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Jun 14 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari to the Court of Appeals
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Appellate Case No. 2021-001296

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins.....Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. ..... Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Petitioner.

APPENDIX

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RECORD ON APPEAL

Orders

Order Denying Motion to Dismiss (filed 04/08/16) 1

Consent Order dismissing Motion for Summary Judgment (filed 01/05/17) 2

Order Denying Plaintiff's Motion for Partial Summary Judgment (filed 05/10/17) 3

Order of Judge Scarborough (filed 07/02/18) 4

Pleadings

Summons and Complaint (filed 11/24/15) 7

Exhibit: Certificate of Title 14

Verification 15

Lis Pendens (filed 11/24/15) 16

Answer and Counterclaims (filed 12/29/15) 17

Amended Answer and Counterclaims (filed 02/03/16) 22

Defendant's Motion to Dismiss (filed 02/03/16) 29

Reply to Answer and Counterclaims (filed 02/16/16) 35

Reply to Amended Answer and Counterclaims (filed 03/18/16) 40

Response to Motion to Dismiss (filed 03/30/16) 46

Exhibit A: Order of Baldwin County Probate Ct. approving transfer (dated 01/15/16) 50

Defendant's Motion for Summary Judgment (w/ exhibits) (filed 08/03/16) 51

Exhibit A: Order of Baldwin County Probate Ct. approving transfer (dated 01/15/16) 60

Attachment: Deed from Perkins to Williams (dated 11/16/15) 61

Attachment: Letter from Dee Asthana to Jeffcoat (dated 10/7/15) 65

Affidavit of Bradford Jeffcoat (filed 08/03/16) 69

Amended Summons and Complaint (filed 01/11/17) 73

Plaintiffs' Motion for Partial Summary Judgment (filed 01/17/17) 81

Exhibit A: Deed from Blue Heron Co. to Jeffcoat (dated 04/28/00) 93

Exhibit B: Deed from Jeffcoat to Jeffcoat & Perkins as JTWRS (dated 07/01/00) 98

Exhibit C: Mortgage of Perkins (dated 07/01/00) 102

Exhibit D: Satisfaction of Perkins' mortgage (Dated 06/20/16) 114

Exhibit E: Letters of Guardianship/Conservatorship, decree, order (dated 09/15/15) 116

Exhibit F: Deed from Perkins to Williams (dated 11/16/15) 120

Exhibit G: Order of Baldwin County Probate Ct. approving transfer (dated 01/15/16) 125

Exhibit H: Affidavit of Leslie T. Fields (dated 11/08/16) 126

Defendant's Memorandum in Opposition to Plaintiffs' Motion for Partial Sum. Judg. and Cross Motion for Partial Sum. Judg. (filed 03/27/17) 130

Attachment: Trans. of Vanessa Williams' 09/28/16 deposition (excerpt) 141

Attachment: Deed from Perkins to Williams (dated 11/16/15) 148

Attachment: Deed from Jeffcoat to Jeffcoat & Perkins as JTWRS (dated 07/01/00) 151

Affidavit of Bradford Jeffcoat (filed 03/27/17) 155

Second Amended Answer and Counterclaims (filed 02/28/18) 160

Reply to Second Amended Answer and Counterclaims (filed 03/19/18) 167

Plaintiffs' Motion for Partial Summary Judgment (filed 04/02/18) 173

Exhibit A: Deed from Blue Heron Co. to Jeffcoat (dated 04/28/00) 186

Exhibit B: Deed from Jeffcoat to Jeffcoat & Perkins as JTWRS (dated 07/01/00) 191

Exhibit C: Mortgage of Perkins (dated 07/01/00) 195

Exhibit D: Satisfaction of Perkins' mortgage (Dated 06/20/16) 207

Exhibit E: Letters of G'ship/C'ship, decree, order (dated 09/15/15) 209

Exhibit F: Deed from Perkins to Williams (dated 11/16/15) 213

Exhibit G: Order of Baldwin County Probate Ct. approving transfer (dated 01/15/16) 218

Exhibit H: Affidavit of Leslie T. Fields (dated 11/08/16) 219

Defendant's Motion for Summary Judgment (filed 04/17/18) 223

Plaintiffs' Response to Defendant's Motion for Summary Judg. (filed 04/26/18) 237

Plaintiffs' Supp. Brief in Support of Motion for Summary Judg. (filed 05/25/18) ... 247

Notice of Appeal 251

Transcripts

Transcript of April 1, 2016 Motion to Dismiss Hearing 253

Transcript of March 29, 2017 Motion for Partial Summary Judgment Hearing 259

Transcript of April 30, 2018 Motion(s) for Summary Judgment Hearing 273

SUPPLEMENT TO RECORD ON APPEAL
(Rule 212(b), SCACR)

Orders

Temporary Letters of Guardianship (dated 07/01/15) 309

Pleadings

Emergency Petition for Guardianship/Conservatorship (filed 07/17/15) 305

Petition for General Guardianship/Conservatorship (filed 11/24/15) 310

Motion to Approve Transfer of Real Property (dated 01/11/16) 313

Response to the Motion to Approve Transfer of Real Property (dated 01/19/16) 318

Other Documents

Health Care Power of Attorney of Sandra P. Perkins 319

Durable Springing Power of Attorney of Sandra P. Perkins 327

COURT OF APPEALS

Brief of Appellant (filed 04/08/19) 341

Brief of Respondent (filed 04/05/19) 374

Reply Brief of Appellant (filed 04/08/19) 397

Opinion No. 5834 of Court of Appeals (filed 07/14/21) 412

Petition for Rehearing and Rehearing *En Banc* (filed 07/20/21) 424

Return to Petition for Rehearing and Rehearing *En Banc* (filed 08/18/21) 432

Reply to Return to Pet. for Reh'ing and Reh'ing *En Banc* (filed 08/20/21) 438

Cover letter from Court of Appeals (dated 10/07/21) 441

Order on Petition for Rehearing (filed 10/07/21) 442

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-6379

FILED
2016 APR -8 PM 3:09
JULIE J. ARMSTRONG
CLERK OF COURT

Vanessa Williams	Bradford Q. Jeffcoat, Jr.
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on Defendant's Motion to Dismiss filed on February 3, 2016 and was argued before the Court on April 1, 2016. This Court determines that based upon oral arguments and looking at the four corners of the pleadings, the factual allegations give rise to a plausible claim, and the motion to dismiss is **DENIED**.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

R Markley Dennis — **Circuit Court Judge**

2060 — **Judge Code**

4/6/16 — **Date**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2015-CP-10-6379
Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins,	)	**CONSENT ORDER TO DISMISS MOTION FOR SUMMARY JUDGMENT**
v.	)	
Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.	)	

FILED
2017 JAN -5 PM 3:55
JULIE J. ARMSTRONG
CLERK OF COURT

WHEREAS it appears this matter was scheduled for a Motion Hearing on January 5, 2017 at the hour of 2:30 p.m. on Defendant Jeffcoat's Motion for Summary Judgment filed on August 3, 2016.

WHEREAS Defendant Jeffcoat wishes to withdraw his Motion for Summary Judgment at this time.

NOW THEREFORE, on Motion of Heather S. Shaw, Attorney for Defendant Bradford Q. Jeffcoat, Jr., and with consent of the Plaintiffs as evidenced by signatures below, it is hereby

OREDERED, ADJUDGED AND DECREED that Defendant Jeffcoat's Motion for Summary Judgment is hereby dismissed without prejudice.

AND IT IS SO ORDERED!

PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

5 Jan, 2017 ~~2016~~
Charleston, South Carolina

I SO MOVE:

Heather S. Shaw, Attorney for
Defendant Bradford Q. Jeffcoat, Jr.

WE SO CONSENT:

~~Nicholas R. Sanders~~ Chris Stebes, Esq

Andrew Wenzel
Attorneys for Plaintiff

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-6379

FILED
2017 MAY 10 PM 12:37
JULIE J. ARMSTRONG
CLERK OF COURT

Vanessa Williams
PLAINTIFF(S)

Bradford Q. Jeffcoat, Jr.
DEFENDANT(S)

Submitted by:	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: This matter came before the Court on 3/29/17. Plaintiff's Motion for Partial Summary Judgment filed on 1/17/17 is **denied**, viewing the evidence in the light most favorable to the non-moving party and finding a scintilla of evidence exists giving rise to a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

T. L. Hughston, Jr.
Circuit Court Judge

2008
Judge Code

5/9/17
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins

Plaintiff,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

FILED
2018 JUN -2 AM 10: 22
JULIE ARM
CLERK OF COURT

This cause coming to be heard, in the Court of Common Pleas for the Ninth Judicial Circuit in the County of Charleston in the State of South Carolina on the Motion for summary judgment filed by the Plaintiff, Vanessa Williams, and cross motion for summary judgment filed by the Defendant Bradford Q. Jeffcoat, Jr. praying that an order be issued granting partition of real property between Plaintiff and Defendant by allotment or order of sale in accordance with S.C. Code Ann. Section 15-61-10 *et seq.*

A hearing on the motions was conducted on April 30, 2018 with counsel for the Plaintiff, John A. Wenzel Esq., Deepti Asthana, Esq. and Andrew Sullivan, Esq. and counsel for the Defendant, Heather Shaw, Esq. making oral submissions for their respective clients. The Court based upon the pleadings, motions, and oral submissions of the parties, and the same having been duly considered, ORDERS, ADJUDGES and DECREES as follows:

1. The common law in South Carolina recognizes both joint tenancies created by statute and those created by common law. Accordingly, South Carolina recognizes that a joint tenant holds its property interest *per my et per tout* or by the half for purposes of survivorship and by the whole for purposes of alienation. Thus, a joint tenant may unilaterally sever or alienate her ownership interest during her lifetime with or without the consent of the other joint tenant. See Smith v. Cutler, 366 SC 546, 623 SE 2d 644 (2005).

2. Having been presented with no authority to the contrary, and with both parties conceding that Alabama Law applies with respect to actions of the Conservator, Vanessa Williams, in conveying her ward's interest in the property in question; and with an Alabama Court of appropriate jurisdiction having ratified the same, the conveyance of real property from Sandra Perkins to Vanessa Williams was lawful. See Alabama Code of Laws § 26-2A-152 C (1) and its equivalent SC Code of Laws § 62-5-424 B (1) (Ann. 2012).

3. Accordingly, the parties are hereby compelled to partition by sale the following described parcel of land:

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office of Charleston County in Plat Book EC at page 618.

4. The Defendant, Bradford Jeffcoat, shall have right of first refusal executable by giving notice to the Court within sixty (60) days of this order.

5. Unless an agreement is reached between the parties as to the price or value of interests to be sold, within sixty (60) days of this order, the parties shall follow the statutory

procedure set forth in SC Code of Laws § 15-62-25 (Ann. 2015), to include obtaining a real estate appraisal regarding the aforementioned parcel from a competent real estate appraiser whose report shall be made available to the court. Ultimately, the court shall set the price or value of interest to be sold unless an objection is filed as described therein.

6. The Defendant shall have ten (10) days from the filing of the appraisal report to file a written objection to the report and request an evidentiary hearing to set the price or value of interest to be sold.

7. After the price or value of interest has been set, the Defendant shall have forty-five (45) days to pay into court the price set as the value of those interests to be purchased and the court shall cause to be executed and delivered the proper instruments for transferring title.

8. In the event that the Defendant fails to pay the purchase price as provided herein, the property shall be listed for sale by a licensed real estate agent selected by the court at the aforementioned price set by the court; and the court shall approve any offer submitted and determine how proceeds will be divided among the Plaintiff and Defendant.

9. Unless otherwise ordered herein, costs are taxed as borne.

10. Any relief not specifically addressed herein, is denied.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
6/28, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,

Plaintiff,

vs.

Bradford Q. Jeffcoat, Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-6379

SUMMONS
(Partition)
(Conversion)
(Non-Jury)

FILED
2015 NOV 24 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and **REQUIRED** to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on the subscriber at his office at 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492, within thirty (30) days after the service thereof, except as to the United States of America who shall have sixty (60) days, exclusive of the day of such service. If you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in said Complaint.

