

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4006379

State Of South Carolina

Terris Riley

Jacque P Riley

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  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.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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 PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the 3 day of Aug, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 3 August 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael H. Montgomery

Robert D. Cook

S. Nelson Weston Jr.

Geoffrey Kelly Chambers

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court \_\_\_\_\_

*Jeanette W. McBride*

**RECEIVED**

SEP 23 2016

SC Court of Appeals

2016 - 001848

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

The State of South Carolina, )  
 )  
Plaintiff, )

CIVIL ACTION No.: 2014-CP-40-6379

vs. )

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

Terris S. Riley and Jacque P. Riley, )  
and Palmetto Citizens Federal Credit )  
Union, )

Defendants. )

**RECEIVED**  
SEP 23 2016  
SC Court of Appeals

FILED  
SEP 23 2016  
PM 1:50  
CLERK OF COURT

This matter is before the Court on the Motion of the Plaintiff, the State of South Carolina, for Summary Judgment. On June 28, 2016, this Court heard lengthy arguments on the above motion. Plaintiff, State of South Carolina, was represented by Michael H. Montgomery. Robert D. Cook, Solicitor General of the State of South Carolina, also represents the government in this matter. Defendants Terris S. Riley and Jacque P. Riley were represented by Geoffrey K. Chambers.

A. DEFENDANTS' MOTION TO STAY OR IN THE ALTERNATIVE FOR A PROTECTIVE ORDER.

At the outset of the hearing, Defendants Jacque Riley and Terris Riley ("Rileys") asked that the Court rule on their motion to stay this matter pending the outcome of criminal charges against Terris Riley. The Rileys advised the Court that during a status conference with the Chief Administrative Judge, she agreed to allow the motion to stay to be heard at the same time as the Motion for Summary Judgment. The Riley's Motion to Stay or in the Alternative to Grant a

2016-001848

Protective Order was filed on June 17, 2016. The Motion was submitted with a memorandum; however, no affidavit was attached or filed prior to the hearing expanding upon or supporting the factual allegations contained in the motion.

The gravamen of the Riley's motion is that the civil action in this case, seeking, *inter alia*, a constructive trust over funds that the Chief Procurement Officer and Procurement Review Panel determined Mrs. Riley used to purchase a lot and construct and furnish a residence which were properly owed the State and various vendors under a state contract should be stayed and that the Motion for Summary Judgment currently before this Court should not be heard. Terris Riley asserts that if the Motion for Summary Judgment is heard, she will be required to invoke her Fifth Amendment privilege against self-incrimination. Her Counsel argues that a motion to compel discovery which was recently filed and is pending before the Court further indicates that she will be placed in the quandary of potentially having to invoke her Fifth Amendment privilege should she be required to testify or answer the discovery requests covered by the Motion to Compel.

The Rileys point to no evidence to reflect that Mrs. Riley has invoked or has been forced to invoke her Fifth Amendment privilege to date in this case.<sup>1</sup> Her own counsel directs the Court to the fact that she voluntarily testified for multiple days in a procurement hearing, albeit not under oath. The record reflects that the pending motion for summary judgment is based upon a Request for Admission served by the Plaintiff upon her along with the Summons and Complaint. The

---

<sup>1</sup> Although this case and the initial discovery requests were filed and served in 2014, the only actions the record reflects have been taken by the Rileys were the filing of a Motion to Dismiss, which this Court denied, and an Answer. Despite the fact that Plaintiff's discovery including Interrogatories, Request to Produce and Request for Admissions were served in 2014 with the Complaint, the Rileys have yet to respond, move for protection or take any other action including denying the request for admission or subsequently, after the time to respond had expired filing a motion to withdraw or amend the admissions. Plaintiff's Summary Judgment motion is clearly based upon the Admissions pursuant to Rule 36 and even after receiving the motion, Defendants made no motion to withdraw or amend the previously admitted facts.

request was properly served upon the Rileys pursuant to the South Carolina Rules of Civil Procedure. To the date of this hearing, no answer has been served to the Request for Admission. Because the request has not been answered, the facts contained therein are admitted pursuant to Rule 36. The Rileys did not object to the request, request a protective Order, or assert a Fifth Amendment privilege in response to the Request for Admission. At the time of this hearing, no objection or assertion of privilege has been made in response to the remaining discovery served upon the defendants. The record in this case is entirely void of any evidence that the Rileys will be prejudiced or have or will be required or choose to invoke a Fifth Amendment privilege.

