

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LAURENS)
)
 Vidhyaben R. Patel, Individually and)
 as Co-Personal Representative of the)
 Estate of Rameshchanda Prabhudas)
 Patel, and Darshak Kumar Patel,)
 Individually and as Co-Personal)
 Representative of the Estate of)
 Rameshchandra Prabhudas Patel,)
)
 Plaintiffs)
 vs.)
)
 Hardik R. Patel, Anal H. Patel and)
 AAHARVID, LLC,)
 Defendants)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 Case No. 2019-CP-30-0140

ORDER
 (Non-jury trial held February 6-7 and
 June 16-17, 2020)

RECEIVED
Nov 16 2020
 SC Court of Appeals

This case was tried non-jury on the dates set forth above. After hearing a significant volume of testimony and reviewing numerous exhibits from all parties, the Court issues this order disposing of the issues in full. It is organized into sections for organizational and ease of reference purposes.

SECTION I - PARTIES

1. Plaintiff, Vidhyaben R. Patel (hereafter “Vidhya”), is the widow of Rameshchandra Prabhudas Patel (hereafter “Ramesh”) who died unexpectedly at age 63 on June 29, 2017. (Petition for Appointment, Laurens County Probate Court dated January 15, 2018, Case No. 2018-ES-30-00084).
2. Plaintiff Darshak Kumar Patel (hereafter “Darshak”) is the younger son of Vidhya and Ramesh. *Id.* Vidhya and Darshak are referred to herein collectively as “Plaintiffs.”
3. Plaintiffs Vidhya and Darshak have sued in two capacities: individually and in their capacities as co-personal representatives of the Estate of Ramesh.

4. Defendant Hardik R. Patel (hereafter “Hardik”) is the oldest son of Vidhya and Ramesh and is married to Defendant Anal H. Patel (hereafter “Anna”). Hardik owns a house in Clinton that is the subject of the Plaintiff’s claim.
5. Anna is the owner of record of AAHARVID, LLC, which owns real estate and operated a convenience store in Clinton, SC.¹ Title is recorded at Book D1070, Page 120-123, Laurens County ROD. Hardik, Anna and AAHARVID, LLC are referred to collectively herein as “Defendants.”

SECTION II – CLAIMS AND COUNTERCLAIMS

Complaint

The complaint by Plaintiffs seeks a finding that one-half of certain assets owned by Defendants Hardik and Anna are owned by the Estate of Ramesh and equitable relief imposing a trust over certain assets. Per Paragraph 9 of the Complaint², the property sought is:

- (a) A one-half interest in the residence located at 18397 Highway 72 E, Clinton
- (b) A one-half interest in the real estate located at 19278 Highway 72 E, Clinton and all “inventory, personal property, bank accounts, and other assets of the business...”
- (c) A one-half interest in of AAHARVID, LLC and all assets of the company.

¹ The convenience store has operated under a new name since January 1, 2019. Defendants sought legal counsel from attorney Thomas Jeter after the October – December, 2018 events which led to the estrangement of the parties.

² Numerous paragraphs in the complaint (39, 42, 45, 48, 51, 58) seem to seek the entire interest in the identified assets, but Paragraph 9 of the complaint is clear that only one-half of assets in issue are the subject of the claims by Vidhya and Darshak. In addition, the prayer confirms the assets over which a trust is prayed for is only a one-half interest in each asset. Paragraph 1 does not specify whether the complaint seeks one-half or the entire interest in the house; Paragraphs 2, 3, 4, 5, 6, refer “for the benefit of the Plaintiffs” which has to be only one-half interest, because Darshak has no individual claims against the Defendants and he could only be seeking relief in his capacity as co-personal representative of the estate of Ramesh.

Counterclaim and Entry of Default

Defendants' Answer asserted counterclaims for declaratory relief regarding ownership of both the house and the convenience store, conversion, and breach of fiduciary duty. Plaintiffs did not timely file a reply, and an Affidavit of Default was submitted with a Motion for Entry of Default and a proposed Order of Judgment on May 24, 2019. An order of default was entered against Plaintiffs dated May 28, 2019. No subsequent motion to set aside that default has been filed and trial counsel for Plaintiffs admitted at the resumed trial in June that he was unaware of the default.³

Prior to presentation of Defendant's case,⁴ defense counsel argued that the entry of default admitted the factual allegations set forth in the counterclaims, making it unnecessary to present testimony in defense of Plaintiffs' claims. The Court took the motion under advisement to address in the final order, and Defendants' case was presented subject to a reservation of rights. The default is addressed below.

Plaintiffs' Case

At the conclusion of the Plaintiffs' case, I dismissed the Plaintiffs' first cause of action for express trust and the sixth cause of action for breach of fiduciary duty. The seventh cause of action, for unjust enrichment, was determined to be a remedial mechanism for the remaining trust claims and not an independent claim. Plaintiffs' counsel withdrew the eighth cause of action for

³ Plaintiff's counsel argued generally at the resumed trial in June that default should be set aside but offered no explanation for why the default had occurred, nor any assertion of the existence of any good cause to set it aside. See Rule 55(b). Additionally, no motion to set aside the entry of default has been filed since trial concluded.

⁴ Prior to the conclusion of Plaintiffs' case, two defense witnesses were taken out of order to accommodate their schedules, but the Defendants reserved all rights regarding motions made at the conclusion of Plaintiffs' case notwithstanding the presentation of evidence out of order.

fraud. The case proceeded to trial only on the claims for constructive and resulting trusts as to the house and the convenience store.

The following findings of fact are based on a detailed review of the exhibits, my deliberate and careful review of the testimony as well as the credibility of the witnesses and the weight of the testimony. I carefully observed each witness, and I noticed such things as their tone of voice, gesture, hesitation or readiness to answer questions, their sincerity and mannerisms, as well as their biases and alliances, all of which assisted in my evaluation of the credibility of each witness.

The claims for constructive trust and resulting trust require the Plaintiff to establish the facts by clear and convincing evidence. “It is well settled in this state that the facts from which the court would infer a resulting trust may be established by parol testimony, but it is also settled that such testimony, to warrant such inference, must be clear and convincing.” *All v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741 (1942). To establish a “resulting trust against one holding the legal title, the evidence must be clear and convincing.” *Id.* Similarly, proof required to establish a constructive trust must be “clear, satisfactory, convincing, full, free, received with great caution, definite, unequivocal, precise, decisive, indubitable, overwhelming, strong, unmistakable, capable of but one conclusion, a greater weight than a mere preponderance.” *Id.* at 751.

