

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2020-001472

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SC Court of Appeals

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, Appellants,

v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC, Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE COURT ERR BY FAILING TO FIND AND RULE THAT APPELLANTS WERE ENTITLED TO A RESULTING TRUST OVER THE PROPERTY AT ISSUE IN THIS LAWSUIT?**
- 2. DID THE COURT ERR BY FAILING TO FIND AND RULE THAT APPELLANTS WERE ENTITLED TO A CONSTRUCTIVE TRUST OVER THE PROPERTY AT ISSUE IN THIS LAWSUIT?**
- 3. IS THE COURT'S ORDER SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL?**
- 4. DID THE COURT ERR IN FAILING TO SET ASIDE THE CONVEYANCE OF AAHARVID, LLC PURSUANT TO THE STATUTE OF ELIZABETH?**

STATEMENT OF THE CASE

Plaintiff's/Appellants 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 ("Appellants") commenced this action by filing a Summons and Complaint in the Court of Common Pleas for Laurens County (Complaint, R. ____). Rameshchanda Patel ("Ramesh") is deceased. Vidhyaben R. Patel ("Vidhya") and Darshak Patel are the co-personal representatives of the Estate of Rameshchanda Patel. Mr. Patel was 63 years old when he died unexpectedly. Plaintiff Vidhya Patel is Ramesh Patel's widow. Plaintiff/Appellant Darshak Patel is Ramesh Patel's youngest son.

Appellants' Complaint sought recovery against Defendants/Respondents ("Respondents") Hardik Patel ("Hardik"), Anal H. Patel ("Anna") and AAHARVID, LLC, for causes of action including the establishment of a constructing and/or resulting trust over certain pieces of property located in Laurens County, South Carolina. Respondent Hardik is Vidhya and Ramesh Patel's oldest son. Respondent Anna Patel is his wife. Appellants' Complaint sought a finding that the Estate of Ramesh and Vidhya each owned a 50% beneficial ownership in a convenience store located at 19278 Highway 72 East in Clinton, South Carolina, and a residence located at 18397 Highway 72 East in Clinton, South Carolina, as well as other assets, including funds being held in escrow in Florence, South Carolina.

Respondents filed Answers and Amended Answers asserting a number of affirmative defenses as well as counterclaims (Answer/Amended Answer Affirmative Defenses and Counterclaim dated March 22, 2029; R. _____) (Answer/Amended Answer Affirmative Defenses and Counterclaim dated April 22, 2019; R. ____). Although an issue arose at trial regarding whether or not Plaintiffs/Appellants were in default as to Defendants/Respondents'

counterclaims, the Court declined to hold Plaintiffs in default and addressed Defendants/Respondents' counterclaims, ultimately finding in favor of Plaintiffs/Appellants. (Order of the Honorable Eugene C. Griffith, dated August 28, 2020; R. _____).

This matter was tried before the Honorable Eugene C. Griffith, Jr., Presiding Judge of the Court of Common Pleas for Laurens County, South Carolina on February 6 and February 7, 2020, and June 16 and June 17, 2020. Judge Griffith heard the matter non-jury as a result of a stipulation of the parties. At the close of the Plaintiffs' case, Judge Griffith dismissed the Plaintiffs' first cause of action for express trust and sixth cause of action for breach of fiduciary duty. Plaintiffs' seventh cause of action for unjust enrichment was determined by the Court to be a remedial mechanism for the resulting trust allegations and not an independent claim. (Transcript of Record, Vol. 2, Page 125 Lines _____). (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____). Plaintiffs withdrew their eighth cause of action for fraud and the trial continued as to Plaintiffs' constructive trust and resulting trust causes of action. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____).

Following four days of testimony, at the instruction of the Court, each side submitted proposed Orders to Judge Griffith for consideration (Proposed Order of Appellant; R. _____) (Proposed Order of Respondent; R. _____). On August 28, 2020, Judge Griffith issued his Order finding and ruling as a matter of law that Plaintiffs/Appellants failed to establish their causes of action for either resulting trust or constructive trust over the property at issue in this case. Plaintiffs timely filed Rule 59(E) and Rule 60(B) Motion for Reconsideration on September 8, 2020, which was denied by Judge Griffith (Order of the Honorable Eugene C. Griffith, Jr., Denying Plaintiff/Appellant's Motion for Reconsideration; R. _____). This Appeal timely followed (Notice of Appeal; R. _____).

STATEMENT OF FACTS

Ramesh Patel and Vidhya Patel came to the United States as immigrants from India. (Transcript of Record, Vol. 1; Page 113; Lines 12-17). Both Vidhya and Ramesh were educated in India, prior to coming to the United States. Vidhya only attended school through the equivalent of the 10th grade. (Transcript of Record, Vol. 1; Page 115; Lines 6-16). She and Ramesh were married in 1979 in India and came to America legally as husband and wife before obtaining their “Green Cards.” (Transcript of Record, Vol. 1, Page 113, Lines 14-25; Page 114, Lines 1-3). (Transcript of Record, Vol. 1; Page 115; Lines 17-20). They are Hindu and the Indian culture to which they belong has played a large role in their lives. The evidence in this case is undisputed that Ramesh was a shrewd and savvy businessman. (Transcript of Record, Vol. 1, Page 50, Lines 5-6) (Transcript of Record, Page 361, Lines 22-25).

In the Hindu community, the father is generally recognized as the leader or patriarch. In the case of Ramesh and Vidhya, they were no exception to this rule. Ramesh made the business decisions. He and Vidhya worked as a team and often worked side by side in the family business. They worked long hours and they worked hard trying to make a life for themselves and their children.

Ramesh and Vidhya shared everything. They considered themselves as partners in all they had. As set forth in more detail below, for many, many years there was a large amount of trust in the family. (Transcript of Record, Vol. 1, Page 50, Lines 5-17). Ramesh and Vidhya had two sons, Hardik and Darshak. (Transcript of Record, Vol. 1, Page 115, Lines 21-25; Page 116, Lines 1-3). Ramesh and Vidhya loved and trusted their sons. Their property was always titled in the name of Ramesh or in a trusted family member.

The family held their finances jointly. (Transcript of Record, Vol. 1, Page 117, Lines 14-16) (Transcript of Record, Vol. 1, Page 125, Lines 11-14). (Transcript of Record, Vol. 2, Page 165, Lines 3-9). What belonged to Ramesh was always considered as belonging to Vidhya. She was fully involved in their life and the family fortune, what there was of it. Vidhya was also heavily involved in the care of her husband. The two loved each other. The joint enterprise of this marriage was the family and they sacrificed to provide the very best possible for the two sons, Hardik and Darshak. Ramesh and Vidhya educated both of their sons. They furnished Hardik and Darshak's tuition, room and board and even cars while they were in school. (Transcript of Record, Vol. 1; Page 42; Lines 2-10) (Transcript of Record, Vol. 1, Page 116, Lines 16-25). They paid for their sons' weddings. (Transcript of Record, Vol. 1; Page 40; Lines 10-15) (Transcript of Record, Vol. 1; Page 41; Lines 18-22) (Transcript of Record, Vol. 1; Page 42; Lines 1-7) (Transcript of Record, Vol. 1, Page 141, Lines 8-16).

