THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

C/A NO.: 2013-CP-36-193
APPELLATE CASE NO.: 2014-002410

Raymond D. Hobby ..... Respondent,

v.

Mary T. Hobby ..... Appellant,

v.

Frances B.B. Knowlton, individually and as Trustee ..... Respondent.

INITIAL BRIEF OF RESPONDENT RAYMOND D. HOBBY

Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorney for Respondent Raymond D. Hobby

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STATEMENT OF THE CASE[1]

This is an appeal from an Order on cross-motions for summary judgment that was entered in a case pending in the Newbery County Court of Common Pleas that arose from a dispute about the terms of a divorce settlement.

After a protracted divorce, Mary T. Hobby ("Appellant") and Raymond D. Hobby ("Respondent" or "Mr. Hobby") reached a settlement agreement in 2010 to form a trust to facilitate equitable distribution of the marital property, consisting of various homes, tracts of land, businesses, and other property. (Divorce Decree pp. 1-17.) They signed a

[1] Respondent Raymond D. Hobby offers this Statement of the Case and Statement of Facts in lieu of Appellant's Appellant's Introduction, Statement of the Case, Background, Trustee Powers to Dispose of Trust Assets and Affidavits Submitted by Ms. Hobby.

trust agreement ("Trust Agreement") and hired a third-party, Mr. Knowlton ("Trustee"), to serve as the trustee. (Hobby Family Liquidating Trust Agreement pp. 1-26.)

Mr. Hobby commenced this action on April 26, 2013 seeking possession of the former marital home located at 544 Crowder Road in Kinards, South Carolina ("the House") and to collect damages from Appellant based on her refusal to move out. (Compl. pp. 1-7.) Mr. Hobby's verified complaint asserted claims against Appellant for summary ejectment of a trespasser, trespass and unjust enrichment. Id.

On May 8, 2013, Appellant answered the complaint. (App.'s Ans. to Compl.) Appellant also moved to dismiss the complaint on the grounds "that the claim for summary ejection upon which all claims are based [was] a statutory claim within the jurisdiction of the magistrate court, not the circuit court." (App.'s Mot. to Dismiss, May 8, 2013.) The Circuit Court agreed and granted Appellant's motion in part, dismissing Mr. Hobby's summary ejectment claim for lack of subject-matter jurisdiction. (Order dated May 31, 2013 and filed June 6, 2013.) As a result, Mr. Hobby was left to pursue his claim for possession in the Magistrate's Court and pursue his claim for damages in the Circuit Court.

On June 7, 2013, Appellant amended her answer to assert a counterclaim for a declaratory judgment and a third-party claim against the Trustee. (App.'s Am. Ans., Countercl. and Third-Party Compl, June 7, 2013.) The Trustee answered the third-party complaint on June 26, 2013, and asserted affirmative defenses, as well as counterclaims for abuse of process and frivolous proceedings. (Ans. and Counterclaim of Knowlton, June 26, 2013.)

On June 12, 2013, Mr. Hobby amended his complaint to add claims for damages against Appellant as a holdover tenant, for breach of contract and for promissory estoppel. (Am. Compl.) Mr. Hobby sought damages for rent of $1,750 per month from April 20, 2012 forward, for double damages and reasonable attorney's fees under S.C. Code §§ 27-40-750 and 770, and for prejudgment interest and costs. Id. Appellant responded with a second motion to dismiss for lack of subject-matter jurisdiction, this time on the grounds that the amended complaint raised claims and issues within the exclusive original jurisdiction of the Probate Court. (App.'s Motion to Dismiss Amended Complaint, June 17, 2013.)

Meanwhile, Mr. Hobby pursued his claim for possession of the House in the Magistrate's Court. The Magistrate found Mr. Hobby owned the House, that Appellant had no right to live there and that Mr. Hobby was entitled to a writ of ejectment under S.C. Code 15-67-610, et seq. (Order Aff'g Magistrate, September 26, 2013, Exhibit K to Am. Mem. in Supp. of Mot. for Partial Summ. J, March 11, 2014.) Appellant appealed the Magistrate's judgment to the Circuit Court, and the Circuit Court affirmed. Id.

On July 9, 2013, Mr. Hobby moved for partial summary judgment in the immediate case as to Appellant's liability on the claims in the first amended complaint. (Mot. for Partial Summ. J., July 9, 2013.)

On September 4, 2013, the Circuit Court held a hearing on the appeal from the Magistrate's judgment, on Appellant's second motion to dismiss, and on Mr. Hobby's motion for partial summary judgment. (Tr. pp. 1-4, p. 19, line 16 to p. 48, line 7, September 4, 2013.) After hearing Appellant's arguments, the Circuit Court affirmed the Magistrate's judgment. (Order Aff'g Magistrate, September 26, 2013.) With respect

Appellant's motion to dismiss, the Circuit Court took a recess to allow the Respondent to file an identical complaint in the Probate Court, serve it, and then remove it to the Circuit Court. (Tr. p. 35, line 11 to p. 40, line 19, September 4, 2013.) After Mr. Hobby did so, the Circuit Court consolidated the two cases and denied Appellant's motion to dismiss. (Tr. p. 40, lines 14 to 19, September 4, 2013.) With respect to Mr. Hobby's motion for partial summary judgment, the Court held the motion in abeyance so it could decide Mr. Hobby's motion with the Trustee's impending motion for summary judgment. (Order on September 4, 2013 hearing, September 4, 2013.)

On September 6, 2013, after her motion to dismiss was denied, Appellant answered to the amended complaint, counterclaim and third-party complaint. (Def.'s Ans. to Am. Compl., Countercl. and Third-Party Compl.) Appellant again denied the Trustee had authority to sell the House, asserted a counterclaim against Mr. Hobby, and asserted third-party claims against the Trustee. Id. Trustee answered that third-party complaint four days later on September 10, 2013. (Ans. and Countercl. of Knowlton, September 12, 2013.) In his answer, the Trustee again asserted counterclaims against Appellant for abuse of process and for frivolous proceedings. Id.

On September 19, 2013, Appellant filed her own motion for summary judgment. (Def.'s Mot. for Summ. J., September 19, 2013.) Appellant contended she was entitled to summary judgment because the undisputed evidence showed the Trustee acted outside the scope of his powers and authority in quitclaiming the House to Mr. Hobby. Id.

On December 23, 2013, Trustee moved for summary judgment. (Trustee's Mot. for Summ. J., December 23, 2013.) At the same time, the Trustee served affidavits from

himself and from Julian Walker, his expert witness. (Id.; Knowlton Aff., December 23, 2013; Walker Aff., December 23, 2013.)

After receiving the Trustee's motion, the Court scheduled a hearing on the cross-motions for summary judgment for March 12, 2014. Two days prior to the hearing, Appellant served an affidavit from her divorce attorney (Mr. McDougall). (McDougall Aff., March 10, 2014.) The day before the hearing, Appellant served an affidavit from her counsel (Mr. Johnson). (Johnson Aff., March 11, 2014.) Immediately prior to the hearing, Mr. Hobby served his affidavit dated March 11, 2014. (R. Hobby Aff., March 11, 2014; Tr. p. 42, lines 15 to 22, March 12, 2014.)

