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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

QUESTION CERTIFIED FROM THE UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISON
Richard Mark Gergel, United States District Court Judge

Civil Action Number: 2:18-cv-1571-RMG
Appellate Case No. 2019-000552

Johnny Thomerson, Plaintiff,

v.

Richard DeVito and Samuel Mullinax, individually and as Liquidating Shareholder Trustees of Lenco Marine, Defendants.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Does the three-year statute of limitations of S.C. Code Ann. § 15-3-530 apply to claims of promissory estoppel?

STATEMENT OF THE CASE[1]

Plaintiff, Johnny Thomerson ("Plaintiff" or "Thomerson"), alleges that Defendants, Richard DeVito ("DeVito") and Samuel Mullinax ("Mullinax") (collectively "Defendants"), the former owners of Lenco Marine, Inc. ("Lenco"), failed to provide Plaintiff a three percent ownership interest in Lenco.

In the United States District Court for the District of South Carolina's order of summary judgment, the Court made the following findings of facts: Lenco manufactured and sold trim tabs and other products to boat manufacturers. Mullinax served as the CEO, and DeVito was the president. (Dkt. No. 46 at 1). Lenco hired Plaintiff no later than May 2007. *Id.*. Plaintiff testified that during discussions regarding his compensation with DeVito prior to starting at Lenco, they had a "discussion that we [Plaintiff and Brian Robinson ("Robinson"), another employee of Lenco] both wanted to have equity ownership at some point in time in the future." *Id.* Plaintiff acknowledges that at the time he began at Lenco, he did not yet have an agreement regarding an equity interest in the company, and, instead, DeVito stated that they would "work on that as we go on down the road." *Id.* Although Defendants dispute the nature of the conversation, Plaintiff testified that DeVito ultimately provided some detail on the equity

[1] Defendants are providing a statement of the case because Plaintiff included contested facts, facts not considered by the District Court, and omitted a number of the requirements of Rule 208(b)(1)(C), SCACR.

plan in early 2009,[2] informing Plaintiff and Robinson that Lenco was going to buy back a 15 percent interest from a minority shareholder, and distribute it as a three percent share to five employees, including Plaintiff and Robinson. *Id.* Plaintiff believed that his three percent equity share would be issued contemporaneously with the stock buyback. *Id.*

In 2011, Plaintiff and Robinson had two conversations with DeVito regarding the ownership share.[3] When Plaintiff and Robinson were in Florida with DeVito, they approached DeVito asking, "where were we with our deal," meaning the "stock transfer." *Id.* DeVito, as they approached, "pretty much blew [them] off." *Id.* On another evening, during a cookout at DeVito's house, Plaintiff testified that he and Robinson asked again about the stock transfer, and DeVito "abruptly left our presence and went into his house." *Id.* at 2-3. Robinson resigned shortly thereafter without any ownership share of Lenco. *Id.* at 3.

DeVito also told Plaintiff that he did not want to distribute ownership shares in the company while there was a pending patent lawsuit against Lenco. *Id.* Plaintiff testified that this was because DeVito wanted to protect them from potential liability in the lawsuit. *Id.* The patent litigation concluded in September 2013 in favor of Lenco. *Id.* However, when the patent lawsuit ended, Plaintiff did not receive the promised three percent interest. *Id.* When Plaintiff asked about the three percent of equity, DeVito refused to speak about the shares, telling Plaintiff he "didn't want to talk about it or we'd [DeVito and Plaintiff] talk about it later." *Id.* Finally, near the end of 2016, Plaintiff asked

[2] Plaintiff testified the conversation occurred in early 2009; however, Defendants submitted evidence that Lenco purchased the 15% ownership interest in November 2007. *Id.*

[3] Plaintiff testified these conversations occurred approximately a month before Robinson resigned from Lenco. *Id.* Robinson resigned in August 2011. *Id.*

DeVito whether he "still intend[ed] to fulfill [his] promise to me of my 3%," and DeVito stated, "No, I am not." *Id.*