Both the Fifth Amendment of the United States Constitution and Article I, Section 12 of the South Carolina Constitution declare that no person shall be compelled to be a witness against himself in any criminal case. In interpreting the Fifth Amendment, the privilege against self-incrimination has been explained in practical terms as an assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding. *Maness v. Meyers*, 419 U.S. 449, 461, 95 S. Ct. 584, 42 L. Ed. 2d 574 (1975). The settled law provides that the privilege extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual. *Hoffman v. United States*, 341 U.S. 479, 486, 71 S. Ct. 814, 95 L. Ed. 1118 (1951).

The Fourth Circuit Court of Appeals has instructed that a court judging the invocation of the privilege against self-incrimination asks first whether the information is incriminating in nature, and second, whether there is a sufficient possibility of criminal prosecution to trigger the privilege. *United States v. Sharp*, 920 F.2d 1167, 1170-71 (4th Cir. 1990). In determining whether the information is incriminating, the *Sharp* court recognized that at least two categories of

potentially incriminating questions exist. First, there are questions whose incriminating nature is evident on the question's face in light of the question asked and the surrounding circumstances. *Id.* at 1170. Second, there are questions which though not overtly incriminating, can be shown to be incriminating through further contextual proof. *Id.*

In this instance, as to Terris Riley, the second test is clearly satisfied since she is currently under indictment for charges stemming from her alleged fraud and conversion. However, in this instance, the first prong of the test is not satisfied. The proceeding before the Court is a Motion for Summary Judgment. The proceeding relies upon a record to which no objection has been made and for which no question is extant that Terris Riley must prospectively answer. The only evidence before the Court is the Request for Admission or Requests to Admit that were deemed admitted by the operation of Rule 36. The Rileys neither interposed a timely objection to the Request for Admission, nor did they seek protection from responding. After the time to respond lapsed, no motion was filed pursuant to Rule 36 seeking to withdraw, correct or amend the admitted facts. The Court queried to Riley's counsel as to the reason they could not go forward and the response was to the effect that going forward with arguing the motion would require invoking Mrs. Riley's Fifth Amendment privilege. The Court can find no basis in this statement since there was no testimony offered with the Motion and Mrs. Riley neither sought protection<sup>2</sup> from offering an affidavit in response, nor did she assert a need or make a request pursuant to Rule 56(f), *S.C.R.C.P.*

---

<sup>2</sup> Mrs. Riley could have sought or obtained a protective Order by showing a particularized harm which will be caused by allowing the discovery and then shifted the burden to the Plaintiff to show why the information is necessary. *See, e.g. Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994). Here, to the extent that she seeks a protective Order, the only harm that she can demonstrate is that she might have summary judgment granted against her, not that any information will be disclosed that might cause a particularized harm.

There is no evidence that Jacque Riley is in any jeopardy of criminal prosecution, so neither test is applicable to his circumstance nor has he asserted one.

The record before the Court provides no basis to stay the case by delaying the Motion for Summary Judgment before it nor does the record provide any evidence which leads to an appropriate conclusion that Mrs. Riley is entitled to a protective Order at this time. She has made no timely response or objection to the Request to Admit and the facts admitted thereby are dispositive. Thus, there is no indication that Mrs. Riley has invoked or will be forced to invoke a Fifth Amendment privilege in this case. Her motion for a Protective Order pursuant to Rule 26 is untimely as it relates to the Request to Admit and moot as it relates to any further discovery based upon this Order which grants Summary Judgment to the Plaintiff.

**B. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

For the reasons stated below, and based upon the arguments of counsel, the requests to admit and other evidence submitted to the Court and the record in the case, this Court finds that Plaintiff's Motion for Summary Judgment should be granted.