CLAWSON and STAUBES, LLC

Christopher B. Staubes
Bar No.: 10470
Nicholas R. Sanders
Bar No.: 100742
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: cstaubes@clawsonandstaubes.com
Attorneys for Plaintiff

November 23, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,

Plaintiffs,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-6379

FILED
2015 NOV 24 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMPLAINT
(Partition)
(Conversion)
(Non-Jury)

The Plaintiffs herein, complaining of the Defendants, above-named, allege and respectfully show unto this Honorable Court:

PARTIES AND JURISDICTION

1. That Vanessa Williams is an individual resident of Baldwin County, Alabama and owns real property located in Charleston County, South Carolina, made the subject matter of this lawsuit.

2. That Sandra P. Perkins is an individual resident of Baldwin County, Alabama, and owns personal property located in Charleston County, South Carolina.

3. That Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins (together with Vanessa Williams, the "Plaintiffs") is an individual resident of Baldwin County, Alabama, the only child of Ms. Perkins, and has been appointed Ms. Perkins' Guardian and Conservator by the Probate Court of Baldwin County, Alabama.

4. That the Defendant, Bradford Q. Jeffcoat, Jr., is, upon information and belief, an individual resident of Charleston County, South Carolina, and is neither an infant nor incompetent person and not in the military service.

5. That the Defendant, Blue Heron Builders, LLC, is, upon information and

belief, a dissolved company that was authorized to do business in the State of South Carolina.

6. That the subject of this action is real property located at 1955 Old Fort Avenue in Charleston, South Carolina in Charleston County, South Carolina (the "Real Property"), and is more particularly described as follows:

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.
>
> TMS No.: 355-09-00-108

7. The personal property made the subject matter of this lawsuit is located in Charleston County, South Carolina.

8. Jurisdiction and venue are proper and correct in this Court.

FOR A FIRST CAUSE OF ACTION
(Partition by Allotment or Sale)

9. The Plaintiffs reallege the allegations of the preceding paragraphs as if fully restated herein.

10. The subject Real Property is currently owned by Defendant Bradford Q. Jeffcoat, Jr. and Vanessa Williams as tenants in common.

11. That Plaintiff Vanessa Williams intends to divest herself of her interest in and to the Real Property.

12. That Plaintiff has offered to sell her interest in the Real Property to Defendant Bradford Q. Jeffcoat, Jr., for fair market value, which offer Defendant declined.

13. That pursuant to S.C. Code Ann. §15-61-10 *et seq.*, partition is compellable

between tenants in common and that this Honorable Court has jurisdiction to make partition by allotment to one or more of the parties or, in case partition by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the subject Real Property and the division of the proceeds according to the rights of the parties.

14. That pursuant to S.C. Code Ann. §15-61-110, Plaintiff seeks her attorney's fees to be taxed as part of the costs of this action.

15. That the Defendants below named claim or may claim to have some interest in or lien upon the subject Real Property, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to Plaintiff's interest or does not attach to the property which is the subject of this action or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

(a) The Defendant, Blue Heron Builders, LLC by virtue of a Mortgage from Bradford Q. Jeffcoat, Jr., to Blue Heron Builders, LLC, in the amount of $74,500.00 Dollars, dated April 28, 2000 and recorded April 29, 2000 in the RMC/ROD Office for Charleston County in Book O346 at Page No. 432.

The Plaintiff is informed and believes that the above Mortgage is expired and was otherwise extinguished as a lien against the subject Real Property as a matter of law with last payment having been due April 28, 2001 and that the subject property has been paid for and is released from the above mortgage, but not released of record and that it does not constitute a lien against the subject property; and

(b) The Defendant, Bradford Q. Jeffcoat, Jr., by virtue of a Mortgage from Sandra P. Perkins, in the amount of $43,550.00 Dollars, dated July 1, 2000 and recorded February 16, 2001 in the RMC/ROD Office for Charleston County in Book E364 at Page No. 21.

The Plaintiff is informed and believes that the above Mortgage has been paid in full, that the subject property has been paid for and is released from the above Mortgage, but not released of record and that the Mortgage does not constitute a lien against the subject Real Property.

16. That, in conjunction with the payment and satisfaction of the Mortgage to

Defendant Jeffcoat, in full, Plaintiff, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins may have made payment in excess to the full amount due and owing on said Mortgage and is entitled to reimbursement from Defendant or appropriate proceeds from the sale of the subject property for any overpayment.

FOR A SECOND CAUSE OF ACTION
(Conversion)

17. The Plaintiffs reallege the allegations of the preceding paragraphs as if fully restated herein.

18. That Sandra P. Perkins is the rightful owner of a 2008 Honda Civic LX (the "vehicle") as shown on the Certificate of Title attached hereto as Exhibit "A" and made a part hereof incorporated herein by reference, and certain other items of personal property, including without limitation, furniture and apparel (collectively, "Personal Property") located at 1955 Old Fort Ave., Charleston, SC.

19. That, at all times relevant to this Complaint, Sandra P. Perkins maintained legal title to the Personal Property.

20. That, upon information and belief, Defendant Bradford Q. Jeffcoat, Jr., has unauthorizedly assumed, converted, and exercised ownership over Sandra P. Perkins' personal property and retained said property without her, or Plaintiff's, consent or authorization.

21. That, upon information and belief, Defendant Bradford Q. Jeffcoat, Jr., has accomplished the conversion of the Personal Property by taking advantage of Sandra P. Perkins' compromised mental state and has done so in willful and conscious disregard to Sandra P. Perkins' legal rights as owner of said Personal Property and rightful recipient of any proceeds thereof.

22. As a direct and proximate result of Defendant Bradford Q. Jeffcoat, Jr.'s

conversion of said Personal Property, Plaintiff, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins has incurred monetary damages in an amount to be determined by this Court and said Plaintiff is entitled to punitive damages.

WHEREFORE, having fully set forth its Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters herein above alleged and grant relief unto the Plaintiffs in the following particulars, to-wit:

a. That the Court find that mortgage recorded April 28, 2000 in the RMC/ROD Office for Charleston County in Book O-346 at Page 432, is expired and was otherwise extinguished as a lien against the subject Real Property as a matter of law with last payment having been due April 28, 2001 and that the subject property has been paid for and is released from the above mortgage, and that it does not constitute a lien against the subject Real Property;

b. That the Court find that the subject Real Property has been paid for and is released, but not released of record, from the mortgage recorded February 16, 2001, in the RMC/ROD Office for Charleston County in Book E364 at Page 021, and that the mortgage does not constitute a lien against the subject Real Property;

c. That the subject Real Property be partitioned between the Plaintiff Vanessa Williams and Defendant Bradford Q. Jeffcoat, Jr., either by allotment or order sale of the Real Property and a division of the proceeds according to the rights of the parties hereto including apportionment to Plaintiff, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins of any overpayment made on the subject mortgage to Defendant Jeffcoat;

d. That Defendant Bradford Q. Jeffcoat, Jr., be ordered to relinquish possession of the above referenced Personal Property to Plaintiff, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins or in the alternative, that a money judgment be entered

against said Defendant for the value of such property plus interest accruing since the time the Personal Property was converted;

e. For punitive damages arising out of Defendant's conversion of Personal Property;

f. That this Court grant unto Plaintiffs such compensation for attorney fees, court costs, and litigation expenses incurred by the Plaintiffs; and

g. That this Court grant unto Plaintiffs such other and further relief that the Court deems just and equitable.

CLAWSON AND STAUBES, LLC

Christopher B. Staubes
Bar No.: 10470
Nicholas R. Sanders
Bar No.: 100742
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Email: cstaubes@clawsonandstaubes.com
Attorneys for Plaintiffs

Charleston, South Carolina
November 23, 2015

PLAINTIFF'S EXHIBIT A

PENGAD 800-631-6989

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER	YEAR	MAKE	MODEL	NEW/USED
2HGFA16509H364302	2009	HOND	CIVIC	NEW

BODY STYLE	DATE ISSUED	ODOMETER	WEIGHT	TITLE NUMBER
4S	09-07-2009	26	2690	7720602096946 21A

VEHICLE BRAND(S)
ACTUAL MILEAGE

FULL NAME OF OWNER(S) CUSTOMER NUMBER 02502461
PERKINS, SANDRA PAULINE
1955 OLD FORT AVE
CHARLESTON SC 294146210

FIRST LIENHOLDER
AMERICAN HONDA FINANCE
PO BOX 997524
SACRAMENTO CA 958997524
DATE OF LIEN 08/03/2009

AMERICAN HONDA FINANCE CORP
1ST LIEN RELEASED 10/1/09 (DATE)
BY (AUTHORIZED AGENT)

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

ACCEPTANCE OF ANY ALTERATION OR ERASURE VOIDS THIS TITLE

040602324

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,

Plaintiffs,

vs.

Bradford Q. Jeffcoat, Jr., and Blue Heron Constructions, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-

VERIFICATION

FILED
2015 NOV 24 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I Vanessa Williams, being duly sworn, depose and say: That my name is Vanessa Williams, Plaintiff herein and that I have been appointed Conservator and Guardian of Sandra P. Perkins, my mother; that I have read the foregoing Complaint and know the contents thereof, and that the same is true of my own knowledge, except as to the matters, therein stated upon information and belief, and as to those I believe them to be true.

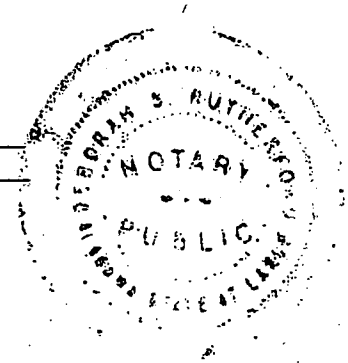
Vanessa Williams

Vanessa Williams, Individually and as Conservator and Guardian of Sandra P. Perkins

Sworn to before me this
17th day of November, 2015.

Deborah S. Rutherford

Notary Public for the State of Alabama
My Commission Expires: 8-19-2017



11/24/15 9:25 AM

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,

Plaintiff,

vs.

Bradford Q. Jeffcoat, Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-6379

LIS PENDENS
(Partition)
(Non-Jury)

FILED
2015 NOV 24 AM 8:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOTICE is hereby given that an action has been commenced and is now pending in this Court upon the Complaint of the above-named Plaintiff against the above-named Defendants for the partition of real estate deeded to Bradford Q. Jeffcoat, Jr., and Sandra P. Perkins by deed dated July 1 2000, and recorded February 16, 2001, in the RMC/ROD Office Charleston County, South Carolina in Book D-364 at Page 107 and thereafter from Sandra P. Perkins to Vanessa L. Williams by deed dated November 16, 2015 and to be recorded in the RMC/ORD Office for Charleston County. The premises covered and affected by the said deed and by the foreclosure thereof, was, at the time of the making thereof, and at the time of the filing of this Notice, described as follows:

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.
>
> TMS No.: 355-09-00-108

CLAWSON and STAUBES, LLC

Christopher B. Staubes
Bar No.: 10470
Nicholas R. Sanders
Bar No.: 100742
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: cstaubes@clawsonandstaubes.com
Attorneys for Plaintiffs

November 23, 2015

FILED
2015 DEC 29 PM 4:32
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	FOR THE NINTH JUDICIAL CIRCUIT
VANESSA WILLIAMS AND VANESSA WILLIAMS as Conservator and Guardian Of Sandra P. Perkins,	CASE NO.: 2015-CP-10-6379
Plaintiff,	**ANSWER AND COUNTERCLAIMS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**
v.	**JURY DEMAND ENDORSED HEREON**
BRADFORD Q. JEFFCOAT, JR. AND BLUE HERON BUILDERS, INC.	
Defendants.	

Defendant Bradford Q. Jeffcoat, Jr., by and through his undersigned attorney, hereby responds to the Complaint of the Plaintiffs as follows:

ANSWER

1. All allegations of the Complaint not specifically admitted or denied are denied.

2. As to paragraph 1 of the Complaint, Defendant denies that Plaintiff Williams has any ownership interest in the real property located in Charleston County that is the subject of this action. Defendant admits that this Plaintiff is a resident of the State of Alabama.

