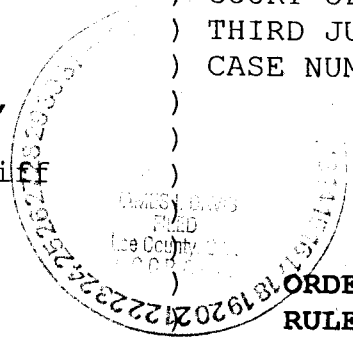


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SUBJECT: Appeals

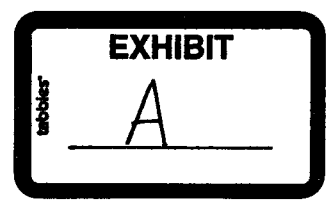
STATE OF SOUTH CAROLINA)
 COUNTY OF LEE) COURT OF COMMON PLEAS
 A&P Enterprises, LLC,) THIRD JUDICIAL CIRCUIT
 Plaintiff) CASE NUMBER: 2013-CP-31-194
 Versus)
 SP Grocery of Lynchburg, LLC)
 And Suresh "Sam" Patel)
 Defendants.)



**ORDER DENYING PLAINTIFF'S
 RULE 59(e) AND 60 MOTIONS**

This Order is in response to the Plaintiff's motion, pursuant to SCRPC 59(e) and 60, requesting this Court alter, amend or reconsider the Order filed April 21, 2014. The plaintiff's motion was timely filed on May 1, 2014 and properly served on this Court and Defendants. A hearing on Plaintiff's motion was held on October 22, 2014. Present and appearing at this hearing were all of the parties as well as their respective counsel of record. Following the hearing, both parties requested and were granted the opportunity to submit memoranda of law in support of their respective positions. Based upon the arguments of the parties counsel, review of the record and consideration of the memorandums of law submitted by the parties, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW



1. The Plaintiff's arguments in support of its motion, summarized from its memorandum of law, are as follows:
 - a. The Defendant lacks standing to assert a claim for promissory estoppel because any interest of Defendant in the property would be for the benefit of a Bankruptcy Estate.
 - b. The Defendant is barred from seeking the equitable remedy of promissory estoppel because of the doctrine of unclean hands.
 - c. The Defendant's claim for promissory estoppel fails as a matter of law because 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
2. I find that the first and second arguments made by Plaintiff are both linked to the filing of bankruptcy by Sam Patel. The first position is that Defendant could not have any interest, equitable or otherwise, if such interest is an asset of a bankruptcy estate. The second position is that Sam Patel's agreement with his brother to buy back the store constitutes an agreement to circumvent his creditors and therefore results in unclean hands.

I do not find that there is evidentiary support for these positions. The evidence of record is testimony by Kim Patel that he loaned Sam Patel \$5000.00 to pay for a bankruptcy filing. No further evidence as to the nature of the bankruptcy proceeding or the outcome are in evidence. I do find that, as to the bankruptcy filing, Kim Patel was certainly aware of the event. I do not find that either of the first two arguments, even if there was evidence to support them, could be made for the benefit of Kim Patel. I do not find that these arguments of Plaintiff give this Court any reason to alter the previous Order.

3. The Plaintiff asserts that the Defendant's claim for promissory estoppel must fail as a matter of law because the Plaintiff contends: 1) Defendant did not prove existence of a contract unambiguous in its terms, and 2) the Defendant did not prove reasonable reliance.
4. The elements of promissory estoppel, as set forth in the Order, are: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

5. I am convinced by the overwhelming weight of the credible evidence, and find by clear and convincing evidence, that Kim unambiguously promised Sam that he would convey the property to Sam and that Sam relied on this promise to his detriment. I find the evidence established that Kim Patel offered to buy back the Lynchburg property for his brother Sam and that Kim initially wanted to pay for the property and title it in Sam's name. Sam insisted on paying Kim back for what Kim paid for the property and that he did not want Kim to put the property into his name until he had done so. Sam acknowledged that the purchase of the property was not intended as a gift, but rather, Sam would pay Kim back within five years. I find that there was an unambiguous promise that the property was to be Sam's upon payment to Kim of the amount Kim paid for the property.

