FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600950

William G Tucker	Connie Lynn Batey
PLAINTIFF(S)	DEFENDANT(S)
Submitted by: The Court	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/S. Jackson Kimball — **Circuit Court Judge**

3063 — **Judge Code**

12/30/2015 — **Date**

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on **January 4, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **January 4, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Scott McCoy 378 E. Main St. Rock Hill, SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster PO Box 106 Rock Hill, SC 29731-6106

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

WILLIAM G. TUCKER,

Plaintiff,

vs.

CONNIE LYNN BATEY,

Defendant.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2015-CP-46- 950

ORDER

This matter came before the Court on December 16, 2015, for a trial. Representing the parties at the trial were Brian S. McCoy for Plaintiff, and J. Martin Foster for Defendant. Also present were the parties. Both sides presented testimony and exhibits, and counsel for the parties presented briefs for the Court's consideration. Based on the testimony, exhibits, and arguments of counsel, I make the following findings of fact and conclusions of law.

BACKGROUND

This is an action for foreclosure of Plaintiff's mortgage on Defendant's residence. Plaintiff also asserts a claim for a declaratory judgment that the note, mortgage, and underlying debt have not been satisfied. Defendant asserts that the debt secured by the mortgage has been satisfied in full, and further asserts a counterclaim against Plaintiff pursuant to S.C. Code Ann. § 29-3-310 *et seq*. for damages for failure to satisfy the mortgage upon demand.

FINDINGS OF FACT

The following are findings of fact, recited in narrative format, which I find based on all the evidence, and after consideration of any applicable burden of proof. I have also considered the credibility of the witnesses in reaching these findings.

In March or April of 2009, Plaintiff, who was then approximately 75 years old and recently widowed, met the Defendant on an online dating website called "PlentyofFish.com." Plaintiff is legally blind, and lives in an independent living section of a retirement community in Charlotte. He is a retired school counselor from the Charlotte-Mecklenburg school system.

Defendant is approximately twenty-two years younger than Plaintiff, and was working as a flight attendant at the time she met Plaintiff online. She had been married six times prior to 'meeting' Plaintiff.

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In the Summer of 2009, Defendant travelled to Charlotte, and the parties met in person. Thereafter, the two began dating. During this time, Plaintiff purchased gifts for Defendant, including two cars. Defendant rented an apartment in Charlotte, but wanted to move from the apartment because she felt unsafe. As a result, she looked for a house, and Plaintiff assisted in that effort.

In April, 2011, Plaintiff purchased a home in Lake Wylie, South Carolina, for a price of $235,000.00. Title to the house was taken in Defendant's name, and Defendant executed and delivered to Plaintiff a Note and Mortgage in the amount of $225,000.00. Plaintiff thereby immediately conferred upon Defendant a gift of $10,000 equity in the property. Defendant made approximately seven payments toward the Note and Mortgage, the last being in January, 2012. Plaintiff expressly allowed Defendant to miss payments.

On May 23, 2012, Plaintiff executed a document titled "Statement of Mortgage Paid in Full" ("Statement"). The document states that "the Mortgage on [the Property titled to Defendant] is hereby paid in full with no other monies due to satisfy this debt." A copy of the document was sent to Defendant by email. The original was never delivered to Defendant, and has never been recorded on the public record. Both parties acknowledged at trial that no consideration or promises were given by Defendant for the document. The debt secured by the note and mortgage remains unpaid.

The impetus for Plaintiff giving the Statement is better understood from two email "chains" between the parties. It is obvious that their relationship had deteriorated, and that the offer to satisfy the debt was gratuitous effort on Plaintiff's part to salvage the relationship. Defendant began seeing other men, and Plaintiff ended the relationship in September, 2013. As a result, the original Statement was never delivered or recorded.

By letter dated January 20, 2015, Plaintiff sent Defendant a "Notice of Default" accelerating the balance due on the Note and Mortgage, and demanding payment of the balance due in the amount of $220,573.13. Payment was not made, and Plaintiff commenced this action.

CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law.

I. Plaintiff's claim.

In this case, Defendant relies upon the Statement to extinguish her debt, and satisfy the note and mortgage securing the debt. It is undisputed that Plaintiff did not complete his promise by cancelling the note, and satisfying the mortgage.

