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## FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Amelia	John Long
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S. C. Court of Appeals	4/19/13
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
803-734-1494	15
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:
Cook vs. Taylor	

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NOTES/COMMENTS:

Attached is a copy of the Order in the above matter.

Thank you -  
s/John Long II

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### FACTUAL BACKGROUND

The Plaintiffs are the biological parents of the Defendant. The Plaintiffs have one other biological child together, Kinnoth B. Cook. In 1995 and 1996, the Plaintiffs took in five (5) foster children, subsequently adopting those five (5) children. The Plaintiffs received financial aid for the foster/adopted children from the State of South Carolina from the time they were taken into the home until they either became of age or left the home. In addition, two (2) of the children who still reside in the home, Trent Cook and Steven Cook, receive Social Security Income (SSI) benefits as a result of certain alleged limited disabilities.

By Deed recorded February 16, 2007, the Plaintiffs purchased from Thad Strickland the property that is the subject matter of this action, being 18.78 acres in Floyds Township, Horry County, South Carolina for One Hundred Sixty-Two Thousand Nine Hundred Seventy-Two and 84/100 (\$ 162,972.84) Dollars. According to the Plaintiffs' testimony, the purpose of this purchase was to provide four of the adopted children a means of making a living in the future by constructing a drag strip and mud bog on the property based upon their limited physical and mental abilities.

The Plaintiffs testified that at the time Monroe Cook purchased the 18.78 acres that is the subject matter of this dispute in February of 2007, the Plaintiffs also owned two (2) other properties, one being their residence and another being a 14.77 acre parcel that Monroe Cook purchased in 1997. At that same time, the two (2) adopted children who were and still are residing in the Plaintiffs' home, Trent Cook and Steven Cook, were receiving SSI of approximately Three Hundred and 00/100 (\$300.00) Dollars each per month. In April, 2007,

Monroe Cook was involved in a work related accident, was unable to produce any income, and began seeking Social Security Disability benefits. Towards the end of 2007 or in early 2008, Social Security contacted the Plaintiffs with a request that they reapply for the SSI benefits being received by Trent Cook and Steven Cook. Lynn Cook testified that it was during a meeting with a Social Security representative that it was determined that Trent Cook and Steven Cook could no longer receive SSI and that the Plaintiffs may have to reimburse Social Security for the benefits previously received because the Plaintiffs owned too much property to qualify for SSI benefits.

Thereafter, by Deed recorded March 20, 2008 in the Office of the Register of Deeds for Horry County, South Carolina, Monroe E. Cook transferred 14.77 acres to his biological son, Kinnoth M. Cook, for Five and 00/100 (\$ 5.00) Dollars. Lynn Cook testified that this transfer was made to get assets out of the Plaintiffs' names to keep from having to pay back SSI benefits previously received and for the SSI benefits to continue to be paid.

Thereafter, in further discussions with Social Security, Lynn Cook learned that the transfer to Kinnoth M. Cook was not sufficient to qualify for SSI benefits for the children or to keep them from having to pay back benefits previously received. Thereafter, by Deed recorded August 28, 2008 in the Horry County Register of Deeds, the Plaintiffs transferred to the Defendant 18.78 acres for Five and 00/100 (\$5.00) Dollars. According to the Plaintiffs, they made this transfer for the same reasons. Sometime after that transfer, the Plaintiffs learned that they still would not qualify for SSI benefits and were ordered by Social Security to pay back approximately Forty Thousand and 00/100 (\$ 40,000.00) Dollars of benefits previously received.

The Plaintiffs and Kinnoth Cook testified that they discussed and were aware of why the property that was transferred to Kinnoth Cook was transferred to him. There is conflicting testimony between the parties as to whether or not there were discussions between the parties as to why the 18.78 acre parcel was transferred to the Defendant. The Plaintiffs testified that they discussed the transfer and the purpose of the transfer with the Defendant prior to the transfer. The Defendant testified that she had no conversation whatsoever with the Plaintiffs prior to the transfer and was not aware of the transfer until it was discovered by her husband, Jarrett Taylor, in May or June of 2009 after an altercation between Jarrett Taylor and Monroe Cook in April of 2009.

In August, 2009, Lynn Cook asked the Defendant to Deed the 18.78 acre parcel to Lynn Cook because Lynn Cook and Monroe Cook were having marital problems, it was needed to assist in paying back the SSI benefits the Social Security Administration ordered the Cooks to pay back, and because she knew the I-73 route crossed the subject parcel. Upon hearing this and believing that Lynn Cook might forge the Defendant's name on a Deed and convey the property back to Lynn Cook, the Defendant conveyed a one-half interest in the subject property to her husband, Jarrett Taylor, by Deed recorded October 22, 2009 in the Office of the Register of Deeds for Horry County. There is some dispute as to whether any further requests were made by Lynn Cook, or any requests at all by Monroe Cook to reconvey the property. The Defendant has no recollection as to any additional requests.

