CHAPTER 3

Statute of Frauds

**SECTION 32‑3‑10.** Agreements required to be in writing and signed.

 No action shall be brought whereby:

 (1) To charge any executor or administrator upon any special promise to answer damages out of his own estate;

 (2) To charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person;

 (3) To charge any person upon any agreement made upon consideration of marriage;

 (4) To charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or

 (5) To charge any person upon any agreement that is not to be performed within the space of one year from the making thereof;

 Unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.

HISTORY: 1962 Code Section 11‑101; 1952 Code Section 11‑101; 1942 Code Section 7044; 1932 Code Section 7044; Civ. C. ‘22 Section 5516; Civ. C. ‘12 Section 3737; Civ. C. ‘02 Section 2652; G. S. 2019; R. S. 2151; 1712 (2) 545.

CROSS REFERENCES

Agreement for use or occupation of real estate for more than one year being void if not in writing, see Section 27‑35‑20.

Formal requisites of financing statement, see Section 36‑9‑502.

Formal requisites of security agreement, see Section 36‑9‑203.

Parol, fraudulent and other void gifts or conveyances, see Sections 27‑23‑10 et seq.

Requirement that letter of credit be in writing, see Section 36‑5‑104.

Requisites of marriage contracts, deeds and settlements, see Section 20‑5‑50.

Satisfaction of Statute of Frauds by modification, rescission or waiver of contract for sale of goods, see Section 36‑2‑209.

Statute of Frauds with regard to sale of goods, see Section 36‑2‑201.

When tenancy may be created by parol, see Section 27‑35‑10.

Library References

Frauds, Statute Of 1, 7, 13, 43, 55, 115.1.

Westlaw Topic No. 185.

C.J.S. Frauds, Statute Of Sections 2, 5, 7, 9, 32 to 33, 60, 128, 132.

RESEARCH REFERENCES

ALR Library

12 ALR 6th 123 , Sufficiency of Description of Terms and Conditions of Lease, or Lease Provision, So as to Comply With Statute of Frauds.

71 ALR 5th 491 , Liability for Tortious Interference With Prospective Contractual Relations Involving Sale of Business, Stock, or Real Estate.

Encyclopedias

101 Am. Jur. Proof of Facts 3d 285, Offeree Acceptance of Real Estate Contract Offer.

85 Am. Jur. Trials 99, Circumstances Entitling Donee to Equitable Enforcement of Oral Gift of Land.

S.C. Jur. Assignments Section 7, Land Contract.

S.C. Jur. Breach of Promise to Marry Section 2, What Constitutes a Promise.

S.C. Jur. Breach of Promise to Marry Section 10, Application of the Statute of Frauds.

S.C. Jur. Contracts Section 17, Promise to Answer for Debt of Another.

S.C. Jur. Contracts Section 18, Promise Not to be Performed Within One Year.

S.C. Jur. Covenants Section 5, Methods of Creating and Requirements of Recording.

S.C. Jur. Landlord and Tenant Section 7, Written and Oral Leases Not Governed by the Rlta.

S.C. Jur. Partnerships and Joint Ventures Section 6, Oral Partnership Agreements.

S.C. Jur. Wills Section 32, Generally; Requirements for Contract’s Validity‑Statutory Requirement of Written Contract.

Forms

South Carolina Legal and Business Forms Section 6:1 , Legal Principles.

South Carolina Legal and Business Forms Section 7:1 , Legal Principles.

South Carolina Legal and Business Forms Section 8:1 , Legal Principles.

South Carolina Legal and Business Forms Section 8:4 , Checklist‑Drafting Deed.

South Carolina Legal and Business Forms Section 9:1 , Legal Principles.

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South Carolina Legal and Business Forms Section 11:1 , Legal Principles.

South Carolina Legal and Business Forms Section 13:1 , Legal Principles.

South Carolina Legal and Business Forms Section 14:1 , Legal Principles.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law Section 12:4, Suretyship and the Statute of Frauds.

Restatement (2d) of Property, Don. Trans. Section 32.3, Document of Transfer Relating to Land.

Restatement (3d) of Property (Servitudes) Section 2.7, Formal Requirements (Statute of Frauds).

Williston on Contracts Section 25:1, Introduction.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Contracts; Exception to the Suretyship Provision of the Statute of Frauds. 32 S.C. L. Rev. 49 (August 1980).

Electronic commerce on the internet and the statute of frauds, 49 S.C. L. Rev. 787, (Summer 1998).

The One Year Clause of the Statute of Frauds in South Carolina. 10 SC LQ 703.

Oral Modification and Rescission of Contracts Required by the Statute of Frauds to be in Writing. 11 SC LQ 228.

Specific Performance of Oral Contracts to Devise. 17 S.C. L. Rev. 540.

Statute of Frauds. 22 S.C. L. Rev. 511.

Statute of Frauds. 25 S.C. L. Rev. 337.

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1. In general

Where papers, offered as evidence of an alleged new agreement waiving provision of a prior written contract covering five years, lack even a suggestion of the waiver, parol evidence cannot be used to implant it there. Southern States Life Ins. Co. v. Foster (C.A.4 (S.C.) 1956) 229 F.2d 77.

Although amendments are freely allowed in Federal practice, allowing the technical defense of the statute of frauds to be raised during the argument of a motion for directed verdict at the conclusion of the plaintiff’s testimony would obviously have taken the plaintiff by surprise and placed it at a great disadvantage. Gaines W. Harrison & Sons, Inc. v. J. I. Case Co., 1960, 180 F.Supp. 243.

In order to satisfy the statute of frauds, there must be a writing signed by the party against whom enforcement is sought, and the writings must establish the essential terms of the contract without resort to parol evidence. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 115.1; Frauds, Statute Of 118(1); Frauds, Statute Of 158(3)

Under the statute of frauds, the form of the required writing is not material, and may be shown entirely by written correspondence. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 103(1); Frauds, Statute Of 118(3)

A logo does not constitute a legal signature, sufficient to satisfy the statute of frauds. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 115.2

University brochure, sports fans’ cancelled checks, payment records, and letters from university did not collectively constitute signed writing sufficient to satisfy statute of frauds for agreement for fans’ purchase of premium seating at university basketball arena, in fans’ breach of contract action against university, where documents lacked university’s signature and did not establish all essential terms of agreement without resort to parol evidence. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 113(2); Frauds, Statute Of 115.1; Frauds, Statute Of 118(1)

Statute of Frauds barred tenants’ claim for specific performance of alleged oral agreement to purchase co‑tenant’s interest in condominium; there was no clear evidence of an oral contract but rather the testimony concerning the terms of the alleged contract was very contradictory, tenants’ actions in possessing and making improvements to condominium, which they already partially owned, did not indicate that contract had been partially executed and could have been consistent with co‑tenant’s version of the events, and tenants were not willing to complete their part of the oral contract but rather tenant admitted he stopped making mortgage payments so that he could purchase the condominium at a foreclosure sale. Fesmire v. Digh (S.C.App. 2009) 385 S.C. 296, 683 S.E.2d 803. Specific Performance 41

Statute of Frauds barred vendors’ recovery against purchaser‑wife as to claim for suit on debt where, although options at issue were in writing, they were signed by purchaser‑husband, not purchaser‑wife, and purchaser‑wife fully complied with terms of contract for sale of residence, which she had signed. McNair v. Rainsford (S.C.App. 1998) 330 S.C. 332, 499 S.E.2d 488. Frauds, Statute Of 115.1

Cited in Smith v Traxler (1953) 224 SC 290, 78 SE2d 630. Julius Kayser & Co. v Textron, Inc. (1955, DC SC) 132 F Supp 49, affd (CA4 SC) 228 F2d 783. Turbeville v. Gordon (S.C. 1958) 233 S.C. 75, 103 S.E.2d 521.

Where one of the parties to a contract, void by the statute of frauds, avails himself of its invalidity, but unconscientiously appropriates what he has acquired under it, equity will compel restitution; and it constitutes no objection to the claim that the opposite party may happen to secure the same practical benefit through the process of restitution which would have resulted from the observance of the void agreement. Gardner v. Nash (S.C. 1954) 225 S.C. 303, 82 S.E.2d 123.

The rule is that when a complaint involving a contract that comes within the terms of the statute of frauds fails to show whether the contract is written or oral, this does not furnish a ground for demurrer, because it will be assumed in such a case that the contract is in the form required by law; but where the complaint shows on its face that such a contract is not in writing, its legality and enforceability under a statute of frauds are properly raised by a demurrer. McMillan v. King (S.C. 1940) 193 S.C. 14, 7 S.E.2d 521. Frauds, Statute Of 150(1)

The protection afforded by this statute is a personal privilege of the parties to the agreement, and may be waived by them. Walker v. Preacher (S.C. 1938) 188 S.C. 431, 199 S.E. 675. Frauds, Statute Of 144

It is not competent to prove by oral testimony any of the essential elements of a contract which the statute of frauds requires to be in writing. McCathern v. O’Donnell & Co. (S.C. 1936) 181 S.C. 76, 186 S.E. 659.

2. Promise of executor or administrator

Plaintiff purchased corn and made payment to defendant’s intestate. Before delivery, defendant’s intestate died. Defendant was appointed his administrator and for his own use purchased the corn from plaintiff. It was held that this agreement was not subject to the statute of frauds because it was not an agreement to pay the debt of intestate out of own estate, but to pay debt of own for valuable consideration. Harrell’s Ex’r v. Witherspoon (S.C. 1826).

3. Promise to answer for debt of another

Applied in State ex rel. Craig v Mutual Sav. Bank (1926) 135 SC 417, 133 SE 901. Standard Acci. Ins. Co. v Simpson (1933, CA4 SC) 64 F2d 583, cert den 290 US 688, 78 L Ed 593, 54 S Ct 123.

Wherever the main purpose and object of the promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another. Price v Bethea (1932) 167 SC 376, 166 SE 409, quoting Lorick & Lowrance v Caldwell (1910) 85 SC 94, 67 SE 143.