As part of the findings of fact, the Court has recognized the rule that the failure to produce evidence that is available to a party or is within a party’s custody or control will support an inference that the evidence, if produced or presented at the trial, would be negative to the position advanced by that party. *Stokes v. Spartanburg Regional Medical Center*, 368 S.C. 515, 629 S.E.2d 675 (Ct. App. 2006), (citing *Baker v. Weaver*, 279 S.C. 479, 309 S.E.2d 770 (Ct. App. 1983)). The fact finder is permitted to determine whether the failure to produce relevant documents warrants the application of the inference. The inference cannot be used as evidence of a fact “otherwise

unproved. The inference has the effect only of authorizing [the factfinder] to give greater weight to the evidence of the adverse party, or to give less weight to the evidence of the party who has failed to present the evidence.” *Id.*, citing *Collins v. Merrimack Mutual Fire Insurance Co.*, 210 S.C. 207, 42 S.E.2d 67 (1947).

SECTION III – FINDINGS OF FACT

Applying the relevant standard for review of the evidence and credibility of witnesses and considering the burden of proof as clear and convincing, the Court makes the following findings of fact:⁵

6. Ramesh Patel died unexpectedly in June, 2017. (Feb. Tr. p. 37, lines 11-12).
7. He was survived by his widow Vidhya, and two adult sons, Hardik and Darshak.
8. Anna and Hardik were married in the United States in 2005 and traveled to India for a traditional Indian ceremony in 2008. The cost of the wedding in India was paid, at least in part, by Ramesh and Vidhya.
9. A home in Clinton was purchased in 2009 and titled in Hardik’s name. Plaintiffs assert that a constructive and/or resulting trust should be established over the home, in whole or in part.
10. A convenience store in Clinton was leased in 2007 and then purchased in 2012 by a limited liability corporation owned exclusively by Anna. Plaintiffs assert that a constructive and/or resulting trust should be established over the convenience store, in whole or in part.

⁵ Findings of fact necessarily include some application of the law to the facts to determine what facts have been established under the applicable burden of proof. To the extent the findings of fact set forth here include the application of law to fact, these findings should be considered findings of law and of fact.

2007 Lease of the Store

11. In 2007, Anna and Hardik filed appropriate documentation with the South Carolina Secretary of State to create AAHARVID, LLC. (June Tr. p. 308, lines 22-24). They personally visited the Secretary of State's office in Columbia to file the articles of incorporation, listing Anna as the sole incorporator. (June Tr. p. 308, line 25-p. 309, line 17; Defendant's Exhibit 10). Neither Ramesh nor Vidhya were involved in establishing the LLC.
12. Anna testified the LLC was named as a combination of Anna's (AA), Hardik's (HAR), and Vidhya's (VID) names. (Feb. Tr. p. 43, lines 6-24; p. 44, lines 8-9). Vidhya had a different explanation for how the LLC name was derived. (Feb. Tr. p. 126, lines 4-12).
13. In 2007, AAHARVID LLC entered into a lease for a convenience store located in Clinton that was owned by P & P Investment. (Feb. Tr. p. 44, lines 10- 14; Defendant's Exhibit 12). Anna signed the lease on behalf of AAHARVID, LLC. (Defendant's Exhibit 12). She also signed the promissory note dated August 3, 2007 which amortized the monthly payments for the lease payment. (Defendant's Exhibit 13).
14. P & P Investments is a company owned by Prakash Patel and Pallev Desai. (Feb. Tr. p. 44, lines 13-16).
15. Prakash Patel introduced the concept of leasing and purchasing the convenience store to Hardik. (June Tr. p. 155, lines 11-20; p. 165, line 7 – p. 166, line 4; p. 167, lines 9 – p. 169, lines 21). Both Hardik and Anna visited the store before AAHARVID, LLC leased the store. (June Tr. p. 306, lines 4-19).
16. One of the principals of P & P Investments, Pallav Desai, negotiated the terms of lease of the convenience store with Ramesh. (Feb. Tr. p. 83, lines 7-9 and 16-17; p. 84, lines 18-20; p.

- 84, line 22 – p. 87, line 23; p. 88, lines 18 – p. 89, line 4). Mr. Desai said he sold the Newberry hotel to Ramesh and Vidhya Patel, Prakash Patel and Praful Patel in 2006. (Feb. Tr. p. 80, lines 2-25).
17. Mr. Desai personally got no money from the lease but believed his partner Prakash Patel received a note in some amount of money for “good will and inventory.” (Feb. Tr. p. 86, lines 6-25). Mr. Desai believed the note was to be paid by Ramesh. (Feb. Tr. p. 87, line 17 – p. 88, line 1). Mr. Desai was uncertain of the amount of the note or the financial arrangements his partner Prakash Patel made for payment of the note. (Feb. Tr. p. 86, lines 12-14).
 18. The other member of P & P Enterprises, Prakash Patel, who would have had first-hand knowledge of payment arrangements with Ramesh, did not testify at trial. Hardik and Anna dealt with Prakash directly and provided the details of the financial arrangements between them. (June Tr. p. 166, line 23 – p.167, line 12; p. 306, lines 9 – p. 307, line 10; p. 311, line 7 – p. 312, line 1).
 19. Anna used personal funds to pay for the appraisal from which the lease amount was determined. (Defendant’s Exhibit 11). Anna, as the principal of AAHARVID LLC, paid the lease payments monthly from the earnings of the convenience store. (June Tr. p. 317, lines 14-19). The lease payments were paid consistent with the terms of the lease. (June Tr. p. 210, line 22 – p. 211, line 5).
 20. Mr. Desai said his company signed the lease with AAHARVID, LLC rather than Ramesh “[b]ecause of our safety.” (Feb. Tr. p. 95, lines 2-6). Mr. Desai preferred to lease to a green card holder who is a “legal member of the United States instead of [leasing to] other people.” (Feb. Tr. p. 96, lines 5-8). Mr. Desai claimed he did not meet Anna until 2012.

21. Anna confirmed the lease price set forth in the promissory note of \$124,113.69 took into account the existing goodwill of the store established from prior operation of the store, as well as inventory. (Feb. Tr. p. 46, lines 18 – p. 47, line 3; p. 86, lines 22-25; June Tr. p. 312, line 15-p. 313, line 4; *See also* Defendant’s Exhibit 12, providing for monthly rental payments and Defendant’s Exhibit 13, promissory note for \$124,113.69). Anna paid the lease payments evidenced in the promissory note from the proceeds of the store operations. (Feb. Tr. p. 47, lines 13-18; June Tr. p. 170, lines 18 - 25).
22. Anna was and is the sole owner of AAHARVID, LLC. Her K-1 for 2007, the year the company was created, reflects her ownership interest in AAHARVID, LLC as 100%. (Defendant’s Exhibit 2, p. 2⁶). Anna’s name is the only name on the articles of incorporation for AAHARVID, LLC. (Defendant’s Exhibit 10).
23. The alcohol sales license for the store was obtained by Anna. She also arranged for the convenience store to become a retail outlet with the South Carolina Lottery Commission. (Feb. Tr. p. 179, line 8 – p. 180, line 9; June Tr. p. 310, line 3 – p. 311, line 3).
24. After the store was leased, Vidya worked at the store as an employee. Anna and Hardik also worked on weekends and when their schedules would permit. (June Tr. p. 57, line 2 – p. 58, line 20; Defendant’s Exhibit 20).