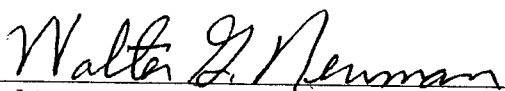
6. In reaching these conclusions, I specifically address and incorporate this Court's previous findings as to credibility of witnesses. This Court had the opportunity to observe the witnesses, both parties and non-parties, their demeanor, and the overall context with which the events that were the subject of their testimony unfolded. Kim Patel testified that he purchased this property solely as an investment to rent it back to his brother.

I do not find that Kim Patel's testimony was credible. I do find that the testimony of Sam Patel was credible and was supported by evidence of the other witnesses. Based on this credible evidence, I find and conclude that there was an unambiguous promise that Kim would convey the property back to Sam.

7. I find that, based upon the unambiguous promise that Kim would convey this property back to Sam, Sam did act in reasonable reliance on the promise. Further, I find that this reasonable reliance was to Sam's detriment. I find that the evidence established that Sam made improvements of a nature and extent that would have been made only if Sam believed the property was going to be his.
8. I find that, to allow Kim Patel to back out of his unambiguous promise would be to countenance the perpetration of an injustice, whereas enforcing the agreement between the parties gives both parties the benefit they each contemplated at the time the promise was made. Sam Patel will end up getting the property back, assuming he makes the payment due Kim, and Kim will end up with the economic benefit anticipated.
9. I find and conclude that the elements necessary to sustain recovery in promissory estoppel are proved by credible evidence and evidence that this Court finds

clear and convincing. Based upon all of the foregoing,
the Plaintiff's Motions pursuant to Rules 59(e) and 60 of
the South Carolina Rules of Civil Procedure are
respectfully denied.

AND IT IS SO ORDERED.



Walter Newman
SPECIAL REFEREE- Lee County

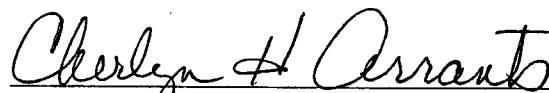
Sumter, South Carolina

Feb. 18, 2015

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE)	THIRD JUDICIAL CIRCUIT
)	CASE NUMBER 2013-CP-31-194
A&P Enterprises, LLC,)	
)	
Plaintiff)	
)	
Versus)	CERTIFICATE OF MAILING
)	
SP Grocery of Lynchburg, LLC)	
And Suresh "Sam" Patel)	
)	
Defendants.)	
)	

The undersigned hereby certifies that she is a secretary with the law firm of Jennings & Jennings, P. A.; that a copy of the **ORDER DENYING PLAINTIFF'S RULE 59(E) AND 60 MOTIONS** was served in the foregoing action by depositing the same in the United States mail with sufficient postage affixed thereto and return address clearly visible on the 4th day of March, 2014, addressed to the following:

John C. Bradley, Jr.
 Moore Taylor Law Firm, PA
 PO Box 5709
 West Columbia, SC 29171


 Cheryl H. Arrants

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)
)
 A&P Enterprises, LLC,)
)
 Plaintiff)
)
 Versus)
)
 SP Grocery of Lynchburg, LLC.)
 Payal Suresh Patel and)
 Suresh "Sam" Patel)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2013-CP-31-194

ORDER



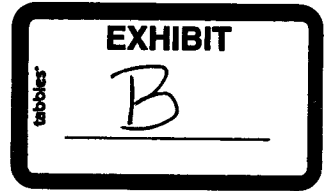
"Good fences make good neighbors." - from Robert Frost's "Mending Wall."
 "Good contracts preserve family and business relationships." - Anonymous.

Background and Procedural History

The above-captioned case was referred to me as Special Referee by consent of the parties and Order of the Honorable James I. Davis on file herein. This matter came to trial before me on February 18, 2014 and both parties presented their respective testimony and documentary evidence.