Additional related cases, see Murrell v Greenland (1793) 1 SC Eq 332. Stephens, Ramsay & Co. v Winn (1811) 5 SCL 17. Gunnels v Stewart (1812) 5 SCL 52. Jones v Ballard (1818) 9 SCL 113. Hughes v Creyon (1818) 9 SCL 257. Ayer v Hay (1818) 9 SCL 365. Siau v Pigott (1818) 10 SCL 124. Aikin v Duren (1820) 11 SCL 370. Caldwell v M’Kain (1820) 11 SCL 555. Leland v Creyon (1821) 12 SCL 100. McBride v Watts (1821) 12 SCL 384. Mease v Wagner (1821) 12 SCL 395. McCray v Madden (1821) 12 SCL 486. Adkinson v Barfield (1822) 12 SCL 575. Boyce v Owens (1822) 13 SCL 208. Lecat v Tavel (1825) 14 SCL 158. Eggart v Barnstine (1825) 14 SCL 162. Caston v Moss (1828) 17 SCL 14. Roche v Chaplin (1830) 17 SCL 419. McMorris v Herndon (1830) 18 SCL 56. Aikein v Cheeseborough & Campbell (1833) 19 SCL 172. Cohen v Hart, Sen, & Co. (1834) 20 SCL 304. Corbett v Cochran (1836) 21 SCL 41. Fyler v Givens (1836) 21 SCL 48. Richardson v Richardson (1841) 26 SCL 280. Pope v Fort (1841) 27 SCL 60. Bronson v Stroud (1842) 27 SCL 372. Simpson v Nance (1841) 28 SCL 4. Strohecker v Cohen (1843) 28 SCL 349. Kinloch v Savage (1844) 17 SC Eq 464. Kinloch, Philips & Co. v Brown (1844) 29 SCL 284. Bird v Muhlinbrink (1844) 30 SCL 199. Dunlap v Thorne (1844) 30 SCL 213. Kinloch, Phillips & Co. v Brown (1844) 30 SCL 223. Thomas v Croft (1845) 31 SCL 113. Adm’r of Antonio v Clissey (1832) 37 SCL 201. Durham v Arledge (1846) 32 SCL 5. Tindal v Touchberry (1848) 34 SCL 177. Hindman v Langford (1848) 34 SCL 207. Taylor v Drake (1850) 35 SCL 431. Hill v Smith (1860) 46 SCL 698. Griffin Bro. & Co. v Rembert (1871) 2 SC 410. Williams v Caldwell (1873) 4 SC 100. Black v White (1880) 13 SC 37. Duncan & Shumate v Heller (1880) 13 SC 94. Felder v Walker (1884) 24 SC 596. Robertson v Hunter (1888) 29 SC 9, 6 SE 850. Olliver v Duval (1890) 32 SC 273, 10 SE 1070. Willoughby v City Council of Florence (1898) 51 SC 462, 29 SE 242. Speer v Meschine (1896) 46 SC 505, 24 SE 329.

Maker of written guaranty agreement cannot impeach express terms of agreement to establish that agreement has been terminated; argument of defendants that obligation which they guaranteed was discharged by agreement made subsequent to their execution of guaranty agreement was invalid where guaranty agreement by its own terms was continuing guaranty of all debts of particular company; while written contract may be changed by subsequent agreement, subsequent agreement must be supported by adequate consideration to be enforcible; where debtor and guarantor were already fully liable for debt, their execution and guaranty of new note for same debt did not constitute consideration for agreement to release other guarantors from their personal liabilities; where guarantors produced no receipt, cancelled check, satisfied note or other evidence that they actually paid indebtedness they failed to carry their burden of proof as to payment. Federal Deposit Ins. Corp. v. Waldron (D.C.S.C. 1979) 472 F.Supp. 21, affirmed 630 F.2d 239.

The state was not entitled to have a bail bond estreated after the criminal defendant absconded where, when the bond surety company contracted for the bond, the conditions of bail stipulated that the defendant was required to be placed under an electronic surveillance system, but the next day the judge’s clerk eliminated the condition due to the unavailability of such a system; since there was no hearing prior to the amendment of the condition of the defendant’s release, the bond surety was not bound by the amendment. State v. McIntyre (S.C. 1992) 307 S.C. 363, 415 S.E.2d 399.

An alleged contract for conveyance of real property, which described the property to be conveyed as “5 acres land adjoining property owned by the purchaser,” failed to satisfy the requirements of the statute of frauds because it was vague and uncertain, where the vendor’s tract of land adjoining the property of the purchaser consisted of approximately 100 acres and had a common boundary with her property of approximately 1,140 feet, and thus there was no way to determine from the contract which 5 acres the parties intended to convey. Cousar v. Shepherd‑Will, Inc. (S.C.App. 1990) 300 S.C. 366, 387 S.E.2d 723.

Oral promise to pay debt of another, though otherwise invalid when not in writing, is enforceable where promise is made as part of transaction where main purpose and object of promisor is not to answer for debt of another, but to subserve some purpose of his own, or where agreement is part of original undertaking between parties, and is not collateral to origination of debt; in determining whether agreement is enforceable under main purpose or original undertaking exception, courts must rely on circumstances of each particular case to ascertain intent of parties and how they viewed agreement; promise must be supported by independent consideration in form of advantage to promisor or detriment to promisee; if evidence is susceptible of more than one reasonable inference, issues must be submitted to jury and their finding thereon should be conclusive; in action by appliance manufacturer against condominium owner to collect amount due for appliances purchased by construction company on ground that owner of condominium units in which appliances had been installed had guaranteed payment, evidence that manufacturer extended time for payment and forbore to file mechanic’s lien against condominiums was sufficient for jury to conclude that guarantor’s promise was supported by consideration necessary to remove it from statute of frauds. General Elec. Co. v. Gate (S.C. 1979) 273 S.C. 88, 254 S.E.2d 305.

Wherever the main purpose and object of promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within statute of frauds, although it may be in form a promise to pay debt of another. Crapps v. Spivey (S.C. 1978) 271 S.C. 29, 244 S.E.2d 520.

It was inferable from the evidence that main purpose of grocer’s alleged promise to stand behind sale of a stock of goods and equipment to vendee was to secure a customer for his wholesale grocery business, thereby promoting his pecuniary interest, so that a dismissal of the action against the grocer on the ground that purported guaranty was within the provisions of statute of frauds was error. Crapps v. Spivey (S.C. 1978) 271 S.C. 29, 244 S.E.2d 520.

It is the general law, and is the law of this State, that where the promise to pay a debt incurred by another is made as a part of a transaction where the main purpose and object of the promisor is not to answer for the debt of another, but to subserve some purpose of his own, his promise is not within the statute of frauds. Campbell v. Hickory Farms of Ohio (S.C. 1972) 258 S.C. 563, 190 S.E.2d 26. Frauds, Statute Of 23(1)

Where the agreement to pay the debt of another is part of an original undertaking between the parties, and is not collateral to the origination of the debt, the statute of frauds does not apply. Campbell v. Hickory Farms of Ohio (S.C. 1972) 258 S.C. 563, 190 S.E.2d 26.

A promise to pay a debt out of the debtor’s funds or property taken over or held by the promisor is an original undertaking and the statute of frauds is not applicable to the promise. Campbell v. Hickory Farms of Ohio (S.C. 1972) 258 S.C. 563, 190 S.E.2d 26. Frauds, Statute Of 34

Where principal stockholders agreed to equalize their holdings with stock acquired from miscellaneous holders, the purchase was made for the benefit of both, and their agreement concerning it is not within the statute of frauds. Florence Printing Co. v. Parnell (S.C. 1935) 178 S.C. 119, 182 S.E. 313. Frauds, Statute Of 84

Tobacco warehouse employee’s oral promise to bear half of loss warehouseman might sustain by re‑employing discharged employee, held admissible and not within statute where re‑employment meant greater commissions for promisor. Price v. Bethea (S.C. 1932) 167 S.C. 376, 166 S.E. 409. Frauds, Statute Of 33(1)

An oral promise to sign note for goods sold and charged to another is unenforceable as a “collateral promise to answer for another’s debt.” Henderson & Dempsey v. Skinner (S.C. 1928) 146 S.C. 281, 143 S.E. 875, 59 A.L.R. 174. Frauds, Statute Of 27

A lawyer’s oral agreement to secure client against loss on loans made through him is void under this section. McCoy v. Hydrick (S.C. 1928) 143 S.C. 135, 141 S.E. 174, 56 A.L.R. 953. Frauds, Statute Of 20

Where a tenant agreed to be liable for the debt of his landlord, it was held a question for the jury whether his liability was original, or whether his liability was collateral so as to bring it within the statute of frauds. Farmers’ Bank of Travelers’ Rest v. Eledge (S.C. 1923) 126 S.C. 517, 120 S.E. 362.

Fact that a promisor owns a major portion of the stock of a debtor corporation is not enough to constitute a new consideration and take a parol promise to pay debt of another out of the statute of frauds. Turner v. Lyles (S.C. 1904) 68 S.C. 392, 48 S.E. 301. Frauds, Statute Of 33(2)

A promise to pay the debt of another upon forbearance to enforce immediately some subsisting lien is not within the statute of frauds, when the release is a damage to the creditor or a benefit to the party promised for. J.A. Ellis & Co. v. Carroll (S.C. 1904) 68 S.C. 376, 47 S.E. 679, 102 Am.St.Rep. 679.

Part payment does not take promise to pay debt of another out of the statute. Millwee v. Jay (S.C. 1896) 47 S.C. 430, 25 S.E. 298.