On April 9, 2018,[4] Plaintiff initiated the instant lawsuit. On June 8, 2019, Defendants removed this action to the United States District Court for the District of South Carolina. Plaintiff asserted six claims against Defendants: (1) Breach of Contract and Covenant of Good Faith and Fair Dealing; (2) Promissory Estoppel; (3) Quantum Meruit and Unjust Enrichment; (4) Negligent Misrepresentation; (5) Constructive Fraud; (6) and violation of the South Carolina Payment of Wages Act. Plaintiff's prayer for relief requests a trial by jury and entry of judgment against Defendants, including:

> a) Actual damages in the amount of at least 3% of the aforesaid sale price of [Lenco] from Defendants to the purchasing third party (or $1,800,000 *assuming a sales price of $60M*);
>
> b) Punitive and exemplary damages against Defendants in the amounts as determined by the jury having been apprised of the facts of the case;
>
> c) Treble damages in the amount of three times 3% of the aforesaid sales price of [Lenco] from Defendants to the purchasing third party (or $5,400,000 *assuming a sales price of $60M*);
>
> d) Attorney's fees and expenses of litigation;
>
> e) Pre-judgment and post-judgment interest;
>
> f) Such other and further relief as the Court deems just and proper.

Among other arguments, Defendant contended that all causes of action were barred by the applicable statutes of limitation as set forth in S.C. Code Ann. § 15-3-530(1) and (5) (2019). On April 2, 2019, the District Court granted summary judgment on all

[4] Plaintiff's brief states that the action was initiated on April 19, 2018; however, the lawsuit was actually filed on April 9, 2018.

contractual, tort (negligent misrepresentation and constructive fraud), and equitable (quantum meruit and unjust enrichment) claims except promissory estoppel based on the applicable three-year statute of limitations. The District Court found that "drawing all inferences in favor of Plaintiff, the undisputed evidence demonstrates that Plaintiff knew or should have known no later than September 2013 that Defendants had refused to provide him an ownership share of Lenco." [Dkt. No. 45 at 5]. Additionally, the Court found that Plaintiff's belief that Lenco would ultimately provide the three percent share to him was an "unreasonable subjective belief that does not toll the statute of limitations." *Id.* at 6. Therefore, the District Court held that "[s]ince Plaintiff filed his claim in 2018, long after the applicable statutes of limitations had run based on Plaintiff's discovery date of September 2013, his claims are time barred and Defendants are entitled to summary judgment on those claims." *Id.* at 7.

The District Court reserved judgment as to Plaintiff's promissory estoppel claim and certified the question that brings the parties in front of the Court. As the instant matter is a certified question, there is no amount of money involved in this aspect of the proceeding.[5]

STANDARD OF REVIEW

Statutory interpretation is a question of law subject to *de novo* review. *Town of Summerville v. City of N. Charleston*, 662 S.E. 2d 40, 41 (S.C. 2008); *Transp. Ins. Co. v. S.C. Second Injury Fund*, 669 S.E. 2d 687, 689 (S.C. 2010).

[5] Plaintiff contends that approximately $1,800,000.00 is currently at issue in this case. Defendants disagree because Plaintiff's sole promissory estoppel claim will be contested legally and factually.

ARGUMENT

Defendants respectfully submit that Plaintiff's promissory estoppel claim is subject to S.C. Code Ann. § 15-3-530 for the following reasons:

- Promissory estoppel is an equitable quasi-contractual remedy when it seeks money damages and, therefore, it is subject to the S.C. Code Ann. § 15-3-530.
- Section 15-3-530(1) bars a promissory estoppel claim that arises from an obligation seeking to recover money damages after three years.
- Alternatively, section 15-3-530(5) as the residual/catch-all statutory provision bars the equitable claim for promissory estoppel because it does not arise on a contract and is not enumerated by law.
- Promissory estoppel and *Quantum meruit* are both quasi-contractual equitable claims and promissory estoppel should be barred by section 15-3-530 for the same reasons that quantum meruit claims are barred by section 15-3-530.

