

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Patricia E. King and Robbie King Jones,  
as representatives of W.R. King and Ellen  
King,

Plaintiffs,

v.

Margie B. King and Robbie Patricia Ione  
King, individually and as co-personal  
representatives of the Estate of  
Christopher C. King, deceased and  
Nelson M. King,

Defendants.

) THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) Civil Action No.: 98-CP-12-325

FINAL ORDER

FILED  
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CLERK OF COURT  
CHESTER CO S.C.

**PROCEDURAL HISTORY**

Before this Court are all remaining claims in an aged case with a complex procedural history involving multiple appeals. The Procedural History component contained in the Order of the undersigned on March 7, 2011 (hereinafter "Order Denying Accounting") is incorporated by reference. See Order, March 7, 2011. It is noted at the outset that in the present proceedings Robin King Jones was not represented, presented no evidence and made no arguments. Therefore reference hereinafter to Plaintiff or to Plaintiffs refers to Patricia E. King, sometimes referred to hereinafter as "Patricia King".

In June 2010, Defendants filed amended counterclaims and Plaintiff replied shortly thereafter. In their amended counterclaims, the Defendants asserted the following causes of action:

1. Restitution and Disgorgement
2. Accounting
3. Attachment of Property

4. Civil Conspiracy
5. Unjust Enrichment
6. Action for Partition of Real Property
7. Trespass to Land
8. Conversion
9. Intentional Interference with Contractual Relations
10. Constructive Trust
11. Promissory Estoppel
12. Trespass to Chattel
13. Breach of Fiduciary Duty of Care
14. Waste
15. Appointment of Receiver
16. Punitive Damages

See Defendants' Counterclaims (Amended) filed June 11, 2010. On August 16, 2010, this court held an evidentiary hearing to determine whether the Defendants were entitled to an accounting. This court denied the Defendants' counterclaim for accounting in its Order Denying Accounting and reserved all other issues for subsequent hearing. Subsequently, Defendants appealed and the South Carolina Court of Appeals upheld this court's Order. See King v. King, 2012-UP-365 (Ct. App. June 20, 2012). Defendants filed a petition for Writ of Certiorari to the Supreme Court of South Carolina which was denied by Order dated February 21, 2013. Thereafter the Court of Appeals remanded the case to this court. The Order denying the claim for an accounting is the law of this case. Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009).

By motion dated March 25, 2011, Plaintiffs moved for summary judgment as to Defendants' remaining counterclaims. In their brief, the Defendants conceded that the following counterclaims are moot: Accounting, Attachment of Property, Action for Partition of Real Property, and Breach of Fiduciary Duty of Care. Upon hearing the motion, this court issued an Order filed on March 9, 2015, holding that punitive damages is an element of damages and not a separate tort claim, and holding that the remaining counterclaims for hearing in this case are:

1. Restitution and Disgorgement,
2. Civil Conspiracy,

3. Unjust Enrichment,
4. Trespass to Land,
5. Conversion,
6. Intentional Interference with Contractual Relations,
7. Constructive Trust,
8. Promissory Estoppel,
9. Trespass to Chattel, and
10. Waste.

On April 29, 2015, this court held an evidentiary hearing on these remaining counterclaims. At the close of the evidence offered by Defendants, Plaintiff made motions pursuant to Rule 50(a) SCRPC for directed verdict as to each of the Defendants' remaining claims. The court granted Plaintiff's directed verdict motions dismissing the following counterclaims: Constructive Trust, Trespass to Land, Intentional Interference with Contractual Relations, Trespass to Chattel, and Waste. The court denied Plaintiff's motions for directed verdict as to the following of Defendants' claims:

1. Unjust Enrichment / Restitution and Disgorgement
2. Civil Conspiracy
3. Conversion
4. Promissory Estoppel

While Defendants in their Amended Counterclaims pled Unjust Enrichment and Restitution and Disgorgement as two separate causes of action, Defendants agreed at the April 29, 2015, hearing that this is a cause of action for Unjust Enrichment seeking the remedy of Restitution and Disgorgement.

The Defendants conceded in their proposed order submitted to the court subsequent to the evidentiary hearing that their claims for Conversion and Promissory Estoppel are not viable claims.

This Order therefore disposes of the two remaining counterclaims, Conspiracy and Unjust Enrichment/Restitution and Disgorgement.

## FINDINGS OF FACT

1. The Findings of Fact component contained in the Order Denying Accounting is incorporated by reference as if restated verbatim. *See Order, March. 7, 2011.*
2. The Defendants' Counterclaim for Civil Conspiracy (Fourth Counterclaim) is denied. There is not sufficient evidence in the record to find that the Plaintiffs conspired with each other or any other person to cause injury to the Defendants.
3. Defendants' claims for Unjust Enrichment (Fifth Counterclaim) and Restitution and Disgorgement (First Counterclaim) are not specifically based upon claims that the Plaintiff Patricia King appropriated the goodwill of the business of Christopher King and the name "King's Funeral Home," but the counterclaims appear broad enough for the court to consider these claims in this context and both parties in their proposed orders have made arguments in this regard.
4. Any good will attached to the person of Christopher King, through whom the Defendants base their claims, was extinguished at his death because the professional good will which may have accumulated as a result of community confidence in his skill and ability as a funeral director, does not possess value or constitute an asset separate and apart from his person. The Plaintiffs therefore could not have appropriated any such good will as it was extinguished upon the event of Christopher King's death.
5. The name "King's Funeral Home" is, however, a recognized property right, distinguishable from goodwill, and was an asset owned by Christopher King at the time of his death. That name was inherited by his devisees.