By Mortgage recorded August 20, 2010, the Defendant and her husband conveyed a mortgage on the subject property to Anderson Brothers Bank as collateral for a loan in the amount of Thirty-Five Thousand and 00/100 (\$ 35,000.00) Dollars that was used as a down

payment on a house and for debt consolidation. The Defendants filed this action on June 3, 2011.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the record before the Court, the Court makes the following findings of fact applicable to this controversy:

This action was initiated by the filing of Summons and Complaint wherein the Plaintiffs have set forth causes of action against the Defendant for breach of implied contract, unjust enrichment, breach of fiduciary duty, and constructive fraud. The Defendant timely answered, alleging defenses of a general denial, gift, promissory estoppel, assumption of the risk, laches, statute of limitations, waiver, estoppel, and failure to join necessary and indispensable parties. In addition, after the Defendant rested, the Defendant moved to amend her Answer to conform to the evidence under Rule 15(b), SCRCP to add the defenses of lack of consideration, illegality, and unclean hands. I find that those defenses were tried by implied consent of the parties and shall be treated in all respects as if they had been raised in the pleadings, and grant Defendant's Motion to Amend.

### BREACH OF IMPLIED CONTRACT AND UNJUST ENRICHMENT

#### 1. Contract Implied In Fact.

The Plaintiffs' first cause of action is for breach of an implied contract. "The unfortunate use of "implied contract" to connote both true ("implied in fact") and quasi ("implied in law") contracts has lead to much confusion. The distinction, however, is clear. A

contract "implied in fact" arises when the assent of the parties is manifested by conduct, not words. A quasi contract, or one implied in law, is no contract at all, but an obligation created by the law in the absence of an agreement between the parties. Stanley Smith & Sons v. Limestone College, 283 S.C. 430, 322 S.E.2d 474, Footnote 1(Ct. App. 1984). "Quantum meruit, quasi contract, and implied by law contract are equivalent terms for an equitable remedy". Williams Carpet Contractors, Inc. v. Skelley, 2012 WL 5235420 (Ct. App. 2012). Thus, breach of a contract implied by law is an equitable cause of action and breach of a contract implied in fact is a legal cause of action. If the Plaintiff is alleging that this is a breach of a contract implied in fact, I find for the Defendant on this cause of action.

"The required elements of a contract are an offer, acceptance, and valuable consideration. A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Valuable consideration may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. A benefit to the promisor or a detriment to the promisee may provide sufficient consideration for a contract." Armstrong v. Collins, 366 S.C. 204, 222-223, 621 S.E. 2d 368, 377(Ct. App. 2005) (internal citations omitted).

The testimony of the parties is conflicting with regards to whether there was an offer and acceptance. The Plaintiffs testified that they conveyed the property to Defendant with the understanding that she would convey it back to them when they asked. The Defendant testified that she never had any conversations with the Plaintiffs prior to the property being conveyed to the Defendant, and then had no conversation with them about the property until almost one (1)

year after the property had been conveyed to the Defendant. The Defendant testified that she believed that the conveyance was a gift from her parents.

However, there was no evidence of any valuable consideration. The Plaintiffs testified that they did not pay any money to the Defendant to hold title to this property. The testimony by the Plaintiffs was that they were conveying the title to the Defendant in order for the Plaintiffs to continue receiving SSI benefits for two (2) of their adoptive children and to keep from having to pay back benefits already received. The Plaintiffs were the only persons who would have received any type of benefit from such a transaction. No right, interest, profit or benefit would have accrued to the Defendant and no forbearance, detriment, loss or responsibility would have been given, suffered, or undertaken by the Defendant. As such, there was no valid contract implied in fact due to a lack of consideration.

Assuming, arguendo, that there was a valid contract implied in fact, Plaintiffs claim for breach of contract is still without merit as it is an illegal contract. "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract." Ward vs. West Oil Company, Inc., 387 S.C. 268, 270, 692 S.E. 2d 516, 519-620 (2010) citing McMullen v. Hoffman, 174 U.S. 639, 654, 19 S. Ct. 839, 43 L. Ed. 1117 (1899). "The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions,

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statutory law, or judicial decisions.” *Id.*, citing White v. J.M. Brown Amusement Co., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004). “Illegal contracts are void and unenforceable, such that actions for its breach may not be maintained.” *Id.*, citing Beach Co. v. Twillman, Ltd., 351 S.C. 56, 64, 566 S.E. 2d 863, 866 (Ct. App. 2002).