I. PROMISSORY ESTOPPEL IS A QUASI-CONTRACTUAL EQUITABLE CLAIM

"Promissory estoppel is an equitable quasi-contractual remedy." *N. Am. Rescue Prods. v. Richardson*, 769 S.E. 2d 237, 241 (S.C. 2015). The Court first used the term "promissory estoppel" in the 1981 case *Higgins Constr. Co. v. Southern Bell Tel. & Tel. Co.* in 1981. 281 S.E. 2d 469 (S.C. 1981). *Higgins* held that an action for promissory estoppel arises from "the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it ***would be virtually to sanction the perpetration of fraud or would result in other injustice***." *Higgins Constr. Co. v. Southern Bell Tel. & Tel. Co.*, 281 S.E. 2d 469, 470 (S.C. 1981) (emphasis added).

After several years of application by the lower courts, the elements for promissory estoppel were crystalized by the Court in *Davis v. Greenwood Sch. Dist. 50*. 620 S.E. 2d 65, 67 (S.C. 2005). They are: "(1) the presence of an unambiguous promise; (2) the promisee reasonably relied upon the promise; (3) the reliance was expected and foreseeable by the promisor; and (4) the promisee was injured as a result of reliance upon the promise." *Id.* at 67. Due to its quasi-contractual nature, promissory estoppel is subject to the statute of limitations set forth in S.C. Code Ann. § 15-3-530.

Plaintiff's promissory estoppel action, as pled in his complaint, is an "action at law" – not an "action in equity" - because it seeks money damages as his sole remedy and, therefore, it is subject to the S.C. Code Ann. § 15-3-530. In determining whether an action is legal or equitable in nature, the court must ascertain the plaintiff's "main purpose" in bringing the action. *Verenes v. Alvanos*, 690 S.E. 2d 771, 773 (S.C. 2010). As the *Verenes* Court explained:

> The main purpose of the action should generally be ascertained from the body of the complaint. However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action. The nature of the issues raised by the pleadings and character of the relief sought under them determines the character of an action as legal or equitable.

Id. at 773 (internal citations omitted). When a claim's primary purpose is to obtain money damages, it is a legal action. *Baughman v. Am. Tel & Co.*, 378 S.E. 2d 599, 600 (S.C. 1989). Conversely, when a claim's primary purpose is to obtain equitable relief, it is an equitable action. *Collins Music Co. v. Lightsey*, 328 S.E. 2d 477, 478 (S.C. 1985). The Court has determined that the following actions are equitable in nature: (1) rescission of contract; (2) seeking injunctive relief; (3) creating a constructive trust; and

(4) foreclosing a mortgage.[6] *Johnson v. South Carolina Nat'l Bank*, 328 S.E. 2d 75, 77 (S.C. 1985) (rescission of contract is an equitable action); *Collins Music Co. v. Lightsey*, 328 S.E. 2d 477, 478 (S.C. 1985) (actions for injunctive relief are equitable); *Bramlett v. Young*, 93 S.E. 2d 873, 879 (S.C. 1956) (constructive trust is an action in equity); *Anderson v. Purvis*, 44 S.E. 2d 611 (S.C. 1947) (mortgage foreclosure is an action in equity).

As shown in Plaintiff's claims and prayer for relief, Plaintiff's primary purpose is to obtain money damages. Aside from alleging that promissory estoppel provides him with an equitable right to obtain money damages, Plaintiff's count for promissory estoppel does not request or mention any equitable relief.

If Plaintiff had timely filed this action within three years of his discovery date of September 2013, the District Court could have required Lenco to transfer or issue stock certificates to Plaintiff for the alleged ownership, such relief being equitable in nature. But, he didn't. Rather than bringing the claim, he waited until sixteen months after the sale of the company had been consummated, when the Respondents no longer had an ownership interest in the stock. Because the primary, and only, purpose of this action is for money damages, Plaintiff's claim for promissory estoppel constitutes a legal action on an alleged obligation subject to the statute of limitations.