After the hearing, the Circuit Court granted the Trustee's motion for summary judgment, granted Mr. Hobby's motion for partial summary judgment as to liability, and denied Appellant's motion for summary judgment. (Order dated May 6, 2014, and filed May 12, 2014.) On May 23, 2014, Appellant moved the trial court to reconsider, alter or amend its Order. (Mot. to Alter or Amend, May 23, 2014.) The trial court held a hearing Appellant's motion (Tr. pp. 58 to 77, October 17, 2014) and, ultimately denied the motion. (Order filed October 20, 2014.)

Appellant then served her Notice of Appeal seeking review of both the May 12, 2014 Order and the October 20, 2014 Order.

STATEMENT OF FACTS

Appellant and Mr. Hobby were married for twenty-seven years and are now divorced. (Divorce Decree pp. 3, 8.) In conjunction with a settlement they reached in their divorce proceedings in 2010, the parties established the Hobby Family Liquidating Trust ("the Trust") to facilitate equitable distribution of marital property. (Divorce

Decree pp. 7-8.) Appellant and Mr. Hobby have been the only beneficiaries to the Trust. Id. at 9. Both parties were well represented by counsel during the divorce, and they each engaged attorneys to draft the Trust Agreement, which they signed, pursuant to the divorce settlement, on December 6th and 9th, 2010. (Trust Agreement pp. 1-26.) The parties hired Respondent Francis B.B. Knowlton ("Trustee") to serve as the trustee. (Trust Agreement p. 1; Divorce Decree ¶ 3(d); Answer to Am. Compl., Countercl. and Third Party Compl. ¶ 20.)

Pursuant to the divorce settlement, the Divorce Decree mandated certain terms for Trust. (Divorce Decree pp. 8-14.) The parties were required to fund the Trust with certain property, including the House. (Divorce Decree pp. 11, 18; M. Hobby Dep. 7:15-18; 203:1-5.) The purpose of the Trust was (and still is) as follows:

> Purpose. The Liquidating Trust is established for the sole purpose of liquidating various marital assets belonging to the Transferors in the most fair, objective, and impartial manner available and in a manner that maximizes the value of such marital assets and satisfies the debts associated with those assets to the extent reasonably possible. In effecting the purpose of this Liquidating Trust, the Trustee shall be mindful of the desire of the parties to divest the Trust Assets for amounts approximately equal to the fair market value of such properties and Trustee shall liquidate the Trust Assets in an orderly fashion while being mindful of prevailing market conditions and the term of the Trust. For the avoidance of doubt, although the Trustee shall have the right to exercise and all rights, powers and privileges set forth herein, such powers shall be exercised in the furtherance of the purposes of the Trust, specifically selling Trust Assets in a timely, prudent and efficient manner and distributing proceeds as provided herein. The Trustee shall make timely distributions to the Beneficiaries and required payments with respect to the Liabilities (defined below) and will not unreasonably prolong the duration of the Liquidating Trust. The Liquidating Trust will not hold itself out as an investment company or as an entity engaged in the active conduct of a trade or business.

(Trust Agreement, Art. I, Paragraph (c).) With respect to the Trustee's authority to sell trust assets, the Trust Agreement provided,

Consistent with the purposes of the Trust as a liquidating Trust and the purposes as further described in Article I (c), the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) **with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition: to any other rights, powers, authority, and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law. . .**

(vi) **to sell or dispose of** or grant options to **purchase any property, real or personal, constituting a part of the Trust Estate or any Trust share created hereunder, for cash or credit, at public or private sale**, or to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

* * *

(xxx) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

* * *

(xxxii) To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested; and ii) **Trustee may sell any Trust Asset to a Transferor provided the sale and terms of**

> **sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.**

(Trust Agreement, Article IX, Paragraph (a) (emphasis added).) As for the Trustee's authority under Article IX, Paragraph (a)(xxxii), the Divorce Decree, pursuant to which the parties created the Trust, provided, "Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value or any other terms mutually agreeable by the parties." (Divorce Decree p. 9) (emphasis added).

Appellant was the owner of record of the House at the time of the Divorce Decree. (See General Warranty Deed from M. Hobby to Trustee, April 11, 2012.) Although Ms. Hobby understood her obligation to transfer title to the home to the Trust (M. Hobby Dep. 7:11-14, 28:22-25, Ex. 9 to Third-Party Def. Mem. Opp'n Third Party Pl. Mot. Summ. J.), she refused to do so. (M. Hobby Dep. 43-44, attached as Ex. 10 to Third Party Def. Mem. Opp'n Third Party Pl. Mot. Summ. J.; see also General Warranty Deed from Ms. Hobby to Trustee, attached as Ex. I to Pl.'s Am. Mem. in Supp. of Summ. J. and in Opp'n to Def.'s Mot. for Summ. J.). Rather, on December 8, 2011, Appellant submitted an offer to purchase the House. (Letter from McDougall to Knowlton, December 8, 2011, Ex. A to Am. Compl.)

Appellant's offer was based on a discounted valuation of $225,000. Id. She offered to pay the Liquidating Trust $127,231 for the House, which amount represented Mr. Hobby's 57.5% share.[2] (Letter from McDougall to Knowlton, December 8, 2011, Ex. A to Am. Compl.; M. Hobby Dep. 147:8-18.) Appellant believed the House was

[2] For purposes of equitable distribution, the Family Court held the Defendant entitled to 42.5% of marital property; the Plaintiff's share is 57.5%. (Divorce Decree p. 9.)

worth substantially less than $300,000 (M. Hobby Dep. 146:19-25), and she considered her offer to be a fair price for the House. (M. Hobby Dep. 55:1-4.)

On January 3, 2012, in response to Appellant's offer, Mr. Hobby made a counteroffer to purchase the House for $325,000, or one hundred thousand dollars more than the valuation Appellant gave the House. (Letter from R. Hobby to Knowlton, Am. Compl., Exhibit B; M. Hobby Dep. 148:11-20.) In addition, Mr. Hobby offered "to leave this asset in the Liquidating Trust to maximize the properties value for any future sale opportunities." (Letter from R. Hobby to Knowlton, Am. Compl., Exhibit B.) While Mr. Hobby offered to leave the asset in the Trust to maximize its value, nothing in his offer indicated an intent for the Appellant to continue living in the House rent-free after the sale. Id. (see also M. Hobby Dep. 153:23-154:8 (stipulating that the offer does not contain any such words).)

