THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL CALHOUN COUNTY
Court of Common Pleas

The Honorable Richard B Ness

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Case No. 2013-CP-09-00083
Appellant Case No. 2016-001867

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Bonnie Riley, Appellant,

v.

Michael Outlaw, Respondent.



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# FINAL REPLY BRIEF

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## FACTS

The Appellant would like to review some salient facts with regard to the actual testimony and evidence submitted to the Court. First, the Complaint stated that the Appellant promised that she would remember the Respondent in her will if he cared for some of her property. [R pp 9-14]. At trial the Appellant testified that she did not put anything into her will but told him that if he cared for her property and tended the property until she died she would give him a parcel of her land. [R pp 25 17 - 27 L 9]. She also testified that the work was not done properly despite her continued complaints. He also refused to correct the damage being done by the lawn care people. [R pp 27 L 10 - 28 L 25]. She also has complaints about other damage done to her yard, including the destruction of power lines and the loss of her food stored in her freezer. [R pp 29 L 8- 32 L 9].

Her testimony is replete with her complaints about the failure of the Respondent to properly care for the property or even causing damage to her property. Those complaints include, but are not limited to:

> He removed trees from her property without compensating her for the value of the trees. [R pp 32 L 10 - 33 L 6].
>
> Respondent dug a big hole on her property to use the dirt for his driveway and never repaired the hole. [R p 34 L 1-19].
>
> They put up a building on her property for their own use and left holes on the property when they took the building down. [R p 35 L 12 - 25].
>
> There were no improvements done to the property by the Respondent and as a result she ordered him off the property. At that time he hired Attorney Banks. [R pp 47 L 17 - 48 L 5].

The Record is replete throughout the Appellant's testimony regarding the fact that the Respondent

did not live up to the oral agreement.[1] The Deed was prepared by the Respondents' attorney. He then advised the Respondents to enter into a written contract and they rejected his advice. [R pp 70 L 21 - 74 L 16]. Therefore, the Respondents knew they needed a written contract and instructed their attorney to attempt to force the closing without a contract.

> Testimony of Martin Banks: "Well, I prepared a deed. I did a title search. I found that there was a mortgage on the property, and informed them that that would be one of the issues that need releasing. I also discovered under the search, I searched the name of the person who the property goes into – the one it would be going into. I'm pretty sure I recommended that we might need a contract because land transactions are best done with contracts, but I – they – it was a done deal they said, "No, can you do it this quick. We don't need a contract," because it is already set in stone. So I found that there was a problem with the name that the property was going to go into, and in the meantime before I could inform someone, I think they'd already arranged for Mrs. Outlaw [sic] to come to my office and sign this deed. That they really wanted this deed instead of a contract, so I did –" [R pp 71 L 12 - 72 L 3] (emphasis added).

Mr Banks also testified he advised the Appellant not to sign the deed at this point in time. [R p 72 L 14 - 73 L 22]. Therefore, the only testimony on the signing of the deed is that it was not appropriate to sign and that the attorney for the Respondent advised the Appellant not to sign the deed. This controversy arose after Mr. Banks wrote the demand letter.

In the Order at Paragraph 9, the Court finds that the Respondent's wife prepared a letter to Wachovia on behalf of the Appellant requesting that this property be released. It states that the letter was signed by the Appellant and sent to Wachovia. [R p 3]. We have reviewed the testimony of Mrs. Outlaw and do not find any testimony that the Appellant signed the letter and it was sent to

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[1] A review of the entire Record reveals that it is not even clear what the Agreement was entered into. There is testimony that it was to occur at the Appellant's death. There was activity regarding the property with Wachovia and Attorney Banks, but the end result was that Banks advised the Appellant not to sign the deed. There is no evidence that the issues regarding the title were ever resolved. [R pp 49 L 10 - 50 L 25; pp 71 L 8 - 73 L 18].

Wachovia. [R pp 111 L 11 - 129 L 10]. No such letter was placed into evidence. Therefore, unless the undersigned has overlooked some of the testimony, this is an error by the trial court.