**I. BACKGROUND**

Defendant Terris S. Riley owned and operated a company under the name and style of New Venue Technologies (hereinafter "New Venue"). New Venue acquired a State Term Contract through a competitive solicitation to provide a service known as the Software Acquisition Manager ("SAM"). The SAM was designed to improve the efficiency of State government's acquisition and use of software. As a part of the SAM, New Venue received payments from the State, State agencies and various political subdivisions for the purchase of software used on desktop computers

in those entities. The contract between New Venue and the State required New Venue to timely transmit these funds to certain state vendors and to procurement services. New Venue failed to make these timely transfers. Instead, it continued to accrue mounting payables owed to the State and the vendors. After a lengthy investigation, the State determined that there was a loss of more than Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) due to misappropriations by Terris S. Riley. This determination was made following a hearing that took place over more than nine days.<sup>3</sup> New Venue subsequently appealed this matter to the Procurement Review Panel which dismissed the case for lack of prosecution.<sup>4</sup> Defendants filed an appeal of the Panel's decision which was not properly served and which has been dismissed by this Court.

In this action, Plaintiff alleges that Terris S. Riley caused New Venue's funds to be transferred to various persons for the purchase of land and the construction of a residence at 497 Langford Road, Blythewood, South Carolina. The Plaintiff seeks a declaration that it has an interest in the property by virtue of a constructive trust up to the amount of its judgment recognizing that that interest is subordinate to the Mortgage of record in favor of Palmetto Citizens Federal Credit Union recorded June 12, 2014 in the office of the Register of Deeds for Richland County in Book R1951 at page 2933.

In support of its Motion for Summary Judgment, Plaintiff notes that the uncontroverted facts and evidence is that Riley used New Venue's funds to acquire the land and construct the residence thereon and that New Venue is indebted to the State in an amount in excess of

---

<sup>3</sup> See Decision 2014-206 of the Chief Procurement Officer dated July 18, 2014 attached hereto as Exhibit "A" which concludes that New Venue is indebted to state resellers in approximately the amount of \$2,700,000.00, is indebted to various public procurement units for at least \$88,208.85 and awards Plaintiff here a judgment in an amount in excess of \$1,441,000.00.

<sup>4</sup> See Decision No. 2014-7 (IV) of the South Carolina Procurement Review Panel attached hereto as Exhibit "B" which concludes: "Therefore, for the reasons stated herein, the Panel hereby DISMISSES New Venue's appeal WITH PRJUDICE" (Emphasis in Original).

\$1,441,000.00. The uncontroverted evidence in this matter reflects that the Defendants have admitted that New Venue's funds were appropriated by the Defendants and utilized in the construction of the residence on Langford Road fulfilling the core requirements to establish a constructive trust.

By virtue of their failure to respond to Plaintiff's Requests for Admissions pursuant to Rule 36, S.C.R.C.P., and the existence of the debt to the State as evinced by the Decisions of the Chief Procurement Officer and the Procurement Review Panel, Plaintiff asserts that it is uncontroverted that the Defendants used Plaintiff's funds to acquire land and construct the residence in question and, therefore, Plaintiff is equitably entitled to the Order of this Court recognizing its interest in the property as a constructive trust due to the fact that allowing Defendants to retain the property free of this trust will result in their unjust enrichment.

## II. PLAINTIFF'S ADMISSIONS

Pursuant to Rule 36, S.C.R.C.P., Plaintiff served upon the Defendants its First Request for Admissions along with the Summons and Complaint. Defendants failed to respond to the Request for Admissions within the time allowed to do so<sup>5</sup> and accordingly, each of the requests is deemed admitted pursuant to Rule 36. Our Courts have strongly enforced Admissions pursuant to Rule 36. In *Commerce Center of Greenville, Inc. v. W. Powers McElveen & Assocs., Inc.*, 347 S.C. 545,

---

<sup>5</sup> The Requests for Admission were served with the Complaint in October 2014. After filing a motion to dismiss the Complaint which was denied, the Riley's finally answered the Complaint in January 2016. Even allowing 15 days after the answer was ultimately due (which is not the proper test – absent a motion, the answers were due 45 days after service, since they were served with the summons and complaint), the Rileys have failed to respond as required by Rule 36, S.C.R.C.P and the requests are deemed admitted. As of this date, there has been no response filed to the Requests nor has any motion been made to allow a response out of time, withdraw the admissions or modify the Riley's answers to the Request.