After receiving Mr. Hobby's offer, the Trustee relayed it to Appellant and her divorce attorney and gave her time to respond. (Knowlton Aff. ¶¶ 6-9, December 23, 2013; M. Hobby Dep. 155:17-156:7.) On January 23, 2012, Appellant discussed the counteroffer with an appraiser and her attorney. (M. Hobby Dep. 157:3-19; 160:24-161:9.) On January 27, 2012, the Trustee advised Appellant and her attorney that due to a cash shortage in the Trust and the threat of defaulting on Trust obligations, he intended to accept Mr. Hobby's offer unless Appellant made a better offer. (E-Mail from Trustee to Def. and McDougall dated January 27, 2012, Exhibit D to Am. Mem. Supp. Mot. for Partial Summ. J.; M. Hobby Dep. 162:23-163:25.) Appellant's attorney tried to elicit a counteroffer from Appellant; however, she failed to respond. (E-mail from McDougall to

Def. and Trustee dated January 30, 2012, Exhibit E to Am. Mem. Supp. Mot. for Partial Summ. J.; M. Hobby Dep. 164:1-17.)

On January 31, 2012, the Trustee advised Appellant and her attorney that the Trust's mortgage payments on various trust assets were becoming due and that he could not wait more than a day or two. (E-mail from Trustee to Def. and McDougall dated January 31, 2012, Exhibit F to Am. Mem. In Supp. of Mot. for Partial Summ. J.; M. Hobby Dep. 164:18-166:20.) However, Appellant did not respond.

Two days later, on February 2nd, the Trustee advised Appellant's attorney that the Trust could not meet its obligations and needed $56,000 to service its debt. (M. Hobby Dep. 168:4-169:3.) That same day, Mr. Hobby mailed the Trustee a check for $56,000 as a "Down payment for 544 Crowder." (R. Hobby Aff. ¶ 13, Ex. A, March 11, 2014; Knowlton Mem. Supp. Mot. for Summ. J., Ex. 19.) Appellant did not respond. Rather, she felt harassed by the e-mails from the Trustee and from her attorney asking for a counteroffer. (M. Hobby Dep. 172:16-173:9.)

On February 7, 2012, the Trustee advised Appellant and her attorney (Mr. McDougall) that he had a check for $56,000 in hand from the Plaintiff as an advance on the purchase of the House. The Trustee told Appellant he would have to accept Mr. Hobby's offer unless he received a materially better offer from her by close of business. (E-mail from Trustee to App. and McDougall dated February 7, 2012, Exhibit G to Am. Mem. in Supp. of Mot. for Partial Summ. J.; M. Hobby Dep. 173:16-174:23.) However, Appellant did not respond.

On February 9, 2012, faced with Appellant's initial offer, with Mr. Hobby's counteroffer and with the threat of imminent default on the Trust obligations, the Trustee

told Appellant and her attorney that he was accepting Mr. Hobby's offer. (E-mail from Trustee to Def. and McDougall dated February 9, 2012, Exhibit H to Am. Mem. in Supp. of Mot. for Partial Summ. J.; Knowlton Aff. ¶ 11, December 23, 2013; R. Hobby Aff. ¶ 12, Ex. A, March 11, 2014.) Appellant, however, did not respond.

The following month, on March 13, 2012, Mr. Hobby paid the Trust another $56,000 toward the purchase of the House. (R. Hobby Aff. ¶ 14, Ex. B, March 11, 2014.) Therefore, by March 14, 2012, Mr. Hobby had paid the Trust $112,000 toward the House.

On March 20, 2012, nearly a month and a half after the Trustee had accepted Mr. Hobby's offer, had deposited the down payment check, and had used the money to keep the Trust afloat, Appellant's attorney contacted the Trustee with an offer from Appellant to buy the House based on a value of $325,000, the same value Mr. Hobby used in his January offer. (Letter from McDougall to Knowlton, March 20, 2011.) The Trustee responded, however, that he had already accepted Mr. Hobby's offer. (E-mail from Knowlton, April 4, 2012, Ex. F to McDougall Aff., September 19, 2013.)

Although Appellant knew the Trustee had a contract to sell the House to her ex-husband, and although her attorney expressed her displeasure for the sale, Appellant signed a general warranty deed conveying the House to the Trust on April 11, 2012, and delivered the deed to the Trustee. (General Warranty Deed from M. Hobby to Trustee, April 11, 2012.) The following week, on April 19, 2012, the Trustee closed the sale of the House to Mr. Hobby. (Deed from Trustee to R. Hobby, April 19, 2012.) At the closing, Mr. Hobby delivered the Trustee a check for $26,125 and gave the Trustee a purchase money mortgage for $186,875, or 57.5% of the purchase price. (R. Hobby Aff.

¶ 15, March 11, 2014.) Therefore, the total consideration Mr. Hobby paid for the House was $325,000. Id.

Although the Trustee sold the House, Appellant refused to move out. Rather, Appellant argued that the Trustee lacked the authority to sell the House to Mr. Hobby without her consent, that Mr. Hobby's offer to purchase the House allowed her to continue living there rent-free, and that her March 20, 2012 offer was superior. Her arguments notwithstanding, Appellant never disputed that the Trust Agreement gave her a right to live in the House rent-free only until it was sold; she never disputed that the Trustee did, in fact, sell the House; nor did Appellant dispute that the Trustee sold the House to Mr. Hobby and gave him a quitclaim deed. (Def.'s Resp. to First Requests for Admission ¶¶ 2, 6, 7, 8, 10.) Furthermore, Appellant conceded during her deposition that Mr. Hobby's offer to purchase the home contained no language that he would buy the House and allow her to continue living there rent-free. (M. Hobby Dep. 153:23-154:8 (stipulating that the offer does not contain any such words).)

To this day, Appellant continues to litigate to the ends of the earth rather than move out.

STANDARD OF REVIEW

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." Knight v. Austin, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Id. at 521-22; Rule 56(c), SCRCP.

"The rulings of a trial [court] in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion." Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 128, 542 S.E.2d 736, 742 (Ct. App. 2001).

"A trial court's ruling to exclude or admit expert testimony will not be disturbed on appeal absent a clear abuse of discretion." Vortex Sports & Entm't, Inc. v. Ware, 378 S.C. 197, 207, 662 S.E.2d 444, 450 (Ct. App. 2008) (citing Mizell v. Glover, 351 S.C. 392, 406, 570 S.E.2d 176, 183 (2002)).

ARGUMENT

In this appeal, the primary issue Appellant raises is whether the Trustee had authority under the Trust Agreement to sell the House to Mr. Hobby. Although she argues factual issues prevented summary judgment as to her liability for Mr. Hobby's claims against her, Appellant failed to present any evidence to create a genuine issue of fact about whether Mr. Hobby owned the House or whether she had a right to continue living there after the Trustee sold it.

Appellant's brief contains no Statement of Issues concisely and directly setting forth each issue the Appellant is raising on appeal. See Rule 208(b)(1), SCACR. As a result, this Respondent has attempted to discern the issues raised based upon the substance of Appellant's arguments and has responded accordingly.