There is a letter in evidence from Wachovia to Appellant and it is Defendant's Exhibit #1. [R p 163-164]. The letter requested that the Appellant send a specific letter to Wachovia to have the lien on the Parcel released, but does not guarantee that it would release the property. Further, there is handwriting on the letter but there is no testimony whose handwriting it is or the meaning of the handwriting. There is testimony regarding this letter. Appellant testified she received a letter from Wachovia but did nothing. Further, Appellant testified that $250 had to be paid to obtain a release and that she could not pay that amount.[2] The Appellant was unclear whether the letter went to her, or Mrs. Outlaw, but she clearly stated that while she called Wachovia, she did not write a letter and she did not sign any letter. [R pp 66 L 10 - 68 L 8]. The Appellant asserts there is therefore a material error in the Order itself.

There are other facts which will be set forth within the Arguments below. These facts are set forth to ensure that the Court understands the context of the arguments below.

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[2] This other evidence that the contract is not definite and certain to its terms and if it exists, it can not be enforced. There is no evidence whether the title was cleared or who was to pay the release fee.

## STANDARD OF REVIEW

This case presents issues of both equity and law. As a result, this court must review each issue under the applicable rule of law. *Mason v. Mason*, 412 S.C. 28, 770 S.E.2d 405 (S.C. App., 2015). On the equitable issues, this Court has the jurisdiction to find facts in accord with the preponderance of the evidence. *Park Regency, LLC v. R&D Dev. of the Carolinas, LLC*, 402 S.C. 401, 741 S.E.2d 528 (S.C. App., 2012). In an action at law tried by a judge without a jury the standard that the findings of the Judge will not be disturbed unless the facts are found to be without evidence which reasonably supports the findings of the court. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (S.C., 1976); *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 538 S.E.2d 15 (S.C. App., 2000).

## ARGUMENTS

### I. THE TRIAL COURT COMMITTED ERROR BY GRANTING RESPONDENT A JUDGMENT ON THE THEORY OF UNJUST ENRICHMENT AS THE RESPONDENT DID NOT PROVE THE ELEMENTS OF THE CAUSE OF ACTION

The trial court entered judgment for the Respondent in the amount of $17,965.00 on the theory of Unjust Enrichment. Specifically the Court stated:

> The Defendant has proven his case in Quantum Meruit. From 2007 through the beginning of 2014 the Plaintiff allowed the Defendant to mow and maintain her property as well as Parcel "C", although with many complaints from the Plaintiff. In spite of complaints, the Plaintiff never stopped the Defendant from performing the service and allowing him to do so for nearly six (6) years prior to this litigation in which the Defendant received no compensation from the Plaintiff other than the promise of the conveyance of Parcel "C" to the Defendant. Therefore, I conclude that the Defendant should have judgment against the Plaintiff in the amount of $17, 965. [R pp 1 - 5].

However, the Court just sets forth the amount of the award. It does not state how the amount was calculated or the basis of the award. While there is evidence that the Respondent did some mowing

for the Appellant, there is also proof that it was not done properly. Further, there are no documents or testimony which set forth the basis for the claim by the Defendants. It appears to be conjecture.

The elements of a contract will be discussed further below. This portion of the Argument assumes there is no enforceable contract. In order to recover under the theory of Unjust Enrichment, a party must show that the Appellant was enriched by the unjust retention of a benefit to the loss of another. *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (S.C., 1989). A recovery under quantum meruit had three elements, "(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." *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 129 (S.C., 1993).

In *Chase Home Fin., LLC v. Risher*, 405 S.C. 202, 746 S.E.2d 471 (S.C. App., 2013), the Court held that a mortgage company could not enforce a lien against a co-owner who did not sign a note or mortgage, even though she signed other documents at the closing. The court found that there was no evidence that the defendant had breached any duty to disclose or undertaken any other actions that would justify recovery against her interest in the real estate. See: both *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (S.C., 2000); *Myrtle Beach Hosp. v. City of Myrtle Beach*, 333 S.C. 590, 510 S.E.2d 439 (S.C. App., 1998) (The Defendant did not receive a benefit) and *Regions Bank v. Wingard Properties Inc.*, 394 S.C. 241, 715 S.E.2d 348 (S.C. App., 2011) (the Bank would have received a benefit to the detriment of Covnington) wherein our Courts have made it clear that these elements of the cause of action must be proven with competent evidence.