556 S.E.2d 718 (Ct. App. 2001), the Court of Appeals addressed the binding effect of admissions due to a failure to respond to the requests to admit. There, a building owner brought an action against an architect and a contractor for damages due to leaky windows. The building owner responded to the requests for admissions, but the owner specifically reserved the right to supplement the response. In reviewing the Circuit Court's refusal to allow the contractor to present copies of the admissions to the jury while granting the owner's request to amend the admissions, this Court determined that admissions obtained via a failure to respond to a request to admit were *just as binding on a party* as answers in pleadings or stipulations, absent the grant of an amendment to the admissions.

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. *See e.g. Adams v. Orr*, 260 S.C. 92, 194 S.E.2d 232 (1973).

Admissions under Rule 36 are treated as admissions in pleadings. *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 399 S.E.2d 430 (Ct. App. 1990), *overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000); *see also* James F. Flanagan, *South Carolina Civil Procedure* 304 (1996) ("Admissions are similar to pleadings."); *Pulte Home Corp. v. Woodland Nursery & Landscapes, Inc.*, 230 Ga. App. 455, 496 S.E.2d 546, 548 (1998) ("In form and substance [a response to a request to admit] is comparable to an admission in pleadings or stipulation of facts and as such is generally regarded as a judicial admission rather than evidentiary admission of a party."). *Commerce Ctr.*, 347 S.C. at 554-55, 556 S.E.2d at 723 (footnote omitted).

Rule 36(b), S.C.R.C.P. delineates the effect of any admission: *Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.*

Therefore, by operation of Rule 36, S.C.R.C.P. the following facts are admitted by the Plaintiff in this case:

**REQUEST NO. 1:**

The checks identified in Paragraphs 23 and 24 of Plaintiff's Complaint were written on New Venue Technologies, Inc.'s accounts.

**REQUEST NO. 2:**

The checks identified in Paragraphs 23 and 24 of Plaintiff's Complaint were used for the purpose of purchasing, constructing on, providing services to, furnishing and/or improving the property located at 497 Langford Road, Blythewood, S.C.

**REQUEST NO. 3:**

New Venue, Inc. has no deeded ownership interest in the property located at 497 Langford Road, Blythewood, S.C.

**REQUEST NO. 4:**

Defendants Terris S. Riley and Jacque P. Riley are the sole owners of the property located at 497 Langford Road, Blythewood, S.C.

**REQUEST NO. 5:**

Defendant Terris S. Riley is the sole shareholder of New Venue Technologies, Inc.

**REQUEST NO. 6:**

Defendants Terris S. Riley and Jacque P. Riley realized a personal benefit from the expenditure of the checks listed in Paragraphs 23 and 24 of Plaintiff's Complaint.

**REQUEST NO. 7:**

Defendants Terris S. Riley and Jacque P. Riley have not returned and/or refunded any amounts represented by the checks listed in Paragraphs 23 and 24 of Plaintiff's Complaint to Plaintiff.

**REQUEST NO. 8:**

There is no recorded mortgage encumbering the property located at 497 Langford Road, Blythewood, S.C. in favor of New Venue Technologies, Inc.

Paragraphs 23 and 24 of the Plaintiff's Complaint read as follows:

23. Upon information and belief, the Rileys transferred a portion of the more than two million dollars that they appropriated from Plaintiff and contractors whose products New Venue was obligated to pay for as part of the pass through from the State on the residence that Plaintiff contends is held in constructive trust for them and to which they are entitled.
24. The Rileys used ownership of New Venue to convert Plaintiff's funds that were being held in trust by New Venue to their own use by writing checks on New Venue's accounts for the construction of their residence on Langford Road totaling at least \$744,130.53. The checks are detailed as follows:
  - a. Check 3242 for a deposit in the amount of \$50,000.00 on June 19, 2012.
  - b. Check 3281 for invoice #1 in the amount of \$34,842.22 on July 31, 2012.
  - c. Check 3297 for Invoice #2 Payment 1 in the amount of \$50,578.13 on August 23, 2013.

