

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM Horry COUNTY  
Court of Common Pleas

William E. Lawson, Special Referee

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CASE NO. 2011-CP-26-4758

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MAY 02 2014

**SC Court of Appeals**

Monroe E. Cook and Lynn S. Cooke .....Appellants

vs.

Nealy Lynn Taylor..... Respondent

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**FINAL REPLY BRIEF OF APPELLANTS**

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## ARGUMENT

### **I. Assumption of the risk is not a defense to quantum meruit.**

Respondent in its Brief argues that assumption of the risk is a defense to quantum meruit and unjust enrichment. Respondent cites for authority an inverse condemnation case entitled *Cutchin v. S.C. Dept. of Highways and Public Transportation*, 301 S.E. 35, 389 S.E.2d 646 (1990). A review of *Cutchin* makes no mention of the doctrine of quantum meruit. In fact, the Court found no evidence of the doctrine of assumption of risk. The Court noted that the plaintiff must freely and voluntarily enter into a known danger and be subsequently injured for the defense to apply. (This was a flooding case.) Obviously, this is not the case here and as a result, Appellants believe it was erroneous for the trial court to apply the doctrine in this case.

### **II. Appellants have argued waiver in their Brief.**

Respondents argue that the doctrine of waiver should apply and as a result the Special Referee's Order should be affirmed. However, waiver is not a defense to unjust enrichment or quantum meruit. The record clearly reveals that the Cooks understood the land would be reconveyed to them by their daughter. In fact, Respondent in her testimony understood this and immediately conveyed one-half interest to her husband because she did not want to reconvey the property to the Cooks. (R. p. 225, lines 5-13). Also Respondent admitted she paid nothing for the land and that she asked no questions but took it (R. p. 218, lines 1-5; p. 221, lines 12-13).

The decisions cited by Respondent regarding waiver do not apply when the Plaintiff's claim is quantum meruit. Respondent cites *Skipper v. Perrone*, 382 S.C. 53, 62, 674 S.E. 510 (Ct.App. 2009) for the proposition that the Court should accept the doctrine of

waiver. In fact, in that case the Court found waiver could not be applied against a party who was aged and had a mental condition.

In this case, the Appellants are uneducated people who relied on the Social Security Administration when they transferred the property (R. p. 39, lines 10-12); that the Social Security Administration employee said he needed to move some of the properties (R. p. 40, lines 9-10); that his daughter Nealy said she would sign the property back the same as her brother when requested (R. p. 41, lines 1-4); and that Respondent was told why Appellants wanted to transfer the property into her name (R. p. 43, lines 1-8).

Thus, with this background, Appellants did not knowingly and voluntarily waive their right to the property and is not a defense to equitable claims such as unjust enrichment or quantum meruit. See *Webb v. First Federal Savings and Loan*, 300 S.E. 507, 388 S.E.2d 823 (S.C.App. 1989). Further, because Appellants have asserted the equitable doctrines of quantum meruit and unjust enrichment, then waiver cannot be asserted since it is a legal defense.<sup>1</sup>

### **III. Appellants did not commit illegality or fraud.**

Appellants take issue with the argument that Appellants illegally tried to transfer the property to get social security benefits. There can be no illegality when a party seeks advice from a government official regarding eligibility for a program. Mrs. Cook testified that she went to the Social Security Administration and was told that Appellants had too much real property in their name to qualify for social security for their children. (R. p. 129, lines 6-8). Further, Mr. Cook's direct testimony was that Social Security Administration employees said he needed to move some of the properties. (R. p. 40, lines 9-19). There is no testimony

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<sup>1</sup> Also, the evidence is the Cooks did not waive their rights to the property and expected Respondent to reconvey it to them.

in the record that what the Cooks were doing was illegal and as a result, the argument by Respondent that the Appellants were involved in an illegal contract is without merit. Cook was told by Social Security Administration employees to deplete his assets (R. p. 40, lines 9-19). Cook was also told by Social Security Administration employees that he must pay back due benefits and he actually paid them (R. p. 43, lines 19-20 and lines 22-23); and no one intended to defraud the government and Appellants immediately paid back the money which they had been overpaid (R. p. 51, lines 12-15). Appellants cite to their Initial Brief (pages 8 and 9) which clearly and unequivocally show testimony of both Appellants that they discussed this matter with the Social Security Administration prior to transferring the property prior to applying for benefits.

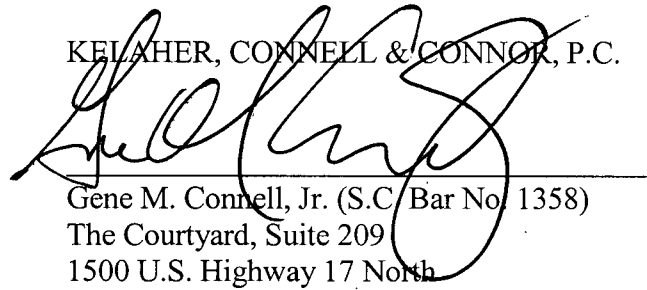
At the most, the issue with the Social Security Administration was a misunderstanding and the evidence does not rise to the level of an illegality.

### CONCLUSION

Accordingly, Appellants request this case be reversed and returned to the trial Court.

Respectfully submitted,

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April 30, 2014  
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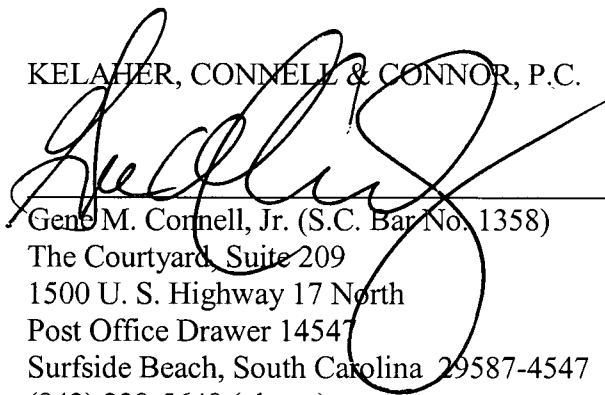
vs.

Nealy Lynn Taylor..... Respondent

**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Final Reply Brief complies with Rule 211(b)  
SCACR.

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April 28, 2014  
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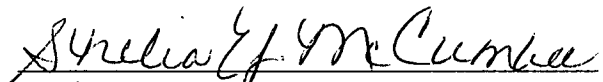
Nealy Lynn Taylor..... Respondent

PROOF OF SERVICE

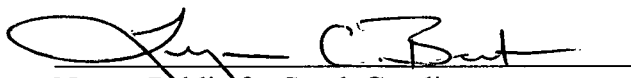
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served **Final Reply Brief of Appellants** on the Respondent, through her attorneys of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Phillip C. Thompson, Esq.  
Thompson & Henry, P.A.  
P. O. Box 1740  
Conway, SC 29528

DATE OF MAILING: April 30, 2014

  
Shelia Y. McCumbee

**SWORN AND SUBSCRIBED** before me,  
this 30<sup>th</sup> day of April, 2014.

  
Notary Public for South Carolina  
My Commission Expires: 2-17-19