6. Patricia King appropriated the name King's Funeral Home without permission of those who owned it, that is, the devisees of Christopher King.
7. It may be inferred from the entire record that the venerable name Kings' Funeral Home had an established value in the community and that Patricia King realized that value from the time she established her sole proprietorship in December 1998.
8. The establishment of the value of the use by Patricia King of the name King's Funeral Home, which is owned by the devisees of Christopher King, would be difficult if not well nigh impossible and has not been done in this case. Notwithstanding that the business operated by Patricia King at 135 Cemetery Street, Chester, South Carolina, was profitable, there is nothing in the record to establish what amount of any profit generated was a result of the use of the name King's Funeral Home.
- 9 Defendants have abandoned their claims for Conversion and Promissory Estoppel.

#### CONCLUSIONS OF LAW

1. The Conclusions of Law component contained in the Order Denying Accounting is incorporated by reference as if restated verbatim. *See* Order, March 7, 2011.
- 2 The Defendants have failed to prove by a preponderance of the evidence their claim for civil conspiracy. Civil conspiracy consists of three elements: "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage. . . . The gravamen of the tort of civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to a common design." Gordon v. Busbee, 397 S.C. 119, 136, 344 S.E.2d 822, 831 (Ct. App. 2011).

All three elements of this cause of action are defeated by the facts of this case. Here, there is no combination of people for the purpose of injury, and therefore, no special damages. The record supports that Moses Caldwell had a choice to make: either work for Christopher King's Funeral Home or work for the funeral home operated by Patricia King. There is not sufficient evidence in the record to establish that Caldwell and Patricia King or Patricia King and any other person conspired together for the purpose of injuring the Defendants.

3. The law of the case is that Christopher King was the sole proprietor of the business known as King's Funeral Home. The name King's Funeral Home is a recognized property right that is distinguishable from goodwill and was an asset owned by Christopher King at the time of his death. See Gignilliat v Gignilliat, Savitz & Bettis, L.L.P. 385 S.C. 452, 684 S.E.2d 746 (S.C. 2009). The name under which the sole proprietorship did business was inherited by the devisees of his estate.
4. Unjust Enrichment is established when a party "has and retains benefits or money which in justice and equity belong to another." Dema v. Tenet Physician Servs. -Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See Sauner v. Pub. Serv. Auth. of S.C. 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). To recover restitution in the context of unjust enrichment, a plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012). Here, Patricia E. King assumed the non-gratuitous benefit of the name King's Funeral Home, which name the Defendants' predecessor in interest, Christopher King, used for over seventeen years as sole proprietor of his business. It may be inferred from the entire record that the venerable name

Kings' Funeral Home had an established value in the community and Patricia King realized that value from the time she established her sole proprietorship in December 1998 at 135 Cemetery Street, Chester, South Carolina. Patricia King did not pay the Defendants anything for the value of the name King's Funeral Home. It is therefore inequitable for her to retain the benefit when she has paid no value for it. There is no evidence in the record of the value in monetary terms of the name King's Funeral Home. Since, however, equity will not suffer a wrong to be without a remedy, Key Corp. Capital, Inc. v. County of Beaufort, 360 S.C. 513, 602 S.E. 2d 104 (Ct. App. 2004), the remedy here is *in specie* restitution, that is, to restore the very thing taken. See Dan D. Dobbs, Handbook on the Law of Remedies Section 4.4 (1973). To accomplish this remedy, the Court will require Plaintiff Patricia King to cease using the name King's Funeral Home.

5. The Court is aware of the fact that Defendants have not specifically requested *in specie* restitution, but I find that this remedy is reasonably pled by Defendants in their prayer "for other and further relief as is equitable in the circumstances and (as) this Court deems just and appropriate." In any event Rule 54 (c) states "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." See Battery Homeowners Association v. Lincoln Financial Resources, 309 S. C. 247, 422 S. E. 2d 93 (1992); Perry v. Smalls, 308 S.C. 259, 417 S.E. 2d 611 (Ct. App. 1992); Sossamon v. Peeler, 291 S.C. 256, 353 S.E. 2d 152 (Ct. App. 1987); Jones v Bennett, 348 S.C. 96, 348 S.E 2d 365 (Ct. App. 1986);

4. The devisees of Christopher King are therefore authorized to use the name King's Funeral Home.

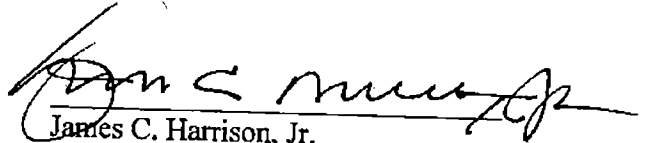
**THEREFORE, IT IS ORDERED:**

- a. The Defendants' counterclaim for unjust enrichment is granted and the Plaintiff Patricia E. King is hereby ordered to cease using the name King's Funeral Home.
- b. The devisees of Christopher King are authorized to use the name King's Funeral Home;
- c. The Defendants' counterclaim for civil conspiracy is denied.
- d. The undersigned will issue a separate order or orders or orders as to costs including the costs of the court reporter and special referee.
- e. The undersigned retains jurisdiction to address any other issues relevant to the Order of Reference.

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CLERK OF COURT  
CHESTER CO S.C.

AND IT IS SO ORDERED, this the 17<sup>th</sup> day of September 2015.

Columbia, South Carolina

  
James C. Harrison, Jr.  
Special Referee