As set forth in more detail below, the Circuit Court committed no reversible error when it entered summary judgment as to Appellant's liability because there was no genuine issue of fact that the Trustee sold the House to Mr. Hobby and that Appellant had no right to continue living there. For these reasons, as well as any other grounds

appearing in the record pursuant to Rule 220(c), SCACR, this Court should affirm the Circuit Court's order.

I. THE CIRCUIT COURT COMMITTED NO REVERSIBLE ERROR WHEN IT HELD THERE WAS NO GENUINE ISSUE OF FACT THAT THE TRUSTEE WAS NOT LIABLE TO APPELLANT ON HER THIRD-PARTY CLAIMS.

Appellant's first argument appears to relate solely to her third-party claims against the Trustee. For example, Appellant assigns error to the Circuit Court for finding there was no evidence that the Trustee breached his fiduciary duty, for granting summary judgment before she had an opportunity to conduct discovery about the cash crisis she says the Trustee created, and for finding Appellant's pinched nerve did not require the Trustee to wait indefinitely for her to make another offer to buy the House. Therefore, none of the issues Appellant raises in that argument appears to pertain to Mr. Hobby's claims against her. Any issues which could conceivably relate to Appellant's liability for Mr. Hobby's claims are also raised in subsequent sections of Appellants brief and, therefore, are addressed below.

Furthermore, many of the issues in Appellant's first argument are not properly preserved for review. Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011); Kleckley v. Nw. Nat. Cas. Co., 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000); State v. Porter, 389 S.C. 27, 37, 698 S.E.2d 237, 242 (Ct. App. 2010) ("The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal.").

For these reasons and those discussed below, Appellant's first argument fails to identify any reversible error the Circuit Court committed.

II. THE CIRCUIT COURT CORRECTLY HELD THERE WAS NO GENUINE ISSUE OF FACT THAT MR. HOBBY OWNED THE HOUSE.

Appellant's second and third arguments raise the same issue: whether the pleadings, affidavits, depositions and discovery before the Circuit Court presented any genuine issue of fact that Mr. Hobby owned the House. Appellant's arguments from both sections are addressed together here.

Appellant contends there was a genuine issue of fact that Mr. Hobby owned the House because her divorce lawyer (Mr. McDougall) and her expert witness (Mr. White) opined that the Trust Agreement required the Trustee to obtain either consent from Appellant or a court order before he could sell the House to Mr. Hobby. In other words, Appellant argues a triable issue existed because she presented affidavit testimony about what the Trust Agreement meant.

It is well-established in South Carolina that the construction of a contract is a question of law for the court, not an issue for a jury. S.C. Dep't of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001); Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 592, 658 S.E.2d 539, 542 (Ct. App. 2008). When a "contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions." S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008). Instead, the "court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it." Id. The Court is "without authority to alter an unambiguous contract by construction or to make new contracts for the parties. Id.

A genuine issue of fact can be created only by evidence that would be admissible at trial. Rule 56(e), SCRCP; Hall v. Fedor, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991); Moon v. Jordan, 301 S.C. 161, 390 S.E.2d 488 (Ct. App. 1990); Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25 (Ct. App. 1987); Hansen v. DHL Labs., Inc., 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994), aff'd, 319 S.C. 79, 459 S.E.2d 850 (1995) ("A genuine issue of fact . . . can be created only by evidence which would be admissible at trial."). Under Rule 702, SCRE, an expert's opinion is admissible to "assist the trier of fact to understand the evidence or to determine a fact in issue." "Generally, expert testimony pertaining to issues of law is inadmissible." Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) (holding trial court correctly refused to consider an expert affidavit where the affidavit largely contained only legal opinions, conclusions, and no factual support); see also Vortex, 378 S.C. at 207, 662 S.E.2d at 450. "Likewise, an expert's testimony may not exceed the scope of his expertise." State v. Commander, 396 S.C. 254, 264, 721 S.E.2d 413, 418 (2011). "A trial court's ruling to exclude or admit expert testimony will not be disturbed on appeal absent a clear abuse of discretion." Vortex, 378 S.C. at 207, 662 S.E.2d at 450 (citing Mizell, 351 S.C. at 406, 570 S.E.2d at 183).

Appellant's arguments rely entirely on opinion testimony from Mr. McDougall and Mr. White which state their interpretations of the Trust Agreement and the contract for sale. In her brief, Appellant relies on the following testimony from Mr. McDougall:

> 11. In my opinion, the trustee did not have the authority to sell the marital property to Ray. Under Article 12(a)(xxxii), the trustee has an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any trust asset such that the trustee is reasonably satisfied that any sale has occurred at arms length and has maximized the value of the trust asset divested. The trustee here failed to maximize the value of the trust asset being divested. He knew that Mary intended to make a further offer. Mary made a further and better offer prior to the contract with Ray. Although the trustee asserted that there were mortgage payments which were due, any such payments would not have likely triggered a foreclosure action in the period of time Mary sought an order to make her second offer. All the trustee had to do was wait or at least communicate further regarding a deadline. The trustee failed to do so and failed to maximize the value of the trust asset being divested.

(App.'s Br. at 26-27.)

> 14. The trustee did not seek Mary's approval of the terms of the sale to Ray, which, in my opinion, is required under Article 12(a)(xxxii). Furthermore, he did not act to protect her by insisting that Ray close pursuant to the terms of his original offer. Under Ray's offer, Ray proposed to leave the marital property in the trust. If the trustee was going to sell the marital property to him on the basis of the offer he made, the trustee should have insisted upon doing so under a contract of sale where title would not be transferred until the entire debt was paid. I had written the trustee and asked him to confer with Ray regarding the terms of Mary's offer in an effort to obtain his consent and approval. No such effort was made to obtain Mary's consent or approval and no court order was entered authorizing the sale to Ray.
>
> 15. In my opinion, the trustee acted outside the scope of his authority and breached his fiduciary duty to Mary and the transfer should be deemed a nullity since he had no authority under the trust to make the transfer.

(App.'s Br. at 28.) In addition, Appellant relies on the following testimony from Mr. White:

> 3. It appears clear that the terms of the contract of sale are the terms of the offer made by Ray Hobby. To that end, it is my opinion that the trustee went beyond the terms of the contract. Additionally, the transfer of the property out of trust in contradiction to the terms of the contract clearly favors one beneficiary, the plaintiff, over another, Mary which is contrary to the terms of the Liquidating Trust.

> 4. Furthermore, in my opinion, the trustee did not have the authority to sell the property to the plaintiff as he did. Under Article 9, Section (a), Paragraph (xxxii), the trustee may only sell a trust asset to a Transferor (either Ray Hobby or Mary), provided the sale and the terms of the sale are reasonable, fair and reflect fair market value ***and*** any other terms mutually agreeable to the parties. ***(emphasis added).*** Based upon my investigation, Mary never agreed to any terms under which the sale took place. In fact, she objected to the sale to Ray Hobby and asserted that her offer was better. Since she did not agree to any of the terms of the sale, in my opinion, the trustee lacked authority to sell the property and the purported sale is a nullity. Ray Hobby clearly had knowledge of the trustee's lack of authority contained in the plain language of the Liquidating Trust.