⁶ Plaintiffs introduced selected pages from Anna’s 2007 tax return in their case (Plaintiff’s Exhibit 1), but as pointed out at the time, the exhibit was not complete. (Tr. p. 77, lines 19-25). Specifically, Plaintiffs omitted the K-1 which proved Anna’s 100% ownership of AAHARVID LLC, which Defendants introduced as their Exhibit 2. Plaintiff’s counsel also stated that the selected pages from Anna’s 2007 tax return had been “provided through discovery.” Tr. p. 76, lines 16-17. As noted, however, Plaintiffs produced very few documents in discovery and specifically did not produce any tax returns, including the partial copy of Anna’s 2007 tax returns. (Motion to Compel dated 7.11.2019 #11). There was no explanation for how Plaintiffs managed to have Anna’s personal tax return.

25. Ramesh did not work at the store initially, as he was then working at a hotel in Newberry owned by a corporation named Shree Shree Hari Inc. According to Praful Patel⁷, at one time Ramesh had a 40% ownership interest in the Newberry hotel, but in 2006 or 2007 he transferred his interest in the hotel to Anna. (Feb. Tr. p. 206, line 21 – p. 207, line 10). Anna transferred half of her 40% interest to Hardik. (June Tr. p. 174, lines 3-15; Exhibit No. 32).
26. In 2013, Hardik and Anna surrendered their combined 40% ownership interest in Shree Shree Hari Inc. to Prakash Patel to satisfy “differences of accounting and amounts established” by a 2012 agreement between Prakash and Ramesh. (Defendant’s Exhibit 32). The 2013 agreement, to which Hardik, Anna, Ramesh and Prakash were signatories, also served as a written satisfaction of Anna’s promissory note to P&P Enterprises that was executed on August 3, 2007. *Id.*
27. The Newberry hotel transaction, whereby Ramesh owned a percentage of a corporate entity, predates the lease of the convenience store. This transaction demonstrates the ability and willingness of Ramesh to own property interests in his personal name, contrary to the position now advanced by Vidhya and Darshak, *i.e.*, that neither the store nor the house could be put in Ramesh’s name because of Ramesh’s immigration status at the time of acquisition of the store and house.
28. The surrender by Hardik and Anna of their interest in Shree Shree Hari Inc. occurred in 2013, a full year after the purchase of the store, six years after the initial lease of the store and two years after the lease note was paid in full.

⁷ Praful Patel did not identify his business or interest in the matter, he simply said he knew the family.

29. There is insufficient evidence to conclude that Ramesh received any funds from the sale of the Newberry hotel or that his interest in the Newberry hotel was somehow converted to a legal or equitable ownership in the convenience store.

2012 Purchase of the Store

30. Prior to Hardik and Anna surrendering their interest in Shree Shree Hari Inc. to Prakash Patel, AAHARVID, LLC purchased the convenience store in Clinton from P & P Investments for \$475,000.00 in 2012. (Feb. Tr p. 50, lines 24-25).
31. In 2012, Ramesh negotiated the price for AAHARVID LLC for the purchase of the convenience store.⁸
32. Anna took out a loan in 2012 from BB&T in the name of AAHARVID, LLC to purchase the store from P&P Enterprises. (Defendant's Exhibit No. 22). AAHARVID, LLC borrowed \$385,000.00 from BB&T to purchase the convenience store. (Feb. Tr. p. 52, line 3). Both Anna and Hardik personally guaranteed the loan. (Defendant's Exhibits No. 23 and 24). *See also* Defendant's Exhibit 32, confirming the loan to AAHARVID, LLC for purchase of "BP station" in Clinton signed by Anna.
33. Because she trusted Ramesh and she was living out of state at time of the 2012 purchase of the convenience store, Anna executed a limited power of attorney to enable Ramesh to sign the BB&T loan documents for AAHARVID LLC. (Feb. Tr. p. 49, line 20 – p. 50, line 17; Defendant's Ex. 26, 27, and 28). Ramesh used the limited power of attorney to sign the

⁸ The sale of the store was a two-part sale, with the portion from 2007-2012 being a lease, with an outright purchase in 2012. (June Tr. p. 171, line 22- p. 172, line 7.).

- promissory note to BB&T for the loan taken out by AAHARVID, LLC. (Defendant's Exhibit 52).
34. The limited power of attorney reflects that Ramesh was acting on Anna's behalf (as principal of AAHARVID, LLC) when he signed the promissory note. *Id.*
 35. The store and real estate were titled to AAHARVID LLC, which is owned by Anna, in 2012. (Defendant's Exhibit 2 and Exhibit 28).
 36. At approximately the same time, Ramesh and Prakash Patel executed an agreement under the terms of which Ramesh would manage the Newberry hotel. (Defendant's Exhibit 29).
 37. When this lawsuit was filed in 2019, AAHARVID, LLC still owed approximately \$250,000.00 on the balance of the mortgage to BB&T for the purchase of the store. (Defendant's Exhibit 42).
 38. Mr. Desai said that the down payment for the convenience store purchase in 2012 was paid by Ramesh. (Feb. Tr. p. 101 lines 14-18). However, a 2012 letter from Mr. Desai "to whom it may concern" said that the sale of the store was to AAHARVID LLC and \$90,950 had been "accepted toward the purchase price" while not specifying who paid the referenced funds. (Defendant's Exhibit 21).
 39. The HUD settlement statement executed at the time of the sale in 2012 reflects "deposit or earnest money" in the amount of \$90,950. It does not indicate the payor as either the LLC purchaser or otherwise. The down payment facilitated the BB&T loan to AAHARVID, LLC of \$385,000.00, which was guaranteed by Anna and Hardik, personally. (Defendant's Exhibit 26).