This action was commenced by the filing by the plaintiff of an action for ejectment in the Lee County Magistrate's Court pursuant to South Carolina Code § 273720. The plaintiff seeks the ejectment of the defendant from property owned by the plaintiff situate in Lee County, South Carolina. The defendant filed a timely return to the Rule to Show Cause in which he set up his ownership or equitable interest in the property as a defense to the ejectment. The parties consented to transfer their respective claims to the Court of Common Pleas. The plaintiff subsequently filed an Amended Complaint to which the defendant filed a proper Answer and Counterclaim. The plaintiff made a timely reply.

A&P Enterprises, LLC is a South Carolina LLC whose sole member is Kamlesh K. Patel, known as "Kim" Patel. SP Grocery of Lynchburg, LLC is a South Carolina limited liability company whose sole member is Payal Suresh Patel. Payal Suresh Patel is the daughter of Suresh Patel, also known as "Sam" Patel. Sam Patel and Kim Patel are brothers.



At the outset of the trial in this matter, plaintiff stipulated to the dismissal of any claims against Payal Suresh Patel, individually. This stipulation was consented to and all claims against Payal Suresh Patel, individually, are hereby dismissed.

The principal parties in interest in this matter are two brothers, Sam and Kim Patel. Though they are associated with respective LLC's, as described above, this Order shall refer to the parties simply as Sam and Kim hereafter.

Sam Patel moved to the United States from India in approximately 1979. Sam's parents, his brother and sisters followed. The entire family had moved in with Sam and his wife in Chicago by the early 1980's. In approximately 1989, Sam bought a store located at Willow Grove Road in Lynchburg. Sam, his wife and children, along with Sam's parents and brother Kim moved from Chicago to South Carolina.

The entire extended family lived on the premises of the store in Lynchburg. Sam, along with the rest of his extended family, worked in the Lynchburg store. The business grew, and eventually a store in Sumter was acquired. There is some dispute as to the circumstances, but by approximately 1992, Kim took over the Sumter store as his own. From this point, Sam and Kim operated their own respective businesses. Both of brothers were apparently successful and came to have other stores and investments.

In 2010, the Defendant Suresh "Sam" Patel owned three parcels of improved real estate in Lynchburg, South Carolina (the "Property"). On two of these parcels, Sam Patel operated a liquor store and a convenience store called "Tommy's Grill." Sam's other businesses included construction and development. At this time, Sam Patel and his companies were experiencing serious financial difficulties which ultimately forced him to file a bankruptcy petition with the United States Bankruptcy Court, District of South Carolina in 2011. Kim loaned him \$5,000 in January 2011 to help pay for the bankruptcy filing.

The Lynchburg store, along with other properties that Sam owned, went into foreclosure. Prior to the foreclosure sale, the brothers talked, and, although they now disagree over the nature of the conversation, they do agree that the result was that Kim would bid on the property at the foreclosure sale. Kim was the successful bidder at the foreclosure sale held on May 9, 2011. The deed transferring the property was filed with the Lee County Clerk of Court on October 13, 2011 showing that A&P Enterprises, LLC, (Kim), had bought the property including the Lynchburg store. The purchase price for the property was \$350,001.00.

Due to Sam Patel's financial problems and pending bankruptcy case, the ownership of the convenience store that operated on the property was placed in the name of SP Grocery, LLC ("SP Grocery") during the summer of 2011. Sam Patel's daughter, Payal Patel, owned 100 percent of SP Grocery. SP Grocery obtained all operating, lottery, and alcohol licenses for the convenience store and liquor store.

Sam continued to operate the Willow Grove Road store, known as Tommy's Grill, after Kim's purchase of the property.

No rent has ever been paid to Kim by Sam. In August 2011, Kim, at the request of the Sam, purchased a truck load of fuel for Sam for \$17,415. Sam agreed to repay Kim for the cost of this fuel. In early 2013, the Kim purchased another tank of fuel for the Sam for \$20,000. Sam has repaid \$3,000 of this sum with \$17,000 still owed. In addition, in 2012 and 2013, Kim was forced to pay the property's real property taxes of \$3,785.47 for each year, for a total of \$7,570.