On the surface, it might be simple to simply say that Appellant got her grass cut and therefore

owes money to the Respondent. However, the actual facts are more complicated and there is no evidence justifying this award to the Respondent. In this instance there is no benefit conferred and no benefit was realized.[3]

The Appellant testified she would leave property to the Respondent if he cut her grass and maintained her yard during her lifetime and take care of her property as she needed. [R pp 25 L 23 - 27 L 1]. However, the Appellant stated that the Respondent did not take care of the property and actually damaged it by tearing up the ground. Further, the Respondent would not do anything about this damage. [R pp 27 L 10- 28 L 25]. Respondent failed to properly move some soil from the Parcel in question onto her lot and damaged the property. He tore out the power lines and caused the Appellant to lose her food stored in her freezer and never repaid this loss. [R pp 29 L 8 - 30 L 22]. Additionally, the Respondent put up structures on the Tract owned by the Appellant for his own benefit and without Appellant's permission. [R pp 30 L 23 - 32 L 14]. Respondent took dirt from the Appellant's property for his own use and did not repair the damage and holes. [R pp 34 L 1 - 35 L 25].

The Appellant has alleged that the Respondent left refuse on the lot and put up a storage shed which left holes when it was removed. It is clear the shed was only for the benefit of the Respondent and that the Respondent used the Tract for his own personal benefit. Thus, the Respondent was receiving a benefit for mowing the grass. The Respondent sought to recover money for the materials and time spent on the barn he constructed for his own use as well. [R pp 35 L 2- 38 L 25; pp 85 L 20 - 87 L 25; pp 105 L 3 - 106 L 5; pp 115 L 11 - 117 L 8].

Additionally, there is no evidence a benefit was received by the Appellant. There is no

[3] In this case there is no known written contract.

evidence indicating what area was mowed by the Respondent so there is no way to determine if the claimed amount of $400 every two weeks was reasonable or any benefit at all. While it is clear that only the Respondent benefitted from the Parcel in question, it appears the Judge charged that mowing to the Appellant as well. The Respondent was presented with several opportunities to introduce evidence regarding the work done and the value provided, however, he only provided speculative figures with no proof of the supposed value. Appellant's attorney asked the Respondent and his wife if they had any proof of the services provided such as checks, invoices, proof of payment to employees or proof of employment of contractors and the answer was no each time.

The Respondent clearly just made up the figure of $21,000 to $26,000 being the value of any services. They had no documents to substantiate the claim and could not produce a contract they claimed existed. [R pp 80 L 21 - 85 L 2; pp 109 L 16 - 110 L 11]. Respondent attempts to claim the building on the Tract was a benefit to the Appellant, but his testimony and the testimony of his wife is that the building was placed on the Tract for his benefit, not the Appellant. [R pp 85 L 14 - 87 L 24]. Respondent admitted he used dirt off the Tract on his own property. [R p 88 L 16 - 89 L 19]. Even though the hearing had been continued several times, the Respondent failed to bring any witness to testify about any supposed benefit and prove his claim to $21,000. [R pp 90 L 25 - 92 L 15].

Additionally, the Respondent is attempting to make the Appellant pay for a survey he had prepared. There is no contract or other provision or evidence that the Appellant was required to pay for a survey. [R pp 94 L 14 - 95 L 15]. The Respondent testified the only benefit to the Appellant for the Tract was that she owned it. [R pp 105 L 19 - 106 L 5].