4. Contracts relating to land

Contract for sale of land, see Denton v McKenzie (1792) 1 SC Eq 289. Givens v Calder (1803) 2 SC Eq 171. Hutchinson v Hutchinson (1809) 4 SC Eq 77. Cosack v Descoudres & Crovat (1821) 12 SCL 425. Howell v Howell (1824) 5 SC Eq 156. Cornwell v Spence (1824) 5 SC Eq 258. Smith v Smith (1842) 18 SC Eq 130. Schmidt v Gatewood (1844) 19 SC Eq 162. Poag v Sandifer (1852) 26 SC Eq 170. Cox v Cox (1852) 26 SC Eq 365. Johnston v La Motte (1853) 27 SC Eq 347. Vestry & Wardens of Church of Advent v Farrow (1854) 28 SC Eq 378. Lee v Lee (1858) 32 SC Eq 574. Hyde v Cooper (1867) 34 SC Eq 250. Garret v Malone (1855) 42 SCL 335. Davis v Moore (1856) 43 SCL 215. Trammell v Trammell (1858) 45 SCL 471. Jones v McMichael (1859) 46 SCL 176. Whetmore v Rhett (1860) 46 SCL 565. Billings v Clinton (1875) 6 SC 90. Hill v Smith (1860) 46 SCL 698. Lyles v Kirkpatrick (1878) 9 SC 265. Coleman v Chester (1880) 14 SC 286 (ovrld on issue of sovereign immunity by McCall v Batson, 285 SC 243, 329 SE2d 741). Harrison v Bailey (1880) 14 SC 334. Coney v Timmons (1882) 16 SC 378. Mims v Chandler (1884) 21 SC 480. Nesbitt v Cavender (1887) 27 SC 1, 2 SE 702. Boozer v Teague (1887) 27 SC 348, 3 SE 551. Martin v Patterson (1887) 27 SC 621, 2 SE 859. Hunter v Mills (1888) 29 SC 72, 6 SE 907. Charles v Byrd (1888) 29 SC 544, 8 SE 1. Shuford v Shingler (1889) 30 SC 612, 8 SE 799. Lamar v Wright (1889) 31 SC 60, 9 SE 736. Rhode v Tuten (1891) 34 SC 496, 13 SE 676. Dixon v Hockady (1892) 36 SC 60, 15 SE 342. Davis v Pollock (1892) 36 SC 544, 15 SE 718. Coleman v Curtis (1892, SC) 15 SE 709, reh dismd (SC) 16 SE 770.

Cited in Julius Kayser & Co. v Textron, Inc. (1956, CA4 SC) 228 F2d 783. United States v Shafto (1957, CA4 SC) 246 F2d 338, 57‑2 USTC ¶9859, 51 AFTR 870.

Applied in Walker v Preacher (1937) 185 SC 462, 194 SE 868. Jackson v Frier (1922) 118 SC 449, 110 SE 676. Smith v Traxler (1953) 224 SC 290, 78 SE2d 630.

It is well established in this State that a parol gift of land may ripen into title where accompanied by actual possession for the statutory period, with claim of ownership, and under such a gift the donee’s possession is adverse from its inception. Harrelson v Reaves (1951) 219 SC 394, 65 SE2d 478, 43 ALR2d 1. Brevard v Fortune (1952) 221 SC 117, 69 SE2d 355.

Documents purporting to convey land were unenforceable under the Statute of Frauds, where the documents did not contain a description of the property that was to be conveyed except to specify that it was at least 30 acres and that the vendor and purchasers were to agree on property lines. Fici v. Koon (S.C. 2007) 372 S.C. 341, 642 S.E.2d 602, rehearing denied. Frauds, Statute Of 110(1)

Under the Statute of Frauds, a conveyance of land is unenforceable if the contract provides only that the boundaries are to be determined upon agreement to a subsequent survey and plat. Fici v. Koon (S.C. 2007) 372 S.C. 341, 642 S.E.2d 602, rehearing denied. Frauds, Statute Of 110(1)

Under the Statute of Frauds, the signed writings in the sale of land must contain a sufficient description of the land to show with reasonable certainty what is to be conveyed; a description that does not include the location of the land or its boundaries is inadequate. Fici v. Koon (S.C. 2007) 372 S.C. 341, 642 S.E.2d 602, rehearing denied. Frauds, Statute Of 110(1)

Testator’s grandson did not prove oral gift of land, on theory of part performance sufficient to take it out of Statute of Frauds, where grandson cleared land and performed other farm maintenance, but testator continued to pay major expenses, and testator did not deliver gift of land. Satcher v. Satcher (S.C.App. 2002) 351 S.C. 477, 570 S.E.2d 535, rehearing denied. Frauds, Statute Of 129(4)

Language of lease between testator and lessee, which mentioned testator’s grandson as an “adjacent property owner” did not conflict with stipulation in grandson’s action to secure title, and thus did not entitle grandson to relief from that stipulation, where stipulation covered writings that might bring grandson’s claim within Statute of Frauds, not any written reference to grandson’s claim. Satcher v. Satcher (S.C.App. 2002) 351 S.C. 477, 570 S.E.2d 535, rehearing denied. Stipulations 13

Agreement between golf club members and golf course owners establishing times for non‑members to play, and sliding scale for increasing tee‑times for members as club membership increased, did not violate statute of frauds, since schedule, at most, granted members right to enter land and not any interest in real property. Prestwick Golf Club, Inc. v. Prestwick Ltd. Partnership (S.C.App. 1998) 331 S.C. 385, 503 S.E.2d 184, rehearing denied, certiorari denied. Frauds, Statute Of 56(1)

Since grandson performed his end of oral contract by which grandson agreed to manage grandfather’s cattle ranch in exchange for devise of ranch, cattle, and equipment, Statute of Frauds did not bar the enforcement of the contract. Wright v. Trask (S.C.App. 1997) 329 S.C. 170, 495 S.E.2d 222. Frauds, Statute Of 139(5)

Oral modification to broker’s contract, under which broker was to receive installment payments of his brokerage commission as buyer paid for business over ten‑year period, was capable of being performed within a year, and was not barred by Statute of Frauds; nothing prohibited buyer from prepaying for the business. Roberts v. Gaskins (S.C.App. 1997) 327 S.C. 478, 486 S.E.2d 771. Frauds, Statute Of 49

In a declaratory judgment action to ascertain the interests in a lot, the doctrine of merger did not apply to preclude proof of an agreement to reconvey the lot where the subsequent deed constituted only part performance of the agreement concerning the conveyance. New Prospect Area Fire Dist. v. New Prospect Ruritan Club (S.C. 1993) 311 S.C. 402, 429 S.E.2d 791. Deeds 94

An agreement to reconvey a lot to a private club did not violate SC Const Art X, Section 11 where the agreement concerned only the lot, and not the building subsequently constructed thereon for the fire department; if the lot were reconveyed, the fire district would own the building and the club would own the lot, and no issue of joint ownership would be presented. New Prospect Area Fire Dist. v. New Prospect Ruritan Club (S.C. 1993) 311 S.C. 402, 429 S.E.2d 791.

In a declaratory judgment action to ascertain the interests in a lot, the parol evidence rule did not apply to a written agreement to reconvey the lot, even though the subsequent deed to the property contained all the terms for transfer of the lot, since the issue was not whether the deed should be construed to include a reverter, but rather whether the written agreement to reconvey was valid. New Prospect Area Fire Dist. v. New Prospect Ruritan Club (S.C. 1993) 311 S.C. 402, 429 S.E.2d 791. Evidence 448

Action by one party in giving up right to sell timber and in returning title to land at expiration of term of written agreement, all pursuant to oral agreements, resulted in benefits to one party and loss to another sufficient to take oral modifications of written agreements out of Statute of Frauds. Graham v. Prince (S.C.App. 1987) 293 S.C. 77, 358 S.E.2d 714.

Mortgage holder’s performance of oral contract did result in loss to him and benefit to landowner, where on execution of oral agreements, mortgage holder gave up valuable timber which he had right to sell, and when timber deed expired, title reverted to landowner; therefore, mortgage holder suffered loss of money timber would have brought at sale and landowner received back valuable standing timber belonging to mortgage holder under timber deed; these facts do not present case of mere inaction which results in no loss to one party and no benefit to other, and therefore case does not come within rule is that alleged performance which consisted of nothing more than a forbearance would not be sufficient to remove oral agreements from Statute of Frauds by performance. Graham v. Prince (S.C.App. 1987) 293 S.C. 77, 358 S.E.2d 714.

Courts of equity will decree specific performance of oral agreements for acquisition of interest in land, despite statute of frauds, where sufficient part performance has occurred. In order to compel specific performance, court must find: (1) clear evidence of agreement; (2) agreement has been partly carried into execution on one side with approbation of other; and, (3) party who comes to compel performance has performed on his part, or has been and remains able and willing to perform. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173. Specific Performance 39

In an action against a purchaser alleging a breach of contract to purchase real estate, testimony of the seller that the purchaser’s representative came to her house and presented to her a written offer signed and dated that day by the purchaser to purchase the property for $108,000, which was reflected upon a form prepared by the purchaser’s company and was entitled “Contract of Sale Offer and Accept”, which she signed and dated, and that purchaser’s representative telephoned to fix a time for him to come over for the purpose of obtaining the seller’s signature on the contract, was sufficient for the jury as evidence of an enforceable contract between the parties. Benya v. Gamble (S.C.App. 1984) 282 S.C. 624, 321 S.E.2d 57, certiorari granted 284 S.C. 366, 326 S.E.2d 654, certiorari dismissed 329 S.E.2d 768. Frauds, Statute Of 159

Memorandum reciting that check was binder for 15 acres of land in Pickens, without specifying location or shape of said land, was too vague and indefinite to satisfy statute of frauds. Cash v. Maddox (S.C. 1975) 265 S.C. 480, 220 S.E.2d 121.