40. Mr. Desai, co-owner of P&P Enterprises, assisted in obtaining the financing from BB&T for the sale. (Feb. Tr. p. 96, lines 10-19). The bank would not give a loan to Ramesh. (Feb. Tr. p. 98, lines 5-24; p. 100, line 9-11; p. 101, lines 4-9). Mr. Desai claims an intention to “skirt the U.S. Immigration laws” because he wanted the store to be sold to Ramesh, but he had to use Anna as a “straw person” because a transfer to Ramesh would not have been legal. (Feb. Tr. p. 103, lines 17-22).
41. Vidhya said she and Ramesh did not have the proper immigration status in 2007 at the time the store was leased or in 2012 so they could not own the store in their own name, so the store was put in Anna’s name. (Feb. Tr. p. 173, lines 17 – p. 175, line 4, lines 23-25; p. 175, lines 13 – p. 176, line 4). However, Vidhya acknowledged that Ramesh had owned interests in other businesses in his own name both before and after the store was leased and purchased, most particularly the Newberry hotel. (Feb. Tr. p. 180, line 10 – p. 181, line 14). Specifically, Mr. Desai said that the Newberry hotel interest was sold to Ramesh in 2006. (Feb. Tr. p. 80, lines 17-25).
42. There is no credible evidence that Ramesh invested any sale proceeds from the Newberry hotel or from any other source into the convenience store, either while it was leased or when purchased by AAHARVID LLC.
43. To the extent it is relevant, it appears that any interest Ramesh may have had in the Newberry hotel was forfeited in 2013 based on an agreement between Prakash Patel and Ramesh. (Feb. Tr. p. 212, lines 8 – 25; Defendant’s Exhibits No. 29 and 32).
44. There was conflicting testimony and evidence that the store was leased or purchased in a manner that it would be "owned" by Ramesh or Vidhya but not titled in either of their names.

45. The records and evidence establish by clear and convincing evidence that Anna and Hardik used the income generated from the store to pay the lease obligation of AAHARVID, LLC from 2007, and to pay the note/mortgage obligation on the store of AAHARVID, LLC (as personally guaranteed by Anna and Hardik) that was taken out in 2012 to purchase the store and real estate.
46. Darshak testified that neither Hardik nor Anna had anything to do with the store in Clinton until after Ramesh died. (Feb. Tr. p. 237, lines 22-25). No other witness, even Vidhya, supported this version of events. Darshak's dislike of Hardik was apparent and his credibility suffered as a result of his obvious animus toward Hardik. (Feb. Tr. p. 240, lines 22-23).
47. Vidhya and Ramesh obtained their green cards in 2013. (Feb. Tr. p. 114, line 18 – p. 115, line 5; p. 136, lines 15-17; p. 190, lines 7 – 15).
48. Both Ramesh and Vidhya were employees of the store and were paid salaries by AAHARVID, LLC when they worked. Vidhya denied receiving a salary for working at the store, but she identified her W-2s from AAHARVID, LLC. (Feb. Tr. p. 163, line 5 – p. 167, line 3). She conceded she had no personal knowledge of the family finances and testified that Ramesh handled all the family finances and taxes. (Feb. Tr. p. 162, line 24 – p. 163, line 4; p. 167, line 9).
49. While working as an employee of the convenience store, Vidhya filed for and received workers' compensation benefits for an on-the-job injury. After her employment was terminated, she filed for and collected unemployment benefits. (Feb. Tr. p. 168, lines 7 – p. 170, line 4; Defendant's Exhibit 32 (unemployment); Defendant's Exhibit 30 (worker's compensation claim)). The worker's compensation policy provided coverage for employees of the store did not provide coverage for owners. (June Tr. p. 332, line 20 – p. 333, line 2).

50. In 2016, Vidhya also represented to immigration officials that she was an employee of the convenience store. (Feb. Tr. p. 170, line 16 – p. 172, lines 1-15; Defendant’s Exhibit 2). Vidhya did not recognize the documents or recall the interaction with immigration officials but she confirmed her signature on the document. *Id.*
51. Vidhya testified that she and Ramesh paid for repairs that were made to the convenience store, although the testimony is not clear as to whether this was while the store was leased or after 2012 purchase. (Feb. Tr. p. 131, line 19 – p. 133, line 4; p. 134, lines 11-12). Vidhya produced no documentation of any kind evidencing payments allegedly made by herself and Ramesh in connection with the convenience store during either period.
52. Vidhya’s testimony that she and Ramesh had paid for virtually everything related to the home and convenience store was not supported by personal knowledge or documentation, or even recollection of matters she was shown to have signed. She acknowledged that Ramesh had handled all of the finances and taxes for her. (Feb. Tr. p. 162, line 21 – p. 163, line 4; p. 167, line 9). She lacked any meaningful knowledge of Ramesh’s, the family’s, or the store’s financial affairs.
53. The testimony of all witnesses regarding income and expenses, when considered together, seems to be consistent in that all expenses for store and home were paid with monies and revenue from the store accounts.
54. Vidhya’s lack of documentation was attributed in part to a period after the death of Ramesh in 2017. Vidhya expected Hardik, as the oldest son, to travel with her to India to dispose of Ramesh’s ashes in 2018. However, Hardik’s work would not permit him to take the time off, so Darshak traveled to India with his mother for that purpose. (Feb. Tr. p. 152, lines 16-25; p. 153, lines 12-17).

55. Vidhya and Darshak claim some set of non-specified documents disappeared from the Clinton home and the convenience store during their trip to India. (Feb. Tr. p. 155, lines 16-22; Tr. p. 272, lines 19-23). She attributes the missing documents to Hardik and Anna, but there is no evidence that supports that assertion. Hardik and Anna denied taking any of Vidhya's property from the house. (June Tr. p. 71, lines 2-9)
56. None of the exhibits introduced by Defendants at trial support Vidhya's testimony that she and Ramesh paid for the house or the convenience store.
57. Vidhya and Darshak, as personal representatives of Ramesh's estate, had the ability and authority to obtain any banking documents or other documentary evidence reflecting Ramesh and/or Vidhya's alleged financial contribution(s) to either the convenience store and/or the Clinton house. Even so, no such documents were produced⁹.

2009 Purchase of Clinton House

58. The evidence establishes that Hardik is the one who contracted to and purchased the Clinton house in 2009. (Defendant's Exhibit 14). Neither Ramesh nor Vidhya ever asked Hardik to convey the house in Clinton to them. (Answer and Counterclaim p. 11, ¶ 14-16)
59. Vidhya testified the house purchased by Hardik in Clinton was located by Hardik and Ramesh. (Feb. Tr. p. 137, lines 20 – 23). She recalled that the house was purchased from a

⁹ In discovery, Plaintiffs said they intended to show payments made by Ramesh and Vidhya for the store and the house from an account with an account number ending in 9955. (Motion to Compel, p. 5, Response 5). However, the only bank statements introduced were for 2016 and 2017, long after the transactions would have occurred and the payments would have been made. (Plaintiff's Exhibit 2). There is no explanation for the absence of the bank statements for the account ending in 9955 for the relevant time period, which were identified as being supportive of Plaintiffs' case, but not produced. The absence of the bank statements for the relevant time period supports an inference that the bank statements, if produced, would not have supported Plaintiffs' testimony. Significantly, the bank statements that were produced for account ending in 9955 show large cash deposits and transfers from other accounts in round numbers during the period of 2016 and 2017, but there is no testimony as to the source of the multiple cash deposits or the money transfers. It is apparent Plaintiffs did not introduce bank statements which reflect the entire financial position of Ramesh and Vidhya for any time period.

bank, and that she and Ramesh paid the purchase price of \$38,000 or \$39,000, some of which was borrowed from relatives. (Feb. Tr. p. 138, line 21 – p. 139, line 3). She had no knowledge of a mortgage on the home.¹⁰ (Feb. Tr. p. 139, lines 16-18). She denied that Hardik or Anna had paid any of the portion of the purchase price for the house. (Feb. Tr. p. 139, lines 19-22).