- d. Check 3298 for Invoice #2 Payment 2 in the amount of \$45,000.00 on September 7, 2012.
- e. Check 3313 for Invoice#3 Payment 1 in the amount of \$28,068.11 on October 9, 2012.
- f. Check 3317 for Invoice #3 Payment2 in the amount of \$23,199.49 on October 25, 2012.
- g. Check 3342 for Invoice # 4 in the amount of \$34,648.85 on November 14, 2012.
- h. Check 3358 for Invoice#5 Payment 1 in the amount of \$23,440.14 on December 3, 2012.
- i. Check 3359 for Invoice #5 Payment 2 on December 19, 2012 in the amount of \$5,677.00
- j. Check 3371 for Invoice #6 dated January 4, 2013 in the amount of \$32,294.24
- k. Check 3381 for Invoice #7 in the amount of \$49,782.15 dated January 18, 2013.
- l. Check 3407 for Invoice #8 in the amount of 38,063.30 dated February 6, 2013.
- m. Check 2701 for Invoice #9 in the amount of \$42,541.64 dated February 27, 2013.
- n. Check 2087 for Invoice #10 in the amount of \$29,763.80 dated March 18, 2013.
- o. Check 3430 for Invoice #11 in the amount of \$43,023.28 dated April 5, 2013.
- p. Check 501 for Invoice #12 in the amount of \$54,836.49 dated April 19, 2013.
- q. Check 3445 for Invoice #13 Payment 1 in the amount of \$50,000.00 dated May 6, 2013.
- r. Check 3453 apparently for Invoice #13 Payment 2 in the amount of \$32,259.00 dated May 21, 2013.
- s. Check 3482 for invoice #14 in the amount of \$48,904.10 dated June 17, 2013.

- t. Check 3487 for invoice #15 Payment 1 in the amount of \$15,000.00 dated July 25, 2013.
- u. Check 3511 for invoice #15 Payment 2 in the amount of \$12,208.59 dated September 16, 2013.

### III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRPC; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). The purpose of summary judgment is to "expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the non-moving party bears the burden of proof, as in this case, this initial responsibility "may be discharged by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case." *Celotex Corporation v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986). The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.

Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538, 552 (1986) (emphasis in original). The opposing party must "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324, 106 S. Ct. at 2553.

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322, 106 S. Ct. at 2552, 91 L. Ed. 2d at 273.

Accordingly, once Plaintiff shows that there are no questions of material fact which would preclude Summary Judgment, Defendants have the burden of presenting evidence of a material fact to the Court. If Defendants fail to present any competent, admissible evidence that will prove that fact, Plaintiff is entitled to summary judgment.

#### IV. DISCUSSION

##### a. Legal Standard for A Constructive Trust.

The law as to constructive trusts is quite well settled by a number of decisions of the South Carolina Supreme Court.

"A constructive trust arises entirely by operation of law without reference to any actual or supposed intentions of creating a trust." *Whitmire v. Adams*, 273 S.C. 453, 257 S.E.2d 160 (1979).

A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.

*Wolfe v. Wolfe*, 215 S.C. 530, 56 S.E.2d 343 (1949).

In the case of *Bank of Williston v. Alderman*, 106 S.C. 386, 91 S.E. 296 (1917), the Court quoted the following from Pomeroy Equity Jurisprudence:

By the well-settled doctrines of equity, a constructive trust arises whenever one party has obtained money, which does not equitably belong to him, and which he cannot in good conscience retain or withhold from another, who is beneficially entitled to it; as, for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like. It is true that the beneficial owner can often recover the money due to him, by a legal action upon an implied assumpsit, but in many instances a resort to the equitable jurisdiction is proper and even necessary. ... It is not essential for the application of this doctrine that an actual trust or fiduciary relation should exist between the original wrongdoer and the beneficial owner. Whenever one person had wrongfully taken the property of another, and converted it into a new form or transferred it, the trust arises and follows the property or its proceeds.