Demurrer to the complaint on the ground that the alleged contract upon which the action was based was an oral contract for the subleasing, use or occupancy of real estate in violation of subdivision (4) of this section, what is now Section 27‑35‑20, and what is now Section 27‑23‑50, was properly overruled, where the questions whether the alleged contract violated the statute of frauds or was removed from the operation of the statute as a contract of guaranty or by virtue of part performance could properly be determined only after the facts were developed on a trial of the merits. Leventis v. Acciardo (S.C. 1971) 256 S.C. 437, 182 S.E.2d 726. Frauds, Statute Of 150(1)

The Supreme Court held that the competence of evidence adduced in behalf of plaintiff in proof of a contemporaneous parol agreement of defendant to reconvey a farm if plaintiff became dissatisfied with the trade, need not be passed upon in view of similar evidence offered by defendant. Owens v. Sweat (S.C. 1955) 227 S.C. 112, 86 S.E.2d 886.

In an action for enforcement of a parol agreement whereby the purchaser agreed to bid on land at a judicial sale and later, upon being reimbursed, to reconvey land to the mortgagor‑debtor, the statute of frauds would not allow such oral agreement to be established by parol except, as here, where there was fraud in the sale. Gardner v. Nash (S.C. 1954) 225 S.C. 303, 82 S.E.2d 123.

As the statute of frauds is designed as a protection against fraud, it shall not be set up as a protection or support of fraud, and although the courts of equity will not execute, specifically, contracts concerning lands which are not manifested in writing as required by this section, they will cancel conveyances obtained by fraudulent misrepresentations in parol or impose upon legal owners the character of trustees. Gardner v. Nash (S.C. 1954) 225 S.C. 303, 82 S.E.2d 123.

A parol gift of land does not and cannot ipso facto transfer title to land. Brevard v. Fortune (S.C. 1952) 221 S.C. 117, 69 S.E.2d 355. Gifts 25

The plea of the statute of frauds will not be permitted to shield a fraud, but at the same time one of the most valuable safeguards thrown around a deed is that parol evidence is not admissible to vary or contradict the terms of a written contract. This applies in all its strictness to actions involving deeds. Scott v. Scott (S.C. 1950) 216 S.C. 280, 57 S.E.2d 470.

Where the identity of the property is definitely certain, it is proper to show by parol testimony of what the property consisted and the extent thereof. Speed v. Speed (S.C. 1948) 213 S.C. 401, 49 S.E.2d 588. Frauds, Statute Of 158(3)

A meager description of land in a contract is frequently held insufficient where the vendor owns two or more parcels of land which fit the description. But where it appears from extrinsic evidence that the vendor owns but one parcel of land answering the description in the memorandum, the courts are inclined to uphold such description of the property. Speed v. Speed (S.C. 1948) 213 S.C. 401, 49 S.E.2d 588. Frauds, Statute Of 110(1)

The law does not require that a contract for the sale of land shall in itself be wholly not require that a contract for the sale of land shall in itself be wholly sufficient to identify the land, but the contract is sufficient if it furnishes the means of identification. The writing or writings must furnish the means or key by which the description may be made certain. Speed v. Speed (S.C. 1948) 213 S.C. 401, 49 S.E.2d 588. Frauds, Statute Of 110(1)

Where a broker claimed one half the value of certain lands under an oral contract and it was contended that his claim to one half of the value of the lands involved was tantamount in law to claiming title to a one‑half interest therein, and consequently the only matter in controversy was an interest in the land itself coming within this section, it was held that the value of an article is intangible, an attribute of the article and a separate conception from the thing itself, which in this case was a measure of compensation and could not be brought within this section [Code 1962 Section 11‑101]. Carter v. McCall (S.C. 1940) 193 S.C. 456, 8 S.E.2d 844, 151 A.L.R. 641.

The term “interest in land,” as used in this section, means some portion of the title or right of possession, and does not include agreements which may affect land but which do not contemplate the transfer of any title, ownership or possession. Carter v. McCall (S.C. 1940) 193 S.C. 456, 8 S.E.2d 844, 151 A.L.R. 641. Frauds, Statute Of 56(1)

This section can only be applied to contracts which have in view the transfer of an interest “in or concerning” lands, the word “concerning” being simply synonymous with the word “in.” Carter v. McCall (S.C. 1940) 193 S.C. 456, 8 S.E.2d 844, 151 A.L.R. 641. Frauds, Statute Of 56(1)

Parol agreement for lease of hunting privileges on land is within the statute of frauds as “transaction relating to real estate.” Palachucola Club v. Withington (S.C. 1931) 159 S.C. 446, 157 S.E. 621. Frauds, Statute Of 58(1)

Under this section a parol contract relating to acquisition of interest in real estate, such as a contract to devise land, is not enforceable save under exceptional conditions. White v. McKnight (S.C. 1928) 146 S.C. 59, 143 S.E. 552, 59 A.L.R. 1297.

Where defendant orally agreed to buy land belonging to the plaintiff for such plaintiff at a judicial sale, the statute of frauds did not prevent recovery by the plaintiff, because the action was not based upon a mere repudiation of an oral agreement concerning land, but upon the chilling of bidding at the sale resulting from the conduct of the defendant. Jarrot v. Kuker (S.C. 1907) 78 S.C. 510, 59 S.E. 533.

5. Agreement not to be performed within one year

Contracts not to be performed within a year, see Gee v Hicks (1830) 9 SC Eq 5. Thompson v Gordon (1848) 34 SCL 196. Compton v Martin (1851) 39 SCL 14. Gadsden v Lance (1841) 16 SC Eq 87. Jones v McMichael (1859) 46 SCL 176. Carter v Brown (1872) 3 SC 298. Walker v Wilmington C. & A. R. Co. (1887) 26 SC 80 1 SE 366. Duckett v Pool (1890) 33 SC 238, 11 SE 689. Wise v Wise (1901) 60 SC 426, 38 SE 794. Hillhouse v Jennings (1901) 60 SC 392, 38 SE 596. Turnipseed v Sirrine (1900) 57 SC 559, 35 SE 757, reh dismd 57 SC 578, 35 SE 1035. Alexander v McDaniel (1899) 56 SC 252, 34 SE 405. Gaines W. Harrison & Sons, Inc. v J. I. Case Co. (1960, DC SC) 180 F Supp 243, 3 FR Serv 2d 220.

This statute does not apply except in cases where the contract cannot possibly be performed within the year. Florence Printing Co. v Parnell (1935) 178 SC 119, 182 SE 313. Joseph v Sears Roebuck & Co. (1953) 224 SC 105, 77 SE2d 583, 40 ALR2d 742.

In Thompson v Gordon (1848) 34 SCL 196, the court held that the statute of frauds, when it enacts that any agreement that is not to be performed within the space of one year, from the making thereof shall be in writing, means an agreement not to be performed in the space of a year, and expressly so stipulated. A contingency is not within the statute ‑ it must appear, within the agreement, that it is not to be performed till after the year, to make a note in writing necessary. Thompson v Gordon (1848) 34 SCL 196. Walker v Wilmington C. & A. R. Co. (1887) 26 SC 80, 1 SE 366. Oswald v Lawton (1938) 187 SC 42, 196 SE 535. McGehee v South Carolina Power Co. (1938) 187 SC 79, 196 SE 538.

An oral contract of insurance is not within this section since it may be completely performed within a year upon the happening of a contingency. Globe Indem. Co. v Cooper Motor Lines, Inc. (1945) 206 SC 154, 33 SE2d 405. Joseph v Sears Roebuck & Co. (1953) 224 SC 105, 77 SE2d 583, 40 ALR2d 742.

This provision applies only to those contracts which are impossible of performance within a year, and a contract on a contingency which may occur within a year need not be supported by a writing. This rule has a particular application to contracts of employment for an indefinite term or on a contingency. Weber v Perry (1942) 201 SC 8, 21 SE2d 193 (diverged from on other grounds by Ludwick v This Minute of Carolina, Inc., 287 SC 219, 337 SE2d 213, 1 BNA IER Cas 1099, 120 BNA LRRM 3446, 103 CCH LC ¶55535). Joseph v Sears Roebuck & Co. (1953) 224 SC 105, 77 SE2d 583, 40 ALR2d 742.

An oral agreement that plaintiff would raise turkeys for defendant soup manufacturer was indefinite in time and thus not within the Statute of Frauds, notwithstanding plaintiff’s testimony that it did not expect to recoup its initial investment for approximately twenty years. Center State Farms v. Campbell Soup Co. (C.A.4 (S.C.) 1995) 58 F.3d 1030.

Where, by written contract, an insurance company appointed agents and provided that claim loss experience would vary their compensation, and further provided that on discharge without cause they should receive one half their renewal commissions for five years, an alleged new agreement after such discharge that provided for a five‑year commission without variation for claim loss experience was one not to be performed within the space of one year. Southern States Life Ins. Co. v. Foster (C.A.4 (S.C.) 1956) 229 F.2d 77.

Oral contract of employment for 18 months is within statute of frauds since it is incapable of performance within 1 year; however, written memorandum, in any form including written correspondence is sufficient to take contract out of operation of statute if signed by party to be charged with agreement and if writing contains all essential terms of contract. Lewis v. Finetex, Inc. (D.C.S.C. 1977) 488 F.Supp. 12.