60. Darshak testified that he was living with his parents at the house “that is in question” in 2007. (Feb. Tr. p. 233, lines 22-25). However, the house in question was not purchased until 2009. He later clarified and said he helped work on the home after it was purchased in the summer of 2009. (Feb. Tr. p. 234, lines 17-19).
61. One of the realtors who was involved in the sale of the Clinton house, Champa Patel, was a friend of Vidhya’s from India. They grew up together. (Feb. Tr. p. 222, line 16 – 24). The house was in foreclosure and was listed by a realty company with which Champa was not affiliated. (Feb. Tr. p. 229, lines 12-25; Feb. Tr. p. 229, lines 8-13). Ramesh called Champa to bring her into the sale of the home, and she therefore was paid a sales commission. (Feb. Tr. p. 224, lines 11-15; p. 229, lines 8-13).
62. Champa testified her husband loaned some money to Ramesh for the purchase of the house, and that Vidhya and Ramesh paid for the house. (Feb. Tr. p. 224, lines 16 – 22). Champa also said Hardik invested no money in the house. (Feb. Tr. p. 226, lines 16-20). Champa also testified the purchase was an all-cash purchase. (Feb. Tr. p. 231, lines 1-5).

¹⁰ While Vidhya denied knowing anything about a mortgage on the house, she answered “yes” when asked if she and Ramesh “made the payments on the house” which would be inconsistent with the absence of debt on the property. (Tr. p. 141, lines 17-18).

63. Hardik wired \$2,500 to the closing attorney from his personal Wachovia account, after initially writing a check that was not negotiated. (Defendant's Exhibits No. 7 and 15; June Tr. p. 179, lines 1-25).
64. Hardik also brought certified funds of \$6,573.57 to closing, again using his own personal funds. (Defendant's Exhibit 17). The HUD settlement statement confirms that the purchaser, Hardik, paid \$6,573.57 at the time of closing on the house. (Defendant's Exhibit 17).
65. The settlement statement also reflects that Hardik took out a loan from BB&T for the balance of the purchase price for the home. (Defendant's Exhibit 17). Hardik borrowed \$31,600.00 to purchase the home, giving BB&T a note and security agreement for the loan. (Defendant's Exhibit 18).
66. Champa's testimony, therefore, is directly contradicted by the purchase, sale and loan documents produced at trial, which reflect the deposit from Hardik, down payment from Hardik's personal funds, and loan from BB&T taken out in Hardik's name to pay the purchase price of the home. Vidhya's testimony, therefore, is also directly contradicted by the purchase, sale and loan documents produced at trial.
67. The security agreement should have been paid off after five years, as the note was a sixty month term.
68. Champa further said the house was put in Hardik's name because "they had immigration issue... Ramesh." (Feb. Tr. p. 224, line 23 – p. 225, line 11; p. 229, lines 14-19). Champa said as a licensed realtor, she was subject to a code of ethics and she would not have participated in a fraudulent HUD (Feb. Tr. p. 227, lines 16-25). She said she got permission from her broker-in-charge to participate in the claimed deceptive titling the house in Hardik's

name as a ruse to skirt immigration issues. (Feb. Tr. p. 229, line 20 – p. 230, line 10). Champa admitted she “wouldn’t know, those rules” and was unable to comment on the legality of the titling charade she was describing. (Feb. Tr. p. 230, lines 13-25).

69. After the purchase of the home, Hardik and Anna moved into and took the master bedroom, while Ramesh and Vidhya had the second bedroom. (Feb. Tr. p. 140, lines 20-24; June Tr. p. 184, line 17 – p. 185, line 3). Vidhya testified the home had only one small bedroom. (Feb. Tr. p. 140, line 6). Vidhya confirmed all four parties maintained their residence in the house during 2009, even while Hardik was going to school in Charlotte and working in Richmond. (Feb. Tr. p. 141, lines 4-7).
70. Hardik paid all utilities for the house, and continued to do so after he and Anna moved out in 2011. (June Tr. p. 186, line 22-page 187, line 8). Ramesh and Vidhya were allowed to live in the house rent free. Hardik also paid for Vidhya’s cell phone and service. (June Tr. p. 216, lines 10-20). Hardik also continued to pay the property taxes and homeowners insurance.
71. Hardik and Anna moved back into the Clinton house during Anna’s first pregnancy, but left shortly after the birth of their child in 2011. Anna moved to her family’s home in Augusta because of difficulties she was encountering with Vidhya and Ramesh. (June Tr. p. 314, lines 11—21).
72. Hardik particularly had difficulties with Ramesh, who felt he should have the right to choose the name for Hardik and Anna’s baby. Hardik described the confrontation between he and Ramesh as the triggering event that caused him to finally move from the Clinton house. (June Tr. p. 196, lines 1-22).

73. After Hardik and Anna left the home in 2011 following their daughter's birth, they never lived as a couple in the house again. However, Hardik has maintained the master bedroom in the house, and until this lawsuit was filed, he stayed in the house on weekends when he worked at the store, rather than drive home to Tega Cay. (June Tr. p. 217, line 21- p. 218, line 7; p. 336, lines 2-6).

Events Following Ramesh's Death

74. Vidhya was not prepared or emotionally ready to assume any responsibility after Ramesh died. (Feb. Tr. p. 151, lines 19-21). At some point after Ramesh's death, Vidhya did not have electric power and/or cable service at the house for two days. (Feb. Tr. p. 157, lines 3-4; p. 157, lines 16-25). She attributed the lapse in utility services to a malicious act by Hardik, but there is no evidence that supports that assertion.
75. Hardik testified that his mother asked him to assist her with financial matters after Ramesh died, and that he assisted her in changing her address to Hardik's own home address in Tega Cay on certain things for which she had requested help. (June Tr. p. 213, lines 6-17).
76. Vidhya testified she had difficulties in receiving her mail. In May of 2018, she had to go to the post office several times to get the difficulties resolved. (Feb. Tr. p. 144, line 21 – p. 145, line 9). She again attributes this difficulty to a malicious act initiated by Hardik.
77. After this lawsuit was filed Hardik, through counsel, required that Vidhya register and pay the utility accounts in August 2019. (June Tr. p. 187, lines 12-22). Hardik continues to pay the taxes and insurance on the home and Vidhya lives there at no charge. (Amended Answer and Counterclaim ¶ 14; p. 10 ¶ 10; p. 11 ¶ 13; Defendant's Exhibits 38 and 43).