The Respondent's wife testified that she tried to put together a figure to make a money claim

against the Appellant but all she could do was take something "off the top of my head." [R pp 111 L 21 - 112 L 6]. She again raised the claim of the survey [R p 113 L 5 - 17]. She admitted there were no invoices for the pole building and guessed $8,000. [R p 115 L 11 - 25]. She did have an invoice for a portion of the pole building, but admits it was not for the benefit of the Appellant. [R pp 116 L 1 - 117 L 11]. While she claimed the Respondent was incurring the cost of $100 every two weeks for cutting the Appellant's yard, there is no evidence regarding the size of the yard and the reasonableness of this claim. Further, she admits she had no proof of this charge. [R pp 125 L 1 - 126 L 7].

This detailed review of the evidence shows that the Respondent may not recover under the theory of Quantum Meruit because he produced no evidence of benefit upon the Appellant. Further, he produced no evidence of any benefit Appellant realized as there is no proof, only the self-serving figures "taken off the top of the heads" of the Appellant and his wife. There being no proof on those two elements, the third element is also not proven. Therefore, the trial court should be reversed and judgment should be entered for the Appellant.

## II. THE TRIAL JUDGE COMMITTED ERROR BY FINDING THAT THE STATUTE OF FRAUDS DID NOT BAR THE CLAIM AND THAT THE FACTS SUPPORTED JUDGMENT FOR THE RESPONDENT

There is no doubt that there is no writing or contract sufficient to satisfy the Statute of Frauds in this instance. This statute provides that "Any agreement for the use or occupation of real estate for more than one year shall be void unless in writing." *S.C. Ann.* § 27-35-20 There is no writing concerning this transaction between the Appellant and Respondent. In order to enforce a contract it must be in writing and signed by the parties:

> No action shall be brought whereby:
> ...
>
> (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or
>
> (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof;
>
> Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

*S.C. Ann.* § 32-3-10 (4). Therefore the purported contract is within the Statute of Frauds and should not be enforced.

However, the trial court ruled that there was a partial performance of the partial and complete performance by the Defendant which took this matter outside the Statute of Frauds. [R pp 1-5]. The Appellant argues that this ruling by the Court if in error and there is no evidence to support the findings of the Judge. The Judge's ruling on the facts and the application of the law was in error.

The standards for the Judge to make a ruling are set forth in cases regarding the Statute of Frauds. In *Player vs Chandler, supra*, the court states that the party claiming that the agreement is without the Statute of Frauds "must establish acts which relate clearly and unequivocally to the agreement, exclusive of any other relation between parties touching such agreement." *Supra.* 299 SC at 105, 382 S.E.2d at 894. Further, "in order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and "the writings must establish the essential terms of the contract without resort to parol evidence." *Springob v. Univ. of S.C.* , 407 S.C. 490, 757 S.E.2d 384, 387 (S.C., 2014). There is a good discussion of this requirement in the case of *Fici v. Koon*, 642 S.E.2d 602, 372 S.C. 341 (S.C., 2007):

> To satisfy the Statute of Frauds, every essential element of the contract must be expressed in a writing signed by the party to be compelled. *Cash v. Maddox,* 265 S.C. 480, 220 S.E.2d 121 (1975); *Speed v. Speed,* 213 S.C. 401, 49 S.E.2d 588 (1948). The burden of proof is on the party seeking to enforce the contract. *Cash, supra.*
>
> In the context of a land sale, a description of the property must be in a signed writing; parol evidence cannot supply this essential element. *Jackson v. Frier,* 118 S.C. 449, 110 S.E. 676 (1922); *Hyde v. Cooper,* 34 S.C. Eq. (13 Rich. Eq.) 250 (1867). Parol evidence may be used only to explain terms appearing in the description; the signed writings must contain a sufficient description of the land to show with reasonable certainty what is to be conveyed. *Cash,* 265 S.C. at 484, 220 S.E.2d at 122. A description that does not include the location of the land or its boundaries is inadequate. *Humbert v. Brisbane,* 25 S.C. 506 (1886). Where there is no adequate description of which part of a parcel is to be conveyed, the conveyance is unenforceable. *Cash, supra; Cousar v. Shepherd-Will, Inc.,* 300 S.C. 366, 387 S.E.2d 723 (Ct.App.1990). [Footnotes omitted].