The statute of frauds is a complete defense to a claim for damages that the defendant has breached an oral contract that could not be performed within the space of a year. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co., 1953, 113 F.Supp. 257, affirmed 208 F.2d 685. Frauds, Statute Of 125(2)

Agency agreement under which agency was permitted to sell insurance on behalf of insurers that contained arbitration provision, and which agency did not sign, could have been performed within one year, and thus agreement did not violate the statute of frauds, where agreement was for an indefinite term and either party could have terminated agreement at will, with or without cause, by giving as little as 90 days notice. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Frauds, Statute Of 49

If there is a possibility that a contract might be performed within one year, the statute of frauds is not a bar to enforcement of the contract. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 49

Agreement between sports fans and university for fans’ purchase of premium seating at university basketball arena was not capable of being performed within one year, and thus statute of frauds applied to agreement in fans’ breach of contract action against university; agreement required fans to pay $5,000 per seat in year one and $1,500 per seat each year during years two through five, and even if fans remitted entire sum of $11,000 per seat during year one, university’s obligation to provide premium seating each year for five years could not be performed in less than five years. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 49

Oral agreement, including oral modification, will be barred by Statute of Frauds if it is incapable of being performed within one year. Roberts v. Gaskins (S.C.App. 1997) 327 S.C. 478, 486 S.E.2d 771. Frauds, Statute Of 43

Statute of Frauds applies only to contracts which are impossible of performance within one year; contract having contingency which may occur within year need not be supported by written document. Roberts v. Gaskins (S.C.App. 1997) 327 S.C. 478, 486 S.E.2d 771. Frauds, Statute Of 49

If there is possibility of performance of oral contract within a year, contract is not barred by Statute of Frauds; fact that performance within year is highly improbable or not expected by parties does not bring contract within scope of this clause. Roberts v. Gaskins (S.C.App. 1997) 327 S.C. 478, 486 S.E.2d 771. Frauds, Statute Of 49

In an action to enforce an alleged oral agreement to recover expenses incurred in caring for defendant’s mother wherein plaintiff alleged defendant agreed to pay her for expenditures and services in exchange for her agreement to withdraw an action brought by her in the probate court to be appointed committee for her grandmother, the decedent, the trial judge properly granted summary judgment in favor of defendant on the ground that the contract violated the Statute of Frauds where there was a total absence of any evidence that the main purpose of the alleged promise by defendant was to end litigation or that the promise allegedly made by defendant was part of an original undertaking made in exchange for the abandonment by plaintiff of her action to be appointed committee for defendant’s mother. Dyer v. Moss (S.C.App. 1985) 284 S.C. 208, 325 S.E.2d 69.

Elements required to satisfy statute of frauds in order to have valid employment contract are compensation, determinable duration, reciprocal rights, duties, and obligations, and written instrument if contract is not to be performed within 1 year. Young v. Independent Pub. Co. (S.C. 1979) 273 S.C. 107, 254 S.E.2d 681. Frauds, Statute Of 113(1)

There can be no dispute as to the well‑established principle that the statute applies only to those contracts which are impossible of performance within a year, and that a contract on a contingency which may occur within the year need not be supported by a writing. If there is a possibility of performance within a year, the agreement is not within the statute. Joseph v. Sears Roebuck & Co. (S.C. 1953) 224 S.C. 105, 77 S.E.2d 583, 40 A.L.R.2d 742.

An oral warranty by the defendant that a pressure cooker was not dangerous and would not explode was not within the statute, for an explosion was a contingency which might occur within one year of the making of such warranty. Joseph v Sears Roebuck & Co. (1953) 224 SC 105, 77 SE2d 583, 40 ALR2d 742.

Order submitting question of intention of parties to jury held proper. Elkins v. Plywoods‑Plastics Corp. (S.C. 1951) 219 S.C. 296, 65 S.E.2d 243.

Contract must show on its face that it is incapable of performance within year. Unless an alleged parol contract shows on its face that it is not capable of being performed within one year, it does not contravene the statute of frauds. There must be a negation of the right to perform the contract within a year. Elkins v. Plywoods‑Plastics Corp. (S.C. 1951) 219 S.C. 296, 65 S.E.2d 243. Frauds, Statute Of 49

This section did not apply to action which was not based upon an oral agreement or understanding as to the issuance of an insurance policy, but on account of knowledge imputed to defendant there was fraud or inequitable conduct in issuing the policy. Aiken Petroleum Co. v. National Petroleum Underwriters of Western Millers Mut. Fire Ins. Co. of Kansas City, Mo. (S.C. 1945) 207 S.C. 236, 36 S.E.2d 380.

An oral contract of employment for an indefinite period, possible of performance within one year from its making, is not within the statute of frauds. McGehee v. South Carolina Power Co. (S.C. 1938) 187 S.C. 79, 196 S.E. 538. Frauds, Statute Of 50(2)

An agreement to give permanent employment in consideration of a release from liability for an injury was held to be within the statute as an agreement not to be performed within one year. Marshall v. Charleston & W.C. Ry. Co. (S.C. 1931) 164 S.C. 283, 162 S.E. 348. Frauds, Statute Of 44(3)

An alledged oral agreement of a landlord to construct an addition to rented premises and to keep it in proper repair is invalid as an agreement not to be performed within the space of one year within the statute of frauds. Rowland & Sons v. Bock (S.C. 1929) 150 S.C. 490, 148 S.E. 549.

Testimony is admissible to prove that a contract alleged as made on or “about” December 24, covering employment for one year from the following January, was later confirmed so as to be within this section. Crosby v. Bradley (S.C. 1927) 142 S.C. 386, 140 S.E. 702. Frauds, Statute Of 156

A verbal agreement entered into on first of July, for a year’s services, to commence on the first of the following October, is within the statute of frauds, as not to be performed within one year. Mendelsohn v. Banov (S.C. 1900) 57 S.C. 147, 35 S.E. 499. Frauds, Statute Of 53

6. Sufficiency of memorandum

The statute requires not only that the agreement, or some memorandum or note thereof, shall be signed by the party to be charged, etc., but that the memorandum or note shall be in writing. That the memorandum so required to be in writing must contain all the essential elements of a contract is well settled in this jurisdiction. McCathern v O’Donnell & Co. (1936) 181 SC 76, 186 SE 659, quoting from Ruff v Hudspeth (1923) 122 SC 391, 115 SE 626.

What shall constitute a sufficient writing of the agreement, see Davis v Robertson (1817) 8 SCL 71. M’Grath v Isaacs (1819) 10 SCL 563. James K. Douglass &. Co. v Spears (1819) 11 SCL 207. Meadows v Meadows (1826) 14 SCL 458. Anderson v Chick (1830) 8 SC Eq 118. McMorris v Herndon (1830) 18 SCL 56. Rogers v Collier (1832) 18 SCL 581. Trustees of Episcopal Church v Wiley (1837) 11 SC Eq 584. Fyler v Givens (1836) 21 SCL 48. Woodward v Pickett (1837) 23 SCL 30. Bennett v Carter (1838) 23 SCL 142. Toomer v Dawson (1840) 25 SCL 68. Secrist v Twitty (1841) 26 SCL 255. Entz v Mills &. Beach (1840) 26 SCL 453. Hatcher v Hatcher (1841) 16 SC Eq 311. Draper v Pattani (1844) 29 SCL 292. Kinloch v Savage (1844) 17 SC Eq 464. Christie v Simpson (1844) 30 SCL 407. Elfe v Gadsden (1845) 31 SCL 373. Brown v Brown (1847) 20 SC Eq 363. Sams v Fripp (1859) 31 SC Eq 447. Hyde v Cooper (1867) 34 SC Eq 250. Griffin Bro. &. Co. v Rembert (1871) 2 SC 410. Mims v Chandler (1884) 21 SC 480. Humbert v Brisbane (1886) 25 SC 506. Boozer v Teague (1887) 27 SC 348, 3 SE 551. Groce v Jenkins (1888) 28 SC 172, 5 SE 352. Kennedy v Gramling (1890) 33 SC 367, 11 SE 1081. Willis v Hammond (1894) 41 SC 153, 19 SE 310.

Where discharged insurance agents alleged that a new agreement waived the provisions of their written contract with the insurance company stipulating that claim loss experience would vary the commissions to which they were entitled for five years after discharge, but the company’s checks and accompanying statements of account were the only writings touching the new agreement, these documents did not fulfill the commandment of this section as to some memorandum or note. Southern States Life Ins. Co. v. Foster (C.A.4 (S.C.) 1956) 229 F.2d 77.

The loss of the memorandum, if executed and sufficient to satisfy the statute of frauds, would not change or impair the obligation of the parties. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906. Lost Instruments 1

A memorandum giving authority to an agent to enter a contract does not meet the requirements of the statute of frauds with regard to a contract subsequently entered by the agent pursuant to that authority, except where the memorandum granting the agent authority constitutes such an offer as may be accepted by the other party without further agreement. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

Subsequent written acknowledgment signed by the party to be charged on an oral contract is sufficient to satisfy the statute of frauds with respect to that earlier contract. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

An agent, who within the scope of his authority, makes an oral contract, may not after revocation of that authority, execute a memorandum sufficient to bind the principal. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

Where the person who signed a statement acknowledging a prior oral contract allegedly made by him as agent for the defendant, at the time he signed the statement had no authority to bind the defendant, the statement did not satisfy the requirements of the statute of frauds. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

In order to charge the defendant corporation upon a subsequent written acknowledgment of an oral contract, it must appear that the person who signed it had authority, actual or ostensible, to bind the corporation and that he acted in pursuance of such authority in signing the memorandum. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

Student failed to point to identifiable contractual promise that state university failed to honor, for purposes of student’s action against university after improper academic advisement rendered student ineligible to play baseball under National Collegiate Athletics Association (NCAA) regulations, and thus, university was not liable for breach of contract; student did not point to any written promise from university to ensure his athletic eligibility, student submitted no real evidence to support claim that such a promise was implied, and student did not discuss NCAA academic eligibility until he was already enrolled at university. Hendricks v. Clemson University (S.C. 2003) 353 S.C. 449, 578 S.E.2d 711. Education 1194

A writing prepared by a party to a contract or by his or her agents may constitute a memorandum sufficient to satisfy the statute of frauds, even if it is not delivered to the other contracting party and is neither intended for nor known to him or her, provided it is intended to evidence the contract of the party and its contents are disclosed for that purpose. The writing must reasonably identify the subject matter of the contract, sufficiently indicate that a contract has been made between the parties, and state with reasonable certainty the essential terms of the agreement. Player v. Chandler (S.C. 1989) 299 S.C. 101, 382 S.E.2d 891. Frauds, Statute Of 106(1)

The memorandum required to satisfy the statute of frauds may be found to exist in the form of a letter. Smith v. McClam (S.C. 1986) 289 S.C. 452, 346 S.E.2d 720. Frauds, Statute Of 103(1)

Statute of frauds requirements were satisfied by letter from mother’s attorney seeking to induce one daughter to sign over her interest in real property to the mother, based upon an agreement entered into between the mother and other children that the mother would leave property equally to the children upon her death, since the letter reasonably identified the subject matter of the contract and the essential terms of the contract could be ascertained with reasonable certainty. Smith v. McClam (S.C. 1986) 289 S.C. 452, 346 S.E.2d 720. Frauds, Statute Of 109; Frauds, Statute Of 113(3)

A memorandum included in the answer to the complaint was not sufficient to remove a lease agreement from the statute of frauds where the answer failed to admit that an oral agreement existed between the parties, admitted only to holding discussions, and where the memorandum clearly manifested that provisions identifying the premises to be leased, defining the terms, and prescribing the rental, time and manner of its payment were merely contemplated terms and conditions and that additional terms and conditions remained to be negotiated and agreed upon. Robert Harmon and Bore, Inc. v. Jenkins (S.C.App. 1984) 282 S.C. 189, 318 S.E.2d 371. Frauds, Statute Of 113(2); Frauds, Statute Of 144

Statute satisfied where written offer of purchase was directed to seller, stating consideration, terms of payment and a description of property involved, buyer was informed that his offer was accepted and his accompanying check had been deposited, and buyer had property surveyed and mailed copy of survey to seller. Goodwin v. Hilton Head Co. (S.C. 1979) 273 S.C. 758, 259 S.E.2d 611.

