



Promissory Note because she "was married to Warren. It was a joint asset." Deposition of Patricia Holliday at 39-40. At all times until the NBSC note was repaid in full, Warren had possession of the original Promissory Note. Patricia never had possession of the note. Patricia testified that Warren had demanded payment from Ross in the time period of 2005 to 2007. Id. at 32.

In 2013, Patricia filed for divorce from Warren. On December 9, 2013, Warren and Patricia were divorced by Order of the Family Court, which adopted the Marital Settlement Agreement that Warren and Patricia had executed prior to the entry of the divorce. The Family Court Order provided that "[t]he personal property acquired by and between the parties during the marriage has been equitably divided to their mutual satisfaction." The Marital Settlement Agreement provided that Warren, his successors, heirs and assigns would pay to Patricia \$16,000 per month for her life, that Patricia would own the family home and most of the married couple's personal effects, and that she would have a life insurance policy on Warren's life in the amount of \$645,000. In exchange, Patricia gave up all claims to any business property of Warren, as well as all personal property in Warren's possession and not specifically mentioned in the agreement. The agreement provides in pertinent part:

"Whereas, the parties now consider it to be in their respective best interests to settle all issues between themselves and all matters heretofore arising or hereafter to arise from their marital union; they have reached a permanent, complete, and final agreement; ... and they desire that [the agreement] shall constitute the total agreement between them, both now and following any divorce which either might obtain, with respect to all matters which were raised or could have been raised between the parties hereto, other than the issue of divorce itself."

"The parties do hereby waive, release and forever acquit, and do hereby discharge each other, their administrators, successors, heirs, assigns of and from any and all suits, actions, causes of action, claims, demands, damages (known, unknown, foreseen and unforeseen), ... including, but not limited to, those resulting from or arising out of the marital relationship between Warren and Patricia, their marriage, separation or divorce, or any tort, or other legal or equitable claim (except those

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arising from a breach of this Agreement) from the beginning of the world to the date of this Agreement.

“The parties agree that Warren shall retain and continue full ownership and interest in any and all [of his] companies and other business assets which Warren holds at this time. Patricia hereby relinquishes and waives any claim she may have in or against these business assets, except as provided in the Patricia Anne Holliday Trust [which provided for the \$16,000 monthly payments]. Warren shall retain sole authority to manage these business assets personally, or at his sole discretion, delegate or appoint management of these business assets to a person holding durable power of attorney.”

“Except to the extent set forth in this Agreement, Warren and Patricia have made a physical division of all other personal property acquired during the marriage, including, but not limited to, household furnishings, appliances, bank accounts, retirement accounts, money situated in other accounts, jewelry, sporting equipment and all other personal property of value. The parties each release the other from all claims of interest to any monies or assets in the possession of the other... Each shall retain sole ownership of all such properties in his or her possession or titled in his or her name unless such property is made the property of the other pursuant to the terms of this Agreement.”

“Warren and Patricia each waive any claim of inheritance or right that they may be entitled to by virtue of the SC Probate Code to share in the other’s estate... Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement.”

Ross made payments to Warren, but not to Patricia. In early 2016, prior to Warren’s death, the loan from NBSC was paid off in full. In September of 2016, Warren died and, in his will, left all of his business properties and personal assets to his heirs, Ross and his brother, Lea Holliday. On July 12, 2017, Patricia’s lawyer made a demand that Ross repay the \$2 million note. On February 19, 2018, Patricia initiated this action to collect from Ross on the note.

### CONCLUSIONS OF LAW

#### **A. Summary Judgment Standard**


Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule

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56(c), SCRPC; Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011). “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id. “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. . . . Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). Evidence, however, is not sufficient to overcome summary judgment if it is introduced “solely in a vain attempt to create an issue of fact that is not genuine.” Main v. Corley, 316 S.E.2d 406, 407 (S.C. 1984). The Court finds that the material facts are not in dispute and that this matter is ripe for summary judgment.

**B. Release**

The Promissory Note at issue in this case is personal property of value and a “negotiable instrument” as defined by the Negotiable Instruments Section of the South Carolina Commercial Code. See S.C. Code Ann. § 36-3-104. As provided by § 36-3-604, a person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument in either of two ways: (1) an intentional voluntary act or (2) agreeing not to sue or otherwise renouncing rights against the party by a signed record. See S.C. Code Ann. § 36-3-604(a). In this case, as demonstrated in this section and the following, Plaintiff’s interest in the Note was released in multiple ways.