In the Hindu community, it is not unusual to title property belonging to one family member in the name of another family member (Transcript of Record, Vol. 1, Page 149, Lines 19-25). (Transcript of Record, Vol. 1, Page 158, Lines 10-22). There was ample evidence presented at trial as to the close relationship between the parties and the manner in which they handled their income and assets. (Transcript of Record, Vol. 1, Page 117, Lines 14-16) (Transcript of Record, Vol. 1, Page 125, Lines 11-14). (Transcript of Record, Vol. 2, Page 165, Lines 3-9).

NEWBERRY QUALITY INN

Sometime in 2006 Ramesh, along with Prakash Patel, Prafull Patel and a Mr. Bodriali purchased a Quality Inn, located in Newberry South Carolina owned by Paul Desai (Transcript of Record, Volume 1; Page 204, Lines 24-25; Page 205, Lines 1-9) (Transcript of Record, Vol. 1, Page 80, Lines 13-25; Page 81, Lines 1-2). The property was purchased by a LLC, Shree Shree

Hari, LLC. (Transcript of Record Volume 1, Page 63, Lines 20-25 – Page 64, Lines 1-25; R._____) Ramesh handled all negotiations for the purchase of the hotel. (Transcript of Record Volume 1, Page 80, Lines 2-12).

Initially, Ramesh Patel owned 40% of Shree Shree Hari. Prakash Patel owned 40%. Prafull Patel owned 10% and Mr. Bodriali owned 10%. (Transcript of Record Volume 1, Page 205, Lines 6-17). The purchase price for the Newberry Quality Inn was approximately 1.8 million dollars. (Transcript of Record Volume 1, Page 81, Lines 5-6). The parties to this transaction put down \$500,000.00 towards the 1.8 million dollars purchase price at closing. (Transcript of Record, Page 82, Lines 3-25) (Transcript of Record, Vol. 1, Page 205, Lines 22-25; Page 206, Lines 1-3). Ramesh Patel contributed \$200,000.00; Prakash Patel contributed \$200,000.00; Prafull Patel contributed \$50,000.00 and Mr. Bodriali contributed \$50,000.00. (Transcript of Record Volume 1, Page 205, Lines 22-25).

Vidhya testified that she and Ramesh paid for their share of the Newberry hotel out of their own money. (Transcript of Record, Vol. 1, Page 117, Lines 22-25; Page 118, Lines 1-5). Neither Hardik nor Anna had any role in the purchase of the Newberry Quality Inn. (Transcript of Record, Vol. 2, Page 41, Lines 18-22).

After the purchase, Ramesh worked at the Quality Inn as Manager and as a Night Clerk. (Transcript of Record, Vol. 1; Page 116, Lines 23-25; Page 117; Lines 1-18). Vidhya worked in housekeeping and in the laundry. (Transcript of Record Volume 1, Page 117, Lines 1-18) (Transcript of Record Page 118, Lines 6-12). Anna never worked at the Newberry Quality Inn. (Transcript of Record Volume 1, Page 32, Lines 15-16) (Transcript of Record, Vol. 2, Page 41, Line 21) Anna had no knowledge as to the formation of the LLC and no involvement in the running of the LLC. (Transcript of Record Volume 1, Page 63, Lines 6-25 – Page 66, Line 2; R.

____) (Transcript of Record, Page 64, Lines 12-25). The record in this case clearly establishes that neither Hardik nor Anna had any direct knowledge or involvement in the management and running of the Newberry hotel.

Sometime around 2007 Ramesh transferred his 40% interest in Shree Shree Hari, LLC to Anna. (Transcript of Record Volume 1, Page 27, Lines 18-25; Page 28, Lines 1-9). Subsequently, Anna transferred half of her interest in the Newberry Hotel to her husband. (Transcript of Record, Vol. 1, Page 206, Lines 21-27) (Transcript of Record, Vol. 1, Page 174, Lines 3-15). After the transfer, Hardik had a 20 % ownership interest and Anna had a 20% ownership interest (Transcript of Record, Vol. 1, Page 311, Lines 21-25; Page 312, Lines 1-5). At the time of the transfer Anna was 21 years old and a full time student. (Transcript of Record, Vol. 2, Page 37, Lines 24-25).

Neither Anna nor Hardik paid anything for the acquisition of these shares. Anna testified that she did not have any knowledge as to the circumstances surrounding this transfer or how these shares came to be placed in her name. (Transcript of Record Volume 1, Page 27, Lines 24-25; Page 28, Lines 1-7) (Transcript of Record, Vol. 1; Page 32; Lines 6-9) (Transcript of Record Volume 1, Page 64, Lines 15-17). She has no knowledge as to how these shares ended up in her name. (Transcript of Record, Vol. 1; Page 28; Lines 5-7). Hardik Patel testified that he paid no money for his interest in the Newberry hotel. He testified that this was a “gift,” although he did not produce any evidence of this “gift.” (Transcript of Record, Volume 1, Page 312, Lines 4-5).

After the transfer, both Ramesh and Vidhya continued to work at the hotel (Transcript of Record, Page 65, Lines 25 – Page 66, Line 1) (Transcript of Record, Vol. 1, Page 358, Lines 15-18). There was no evidence that any money changed hands as a result of this transfer. There was no evidence presented that anything changed regarding the running and management of the Newberry hotel after this transfer.

CLINTON CONVENIENCE STORE

The first piece of property directly at issue in this case involves the convenience store property located on Highway 72 in Clinton, South Carolina (“Convenience Store”) (Transcript of Record, Vol. 1, Page 124, Lines 3-24) (Transcript of Record, Vol. 1, Page 44, Lines 10-21). The property was leased in August of 2007 and, as set forth below, subsequently purchased in 2012. (Transcript of Record, Vol 1, Page 44, Lines 10-14; R. _____) (Transcript of Record Vol. 1, Page 50; Lines 24-25).

At the time of the lease, this property was owned by P&P Investments (“P&P”). (Transcript of Record Vol. 1, Page 83, Lines 4-19). P&P was made up of Paul Desai (who testified at length about this transaction at trial) and Prakash Patel (who did not testify at trial). (Transcript of Record, Vol. 1, Page 44, Lines 10-18). Ramesh negotiated the lease directly with Paul Desai.

P&P entered into a lease for the property with AAHARVID, LLC (“The LLC”) (Transcript of Record, Vol. 1, Page 43, Lines 8-10) (Transcript of Record, Vol. 1, Page 126, Lines 4-25) The name “AAHARVID, LLC” was a combination of the names of three family members, “Anna,” “Hardik” and “Vidhya.” (Transcript of Record, Vol. 1, Page 126, Lines 7-8). As recognized by the Court in its Order, the legal ownership of AAHARVID, LLC rested in Anna. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____).

Despite the circumstances surrounding the creation and ownership of the LLC, Paul Desai, who testified at trial, testified that at all times he believed he was dealing with Ramesh and no one else. (Transcript of Record, Vol. 1, Page 88, Lines 3-8). Paul Desai testified at trial that the lease was entered into with the newly formed LLC and not with Ramesh personally because of the Partnership’s concerns over Ramesh’s immigration status. (Transcript of Record, Vol. 1, Page 88, Lines 22-25; Page 89, Lines 1-9) (Transcript of Record Vol. 1, Page 94, Lines 12-17; Page 95,

Lines 2-6; Page 96, Lines 2-8). Neither Ramesh nor Vidhya held “Green Cards” at the time of the lease in 2007.