II. S.C. CODE ANN. § 15-3-530 BARS AN ACTION FOR PROMISSORY ESTOPPEL

Statutes of limitations are fundamental to our judicial system. *Lyons v. Fid. Nat'l Title Ins. Co.*, 781 S.E. 2d 126, 131 (S.C. Ct. App. 2015) (quoting *Carolina Marine Handling, Inc. v. Lasch*, 609 S.E. 2d 548, 552 (S.C. Ct. App. 2005)). They embody

[6] This is a non-exhaustive list.

important public policy considerations; specifically, they stimulate activity, punish neglect, and promote repose by giving security and stability to human affairs. *Anonymous Taxpayer v. S.C. Dep't of Revenue*, 661 S.E. 2d 73, 80 (S.C. 2008). The statute protects a defendant from false or fraudulent claims that might be difficult to disprove if not pursued until after the relevant evidence has been lost or destroyed and witnesses have become unavailable. *Santee Portland Cement Co. v. Daniel Int'l Corp.*, 384 S.E. 2d 693, 694 (S.C. 1989), overruled on other grounds by *Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp.*, 462 S.E. 2d 858 (S.C. 1995). Without a statute of limitations, potential defendants will have a never-ending fear of litigation, and the policy goal of providing finality to litigation is thwarted. *Allwin v. Russ Cooper Assocs.*, 825 S.E. 2d 707, 713 (S.C. Ct. App. 2019).

South Carolina statute of limitations provides that:

The periods for the commencement of actions other than for the recovery of real property shall be as prescribed in the following sections:

> Within three years:
>
> > (1) *an action upon a contract, obligation, or liability, express or* ***implied***, excepting those provided for in Section 15-3-520[7]. . .
> >
> > (5) an action for assault, battery, or injury to the person or rights of another, ***not arising on contract and not enumerated by law***, and those provided for in Section 15-3-545[8];

S.C. Code Ann. § 15-3-530(1), (5) (2019) (emphasis added). Additionally, "***[c]ivil actions may only be commenced*** within the periods prescribed in [Title 15] after the

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[7] S.C. Code Ann. § 15-3-520 provides a twenty-year statute of limitations for actions unrelated to promissory estoppel.

[8] S.C. Code Ann. § 15-3-545 relates to actions for medical malpractice.

cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute." S.C. Code § 15-3-20(A) (2019) (emphasis added).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. *City of Newberry v. Newberry Elec. Coop., Inc.*, 692 S.E. 2d 510, 512 (S.C. 2010). What a legislature states in the text of a statute is the best evidence of its intent and will. *Hodges v. Rainey*, 553 S.E. 2d 578, 581 (S.C. 2000). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 537 S.E. 2d 543, 546 (S.C. 2000). Thus, when a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the Court has no right to impose another meaning. *Hodges v. Rainey*, 553 S.E. 2d 578, 581 (S.C. 2000). The statute, as a whole, must receive a practical, reasonable, and fair interpretation, consistent with the purpose, design, and policy of the legislature. *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 503 S.E. 2d 471, 478 (S.C. 1998). When the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the statute itself. *Kennedy v. S.C. Ret. Sys.*, 549 S.E. 2d 243, 247 (S.C. 2001). Finally, "in construing a statute, the Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature." *Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def.*, 670 S.E.2d 371, 373 (S.C. 2008).

Upon a reading of the language of S.C. Code Ann. § 15-3-530(1), the statute plainly and unambiguously intended to bar an action based on a contract, obligation or liability regardless if the contract, obligation or liability is expressly stated or written or implied by conduct or actions of the parties. Section 15-3-530(1) is broadly drafted and conveys a clear and definite meaning with no exceptions or caveats stated. If the legislature wanted to create an exception for equitable claims involving a contract, obligation, or liability, it could have and should have stated a clear and definite exception to the section 15-3-530(1).