3. As to paragraph 2 of the Complaint, upon information and belief, Defendant would allege that Plaintiff Sandra P. Perkins is deceased. Defendant would further allege that this Plaintiff was a resident of Charleston County, South Carolina in the years preceding her demise, although she had been involuntarily transported to the State of Alabama shortly before her death.

4. Defendant denies the allegations of paragraph 3 of the Complaint, and affirmatively states that the Probate Court of Baldwin County, Alabama, had no jurisdiction over the person or estate of Sandra P. Perkins at the time Plaintiff Vanessa Williams was purportedly appointed by said Court to be the Guardian and Conservator of Sandra P. Perkins.

5. Defendant admits the allegations of paragraph 4 of the Complaint.

6. Defendant denies for want of information the allegations of paragraph 5 of the Complaint.

7. Defendant admits the allegations of paragraphs 6, 7, and 8 of the Complaint.

8. Paragraph 9 of the Complaint requires no response.

9. Defendant admits the allegations of paragraph 10 of the Complaint.

10. Defendant denies the allegations of paragraphs 11 and 12 of the Complaint.

11. Defendant admits so much of paragraphs 13 and 14 of the Complaint as allege that this Court has jurisdiction over the instant action. The remaining allegations are incapable of response and state legal conclusions.

12. Defendant denies the allegations of paragraphs 15 and 16 of the Complaint.

13. Paragraph 17 of the Complaint requires no response.

14. Defendant admits the allegations of paragraphs 18 and 19 of the Complaint.

15. Defendant denies the allegations of paragraphs 20, 21, and 22 of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

16. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

17. Defendant alleges that this action should be dismissed against him pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for failure to state facts sufficient to constitute a cause of action.

FOR A SECOND AFFIRMATIVE DEFENSE
(Unclean Hands)

18. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

19. Plaintiff Vanessa Williams is barred from any equitable relief because of Plaintiff's own inequitable actions, which are more fully set forth below.

FOR A THIRD AFFIRMATIVE DEFENSE
(Lack of Standing)

20. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

21. Plaintiff Vanessa Williams lacks standing to institute the instant action.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Additional Defenses)

22. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

23. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Reply to assert any such defense.

FOR A FIFTH AFFIRMATIVE DEFENSE
AND COUNTERCLAIM AGAINST
PLAINTIFF VANESSA WILLIAMS
(Fraud)

24. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

25. Defendant and Sandra P. Perkins have resided together in a domestic partnership for approximately fifteen (15) years.

26. On or about July 1, 2000, Defendant Bradford Q. Jeffcoat, Jr. conveyed an interest in the certain real property at issue herein to Sandra P. Perkins, by general warranty deed, specifying in

the deed that the conveyance was to Defendant and Perkins as joint tenants with right of survivorship and not as tenants in common.

27. It was and remained the intention of these parties, at all relevant times, that the real property at issue remain solely and exclusively the property of the other in the event of the death of either.

28. In mid June, 2015, Defendant asked Plaintiff Williams if she would come to South Carolina for a brief visit in order to assist in the care of Perkins, her mother.

29. Perkins had a medical appointment scheduled for June 16, 2015.

30. In lieu of taking her to her medical appointment, as discussed by the parties, Williams removed Perkins from this jurisdiction, taking her from her own home to Williams' home in Alabama.

31. Immediately upon her return to Alabama, Williams petitioned the court of Baldwin County, Alabama, to appoint her as conservator and guardian of her mother.

32. On November 16, 2015, as Conservator of the Estate of Sandra P. Perkins, Vanessa Williams executed a General Warranty Deed purporting to convey Perkins' interest in the real property owned by Perkins and Defendant, as joint tenants with rights of survivorship, to herself, individually, for the sum of Ten ($10.00) Dollars.

33. This transfer was conducted in violation of Code of Ala. § 26-2A-150, which makes voidable any sale or encumbrance from a conservator to, *inter alia*, any person related to the conservator.

34. This transfer was further conducted in violation of Code of Ala. § 26-2A-152(d)(3), which requires prior court authorization before a conservator may dispose of real property belonging to the incompetent.

35. Any supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins is fraudulent, voidable, and contrary to Alabama and South Carolina law.

36. The supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins constitutes a fraud upon the Court.

37. Defendant has been damaged by the fraudulent and unlawful actions of Plaintiff Williams, in an amount to be determined at trial.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Bradford Q. Jeffcoat prays that the Court inquire into the matters set forth above, and that the Court grant him relief as follows:

A. To dismiss the Complaint of the Plaintiffs;

B. To find that the alleged transfer of interest in the real property at issue in this action from Plaintiff Sandra P. Perkins to Plaintiff Vanessa Williams is fraudulent and without effect;

C. To order that a Deed to the real property at issue in this action be issued in the sole and exclusive name of Bradford Q. Jeffcoat, Jr.;

D. To award Defendant Jeffcoat damages in an amount to be determined at the trial of this action; and

E. To grant such other relief as may be just and proper.

Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
215 East Bay St., Ste. 203
Charleston, SC 29401
Phone: (843) 377-1686
Fax: (843)793-3143

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **AMENDED ANSWER AND COUNTECLAIMS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.** **JURY DEMAND ENDORSED HEREON**

FILED
2016 FEB -3 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Bradford Q. Jeffcoat, Jr., by and through his undersigned attorney, hereby responds to the Complaint of the Plaintiffs as follows:

ANSWER

1. All allegations of the Complaint not specifically admitted or denied are denied.

2. As to paragraph 1 of the Complaint, Defendant denies that Plaintiff Williams has any ownership interest in the real property located in Charleston County that is the subject of this action. Defendant admits that this Plaintiff is a resident of the State of Alabama.

3. As to paragraph 2 of the Complaint, upon information and belief, Defendant would allege that Plaintiff Sandra P. Perkins is deceased. Defendant would further allege that this Plaintiff was a resident of Charleston County, South Carolina in the years preceding her demise, although she had been involuntarily transported to the State of Alabama shortly before her death.

4. Defendant denies the allegations of paragraph 3 of the Complaint, and affirmatively states that the Probate Court of Baldwin County, Alabama, had no jurisdiction over the person or estate or Sandra P. Perkins at the time Plaintiff Vanessa Williams was purportedly appointed by said Court to be the Guardian and Conservator of Sandra P. Perkins.

5. Defendant admits the allegations of paragraph 4 of the Complaint.

6. Defendant denies for want of information the allegations of paragraph 5 of the Complaint.

7. Defendant admits the allegations of paragraphs 6, 7, and 8 of the Complaint.

8. Paragraph 9 of the Complaint requires no response.

9. Defendant admits the allegations of paragraph 10 of the Complaint.

10. Defendant denies the allegations of paragraphs 11 and 12 of the Complaint.

11. Defendant admits so much of paragraphs 13 and 14 of the Complaint as allege that this Court has jurisdiction over the instant action. The remaining allegations are incapable of response and state legal conclusions.

12. Defendant denies the allegations of paragraphs 15 and 16 of the Complaint.

13. Paragraph 17 of the Complaint requires no response.

14. Defendant admits the allegations of paragraphs 18 and 19 of the Complaint.

15. Defendant denies the allegations of paragraphs 20, 21, and 22 of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

16. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

17. Defendant alleges that this action should be dismissed against him pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for failure to state facts sufficient to constitute a cause of action.

FOR A SECOND AFFIRMATIVE DEFENSE
(Unclean Hands)

18. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

19. Plaintiff Vanessa Williams is barred from any equitable relief because of Plaintiff's own inequitable actions, which are more fully set forth below.

FOR A THIRD AFFIRMATIVE DEFENSE
(Lack of Standing)

20. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

21. Plaintiff Vanessa Williams lacks standing to institute the instant action.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Additional Defenses)

22. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

23. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Reply to assert any such defense.

FOR A FIFTH AFFIRMATIVE DEFENSE
AND FIRST COUNTERCLAIM AGAINST
PLAINTIFF VANESSA WILLIAMS
(Fraud)

24. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

25. Defendant and Sandra P. Perkins have resided together in a domestic partnership for approximately fifteen (15) years.

26. On or about July 1, 2000, Defendant Bradford Q. Jeffcoat, Jr. conveyed an interest in the certain real property at issue herein to Sandra P. Perkins, by general warranty deed, specifying in the deed that the conveyance was to Defendant and Perkins as joint tenants with right of survivorship and not as tenants in common.

27. It was and remained the intention of these parties, at all relevant times, that the real property at issue remain solely and exclusively the property of the other in the event of the death of either.

28. In mid June, 2015, Defendant asked Plaintiff Williams if she would come to South Carolina for a brief visit in order to assist in the care of Perkins, her mother.

29. Perkins had a medical appointment scheduled for June 16, 2015.

30. In lieu of taking her to her medical appointment, as discussed by the parties, Williams removed Perkins from this jurisdiction, taking her from her own home to Williams' home in Alabama.

31. Immediately upon her return to Alabama, Williams petitioned the court of Baldwin County, Alabama, to appoint her as conservator and guardian of her mother.

32. On November 16, 2015, as Conservator of the Estate of Sandra P. Perkins, Vanessa Williams executed a General Warranty Deed purporting to convey Perkins' interest in the real property owned by Perkins and Defendant, as joint tenants with rights of survivorship, to herself, individually, for the sum of Ten ($10.00) Dollars.

33. This transfer was conducted in violation of Code of Ala. § 26-2A-150, which makes voidable any sale or encumbrance from a conservator to, *inter alia*, any person related to the conservator.

34. This transfer was further conducted in violation of Code of Ala. § 26-2A-152(d)(3), which requires prior court authorization before a conservator may dispose of real property belonging to the incompetent.

35. Any supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins is fraudulent, voidable, and contrary to Alabama and South Carolina law.

36. The supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins constitutes a fraud upon the Court.

37. Defendant has been damaged by the fraudulent and unlawful actions of Plaintiff Williams, in an amount to be determined at trial.

FOR A SIXTH AFFIRMATIVE DEFENSE AND SECOND COUNTERCLAIM AGAINST PLAINTIFF VANESSA WILLIAMS (Breach of Fiduciary Duty)

38. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

39. Plaintiff Vanessa Williams, having removed Sandra Perkins from this jurisdiction without the consent of said Sandra Perkins, had herself appointed as Conservator and Guardian of the estate and person of Sandra Perkins.

40. On November 16, 2015, as Conservator of the Estate of Sandra P. Perkins, Vanessa Williams executed a General Warranty Deed purporting to convey Perkins' interest in the real property owned by Perkins and Defendant, as joint tenants with rights of survivorship, to herself, individually, for the sum of Ten ($10.00) Dollars.

41. This purported sale by Vanessa Williams to Vanessa Williams, having occurred while Vanessa Williams was the Conservator of the Estate of Sandra Perkins and for no consideration of any value, constitutes a breach of the fiduciary duty of the Conservator.

42. Defendant has been damaged by the breach of fiduciary duty.

43. Defendant has been damaged by the fraudulent and unlawful actions of Plaintiff Williams, in an amount to be determined at trial.

FOR A SEVENTH AFFIRMATIVE DEFENSE AND THIRD COUNTERCLAIM AGAINST PLAINTIFF VANESSA WILLIAMS (Slander of Title)

44. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

45. Plaintiff has no legitimate interest in the real property owned by Defendant.

46. Plaintiff has wrongfully and with malice published the false statement that she owns one-half of the real property owned by Defendant.

47. The publication of this statement is derogatory to Defendant's title.

48. The false assertion of an unfounded claim against Defendant's property constitutes slander of title.

49. Plaintiff has acted in a reckless, willful, wanton and malicious manner in wrongfully asserting and recording an interest in Defendant's real property.