(App.'s Br. at 27, 28-29.)

Appellant does not argue that the Circuit Court erred in finding the Trust Agreement clear and unambiguous.[3] Rather, she argues the Circuit Court erred because it rejected the interpretations proffered by her witnesses of the Trust Agreement and contract for sale. As in Dawkins, the expert testimony on which Appellant relied consisted of legal opinions and conclusions without factual support. See Dawkins, 354 S.C. at 66, 580 S.E.2d at 437. Even if those witnesses could have been qualified as experts,[4] their opinions were nothing more than their interpretations about what the Trust Agreement and contract for sale meant. Those opinions related to an issue of law for the Court to decide, not a factual issue for a jury, and were therefore inadmissible. Therefore, Appellant's argument is meritless.

The record before the Circuit Court included a copy of the April 19, 2012, quitclaim deed from the Trustee that was recorded in the Newberry County Clerk Court's Office. The quitclaim deed alone was prima facie evidence that Mr. Hobby owned the

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[3] To the contrary, Appellant argues in her brief, "The Trust Agreement clearly sets forth the powers of the Trustee. . ." (App.'s Br. at 13.)

[4] The record contains no evidence that Mr. McDougall is qualified to testify as an expert on trust law or real estate law. Rather, according to his *curriculum vitae*, his work consists exclusively of family law cases.

House. See Cummings v. Varn, 307 S.C. 37, 45, 413 S.E.2d 829, 834 (1992) ("A deed valid on its face is presumed to be valid."). The deed satisfied all the statutory recording requirements and was properly recorded in the Newberry County Clerk of Court's Office. Although Appellant argues the deed resulted from the Trustee breaching a fiduciary duty, she presented no evidence of undue influence, incapacity, fraud or any other basis recognized to set aside a deed, despite having nearly one year to conduct discovery on the matter. Rather, Appellant has presented only suspicion premised on a belief that the Trustee should have sold the House to her, not her ex-husband.

Appellant's true argument, which is whether the Trustee *should* have sold the House to Mr. Hobby, has no bearing on whether the Trustee *could* have done so. As a matter of law, the Trust Agreement clearly gave the Trustee authority to enter into a binding contract to sell the House. Therefore, after the Trustee accepted Mr. Hobby's offer in February of 2012, endorsed the back of the down payment check and deposited it, the Trust was bound to honor the contract for sale, regardless of any offer the Appellant subsequently made. See Cash v. Maddox, 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975) (recognizing enforceable contract for the sale of land can be established by separate writings that contain the essential terms of the sale.)

Finally, Appellant's argument overlooks the effect of her own admissions, which conclusively proved Mr. Hobby owned the House. (Def.'s Resp. to First Requests for Admission ¶¶ 2, 6, 7, 8, 10.) See also Rule 36(b), SCRCP (each matter admitted is conclusively established for the purpose of the pending action). Those admissions, which Mr. Hobby filed with his motion for partial summary judgment on July 9, 2013, contained no qualifying language that the sale was fraudulent or the quitclaim deed null

and void. Under Rule 36(b), SCRCP, therefore, Appellant's own admissions conclusively established the material facts required to prove her liability: (i) Appellant's right to live in the House expired when the Trustee sold it, (ii) the Trustee sold the House, thereby terminating Appellant's right to live there, and (iii) the Trustee sold the House to Mr. Hobby and gave him a deed before April 20, 2012. Rule 36(b), SCRCP. Based upon those admissions alone, the Circuit Court correctly held there was no question that Mr. Hobby owned the House, nor was there any question that Appellant had no right to continue living there after April 19, 2012. No opinion in her experts' affidavits could un-ring the bell those admissions sounded or insert a term into Mr. Hobby's offer to purchase the House that was not there. (See M. Hobby Dep. 153:23-154:8 (stipulating that the offer does not contain any words that she would be able to continue living in the House rent-free after the sale).)

Therefore, the pleadings, depositions, affidavits, and discovery on file before the Circuit Court presented no triable issue that Mr. Hobby owned the House or that Appellant had no right to continue living there, and the Circuit Court committed no reversible error when it so held.

III. MR. HOBBY'S MOTION FOR PARTIAL SUMMARY JUDGMENT COMPLIED WITH RULES 6 AND 56, SCRCP, AND WAS SUPPORTED BY THE VERIFIED COMPLAINT AND APPELLANT'S OWN ADMISSIONS.

Appellant next argues that Mr. Hobby's motion for partial summary judgment failed to comport to Rules 6[5] and 56, SCRCP. However, that argument misses the mark

[5] In her brief, Appellant argues Mr. Hobby failed to comply with Rule 4 because he did not serve any affidavits contemporaneously with his motion. Since Rule 4 contains no such requirement, this Respondent has construed Appellant's argument as one based upon Rule 6, SCRCP.

because Respondent's motion was supported by Appellant's own admissions and by a verified pleading.

Mr. Hobby attached Appellant's Responses to his First Requests for Admissions as Exhibit A to his motion for partial summary judgment. According to Appellant's own admissions, she was allowed to live in the House until it was sold, and the Trustee sold the House to Mr. Hobby before April 20, 2012. (Def's Responses to First Requests for Admissions ¶¶ 2, 6, 7, 8, 10.) As stated above, Appellant's admissions conclusively established (i) that Appellant's right to live in the House expired when the Trustee sold it, (ii) that the Trustee sold the House, thereby terminating Appellant's right to live there, and (iii) the Trustee sold the House to Mr. Hobby and gave him a deed before April 20, 2012. Rule 36(b), SCRCP. There is no question, therefore, that Appellant had no right to continue living in the House after April 19, 2012.

Further support for Mr. Hobby's motion was found in the original verified complaint. Courts in South Carolina have recognized that a verified complaint is an acceptable substitute for an affidavit at the summary judgment phase as long as the pleading satisfies Rule 56(e). Dawkins, 354 S.C. at 67, 580 S.E.2d at 438. The seven-page verified complaint in this case contains detailed and specific factual allegations confirmed by an attached affidavit from Mr. Hobby, dated April 25, 2013, which satisfies the requirements under Rule 56(e), SCRCP. In that affidavit, Mr. Hobby attested,

1. I am over 18 years of age.

2. I have personal knowledge of the information contained in this Affidavit.

3. I have reviewed the Verified Complaint, the allegations contained therein and the Exhibits attached thereto, and I know those factual allegations to be true and correct, with the exception of those

allegations made upon information and belief, and as to those, I am informed and believe that they are true.

4. The reasonable rental value of the Property which is the subject of this lawsuit is $1,750.00 per month.

5. After I purchased the Property on April 19, 2012, Defendant Mary T. Hobby refused to move out of the house, and she still lives there today.

6. As of the date of this Affidavit, the Defendant has caused me damages in excess of $21,000 based on the rental rate for the Property alone.