Statute of frauds does not require that memoranda of contract be contained in one document, but permits essential contractual terms to be gathered from several writings which are connected either expressly or through internal evidence of subject matter and occasion; where several writings are relied upon to constitute requisite memorandum, they must, taken as whole, set forth all essential terms of agreement so that contract may be proved on basis of such memorandum without resort to parol evidence. Young v. Independent Pub. Co. (S.C. 1979) 273 S.C. 107, 254 S.E.2d 681. Frauds, Statute Of 118(2)

It is well settled that the form of writing required by the statute is not material. Whatever form the agreement may assume, if the writing or writings, viewed as a whole, constitute in essence or substance upon their face a note or memorandum in writing, subscribed by the party sought to be charged, showing who the contracting parties are, the subject matter of the sale, and the consideration, the statute is satisfied. Speed v. Speed (S.C. 1948) 213 S.C. 401, 49 S.E.2d 588. Frauds, Statute Of 103(1); Frauds, Statute Of 118(1); Frauds, Statute Of 118(3)

This section merely requires some memorandum or note of the agreement relating to real estate to be in writing and signed by the party charged therewith or his agent, and does not require a formally executed contract. There must be written evidence of the contract, if there is no written contract, and a letter which recites the contract, but repudiates it, is sufficient. Blocker v. Hundertmark (S.C. 1944) 204 S.C. 269, 28 S.E.2d 855. Frauds, Statute Of 99

A will is not a sufficient memorandum of an agreement required by the statute of frauds to be in writing if the testator afterwards makes a later and different will. McMillan v. King (S.C. 1940) 193 S.C. 14, 7 S.E.2d 521. Frauds, Statute Of 103(1)

A pleading, if sufficiently definite and certain, and signed by the party to be charged, or by his agent or attorney on his behalf, admitting a parol agreement within the statute, may constitute a sufficient writing within the meaning of the statute so as to enable the court to enforce a contract. Walker v. Preacher (S.C. 1938) 188 S.C. 431, 199 S.E. 675.

In order for a pleading to constitute a sufficient memorandum of an oral contract, the subject matter must be so certainly described that no oral testimony is needed to supply any necessary terms or conditions. Walker v. Preacher (S.C. 1938) 188 S.C. 431, 199 S.E. 675. Frauds, Statute Of 100

Where land was sold under an order of court in a partition action, the auctioneer who made the sale was the agent of both seller and purchaser and his entry of lots sold, amount of bid, terms of sale, and name of purchaser in his book was a sufficient compliance with this section. Parrott v. Dickson (S.C. 1929) 151 S.C. 114, 148 S.E. 704, 63 A.L.R. 965.

A will devising land to a certain person, without reference to testator’s parol contract to do so, is not a sufficient written memorandum or note. White v. McKnight (S.C. 1928) 146 S.C. 59, 143 S.E. 552, 59 A.L.R. 1297. Frauds, Statute Of 103(1)

For a writing to be sufficient memorandum to take a verbal contract to convey out of the statute of frauds, the writing relied on must contain all the material terms of the agreement, and it cannot be supplemented by parol evidence. Boozer v. Teague (S.C. 1887) 27 S.C. 348, 3 S.E. 551.

7. Full performance

Complete performance of his obligations by one party to an oral agreement, otherwise within the statute of frauds, with acceptance of the performance by the other party, will both in law and in equity at times exclude or withdraw the agreement from the statute. Southern States Life Ins. Co. v. Foster (C.A.4 (S.C.) 1956) 229 F.2d 77. Frauds, Statute Of 139(1)

Full performance by one side will take the entire contract out of the one year clause of the statute of frauds. Coker v. Richtex Corp. (S.C. 1973) 261 S.C. 402, 200 S.E.2d 231. Frauds, Statute Of 139(1)

Where plaintiff’s oral contract was to continue his employment until age 65, and there is no contention that he was otherwise under a legal obligation to continue his employment, he fully performed his part of the agreement by continuing to work, and accordingly the statute of frauds is not a defense. Coker v. Richtex Corp. (S.C. 1973) 261 S.C. 402, 200 S.E.2d 231.

The statute of frauds only applies to executory, as distinguished from executed, contracts. DeWitt v. Kelly (S.C. 1971) 256 S.C. 224, 182 S.E.2d 65.

If an oral contract, otherwise within the statute, is completely executed or performed, it is taken out of the operation of the statute. DeWitt v. Kelly (S.C. 1971) 256 S.C. 224, 182 S.E.2d 65.

Performance of agreement removes necessity for agreement to be in writing. Footman v. Sweat (S.C. 1966) 247 S.C. 172, 146 S.E.2d 624.

8. Part performance—In general

Nonaction is an adequate consideration, but it does not constitute a part performance to excuse or lift the agreement from the exactions of the statute of frauds. Southern States Life Ins. Co. v. Foster (C.A.4 (S.C.) 1956) 229 F.2d 77.

Part performance of an employment contract would not relax the requirement of the statute of frauds. Computer Servicenters, Inc. v. Beacon Mfg. Co. (D.C.S.C. 1970) 328 F.Supp. 653, affirmed 443 F.2d 906.

The construction of a restaurant on leased property did not relate clearly to an oral lease extension agreement exclusive of the original lease agreement where the lessees were entitled to make improvements to the leased property as they desired under the original lease agreement. Thus, the oral lease extension agreement was not removed from operation of the statute of frauds on the ground of part performance. Player v. Chandler (S.C. 1989) 299 S.C. 101, 382 S.E.2d 891. Frauds, Statute Of 129(3)

In order for improvements to real property to constitute part performance of an oral contract to convey real estate sufficient to remove the contract from the statute of frauds, the improvements must be made by the purchaser with his or her own means and upon the faith of the vendor’s promise. Thus, where improvements were made at the direction of a third party, they could not be used by the purchaser to prove part performance. Bradshaw v. Ewing (S.C. 1989) 297 S.C. 242, 376 S.E.2d 264. Frauds, Statute Of 129(7)

Mortgage holder’s performance of oral contract did result in loss to him and benefit to landowner, where on execution of oral agreements, mortgage holder gave up valuable timber which he had right to sell, and when timber deed expired, title reverted to landowner; therefore, mortgage holder suffered loss of money timber would have brought at sale and landowner received back valuable standing timber belonging to mortgage holder under timber deed; these facts do not present case of mere inaction which results in no loss to one party and no benefit to other, and therefore case does not come within rule that alleged performance which consisted of nothing more than a forbearance would not be sufficient to remove oral agreements from Statute of Frauds by performance. Graham v. Prince (S.C.App. 1987) 293 S.C. 77, 358 S.E.2d 714.

Oral contract within Statute of Frauds may be taken out by part performance where one party does some act essential to performance of agreement resulting in loss to himself and benefit to others, however, action by one party which results in no loss to him or benefit to other party will not remove parole agreement from statute; while mere forebearance may be good consideration to support oral promise, it is not performance which will exempt parole agreement from Statute of Frauds because it does not enrich other party at expense of passive party and for that reason does not in law imply obligation by other party to perform his agreement or estop him to deny it. Graham v. Prince (S.C.App. 1987) 293 S.C. 77, 358 S.E.2d 714. Frauds, Statute Of 144

Actions of tenants under alleged oral lease in taking possession of premises, consistently making rental payments which landlord accepted and cashed or retained, making improvements and maintaining equipment on property, and otherwise treating property as though they were operating under terms of lease, constitutes sufficient part performance to take agreement out of operation of statute of frauds. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173. Frauds, Statute Of 129(8)

Party seeking to show part performance by possession and improvements must show acts which relate clearly and unequivocally to agreement, exclusive of any other relation between parties touching agreement; mere payment of all or portion of price is not itself regarded as such part performance; however, taking possession and paying rent, in conjunction with other facts and circumstances, may constitute sufficient part performance to take agreement out of statute of frauds. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173.

SC Code Ann Section 27‑35‑20 does not prohibit court from ordering property owner to execute 5‑year lease on same terms as oral lease, where court found that parties had oral lease for 5 years and that lease agreement was taken out of operation of statute of fraud by reason of part performance. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173.

Demonstration of sufficient part performance to remove agreement from operation of statute of frauds rendered without merit argument that Section 27‑35‑20 was separate from Section 32‑3‑10, and that part performance could not relieve lessee from operation of Section 27‑35‑10. Gibson v. Hrysikos (S.C.App. 1987) 293 S.C. 8, 358 S.E.2d 173.