50. Defendant has suffered special damages as a direct and proximate result of Plaintiff's slander of his title.

51. Defendant has incurred attorney's fees as a direct and proximate result of Plaintiff's slander of his title.

52. Defendant is entitled to compensation for the damages incurred as result of Plaintiff's slander of his title.

53. Defendant is further entitled to punitive damages for the reckless and malicious conduct of Plaintiff.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Bradford Q. Jeffcoat prays that the Court inquire into the matters set forth above; and that the Court grant him relief as follows:

A. To dismiss the Complaint of the Plaintiffs;

B. To find that the alleged transfer of interest in the real property at issue in this action from Plaintiff Sandra P. Perkins to Plaintiff Vanessa Williams is fraudulent and without effect;

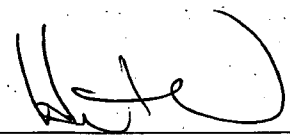
C. To order that a Deed to the real property at issue in this action be issued in the sole and exclusive name of Bradford Q. Jeffcoat, Jr.;

D. To award Defendant Jeffcoat damages in an amount to be determined at the trial of this action, including but not limited to his attorney's fees;

E. To award Defendant Jeffcoat special damages for the slander of his title to his real property;

F. To punitive damages for Plaintiff's reckless, willful, wanton, and malicious actions in asserting an unwarranted claim against Defendant's real property; and

G. To grant such other relief as may be just and proper.



Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
215 East Bay St., Ste. 203
Charleston, SC 29401
Phone: (843) 377-1686
Fax: (843)793-3143

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **MOTION TO DISMISS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**

FILED
2016 FEB -3 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff Vanessa Williams, in her own capacity and as Conservator and Guardian of Sandra Perkins, has filed an action in partition with respect to certain real property owned by Defendant Bradford Jeffcoat and Sandra Perkins as joint tenants with right of survivorship. Williams predicates her claim to an interest in the property on a deed, executed on November 16, 2015, conveying Perkins' interest in the property to her. This deed is ineffective to convey any interest. As Perkins has died since the filing of the instant complaint, and the real property is consequently held in its entirety by the surviving joint tenant, Plaintiff's complaint should be dismissed.

The facts underlying this action are relatively simple. Sandra Perkins and Bradford Jeffcoat lived together for approximately 20 years. During the period of their cohabitation, Jeffcoat purchased the real property at issue in this action. It was originally purchased in his name alone. He subsequently transferred one-half interest in the property to his partner, Sandra Perkins, and the two of them executed a new deed to the property as joint tenants with right of survivorship. Independent of the deed, Perkins executed a note to Jeffcoat; that note has been paid in full and is no longer an issue in the case. Perkins and Jeffcoat continued to live together, in the house in question.

Sandra Perkins developed Alzheimer's disease. During the summer of 2015, Jeffcoat asked her daughter, Plaintiff Vanessa Williams, if she could come to Charleston and help him take her mother to doctor's appointments, as he had to work. Instead of taking her to her doctor, Williams took Perkins to her home in Alabama. She immediately filed an emergency motion in the Probate Court of Baldwin County, Alabama, alleging that her mother was incompetent and seeking to have herself appointed as Guardian of her mother and Conservator of her mother's estate. That request was granted.

In November, 2015, after her mother had been placed in a nursing home in Alabama but shortly prior to Ms. Perkins' death, Williams came to Charleston, where she executed a new deed to the real property. In her capacity as Conservator, she signed on her mother's behalf, purportedly conveying Ms. Perkins' interest as a joint tenant to herself individually, for Ten Dollars ($10.00) and love and affection. She has now filed this action, asking that the property be partitioned and sold, in order to force Defendant to pay her one-half of the value of the real estate. The deed upon which she is suing is utterly invalid, and does not convey any interest in the property to her. As Ms. Perkins has since passed away, the entirety of the interest in the real estate has now vested in Defendant Jeffcoat, as the surviving joint tenant.

There is no question but that a joint tenancy can be severed. Section 27-7-40 of the Code of Law of South Carolina sets out the manner in which such a severance may be accomplished. A tenancy can be severed by a conveyance by one joint tenant to the other. S.C. Code § 27-7-40(a)(v). If one of two joint tenants dies, "the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants." S.C. Code § 27-7-40(a)(i). Where the joint tenants are husband and wife, a decree of divorce alters their joint tenancy to a tenancy in common. S.C.

Code § 27-7-40(a)(vii). Finally, a joint tenancy can be severed by a valid court order. S.C. Code § 27-7-40(a)(viii). The Code expressly states that the section "MUST be liberally construed to carry out the intentions of the parties." S.C. Code § 27-7-40(c)(emphasis added).

In addition, the Code specifically states that one joint tenant may not encumber his or her interest "acting alone without the joinder of the other joint tenant..." S.C. Code § 27-7-40(a)(iii). The sale of the interest of one joint tenant to a third party, such as the purported sale by Sandra Perkins to Vanessa Williams, without the participation or consent of Defendant Jeffcoat, constitutes precisely such an encumbrance. Pursuant to the South Carolina Code of Laws, this supposed transfer of the interest of one joint tenant to a third party, accomplished without the acquiescence of the other joint tenant, is completely invalid. *See, e.g., Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (App. 2012)(mortgage taken out by one of two joint tenants with right of survivorship is invalid and recording it constitutes slander of title).

Section 27-7-40 of the South Carolina Code of Laws is written in simple language, and its meaning is clear. A joint tenancy can only be severed by the transfer of one joint tenant to the other, or by some action of a court of competent jurisdiction. Had Perkins brought an action before this Court seeking to have her interest in the jointly owned real estate severed from that of her long-time partner, the Court could certainly have entered an order accomplishing that. She could also have transferred her interest directly to Jeffcoat, without the involvement of any court. However, there is no provision whatever for the "sale" of a joint interest to an outsider. Such a transaction constitutes an encumbrance, expressly prohibited by the plain language of the statute.

Sandra Perkins passed away during the last week of November, 2015. At that time, her interest in the real property automatically vested in Bradford Jeffcoat, as the surviving joint tenant. The instant action is entirely predicated upon the claim that Perkins, although she had

been adjudged to be incompetent, somehow sold her interest in the jointly owned property to Plaintiff herein. That supposed sale was ineffective to transfer any interest to anyone[1] and this case is consequently based upon a nullity. Since the only claim of Plaintiff to the property rests upon the validity of this deed, and the deed is invalid as a matter of law, the Complaint must be dismissed.

Defendant Bradford Jeffcoat would respectfully ask that the Complaint of the Plaintiff be dismissed with prejudice, that the Court order that a new deed be prepared by the Office of the RMC of Charleston County reflecting that he owns the subject property in its entirety as the surviving joint tenant, and that a date be set for a hearing on his counterclaims against Plaintiff.

Respectfully submitted,

Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
215 East Bay St., Ste. 203
Charleston, SC 29401
Phone: (843) 377-1686
Fax: (843)793-3143

February 1, 2016
Charleston, SC

[1] Defendant has filed Counterclaims against Williams, including one for breach of her fiduciary duty as Conservator in executing the documents supposedly accomplishing this transfer. Defendant will not address this breach in the instant Memorandum, and will reserve that argument until such time as his counterclaims are heard.

Heather S. Shaw
Attorney At Law

215 East Bay Street, Suite 203
Charleston, SC 29401

Telephone: (843) 377-1686
Fax: (843) 793-3143
heather@shawfamilylaw.com

UNAVAILABLE DATES AND TIMES

As of January 29, 2016

Thursday, February 4, 2016	**9:00 a.m.**	**Final Hearing**	**[CCFC]**
Friday, February 5, 2016	**9:30 a.m.**	**Final Hearing**	**[CCFC]**
Friday, February 12, 2016	**ALL DAY**	**Mediation**	**[MPSC]**
Tuesday, February 23, 2016	**9:30 a.m.**	**Temporary Hearing**	**[CCFC]**
Thursday, March 17, 2016	**ALL DAY**	**Depositions**	**[CHAS]**
Tuesday, April 12, 2016	**9:30 a.m.**	**4-hour Mediation**	**[CHAS]**
Thursday, April 14, 2016	**ALL DAY**	**Mediation**	**[SMVL]**
Tuesday, April 20, 2016	**2:00 p.m.**	**½ Day RTSC**	**[CCFC]**

** **This list is only current as of the date and time noted below; to avoid a scheduling conflict, you may wish to call our office to confirm as new dates/times are added regularly.**

Updated by ksb: 2/2/2016 9:55 AM

HEATHER S. SHAW
Attorney At Law

215 East Bay Street, Suite 203
Charleston, South Carolina 29401

(843) 377-1686 Telephone
(843) 793-3143 Facsimile

TO: Clerk of Court, Charleston County
Date: 2/2/2016

RE:

Case No.: 2016-CP-10-6379

Please file the following attached documents in your office. Thank you for your assistance in this matter.

____	AFFIDAVIT OF DEFAULT
____	AFFIDAVIT/ACKNOWLEDGMENT OF SERVICE
X	ANSWER/ANSWER & COUNTERCLAIM
____	ANSWERS TO INTERROGATORIES
____	CERTIFICATE OF MAILING
____	FINAL ORDER
____	FINANCIAL DECLARATION
____	HEARING REQUEST
X	MOTION/NOTICE OF MOTION
____	MOTION FOR TEMPORARY RELIEF
____	ORDER
____	REPLY
____	SUMMONS & COMPLAINT
____	TEMPORARY ORDER
____	VERIFICATION
____	OTHER: ____
X	CHECK # 1399 IN THE AMOUNT OF $25.00
X	STAMPED, SELF-ADDRESSED ENVELOPE
X	UNAVAILABLE DATES

Sincerely,

Karen S. Berry
Paralegal to Heather S. Shaw
karen@shawfamilylaw.com
Enclosures: as stated (original + 2 copies)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, Plaintiff, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIM OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**

FILED
2016 FEB 16 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, by and through counsel, and in response to the Answer and Counterclaim of the Defendant Bradford Q. Jeffcoat, Jr., alleges and says as follows:

1. The allegations of paragraph 1 do not require a response.
2. The allegations of paragraph 2 do not require a response.
3. The allegations of paragraph 3 pertaining to the alleged involuntary transport of Sandra P. Perkins are denied and strict proof is demanded thereof. The rest of the allegations of paragraph 3 do not require a response.
4. The allegations of paragraph 4 are conclusions of law and do not require a response.
5. The allegations of paragraph 5 do not require a response.
6. The allegations of paragraph 6 do not require a response.
7. The allegations of paragraph 7 do not require a response.
8. The allegations of paragraph 8 do not require a response.
9. The allegations of paragraph 9 do not require a response.
10. The allegations of paragraph 10 do not require a response.
11. The allegations of paragraph 11 do not require a response.
12. The allegations of paragraph 12 do not require a response.

13. The allegations of paragraph 13 do not require a response.

14. The allegations of paragraph 14 do not require a response.

15. The allegations of paragraph 15 do not require a response.

16. The allegations of paragraph 16 do not require a response.

17. The allegations of paragraph 17 are denied and strict proof is demanded thereof.

18. The allegations of paragraph 18 do not require a response.

19. The allegations of paragraph 19 are denied and strict proof is demanded thereof.

20. The allegations of paragraph 20 do not require a response.

21. The allegations of paragraph 21 are denied and strict proof is demanded thereof.

22. The allegations of paragraph 22 do not require a response.

23. The allegations of paragraph 23 do not require a response.

24. The allegations of paragraph 24 are denied and strict proof is demanded thereof.

25. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 25 and therefore denies same and demands strict proof thereof.

26. The allegations of paragraph 26 are admitted.

27. The allegations of paragraph 27 are denied and strict proof is demanded thereof.

28. The allegations of paragraph 28 are denied and strict proof is demanded thereof.

29. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 29 and therefore denies same and demands strict proof thereof.

30. The allegations of paragraph 30 are denied and strict proof is demanded thereof.

31. The allegations of paragraph 31 are denied and strict proof is demanded thereof.

32. The allegations of paragraph 32 are admitted.

33. The allegations of paragraph 33 are denied and strict proof is demanded

thereof.

34. The allegations of paragraph 34 are denied and strict proof is demanded thereof.

35. The allegations of paragraph 35 are denied and strict proof is demanded thereof.

36. The allegations of paragraph 36 are denied and strict proof is demanded thereof.

37. The allegations of paragraph 37 are denied and strict proof is demanded thereof.

38. The Plaintiff denies each and every allegation not hereinabove specifically admitted or denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Unclean Hands)

39. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

40. Defendant's counterclaim is barred, in whole or in part under the Doctrine of Unclean Hands.

FOR A SECOND AFFIRMATIVE DEFENSE
(Defendant's Misconduct)

41. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

42. Defendant's counterclaim is barred, in whole or in part by his own misconduct and course of dealings.

FOR A THIRD AFFIRMATIVE DEFENSE
(Ala. Code §26-2A-152(c)(1))

43. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

44. Plaintiff pleads that at all times relevant to the underlying dispute in this case, that she was acting within the scope of Code of Alabama Section 26-A-152(c)(1).