(R. Hobby Aff., April 25, 2013, Exhibit C to Verified Complaint.)

In the original complaint, the only factual allegations made upon information and belief were (i) that the reasonable monthly rental rate for the House was $1,750 per month (Compl. ¶ 24), which Mr. Hobby confirmed in his attached affidavit; (ii) that no appeal was then pending from the Family Court's order (Compl. ¶ 26); and (iii) that the Magistrate declined to schedule Mr. Hobby's ejectment claim for a hearing. (Compl. ¶ 28.) All of the remaining factual allegations were verified. When he filed his amended complaint, Mr. Hobby incorporated the affidavit verifying those same allegations. (Am. Compl. ¶ 38.) Therefore, the record shows not only that Mr. Hobby complied with Rules 6 and 56, SCRCP, but also that his motion was supported by a verified pleading and by Appellant's own admissions that established Appellant's liability.

Appellant argues Mr. Hobby's affidavit was not served until the day before the hearing. However, Mr. Hobby's March 11, 2014 affidavit was a reply affidavit to the Appellant introduced in response from Mr. McDougall, Mr. White and Mr. Johnson. See Rule 6(d), SCRCP.

For these reasons, Appellant's argument that Mr. Hobby's motion failed to comply with Rules 6 and 56, SCRCP, has no merit.

IV. SUMMARY JUDGMENT WAS NOT PREMATURE BECAUSE APPELLANT HAD A FULL AND FAIR OPPORTUNITY TO CONDUCT DISCOVERY AND BECAUSE APPELLANT FAILED TO ADVANCE ANY REASON WHY FURTHER DISCOVERY WOULD UNCOVER ADDITIONAL EVIDENCE AND CREATE A GENUINE ISSUE OF FACT AS TO HER LIABILITY.

Appellant's fifth argument for reversal is that summary judgment was premature.[6] "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. Guinan v. Tenet Healthsystems of Hilton Head, Inc., 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) (citing Dawkins, 354 S.C. at 71, 580 S.E.2d at 439-40). "[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition." Dawkins, 354 S.C. at 69, 580 S.E.2d at 439 (internal quotations omitted). It is not premature for the trial court to grant summary judgment where the party had a full and fair opportunity to develop the record on an issue but failed to do so. George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 594, 545 S.E.2d 500, 506 (2001).

The record in this case shows that the Appellant had ample opportunity to conduct discovery. Mr. Hobby filed the verified complaint in this lawsuit on April 26, 2013, and amended his complaint on June 13, 2013. After receiving the Appellant's responses to his first requests for admission, Mr. Hobby filed a motion for partial summary judgment

[6] To the extent the Court determines Appellant properly raised the issue of whether the Circuit Court erred in denying her request for additional time under Rule 56(f), SCRCP, the record contains no indication that the Circuit Court abused its discretion because the Appellant had eight months to conduct discovery and take depositions, yet Appellant simply failed to do so. Bayle, 344 S.C. at 128, 542 S.E.2d at 742 ("The rulings of a trial [court] in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion."). Appellant can hardly claim surprise when she failed to serve any interrogatories.

as to liability on July 9, 2013. Two months later, on September 4, 2013, the motion for partial summary judgment was before the Circuit Court for a hearing. However, the Circuit Court held the motion in abeyance so it could decide Respondent's motion with the Trustee's impending motion for summary judgment.

Notably, prior to the September 4, 2013 hearing, Mr. Hobby filed a memorandum in support of his motion for summary judgment that set forth the grounds for his motion. (Mem. Supp. Mot. for Partial Summary J. pp. 6-13.) Therefore, the record clearly demonstrates that Appellant had eight months from the time Mr. Hobby filed his motion to depose Mr. Hobby and the Trustee about the terms of the sale, and she had six months from the September 4, 2013 hearing to conduct discovery. Between April 26, 2013 and March 12, 2014, the only discovery Appellant sought was the deposition of Julian Walker, the Trustee's expert. She noticed no other depositions; she served no interrogatories, requests for production or requests for admission; and she served no subpoenas. Appellant's failure to conduct discovery did not make summary judgment premature. See Dawkins, 354 S.C. at 71, 580 S.E.2d at 439-40; George, 344 S.C. at 594, 545 S.E.2d at 506.

The only explanation Appellant has offered for needing more time for discovery was this that lawsuit was only six months old at the March 12, 2014 hearing. (See App.'s Br. at 31 (quoting Affidavit of Pope Johnson, March 10, 2014 ¶ 3).) The affidavit of her counsel apparently referred to the complaint filed in the Probate Case. For the sake of clarity, it must be noted that Mr. Hobby did file a complaint in the Probate Court during the September 4, 2013 hearing at the Circuit Court's suggestion. (Tr. pp. 35, line 11 to p. 40, line 19, September 4, 2013.) As this Court can glean from the record, the allegations

in the Probate complaint were identical to those made in the amended complaint in the Circuit Court case. In fact, the Probate Complaint was a photocopy of the Respondent's amended complaint filed in the Circuit Court case, save handwritten changes related to the caption, jurisdiction and the date. Respondent removed the Probate Case immediately after filing it, and the Circuit Court consolidated the case with the already pending Circuit Court case.[7] (Tr. pp. 35, line 11 to p. 40, line 19, September 4, 2013.) Therefore, while it is true that the Probate Case was filed on September 4, 2013, Appellant had nearly one year to conduct discovery prior to the summary judgment hearing, not six months.

Moreover, Appellant filed her own motion for summary judgment on September 19, 2013, accompanied by affidavits from her divorce attorney (Mr. McDougall) and from her expert witness (Mr. White). If Appellant believed summary judgment was proper at that time, she could hardly argue that summary judgment was premature six months later.

For these reasons, Appellant's argument that summary judgment was premature fails to hold water. To the contrary, the record clearly supports the Circuit Court's holding that Appellant had a full and fair opportunity to conduct discovery and that she failed to present any reason why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.

V. CIRCUIT COURT CORRECTLY HELD NO GENUINE ISSUE OF FACT EXISTED AS TO APPELLANT'S LIABILITY AS A HOLDOVER TENANT.

Appellant next argues the Circuit Court erred in finding no triable issue as to her

[7] The Circuit Court never assigned a separate civil action number for the Probate Case when it was removed. Instead, the Court consolidated the cases on the record under C/A No. 2013-CP-36-0193.

liabilty as a holdover tenant under the South Carolina Residential Landlord and Tenant Act, S.C. Code §§ 27-40-10 to 940 (2007) ("RLTA").

As an initial matter, this issue is not preserved for review. "At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial [court]." Herron, 395 S.C. at 465, 719 S.E.2d at 642. An issue not raised to or addressed by the trial court is not properly preserved for review by the Court of Appeals. Kleckley, 338 S.C. at 138, 526 S.E.2d at 221 (2000). See also, Porter, 389 S.C. at 37, 698 S.E.2d at 242 ("The general rule of issue preservation is if an issue was not raised to and ruled upon by the trial court, it will not be considered for the first time on appeal."). A review of the record shows that Appellant's initial brief is the first mention of this issue. She failed to raise this argument in her memorandum in opposition to Respondent's motion; she failed to raise it to the Circuit Court at any hearing; and she failed to raise it in her Rule 59 motion. Therefore, Appellant failed to preserve this issue.

