

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

CASE NO. 201194886

Wheeler M. Tillman,Appellant,

v.

Samuel E. Tillman, Personal Representative for the Estate of
Moye M. Tillman, Deceased, and Samuel E. Tillman,
Individually,Respondents.

RETURN TO PETITION
FOR REHEARING

Respondent respectfully submits that the answers to the questions raised by Appellant (referred to in the Opinion and herein as "Wheeler") in Wheeler's Petition for Rehearing already lie in this Court's Opinion. Respondent (referred to in the Opinion and herein as "Brother") will endeavor to be brief in pointing out those portions of the opinion that in Brother's view answer the questions raised by Wheeler.

A. Wheeler contends that Opinion No. 2013-UP-199 overlooks and fails to address admissions of Brother which show no prejudice to Brother by reason of Mother's death.

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Wheeler relies upon the admission in Brother's answer to the allegation made by Wheeler in his Complaint that Brother knew that Mother was not going to pay Wheeler's claim and that Mother did not want Brother to pay Wheeler after Mother died. It is unclear to Brother how that admission shows no prejudice by reason of Mother's death. However, Brother will refer to this particular admitted allegation below.

The answer to the prejudice question in this case does not lie in the uncontroverted fact that Brother knew that Mother refused to pay Wheeler's claim while she was alive and made it clear that she did not want Brother to pay Wheeler's claim after Mother's death, but instead in the conclusion expressed in Opinion No. 2013-UP-199 that "the unreasonable delay resulted in prejudice to both Brother and Estate, as the alleged transaction upon which Wheeler bases his claim arose from communications and interactions between Wheeler and Mother. By waiting until 2010 to file his claim, Brother and Estate were prejudiced and disadvantaged in the defense of Wheeler's claims, as it was impossible for Brother and Estate to know of any defenses Mother may have had as to Wheeler's claims." This conclusion is remarkably well supported by *Ramantanin v. Poulos*, 240 S.C. 13, 124 S.E.2d 611 (1962), which, upon remarkably similar facts, reached the same conclusion regarding prejudice.

B. Wheeler contends that Opinion No. 2013-UP-199 "misapprehends the conclusion inferred from the fact that Wheeler was a practicing attorney in this area during the relevant time period."

This finding by the Trial Court, which Appellant does not dispute, was also relied upon by the Trial court and in Opinion No. 2013-UP-199 in concluding that Wheeler's delay was unreasonable. Wheeler similarly does not challenge the findings of the Trial Court, also relied upon in Opinion No. 2013-UP-199, that Wheeler had reason to believe that he had a claim as far back as the early to mid-1980s, and had made demands in 1991 and 2005, but did not file suit until 2010.

Wheeler's implication seems to be that he should be excused from application of the doctrine of laches because he had made a conscious decision to avoid controversy and therefore waited until after the death of Mother. For courts to excuse delay based on the subjective desire of the delaying party to avoid controversy, the doctrine of laches, and the policy of avoiding the litigation of stale claims, would be completely eviscerated.

C. Wheeler contends that admissions Wheeler attributes to Brother created a constructive trust. The answer to this contention lies in a portion of Opinion No. 2013-UP-199 that Wheeler does not provide any logical basis to reconsider:

"A determination of constructive trust being held by Brother cannot be reached without also concluding that Mother wrongfully withheld the value of Wheeler's ownership interest. The same holds true of Wheeler's claim of unjust enrichment." Thus, with regard to both constructive trust and unjust enrichment, Wheeler would have had to have shown that he was beneficially entitled to the interest held in the property by Mother while she was alive for Brother to have the interest Brother received be subject to Wheeler's claims. Wheeler made no such showing, and does not in his Petition for Rehearing provide any new basis for such a conclusion.

D. Wheeler contends that his delay was caused by Brother and not himself. This is a puzzling assertion in light the unchallenged pleading by Wheeler that Mother consistently refused to honor Wheeler's claim, and the findings of the Trial Court, relied upon in Opinion No. 2013-UP-199, that Wheeler knew he had a claim as far back as the early to the mid-1980s, made written demand in 1991 and again in 2005, and did not file suit until 2010. As noted above with regard to the theories of constructive trust and unjust enrichment, the promises attributed by Wheeler to Brother occurred in 2006 and 2009, over twenty years after the beginning of Wheeler's unreasonable delay.