FOR A FOURTH AFFIRMATIVE DEFENSE
(Reservation of Defenses)

45. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

46. Plaintiff reserves the right to amend its reply to allege such other affirmative defenses as may become available.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)

47. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

48. That the claims of Defendant Bradford Q. Jeffcoat, Jr., fail to state sufficient facts to constitute a cause of action upon which relief may be granted and therefore the claim should be dismissed pursuant to the provisions of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel)

49. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

50. Defendant Bradford Q. Jeffcoat, Jr.'s Counterclaim is barred by the doctrines of waiver and/or estoppel.

CLAWSON and STAUBES, LLC

Christopher B. Staubes (10470)
Nicholas R. Sanders (100743)
126 Seven Farms Drive, Suite 200
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Phone: (843) 577-2026
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Email: cstaubes@clawsonandstaubes.com
Attorneys for Defendants

Charleston, South Carolina
February 17, 2016

2015-CP-10-6379

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel on the 12th day of February 2016 via:

X	United States Postal Service
	Facsimile
	Electronic Email

Andrea

FILED
2016 FEB 16 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, Plaintiff, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **PLAINTIFF'S REPLY TO AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**

FILED
2016 MAR 18 A 10:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW, Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, by and through counsel, and in response to the Amended Answer and Counterclaim of the Defendant Bradford Q. Jeffcoat, Jr., alleges and says as follows:

1. The allegations of paragraph 1 do not require a response.

2. The allegations of paragraph 2 do not require a response.

3. The allegations of paragraph 3 pertaining to the alleged involuntary transport of Sandra P. Perkins are denied and strict proof is demanded thereof. The rest of the allegations of paragraph 3 do not require a response.

4. The allegations of paragraph 4 are conclusions of law and do not require a response.

5. The allegations of paragraph 5 do not require a response.

6. The allegations of paragraph 6 do not require a response.

7. The allegations of paragraph 7 do not require a response.

8. The allegations of paragraph 8 do not require a response.

9. The allegations of paragraph 9 do not require a response.

10. The allegations of paragraph 10 do not require a response.

11. The allegations of paragraph 11 do not require a response.

12. The allegations of paragraph 12 do not require a response.

13. The allegations of paragraph 13 do not require a response.

14. The allegations of paragraph 14 do not require a response.

15. The allegations of paragraph 15 do not require a response.

16. The allegations of paragraph 16 do not require a response.

17. The allegations of paragraph 17 are denied and strict proof is demanded thereof.

18. The allegations of paragraph 18 do not require a response.

19. The allegations of paragraph 19 are denied and strict proof is demanded thereof.

20. The allegations of paragraph 20 do not require a response.

21. The allegations of paragraph 21 are denied and strict proof is demanded thereof.

22. The allegations of paragraph 22 do not require a response.

23. The allegations of paragraph 23 do not require a response.

24. The allegations of paragraph 24 are denied and strict proof is demanded thereof.

25. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 25 and therefore denies same and demands strict proof thereof.

26. The allegations of paragraph 26 are admitted.

27. The allegations of paragraph 27 are denied and strict proof is demanded thereof.

28. The allegations of paragraph 28 are denied and strict proof is demanded thereof.

29. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 29 and therefore denies same and demands strict proof thereof.

30. The allegations of paragraph 30 are denied and strict proof is demanded thereof.

31. The allegations of paragraph 31 are denied and strict proof is demanded thereof.

32. The allegations of paragraph 32 are admitted.

33. The allegations of paragraph 33 are denied and strict proof is demanded

thereof.

34. The allegations of paragraph 34 are denied and strict proof is demanded thereof.

35. The allegations of paragraph 35 are denied and strict proof is demanded thereof.

36. The allegations of paragraph 36 are denied and strict proof is demanded thereof.

37. The allegations of paragraph 37 are denied and strict proof is demanded thereof.

38. The allegations of paragraph 38 do not require a response.

39. The allegations of paragraph 39 are denied and strict proof is demanded thereof.

40. The allegations of paragraph 40 are admitted.

41. The allegations of paragraph 41 are denied and strict proof is demanded thereof.

42. The allegations of paragraph 42 are denied and strict proof is demanded thereof.

43. The allegations of paragraph 43 are denied and strict proof is demanded thereof.

44. The allegations of paragraph 44 are denied and strict proof is demanded thereof.

45. The allegations of paragraph 45 are denied and strict proof is demanded thereof.

46. The allegations of paragraph 46 are denied and strict proof is demanded thereof.

47. The allegations of paragraph 47 are denied and strict proof is demanded thereof.

48. The allegations of paragraph 48 are denied and strict proof is demanded thereof.

49. The allegations of paragraph 49 are denied and strict proof is demanded thereof.

50. The allegations of paragraph 50 are denied and strict proof is demanded thereof.

51. The allegations of paragraph 51 are denied and strict proof is demanded thereof.

52. The allegations of paragraph 52 are denied and strict proof is demanded thereof.

53. The allegations of paragraph 53 are denied and strict proof is demanded thereof.

54. The Plaintiff denies each and every allegation not hereinabove specifically admitted or denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Unclean Hands)

55. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

56. Defendant's counter-claims are barred, in whole or in part under the Doctrine of Unclean Hands.

FOR A SECOND AFFIRMATIVE DEFENSE
(Defendant's Misconduct)

57. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

58. Defendant's counter-claims are barred, in whole or in part by his own misconduct and course of dealings.

FOR A THIRD AFFIRMATIVE DEFENSE
(Ala. Code §26-2A-152(c)(1))

59. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

60. Plaintiff pleads that at all times relevant to the underlying dispute in this case, that she was acting within the scope of Code of Alabama Section 26-A-152(c)(1).

FOR A FOURTH AFFIRMATIVE DEFENSE
(Good Faith)

61. Each and every allegation set forth above is incorporated by reference as

if repeated herein verbatim.

62. Plaintiff pleads that at all times relevant to the underlying dispute in this case, that she acted in good faith.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

63. Each and every allegations set forth above is incorporated by reference as if repeated herein verbatim.

64. Plaintiff pleads that Defendant has failed to mitigate damages.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)

65. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

66. That the claims of Defendant Bradford Q. Jeffcoat, Jr., fail to state sufficient facts to constitute a cause of action upon which relief may be granted and therefore the claim should be dismissed pursuant to the provisions of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Reservation of Defenses)

67. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

68. Plaintiff reserves the right to amend its reply to allege such other affirmative defenses as may become available.

FOR A EIGHTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel)

69. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

70. Defendant Bradford Q. Jeffcoat, Jr.'s counterclaims are barred by the doctrines of waiver and/or estoppel.

FOR A NINTH AFFIRMATIVE DEFENSE
(Standing)

71. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

72. Defendant Bradford Q. Jeffcoat, Jr. lacks standing to assert his counterclaims.

FOR A TENTH AFFIRMATIVE DEFENSE
(True Publications)

73. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

74. Plaintiff pleads that publications made by her are true.

Respectfully submitted,

CLAWSON and STAUBES, LLC

Christopher B. Staubes (10470)
Nicholas R. Sanders (100742)
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
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Email: cstaubes@clawsonandstaubes.com
Attorneys for Defendants

Charleston, South Carolina
March 18, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel on the 18th day of March 2016 via:

X	United States Postal Service
	Facsimile
	Electronic Email

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,

Plaintiff,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS

FILED
2016 MAR 30 AM 10:4
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs herein in Response to Defendant, Bradford Q. Jeffcoat, Jr.'s Motion to Dismiss, allege and respectfully show unto this Honorable Court the following:

Plaintiff, Vanessa Williams, in her own capacity and as Conservator and Guardian of Sandra P. Perkins has filed an action in partition with respect to certain real property previously owned by Defendant Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins as joint tenants with right of survivorship and not as tenants in common.

Despite claiming to have lived together for approximately 20 years, Defendant, Bradford Q. Jeffcoat, Jr. was either unable or unwilling to provide for the health and welfare of Sandra P. Perkins in her time of need and infirmity.

Accordingly, Plaintiff, Vanessa Williams moved her mother from Charleston, South Carolina, to her home in Lillian, Alabama in order to provide for her mother in her time of failing health.

Sandra P. Perkins was found to be mentally incapacitated by the Probate Court of Baldwin County Alabama and her daughter, Vanessa Williams was appointed guardian and conservator on September 15, 2015.

Vanessa Williams, acting as conservator and pursuant to Alabama Code Section 26-2A-152 (c)(1)[1], properly conveyed the aforementioned real property to herself by deed which was signed by Vanessa Williams as conservator on November 16, 2015 and subsequently recorded in accordance with the laws of South Carolina.

Contrary to what has been alleged by Defendant, Sandra P. Perkins was never placed in a nursing home. At all times, Vanessa Williams took care of her dying mother and ensured that she was surrounded by people that loved her and that her mother lived out her last days in the comfort of Vanessa Williams' home.

The Defendant has now filed a Motion to Dismiss alleging that the conveyance of that certain real property from Sandra P. Perkins to Vanessa Williams is a nullity. The Defendant's theory is that S.C. Code §27-7-40 prohibits such a transfer. In particular, Defendant relies on S.C. Code §27-7-40(a)(iii) which states that one joint tenant may not encumber his or her interests "acting alone without the joinder of the other joint tenant..." The Defendant further sites the case of *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192 (Ct. App. 2012) for the same authority in a case where a joint tenant attempted to grant a mortgage on real property which the court found to be invalid. In summation, Defendant concludes that a joint tenancy can only be severed by the

[1] (c) A conservator, acting as a fiduciary in efforts to accomplish the purpose of the appointment, may act without court authorization or confirmation, to

(1) Collect, hold, and retain assets of the estate including land in another state and stocks of private corporations, until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

transfer of one joint tenant to the other, or by some action of a Court of a competent jurisdiction.

Defendant's assertions are wrong and the law cited has no application to the facts at bar. First, the provisions in S.C. Code §27-7-40 do not apply to the deed at issue in this case because the statute was not enacted until August 17, 2000, well after the subject deed was executed. The deed in question was executed on July 1, 2000 and the statute does not apply retroactively.

Next, S.C. Code §27-7-40 does not exclude the long held common law rule that a conveyance of property interest by a joint tenant with right of survivorship severs the survivorship interest and creates a tenancy in common. *See Davis v. Davis*, 223 S.C. 182, 190 (1953) (opining, "The right of survivorship is merely one incident of a joint tenancy. Another incident of such tenancy is that any one of the tenants can destroy it, with the incidental right of survivorship, by a conveyance to a third person.").

Furthermore, conveying a fee simple interest in land does not amount to an encumbrance. Encumbrance is defined with respect to real property in the South Carolina Commercial Code as "...a right, ***other than an ownership interest***, in real property."[2] The term includes mortgages and other liens on real property. Black's Law Dictionary similarly defines encumbrance as "a claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; ***any property right that is not an ownership interest.***"[3] Ownership interests are specifically excluded under the definition of encumbrance and the attempt by the Defendant to conflate "encumbrance" with "ownership interest" is misguided.

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[2] S.C. Code § 36-9-102 (32) (emphasis added).

[3] *Black's Law Dictionary* 568 (8th ed. 2004) (emphasis added).

Finally, even though Court approval was not required for Vanessa Williams' valid conveyance of aforementioned real property, the Probate Court of Baldwin County did approve said conveyance pursuant to Alabama Code Section 26-2A-152 (c) (1) on January 15, 2016. A copy of the Order is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

WHEREFORE, the premises considered, Plaintiffs respectfully request this Honorable Court to deny Defendant, Bradford Q. Jeffcoat, Jr.'s Motion to Dismiss and grant such other, further and different relief to which Plaintiffs are entitled under the circumstances.