As part of the transaction, Ramesh made a down payment to P&P. Paul Desai, who testified at trial, testified that Ramesh made a down payment at the time the lease was entered into. (Transcript of Record, Vol. 1, Page 84, Lines 22-24) (Transcript of Record, Vol. 1, Page 85, Lines 7-9). (Transcript of Record, Vol. 1, Page 86, Lines 6-9). Vidhya also testified that Ramesh made a down payment to P&P at the time the store was leased. Neither Anna nor Hardik put any money down at the time the Clinton convenience store was purchased. (Transcript of Record, Vol. 1, Page 127, Lines 1-19).

AAHARVID, LLC also entered into a note with P&P for the goodwill, inventory and gas at the time of the lease. (Transcript of Record, Vol. 1, Page 44, Lines 22-25; Page 45, Lines 1-9). The LLC took out a note for approximately \$124,000.00 which constituted the value of the inventory. The loan was for an indefinite period of time at 8% interest. This loan was to be paid back over time out of the operation of the convenience store. (Transcript of Record, Vol. 1, Page 46, Lines 16-25) (Transcript of Record, Vol. 1, Page 47, Lines 1-9) (Transcript of Record, Vol. 1, Page 47, Lines 10-17).

At the time of the lease, the store was in “bad shape.” (Transcript of Record, Vol 1, Page 131, Lines 19-24; Page 132, Lines 1-25; Page 133, Lines 1-25). It needed paint. The roof was in need of repairs. The parking lot was in need of repair. The bathroom needed work. Ramesh and Vidhya paid for these repairs. Vidhya estimated that she and Ramesh put approximately \$25,000.00 of their own money into these repairs and upgrades. (Transcript of Record, Vol. 1, Page 133, Line 2).

After the lease was entered into, Vidhya ran the store. She considered it her business. (Transcript of Record, Vol. 1, Page 133, Lines 22-25) (Transcript of Record, Page 134, Line 1-12) (Transcript of Record, Vol. 1, Page 122, Lines 6-25) (Transcript of Record, Page 123, Lines 1-9). She opened and closed the store. She stocked shelves. She ran the cash register. (Transcript of Record, Vol. 1, Page 122, Line 19 – Page 123, Line 9; R. ____). She worked over 40 hours a week, often up to 60 hours per week. (Transcript of Record, Vol. 1, Page 110, Line 3-5; R. ____). (Transcript of Record, Vol. 1, Page 162, Lines 13-18). She and Ramesh had signatory authority on the businesses checks. They did all of the ordering and paid all of the bills. (Transcript of Record, Vol. 1, Page 122, Lines 19-25; Page 123, Lines 1-9). Ramesh worked in the store while he was working at the Newberry Quality Inn and after he gave up his interest in the Quality Inn. Vidhya worked in the store from the initial lease in 2007 until January of 2019. (Transcript of Record, Vol. 1, Page 121, Lines 18-23). Neither Anna nor Hardik were ever involved in the day to day running of the store to any greater extent than any family member other than Vidhya.

In 2012, the convenience store was sold to AAHARVID, LLC. The purchase price of the store was for \$475,000.00. (Transcript of Record, Vol. 1, Page 50, Lines 24-25) (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. ____). It is uncontested that the transaction was handled by Ramesh, and not by either Anna or Hardik who were both living out of South Carolina at this time. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. ____). As was the case with the original lease, all of the documents executed for this transaction were executed on behalf of the LLC.

As part of the transaction, AAHARVID, LLC borrowed \$385,000.00 from BB&T (Defendant's Exhibit No. 22; R. ____). (Transcript of Record, Vol. 1, Page 52, Line 3). Ramesh was given a Power of Attorney to sign the documents for this loan. (Order of the Honorable Eugene

C. Griffith, Jr., dated August 28, 2020; R. ____) (Transcript of Record, Vol. 1, Page 49, Lines 20 – Page 50; Line 17). The evidence presented at trial clearly establishes that a down payment of approximately \$90,000.00 was made as part of the 2012 sale. (Defendant’s Exhibit 26, R. ____) (Defendant’s Exhibit 21, R. ____) (Transcript of Record, Vol. 1, Page 101, Lines 14-18) (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. ____).

The only evidence presented at trial as to the source of these funds came from Paul Desai, one of the principals involved in the transaction who testified that this down payment came from Ramesh. (Transcript of Record, Vol. 1, Page 101, Lines 14-18). Again, the transaction was made in the name of the existing LLC and not Ramesh personally due to immigration concerns/issues involving P&P and its principals (Transcript of Record, Vol. 1, Page 96, Lines 10-19) (Transcript of Record, Vol. 1, Page 103, Lines 17-22) (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. ____)

CLINTON RESIDENCE

The second piece of property directly at issue in this case is the Clinton residence, located at 18397 Highway 72 East, Clinton, South Carolina (“The Residence”). This residence is located approximately one mile from the convenience store, discussed above. (Transcript of Record, Vol. 1, Page 140, Lines 2-12). The house was discovered by Ramesh and Hardik. (Transcript of Record, Vol. 1, Page 137, Lines 20-23; R. ____). The family decided to purchase this house due to its close proximity to the convenience store. (Transcript of Record, Vol. 1, Page 137, Lines 20-23).

At the time of its purchase, this property was in foreclosure. (Transcript of Record, Vol. 1, Page 71, Lines 12-13). It was in bad shape. (Transcript of Record, Vol. 1, Page 226, Lines 21-23). It was not in a “livable” condition. (Transcript of Record, Vol. 1, Page 71, Lines 3-5). (Transcript of Record, Vol. 1, Page 139, Lines 13-15). (Transcript of Record, Vol. 1, Page 226, Lines 21-23).

It needed new flooring, new paint, bathroom renovations, and a new back door. (Transcript of Record, Vol. 1, Page 226, Lines 21-25) (Transcript of Record, Vol. 1, Page 227, Line 1).

Ramesh and Vidhya contacted Champa Patel, a Real Estate agent to assist them in the purchase of the residence. She testified at trial. (Transcript of Record, Vol. 1, Page 49, Lines 1-6) (Transcript of Record, Vol. 1, Page 221, Lines 14-15) (Transcript of Record, Vol. 1, Page 223, Lines 24-25) (Transcript of Record, Vol. 1, Page 224, Lines 1-2). She testified that all of her negotiations and dealings with the purchase of the house were with Ramesh. She had no contact or involvement with either Anna or Hardik. (Transcript of Record, Vol. 1, Page 224, Lines 11-15) (Transcript of Record, Page 226, Lines 14-20).

Approximately \$40,000.00 cash was put down at the time of the purchase of the residence (Transcript of Record, Vol. 1, Page 138, Lines 16-23). (Transcript of Record, Vol. 1, Page 139, Lines 16-22). Vidhya testified that the cash to purchase and repair the house came from her and from Ramesh and consisted of a combination of their personal finances and money loaned to them by family members as well as Champa Patel, the Real Estate Agent (which she and Ramesh paid back). (Transcript of Record, Vol. 1, Page 139, Lines 2-16) (Transcript of Record, Vol. 1, Page 224, Lines 3-10; Lines 16-22) (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____).

Due to concerns over immigration status, the house (like the convenience store) was put in Hardik's name (Transcript of Record, Vol. 1, Page 224, Line 23 – Page 225, Line 11; R. _____) Champa Patel, the real estate agent involved in the transaction, testified that she cautioned Ramesh and Vidhya about titling the house in Hardik's name. Vidhya and Ramesh told her that they trusted Hardik with this arrangement. (Transcript of Record, Vol. 1, Page 225, Lines 14-25; Page 226, Lines 1-13).

