5518

---

**S.C. SUPREME COURT**

Les Springob, Paul Trussell, Barton Dumas,  
Stanley Harpe and John Yenco, ..... Plaintiffs,

Of Whom, Paul Trussell, Barton Dumas,  
and John Yenco are, ..... Appellants,

v.

The University of South Carolina and the  
University of South Carolina Gamecock Club, ..... Respondents.

---

**REPLY TO APPELLANTS' RETURN TO  
RESPONDENTS' PETITION FOR REHEARING**

---

The Respondents University of South Carolina and the University of South Carolina Gamecock Club (collectively referred to as "University") have petitioned this Court for a rehearing in part of its recent decision in *Springob v. University of*

*South Carolina*, Op. No. 27363 (S.C. S.Ct. filed March 12, 2014). The Appellants have now filed a return to which a brief reply is warranted.

The University has argued as a basis for rehearing that the Court, with its ruling, has rendered the statute of frauds a nullity by allowing the Appellants to utilize parol evidence to satisfy the prerequisite of showing the existence of an oral contract and its essential terms as part of the estoppel exception to the statute of frauds. In their return, the Appellants offer no rebuttal to this point. They simply offer extensive quotes from this Court's opinion and then make the previously rejected argument that the affidavits submitted (i.e., the parol evidence) is undisputed and unchallenged.

On this latter point, the Court has already recognized that there is a fact question in dispute as to the existence of an oral agreement and its essential terms beyond the initial five-year period. *See*, Slip Op. at 6 ("Appellant's affidavits create a fact question as to the existence of an oral contract beyond year five"). Moreover, in his deposition testimony, Chris Massaro of the Gamecock Club testified that he never told anyone that there would be no additional sum owed for the premium seating after the five year term ended. Massaro explained: "I can tell you that I never gave the impression that there wouldn't be payments after five years. That did not come out of my mouth. That was always our intent." (R. 99). Thus, the affidavits are not "undisputed and unchallenged" as Appellants continue to argue – a position previously rejected by this Court.

Therefore, with it clear that the existence of an oral agreement and its essential terms are legitimately in dispute beyond the initial five-year period, this is the very scenario where the statute of frauds becomes applicable. The estoppel defense should not be utilized to circumvent the purpose of the statute of frauds where the existence of an oral contract and its essential terms are reasonably in dispute. The allowance of parol evidence to establish the existence of an oral contract within the context of an estoppel exception circumvents the entire purpose of the statute of frauds – why require a writing when all one would need to have is parol evidence of the purported agreement under the guise of an estoppel defense? The Court is respectfully asked on rehearing to re-examine this critical point and not to render the statute of frauds a nullity.

Respectfully requested,

DAVIDSON & LINDEMANN, P.A.

BY: 

---

ANDREW F. LINDEMANN  
WILLIAM H. DAVIDSON, II  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Respondents*

Columbia, South Carolina

April 18, 2014

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

---

Case No. 2008-CP-40-5518

---

Les Springob, Paul Trussell, Barton Dumas,  
Stanley Harpe and John Yenco, ..... Plaintiffs,

Of Whom, Paul Trussell, Barton Dumas,  
and John Yenco are, ..... Appellants,

v.

The University of South Carolina and the  
University of South Carolina Gamecock Club, ..... Respondents.

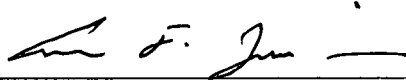
---

**CERTIFICATE OF SERVICE**

---

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of the **Reply Memorandum in Support of Respondents' Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 18th day of April 2014:

Joseph M. McCulloch, Jr., Esquire  
Kathy Schillaci, Esquire  
Law Offices of Joseph M. McCulloch, Jr.  
Post Office Box 11623  
Columbia, South Carolina 29211



---