The Family Relationship

78. Prior to 2018, there was a normal family relationship among the parties, both personally and, to the extent they worked together professionally. (Feb. Tr. p. 123, lines 22-24). The relationship was typical for many extended families, not unique to families who come from the Indian culture.
79. After immigrating to the United States, Ramesh and Vidhya did not seek to involve themselves with others outside the Indian community, and instead they found their place almost exclusively among other Indian immigrants. (June Tr. p. 165, lines 15-18).
80. The proclivity to interact solely with other Indian immigrants and the expectation of adherence to traditional Indian norms as interpreted by Vidhya was a particular point of contention. This contention was a source of friction between Vidhya on the one hand and Hardik and Anna on the other. When they lived together in one home, Vidhya expected Anna to do all the cooking, cleaning and other domestic chores, even though Anna was working full time as a pharmacy technician and at times also attending school. (June Tr. p. 299, lines 8-25).
81. When Hardik and Anna moved to Tega Cay in 2017, Anna enrolled the children in Christian day school, she taught at a Christian day care, and she involved the children in activities that were not uniquely associated with traditional Indian culture in which Hardik had been raised. (June Tr. p. 292, line 18 – p. 295, line 10)
82. After Hardik and Anna no longer shared a home with Ramesh and Vidhya, Hardik began to realize that the ostensibly “Indian culture” that had been imposed on him by his parents was merely the way his parents chose to interact with him, and it was toxic. (June Tr. p. 153, line 15 – p. 154, line 8). Vidhya was verbally abusive of Hardik and Anna. Hardik wanted to

protect Anna and his children from the life he had endured as a child. (June Tr. p. 155, line 21 – p. 156, line 24). Hardik described the group of Indian people who surrounded his parents as “a cult.” (June Tr. p 154, lines 9-24).

83. During the February hearings, there were many observers in the courtroom gallery who were not called as witnesses and appeared to be in attendance solely as supporters of Vidhya and Darshak. The Court observed this group of supporters at that time who were quite animated and demonstrative in their support for Vidhya and Darshak, which underscored Hardik’s description of the associations of his parents. The June hearings occurred after the onset of the Covid-19 pandemic and restrictions, thus the gallery was limited to parties and witnesses only.
84. Hardik is proud of his and Anna’s accomplishments of becoming United States citizens, and that he and Anna raise their children as Americans, not so intensely a part of the restrictive and insular version of Indian culture. Hardik did not have the emotional strength to excise himself and Anna from that insular community that surrounded Ramesh and Vidhya until after Ramesh died.
85. After Ramesh died, Anna increased the salary that was paid to Vidhya for her work in the convenience store.
86. Following Ramesh’s death, Hardik was living in Tega Cay with his family but still working at the convenience store on weekends. (June Tr. p. 217, lines 14-24). In October, 2018, while Vidhya was in Atlanta for a wedding, Hardik discovered a large number of \$100 bills, nearly \$11,000, in Vidhya’s bedroom at the Clinton home. (June Tr. p. 219, lines 18-24; Defendant’s Exhibit 49). Hardik was distressed by the discovery. There had been occasions when Vidhya had taken money from the store, claiming she had paid for store inventory with

- personal funds and she was simply reimbursing herself. (Feb. Tr. p. 216, line 25 – p. 217, line 5). Those incidents had troubled Hardik, but the discovery of the cash hidden at the house convinced him that Vidhya could no longer be trusted with the AAHARVID LLC checkbook. (June Tr. p. 219, line 7 – p. 223, line 9).
87. In October, 2018, after discussing the matter, Anna and Hardik removed Vidhya’s name from the AAHARVID, LLC bank account, and Hardik told Vidhya that he would handle all deposits for the store going forward. (Feb Tr. p. 159, lines 11-20; June Tr. p. 221, line 25 – p. 222, line 12).
88. When Vidhya was told that her authority to sign checks had been removed from the AAHARVID LLC bank account, Vidhya deposited checks for \$5,000.00 each that she had written to herself from the AAHARVID, LLC bank account. (June Tr. p. 225, line 5 – p. 226, line 14). Anna and Hardik attempted to reverse the transactions, but Vidhya had closed the account into which she had deposited the funds, and thereby thwarted BB&T’s attempt to trace the funds. (June Tr. p. 226, lines 15-18).
89. Because of the dispute about when Vidhya’s authority to sign checks had been withdrawn on the AAHARVID LLC bank account, BB&T asked the parties to terminate their banking relationship with BB&T. (June Tr. p. 227, line 11 – p. 228, line 4). Vidhya received \$235,207.26 in certified checks when BB&T closed out her bank accounts. (Defendant’s Exhibit 36).
90. Anna maintained security cameras in the store. In November, 2018, she and Hardik reviewed some of the security footage and saw Vidhya activating and cashing out lottery tickets for herself. (June Tr. p. 344, line 7-9; p. 346, line 16). The court viewed a video provided by Defendants of a portion of the security camera video. Defendant’s Exhibit No. 4 is a still shot

from the video that was shown to the court. Vidhya confirmed the photo was of her scanning a lottery ticket. (Feb. Tr. p. 184, lines 1 – p. 186, line 14). Vidhya testified that she had paid for the lottery tickets before she scanned them.

91. Hardik installed additional security cameras after discovering the possible theft of lottery tickets by Vidhya. (June Tr. p. 351, lines 7-13).
92. At the end of 2018, Anna and Hardik sought legal advice from Thomas Jeter, Esquire, about the problems with the bank account and operating the business going forward. (June Tr. 352, line 7 – p. 353, line 15). Mr. Jeter reviewed the lottery retailer contract agreement for the store and advised Anna that she had an obligation under that contract to report any theft of lottery property to the Lottery Commission. (June Tr. p. 354, line 17 – p. 355, line 10).
93. Anna dutifully reported the theft by Vidhya of lottery tickets to both the lottery commission and to law enforcement. (June Tr. p. 356, lines 13-23). Vidhya was ultimately arrested by law enforcement.
94. Neither Hardik nor Anna requested, arranged, or facilitated the arrest; in fact they knew nothing about it until after it had occurred. (June Tr. p. 363, lines 3-5). Someone called Anna after hearing a news report about the arrest. (June Tr. p. 363, lines 6-8).
95. Vidhya did not return to work at the store in 2019. (Feb. Tr. p. 121, line 20 – p. 122, line 9; June Tr. p. 359, lines 8-20).
96. In 2019, Vidhya applied for and received unemployment payments from the state. (Defendant's Exhibits 41 and 44). In applying for unemployment benefits, Vidhya stated that she had been a full-time employee of AAHARVID LLC and was not self-employed. (Defendant's Exhibit 44, p. 3). Vidhya reported to the State that she had been "laid off due

to lack of work – slow down in business” and she would not be returning to the employment with AAHARVID LLC again. (Defendant’s Exhibit 44, p. 4 and 8). She said she had been “laid off” by the “owner” of the store. *Id.* p. 12. She reported her salary from AAHARVID LLC had been \$24,000 per year. *Id.* Vidhya certified that the information was “true and accurate” and acknowledged she understood the penalty for perjury if her statements in support of her unemployment request were false. *Id.* p. 11.