Before the family could move in, the house needed substantial renovations. Ramesh and Vidhya paid between \$40,000.00 and \$50,000.00 to renovate and repair the house. (Transcript of Record, Vol. 1, Page 139, Lines 13-15) (Transcript of Record, Vol. 1, Page 226, Lines 21-24). Once these repairs and renovations were completed, the entire family moved in, including Hardik and Anna. (Transcript of Record, Vol. 1, Page 26, Lines 15-21) (Transcript of Record, Vol. 1, Page 140, Lines 20-25) In 2011, Anna and Hardik left and moved to Richmond, Virginia. They would never return to the Clinton residence to live on a full time basis. (Transcript of Record, Vol. 1, Page 48, Lines 11-14) (Transcript of Record, Vol. 1, Page 142, Lines 1-25).

Ramesh and Vidhya continued to live in the Clinton House. They paid for insurance, utilities and the mortgage. (Transcript of Record, Vol. 1, Page 148, Lines 16-25) Although Hardik now claims that he was the sole owner of the house, neither Ramesh nor Vidhya ever paid him any rent to live there. (Transcript of Record, Vol. 1, Page 48, Lines 15-21). Ramesh and Vidhya lived in the house together until Ramesh's untimely death. Following Ramesh's death, Vidhya continued to live in the house and was still living in the house at the time of trial. (Transcript of Record, Page 121, Lines 15-17) (Transcript of Record, Vol. 1, Page 156, Line 10.) Although they were permanently living elsewhere, Anna and Hardik continued to have a bedroom in the home.

DEATH OF RAMESH

In June of 2017, Ramesh suddenly and unexpectedly died. (Transcript of Record, Vol. 1; Page 37; Lines 11-12) (Transcript of Record, Vol. 1; Page 150; Lines 4-17) He left no will. (Transcript of Record, Vol. 1; Page 158; Lines 23-24) In the Hindu culture, bodies are cremated before burial. Pursuant to this culture, the eldest son travels back to India with his father's ashes. However, Hardik did not do so. (Transcript of Record, Vol. 1; Page 37; Lines 11-16) (Transcript of Record, Vol. 1, Page 152, Lines 1-25). Instead, Darshak accompanied his mother to India.

(Transcript of Record, Vol. 1; Page 37; Lines 16-17). (Transcript of Record, Vol. 1; Page 152; Lines 19-25) They were gone for approximately forty (40) days. (Transcript of Record, Vol. 1, Page 254, Lines 12-13).

While Vidhya and Darshak were in India, Hardik reached out to Prafull Patel, who testified regarding this encounter at trial, for advice (Transcript of Record, Vol. 1, Page 201, Lines 1-25; Page 202, Line 1) (Transcript of Record, Vol. 1, Page 317, Lines 3-14) This was not unusual for him to do so. (Transcript of Record, Vol. 1, Page 200, Lines 11-14). Mr. Patel, again who testified at trial, is not related to any of the parties to this lawsuit or appeal. (Transcript of Record, Vol. 1, Page 199, Lines 3-5). He testified that he had no financial stake in the outcome of the trial. (Transcript of Record, Vol. 1, Page 199, Lines 15-16). He testified that he has known the family for approximately 20 years. (Transcript of Record, Vol. 1, Page 199, Lines 17-23). Although he later testified that Prafull Patel “bullied” him (see discussion below), Hardik conceded that he respected Mr. Patel. (Transcript of Record, Vol. 1, Page 317, Lines 8-17).

During this conversation, Hardik (and Anna who was on the phone with her husband) conceded that they were aware the Clinton convenience store and the Clinton house had been purchased and paid for by his parents, but put in his (Hardik’s) name (Transcript of Record, Vol. 1, Page 201, Lines 7-16) (Transcript of Record, Vol. 1, Page 202, Lines 1-5). Hardik told Prafull that he wanted to retain a lawyer to get ownership of these properties. (Transcript of Record, Vol. 1, Page 202, Lines 1-12) Prafull informed Hardik that the family needed to “get together” and discuss these matters. (Transcript of Record, Vol. 1, Page 202, Lines 9-14). (Transcript of Record, Vol. 1, Page 202, Lines 1-25; R. _____).

REMOVAL OF ITEMS AND PAPERS FROM CLINTON HOUSE

While Vidhya and Darshak were out of the country, carrying Ramesh's ashes back for burial, Hardik went into the Clinton house. He removed items, as well as papers and documents relating to the purchase of the house and convenience store from the residence. None of these papers were ever returned. Some of these same papers ended up as evidence in the trial of this case. (Transcript of Record, Vol. 1, Page 272, Lines 19-23; Lines 24-25) (Transcript of Records, Page 273, Line 1).

DISPUTE OVER CREDIT CARD DEBT

Sometime after Vidhya and Darshak returned from India, Hardik had a conversation with his brother Darshak. Darshak testified about this conversation at trial. Hardik informed his brother that after Ramesh's death, he approached his mother concerning a Discover Credit Card debt of \$35,000.00. (Transcript of Record, Vol. 1, Page 255, Lines 24-25) Hardik informed his brother that he asked Vidhya to give him \$35,000.00 out of the \$200,000.00 she received from an insurance policy on Ramesh. (Transcript of Record, Vol. 1, Page 256, Lines 1-16). Vidhya at first agreed to provide the money but later refused to give Hardik the money which angered him. Hardik told his brother that he was not going to forget this slight. (Transcript of Record, Vol. 1, Page 256, Lines 1-16). During this conversation and a subsequent one, Hardik continued to threaten his mother. (Transcript of Record, Vol. 1, Page 256, Lines ____) (Transcript of Record, Vol. 1, Page 269, Lines 11-20).

CHANGE OF LIFE INSURANCE BENEFICIARY

Prior to Ramesh's death, he purchased a Life Insurance Policy on the life of Vidhya. Baset Patel, who testified at trial, was the life insurance agent who handled the transaction with Ramesh. (Transcript of Record, Vol. 2, Page 86, Lines 7-10). Ramesh was the beneficiary. (Transcript of

Record, Vol. 2, Page 86, Lines 15-17). It was Vidhya's desire that after Ramesh's death that both of her sons be placed on the policy as beneficiaries. (Transcript of Record, Vol. 2, Page 89, Lines 2-17) (Transcript of Record, Vol. 2, Page 90, Lines 20-25).

Unbeknownst to Vidhya, Hardik had himself listed as the sole beneficiary of this policy, against his mother's wishes. He also had the address on the policy changed to his home address without his mother's consent. After she learned of these actions, Vidhya had to take action to have these changes "reversed." Her own address was reinstated and both of her sons were named as beneficiaries. (Transcript of Record, Vol. 1, Page 160, Lines 14-17) (Transcript of Record, Vol. 1, Page 161, Lines 2-4) (Transcript of Record, Vol. 1, Page 264, Lines 3-21) (Transcript of Record, Vol. 2, Page 89, Lines 2-17)

HARRASSMENT OF VIDHYA

Hardik continued his campaign of harassment against Vidhya, who continued to live in the Clinton residence and work long hours in the Clinton convenience store, which she considered to be her business. The electricity and gas were cut off at the Clinton residence under mysterious circumstances. (Transcript of Record, Vol. 1, Page 157, Lines 3-25). Vidhya began having troubles with mail delivery to the convenience store. (Transcript of Record, Vol. 1, Page 144, Line 14; R. _____).

