

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2008-CP-40-5518

Les Springob, Paul Trussell, Barton
Dumas, Stanley Harpe, and John Yenco,

Of Whom Paul Trussell, Barton Dumas, and John Yenco
are the Appellants,

v.

The University of South Carolina and
the University of South Carolina Gamecock
Club, Respondents.

REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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REPLY

I. The Statute of Frauds is the Sole Issue on Appeal

Appellants agree that the sole issue on appeal is the lower court's grant of summary judgment on the basis of the statute of frauds. Appellants request this Court reverse the lower court's grant of summary judgment and remand the case back to the lower court for further proceedings.

II. The Circuit Court erred in finding that the Appellants' breach of Contract Claims are barred by the Statute of Fraud and that finding should be Reversed.

Simply put, all parties agree that a contract existed. Indeed, USC Respondents sent a bill to Appellants each year demanding and readily accepting thousands upon thousands of dollars from Appellants for courtside seats. As to the terms of the contract, Appellants testified that they each entered into a contract with USC Respondents, specifically Chris Massaro, for basketball courtside seating whereby if they paid a \$5,000 per seat premium in the first year and \$1500 per seat thereafter for four years, the seats were theirs so long as they bought season tickets and kept up their donor level. (R.). This was based on the brochure at issue and Chris Massaro's explanation of the brochure. When USC Respondents sent bills in year six and were confronted by Appellants, USC Respondents promised to "research" their intent and after a year, announced that it was their intent for seat payments to end after five years. USC Respondents then advanced the defense of the Statute of Frauds even though USC Respondents were the ones who made the offer, chose to give Chris Massaro fully

authority to enter into agreements with Appellants, and chose not to memorialize the final agreements into writing.

There is no dispute that Chris Massaro was appointed by USC Respondents as their agent as to these agreements. Chris Massaro testified that he does not know what he told Appellants about what would occur after five years and any “intent” for payments in year six and beyond was never memorialized or communicated to Appellants by Chris Massaro during his explanation of the brochure and program. (R.) Importantly, this was an agreement created by USC Respondents and as set forth in Appellants’ Brief, USC Respondents should not be allowed to disavow the offer and Agreement they created based on the Statute of Frauds.

a. The Statute of Frauds Does Not Apply

USC Respondents argue that the Statute of Frauds applies because it was “impossible for the University to perform its end of the alleged contract within one year.” However, had Appellants chosen not to purchase season tickets or had they chosen not to pay \$1500 in years two through five, essentially terminating the contract, the contract would have been fully performed by both parties within a year. As such, the Statute of Frauds should not apply.

USC Respondents next argue that the brochure cannot be construed as an agreement because it is not signed by any agent of the University and does not indicate what will happen in year six. However, all parties point to the brochure and all parties readily admit the existence of a contract. This Court should find that the brochure (with the USC logo) which indicates no payments in year six along with Appellants’ cancelled checks and subsequent signed correspondence from Respondents confirming Appellants’

rights to the seats and demanding money (which USC Respondents then accepted), constitute, at the very least, “some memorandum or note thereof” in writing of the agreement between the parties. As such, this Court should reverse the lower court’s grant of summary judgment and remand the case for further proceedings.

b. If this Court Finds the Statute of Frauds Applies, Equity Requires that the Agreement be Enforced

Even if this Court finds that the Statute of Frauds applies, which Appellants argue is not the case, equity requires that the Agreement be enforced. Appellants have fully and partially performed under the contract by paying USC Respondents thousands and thousands of dollars. USC Respondents now utilize the Statute of Frauds even though USC Respondents were the ones who instigated the offer, allowed Chris Massaro to meet and make agreements with each Appellant, and chose not to final the agreements into written memorializations. “The theory of the equitable doctrine of part performance . . . is that a ‘**court of equity will not permit a statute designed to prevent frauds to be used as an instrument to effect a fraud.**’” Aust v. Beard, 230 S.C. 515, 522-523, 96 S.E.2d 558, 562 (1957)(emphasis added). There is no dispute Appellants made all required payments for the five years including seat payments, Gamecock Club membership payments and season ticket payments which is the sum total of performance by Appellants under the agreements shown to exist by Appellants.

Furthermore, equity requires that USC Respondents be estopped from asserting the Statute of Frauds. Estoppel may overcome the Statute of Frauds where “the party asserting the estoppel [shows] that he has suffered a definite, substantial, detrimental change of position in reliance on the contract, and that no remedy except

enforcement of the bargain is adequate to restore his former position.” Id. While USC Respondents argue there was no detrimental change of position, Appellants paid USC Respondents thousands upon thousands of dollars and only after full performance by Appellants did USC Respondents argue they are not bound by the agreements made. In addition to the monetary amounts paid, as pointed out in Appellants’ brief, preferential seating opportunities to sporting events has an intangible and irreplaceable value. As seen in USC Respondents’ advertising of the seats, this was “the opportunity of a lifetime.”

Appellants fully and partially performed, paying thousands and thousands of dollars to USC Respondents. USC Respondents made the offer to Appellants and then chose not to memorialize the agreements in writing. USC Respondents chose Chris Massaro as their sole representative and allowed him to enter into these Agreements with Appellants, and Chris Massaro is unable to say what he said to Appellants concerning year six. As such, Appellants have fully and partially performed the Agreement, and USC Respondents should be estopped from asserting the Statute of Frauds. The lower court’s ruling should be reversed and the matter remanded to the lower court for further proceedings.

CONCLUSION

Based on the above, the lower court erred in dismissing the Appellants’ claims based on the Statute of Frauds and the matter should be remanded to the lower court for trial.

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PROOF OF SERVICE

I certify that I have served the **APPELLANTS' REPLY BRIEF** on William Davidson, Esq. by depositing a copy of it in the United States Mail, first-class mail, postage prepaid, on July 5, 2012 to William Davidson, Esq., Davidson & Lindemann, PA, P.O. Box 8568, Columbia, SC 29202 this **1st day of October, 2012.**



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October 1, 2012

Via First Class U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

**RE: Les Springob, Paul Trussell, Barton Dumas, Stanley Harpe,
and John Yenco, of Whom Paul Trussell, Barton Dumas, and
John Yenco are the Appellants, v. The University of South
Carolina and the University of South Carolina Gamecock
Club; SCCA Tracking No. 2012-206887; Case No. 2008-CP-40-
5518**

Dear Ms. Kitchings:

Please find enclosed a copy of Appellants' Reply Brief and Proof of Service. Please file the originals and return a clocked-in copy of each document to me in the enclosed, self-addressed envelope. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Kathy R. Schillaci

cc: Will Davidson, Esq.

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