Complaint in action to compel specific performance of oral contract to convey land which alleges improvements to property, including installation of private septic tank system, is sufficient allegation of part performance to survive demurrer on basis of Statute of Frauds. Hill v. Watford (S.C. 1981) 276 S.C. 344, 278 S.E.2d 347. Frauds, Statute Of 129(7)

Sufficient part performance of an oral contract to convey land to take the contract out of the statute of frauds occurs when one party has done such acts in pursuance of and in reliance on the agreement that the application of the statute would be unconscionable. Parr v. Parr (S.C. 1977) 268 S.C. 58, 231 S.E.2d 695. Frauds, Statute Of 129(1)

Where a party conveyed 469 acres of land to another with an oral agreement that 7 acres of the land, which contained his home, would be reconveyed, and he delivered the deed for the property and relinquished possession and control of all land except the homesite, there was sufficient part performance to preclude assertion of the defense of the statute of frauds. Parr v. Parr (S.C. 1977) 268 S.C. 58, 231 S.E.2d 695.

Wills of husband and wife executed at same time, before same witnesses, strictly reciprocal in terms, are not in absence of recital that they are made pursuant to contract, in themselves sufficient evidence of enforceable contract, but proof of testamentary contract may be supplied by competent witnesses who testify to admissions of testators or such proof may result as implication from circumstances and relations of parties and what they have actually provided for by the instrument. Hayes v. Israel (S.C. 1963) 242 S.C. 497, 131 S.E.2d 506.

Burden of establishing existence of oral contract to make will and its terms rests on plaintiff, and mere preponderance of evidence is not enough as such contracts are regarded with suspicion and will not be sustained unless established by definite, clear, cogent and convincing evidence, a higher degree of proof than necessary in usual civil case. Brown v. Graham (S.C. 1963) 242 S.C. 491, 131 S.E.2d 421.

Sufficient part performance of a parol contract for the conveyance of real estate will, in equity, remove the contract from the operation of this section. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(3)

Relief on the basis of part performance rests essentially upon the principle of equitable estoppel, which requires that the party sought to be charged upon a parol contract for the sale of land be denied the protection of the statute where the other party has done such acts in pursuance of and reliance upon the contract that its application against his claim would be unconscionable. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812.

Where, under an oral contract for sale of two parcels of land, vendee went into actual and active possession of one, using it as an entrance to his home, and did nothing toward the other parcel which he had bought to protect himself against undesirable neighbors, there was held to be sufficient part performance and vendee could compel specific performance by vendor’s heirs with respect to both parcels. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812.

The courts will require specific performance of an oral contract for the conveyance of land where the party seeking to rescue it from the statute show acts of performance or part performance on his part so clearly and unequivocally referable to such an agreement as would render application of the statute unconscionable. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812.

The courts will require specific performance of an oral contract for the conveyance of land, where the terms of the contract are clear, definite and certain, and are established by competent and satisfactory proof. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Specific Performance 42

Actual possession is the most satisfactory evidence of part performance with regard to oral agreements for the partition of real estate. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(4)

Mere change of possession is not necessarily sufficient to avoid the consequences of the statute; like payment of the purchase price, it is a fact to be considered in connection with other facts and circumstances of the transaction in determining whether or not there has been such performance or part performance as warrants relief from the statute. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(4)

The fact that improvements have been made on the property after possession, while strong evidence of part performance, is neither conclusive of that issue nor indispensable proof of it. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(7); Frauds, Statute Of 158(1)

Payment of the purchase price in whole or part is not of itself regarded as such part performance as will take the contract out of the statute, and the fact that no part of the purchase price has been paid does not necessarily require application of the statute. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(5)

For purpose of determining part performance, acts of ownership by the purchaser of real estate should be evaluated in the light of the purpose for which the land is acquired. Scurry v. Edwards (S.C. 1957) 232 S.C. 53, 100 S.E.2d 812. Frauds, Statute Of 129(3)

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 (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558. Frauds, Statute Of 1.3

Nothing can be regarded as part performance to take a contract out of the operation of the statute which does not place the party in a situation which is a fraud upon him unless the contract is enforced. Aust v. Beard (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558.

Where a party seeks to secure a parol agreement from the statute by showing possession and improvements put upon the land, he must show acts of performance or part performance by him which relate clearly and unequivocally to such agreement, exclusive of any other relation between the parties touching such premises. Aust v. Beard (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558.

Where the improvements claimed were the removal of some heavy undergrowth, planting some grass, and the erection of two large electric signs advertising plaintiff’s motel, it could not be said that the making of these improvements was “clearly and unequivocally” referable to the alleged parol contract. Aust v. Beard (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558.

Before a court of equity will specifically enforce a parol contract on the ground of part performance, all the material terms of the contract must be established to the satisfaction of the court by proof that is clear, definite and certain. Aust v. Beard (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558.

Where the improvements claimed were the removal of some heavy undergrowth, planting some grass and the erection of two large electric signs, advertising plaintiff’s motel, none of these could be properly classified as permanent improvements of such character as to substantially enhance the value of the lots. Aust v. Beard (S.C. 1957) 230 S.C. 515, 96 S.E.2d 558.

Where an oral contract was proven, under which plaintiffs agreed to live with defendant in her old age, and she in turn agreed to devise them her home, and plaintiffs lived with her until her death, their part performance removed the contract from the operation of the statute. McLauchlin v. Gressette (S.C. 1953) 224 S.C. 296, 79 S.E.2d 149.

A parol contract to devise real estate in exchange for services, when it is fully established by clear and convincing proof and has been performed by the party asking relief, will be enforced by a court of equity. McLauchlin v. Gressette (S.C. 1953) 224 S.C. 296, 79 S.E.2d 149.

Evidence held sufficient to establish an oral contract to make a will and performance sufficient to take the case out of the statute of frauds. Kirkpatrick v. Kirkpatrick (S.C. 1953) 223 S.C. 357, 75 S.E.2d 876. Specific Performance 121(5)

When an alleged contract rests in parol, such a contract is in the teeth of the statute of frauds, but specific performance (or its equivalent) is properly allowable only when enforcement of that statute would result in a fraud upon the promisee as only in prevention of fraud do courts allow a violation of the statute. Young v. Levy (S.C. 1945) 206 S.C. 1, 32 S.E.2d 889.

Although part performance by one of the parties to a contract within the statute of frauds will not, at law, entitle such party to recover upon the contract itself, he may nevertheless recover for money paid by him or property delivered, or service rendered in accordance with, and upon the faith of, the contract. Williams v. Texas Co. (S.C. 1943) 202 S.C. 333, 24 S.E.2d 873.

The doctrine of part performance usually involves a showing that the party claiming land under an oral agreement went into possession of the land and made improvements thereon, or went into possession and thereafter made payments to the former owner on account of the purchase price. McMillan v. King (S.C. 1940) 193 S.C. 14, 7 S.E.2d 521. Frauds, Statute Of 129(8); Frauds, Statute Of 129(9)

The doctrine of part performance is founded largely on the doctrine of estoppel, and is founded on the equitable purpose to prevent a contractor under an oral agreement from getting the pecuniary benefits of an agreement to convey, without carrying out the agreement, and preventing the imposition of a serious loss to the purchaser of the property who in reliance upon an oral agreement has paid or expended money in reliance on his purchase. McMillan v. King (S.C. 1940) 193 S.C. 14, 7 S.E.2d 521. Frauds, Statute Of 129(3)

An agreement to devise lands is not enforceable, unless in writing or unless taken out of the statute by a showing of part performance, but the agreement itself, and also the evidence of part performance, in such a case, must be established by clear and convincing testimony, and the agreement and the claim of part performance thereof should each be alleged at least with definiteness and clarity when the sufficiency of the complaint is tested by demurrer. McMillan v. King (S.C. 1940) 193 S.C. 14, 7 S.E.2d 521. Frauds, Statute Of 149; Frauds, Statute Of 158(4)

The court in the exercise of its equitable powers may enforce specific performance of an oral contract to make a will, provided it has been taken out of the statute of frauds under the doctrine of part performance. Baylor v. Bath (S.C. 1938) 189 S.C. 269, 1 S.E.2d 139.

The provision prohibiting any action to be brought on an oral contract within the statute includes actions based indirectly on the contract. An action for damages for its breach is in effect one for its enforcement and cannot be maintained; and this is, as a general rule, held true, though there has been such a part performance by the plaintiff as would authorize a court of equity to decree the specific performance by the other party, McCathern v O’Donnell & Co. (1936) 181 SC 76, 186 SE 659, and the purchaser has made improvements, it is sufficient. McCathern v. O’Donnell & Co. (S.C. 1936) 181 S.C. 76, 186 S.E. 659.

While equity will compel restoration of money paid or value of services rendered on faith of another’s performance of engagements under parol contract relating to real estate, which is not enforceable under this section, an action at law for damages for breach of such contract cannot be maintained because of part performance by plaintiff. White v. McKnight (S.C. 1928) 146 S.C. 59, 143 S.E. 552, 59 A.L.R. 1297.

Specific performance of parol contract relating to acquisition of interest in real estate, such as contract to devise land, may be enforced in equity, notwithstanding this section, where there has been part performance by party seeking relief. White v. McKnight (S.C. 1928) 146 S.C. 59, 143 S.E. 552, 59 A.L.R. 1297.

Where one of the parties to a parol agreement for the sale of land was allowed to take and retain possession for thirteen years after full payment of the purchase money, this was sufficient to constitute part performance. Watts v. Witt (S.C. 1893) 39 S.C. 356, 17 S.E. 822. Frauds, Statute Of 129(8)

There may be a binding parol partition of land, provided there is sufficient proof of part performance to take it out of the statute of frauds, and actual possession is deemed the most satisfactory evidence of part performance. Kennemore v. Kennemore (S.C. 1887) 26 S.C. 251, 1 S.E. 881. Frauds, Statute Of 68

In Humbert v Brisbane (1886) 25 SC 506, the court held that it is well settled that even a parol contract for the sale of land may be enforced when there has been such part performance as, under the cases, will take it out of the operation of the statute. Mere payment of a part or the whole of the purchase money, without more, is not sufficient; but when such payment is accompanied with possession, acquired under the contract, Humbert v. Brisbane (S.C. 1886) 25 S.C. 506.