Even if the Court finds this issue preserved, Appellant's argument fails because she misconstrues a comment made by Respondent's counsel at the motions hearing on March 12, 2014. Respondent has conceded since filing its motion two years ago that factual issues exist on the issue of damages because the parties have disputed the value of the House and the reasonable monthly rental rate for the House. For that reason, Mr. Hobby sought only partial summary judgment as to liability. Appellant's argument takes a comment out of context and, more importantly, fails to include the sentence that followed it, "We're just talking about liability here (in this motion)." (Tr. p. 6, line 21, March 12, 2014).

Although Appellant makes a creative argument, a comment taken out of context fails to create a genuine issue of material fact because it does not water down the effect of the quitclaim deed, of Appellant's admissions in discovery responses, or of Appellant's failure to present any admissible document or testimony either contradicting the fact that Mr. Hobby owned the House or establishing Appellant's right to continue living there rent-free. To the contrary, the affidavits, discovery responses and evidence in the record left no triable issue that Appellant was liable to Mr. Hobby as a holdover tenant. See Bruce v. Durney, 341 S.C. 563, 569, 534 S.E.2d 720, 723 (Ct. App. 2000) (construing RLTA broadly to find landlord-tenant relationship existed between father and daughter despite absence of written rental agreement and no rent payments).

For these reasons, even if Appellant properly preserved this issue, her argument lacks merit.

VI. THE CIRCUIT COURT CORRECTLY HELD AS A MATTER OF LAW THAT THE TRUST AGREEMENT REQUIRED APPELLANT TO MOVE OUT OF THE HOUSE AFTER THE TRUSTEE SOLD IT.

Appellant next argues the Circuit Court erred in granting Mr. Hobby summary judgment as to liability because the Trust Agreement contained no term requiring her to move out of the House after the Trustee sold it. This argument, too, lacks merit.

After considering the parties filings and extensive arguments, the Circuit Court held,

> There is no question that the terms of the parties' Trust Agreement are clear and unambiguous. It gave Wife the right to continue living in the House rent-free 'until such property [was] sold, or until vacated by her.' (Trust Agreement, Article XII, (f).) **By agreeing that her right to live in the House expired when the Trustee sold the House, Wife also agreed to move out when it was sold.** The evidence is uncontested that she refused to move out and that she is still living in the House today.

(O. Granting Partial Summ. J. at 11) (emphasis added).

In order to recover for breach of contract, a party must prove "the existence of a contract, its breach, and the damages caused by such breach." S. Glass & Plastics Co., Inc. v. Kemper, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012), reh'g denied (Sept. 20, 2012) (citing Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). When a "contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions." Silver, 376 S.C. at 592, 658 S.E.2d at 543. A party may not reinterpret written contract terms midstream simply because she is unhappy with the contract she executed. Id. at 593. "There exists in every contract an implied covenant of good faith and fair dealing." Adams v. G.J. Creel & Sons, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995).

In this case, the Trust Agreement clearly stated Appellant's right to live in the House expired when the Trustee sold it. Appellant admitted as much in her discovery responses. (Def.'s Resp. to First Req. for Admission ¶ 2.) While the Trust Agreement did not explicitly say, "Mary Hobby hereby agrees to move out of 544 Crowder Road when Trustee sells it," no such provision was required. Appellant's agreement to move out of the House once the Trustee sold it was "necessary to comply with the [Trust Agreement] and fulfill the duty of good faith and fair dealing which is an implied term of every contract." Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 132, 631 S.E.2d 252, 258 (2006) (holding that while contract did not explicitly require furnishing of additional ceiling tiles to project, providing surplus tiles and replacing damaged tiles was necessary to comply with the contract and to fulfill the duty of good faith and fair

dealing). As a result, her promise to move out once the Trustee sold the House was a material term to the Trust Agreement. To construe the Trust Agreement otherwise would lead to the illogical conclusion that the Trustee could sell the House but Appellant could continue living there rent-free. The Circuit Court recognized as much, holding, "By agreeing that her right to live in the House expired when the Trustee sold the House, Wife also agreed to move out when it was sold." (O. Granting Summ. J. at 11.)

Furthermore, "it is a fundamental rule of contract construction that the law existing at the time and place of the making of a contract is a part of the contract." Catawba Indian Tribe of S. Carolina v. State, 372 S.C. 519, 528-92, 642 S.E.2d 751, 756 (2007) (quoting City of North Charleston v. North Charleston Dist., 289 S.C. 438, 442, 346 S.E.2d 712, 715 (1986)). The RLTA clearly states that upon termination of a tenant's leasehold interest, the landlord "has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees." S.C. Code Ann. § 27-40-750 (2007). As set forth in the Circuit Court's Order, the RLTA applies to the Trust Agreement because the terms of the trust relate to the use of the House. See also Bruce, 341 S.C. at 569, 534 S.E.2d at 723 (construing RLTA broadly to find landlord-tenant relationship existed between father and daughter despite absence written agreement and payment of rent). As part of the Trust Agreement, therefore, Appellant agreed that when her right to live in the House terminated (i.e., when the Trustee sold it), whoever purchased it would have a right of possession. There is no genuine dispute that Appellant's refusal to move out constituted a breach of those terms of the Trust Agreement.

For these reasons, the Circuit Court committed no reversible error when it held Appellant agreed as part of the Trust Agreement to move out of the House once the Trustee sold it.

VII. THE CIRCUIT COURT CORRECTLY IDENTIFIED THE ELEMENTS FOR A *QUANTUM MERUIT* CLAIM.

Appellant's final argument is that the Circuit Court erred by applying the incorrect elements for a claim for recovery under *quantum meruit.*

Similar to other issues Appellant raises on appeal, this issue is not preserved for review. See Paragraph V, supra. See also Herron, 395 S.C. at 465, 719 S.E.2d at 642; Kleckley, 338 S.C. at 138, 526 S.E.2d at 221; and Porter, 389 S.C. at 37, 698 S.E.2d at 242. Similar to other issues Appellant raises, the record contains no indication that Appellant raised this issue prior to her initial brief. Therefore, Appellant failed to preserve this issue for review.

Even if this Court finds this issue properly preserved, Appellant's argument overlooks controlling precedent. Appellant contends the Circuit Court should have applied the elements of *quantum meruit* set forth in Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000). However, ten years after Myrtle Beach, the Supreme Court clearly promulgated the elements to recover under *quantum meruit*: "The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010). In its Order granting Mr. Hobby's motion, the Circuit Court applied the elements from the latter case. To the extent Appellant argues

the Circuit Court erred by not applying the elements set forth in Myrtle Beach, she overlooks the Supreme Court's controlling opinion in Earthscapes Unlimited.