And in the same case the Court cites with approval the following from 39 *Cyc.* 169:

Constructive trusts do not arise by agreement or from intention, but by operation of law; and fraud, actual or constructive, is their essential element. Actual fraud is not necessary, but such trust will arise whenever the circumstances under which property was acquired make it inequitable that it should be retained by him who holds the legal title. Constructive trusts have been said to arise through the application of the doctrine of equitable estoppel, or under the broad doctrine that equity regards and treats as done what in good conscience ought to be done. Such trusts are also known as trusts *ex maleficio*, or *ex delicto*, or involuntary trusts, and their forms and varieties are practically without limit, being raised by courts of equity, whenever it becomes necessary to prevent a failure of justice.

In *Greene v. Brown*, 199 S.C. 218, 19 S.E.2d 114, 116 (1942), the Court quotes the following from 65 C. J. 455:

Fraud, actual or constructive, is an essential element in the creation or existence of a constructive trust, and no such trust arises where there are no circumstances which make it inequitable for one to hold absolute title to property against another.

The Supreme Court further held in *All v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741, 749 (1942), 159

A.L.R. 981:

Constructive trusts have none of the elements of an express trust, but arise entirely by operation of law without reference to any actual or supposed intention of creating a trust and are resorted to by equity to vindicate right and justice or frustrate fraud.

In *Dominick v. Rhodes*, 202 S.C. 139, 24 S.E.2d 168, our court held: *It is true that generally speaking fraud is an essential element but it need not be actual fraud.*

In *Dominick, supra*, the Court cited with approval the text of 65 C. J. 456, 457, as follows:

Actual or intentional fraud is not necessary, nor is it necessary that any express or conventional trust relation shall exist between the parties, or that any promise shall have been made by the one for the benefit of the other.

In *Searson v. Webb*, 208 S.C. 453, 38 S.E.2d 654, 657 (1946) our Supreme Court held:

A constructive trust is the creation of the court and is permitted to be proved by parol despite the statute of frauds upon the high and long established ground that the statute will not be permitted to shield a fraud. The device has statutory sanction in this State. Section 9042, Code of 1942. However, it does not result from unwritten words alone, but by the fact of fraud, bad faith, abuse of confidence or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution to the wronged *cestui*.

In *Searson, supra*, the Court also quotes the following from 2 *Bogert on Trusts and Trustees* § 451:

Constructive trusts will be considered as comprising those cases where a court of equity finds that a defendant holds a property interest unfairly as against the complainant, but not under an express or resulting trust.

Here, Plaintiff asserts that the uncontroverted facts admitted by Defendants in Plaintiff's First Request to Admit establish the existence of a Constructive Trust and entitle Plaintiff to Judgment accordingly.

**b. Plaintiff's Motion for Summary Judgment.**

The Plaintiff's claim against these Defendants seeks a judgment imposing a constructive trust upon the Defendants' residence. The Plaintiff alleges that there is no material question of fact as to this claim.

It appears that all of the elements necessary for the Court to find a constructive trust are present in this fact pattern and are admitted by the Defendants, to wit, that the Rileys transferred a portion of the more than two million dollars that they appropriated from Plaintiff and contractors whose products New Venue was obligated to pay for as part of the pass-through from the State on the residence that Plaintiff contends is held in constructive trust for them and to which the Plaintiff is entitled. The Rileys have further admitted that they converted Plaintiff's funds that were being held in trust by New Venue to their own use by writing checks on New Venue's accounts for the construction of their residence on Langford Road totaling more than \$744,130.53.