Consideration is required to support a promise. A gratuitous promise or a donative promise is not enforceable. *See, e.g., Black v. Gettys*, 238 S.C. 167, 186, 119 S.E. 2d 660, 669 (1961). In *Black*, plaintiff signed a sealed instrument, for which she received no consideration, to transfer shares of stock to a trust for the benefit of her children. The court found the instrument to be a "mere gratuitous promise." It stated:

> Generally, where a contract is entirely voluntary or without consideration, or is in effect and substance a mere gift, even though one for the conveyance of land, it will not be specifically enforced, for equity will not compel a party to be generous. *Id.*

"[A] gift to be operative must be executed and must take effect immediately and irrevocably, for the obvious reason that if anything remains to be done the title to the property does not pass . . . ." *Lynch v. Lynch*, 201 S.C. 130, 137, 21 S.E.2d 569, 572(1942). "Thus, mere intention to give without delivery is unavailing; the intention must be executed by a complete and unconditional delivery." *Id.*

The giving of an engagement ring is analogous to the present fact situation. Unless the facts of a particular case establish otherwise, an engagement ring is given as a gift with no consideration except the expectation of future marriage. If the marriage does not occur, the donor is entitled to a return of the ring. Giving an engagement ring is impliedly conditioned upon the marriage taking place. *See Campbell v. Lynch*, 398 S.C. 12, 726 S.E. 2d 221 (Ct. App. 2012). In *Campbell*, the Court held that "[u]ntil the condition [of marriage] underlying the gift is fulfilled, the attempted gift is unenforceable and must be returned to the donor upon the donor's request." 398 S.C. at 20, 726 S.E. 2d at 225. This holding controls irrespective of "fault" for the break-up. 398 S.C. at 21, 726 S.E. 2d at 226. In the present case, there are no facts that would alter the operation of this rule, and I so conclude.

To the extent it may be inferred from Defendant's Answer and Counterclaim that the payments made on the debt to Plaintiff support the promise to satisfy the debt, such assertion is unavailing. South Carolina recognizes the old English rule called the "Rule in Pinnel's case" ("Rule"), and that remains the law of this State. The Rule holds that payment of less than the full amount of a liquidated debt cannot satisfy the full debt, even if the parties agree that such lesser payment will satisfy the debt entirely. *See Ex Parte Zeigler*, 83 S.C. 78 (1909) (holding that the rule of Pinnel's case "is firmly established in this state"), aff'd 88 S.C. 168 (1911); and, *Riggs v. Home Mut. Fire Protection Ass'n*, 61 S.C. 448, 39 S.E. 2d 614 (1901) (regarding the Rule in Pinnel's case, Court held "in this state it has been expressly recognized in several cases . . . and

must still be recognized by us.").

In both *Zeigler* and *Riggs*, the Court recognizes that the application of the Rule may be limited based on the facts of a particular case, or recognized exceptions to its application. However, in the present case, other than the Statement itself, Defendant has presented no evidence that would mitigate the application of the Rule, and I find no such facts. The debt is clearly a liquidated claim, and I conclude that the Rule applies.

In this case, Plaintiff's unilateral promise, unsupported by consideration from Defendant, required additional action before it would have been completed, namely cancellation of the note and filing a satisfaction of the mortgage. Based on the foregoing discussion of applicable law, Defendant cannot rely on Plaintiff's uncompleted and gratuitous promise.

II. Defendant's defenses and counterclaim.

A. Illegality of contract.

Defendant alleges illegality of contract as a complete defense to Plaintiff's claims. Even assuming that the Complaint may be construed to allege a contract that would be illegal as a matter of public policy, there was no evidence offered by either party at trial to support such allegations, and the defense fails as a matter of law.

B. Waiver.

Defendant asserts the equitable doctrine of waiver as a defense to Plaintiff's foreclosure claim. "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fariway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992); *see, also, Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388 (1994). It is not necessary that a party asserting waiver be prejudiced in his position, as ". . . waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position.." *Janasik, supra*, 307 S.C. at 344, 415 S.E.2d at 388.