Of course, partial performance may take a case outside the Statute of Frauds, but certain proof must be made. Such proof was not offered here. *Bradshaw v. Ewing*, 376 S.E.2d 264, 297 S.C. 242 (S.C., 1988).

A case on point here is *Bradshaw v. Ewing*, 376 S.E.2d 264, 297 S.C. 242 (S.C., 1988). In *Bradshaw*, the Plaintiff brought an action to enforce an oral contract to convey real estate. The Plaintiff alleged a contract had been orally modified. As stated in the opinion, partial performance must be shown to take a case outside of the Statute of Frauds. The Court ruled performance may be shown by evidence of the following:

> Performance may be proved by evidence of the following: (1) improvements to the real estate; (2) possession of the real estate; (3) payment of the purchase price. *Stackhouse v. Cook*, 271 S.C. 518, 248 S.E.2d 482 (1978). Actual possession and improvements to the property are the strongest evidence to show part performance. *Scurry v. Edwards*, 232 S.C. 53, 100 S.E.2d 812 (1957). Payment of the purchase price is the weakest evidence of part performance and will not suffice on its own to remove a contract from the Statute of Frauds. *McMillan v.*

> *McMillan*, 77 S.C. 511, 58 S.E. 431 (1907). In order to overcome the Statute of Frauds, Dutchland must establish the parol contract "by competent and satisfactory proof, such as is clear, definite and certain." *Aust v. Beard*, 230 S.C. 515, 96 S.E.2d 558 (1957). *Id.*

First the Appellant would draw the Court's attention to the fact that the evidence must be competent and clear, definite and certain. In this case none of those requirements were met and the Court was in error to enter judgment for the Respondent.

In *Bradshaw* the party seeking to claim performance submitted evidence they had improved the property by moving a large ranch house on the property, partially cleared and graded the property, picking up trash and cutting wood. However, the two improvements were made at the direction of a third party. Improvements must be permanent to establish performance and must substantially improve the value of the property. In this case the improvements were not permanent as they were removed from the property. Additionally in the *Aust* case cited above the party cleared heavy undergrowth, planted grass and erected two large electric signs. In both *Bradshaw* and *Aust*, the Court found that this was not sufficient and did not remove the oral contract outside of the Statute of Frauds.

These facts in these two cases mirror this case in that the only permanent action taken by the Respondent was to clear some brush and cut the grass. These actions do not rise to this standard of proof and therefore it is clear that the findings of the Court are not supported by the evidence.[4]

Additionally, there is no description of the property which arises to the threshold of proving the claims of the Respondent. As in *Fici v. Koon*, 642 S.E.2d 602, 372 S.C. 341 (S.C., 2007), the Appellant did not approve of the plat prepared by the Respondent. In *Fici* the parties walked the

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[4] This is especially true in light of the paucity of evidence actually entered by the Respondent.

proposed lines and had a survey prepared. The plat was recorded. The Seller, as in this case, did not approve the plat. The court held that any contract of a land sale must have a description which may not be provided by parol evidence but must be in writing. Also, the burden of proof is on the Respondent in this instance. As shown in *Fici* there must be a sufficient description which is agreed to by the Seller. See also, *Springob v. Univ. of S.C.* , 407 S.C. 490, 757 S.E.2d 384 (S.C., 2014) for the requirements of the Statute of Frauds.[5]

In light of the absolute failure of proof, the Appellant submits that the Court erred in finding that partial performance took this oral agreement outside of the Statute of Frauds and requests the Court enter its ruling reversing the Judgment by the trial court.

## III. THE TRIAL COURT COMMITTED ERROR BY ALLOWING A JUDGMENT TO BE ENTERED WHEN THERE WAS NO PROOF OF DAMAGES AND SUCH PROOF AS SUBMITTED WAS SPECULATIVE.