In May of 2018 Hardik changed the business mailing address to his house in Tega Cay, South Carolina. (Transcript of Record, Vol. 1, Page 144, Lines 1-25) (Transcript of Record, Vol. 1, Page 145, Lines 1-25). Vidhya began having difficulties receiving her own mail. (Transcript of Record, Vol. 1, Page 144, Line 15; R. _____) (Transcript of Record Vol. 2, Page 73, Lines _____). She had to go to the Post Office to change the mail back to her own address. (Transcript of Record, Vol. 1, Page 145, Lines 1-25; R. _____). Appellants presented evidence that in addition to having

Vidhya's address changed, Hardik had mailing addresses changed for his brother and sister-in-law without their permission. (Transcript of Record, Vol. 1, Page 265, Line 4 – Page 266; Line 16; R. _____). In addition, Vidhya was denied health insurance because Hardik failed to complete the necessary tax paperwork. (Transcript of Record, Vol. 1, Page 267, Line 15 – Page 268, Line 14; R. _____).

CREATION OF NEW LLC, FIRING AND ARREST OF VIDHYA

Respondent's campaign of harassment against Vidhya culminated in late 2018 when he successfully had her "fired" and removed from the Clinton convenience store and arrested and thrown in jail. In October of 2018 Hardik and Anna approached Attorney Thomas Jeter regarding the formation of a "new" LLC to take over the ownership and running of the Clinton convenience store. (Transcript of Record, Vol. 2, Page 7, Lines 23-25; Page 8, Line 1). During the conversation with Attorney Jeter, Hardik and Anna accused Vidhya of taking money out of the business (which she considered to be her own), as well as taking lottery tickets without paying for them. (Transcript of Record, Vol. 2, Page 8, Lines 15-24) (Transcript of Record, Vol. 2, Page 10, Lines 20-25) (Transcript of Record, Vol. 2, Page 11, Lines 1-5). Hardik and Anna showed Attorney Jeter "surveillance" video footage from their phone "showing" Vidhya taking tickets (although Attorney Jeter could make no determination from the video as to whether or not Vidhya paid for them prior to "taking" them) (Transcript of Record, Vol. 2, Page 12, Lines 1-14) (Transcript of Record, Vol. 2, Page 37, Lines 5-18)

Attorney Jeter assisted Anna and Hardik in the creation of a new LLC to take over the running of the Clinton convenience store -(Transcript of Record, Vol. 2, Page 8, Lines 2 -12; R. _____) (Transcript of Record, Vol. 1, Page 59, Lines 1 – Page 60, Lines 23; R. _____). According to Hardik, the existing store account was closed and a new one opened/established. Although there

was conflicting testimony at trial, there was approximately \$50,000.00 and \$70,000.00 in the existing business account at the time of this transaction. (Transcript of Record, Vol. 1, Page 58, Line 15; R. ____). Respondents presented evidence that the goodwill and inventory “owned” by the existing LLC (AAHARVID) was purchased by the “new” LLC.

In December of 2018, Vidhya was “fired” from the Clinton convenience store. (Transcript of Record, Vol. 1, Page 271, Line 17-18; R. ____). She was placed on Trespass notice which would subject her to being arrested if she came onto store property. (Transcript of Record, Vol. 1, Page 57, Line 3; R. ____) (Transcript of Record, Vol. 1, Page 271, Lines 17-18; R. ____) (Transcript of Record, Vol. 1, Page 330, Line 17; R. ____). This was placed on her by Anna.

As a result of their conversation with Attorney Jeter, Hardik and Anna called the authorities on Vidhya and she was subsequently arrested. While Anna readily acknowledged her role in the events leading up to Vidhya’s arrest, Hardik only acknowledged his involvement in the arrest after being cross examined about this at trial (Transcript of Record, Vol. 1, Page 305, Lines 17- Page 305, Line 1; R. ____). As of the time of trial, there has been no disposition of the charges brought against Vidhya. She has not returned to the store since December of 2018.

STANDARD OF REVIEW

This Court reviews all questions of law de novo. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 658 S.E.2d 80 (2008). Review of the trial court's factual findings, however, depends on the whether the underlying action is an action at law or an action in equity. In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings. In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence. *See, Wilder Corp. v. Wilke*, 324 S.C. 570, 577, 479 S.E.2d 510, 513 (Ct.App.1996) In

an action tried in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Inlet Harbour v. S. C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 659 S.E.2d. 151 (2008); *Mac Papers, Inc. v. Genesis Press, Inc.*, 426 S.C. 393, 826 S.E.2d. 874 (2019).

ARGUMENTS

1. THE COURT ERRED IN FINDING AND RULING AS A MATTER OF LAW THAT APPELLANTS FAILED TO PROVE THEY WERE ENTITLED TO A RESULTING TRUST AS TO THE CONVENIENCE STORE AND THE FAMILY RESIDENCE

The Trial Court erroneously found and ruled as matter of law that Appellants were not entitled to and did not carry their burden of proof of establishing a resulting trust over the Convenience Store, or the family residence located in Clinton, South Carolina. A “resulting trust” arises when one party holds legal title in trust for the true beneficiary owners. A “resulting trust” arises when the intent behind disposition creates an inference the beneficial interest does not run with the legal title. *Bowen v. Bowen*, 575 S.E.2d 553 (2003) *Green v. Green*, 237 S.C.424, 117 S.E.2d. 583 (1960); *Caulk v. Caulk*, 211 S.C. 57, 43 S.E.2d. 600 (1947); *Lollis v. Lollis*, 291 S.C. 525, 354 S.E.2d. 559 (1987).

Under a long recognized rule in South Carolina, when real estate is conveyed to one person and the consideration is paid by another, it is presumed the party who pays the purchase money intended a benefit to himself and accordingly a resulting trust is raised. Further, actual intent regarding a trust may be shown by parol evidence. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). See also: *Caulk v. Caulk*, 211 S.C. 57, 43 S.E.2d 600 (1945). The burden rests on the Plaintiff to establish the elements necessary for imposition of a resulting trust by clear and convincing evidence. *Moore v. McKelvey*, 266 S.C. 95, 221 S.E.2d 780 (1976); *All v. Prillman*, 200 S.C.279, S.E.2d. 741 (1942). Here the evidence met the standard of proof

required. The Court erroneously found and ruled as a matter of law that Appellants failed to carry their burden of establishing that they were entitled to a resulting trust over the Clinton convenience store or the Family residence located in Clinton. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____) (Order of the Honorable Eugene C. Griffith denying Plaintiff's Motion for Reconsideration; R. _____). The Court erred in failing to find and rule as a matter of law that Appellants were the beneficial owners of these two properties.

RESULTING TRUST AS TO CONVENIENCE STORE

Contrary to the Trial Court's Order, the Appellants clearly established entitlement to a Resulting Trust over the convenience store and Family residence. With respect to the convenience store, the evidence presented at trial clearly indicates that the initial leasing transaction and the subsequent sale were carried out between Ramesh Patel and P&P. The only disinterested witness who testified as to the circumstances surrounding either transaction, testified that the deal/transaction was solely between Ramesh and P&P. The transaction was carried out in the name of the newly formed LLC, AAHARVID, LLC because the lessors/sellers had concerns over titling the transaction in Ramesh's name due to their concerns over Ramesh's immigration status. While Respondents presented evidence that might suggest that Ramesh had owned property in his own name prior to the convenience store transaction, the evidence in this case is clear that the principals involved in this transaction with Ramesh had these concerns and as a result the property was placed in the name of the LLC that was in Anna's name.