The Court has the power to apply section 15-3-530(1) to promissory estoppel claims even when it is not specifically addressed in the statute. In *State v. McClinton*, 369 S.C. 167 (S.C. 2006), the Court held that section 15-3-530(1) applied to the State in bringing a bail bond forfeiture action. *Id.* at 174. The Court found that bail bond forfeiture actions are civil actions based on contract. *Id.* The Court determined that "[t]he Legislature has not provided a specific statute of limitations in the bail bond statutes; however, nothing in those statutes indicates an intent to prohibit a reasonable deadline for the State to act." *Id.* The Court further reasoned that "[s]tatutes of limitations 'are designed to promote justice by forcing parties to pursue a case in a timely manner. Parties should act before memories dim, evidence grows stale or becomes nonexistent, or other people act in reliance on what they believe is a settled state of public [or private] affairs.'" *Id.* at 175 (internal citation omitted). The Court's reasoning and application of section 15-3-530(1) to bail bond forfeiture actions is compelling in applying the statute of limitations to promissory estoppel claims.

Promissory estoppel arises from an unambiguous promise to take or refrain from taking some action and therefore it is an "obligation" of the promisor. In Plaintiff's promissory estoppel claim, he seeks to obtain money damages arising from Defendants' alleged obligation to grant him an equity ownership interest in Lenco prior to the sale of its stock.

This interpretation of promissory estoppel as an obligation under section 15-3-530(1) is practical, reasonable, and fair because it does not treat an obligation for money damages under promissory estoppel differently than an obligation under a contract. It does not treat an obligation differently whether it is express or implied under the theory of promissory estoppel. It is reasonable because it does not treat Plaintiff's claim on an obligation under the theory of promissory estoppel differently than his claims as to the same obligation under negligent misrepresentation or constructive fraud, which are also barred by the three-year statute of limitations. It is practical because it does not treat Plaintiff's claim on an obligation under the theory of promissory estoppel differently than his claims for unjust enrichment and quantum meruit, as discussed in depth below.

If quasi-contractual equitable claims are excluded under section 15-3-530(1), the fundamental policy of the statute would be undermined because a claim for promissory estoppel would exist in perpetuity. As a result, defendants will be prejudiced by the indefinite nature of the promissory estoppel claim. While contract and tort claims are barred by the statutes of limitations, defendants would live with the indefinite fear of potential promissory estoppel litigation. Interpreting section 15-3-530(1) as excluding promissory estoppel claims leads to an absurd result that could not have been intended

by the legislature because promissory estoppel becomes the safe harbor claim for all untimely contract or tort claims involving a promise or obligation giving rise to money damages. The goal of providing certainty is thwarted. Overall, all the policy goals of the statute discussed above are nullified with a finding that the Legislature intended for promissory estoppel to be exempt from the language of section 15-3-530(1).

If section 15-3-530(1) does not clearly bar an obligation based on promissory estoppel, the Legislature provided a residual/catch-all statutory provision in S.C. Code Ann. 15-3-530(5) that bars Plaintiff's promissory estoppel claim. *Owens v. Okure*, 488 U.S. 235, 244-48 (1989) (identifying S.C. Code Ann. 15-3-530(5) as the residual statute of limitations). Section 15-3-530(5) bars "an action for . . . injury to . . . rights of another, ***not arising on contract and not enumerated by law.***" *Id.* (emphasis added). The plain and unambiguous language of section 15-3-530(5) bars lawsuits not arising on contract and not enumerated by law that are filed more than three years after the cause of action accrued. Given that this language is meant to be a catch-all provision, it applies to all claims not subject to the other provisions of S.C. Code Ann. § 15-3-530, including equitable claims for promissory estoppel.