Respectfully submitted,
CLAWSON and STAUBES, LLC

Christopher B. Staubes (10470)
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Attorneys for Defendants

Charleston, South Carolina
March 29, 2016

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
an incapacitated person	*	**STATE OF ALABAMA**

CASE NO. 32367

ORDER

This matter came on to be heard on the "Motion to Approve Transfer of Real Property" filed by **VANESSA L. WILLIAMS**, Court appointed Guardian and Conservator of Sandra P. Perkins, and the Court being of the opinion that said Motion should be granted, **IT IS, THEREFORE,**

ORDERED, ADJUDGED and **DECREED** that pursuant to Code of Alabama, Sections 26-2A-152 (c) (1), the conveyance and transfer of all of Sandra P. Perkins' interest in that certain real property described below to Vanessa L. Williams, by Vanessa L. Williams acting as conservator of said Ms. Perkins, is hereby approved.

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

TMS No.: 355-09-00-108

DONE AND ORDERED this 15th day of January, 2016.

JUDGE OF PROBATE

PLAINTIFF'S EXHIBIT A

PENGAD 800-631-6989

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **MOTION FOR SUMMARY JUDGMENT OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**

FILED
2016 AUG -3 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The instant action was filed by Plaintiff Vanessa Williams, individually and in her capacity as Conservator and Guardian of Sandra Perkins, seeking partition of a parcel of real property located in Charleston County, South Carolina. For the reasons which follow, Defendant is entitled to summary judgment in his favor, and would respectfully request that this Court issue a deed to the property in his name alone.

I. FACTS

As of mid-summer, 2015, Brad Jeffcoat and Sandra Perkins had lived together in a committed relationship for approximately 20 years. During that time, Jeffcoat purchased the residential real property at issue in this case. Almost immediately after the purchase, one-half of the interest was transferred to Ms. Perkins[1]. The new deed was executed in both of their names and very specifically shown as being Joint with Right of Survivorship. The domestic partners continued to live together in the home they owned.

Ms. Perkins developed Alzheimer's, and by 2015 required constant care. As Jeffcoat remained employed, he asked her daughter, Plaintiff Vanessa Williams, to come to Charleston for a few weeks, which she did. On June 16, a day she was to take her mother to the doctor's

[1] Ms. Perkins mortgaged her one-half interest to Jeffcoat; that mortgage has been paid in full and is not relevant to the present matter.

office, she packed up some of her mother's things and took her to her own home in Alabama, without a word to Jeffcoat. Jeffcoat made attempts to contact Plaintiff and Ms. Perkins, unsuccessfully. However, he took no actions to bring Ms. Perkins back at that time, understanding that, under the circumstances, Plaintiff wished to have some time with her mother. Ms. Perkins herself did nothing to indicate any desire to leave her home of years, or to make a permanent move to another State; at the time he left for work that morning, Defendant was given no indication that Plaintiff intended to take Ms. Perkins anywhere other than to her scheduled doctor's appointment.

After taking her to Alabama, on September 15, 2015, Plaintiff filed the appropriate papers in the Probate Court of Baldwin County, Alabama, and had herself appointed as Conservator and Guardian of the person and estate of her mother, alleging – quite accurately – that her mother suffered from a major cognitive disorder and could no longer manage her own affairs. Defendant was unable to contact either his long-time partner or Plaintiff, and had no idea by this time where Ms. Perkins had been taken. He was unaware of the appointment until the institution of this action.

On November 16, 2015, Plaintiff returned to Charleston. Although she made no attempt to contact Defendant or to retrieve any of her mother's possessions, including the vehicle in her mother's name which was originally a part of this action, she did have a new deed issued for the real property. Specifically, for the sum of $10.00, and love and affection, she, as Conservator, transferred her mother's one-half joint interest in the property to herself, individually. Ms. Perkins died, in Alabama, on November 27, 2015. This action was filed three days prior to her death, alleging conversion of the personal property Plaintiff neglected to retrieve when she came to town, and seeking partition of the real property.

II. ARGUMENT

A. Standard of Review

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. S.C.R.C.P 56(e); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *NationsBank v. Scott Farm*, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). Regardless of inferences, however, where there is no factual dispute and the law so dictates, summary judgment should be granted.

B. Joint and Survivorship Property Cannot Be Unilaterally Partitioned

The fundamental premise upon which this action is premised is fatally flawed. Joint and survivorship property cannot be partitioned unilaterally by one of the owners. Even if, *arguendo,* the transfer of interest from Ms. Perkins, accomplished by the signature of her daughter conveying the property to herself – a concept that Defendant strongly believes is contrary to law, *infra* – the deed executed by Plaintiff accomplishes nothing, as a matter of law.

A joint tenancy, including a joint tenancy with rights of survivorship, can be severed through a variety of methods. These are clearly set out in Section 27-7-40 of the Code of Laws of South Carolina. This section reads, in its entirety:

> **(a)** In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
> **(i)** In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> **(ii)** In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.
> **(iii)** The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.
> **(iv)** If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.
> **(v)** If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.
(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.
(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.
(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.
(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.
(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

This Section sets out all of the ways in which a joint tenancy with rights of survivorship may be severed. The death of one of the tenants terminates the joint tenancy and automatically vests the entire interest of the deceased tenant in the other. A court of competent jurisdiction may sever the tenancy, whether in the context of a divorce action or an action in partition. Any of the joint tenants may freely convey his or her interest to the other.

There is absolutely no provision that would allow the unilateral action of one of the joint tenants to sever the tenancy and convey an interest to a third party. In fact, the Code is clear that property held in a joint tenancy may only be encumbered by the consent of all joint tenants. S.C. Code § 27-7-40(a)(iii). Although an "encumbrance" is usually read to mean a mortgage, there is no doubt but that an attempted sale of a portion of the property also creates an encumbrance. Furthermore, the Code itself clearly and unequivocally states that it "**MUST** be liberally construed to carry out the intentions of the parties." S.C. Code § 27-7-40(c)(emphasis added). Since the property at issue was, at all relevant times prior to Ms. Perkins' death, held as survivorship property, it may be presumed that the parties to the original deed intended it to pass to the survivor of them. Defendant intended such to be the case, and Ms. Perkins, who was unquestionably suffering from severe Alzheimer's, could not have expressed any intent to the contrary.

Furthermore, if the taking out of a loan without the consent of the other joint tenant is impermissible under the law, it would seem obvious that the purported transfer of an even greater interest – of the total interest of one of the tenants – would also be impermissible. Defendant has been unable to locate any South Carolina cases dealing with the attempt by one joint tenant to convey the entirety of his interest to a third party. However, there are cases in which one joint tenant has attempted to mortgage his share without the consent of the other tenant; such mortgages are entirely invalid, and some courts have found that the recording of such a mortgage constitutes slander of title. *See, e.g., Solley v. navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (App. 2012).

The Code is written in simple and plain language. It provides the exclusive means by which a joint tenancy with rights of survivorship may be severed. Other than the death of one

tenant, in which event the interest passes to the other as a matter of law, or the conveyance by one tenant to the other, there is no provision for severance that does not involve either the full consent of the other tenant, or an order by a court of competent jurisdiction. There is absolutely no provision whatsoever that would allow for the "sale" of the interest of only one of the joint tenants to a third party. The deed executed by Plaintiff to herself is completely invalid.

Sandra Perkins passed away during the last week of November, 2015. At that time, her interest in the real property in question automatically passed to Bradford Jeffcoat, by operation of law, pursuant to S.C. Code § 27-7-40(a)(i). The deed allegedly conveying the interest of Ms. Perkins to her daughter accomplished nothing, as the statutory scheme does not allow for the severance of a joint interest in these circumstances absent an order from a court of competent jurisdiction. Defendant is, therefore, entitled to summary judgment in his favor on the Complaint of the Plaintiff.

C. Even if the Joint and Survivorship Interest Could Be Unilaterally Severed, Alabama Law Does Not Permit a Conservator to Transfer Property to Herself Without Court Approval.

Plaintiff Vanessa Williams executed the deed at issue both as grantee and as grantor, in her capacity as Conservator and Guardian of Sandra Perkins. Even if, *arguendo*, the deed severing the joint and survivorship tenancy of Sandra Perkins and Brad Jeffcoat were valid under South Carolina, the Conservator of the Estate of Sandra Perkins lacks the authority under Alabama law to dispose of her real property.

Defendant herein does not concede that Ms. Perkins moved to Alabama voluntarily, or that she intended to make her home in Alabama such that an Alabama court would have had jurisdiction to appoint a Conservator or Guardian for her in the first instance. That is, however, not relevant, and the fact remains that it was done, and Plaintiff succeeded in having herself

appointed to those positions. The powers of a Conservator are set out in Section 26-2A-152 of the Code of Alabama, and that section enumerates those powers a Conservator may exercise with and without prior court authorization. Among those which she may, "as a fiduciary in efforts to accomplish the purpose of the appointment," exercise only with the prior authorization of the court, is to "[d]ispose of any real property, including land in another state..." Code of Ala. § 26-2A-152(d)(3).

Defendant has raised counterclaims, including one for breach of fiduciary duty, which are not addressed in the instant motion, and Defendant would respectfully ask that those counterclaims be addressed at a later date.[2] There is no question, however, that Plaintiff did not obtain the approval of the Probate Court of Baldwin County, Alabama, until approximately two months after the issuance of the deed purporting to convey Ms. Perkins' interest to herself.

On January 15, 2016, nearly two full months after Ms. Perkins passed away, that court issued an Order approving Plaintiff's conveyance of the real property in Charleston County. By the time that Order was issued, Ms. Perkins' interest had already passed, as a matter of law, to Defendant. Despite her appointment as Conservator of Ms. Perkins' estate, Plaintiff lacked the authority to convey any real property to anyone until the Order was issued; since there was no longer any real property in Ms. Perkins' name by the time of the Order, the Order itself is a nullity. The conveyance of real property was beyond the scope of the statutory authority of the Conservator at the time it was made, and is consequently void. Even if the joint and survivorship interest held by Ms. Perkins were capable of alienation unilaterally, the signature of the

[2] Defendant would note, however, that prior to the supposed "sale" of the property to herself, Plaintiff caused Alabama counsel to write a letter to Defendant asking if he would be willing to purchase the interest of Ms. Perkins in the property, as Ms. Perkins "needs as much financial assistance as possible." Disposing of the property for the sum of $10.00 does not provide much in the way of financial assistance to the ward.

Conservator on the deed purporting to convey that interest is a nullity, and Defendant is entitled to summary judgment on Plaintiff's claim.

CONCLUSION

There are no disputed facts in this case. Plaintiff attempted to unilaterally sever a joint and survivorship tenancy, an act that cannot be accomplished without the order of a court of competent jurisdiction. Furthermore, her signature as Conservator of the Estate of Sandra Perkins is invalid to transfer real property, as she failed to obtain the approval of the Probate Court as required by Alabama law.

Defendant is entitled to summary judgment in his favor, and would respectfully request that the Court order that a new deed be issued showing that the entirety of the real property at issue in this action is held in his name alone.

Respectfully submitted,

Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
215 East Bay St., Ste. 203
Charleston, SC 29401
Phone: (843) 377-1686
Fax: (843)793-3143

July 7, 2016
Charleston, SC

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
an incapacitated person	*	**STATE OF ALABAMA**

CASE NO. 32367

ORDER

This matter came on to be heard on the "Motion to Approve Transfer of Real Property" filed by **VANESSA L. WILLIAMS**, Court appointed Guardian and Conservator of Sandra P. Perkins, and the Court being of the opinion that said Motion should be granted, **IT IS, THEREFORE,**

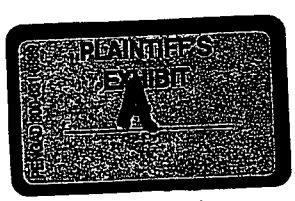
ORDERED, ADJUDGED and **DECREED** that pursuant to Code of Alabama, Sections 26-2A-152 (c) (1), the conveyance and transfer of all of Sandra P. Perkins' interest in that certain real property described below to Vanessa L. Williams, by Vanessa L. Williams acting as conservator of said Ms. Perkins, is hereby approved.