Appellants presented evidence that at the time of the 2007 lease, Ramesh put down money for the down payment. Paul Desai, the only partner of P&P who actually testified at trial, testified that Ramesh put down a down payment. Thus the only evidence of any money that was put down at the time of the initial 2007 transaction was that money was put down by Ramesh and no one

else. (Transcript of Record, Vol. 1, Page 86, Lines 6-25) (Transcript of Record, Vol. 1, Page 87, line 17 – Page 88, Line 1).

In 2012 the lease agreement was “converted” to a sale, again to the LLC that was created at the time of the original lease. All of the testimony presented at trial as well as the documentary evidence presented by Respondents and relied upon by the Court, establishes that in addition to the note taken out with BB&T, a down payment in the amount of approximately \$90,000.00 was put down at the time of closing. The only evidence presented at trial as to the source of this down payment came from Paul Desai, who testified that the down payment was made by Ramesh (Transcript of Record, Vol. 1, Page 101, Lines 14-18) (Defendant’s Exhibit 26). This left a balance of approximately \$385,000.00 due and owing on the note from BB&T. Although the note was personally guaranteed by Anna and Hardik, payments to satisfy the note were made out of the actual operation of the convenience store.

In addition, there was testimony presented at trial (and virtually ignored by the Trial Court in its Order) that the original note which was taken out at the time of the 2007 lease for inventory and goodwill, was satisfied by the surrender of Ramesh’s ownership in the Newberry hotel. (Transcript of Record, Vol. 1, Page 212, Line 17 – Page 213, Line 14; R. _____).

Further, there was ample testimony as to the need for repairs and renovations to be made to the store. There was ample testimony that these repairs and renovations were made by money provided by Ramesh and Vidhya.

RESULTING TRUST AS TO CLINTON RESIDENCE

The Appellants clearly established their entitlement to an Order of the Court awarding them a Resulting Trust as to the family residence in Clinton. Champa Patel, the real estate agent who handled the transaction testified, based on her direct knowledge of the transaction, that the house

was purchased by Ramesh, for himself and his wife, but titled in Hardik's name. She testified that she cautioned Ramesh and Vidhya against this type of transaction, but that they wanted to go forward with handling it in that manner because they trusted their children, particularly Hardik.

The money that was put down at closing came from money provided by Ramesh and Vidhya as well as a loan from Champa Patel. After the house was purchased, extensive renovations were made and paid for by Ramesh and Vidhya. While Hardik presented evidence of a "check" he claimed was used as a down payment, there was no evidence that this check cleared. In addition, while there were questions raised at trial regarding the existence of a mortgage on the Clinton residence, Appellants presented evidence that mortgage payments were made by Ramesh. (Transcript of Record, Vol. 1, 242, Lines 1-25; R. ____) (Transcript of Record, Vol. 1, Page 243, Line 1 – Page 244, Line 25; R. ____). Respondents presented no evidence that they actually made any payments of any type towards the purchase of the house. Appellants presented evidence that they did so.

The evidence in this case clearly establishes that Appellants are entitled to a resulting trust over the real estate that was conveyed to AAHARVID, LLC by P&P (the convenience store) as well as the Clinton residence. The Trial Court erred in finding and ruling as a matter of law, both in his August 28, 2020 Order and subsequent Order Denying Appellants' Motion for Reconsideration that Appellants failed to meet their burden of establishing a resulting trust over the convenience store or the family residence. The evidence presented at trial clearly established Appellants' entitlement to a resulting trust over these two properties.

2. THE COURT ERRED IN FINDING AND RULING AS A MATTER OF LAW THAT APPELLANTS FAILED TO ESTABLISH CONSTRUCTIVE TRUSTS OVER THE PROOPERTY AT ISSUE IN THIS CASE

Even if the evidence was insufficient to establish a Resulting Trust over the Family home

and the convenience store, (which the Appellants deny) the Court erred in ruling that Appellants' were not entitled to a Constructive trust over both of these properties.

A constructive trust will arise whenever the circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. *Wolfe v. Wolfe*, 215 S.C.530, 56 S.E.2d. 343 (1959); *Dominick v. Rhodes*, 202 S.C. 139, 24 S.E.2d. 168 (1943); *Lollis v. Lollis*, 291 S.C. 525. 354 S.E.2d. 559 (1987) *Bank of Williston v. Alderman*, 106 S.C.386, 91 S.E. 296 (1917). A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. *Lollis v. Lollis*, 291 S.C. 525. 354 S.E.2d. 559 (1987); *Searson v. Webb*, 208 S.C. 453, 38 S.E.2d. 654 (1946). While fraud is an essential element, it need not be actual fraud. *Wolfe v. Wolfe*, 215 S.C.530, 56 S.E.2d. 343 (1959); *Dominick v. Rhodes*, 202 S.C. 139, 24 S.E.2d. 168 (1943);

CONSTRUCTIVE TRUST OVER CONVENIENCE STORE

The evidence in this case presented by Appellants clearly establishes a close relationship of trust and confidence necessary for the imposition of a constructive trust over both the convenience store as well as the Clinton family residence. There was ample evidence of the close relationship between the parties to these transactions at the time they were entered into. The relationship between the parties far exceeded that routinely found in a family relationship. There was ample evidence that the family pooled its money and resources together. There was ample evidence that the parties trusted each other with their finances. The special circumstances necessary to establish a fiduciary relationship were clearly present in this case. See, *Swiger by and through DeHaven v. Smith*, 426 S.C.418 827 S.E.2d. 200 (Ct. App. 2019); *Flowers v. Oakdale Reality and Water Corporation*, 256 S.C.591, 183 S.E.2d. 513 (1971).

In this case there was clear evidence that while the 2007 lease and the 2012 sale were formally executed between P&P and the LLC, Ramesh was the party behind both transactions. At the time of the initial lease, this property was owned by P&P Investments (“P&P”). (Transcript of Record Vol. 1, Page 83, Lines 4-19). P&P was made up of Paul Desai (who testified at length about this transaction at trial) and Prakash Patel (who did not testify at trial). (Transcript of Record, Vol. 1, Page 44, Lines 10-18). Ramesh negotiated the lease directly with Paul Desai. Despite the circumstances surrounding the creation and ownership of the LLC, Mr. Desai, who testified at trial, testified that at all times he believed he was dealing with Ramesh and no one else. (Transcript of Record, Vol. 1, Page 88, Lines 3-8). Paul Desai testified at trial that the lease was entered into with the newly formed LLC and not with Ramesh personally. (Transcript of Record, Vol. 1, Page 88, Lines 22-25; Page 89, Lines 1-9) (Transcript of Record Vol. 1, Page 94, Lines 12-17; Page 95, Lines 2-6; Page 96, Lines 2-8).

As part of the transaction, Ramesh made a down payment to P&P. Paul Desai, who testified at trial, testified that Ramesh made a down payment at the time the lease was entered into. (Transcript of Record, Vol. 1, Page 84, Lines 22-24) (Transcript of Record, Vol. 1, Page 85, Lines 7-9). (Transcript of Record, Vol. 1, Page 86, Lines 6-9). Vidhya confirmed this testimony that Ramesh made a down payment to P&P at the time the store was leased.