Therefore, Respondents submit that section 15-3-530(1) bars promissory estoppel claims due to their quasi-contractual nature, and in the alternative section 15-3-530(5) as the residual/catch-all statutory provision bars the equitable claim for promissory estoppel because it does not arise on a contract and is not enumerated by law.

III. QUANTUM MERUIT IS AN EQUITABLE CLAIM BARRED BY S.C. CODE ANN. § 15-3-530

The District Court, in its April 2, 2019 Order on Defendants' Motion for Summary Judgment, held that S.C. Code Ann. § 15-3-530 applied to Plaintiff's claim for *quantum meruit*. (Dkt. No. 45 at 7). Given the similarities between *quantum meruit* and promissory estoppel, the statute of limitations equally applies to promissory estoppel.

Like promissory estoppel, *quantum meruit* is a quasi-contractual equitable claim that allows recovery for unjust enrichment. *Columbia Wholesale Co v. Scudder May N.V.*, 440 S.E. 129, 130 (S.C. 1994). A recovery requires: (1) a benefit conferred by plaintiff upon the defendant; (2) a realization of that benefit by the defendant; and (3) a retention of the benefit by the defendant under circumstances that make it inequitable for him to retain without paying its value. *Id.* Although additional causes of action once existed for quasi-contract and implied in law contract,[9] in *Myrtle Beach Hosp. v. City of Myrtle Beach*, the Court held that they are now equivalent terms and are all now known merely as *quantum meruit*. 532 S.E. 2d 868, 872 (S.C. 2000).

The *quantum meruit* claim is subject to the statute of limitations. In *Winthrop v. Mulllins*, 45 S.E. 2d 332, 334 (S.C. 1947), the Court stated, "[s]hould [plaintiffs] have sued secondly simply upon *quantum meruit* for services rendered, they would have been met with the bar of the Statute of Limitations." In *McConnell v. Crocker*, 67 S.E. 2d 80 (S.C. 1951), the Court held that the statute of limitations applies to claims of *quantum meruit*. While *Winthrop* and *McConnell* clearly apply the statute of limitations

[9] *Quantum meruit* is also known as unjust enrichment. *See e.g. Scudder*, 440 S.E. 2d at 130 (*quantum meruit* is an equitable doctrine to allow recovery for unjust enrichment).

to *quantum meruit* claims, these cases are distinguished from *Anderson v. Purvis*, 44 S.E. 2d 611 (S.C. 1947), that held when a plaintiff seeks equitable relief against the defendant, the defendant is entitled to seek equitable defenses, regardless of whether they are barred by the statute of limitations. In *Anderson*, the plaintiff sought to foreclose a mortgage against a physician, and the physician alleged, in an affirmative defense, that he provided medical services to plaintiff's family and requested that the amounts be accounted for in the amounts owed under the mortgage. *Id.* at 612-13 (S.C. 1947). While the Court remanded the action so that the fair and reasonable value of the physician's services could be determined, as in *quantum meruit*, the Court, in dicta, stated that if the physician attempted to recover money damages in an action at law, he would be barred by the statute of limitations. Id. at 615 (S.C. 1947).

Interestingly, after *McConnell* was decided, *Anderson v. Purvis* again had an issue determined by the Court. *Anderson v. Purvis*, 67 S.E. 2d 80 (S.C. 1951). The Court clarified that the first *Anderson* appeal held that "the court of equity is not bound ***in this case*** by the statute of limitations" and that *McConnell*, where the statute was enforced, was an action at law. *Id.* at 81 (emphasis added).

In *Graham v. Welch*, 743 S.E. 2d 860 (S.C. Ct. App. 2013), the Court of Appeals applied S.C. Code Ann. § 15-3-530 to bar the plaintiff's *quantum meruit* claim arising from the defendant accounting firm's failure to pay plaintiff's taxes to the State of New York from funds plaintiff had paid to the accounting firm on his account. *Id.* at 861; *see also*, *Wellin v. Wellin*, 2:13-cv-1831-DCN, 2014 U.S. Dist. LEXIS 7686, at *8 (D. S.C. January 22, 2014) (Under South Carolina law . . . unjust enrichment claims are governed by S.C. Code Ann. § 15-3-530(1) and (5)).