Kim's position is that the property was purchased solely as an investment and that he expected Sam to pay rent at some point as Sam had informed Kim while asking him to purchase the property that it would be a good investment since he would pay his brother a monthly rent along with paying all maintenance costs, insurance and real estate taxes for the property. Kim says that he relied on these representations, ultimately agreed to purchase the property, and made a high bid of \$350,001 for the property at the foreclosure sale. He says that he expected to make a reasonable profit of about 10% on this business deal. He denies that he bought the property just to help his brother. He says, in fact, that since 1992 he and Sam and their families had a poor relationship and that the only time he heard from Sam was if Sam needed money. Kim testified that he was, in essence, thrown into the Sumter store by Sam in 1991-1992 and that the relationship between the families was acrimonious. While he intended to give his brother Sam some time to "get on his feet", he anticipated he would receive rent of some \$5000.00 per month from Sam after a period of six months or so.

Kim further says that, beginning in 2012, he began contacting Sam in an effort to get him to pay the rent as was agreed. Sam, despite these requests, failed to pay any rent to the Plaintiff. In 2013, Kim Patel continued to request that the Defendants pay rent for the use of the Property and that they pay the real property taxes. Kim testified that the first time an actual lease was proposed to Sam was in April of 2013, in the form of a letter sent to Sam by counsel for Kim. No such payments were forthcoming from the Defendants.

Kim seeks Judgment against Sam evicting him from the property, awarding judgment for past due rental and property taxes he feels Sam should have paid under breach of contract, alternatively, for the same financial damages under Quantum Meruit, and for judgment on a final cause of action for the loan he made to Sam for the fuel purchase in August of 2011.

Sam gives a very different picture. He and his witnesses describe a long-standing history of working together. In the world they live in, as Sam describes it, he would have reasonably expected Kim would be willing to help them out as a family member. Sam contends that Kim purchased the store in order to convey it back to Sam, not to rent it to him. Sam testified that Kim offered to buy back the Lynchburg property for him and that Kim initially wanted to pay for the property and title it in Sam's name. Sam testified that he insisted on paying Kim back for what Kim paid for the property and that he did not

want Kim to put the property into his name until he had repaid Kim. Sam acknowledged that the ultimate purchase of the property was not as a gift, but rather, Sam intended to pay Kim back within five years. Sam testified that he did not object to making some monthly payments toward the amount Kim paid, but that he believed it was fair to credit this toward the purchase price. As evidence of improvements on the property and as evidence of reliance upon Kim's promise that the property would go back to Sam, Sam testified as to significant expenditures on the property. The testimony and accompanying exhibit reflects expenditures, after the purchase of the property by Kim, of over \$68,000.00. The expenditures were for gas pumps and installation, HVAC repairs and general repairs to the property.

Two other witnesses testified for the Defendant, Payal Patel and Terrence Wilson. Their testimony is important in several respects. Despite the fact that Payal Patel is Sam's daughter and arguably has some interest in her father's position in this litigation, I do find that her testimony was very credible as to her description of family relationships. Her description contradicted her uncle Kim's testimony significantly. Where Kim described a family that was fractured after 1992, Payal described family birthday parties, weddings and other events that all attended enjoyably. These events were all after the 1992 timeframe.

Terrence Wilson testified that he had been friends with both Sam and Kim for many years both personally and in a business capacity. Indeed, he testified that he owed fairly substantial sums of money to both Kim and Sam. Terrence testified that he had spoken with both Sam and Kim and was very aware that the arrangement was to be that the store would be Sam's when Sam could pay Kim back. Terrence testified that there was never any discussion of rent until the Kim and Sam's respective wives had an argument over a separate matter in early 2013.

Sam contends that he has an equitable ownership interest in the property in the form of a right to purchase it pursuant to the understanding as set forth above. He contends that Kim should be equitably estopped from proceeding in violation of that understanding. He points to his reliance upon Kim's representations that Sam would get the title to the property back which led him to expend over \$68,000 in repairs and upkeep of the property which would have normally been a landlord's expense.