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

TMS No.: 355-09-00-108

DONE AND ORDERED this 15th day of January, 2016.

JUDGE OF PROBATE





#PGS: 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED BY CLAWSON & STAUBES, LLC

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Sandra P. Perkins,** for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and love and affection to me in hand paid at and before the sealing of these presents by **Vanessa L. Williams,** in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said **Vanessa L. Williams,** her heirs and assigns, all of my one half undivided interest in and to the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

BEING the same property conveyed to Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins by deed of Bradford Q. Jeffcoat, Jr. dated July 1, 2000 and recorded February 6, 2001 in Book D364, at Page 107 in the RMC Office for Greenville County, South Carolina.

TMS# 355-09-00-108

Grantee's Address: 32183 Waterworks Ln
Lillian, AL 36549

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said **Vanessa L. Williams,** her heirs and assigns forever a one half undivided interest.

AND, subject to the Exceptions, I do hereby bind myself and my heirs, personal representatives and administrators to warrant and forever defend, all and singular, the said premises unto the said **Vanessa L. Williams,** her heirs and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 16th day of November, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(First Witness signs here)

(Second Witness or Notary signs here)

Vanessa L. Williams (L.S.)
Sandra P. Perkins, by Vanessa L. Williams,
Guardian and Conservator of Sandra P. Perkins

STATE OF Alabama)
)
COUNTY OF Baldwin)

THE foregoing instrument was acknowledged before me by Sandra P. Perkins, by Vanessa L. Williams, Guardian and Conservator of Sandra P. Perkins this 16th day of November, 2015.

Deborah S. Rutherford (L.S.)
Notary Public for Alabama
My Commission Expires: 8-19-17



STATE OF ~~SOUTH CAROLINA~~ Alabama)
COUNTY OF ~~CHARLESTON~~ Baldwin)

AFFIDAVIT

Date of Transfer of Title
November 16, 2015

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Sandra P. Perkins to Vanessa L. Williams on November 16, 2015.

3. Check one of the following: **The DEED is**
   (a)__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)__ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_x_ EXEMPT from the deed recording fee because (exemptions #1)
   (Explanation, if required (transferring one half interests less than $100.00)
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a)__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $.
   (b)__ The fee is computed on the fair market value of the realty which is $_____.
   (c)__ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES __ or NO __ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (A)$_____the amount listed in item 4 above
   (b)$_____the amount listed in item 5 above (no amount place zero)
   (c)$_____Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.

8. Check if Property other than Real Property is being transferred to this Deed.
   (a) _____ Mobile Home
   (b) _____ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me on this 16th day
of November, 2015

Vanessa L. Williams
Legal Representative

Deborah S. Ruthford (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-19-17

Vanessa L. Williams
Print Name

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

OK to file as per Co. atty Manos

Filed By: + Nick Sanders Atty

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

RECORDED

Date:	November 24, 2015
Time:	8:58:08 AM

Book	Page	DocType
0519	167	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
PERKINS SANDRA P

RECIPIENT:
WILLIAMS VANESSA L

Original Book:

Original Page:

Note:

of Pages: 4

Recording Fee	$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 10.00

DRAWER	Drawer 1
CLERK	KLH

AUDITOR STAMP HERE
RECEIVED From RMC
NOV 25 2015
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP ASTRJB
DATE NOV 30 2015
27

0519 Book
167 Page
11/24/2015 Recorded Date
4 # Pgs
Original Book
Original Page
D Doc Type
08:58:08 Recorded Time

CALDWELL WENZEL & ASTHANA, P.C.
Enterprising Legal Solutions

C. RANDALL CALDWELL
DREW WENZEL
DEEPTI ASTHANA

RCALDWELL@CALDWELLWENZEL.COM
DWENZEL@CALDWELLWENZEL.COM
DASTHANA@CALDWELLWENZEL.COM
PHONE: (251) 948-2168
FAX: (251) 948-2938

October 7, 2015

Bradford Jeffcoat
1955 Old Fort Ave
Charleston, SC 29414

Re: Sandra P. Perkins

Dear Mr. Jeffcoat,

The law firm of Caldwell Wenzel & Asthana, PC represents Vanessa Williams, the only child of Sandra P. Perkins. As you might already be aware, Ms. Perkins has developed a major cognitive disorder and accordingly on the 15th day of September, 2015, the Probate Court of Baldwin County found Ms. Perkins to be incapacitated and appointed Vanessa Williams as her Guardian and Conservator.

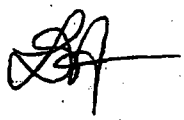
As her mother's Guardian and Conservator, and Power of Attorney, Ms. Williams has the full power and authority to act on Ms. Perkins' behalf. It is our understanding that you and Ms. Perkins own real property located at 1955 Old Fort Ave, Charleston, SC 29414 as tenants in common. Since Ms. Perkins is in poor health and needs as much financial assistance as possible, in good faith, would you be agreeable to either listing the house for sale or purchasing Ms. Perkins' interest in the house? If you are amenable to one of these options, please let us know at your earliest convenience.

Also, Ms. Williams would like to schedule a day(s) and time when she can come and take possession of her mother's vehicle (2008 Honda Civic LX), Ms. Perkins' personal belongings, furniture, and other personal property items. Please provide us with a few dates and times that would be convenient for you.

Additionally, if you are aware of any other property belonging to Ms. Perkins that is not mentioned above, we would greatly appreciate if you could provide us with such information.

I hope to hear from you by October 21, 2015 and look forward to working with you amicably. In the meantime, if I can answer any questions, please do not hesitate to reach me at (251) 948-2168.

Sincerely,



Dee Asthana

Heather S. Shaw

Attorney At Law

215 East Bay Street, Suite 203
Charleston, SC 29401

Telephone: (843) 377-1686
Fax: (843) 793-3143
heather@shawfamilylaw.com

UNAVAILABLE DATES AND TIMES

As of July 29, 2016

Friday, July 29, 2016	11:00 a.m.	Final Hearing	[DCFC]
Monday, August 1, 2016	10:00 a.m.	Temporary Hearing	[DCFC]
Wednesday, August 3, 2016	9:00 a.m.	Temporary Hearing	[CCFC]
	11:00 a.m.	Temporary Hearing	[CCFC]
Friday, August 5, 2016 THRU Friday, August 12, 2016	ORDER OF PROTECTION		
Wednesday, August 17, 2016	9:30 a.m.	½ day Mediation (SK)	[SLF]
Monday, August 22, 2016	9:30 a.m.	Final Hearing	[CCFC]
Tuesday, August 23, 2016	2:00 p.m.	(2) Final Hearings	[DCFC]
Friday, September 2, 2016	11:00 a.m.	(2) Final Hearings	[CCFC]
Friday, September 9, 2016	12:00 p.m.	½ day Deposition	[DISL]
Friday, October 21, 2016	ALL DAY	Mediation	[MTPL]
Monday, October 31, 2016	ALL DAY	TRIAL 'B'	[CCFC]
Tuesday, November 1, 2016	ALL DAY	TRIAL 'B'	[CCFC]
Wednesday, November 2, 2016	ALL DAY	TRIAL 'B'	[CCFC]
Thursday, November 3, 2016	ALL DAY	TRIAL 'B'	[CCFC]
Friday, November 4, 2016	ALL DAY	TRIAL 'B'	[CCFC]
Monday, November 7, 2016	ALL DAY	TRIAL 'B'	[CCFC]

** **This list is only current as of the date and time noted below; to avoid a scheduling conflict, please call our office to confirm as new dates/times are added regularly.**

Updated by ksb: 8/1/2016 11:13 AM

HEATHER S. SHAW
Attorney At Law

510 Mill Street, Suite 2B
Mt. Pleasant, South Carolina 29464

(843) 377-1686 Telephone
(843) 793-3143 Facsimile

TO: Clerk of Court, Charleston County
Date: ~~7/14/2016~~ 8/1/16

RE: *Williams v. Jeffcoat*
Case No.: 2016-CP-10-6379

Please file the following attached documents in your office. Thank you for your assistance in this matter.

____	AFFIDAVIT OF DEFAULT
____	AFFIDAVIT/ACKNOWLEDGMENT OF SERVICE
____	ANSWER/ANSWER & COUNTERCLAIM
____	ANSWERS TO INTERROGATORIES
____	CERTIFICATE OF MAILING
____	FINAL ORDER
____	FINANCIAL DECLARATION
____	HEARING REQUEST
X	MOTION/NOTICE OF MOTION
____	MOTION FOR TEMPORARY RELIEF
____	ORDER
____	REPLY
____	SUMMONS & COMPLAINT
____	TEMPORARY ORDER
____	VERIFICATION
____	OTHER: 1483
X	CHECK # ~~2030~~ IN THE AMOUNT OF $25.00
X	STAMPED, SELF-ADDRESSED ENVELOPE
X	UNAVAILABLE DATES

Sincerely,

Karen S. Berry
Paralegal to Heather S. Shaw
karen@shawfamilylaw.com
Enclosures: as stated (original + 1 copy(ies)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2015-CP-10-6379
Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins,)	**AFFIDAVIT OF DEFENDANT BRADFORD Q. JEFFCOAT, JR. IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**
)	
v.)	
)	
Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.)	
)	

FILED
2016 AUG -3 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT

I, Bradford Q. Jeffcoat, Jr., am a Defendant in this action. Sandra Perkins and I lived together for almost 20 years. During this time, I purchased a home, the property at issue in this action. I originally purchased the home in my name only, but subsequently transferred one-half interest in the property to Sandra, and we executed a new deed to the property as joint tenants with right of survivorship. Sometime after I purchased the home, and independent of the deed, Sandra executed a note to me because she wanted to contribute toward the home since we lived there together. Before executing the new deed, Sandra and I discussed at length that when one of us passed away, it was our wish and intent that the house would automatically go to the survivor, which is why we chose to do a joint tenancy with right of survivorship.

Sandra developed Alzheimer's disease and eventually had to quit her job due to increasing memory loss as a result of this disease. In Spring 2015, I asked her daughter, Plaintiff Vanessa Williams, if she could come to Charleston and help me take her mother to doctor's appointments, as I had to work. On June 16, 2015, while I was at work, Vanessa packed her mother's belongings and, instead of taking her to her doctor, she took Sandra to her home in Alabama without saying one word to me about her plans. She immediately filed an emergency motion in the Probate Court of Baldwin County, Alabama, alleging that her mother was

incompetent and seeking to have herself appointed as Guardian of her mother and Conservator of her mother's estate. That request was granted.

Sandra had never expressed to me any desire to leave our home or to move anywhere else, and especially not to move to Alabama. I was given no information about her whereabouts or condition after Vanessa absconded with her. I tried repeatedly to contact Sandra and Vanessa, but my calls were never answered, messages left were never returned, and letters I mailed were returned unclaimed. I had no knowledge that Vanessa had been appointed as Sandra's guardian or that she was trying to take half of the property, my home. I didn't even know Sandra had passed away until a mutual friend of Sandra's and mine mentioned it. I was only able to confirm this after my attorney's office began checking probate records in Alabama and found that Sandra's death certificate had been filed with the Baldwin County (AL) Probate office. I was quite upset that Vanessa not only wouldn't respond to my attempts to contact Sandra or her, but didn't even have the courtesy to let me know Sandra had died, considering her mother and I had been in a loving relationship and cared deeply for each other for so many years.

In early October 2015, I received a letter from an attorney in Alabama that Vanessa had retained. In the letter, the attorney informed me that Vanessa had been appointed as Sandra's Guardian and Conservator and asked if I would be agreeable to purchasing Sandra's interest in the house since Sandra needed "as much financial assistance as possible." I was speechless to say the least; pay for what I already owned?! The letter further stated that Vanessa wanted to come and pick up her mother's car, personal belongings, furniture and other personal property that she did not take when she absconded with Sandra to Alabama.