While it could be asserted that Plaintiff waived his right to collect the debt from Defendant by executing the Statement, any such waiver, like a gratuitous gift, was not completed, as he did not complete the actions necessary to complete the abandonment of his rights. Further, while Defendant need not necessarily have been prejudiced by Plaintiff's decision to enforce his note and mortgage, the presence or absence of prejudice is a proper consideration in the application the equitable doctrine of waiver. *See Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct.App. 2007).

In view of the facts of this case, I conclude that the absence of prejudice to Defendant is a

proper consideration in determining whether Plaintiff has abandoned his right to collect on the note and mortgage. At trial, Defendant presented no evidence of prejudice or hardship imposed on her by remaining liable for a debt to Plaintiff that she voluntarily incurred. Thus, I conclude that under the facts of this case, the doctrine of waiver is not available as a defense to the debt.

C. Duty of good faith.

Even assuming that a breach of the implied duty of good faith and fair dealing is available to Defendant as a separate defense, the testimony and exhibits contain no evidence of the breach of any such duty, and none could be reasonably inferred. Thus, any such defense fails as a matter of law.

D. Counterclaim for satisfaction of mortgage.

The findings of fact and conclusions of law already set forth herein sustain the viability of the note and mortgage given by Defendant. Thus, Plaintiff retains the right to maintain his cause of action for foreclosure of the mortgage on Defendant's property. It follows that Defendant is not entitled to the relief sought in her counterclaim for satisfaction of the mortgage, and damages pursuant to S.C. Code Ann. § 29-3-310, *et seq.*

Therefore, Defendant's counterclaim must be denied.

E. Equity.

Plaintiff's action is one in equity, and Defendant asserts an equitable defense. The facts of this case present a situation where finding an equitable resolution of the underlying dispute is particularly appropriate. Viewing the entire record, I find and conclude that it would be inequitable to extinguish Defendant's obligation to pay the debt secured by the note and mortgage held by Plaintiff.

It is apparent from the entire record that there was never any original intent by either party that Defendant not pay the debt secured by the note and mortgage. It is also apparent that the Statement given by Plaintiff was the result of stress generated by the deterioration in the parties' relationship, and Defendant's threat to end it and see other men.

While Defendant's imposition upon Plaintiff may not rise to the legal standard of undue influence or duress, it is clear from all the circumstances that Plaintiff's execution of the Statement was the culmination of his attempts to preserve his relationship with Defendant. Plaintiff's attempts proved to be futile, and Defendant has presented no evidence to explain or mitigate these inferences drawn from the facts and circumstances of the case.

It has long been the rule in this state that "[c]ourts have the inherent power to do all

things reasonably necessary to insure that just results are reached to the fullest extent possible." *Jones v. Leagan*, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct.App.2009); and, *Ex parte Dibble*, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct.App. 1983). "The decision to grant equitable relief is in the discretion of the trial judge." *First Union National Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct.App. 1998). This includes the ability to apply or fashion an equitable remedy where circumstances make such action appropriate. *See, e.g., Ingram v. Kasey's Associates*, 340 S.C. 98, 531 S.E.2d 287 (2000); *Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct.App. 2009); *Laughon v. O'Braitis*, 360 S.C. 520, 602 S.E.2d 108 (Ct.App. 2004); *Ex parte Dibble, supra.*

In my judgment, the facts of this case support the exercise of the court's inherent power. Even if the execution and delivery of the Statement would, as a matter of law, operate to satisfy Defendant's debt to Plaintiff, it would be manifestly inequitable to impose such a result under the facts of this case. Thus, Plaintiff should, in equity, be granted the right to complete foreclosure of his note and mortgage.

ORDER OF THE COURT

Based on the findings of fact and conclusions of law herein, it is ordered as follows:

1. Plaintiff is granted judgment against the Defendant for foreclosure of the mortgage on Defendant's property.

2. The amount of the mortgage debt, and any attorney fees and costs, shall be determined by a supplemental hearing to be held at the earliest practicable date.

3. The subject property will be sold at the earliest available sale date in accordance with applicable statutes and practice.

4. The Court will issue such further orders as are necessary to complete the foreclosure process.

5. Defendant's counterclaim is dismissed with prejudice.

AND IT IS SO ORDERED.

December 30, 2015

S. Jackson Kimball
Master in Equity for York County

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