What Appellant truly appears to take issue with is that Respondent's claim was labeled as *quantum meruit* rather than unjust enrichment. In his amended complaint, Mr. Hobby did not label his fifth cause of action as one for *quantum meruit* or unjust enrichment. Rather, he set forth allegations which established the elements of both. See Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P., 385 S.C. 452, 466, 684 S.E.2d 756, 764 (2009) (*quantum meruit* as an equitable doctrine allows recovery for unjust enrichment); JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011) (requirements are the same to recover for *quantum meruit*, unjust enrichment, and restitution). The elements of proof for unjust enrichment and for *quantum meruit* are, in the words of Jim Trotter, III,[8] "I-[clap]-dentical." Id. Whether the cause of action is labeled as one for unjust enrichment or *quantum meruit*, the remedy is the same. Id. Therefore, the undisputed facts before the Circuit Court left no triable issue that Mr. Hobby was entitled to recover from Appellant for unjust enrichment. Any error in labeling the claim as one for *quantum meruit* rather than unjust enrichment was harmless.

For these reasons, the Circuit Court committed no reversible error, and this Court should affirm the order granting summary as to Appellant's liability on Respondent's fifth cause of action.

[8] The Beachum County, Alabama District Attorney in *My Cousin Vinny*.

VIII. THE DOCTRINE OF COLLATERAL ESTOPPEL BARS THE APPELLANT FROM RELITIGATING WHETHER MR. HOBBY OWNED THE HOME AND WHETHER APPELLANT HAD A RIGHT TO CONTINUE LIVING THERE RENT-FREE.

In addition to the arguments set forth above, Appellant's arguments fail because she was barred from relitigating whether Mr. Hobby owned the House and whether she had a right to continue living there rent-free after he bought it.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. South Carolina Dept. of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (2009) (citing Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009)). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782.

At the trial in the Magistrate's Court Case, Mr. Hobby's claim for summary ejectment of a trespasser under S.C. Code § 15-67-610 required the Magistrate to determine (i) whether Mr. Hobby owned the House and (ii) whether Appellant had a right to continue living in the House rent-free. See S.C. Code Ann. § 15-67-610 to 640 (2005). After a bench trial, the Magistrate ruled against Appellant, found that she had no right to continue living in the House and held that Mr. Hobby was entitled to a writ of ejectment. The Magistrate necessarily ruled, therefore, that Mr. Hobby owned the House and that Appellant was living there unlawfully as a trespasser. Id.

Appellant's arguments to the Circuit Court were nothing more than an attempt to re-litigate issues another court had already decided in a prior case. In the Magistrate's

Court, Appellant litigated whether Mr. Hobby owned the House, the Magistrate determined that issue directly, and the Magistrate's ruling was necessary to support the judgment the court entered. Similarly, Appellant's argument that she has a right to continue living in the House rent-free was actually litigated in the Magistrate's Court, was directly determined, and was necessary to support the Magistrate's judgment. Indeed, had the Magistrate not found Mr. Hobby owned the House, or had he found Appellant had a right to continue living there, then the Magistrate would not have granted Mr. Hobby's petition for ejectment.

For these reasons, the record in this case demonstrates that the doctrine of collateral estoppel barred Appellant from relitigating whether Mr. Hobby owned the House and whether Appellant had a right to continue living there rent-free after the Trustee sold it to him. Based upon this conclusion and the Appellant's own admissions, the pleadings, depositions, affidavits, and discovery before the Circuit Court presented no genuine issue of fact about Appellant's liability as a trespasser, as a holdover tenant, for breach of contract and for unjust enrichment.

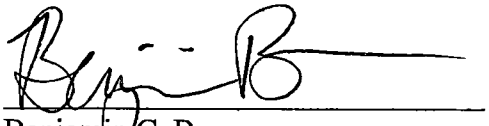
IX. ADDITIONAL ISSUES

Appellant's failure to include a clear Statement of Issues as required by Rule 208(b)(1)(B), SCACR, creates uncertainty about the precise issues she raises on this appeal. Therefore, to the extent the Court determines Appellant has properly presented an issue which Mr. Hobby does not directly address in this brief, Mr. Hobby respectfully requests that the Court advise him of that shortcoming and grant him leave to supplement his brief.

CONCLUSION

Appellant launches a variety of arguments for reversal of the Circuit Court's; however, she fails to clearly and specifically articulate any factual issue that the Circuit Court overlooked. Although Appellant argues the Circuit Court should have considered the testimony she submitted, that testimony related solely to a legal issue for the Court to determine. Many of the other issues Appellant raises have not been properly preserved for review. Appellant's remaining arguments fail to show any reversible error the Circuit Court committed, for her own admissions and the record before the Circuit Court clearly established her liability.

For these reasons, as well as any other grounds the Court finds in the record pursuant to Rule 220(c), SCACR, this Court should affirm the Circuit Court's order.



Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorney for Respondent Raymond D. Hobby

April 8, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
APR 13 2015
SC Court of Appeals

APPEAL FROM THE NEWBERRY COUNTY
Court Of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

C/A NO.: 2013-CP-36-193
APPELLATE CASE NO.: 2014-002410

Raymond D. Hobby ..... Respondent,

v.

Mary T. Hobby ..... Appellant,

v.

Frances B.B. Knowlton, individually and as Trustee ..... Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Initial Brief of Respondent Raymond D. Hobby is in substantial compliance with Rule 208(b), SCACR.

Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorney for Respondent Raymond D. Hobby

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PROOF OF SERVICE

I, Benjamin C. Bruner, attorney for Respondent Raymond D. Hobby, do certify that a copy of the attached Initial Brief of Respondent Raymond D. Hobby was served by U.S. Mail on Pope D. Johnson, Esquire, 1230 Richland Street, Columbia, South Carolina 29201, and on R. Davis Howser, Esquire, Post Office Box 12009, Columbia, South Carolina 29211, this 8th day of April, 2015.

Benjamin C. Bruner

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.*
WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS, III, P.A.
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN ALLISON LEE
CAITLIN C. HEYWARD

* Of Counsel
** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

April 8, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: ***Hobby v. Hobby v. Frances Knowlton***
Appellate Case No.: 2014-002410
BPWM File No.: 1-04.141

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of the Initial Brief of Respondent Raymond D. Hobby, a Certificate of Counsel, Proof of Service of the Initial Brief, Respondent Raymond D. Hobby's Designation of Matter, and Proof of Service of the Designation of Matter. Please file the originals and return a stamped copy of each to me in the envelope provided.

By copy of this letter, I am serving the same on all counsel of record.

With my kindest regards, I am,

Very truly yours,

Benjamin C. Bruner

BCB/gh
Enclosures

cc: R. Davis Howser, Esq.
Pope D. Johnson, III, Esq.

orable Jenny Abbott Kitchings
Court, South Carolina Court of Appeals
11629
a, SC 29211