The District Court below cited several other cases that consistently held that *quantum meruit* are subject to S.C. Code Ann. § 15-3-530. These cases are based on the finding that quantum meruit claims arising from a quasi-contractual obligations are barred by the plain language of S.C. Code Ann. § 15-3-530(1). *Crossroads Convenience, LLC v. First Cas. Ins. Grp.*, 1:15-cv-02544-JMC, 2017 U.S. Dist. LEXIS 43984, at *20 (D. S.C. 2017) ("Under South Carolina law, *quantum meruit* claims are subject to S.C. Code Ann. § 15-3-530(1)'s three-year statute of limitations); *Brown v. Goodman Mfg. Co., L.P.*, 1:13-cv-03169, 2015 U.S. Dist. LEXIS 26939, at *18-19 (D. S.C. March 5, 2015) ("An action for unjust enrichment is governed by a three-year statute of limitations"); *Wells Fargo Bank, N.A. v. Carter*, 9:14-127-SB, 2014 U.S. Dist. LEXIS 185244, at *4 (D. S.C. July 22, 2014) (because *quantum meruit* is based upon an implied contract, it is subject to S.C. Code Ann. § 15-3-530(1)); *Magwood v. Heritage Trust Fed. Credit Union*, 2:09-2751-DCN-BM, 2010 U.S. Dist. LEXIS 117918, at *13-14 ((D. S.C. June 4, 2010) (expressly holding that *quantum meruit* is barred under S.C. Code Ann. § 15-3-530(1) because it is an action based upon a contract, obligation, or liability), adopted by *Magwood*, 2010 U.S. Dist LEXIS 118010 (D. S.C. Nov 4, 2010).

In the instant case, the District Court found that Plaintiff's *quantum meruit* claim was based on a contract, obligation, or liability, and therefore, it was barred by S.C. Code Ann. § 15-3-530(1). (Dkt. No. 45 at 7). Similarly, Plaintiff's promissory estoppel claim is also a quasi-contractual equitable claim. The cases cited demonstrate that quasi-contractual equitable claims are subject to the limitations of S.C. Code Ann. § 15-3-530. As such, the logical extension of the *quantum meruit* precedent mandates that promissory estoppel be subject to the applicable statute of limitations. Plaintiff's sole

purpose for asserting the promissory estoppel claim, like the quantum meruit claim, is to obtain money damages and, thus, it is an action at law and not one in equity. Therefore, Plaintiff's quasi-contractual equitable claim of promissory estoppel sounds in law and is subject to S.C. Code Ann. § 15-3-530.

IV. REFUTATION OF PLAINTIFF'S INITIAL BRIEF

The analysis above establishes that promissory estoppel based on quasi-contractual equitable claim for money damages is an action at law and therefore it is subject to the statute of limitations in section 15-3-530. Plaintiff's Initial Brief misses this entire legal analysis.

Plaintiff's argument in chief is best summarized by its conclusion: "South Carolina Law (1947, 1951, 1994, 2005, 2009, 2015) is clear that statutes of limitations do not apply to equitable claims such as presented [sic] by Plaintiff Thomerson's Complaint." (Pl.'s Initial Br. 11). The entire argument appears to rest on a single case of *Dixon v. Dixon*. 806 S.E. 2d 849 (S.C. 2005).[10] Regardless, the cases cited by Plaintiff are factually and legally distinguishable from the instant case and none address whether promissory estoppel is subject to S.C. Code Ann. § 15-3-530.