There is no document in which the parties memorialized the terms of their understanding.

Applicable Law

The elements of promissory estoppel require that a claimant prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by a party to whom the promise is made; (3) the reliance is expected and foreseeable by a party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Promissory estoppel is a distinct and separate legal theory from contract. Where a contract requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee, and in certain cases bars the promisor from making an inconsistent disposition of the property. *Satcher, Id.* The applicability of the doctrine depends on whether the refusal to apply it "would be virtually to sanction the perpetration of a fraud *or would result in other injustice.*" *Citizens Bank v. Gregory's Warehouse, Inc.*, 297 S.C. 151, 154, 375 S.E.2d 316, 318 (Ct. App. 1988). (Emphasis supplied.)

To prevail under the theory of promissory estoppel, the moving party must prove each element by clear, cogent, and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in a fact finder a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal *Satcher v. Satcher*, 351 S.C. 477; 570 S.E.2d 535 (Ct. App. 2002); *Knight v. Stroud*, 214 S.C. 437, 53 S.E.2d 72 (1949).

Findings

I find that there was no "meeting of the minds" sufficient to establish a cause of action under contract on behalf of either party regarding the ownership of the property. Both parties have argued their position strongly in equity.

As to the parole gift, the parties have agreed that that did not happen. Even Sam, who said that Kim offered the gift, testified that he declined it and planned to repay Kim the money he invested.

The next issue to be resolved is whether Sam has an equitable interest in the real property in question pursuant to promissory estoppel? If so, what are the terms of Sam's equitable interest?

The context within which actions take place helps us to determine the credibility of one side as opposed to the other. Kim describes a poor family relationship and says that his involvement in this transaction was purely business and for profit. Sam describes a supportive family relationship and says that the transaction repurchasing the property was an example of one family member being willing to help another. The testimony of Payal Patel and of Terrence Wilson support Sam's position. The purchases of fuel by Kim for Sam in August 2011 and again in early 2013 are further indications of credibility for Sam. Further, I find that the improvements made by Sam were in the main of a nature that suggests that the person making them would not have undertaken them without some belief that the property was to be theirs. Finally, the first time a lease was proposed to Sam was in a letter from Kim's attorney of April, 2013.

Based upon my viewing of the witnesses, hearing the testimony, and reviewing the exhibits submitted in that context, I find that even under the burden of proof set forth in the *Satcher* decision, the credible evidence is overwhelmingly in favor of the position that Kim's purchase of this property was part of a course of action linked to a promise to Sam that the property would be conveyed back to him if he were able to repay Kim the amount owed within a reasonable time. Sam testified that this amount owed was comprised of the full amount of the purchase price to Kim of \$350,001.00 as well as additional funds that Kim had loaned Sam. I find that at the time the parties were contemplating the transaction and when the purchase was made by Kim, the only loan having been made was the loan for Five thousand (\$5,000.00) Dollars, so that the repurchase price was \$355,001.00.

I further find that Kim and Sam understood that Sam would be given a reasonable time to get on his feet before payments would begin, and that this time was defined at six months. I find that the payments should have begun no later than May 13, 2012, at the end of the seventh month after the deed into Kim was recorded.

I find an implied promise of up to five years for the payments to be made. I find that to exercise his equitable right to purchase this property from Kim, Sam must finish repaying Kim in full on or before May 13, 2017.

Kim stated that he should receive monthly payments, although by the time this lawsuit commenced he felt that such payments were rent instead of payments on a purchase price. Sam had no objections to monthly payments, he just wanted them to be credited to the purchase price. I conclude that the parties did contemplate monthly payments. Based on the entirety of the credible evidence before me, I find that, beginning with May 13, 2014, Sam must pay Kim no less than \$3,750.00 per month, a figure in line with the demand Kim made on Sam. *

In the context of the brothers' dealings with each other, it was reasonable that Sam would rely upon Kim's promise and that reliance was clearly foreseeable. Sam relied to his financial detriment. A finding to the contrary, that Sam's only interest in the premises was as a tenant and that he could simply be evicted, would result in injustice.