AAHARVID, LLC also entered into a note with P&P for the goodwill, inventory and gas at the time of the lease. (Transcript of Record, Vol. 1, Page 44, Lines 22-25; Page 45, Lines 1-9). The LLC took out a note for approximately \$124,000.00 which constituted the value of the inventory. The loan was for an indefinite period of time at 8% interest. This loan was to be paid back over time out of the operation of the convenience store. (Transcript of Record, Vol. 1, Page 46, Lines 16-25) (Transcript of Record, Vol. 1, Page 47, Lines 1-9) (Transcript of Record, Vol. 1,

Page 47, Lines 10-17).

At the time of the lease, the store was in “bad shape.” (Transcript of Record, Vol 1, Page 131, Lines 19-24; Page 132, Lines 1-25; Page 133, Lines 1-25). It needed paint. The roof was in need of repairs. The parking lot was in need of repair. The bathroom needed work. Ramesh and Vidhya paid for these repairs. Vidhya estimated that she and Ramesh put approximately \$25,000.00 of their own money into these repairs and upgrades. (Transcript of Record, Vol. 1, Page 133, Line 2).

After the lease was entered into, Vidhya ran the store. She considered it her business. (Transcript of Record, Vol. 1, Page 133, Lines 22-25; R. _____.) (Transcript of Record, Page 134, Line 1-12; R. _____.) (Transcript of Record, Vol. 1, Page 122, Lines 6-25; R. _____.) (Transcript of Record, Page 123, Lines 1-9; R. _____.) She worked long hours. She opened and closed the store. She stocked shelves. She ran the cash register. She worked up to 60 hours per week. She and Ramesh had signatory authority on the businesses checks. They did all of the ordering and paid all of the bills (Transcript of Record, Vol. 1, Page 122, Lines 19-25; Page 123, Lines 1-9; R. _____.) Ramesh worked in the store while he was working at the Newberry Quality Inn and after he gave up his interest in the Quality Inn (as set forth below). Vidhya worked in the store from the initial lease in 2007 until January of 2019. (Transcript of Record, Vol. 1, Page 121, Lines 18-23; R. _____.)

In 2012, the convenience store was sold to AAHARVID, LLC. The purchase price of the store was \$475,000.00. (Transcript of Record, Vol. 1, Page 50, Lines 24-25; R. _____.) (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____.) It is uncontested that the transaction was handled by Ramesh. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____.)

As part of the transaction, AAHARVID, LLC borrowed \$385,000.00 from BB&T (Defendant's Exhibit No. 22; R. _____) (Transcript of Record, Vol. 1, Page 52, Line 3; R. _____). Ramesh was given a Power of Attorney to sign the documents for this loan. (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____) (Transcript of Record, Vol. 1, Page 49, Lines 20 – Page 50; Line 17; R. _____). The evidence presented at trial clearly establishes that a down payment of approximately \$90,000.00 was made as part of the 2012 sale. (Defendant's Exhibit 26, R. _____) (Defendant's Exhibit 21, R. _____) (Transcript of Record, Vol. 1, Page 101, Lines 14-18; R. _____). (Order of the Honorable Eugene C. Griffith, Jr., dated August 28, 2020; R. _____). The only evidence presented at trial as to the source of these funds came from Paul Desai, one of the principals involved in the transaction who testified that this down payment came from Ramesh. (Transcript of Record, Vol. 1, Page 101, Lines 14-18; R. _____).

There was ample evidence presented at trial as to the breach of the close familial and fiduciary relationship on the part of Respondents. Sometime after Vidhya and Darshak returned from burying Ramesh, Hardik had a conversation with Darshak concerning his mother's failure to cover a personal credit card debt of \$35,000.00. (Transcript of Record, Vol. 1, Page 255, Lines 24-25; R. _____). (Transcript of Record, Vol. 1, Page 256, Lines 1-16; R. _____). Vidhya at first agreed to provide the money but later refused to give Hardik the money which angered him. Hardik told his brother that he was not going to forget this slight. (Transcript of Record, Vol. 1, Page 256, Lines 1-16; R. _____). During this conversation and a subsequent one, Hardik continued to threaten his mother. (Transcript of Record, Vol. 1, Page 256, Lines _____) (Transcript of Record, Vol. 1, Page 269, Lines 11-20; R. _____).

While the Court discounted this testimony on the basis of a "sibling rivalry," one of the most telling pieces of evidence presented at trial (and practically ignored by the trial court in its

order) involved the conversation between Hardik and Prafull Patel (which was initiated by Hardik reaching out to Mr. Patel for advice). (Transcript of Record, Vol. 1, Page 201, Lines 1-25; Page 202, Line 1) (Transcript of Record, Vol. 1, Page 317, Lines 3-14) Mr. Patel, again who testified at trial, is not related to any of the parties to this lawsuit or appeal. (Transcript of Record, Vol. 1, Page 199, Lines 3-5). He testified that he had no financial stake in the outcome of the trial. (Transcript of Record, Vol. 1, Page 199, Lines 15-16). He testified that he has known the family for approximately 20 years. (Transcript of Record, Vol. 1, Page 199, Lines 17-23).

During this conversation, Hardik (and Anna who was on the phone with her husband) conceded that they were aware the Clinton convenience store and the Clinton house had been purchased and paid for by his parents, but put in his (Hardik's) name (Transcript of Record, Vol. 1, Page 201, Lines 7-16) (Transcript of Record, Vol. 1, Page 202, Lines 1-5). Hardik told Praful that he wanted to retain a lawyer to get ownership of these properties. (Transcript of Record, Vol. 1, Page 202, Lines 1-12)

In addition to this testimony as to motive and plan, Appellants presented ample evidence of bad faith and violation of fiduciary duty on the part of Respondents. This evidence included Respondents' actions with respect to his mother's life insurance policy, actions regarding change of addresses, and their role in the events leading up to his mother's arrest. The Appellants satisfied their burden of establishing the facts necessary to support their entitlement to a constructive trust over the convenience store. It would be inequitable to allow Respondents to hold title to the convenience store to the exclusion of Appellants. The trial court's order to the contrary is clearly erroneous and not based on the evidence presented at trial.

CONSTRUCTIVE TRUST AS TO CLINTON FAMILY RESIDENCE

Likewise, Appellants are entitled to a constructive trust over the Clinton residence. Champa Patel, the real estate agent who handled the transaction testified, based on her direct knowledge of the transaction, that the house was purchased by Ramesh, for himself and his wife, but titled in Hardik's name. She testified that she cautioned Ramesh and Vidhya against this type of transaction, but that they wanted to go forward with handling it in that manner because they trusted their children, particularly Hardik. The money that was put down at closing came from money provided by Ramesh and Vidhya as well as a loan from Champa Patel. After the house was purchased, extensive renovations were made and paid for by Ramesh and Vidhya. While Hardik presented evidence of a "check" he claimed was used as a down payment, there was no evidence that this check cleared, or that any of his money was used to purchase and pay for this home. In addition, Respondents presented no evidence that they actually made any payments of any type towards the purchase of the house. The Appellants clearly satisfied their burden in establishing the facts necessary to support their entitlement to a constructive trust over the family residence. It would be inequitable to allow Respondents to hold title to this residence to the exclusion of Appellants. The trial court's order to the contrary is clearly erroneous and is not supported by the evidence present at trial.