Plaintiff cites to *Dixon v. Dixon*, 608 S.E. 2d 849 (S.C. 2005) as "the most recent, i.e. controlling (and non-reversed or distinguished) statement of the law on the topic." (Pl.'s Initial Br. 10). *Dixon* is an equitable action for rescission and not money damages. In *Dixon*, a mother deeded a property to her son and, later, decided that she wanted the deed rescinded. *Id.* at 851-52. The Court determined that an action to rescind a

[10] The remainder of the cases cited seem to be included merely to corroborate Plaintiff's reading of *Dixon v. Dixon*.

contract based on undue influence is an equitable action and stated that the statute of limitations does not apply to ***actions in equity***. *Id.* at 855 (emphasis added).

Similarly, Plaintiff's reliance on the unpublished opinion in *Bigford Enters. v. D.C. Dev., Inc.*, 2015 S.C. App. Unpub. LEXIS 407 (Ct. App. July 1, 2015) is not on point. It was an action to pierce the corporate veil or to set aside the corporate form that was determined to be an action in equity. *Id.* (citing to *Dumas v. InfoSafe Corp., 320 S.C. 188, 192 (Ct. App. 1995)* ("An action to pierce the corporate veil is one in equity.")

In *Mazloom v. Mazloom*, 675 S.E. 2d 746 (S.C. Ct. App. 2009) the court held that the claim seeking an accounting of corporate assets was an equitable action not subject to the statute of limitations. *Id.* at 752-53. Seeking to account for a company's assets is not a claim for money damages. The money damages awarded in *Mazloom* arose from the action at law for plaintiff's claim to repurchase his interest due to oppression that awarded the plaintiff (1) his 25% interest in the company, (2) his claim for unpaid distributions under S.C. §§ 33-44-405(a) and 407 and (3) punitive damages on his claim for breach of fiduciary duty, which the court held was subject to the statute of limitations but not barred as untimely. *Id.* at 754-55. *Mazloom* clearly shows the different treatment of claims for equitable relief and claims for monetary relief. In the instant case, Plaintiff's promissory estoppel claim seeks monetary relief and therefore, *Mazloom* is not dispositive.

Plaintiff incorrectly concludes that "actions in equity" and "equitable claims" possess identical meanings. As discussed above, South Carolina law differentiates between "actions at law" and "actions in equity." The distinction relates to the nature of the relief requested by the plaintiff—actions at law primarily seek money damages and

actions in equity primarily seek equitable relief. All of Plaintiff's claims are for money damages and, therefore, the entire suit is an action at law subject to the statute of limitations.

CONCLUSION

In sum, S.C. Code Ann. § 15-3-530(1) or (5) applies to the quasi-contractual equitable claim of promissory estoppel when it sounds in law and not in equity. The Court should read Title 15 to encapsulate all causes of action and, thus, determine that the Legislature intended to include promissory estoppel within the statutes of limitations. Further, South Carolina precedent demonstrates that *quantum meruit* is subject to S.C. Code Ann. § 15-3-530. Likewise, when promissory estoppel is also a quasi-contractual equitable claim seeking monetary damages, it is an action at law and subject to S.C. Code Ann. § 15-3-530(1) or (5). Holding that a promissory estoppel claim seeking monetary relief is an action at law and subject to the statute of limitations is a reasonable, practical and fair statutory interpretation and does not overturn or invalidate any existing statute or case precedent. Therefore, for the reasons above, Respondents respectfully request that the Court answer the certified question in the affirmative.

Respectfully submitted,

Dated: July 1, 2019

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

Appeal From Charleston County
The Honorable Richard M. Gergel

Civil Action Number: 2:18-cv-1571-RMG
Appellate Case Number: 2019-000552

Johnny Thomerson, Plaintiff,

vs.

Richard DeVito and Samuel Mullinax, both individually and as Liquidating Shareholder Trustees of Lenco Marine, Defendants

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PROOF OF SERVICE

I, the undersigned, hereby certify that I have served a copy of the foregoing Brief of Respondent on each party entitled to notice by placing a copy of same in the United States mail with sufficient postage attached thereto and addressed as follows:

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Charleston, South Carolina
July 1, 2019

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