The Plaintiffs clearly and unequivocally testified that the only reason they conveyed the property to the Defendant was to circumvent Social Security regulations concerning their right to receive and keep Social Security benefits for two (2) of their adopted children. Based on the Plaintiffs’ own testimony, I find that even if all elements of a contract had existed, the contract was illegal, making the contract void and unenforceable, and an action for its breach cannot be maintained.

**2. Contract Implied In Law and Unjust Enrichment.**

On the other hand, if the contract is one that the Plaintiffs are alleging is implied by law, then it is an equitable claim like the Plaintiffs’ claim for unjust enrichment, requiring the same proof as unjust enrichment. Williams Carpet Contractors, Inc., *supra*. However, even if the elements to prevail on either unjust enrichment or a breach of a contract implied by law could be satisfied, Plaintiffs’ claims for these two (2) causes of action is precluded by the doctrine of unclean hands. “The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self imposed ordinance that closes the door of the court of equity to one tainted with an equitableness or bad faith relative to the matter in which he seeks relief. The decision to grant equitable relief is

in the discretion of the trial judge.” Straight v. Goss, 383 S.C. 180, 206-207, 678 S.E. 2d 443, 457-458 (Ct. App. 2009)(internal citations omitted). I find and conclude that the Plaintiffs’ equitable claims for breach of a contract implied in law and unjust enrichment are barred by the doctrine of unclean hands for the same reasons that any contract implied in fact would have been deemed illegal, that being the illegal purpose for which the Plaintiffs conveyed the property to the Defendant discussed above.

### **BREACH OF FIDUCIARY DUTY**

The Plaintiffs’ third cause of action is for breach of fiduciary duty. “ To establish a claim for breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant.” RFT Management Co., LLC vs. Tinsley & Adams, LLP, 399 S.C. 322, 335-336, 732 S.E. 2d 166 (2012). “A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscious is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” Id. at 335.

The only evidence presented of a fiduciary relationship was the evidence that the Defendant is the daughter of the Plaintiffs. However, the evidence is conflicting with regards to whether or not the Defendant was aware of the Plaintiffs’ reasons for transferring the property to her. The Defendant testified that she never had any conversations with the Plaintiffs with regards to why they transferred the property to her until approximately one (1) year after the transfer when her Mother, Lynn Cook, asked the Defendant to convey the property to Lynn Cook. Lynn Cook testified that at that time she and Monroe Cook were having marital problems, she needed the

property to pay back the SSI benefits to Social Security and she was aware that the proposed I-73 highway project would cross the property. "As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him." Regions Bank v. Shmuach, 354 S.C. 648, 670-671, 582 S.E. 2d 432, 444 (Ct. App. 2003). Based upon the testimony, the Plaintiffs have not established by a preponderance of the evidence that a fiduciary relationship existed between the Plaintiffs and the Defendant. Therefore, the Plaintiffs cannot prevail on their claim for breach of fiduciary duty.

In addition, the Plaintiffs are seeking the equitable remedy of specific performance, or in the alternative, for the value of their alleged loss, the purchase price of the property in February of 2007. Specific performance, being an equitable remedy is barred by the doctrine of unclean hands for the same reasons discussed above. As for the legal remedy of monetary damages in the amount of the purchase price of the property in February of 2007, it is common knowledge that the real estate market declined severely beginning in late 2006 or early 2007. There was no evidence presented at trial with regards to the current market value of the property on the date of the hearing or any time subsequent to the purchase of the property in February of 2007. This Court takes judicial notice of the fact that real estate values in this area have declined since the real estate market boom that occurred in the early 2000s. This is a fact that is not subject to reasonable dispute as it is generally known within the territorial jurisdiction of this Court and is also capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, such as real estate appraisers, brokers and bankers. Rule 201(b), SCRE. "A Court may take judicial notice, whether requested or not." Rule 201(c), SCRE.

Therefore, since there was no evidence presented at trial as to the current market value at any time after the purchase of the property in February, 2007, this Court has no way of knowing what the current market value is, and with the sharp decline in real estate values in this jurisdiction since February of 2007, an award of the purchase price of the property would result in a windfall to the Plaintiffs at the expense and to the detriment of the Defendant which would be highly prejudicial to the Defendant and result in an injustice.