The Court granted a money judgment in favor of the Respondent in the amount of $17,965 without setting forth what evidence upon which he based his calculations. He used a speculative figure provided by the Respondent who had admitted it was a figure his wife assumed from the top of her head. Using that figure he makes calculations of $200 per month and later $100 and simply stated, without any evidence, those figures were appropriate. Additionally, the Court allows the Respondent to recover the cost of the survey even though there is no evidence she requested a survey or was obligated to pay for one. The award is based upon the fact that the Respondent had been mowing the grass and maintaining property for a number of years. [R pp 1- 5]. This award is both

[5] In addition to the arguments of the Appellant, we also would point out the contract could not be enforced as there was no evidence the lien was satisfied or that the property would be released from the mortgage. Further, there was no agreement on the payment of the $250 fee.

speculative and is not based upon the evidence which was actually introduced at trial.

First, while the Court's does not award any damages for the erection of the building, it ignores that fact that the Respondent was allowed to erect a building on the property of the Appellant and used the property for his own purposes for storage of equipment. This ended when the son of the Respondent was no longer operating the farm machinery. The court did not take this use by the Respondent into consideration and did not assign any value to the use of this land. [R pp 80 L 21 - 85 L 8; R pp 85 L 14 - 87 L 24; R pp 88 L 16 - 89 L 19 R pp 90 L 25 - 92 L 15; R pp 109 L 16 - 110 L 11]. Mrs. Outlaw also testified that the building was erected for their own purposes and solely for their benefit. [R p 117 L 2-16]. The Respondent even sought to be reimbursed for the labor and cost of building this building. [R pp 35 L 2- 38 L 25; R pp 85 L 20 - 87 L 25; R pp 105 L 3 - 106 L 5; R p 120 L 5 - 7; R pp 115 L 11 - 117 L 8].

The Respondent and his wife also admitted that their claim was speculative and they made it up off the top of their heads. [R pp 80 L 21 - 85 L 8; R pp 109 L 16 - 110 L 11; R pp 111 L 21 - 112 L 6; R p 113 L 5 - 17; R p 115 L 11 - 25; R pp 116 L 1 - 117 L 11; R pp 125 L 1 - 126 L 7]. There is no evidence that the cutting of the grass on the Parcel was done for the benefit of the Appellant and the Respondent admitted that there was no benefit conveyed to the Appellant. [T pp 105 L 19 - 106 L 5]. The Court did not take into account the benefit received by the Appellant, which actually exceeded any benefit conveyed to the Appellant. Especially when you recall the amount of damage done to her property.

There is no evidence in the record to justify this award. As stated above, the Respondent failed to introduce any competent evidence regarding the value of the work he claims to have done.

He did not show the Court how large the space he cut for the Appellant.[6] He did not have any checks or records indicating any man hours he expended, no records indicating anyone who was paid to do any work, no evidence of costs or expenses such as gas, oil, equipment use, or the value of any time expended. As shown above, the Respondent's wife testified she wanted a figure to give to Attorney Banks and just pulled something off the top of her head.

Therefore, a review of the record confirms that there was no evidence to justify the award granted by the Court. Additionally, the Judge failed to make any findings as to what the Respondent did and the benefit he received. The Court simply accepted the estimated guess of $400 every two weeks and somehow came up with a figure. These damages are entirely speculative.

As stated in the case that both parties cite, *Minter v. GOCT, Inc.*, 322 S.C. 525, 528, 473 S.E.2d 67/ 70 (S.C. App., 1996):

> the general rule for recovery of damages which requires that the evidence should be such as to enable the factfinder to determine the amount of the damages with reasonable certainty. While proof with mathematical certainty is not required, the amount of damages cannot be left to conjecture, guess, or speculation. *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).

Further discussion of the process of evaluating an award of damages is set forth in *YADKIN BRICK v. MATERIALS RECOVERY*, 339 S.C. 640, 529 S.E.2d 764 (S.C. App., 2000):

> "Neither the existence, causation nor amount of damages can be left to [the judge or jury's] conjecture, guess or speculation."[Citation omitted] Moreover, bald allegations are insufficient to establish a claim for diminution in value, and the evidence must not be speculative as to the amount of the alleged diminution. *See Baughman v. American Tel. & Tel. Co.*,306 S.C. 101, 410 S.E.2d 537 (1991).