SECTION IV – LEGAL DISCUSSION

Resulting Trust

“Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is placed in the name of another . . . The general rule is that when real estate is conveyed to one person and the consideration paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself, and accordingly a resulting trust is raised. . . the presumption, however, may not be in accord with the truth. It may be rebutted and the actual intention shown by parol evidence.” *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). “Fraud can defeat a resulting trust.” *Id.*, citing *Elrod v. Cochran*, 59 S.C. 467, 472, 38 S.E. 122, 124 (1901).

A resulting trust may not be imposed when the transaction is undertaken to defraud other persons or to violate the law. *Id.* “The law will not permit a party to deliberately put his property out of his control for a fraudulent purpose, and then, through intervention of a court . . . regain the same after his fraudulent purpose has been accomplished.” *Ali v. Prillaman*, 200 S.C. 279, 20 S.E.2d 741, 753 (1942)

“It is well settled in this state that the facts from which the court would infer a resulting trust may be established by parol testimony, but it is also settled that such testimony, to warrant such inference, must be clear and convincing. *Id.* “[T]o establish a... resulting trust against one holding the legal title, the evidence must be clear and convincing. *Id.*”

Constructive Trust

“No parol trust will be integrated on a legal title... unless with the greatest caution, and where the fraud necessary to create the trust is established by clear and convincing proof. And in such a case, as a deed absolute in form raises a strong presumption against the existence of a trust; evidence sufficient to overcome it must be greater than a mere preponderance.” *Ali v. Prillaman* at 750.

“The mere failure of a grantee to perform his oral promise to hold property upon trust affords no basis for a constructive trust... where no deception was employed by the grantee. . . made for the express purpose of enabling him to make sales, pay off an indebtedness, and if possible, save something out of the proceeds for the grantor, he will not be held a trustee...” *Id.* “So where the grantor, without accident or mistake or fraud... deeded property to her son for the purpose of enabling him to defend the title against a threatened suit, with the understanding that he would hold it for her benefit, there is no trust.” *Id.* at 751.

Familial relationships do not constitute a fiduciary relationship, absent some special circumstances. *Swiger by and through DeHaven v. Smith*, 426 S.C. 408, 827 S.E.2d 200 (Ct.App. 2019). *See also Flowers v. Oakdale Realty and Water Corporation*, 256 S.C. 591, 183 S.E.2d 513 (1971). Under certain circumstances, a parent and child may have a fiduciary relationship, but the

specific facts of each case are unique. *Smith v Jones (In re: Estate of Smith)*, 419 S.C. 111, 796 S.E.2d 158 (Ct.App. 2016).

“Persons in family relations, such as those of... parent and child... are also ordinarily to be regarded as in a confidential relationship with the meaning of the rule; but they are not necessarily so.” *Ali v. Prillaman*, at 750. *See also Chapman v. Citizens and So. Nat. Bank of S.C.*, 302 S.C. 469, 396 S.E.2d 446, 451 (Ct.App. 1990) (relationship of husband and wife does not necessarily create a fiduciary relationship; “even in a husband and wife relationship, which may be the most intimate of all, the one in whom the trust or confidence is reposed must possess the power to abuse the trust of the confiding party in his business affairs to the detriment of the one confiding party. This power to abuse for the benefit of himself or herself, a trust reposed in a spouse, in the eyes of the law, invests that spouse with a dominance in the relationship.”).

SECTION V – CONCLUSIONS OF LAW

As to Plaintiff’s Claims

97. The claims by Vidhya and Darshak, individually and in their capacities as personal representatives of the Estate of Ramesh sound in equity.
98. To succeed in their claims for resulting trust and/or constructive trust, Vidhya and Darshak would be required to establish, by clear and convincing evidence, all of the following facts:
 - (a) Ramesh and Vidhya paid for the Clinton house, in whole or in part from their personal funds.
 - (b) The parties intended for the house to belong to Ramesh and/or Ramesh and Vidhya permanently.
 - (c) Ramesh and Vidhya paid for the lease of the store from 2007-2012 from their personal funds.

- (d) The parties intended for the lease of the convenience store to benefit Ramesh and/or Ramesh and Vidhya.
 - (e) Ramesh and Vidhya paid for the purchase of the convenience store in 2012 using their personal funds.
 - (f) The parties intended for the convenience store to belong to Ramesh and/or Ramesh and Vidhya permanently.
99. Plaintiffs Vidhya and Darshak have not established, by clear and convincing evidence, or even by a preponderance of the evidence, that any of the facts set forth above in this section are true.
100. It is not disputed, that Ramesh, Vidhya and Hardik were close, personally and professionally, until Ramesh died. However, the closeness was that of an ordinary family, insufficient to create a fiduciary relationship. As such, neither Hardik nor Anna owed a fiduciary obligation to Ramesh or Vidhya.
101. There was no express or implied promises that the house or the convenience store were purchased for Ramesh and/or Vidhya.
102. Hardik and Anna used their personal funds and/or profits of the convenience store to purchase the house and the convenience store or, at a minimum, the majority of the funds used were generated by the profits of the convenience store.
103. The Plaintiffs' allege that the house was titled in the name of Hardik and the convenience store was titled to AAHARVID, LLC to camouflage ownership by the real beneficial owners, Ramesh and/or Vidhya. Under Plaintiffs' theory, this subterfuge was undertaken because Ramesh and Vidhya were personally ineligible to own property in the United States by virtue

of their immigration status¹¹ so Hardik and Anna were merely holding the properties for Ramesh and Vidhya.

104. Plaintiffs' arguments, if true, would support a conclusion that the transactions were fraudulent in nature, such that equity would not provide a remedy to impose a trust of any kind over the house and the convenience store, even if the facts established everything the Plaintiffs claim.

105. Anna testified that Vidhya never said anything about wanting to own the house or the convenience store until after Ramesh died, when Vidhya complained that Ramesh did not leave her anything. (June Tr. p. 368, line 21 – p. 369, line 17).

106. There is conflicting testimony and evidence regarding whether the house or the store was intended to belong, in whole or in part, to Vidhya. The testimony of the defendants outweighs the testimony of the plaintiffs on this issue.