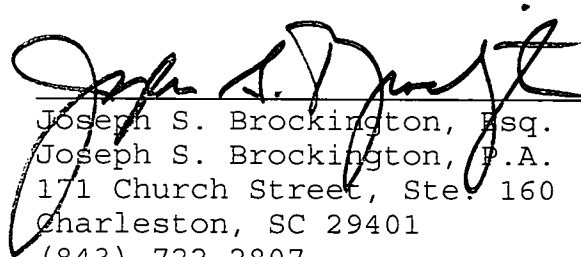
Respectfully submitted,

"A determination of constructive trust being held by Brother cannot be reached without also concluding that Mother wrongfully withheld the value of Wheeler's ownership interest. The same holds true of Wheeler's claim of unjust enrichment." Thus, with regard to both constructive trust and unjust enrichment, Wheeler would have had to have shown that he was beneficially entitled to the interest held in the property by Mother while she was alive for Brother to have the interest Brother received be subject to Wheeler's claims. Wheeler made no such showing, and does not in his Petition for Rehearing provide any new basis for such a conclusion.

D. Wheeler contends that his delay was caused by Brother and not himself. This is a puzzling assertion in light the unchallenged pleading by Wheeler that Mother consistently refused to honor Wheeler's claim, and the findings of the Trial Court, relied upon in Opinion No. 2013-UP-199, that Wheeler knew he had a claim as far back as the early to the mid-1980s, made written demand in 1991 and again in 2005, and did not file suit until 2010. As noted above with regard to the theories of constructive trust and unjust enrichment, the promises attributed by Wheeler to Brother occurred in 2006 and 2009, over twenty years after the beginning of Wheeler's unreasonable delay.

Respectfully submitted,

June 4, 2013



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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Deadra L. Jefferson, Circuit Court Judge

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TRACKING NO. 2011194886

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Wheeler M. Tillman,.....Appellant,

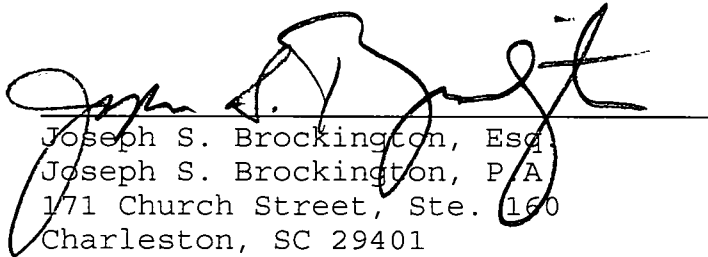
v.

Samuel E. Tillman, Personal Representative for the Estate of
Moye M. Tillman, Deceased, and Samuel E. Tillman,
Individually,.....Respondents.

PROOF OF SERVICE

I certify that I have served the RETURN TO PETITION FOR REHEARING on Appellant Wheeler M. Tillman, by depositing a copy of it in the United States Mail postage prepaid, on June 4, 2013, addressed to Wheeler M. Tillman, Esq., 8811 University Boulevard, North Charleston, South Carolina 29406.

June 4, 2013



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June 4, 2013

Hon. Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
1015 Sumter St.
Columbia, SC 29211

Re: Wheeler M. Tillman vs. Samuel E. Tillman, Personal
Representative of the Estate of Moye M. Tillman, Deceased,
and Samuel E. Tillman, Individually
Case Tracking No. 2011194886

Dear Ms. Kitchings:

Please find enclosed the following in the above-captioned
matter:

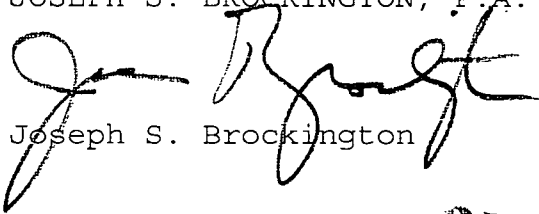
1. Original plus seven (7) copies of the Return to Petition
for Rehearing, together with the Proof of Service of same, and
2. Self-addressed, stamped envelope.

Please provide for the filing and handling of the original and
six copies. The return of one filed-stamped copy in the envelope
provided is appreciated.

With best regards, I remain

Yours very truly,

JOSEPH S. BROCKINGTON, P.A.


Joseph S. Brockington

JSB/sfc
Enclosure
cc: Wheeler M. Tillman, Esquire

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