In short, the amount of damages must never be left to conjecture, guess or speculation. And, while

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[6] The cutting of the Parcel in question was clearly done for the benefit of the Respondent and provided no benefit to the Appellant.

it is not necessary to establish damages to a mathematical certainty, they must be established to a reasonable certainty. *Minter, supra. South Carolina Finance Corp. of Anderson v. West Side Finance Co.*, 236 S.C. 109, 113 S.E.2d 329 (S.C., 1960).

A review of these cases indicate what is absent in this case. In *Yadkin*, the brick yard failed to submit sufficient evidence because it did not show permanent damage and its expert testified that he could not provide an opinion as to the diminution of the property. As set forth above, bald allegations are insufficient and evidence must not be speculative. In the *South Carolina Finance Corp. Of Anderson* cited above, the Court held that the introduction of the amount of all loans during a period of time, together with the testimony of the treasurer as to the amount of profit which would have been received was sufficient. *Id.* 113 S.E.2d 336. In *Collins Holding Corp. v. Landrum*, 360 S.C. 346, 601 S.E.2d 332 (S.C., 2004) the evidence given by a Certified Public Accountant based upon the weekly revenue to be realized for a particular time period was sufficient to support an award of damages.

In a case with similar claims such as this, *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 769 S.E.2d 242 (S.C. App., 2014), a party breached a lease by placing a phone tower on the leased property. The Court ruled that even though there was a breach of the lease, the proof of damages was speculative and the tower did not interfere with their operations. Therefore, the claim did not support an award of damages.

In this case, as set forth above, the testimony of the Respondent and his wife clearly shows that this claim is speculative. They were not able to produce one check, invoice, or any substantial proof of the value of any work which was performed. [See arguments above and R p 110 L 1 - 11]. And, more importantly, when asked about how they came up with their figures, Brandy Outlaw

testified:

Attorney Jackson: Okay. Were you able to put together – and again, I know y'all didn't keep records as the time this was going on – were you able to go back and put together some figures as to the value of these things that were done?

Brandy Outlaw: Yes, I – we tried to put together a few figures. It was very quick. We went to see Martin Banks within – it was either that afternoon or the next morning and so **we just threw some numbers together really fast. We did not have receipts or anything like that to show him. It was just off the top of our head.**

[R pp 111 L 21 - 112 L 6] (emphasis added).

There is no evidence of any funds expended, costs of labor, costs of work or the value of the services provided. Additionally, the Court did not take into account the admitted value to the Respondent when calculating damages. The Court simply multiplied a number of months, by a figure provided by the Respondent and gave an award. However, in addition to no proof of the damages, the Respondent's wife admitted they just made up that figure off the top of their head. There being no evidence to support this award, the Appellant prays that the Court will issue its Order reversing the Court and entering judgement in her favor. *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 769 S.E.2d 242 (S.C. App., 2014)

## CONCLUSION

This case involves a dispute between neighbors regarding a promise to convey real estate at the time of the Appellant's death in return for certain yard maintenance work. While there is no dispute that the Respondent did perform some work, there is no proof of damages other than the speculation of the Respondent that he spent $200 a month cutting grass. The Respondent's wife admits that is a figure they made up. They have no checks, receipts, bills, or any other proof regarding the purported work performed. Additionally, there is no sufficient description of the

property to support taking the purported contract outside the Statute of Frauds. The Respondent has failed in his proof on all issues and the Order entered by the Trial Court should be reversed and judgment entered for the Appellant.

Respectfully submitted, this the 4th day of August 2017.

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In The Court of Appeals

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APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Richard B. Ness, Special Referee

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Bonnie Riley, Appellant,

vs.

Michael Outlaw, Respondent.



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Case No. 2013-CP-09-00083
Appellant Case No. 2016-001867

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## CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCAR.

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August 4th, 2017

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