107. There is conflicting testimony and evidence regarding whether the house or the store was to belong, in whole or in part, to Ramesh. The testimony of the defendants outweighs the testimony of the plaintiffs on this issue.

108. Plaintiffs are not entitled to the imposition of a resulting or constructive trust over the house or the convenience store.

109. On the Plaintiff's claims, judgment is entered in favor of Defendants.

¹¹ The Court makes no finding or conclusion as to Ramesh or Vidhya's immigration status at any point enabled them to own real or personal property in their own name. It is sufficient, for purposes of adjudicating the matters presented, that Vidhya disclosed her subjective belief that they could not legally own property in their own names, and that as a result they adopted the subterfuge of ownership by Hardik and Anna's corporation with the intent to benefit themselves personally. The objective and actual legal necessity or existence of any such restriction is irrelevant.

SECTION VI – COUNTERCLAIMS

Defendants' counterclaims included three causes of action: (1) declaratory judgment as to ownership of the house and the store; (2) conversion; and (3) breach of fiduciary duty as personal representatives. Regarding the Defendants' motion for default judgment on its counterclaims, this court finds that it would be more appropriate to rule on the merits on these issues, and thus denies this motion.

As to the First Counterclaim – Declaratory Judgment

Having reviewed the matter in detail, I conclude that the first counterclaim for declaratory judgment was tantamount to mere denial of Plaintiff's claims. Because the findings of fact and conclusions of law set forth above result in denial of Plaintiffs' claims, the relief sought in the first counterclaim would be redundant.

As to the Second Counterclaim – Conversion

As it relates to the second counterclaim, the following facts have been admitted by the entry of default against the Plaintiffs and from the evidence presented at trial:

110. As an employee, Vidhya had limited authorization from AAHARVID, LLC to write checks from the company's checkbook for vendors as necessary and convenient for the day-to-day operation of the business. Vidhya signed checks from a bank account owned by AARHARVID, LLC, on four occasions to support Darshak after his cancer treatment, in sum of \$10,000. The testimony of all witnesses regarding income and expenses, when considered together, seems to be consistent in that all expenses for store and home were paid with monies from the store accounts. The Court finds these payment of these monies may be inconsistent

with a traditionally operated convenience store business account this court finds that it is consistent with how this business operated and thus not a conversion.

111. The Court also viewed a video in which Vidhya scanned winning lottery tickets and retained the receipts for herself when no customers were present.

112. On several occasions in 2018, Vidhya was caught on camera via surveillance footage taking entire rolls of lottery tickets from behind the counter at the Convenience Store and putting them in her bag before leaving the store without paying for them. These lottery tickets were the property of AAHARVID, LLC. On at least on occasion, Vidhya cashed a whole roll of lottery tickets at the convenience store and converted the proceeds for her personal use. AAHARVID, LLC intended this roll of lottery tickets to be sold to customers for profit. After reviewing the surveillance footage and discovering her theft of Company property. Hardik, acting as an authorized agent of the Company, did not rehire Vidhya with the Company on January 1, 2019.

Legal Discussion – Conversion Claim

Conversion is “the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner’s rights.” *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct.App. 2007) (citations omitted). One asserting a claim for conversion must establish “either title or right to the possession of the personal property.” *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). *See also Hennes v. Shaw*, 397 S.C. 391, 725 S.E.2d 501 (Ct.App. 2012).

Conclusions of Law – Conversion Claim

113. Defendants have not established by a preponderance of the evidence that Vidhya and Darshak improperly converted from AAHARVID, LLC the sum of \$10,000.00.
114. Defendants have established by a preponderance of the evidence that lottery tickets belonging to AAHARVID, LLC were converted by Vidhya, in contravention of the rights of AAHARVID, LLC and that she did not return the proceeds of the lottery tickets to AAHARVID, LLC.
115. However, Defendants have not established the value of the lottery tickets that were stolen from AAHARVID, LLC. The order of default enabled the parties to introduce evidence to sustain their burden of proof on the amount of damages where damages were unliquidated.
116. While the evidence, and the default, supports the conclusion that Vidhya inappropriately misappropriated lottery tickets and wrongfully profited from the conversion of the lottery tickets, Defendants did not introduce evidence of the value of the lottery tickets improperly used by Vidhya and therefore did not sustain their burden of proof as to the elements of conversion as to the lottery tickets.
117. There is no prayer for punitive damages, and I find and conclude that the evidence would not support an award of punitive damages in connection with the conversion of funds belonging to AAHARVID LLC.

As to Third Cause of Action – Breach of Fiduciary Duty

The third counterclaim alleges damages to Hardik as a result of Vidhya and Darshak's actions as personal representatives of Ramesh's estate in that they misappropriated the proceeds of Ramesh's interest in the Florence hotel to Vidhya. However, Defendants established further legal proceedings where the Laurens County Probate Court issued an order enjoining an attorney

in possession of the closing funds to escrow any funds that were the property of Ramesh and are to become assets of his estate. (Defendants' Exhibit 50). Benjamin Moore, Esquire of Florence testified that he had complied with the court order and continues to hold approximately \$200,000.00 in funds that are due to Ramesh's estate in escrow pending further decision by the probate court.

Because Hardik successfully pre-empted the attempted diversion of the proceeds from the sale of the Florence hotel that were due to the Estate of Ramesh, he cannot recover for breach of fiduciary duty, even if the evidence establishes an effort to divert the assets. Therefore, the claim for breach of fiduciary duty fails. This conclusion does not affect the probate court proceedings as to entitlement of any party to the assets of the estate of Ramesh, including those currently held in escrow by third parties. Such issues are reserved to resolution in that matter currently pending in probate court.

SECTION VII – AWARD AND JUDGMENT

Based on the findings of fact and conclusion of law set forth above, and for the reasons set forth, it is ordered:

- A. As to Plaintiffs' claims for resulting trust and constructive trust, the Plaintiffs have failed to establish a right to equitable relief, and judgment is awarded in favor of the Defendants;
- B. Defendants' counterclaim for declaratory judgment is denied as moot and redundant given the findings and conclusions that denied Plaintiffs' claims herein;
- C. Defendants' counterclaim for conversion, judgment is denied given the findings and conclusions that the checks were authorized.

- D. Defendants' counterclaim for breach of fiduciary duty is dismissed, as it is treated as currently pending in a separate proceeding at the probate court;
- E. The lis pendens bearing Case Number 2019-LP-30-00028 shall be dissolved.

The Clerk of Court is directed to enter judgment accordingly.

August __, 2020

Eugene C. Griffith Jr.
Circuit Court Judge



Laurens Common Pleas

Case Caption: Vidhyaben R. Patel, Co-Per. Rep. Est. Of Rameshchandra Patel ,
plaintiff, et al VS Hardik R Patel , defendant, et al
Case Number: 2019CP3000140
Type: Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154