### CONSTRUCTIVE FRAUD

The Plaintiffs' fourth cause of action is for constructive fraud. "To establish constructive fraud all elements of actual fraud except the element of intent must be established." Woods v. State, 314 S.C. 501, 506, 431 S.E. 2d 260, 263 (Ct. App. 1993)(internal citations omitted). "In order to prove [actual] fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate inquiry." Regions Bank vs. Schmauch, at 444 - 445. "In an action for actual fraud, the alleged representation must be one of existing fact, not merely promises or statements as to future events which later were unfulfilled. Unless the plaintiff can show that the defendant made a promise of future action with no intention of fulfilling the promise *at the time it was made*, the representation cannot be the basis of an action for fraud. The truth or falsity of a representation *must be determined as of the time it was made or acted on and not at some later*

*date*. Evidence of mere non performance of a promise is not sufficient to establish either fraud or a lack of intent to perform.” Woods at 506, 263 (internal citations omitted)(emphasis added).

The Plaintiffs testified that they spoke to the Defendant before they conveyed the property to her and she promised to reconvey it to them upon their request. The Defendant denied that any such conversation took place, or that she would promise to reconvey the property at any time. Assuming, *arguendo*, that the Defendant did make a promise to reconvey the property in the future, it was merely a promise to do something in the future which was later unfulfilled. In addition, there is no evidence in the record that the Defendant made that promise with no intention of fulfilling it *at the time the promise was made*. Therefore, there is no evidence in the record to establish either fraud on the part of the Defendant in making such a promise or a lack of intent to perform it at the time it was made. As such, the Plaintiffs have failed to meet their burden of proof on their claim of constructive fraud.

#### WAIVER AND ASSUMPTION OF THE RISK

As additional sustaining grounds, the Defendant also plead the defense of waiver and assumption of the risk. “Waiver is a voluntary and intentional abandonment or a relinquishment of a known right. It may be expressed or implied by a party’s conduct.” Skipper v. Perrone, 382 S.C. 53, 62, 674 S.E. 2d 510, 514 (Ct. App. 2009). “To establish the assumption of risk defense in South Carolina: (1) the plaintiff must have knowledge of the fact constituting a dangerous condition; (2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose

himself or herself to the danger. The doctrine is predicated on the factual situation of a defendant's acts alone creating the danger and causing the accident, with the plaintiff's act being that of voluntarily exposing himself to such an obvious danger with appreciation thereof which resulted in the injury." Singleton v. Sherer, 377 S.C. 185, 208, 659 S.E. 2d 196, 206 (Ct. App. 2008).

The Plaintiffs testified that they voluntarily and intentionally signed the Deed conveying the property to the Defendant, giving up all legal rights to the property, and that they knew that once the property was titled in the Defendant's name, she was free to give it away, sell it, or encumber it, thereby appreciating the nature and extent of that danger. Therefore, the Plaintiffs have waived all of their rights, title, and interest in and to the property and voluntarily assumed the risk that the property would never be reconveyed to them.

### ESTOPPEL

The Defendant has also asserted estoppel as defense. "To successfully assert the doctrine of estoppel, a party must show a (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped, and (3) prejudicial change in position." Langdale v Carpets, 395 S.C. 194, 205, 717 S.E. 2d 80, 85 (Ct. App. 2011).

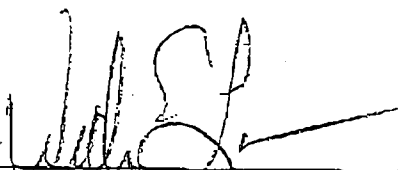
Although the facts are disputed as to whether the Defendant knew why the property was being conveyed to her at the time it was conveyed or agreed to reconvey the property at some time in the future, the Defendant did rely upon the conveyance by the Plaintiffs as being a transfer to

her of the fee simple title to the property as shown by her subsequent conveyance of a one-half interest in the property to her husband and subsequent to that, using the property as collateral for a loan. The Defendant testified that she would not have been able to become indebted to Anderson Brothers Bank without using the property as collateral security for the loan and if she had to reconvey the property to the Plaintiffs, that she would be in default under the loan documents, all amounting to a prejudicial change in her financial condition.

Based upon the foregoing, I find and conclude that Defendant's Motion to amend the Complaint to conform to the evidence to allege the additional defenses of lack of consideration, illegality, and unclean hands is granted pursuant to Rule 15(b), SCRCF as those issues were tried without objection and by consent of the Parties.

I further find that the Defendant has prevailed in this matter and that the Complaint is hereby dismissed with prejudice.

**AND IT IS SO ORDERED.**

  
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William E. Lawson, Special Referee

March 20, 2013  
Myrtle Beach, South Carolina