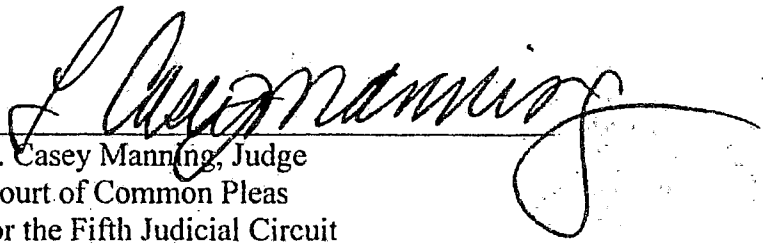
Defendants' express legal admissions establish the factual basis necessary to find a constructive trust in this matter. The Riley's have obtained money, in the form of a lot and residence using funds that did not belong to them, but rather which were to be remitted by New Venue to Plaintiff and its vendors. The Riley's should not, in good conscience, be allowed to retain the value purchased with these funds that equitably belong to the Plaintiff which is beneficially entitled to the funds. Moreover, it does not appear that there is any other source of recovery to the Plaintiff. The circumstances and undisputed facts in this matter make it inequitable for the Riley's to retain title to the property.

Therefore, this Court grants the Plaintiff's Motion for Summary Judgment on the Constructive Trust Cause of Action and awards Plaintiff a judgment lien against and an equitable interest in the property to the amount of its award as determined by the Order of the Chief Procurement Officer.

**V. CONCLUSION**

For the foregoing reasons, this Court Grants Plaintiff's Motion for Summary Judgment. Accordingly, the Clerk is directed to enter Judgment on behalf of the Plaintiff reflecting Plaintiff's equitable interest in the property in the form of a Constructive Trust in the amount determined by the CPO and Procurement Review Panel of \$1,441,000.00, subject only to the prior interest of the first mortgagee of Record, Palmetto Citizens Federal Credit Union.

**IT IS SO ORDERED.**

  
L. Casey Manning, Judge  
Court of Common Pleas  
for the Fifth Judicial Circuit

Columbia, South Carolina

July 27, 2016

MONTGOMERY WILLARD, LLC  
ATTORNEYS AND COUNSELORS AT LAW  
1002 CALHOUN STREET  
COLUMBIA, SOUTH CAROLINA 29201  

---

(803) 779-3500

MICHAEL H. MONTGOMERY  
MHM@MONTGOMERYWILLARD.COM  
DIRECT DIAL No. (803) 753-6483

CERTIFIED CIVIL MEDIATOR

POST OFFICE Box 11886  
COLUMBIA, SOUTH CAROLINA 29211-1886

FACSIMILE (803) 799-2755  
WORLD WIDE WEB [HTTP://WWW.MONTGOMERYWILLARD.COM](http://www.MONTGOMERYWILLARD.COM)

July 19, 2016

*Hand Delivery*  
The Honorable L. Casey Manning  
1701 Main Street  
Room 214  
Columbia, SC 29202-0192

**Re: *The State of South Carolina v. Terris S. Riley and Jacque P. Riley and Palmetto  
Citizens Federal Credit Union  
Case No.: 2014-CP-40-6379  
Our File No.: 2135598***

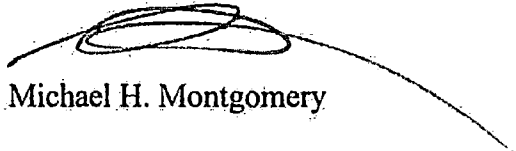
Dear Judge Manning:

Pursuant to your request, enclosed for your convenience in hard copy and in electronic form via flash drive is a proposed Order Granting Plaintiff's Motion for Summary Judgment in the above referenced action. Please feel free to contact me if you have any questions or concerns.

With kind regards, I am

Very truly yours,

MONTGOMERY WILLARD, LLC

  
Michael H. Montgomery

Enclosures

cc w/ encl: Geoffrey Kelly Chambers  
S. Nelson Weston, Jr.  
Frank S. Potts  
Keith McCook

2016-001848

**FROM:**

P.O. Box 974  
Blythewood SC 29016



1000



29211

U.S. POSTAGE  
PAID  
BLYTHEWOOD, SC  
29016  
SEP 21 16  
AMOUNT  
**\$2.20**  
R2305K141342-07

**TO:**

SC Court of Appeals  
P.O. Box 11629  
Columbia SC 29211

**RECEIVED**

SEP 23 2016

SC Court of Appeals

Utility Mailer  
10 1/2" x 16"

Ready **P**ost