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First, the Marital Settlement Agreement, by its terms, resolved all issues of ownership of marital assets. As even Plaintiff recognized, the Promissory Note at issue herein was a marital asset. Marital property is defined as all real and personal property acquired by the parties during marriage and owned as of the date of filing or commencement of marital litigation regardless of how title is held. S.C. Code Ann. § 20-3-630(A). Equitable distribution of marital assets is based on a recognition that marriage is, among other things, an economic partnership. Johnson v. Johnson, 296 S.C. 289, 293, 372 S.E.2d 107, 109 (Ct. App. 1988). When a marriage ends, division of the property acquired is determined by the guiding equities set forth in Section 20-3-620 of the South Carolina Code. Id. Similarly, South Carolina law recognizes that a beneficiary may contract away her beneficiary interest through a separation or property settlement agreement, even if the beneficiary designation is not formally changed. Estate of Revis v. Revis, 326 S.C. 470, 477, 484 S.E.2d 112, 116 (Ct. App. 1997).

It is undisputed that the loan made to Ross was done during the marriage of Patricia and Warren. All debts and receivables arising during the marriage of the parties constitutes marital property. When Warren and Patricia obtained a divorce, they entered into a Marital Settlement Agreement that gave Warren all property (whether personal or business) that was not specifically given to Patricia. Patricia expressly released Ross—who is an heir, personal representative, successor and assignee of Warren—from “all suits, actions, causes of action” that result from or arise out of the “marital relationship ... from the beginning of the world to the date of this agreement.” In addition, Patricia released any claims to the Note repeatedly throughout the document. The release specifically says that “Warren Holliday shall remain solely liable for any and all business debts that Warren has incurred” and that “Warren and Patricia are limited to the receipt of those properties or monies as outlined in this Agreement.”

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The Family Court's act of entering the Agreement into the Final Divorce Decree estops Plaintiff from asserting a claim to this Note. See S.C. Code Ann. § 20-7-420(2) (Supp. 1998) (granting family court exclusive jurisdiction over all legal and equitable rights of parties in actions in and to the real and personal property of the marriage); see also S.C. Code Ann. § 20-3-130(G) (Supp. 1998) ("The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve [an] agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements."); Moseley v. Mosier, 279 S.C. 348, 353, 306 S.E.2d 624, 627 (1983).


The Court finds that the language of the Marital Settlement Agreement provides that Patricia expressly released any and all claims she had to the marital assets, both business and personal of Patricia and Warren, except as provided in the Agreement. The Court concludes that Patricia has no claim to, or interest in, the Promissory Note at issue in this matter.

At the hearing before the Court, Patricia argued that S.C. Code § 62-2-507(c)(2) somehow preserved her interest in the Promissory Note despite the terms of the Marital Settlement Agreement. That Section states in pertinent part:

***(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:***

...

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship so that the share of the decedent passes as the decedent's property and the former spouse has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint and multiple-party accounts in banks, savings and

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loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents. [Emphasis added.]

Because there were express terms in a Court Order, the Court finds that Patricia released her interest in the Promissory Note under the terms of this statute.

### C. Statute of Limitations

The Defendant contends Patricia's claim are also barred under the applicable Statute of Limitations. He contends that S.C. Code § 36-3-118 requires that a plaintiff bring an action within six years after a demand for payment has been made or within ten (10) years of the date of the note if no payments have been made. Patricia argued that no payments were made to her and that she had no knowledge that any payments had ever been made by Ross to Warren. Thus Defendant argues, Patricia went thirteen (13) years without requesting payments on the Note or even inquiring as to whether the Note had been, or was being, paid.

Patricia argued that Ross had testified that he had made payments in 2005 through 2007 and another payment in 2010 after Warren's demand for payment. Defendant argues that under the applicable statutes of limitations, even if these payments retriggered the start of the limitations period, Patricia's action in 2018 was well after six (6) years after Ross made his last payment to Warren.

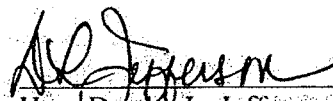
The Court has concluded that Plaintiff is barred from suing for breach of contract in this case due to the Marital Settlement Agreement as explained above. Since this issue is dispositive the Court declines to address the merits of the Defendant's statute of limitations argument on summary judgment.

### CONCLUSION

Based on the undisputed facts and conclusions of law, it is hereby ORDERED that Defendant's Motion for Summary Judgment is GRANTED.

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**IT IS SO ORDERED.**



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Hon. Deadra L. Jefferson  
Presiding Judge  
Ninth Judicial Circuit

Charleston, South Carolina

October 10, 2019.