9. —— Parol gifts, part performance

In order to remove a parol gift of land from the Statute of Frauds, the donee must either: (1) take possession of the land and perfect his title to it by adverse possession for the statutory period, or (2) prove sufficient partial performance, such as taking full possession of the property and making permanent and valuable improvements to it. Satcher v. Satcher (S.C.App. 2002) 351 S.C. 477, 570 S.E.2d 535, rehearing denied. Frauds, Statute Of 129(4); Frauds, Statute Of 129(9)

Mere possession of property with only slight improvements is insufficient to remove an oral gift from the Statute of Frauds. Satcher v. Satcher (S.C.App. 2002) 351 S.C. 477, 570 S.E.2d 535, rehearing denied. Frauds, Statute Of 129(9)

A donee may have a decree for specific performance of a parol gift of land, provided there is sufficient partial performance to take the case out of the statute of frauds, such as full possession thereunder and the making of permanent and valuable improvements to the property. Brevard v. Fortune (S.C. 1952) 221 S.C. 117, 69 S.E.2d 355. Gifts 25

Parol gift of land is on the same footing as a parol sale of land. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

In order to take a parol gift of land out of the statute of frauds, possession must be taken in pursuance of the gift. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

As a further condition to the consummation of his equitable right and title, the donee must make improvements of a valuable and permanent character, induced therto by the promise to give the land. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

Donee is not entitled to the aid of equity when the improvements are slight and not of permanent value. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

Where an alleged parol donee of land and her husband were in the possession of the property by reason of her husband becoming a sharecropper of the alleged donor, and with only inconsequential improvements, a parol gift was not established, and when the alleged donor made and executed his will wherein he directed a sale of the entire tract of land, the net proceeds from such sale to be divided among certain beneficiaries named, he thereby refuted any claim of a parol gift of part of the land. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

A parol gift of land can be established only by clear and convincing testimony. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

Unless possession of the land is delivered or taken in pursuance of the gift, therby taking such parol gift out of the statute of frauds, evidence of the parol gift is inadmissible. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72. Gifts 25; Gifts 49(4)

The necessity of proving the making of valuable and permanent improvements on the land in reliance upon a gift is in the nature of equitable estoppel. Knight v. Stroud (S.C. 1949) 214 S.C. 437, 53 S.E.2d 72.

10. Detrimental change of position

To overcome statutory requirements that an agreement be in writing, a party asserting equitable estoppel must show that he or she suffered a definite, substantial, detrimental change of position in reliance on such agreement and that no remedy except enforcement of the bargain is adequate to restore his or her former position. Player v. Chandler (S.C. 1989) 299 S.C. 101, 382 S.E.2d 891. Frauds, Statute Of 144

Lounge owners are not estopped from asserting statute of frauds as defense to action on oral, 5‑year contract whereby plaintiff was granted exclusive right to provide game machines for lounge, where plaintiff’s only showing is that it has lost benefit of bargain under agreement and it does not show it suffered any direct out of pocket losses or any losses from incidental reliance on contract or that lounge owners were unjustly enriched. Furthermore, consideration which plaintiff gave to do business with lounge does not constitute definite, substantial, detrimental change of position necessary to invoke estoppel, since account with lounge was plaintiff’s most profitable in State and plaintiff made money on arrangement for almost 2 years. Collins Music Co., Inc. v. Cook (S.C.App. 1984) 281 S.C. 580, 316 S.E.2d 418.

Equity will not allow the statute of frauds to be used as an instrument of fraud, and where a party to a contract within the statute induces the other to waive some provision therof upon which he is entitled to insist, and to change his position to his disadvantage with respect thereto, the party so acting will be estopped to claim the benefit of the statute. Florence Printing Co. v. Parnell (S.C. 1935) 178 S.C. 119, 182 S.E. 313.

11. Oral modification

Oral agreement extending time for payment of a negotiable instrument was within the statute of frauds and unenforceable absent a written memorandum signed by the maker. Federal Deposit Ins. Corp. v. Moore (D.C.S.C. 1978) 448 F.Supp. 493.

A mere failure or refusal to perform an oral contract, within the statute of frauds, is not such fraud as will take the case out of the operation of the statute, and this is ordinarily true even though the other party has changed his position to his injury. United Merchants & Mfrs. v. South Carolina Elec. & Gas Co., 1953, 113 F.Supp. 257, affirmed 208 F.2d 685. Frauds, Statute Of 1.3

Trial court’s erroneous consideration of extrinsic evidence in construing unambiguous commercial lease agreement was harmless, where trial court discussed the extrinsic evidence only in setting forth alternative grounds for coming to its otherwise proper conclusion regarding scope of damages for breach contemplated by lease agreement. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1050.1(5)

After concluding that term “damages” in default provision of commercial lease was clear and unambiguous, trial court improperly considered extrinsic evidence of the parties’ correspondence as further support for its interpretation of lease as requiring tenant to pay future rents as damages upon default. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Evidence 448

Lease was ambiguous as to whether parties intended for rental unit to contain washer/dryer and dishwasher, and therefore introduction of parol evidence to determine parties’ intent was warranted in landlord’s breach of contract action, where lease stated that unit did not contain washer/dryer or dishwasher, but stated that any overflow from washing machine or dishwashers was responsibility of tenant, and security deposit agreement, which was specifically made part of lease through lease’s terms, indicated that dishwasher had to be cleaned in order for tenant to receive return of security deposit. Frewil, LLC v. Price (S.C.App. 2015) 411 S.C. 525, 769 S.E.2d 250. Evidence 393(2)

A contract required to be in writing by the South Carolina Statute of Frauds cannot be orally modified. Player v. Chandler (S.C. 1989) 299 S.C. 101, 382 S.E.2d 891. Frauds, Statute Of 131(1)

Contract required, by Code Section 32‑3‑10, to be in writing cannot be orally modified. Windham v. Honeycutt (S.C. 1983) 279 S.C. 109, 302 S.E.2d 856. Frauds, Statute Of 131(1)

11.5. Estoppel

The doctrine of equitable estoppel may be invoked to prevent a party from asserting the statute of frauds. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 144

A party invoking the doctrine of equitable estoppel to prevent another party’s assertion of the statute of frauds must show 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. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 144

It is not sufficient for a party invoking the doctrine of equitable estoppel to prevent another party’s assertion of the statute of frauds to show merely that he has lost an expected benefit under the contract. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 144

Before the doctrine of equitable estoppel can be invoked by a party seeking to prevent another party’s assertion of the statute of frauds, there must be competent proof of the existence of the oral contract. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Frauds, Statute Of 144

11.75. Summary judgment

Genuine issue of material fact existed as to whether sports fans suffered a definite, substantial, and detrimental change by purchasing five years of premium seating at university basketball arena in reliance on university’s purported oral representations that, after five years, fans could retain premium seats by paying face value of season tickets, precluding summary judgment on issue of whether university was equitably estopped from asserting statute of frauds in fans’ breach of contract action against university. Springob v. University of South Carolina (S.C. 2014) 407 S.C. 490, 757 S.E.2d 384, rehearing denied. Judgment 181(19)

12. Review

Commercial tenant abandoned, and thus failed to preserve for appellate review, her argument that trial court erred in sustaining landlord’s objection to questioning on cross‑examination concerning language in two subsequent leases which landlord entered into with two different tenants, where commercial tenant, in her appellate brief, made only a conclusory argument, without citing legal authority to support her claim. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1079

Commercial tenant abandoned, and thus failed to preserve for appellate review, her argument that trial court erred in sustaining landlord’s objection to questioning on cross‑examination concerning landlord’s intent behind language in commercial lease, where tenant, in her appellate brief, merely recited the trial transcript and made a conclusory argument, without citing legal authority to support her claim. Bluffton Towne Center, LLC v. Gilleland‑Prince (S.C.App. 2015) 412 S.C. 554, 772 S.E.2d 882. Appeal and Error 1079

Statute of frauds issue was not preserved for review, where issue was not raised by appellant nor ruled on by trial court, though it was raised by a codefendant. Tupper v. Dorchester County (S.C. 1997) 326 S.C. 318, 487 S.E.2d 187. Appeal And Error 179(1)

13. Attorney fees

Vendor who successfully asserted the Statute of Frauds as a defense in purchasers’ action for specific performance of a contract for the sale of land was considered a prevailing party, and thus, vendor was entitled to attorney fee award in accordance with provision in land sale contract. Fici v. Koon (S.C. 2007) 372 S.C. 341, 642 S.E.2d 602, rehearing denied. Costs 194.36

As with any affirmative defense, the party successfully asserting the Statute of Frauds is a prevailing party and therefore entitled to attorney’s fees where provided by contract. Fici v. Koon (S.C. 2007) 372 S.C. 341, 642 S.E.2d 602, rehearing denied. Costs 194.32

**SECTION 32‑3‑20.** Action on representation as to character will lie only where representation is in writing and signed.

 No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any person to the intent or purpose that such other person may obtain credit, money or goods thereon unless such representation or assurance be made in writing, signed by the party to be charged therewith or by some person thereunto by him legally authorized.

HISTORY: 1962 Code Section 11‑102; 1952 Code Section 11‑102; 1942 Code Section 7049; 1932 Code Section 7049; Civ. C. ‘22 Section 5521; Civ. C. ‘12 Section 3742; Civ. C. ‘02 Section 2657; G. S. 2024; R. S. 2156.

CROSS REFERENCES

Requirement that letter of credit be in writing, see Section 36‑5‑104.

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Statute of Frauds. 22 S.C. L. Rev. 511.

Statute of Frauds. 25 S.C. L. Rev. 337.