I find that Sam possesses an enforceable promise from his brother under the doctrine of promissory estoppel. The summary of the terms is \$355,001.00, to be paid in full no later than May 13, 2017, payments of at least \$3,750.00 per month for the duration, beginning May 13, 2014 and payable on or before the eighth day of every month thereafter until paid in full or until May 13, 2017, whichever comes first, at which time Suresh "Sam" Patel shall be entitled to the title to the property if he has paid in full. Should Sam not have paid in full for the property by May 13, 2017, he will forfeit his rights under this equitable interest and his status and that of any business he may be operating on this property will convert into that of a tenant. The real property taxes for each year are the responsibility of Sam.

This leaves the breach of contract issues of the two gasoline purchases and the taxes to be determined.

On the issue of the fuel purchases, throughout these proceedings before me, Sam acknowledged the debts arising from these two purchases. The parties through their actions have agreed that both of these should be part of any judgment. In view of my finding that these fuel purchases were not a part of the discussion between the parties when the understanding was reached concerning the purchase of the property, it is appropriate for this Order to include both now in my finding regarding the separate cause of action for breach of contract. On the first sum, Seventeen thousand four hundred and fifteen and no/100 (\$17,415) Dollars, Sam has made no effort to make payments to Kim. I am aware that Kim had indicated he would give Sam "six months or so" to get back on his feet before looking for payments. Plaintiff indicates to the Court a date of May 13, 2012 as the date when the payments should have begun. I find that date to be reasonable. He asks in his complaint for prejudgment interest. The debt being one of a liquidated amount, Kim should be and is allowed prejudgment interest beginning May 13, 2012, which is the earliest date that Sam was expected to pay on this debt and did not.

Regarding the admitted debt from 2013 in the amount of \$17,000, the same factors would apply, except that I do not find in the record the date of the transaction. My recollection of the testimony at trial on this particular loan was that the loan was made in early 2013. Allowing for the same six-month period would mean that payments should have begun no later than January 1, 2014. I conclude that Kim should have judgment against Sam for this amount, plus prejudgment interest to be computed from the date of January 1, 2014.

Regarding the real estate property taxes paid by Kim, I find that Sam's claim to equitable ownership of the property means that Sam also owns the property taxes for that property. Since the court does not have evidence of the date of these payments, I cannot issue an order as to prejudgment interest. However, I do grant Kim judgment against Sam for the amount of \$3785.45 for each of those two years, for a total of \$7,570.90.

Now, referring to the parties as their names should appear in the judgment rolls, I grant judgment as follows:

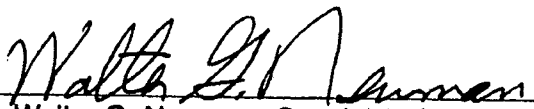
IT IS ORDERED, that Suresh "Sam" Patel owns an equitable interest in the subject real estate, that he cannot be evicted at this time, and that he has the right to purchase the property from A&P Enterprises, LLC according to the terms set forth above, and that owes the annual real property taxes as an incident of ownership of the equitable interest in this property. It is further

ORDERED, that A&P Enterprises, LLC is granted judgment against Suresh "Sam" Patel in the amount of \$17,415, plus prejudgment interest on this sum from May 1, 2012, plus judgment for sum of \$17,000, plus prejudgment interest on this sum from

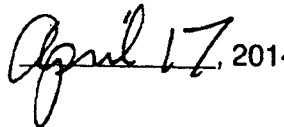
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the date of January 1, 2014; plus the sum of \$7570.90, without prejudgment interest, for a total monetary judgment of \$41,985.90, plus prejudgment interest to be computed as indicated.

AND IT IS SO ORDERED.


Walter G. Newman, Special Referee
for Lee County

Sumter, South Carolina

 April 17, 2014

* These payments are the minimum to be paid each month. Clearly, Sam will be required to make payments far beyond this minimum per month in order to pay the debt in full in the time allowed.