3. THE COURT'S ORDER IS NOT SUPPORTED BY THE EVIDENCE PRESENTED AT TRIAL

In ruling against Appellants, the Court ignored the evidence presented at trial and, instead relied upon the testimony of Respondents as to the underlying facts as well as the interpretation of documents introduced as evidence. The Appellants presented reliable, credible and substantiated evidence. The Court erred in ignoring this evidence, and instead relying on the testimony of Hardik and Anna in finding and ruling that the Appellants failed to establish their case for Resulting Trust

or Constructive Trust. In passing on a non-jury matter, the Court must pass on the credibility of the witnesses. See, *Millvale Plantation, LLC v. Carrison Family Ltd. P'ship*, 401 S.C. 166, 736 S.E.2d 286 (Ct. App. 2012). See also *Church v. McGee*, 391 S.C. 334, 342, 705 S.E.2d 481, 485 (Ct.App.2011). Anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded their testimony. *Matter of Campbell*, 427 S.C. 183, 830 S.E.2d 14 (2019).

In addition to the Appellants, Vidhya Patel, and Darshak Patel, the Appellants called a variety of witnesses who were involved in the transactions at issue in this case. Paul Desai, who was intimately involved in the Newberry hotel transaction, as well as the Clinton convenience store testified regarding his knowledge of those transactions. Champa Patel, the real estate agent who was involved in the purchase of the Clinton house also testified. Basel Patel, the insurance salesman who was involved in Hardik's attempt to have the beneficiary of his mother's life insurance policy changed testified. Prafull Patel testified about his knowledge of the facts of this case as well as his conversation with Hardik. None of these witnesses were related to the Appellants. None of these witnesses had anything to gain (or lose) by their testimony in this case.

Unlike the case put up by Appellants who called a number of collaborating witnesses, Respondents' case rested primarily on the testimony of Hardik and Anna. The one witness who could have potentially shed light on the Respondents' "version" of the facts, Prakash Patel, was the "main man" according to Hardik's testimony. (Transcript of Record, Vol. 1, Page 325, Line 7; R. ____). According to Hardik, Prakash Patel considered him to be his "son." (Transcript of Record, Vol. 2, Page 47; R. ____). Yet, he was not called to trial in either February or when the trial resumed in June, because he was "too busy." (Transcript of Record, Vol. 2, Page 244, Line 13 – Page 245, Line 7; R. ____). In addition to the testimony of Prakash Patel, Respondents did

not call their accountant, who resides in Charlotte, who could have easily shed light on the issues involved in this case. Failure to present this evidence clearly should have created a strong inference that this evidence, if presented, would have been negative to the testimony put up by Respondents. See, *Stokes v. Spartanburg Regional Medical Center*, 368 S.C.515, 629 S.E.2d. 675 (Ct. App. 2006).

Appellants introduced substantial evidence which called the reliability of Hardik and Anna's testimony into question. As an example of problematic conduct by the Respondents, the Court heard evidence regarding the manner in which the Respondents handled a vehicle which had been financed in Vidhya's name for Anna. There came a time when Anna needed a new car but could not get financing. Ramesh and Vidhya placed the car in Vidhya's name. Credit was extended using Vidhya's credit. When the parties became adversarial, Hardik and Anna quit paying on the vehicle in an apparent effort to harm or coerce Vidhya. The titling of the vehicle is a clear example of one family member placing an asset in the name of another family member for the sake of convenience and assistance. (Transcript of Record, Vol. 1, Page 330, Lines 13 – Page 344, Line 9; R. ____).

The refusal of Hardik and Anna to pay for the vehicle is evidence of questionable conduct by Hardik and Anna. In addition, Hardik and Anna claim to own the family home in Clinton, South Carolina. They also claim to own the convenience store which was bought and paid for by Ramesh and Vidhya. The house and convenience store are major items of contention in this case and both of these assets have significant value. While allegedly claiming to own these two valuable assets, Hardik and Anna applied for and received public assistance using Government subsidized housing. It is difficult to understand how these Respondents would have qualified for public assistance in housing if they actually did own a home which was paid for and had a valuable convenience store

producing significant income.

Also worthy of note is the way Hardik dealt with Vidhya's life insurance policy following the death of Ramesh. After his father died, Hardik knew his mother had limited education and she trusted him. Hardik had his mother sign a form which she did not understand. This form made Hardik Vidhya's sole life insurance beneficiary to the exclusion of Hardik's brother. In effect, Hardik tried to cut his brother out of death benefits from his mother's life insurance policy. When Vidhya learned what Hardik had done, she immediately changed the beneficiary back to the way it had been prior to the death of Ramesh. She made the change in order to reestablish her true intent in regard to the beneficiaries of her life insurance policy.

The examples listed above are certainly not the only questionable conduct on the part of Hardik and Anna. There are in the record numerous reasons to question the veracity of these two witnesses upon which the court relied on to deny Appellants the relief requested in their Complaint.

4. THE CONVENANCE TO AAHARVID, LLC IS PROHIBITED BY THE STATUTE OF ELIZABETH

The court erred in not finding that the transfer from AAHARVID, LLC to Hardik's new business in late 2019 was fraudulent and in violation of the Statute of Elizabeth. See: *Future Group II v. NationsBank*, 324 S.C. 89, 478 S.E.2d 45 (1996). See also: Statute of Elizabeth as codified at S.C. Code § 27-23-10). Respondents established no valid reason for this transfer. There is no doubt but that Respondents' new corporation was set up by "the lawyer" in an effort to frustrate Vidhya's efforts to regain possession of her property. *McDaniel v. Allen*, 265 S.C. 237, 217 S.E.2d 773(1975).

After Vidhya was placed on trespass notice, Hardik and Anna took possession of the cash and the checkbook as well as the inventory and equipment. There was testimony in the

record that the existing bank account (for the old LLC) had approximately \$50,000.00 to \$70,000.00 in it at the time of the transfer. The “business” was transferred to Hardik’s new LLC. Both Anna and Hardik should be required to account through the Probate Court for the money taken; for the inventory taken; for the profits earned; and for the money held either as a LLC, a corporation or individually which has been taken from or through the convenience store since the time Vidhya was placed on trespass notice. The Trial Court erred in failing to set aside this transfer and to Order an accounting for the value of the original LLC at the time the new one was formed.

CONCLUSION

Hardik and Anna are seeking in this case everything Hardik’s parents built and earned over their lifetimes. Hardik and Anna seek a windfall at the expense of a hard working widow who over the years sacrificed for them. Hardik and Anna have much to gain by their testimony. They seek to leave Vidhya penniless and destitute. For the reasons set forth above, the Appellants respectfully request that this Court review the evidence presented by the parties at trial, reverse the Lower Court’s Order dated August 28, 2020, which found and concluded as a matter of law that they had not met their burden of proof and they were not entitled to a Constructive and/or Resulting Trust over the property at issue in this lawsuit as alleged in their Complaint.

In the alternative the Appellants respectfully request that this Court review the evidence presented at Trial and make its own determination that the Appellants are entitled to the relief sought in their complaint; that the family residence in Clinton, South Carolina was held in trust for Ramesh and Vidhya as beneficial owners; that the Clinton convenience store was held in trust with Ramesh and Vidhya being beneficial owners, and for an accounting and distribution of all assets of the Convenience store since Vidhya was excluded from it.

Respectfully submitted,

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