Shortly before Sandra's death on November 27, 2015, Vanessa came to Charleston, where she executed a new deed to Sandra's and my home. In her capacity as Conservator, she

signed on her mother's behalf, conveying Sandra's interest as a joint tenant to herself individually, for Ten Dollars ($10.00) and love and affection. She has now filed this action, asking that the property be partitioned and sold in order to force me to pay her one-half of the value of the real estate. I do not believe the deed upon which she is suing is valid. As Sandra has since passed away, the entirety of the interest in the real estate has now vested in me, as the surviving joint tenant. While in Charleston, Vanessa made no attempt to contact me or come to my home to retrieve the remainder of Sandra's personal items or car, items that Vanessa may have been able to sell to generate funds since her attorney had stated such a great need for financial assistance to care for Sandra. For years following Sandra's diagnosis, I took care of her solely, with no physical or financial assistance from anyone. I loved Sandra and was happy to care for her. It was only when her condition digressed such that it became a safety concern for her to be alone while I was working or taking her to doctor appoints, that I finally had an in-home aide come to our home to be with Sandra when I was working. I ultimately decided to call Vanessa and ask if she would be able to come stay for a short time to help. Never in my wildest imagination did I think Vanessa would remove her mother from her own home and take her from the care of doctors who had been treating her and were most familiar with her illness. Prior to this time, Vanessa only saw her mother once or twice each year and this was usually when Sandra and I would go to visit her.

Neither Sandra nor I wanted the other to have any problems from our respective beneficiaries in regard to our home. What Vanessa is now doing is exactly what her mother did not want to happen, and what we worked diligently to avoid happening. Just as I would have never wanted any beneficiary(ies) of mine to attempt to put Sandra out of our/her home had I pre-deceased her, she also did not want any beneficiary(ies) of hers to try to take our/my home

away from me. I respectfully ask that the Complaint of the Plaintiff be dismissed with prejudice, that the Court order that a new deed be prepared by the Office of the RMC of Charleston County reflecting that I own my home in its entirety as the surviving joint tenant, and that I be permitted to go forward on my counterclaim for Breach of Fiduciary Duty, Fraud and slander of title.

Respectfully submitted,

BRADFORD Q. JEFFCOAT, JR.

Sworn to and subscribed before me
This 12 day of July, 2016

Notary Public, State of South Carolina
My Commission expires: 01/30/2023

RUFUS C. FOSTER III NOTARY PUBLIC STATE OF SOUTH CAROLINA JANUARY 30, 2023

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins,,

Plaintiffs,

vs.

Bradford Q. Jeffcoat, Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

AMENDED SUMMONS (Partition) (Conversion) (Non-Jury)

FILED
2017 JAN 11 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and **REQUIRED** to answer the First Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the First Amended Complaint on the subscriber at his office at 126 Seven Farms Drive, Suite 200, Charleston, South Carolina 29492, within thirty (30) days after the service thereof, except as to the United States of America who shall have sixty (60) days, exclusive of the day of such service. If you fail to answer the First Amended Complaint or otherwise appear and defend within the time aforesaid, Plaintiffs in this action will apply to the Court for the relief demanded in said Complaint.

CLAWSON and STAUBES, LLC

Christopher Staubes
Bar No.: 10470
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: cstaubes@clawsonandstaubes.com
Attorney for Plaintiffs

January 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins,

Plaintiffs,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

FIRST AMENDED COMPLAINT
(Partition)
(Conversion)
(Non-Jury)

FILED
2017 JAN 11 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiffs, Vanessa Williams individually, as Conservator and Guardian of Sandra P. Perkins, and as Personal Representative of the Estate of Sandra P. Perkins, and file this First Amended Complaint to add Plaintiff, Vanessa Williams as Personal Representative of the Estate of Sandra P. Perkins as Plaintiff to each and every cause of action such that the Complaint now reads as follows:

PARTIES AND JURISDICTION

1. That Vanessa Williams is an individual resident of Baldwin County, Alabama and owns real property located in Charleston County, South Carolina, made the subject matter of this lawsuit.

2. That Sandra P. Perkins, now deceased, was an individual resident of Baldwin County, Alabama and at the time of her death, owned personal property located in Charleston County, South Carolina, made the subject matter of this lawsuit.

3. That Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, is the only child of Ms. Perkins, and has been appointed Personal

Representative of the Estate of Sandra P. Perkins by the Probate Court of Baldwin County, Alabama.

4. That for a certain duration of time, while Sandra P. Perkins was living, Vanessa Williams acted as Conservator and Guardian of Sandra P. Perkins. She was appointed Ms. Perkins' Guardian and Conservator by the Probate Court of Baldwin County, Alabama.

5. That the Defendant, Bradford Q. Jeffcoat, Jr., is, upon information and belief, an individual resident of Charleston County, South Carolina, and is neither an infant nor incompetent person and not in the military service.

6. That the Defendant, Blue Heron Builders, LLC, is, upon information and belief, a dissolved company that was authorized to do business in the State of South Carolina.

7. That the subject of this action is real property located at 1955 Old Fort Avenue in Charleston, South Carolina in Charleston County, South Carolina (the "Real Property"), and is more particularly described as follows:

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.
>
> TMS No.: 355-09-00-108

8. The personal property made the subject matter of this lawsuit is located in Charleston County, South Carolina.

9. Jurisdiction and venue are proper and correct in this Court.

FOR A FIRST CAUSE OF ACTION
(Partition by Allotment or Sale)

10. The Plaintiffs reallege the allegations of the preceding paragraphs as if fully restated herein.

11. The subject Real Property is currently owned by Defendant Bradford Q. Jeffcoat, Jr. and Vanessa Williams as tenants in common.

12. That Plaintiff Vanessa Williams intends to divest herself of her interest in and to the Real Property.

13. That Plaintiff has offered to sell her interest in the Real Property to Defendant Bradford Q. Jeffcoat, Jr., for fair market value, which offer Defendant declined.

14. That pursuant to S.C. Code Ann. §15-61-10 *et seq.*, partition is compellable between tenants in common and that this Honorable Court has jurisdiction to make partition by allotment to one or more of the parties or, in case partition by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the subject Real Property and the division of the proceeds according to the rights of the parties.

15. That pursuant to S.C. Code Ann. §15-61-110, Plaintiff seeks her attorney's fees to be taxed as part of the costs of this action.

16. That the Defendant below named claims or may claim to have some interest in or lien upon the subject Real Property, or some part thereof, by virtue of the matters and things set forth below, but any such interest in or lien upon the said premises is junior and subordinate to Plaintiff's interest or does not attach to the property which is the subject of this action or has been paid in full and not satisfied of record. Said liens or interests are of record in the RMC/ROD Office or Clerk of Court's Office for Charleston County and are described as follows:

(a) The Defendant, Blue Heron Builders, LLC by virtue of a Mortgage from Bradford Q. Jeffcoat, Jr., to Blue Heron Builders, LLC, in the amount of $74,500.00 Dollars, dated April 28, 2000 and recorded April 29, 2000 in the RMC/ROD Office for Charleston County in Book O346 at Page No. 432.

The Plaintiff is informed and believes that the above Mortgage is expired and was otherwise extinguished as a lien against the subject Real Property as a matter of law with last payment having been due April 28, 2001 and that the subject property has been paid for and is released from the above mortgage, but not released of record and that it does not constitute a lien against the subject property.

17. That there existed a Mortgage from Sandra P. Perkins, in the amount of $43,550.00 Dollars, dated July 1, 2000 and recorded February 16, 2001 in the RMC/ROD Office for Charleston County in Book E364 at Page No. 21 to the Defendant, Bradford Q. Jeffcoat, Jr. That said Mortgage has been paid in full, that subject property has been paid for and is released of record from the above Mortgage and that said Mortgage does not constitute a lien against the subject Real Property. That, in conjunction with the payment and satisfaction of the Mortgage to Defendant Jeffcoat, in full, Plaintiff, Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins may have made payment in excess to the full amount due and owing on said Mortgage and is entitled to reimbursement from Defendant or appropriate proceeds from the sale of the subject property for any overpayment.

FOR A SECOND CAUSE OF ACTION
(Conversion)

18. The Plaintiffs reallege the allegations of the preceding paragraphs as if fully restated herein.

19. That Sandra P. Perkins is the rightful owner of certain items of personal property, including without limitation, furniture and apparel (collectively, "Personal Property") located at 1955 Old Fort Ave., Charleston, SC.

20. That, at all times relevant to this Complaint, Sandra P. Perkins maintained legal

title to the Personal Property.

21. That, upon information and belief, Defendant Bradford Q. Jeffcoat, Jr., has unauthorizedly assumed, converted, and exercised ownership over Sandra P. Perkins' personal property and retained said property without her, or Plaintiff's, consent or authorization.

22. That, upon information and belief, Defendant Bradford Q. Jeffcoat, Jr., has accomplished the conversion of the Personal Property by taking advantage of Sandra P. Perkins' compromised mental state and has done so in willful and conscious disregard to Sandra P. Perkins' legal rights as owner of said Personal Property and rightful recipient of any proceeds thereof.

23. As a direct and proximate result of Defendant Bradford Q. Jeffcoat, Jr.'s conversion of said Personal Property, Plaintiff, Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins has incurred monetary damages in an amount to be determined by this Court and said Plaintiff is entitled to punitive damages.

WHEREFORE, having fully set forth its First Amended Complaint, the Plaintiffs pray that this Honorable Court inquire into the matters herein above alleged and grant relief unto the Plaintiffs in the following particulars, to-wit:

a. That the Court find that mortgage recorded April 28, 2000 in the RMC/ROD Office for Charleston County in Book O-346 at Page 432, is expired and was otherwise extinguished as a lien against the subject Real Property as a matter of law with last payment having been due April 28, 2001 and that the subject property has been paid for and is released from the above mortgage, and that it does not constitute a lien against the subject Real Property;

b. That the subject Real Property be partitioned between the Plaintiff Vanessa Williams and Defendant Bradford Q. Jeffcoat, Jr., either by allotment or order sale of the Real

Property and a division of the proceeds according to the rights of the parties hereto including apportionment to Plaintiff, Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins of any overpayment made on the subject mortgage to Defendant Jeffcoat;

c. That Defendant Bradford Q. Jeffcoat, Jr., be ordered to relinquish possession of the above referenced Personal Property to Plaintiff, Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins or in the alternative, that a money judgment be entered against said Defendant for the value of such property plus interest accruing since the time the Personal Property was converted;

d. For punitive damages arising out of Defendant's conversion of Personal Property;

e. That this Court grant unto Plaintiffs such compensation for attorney fees, court costs, and litigation expenses incurred by the Plaintiffs; and

f. That this Court grant unto Plaintiffs such other and further relief that the Court deems just and equitable.

CLAWSON AND STAUBES, LLC



Christopher B. Staubes
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Attorney for Plaintiffs

Charleston, South Carolina
January 10, 2017

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **CERTIFICATE OF SERVICE**

I hereby certify that I have caused a copy of the filed *Amended Summons and First Amended Complaint* in this matter to be deposited in the United States mail with postage prepaid and affixed thereto, addressed as follows, on the following: 10th day of January, 2017.

Heather S. Shaw, Esq.
Shaw Law Firm, LLC
510 Mill St Ste 2B
Mount Pleasant SC 29464-4483

Blue Heron Builders, LLC
5220 Old Washington
Hollywood, SC 29449

FILED
2017 JAN 11 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

CLAWSON and STAUBES, LLC

Andrea E. Egan
Paralegal for Chris Staubes
126 Seven Farms Drive, Suite 200
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Facsimile: (843) 722-2867
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins,

Plaintiffs,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

FILED
2017 JAN 17 PM 2:35
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiffs, Vanessa Williams individually, as Conservator and Guardian of Sandra P. Perkins, and as Personal Representative of the Estate of Sandra P. Perkins, by and through undersigned counsel, and respectfully requests this Honorable Court to enter Partial Summary Judgment on all allegations made by Plaintiffs on Partition by Allotment or Sale, and in support thereof, shows as follows:

1. That there exists no genuine issue of material fact.
2. That Plaintiffs are entitled to judgment as a matter of law.

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Facts

Plaintiff, Vanessa Williams, is the daughter of Sandra Perkins. The Defendant, Bradford Q. Jeffcoat, Jr. and Ms. Perkins have been roommates for approximately fifteen (15) years. On April 28, 2000, Mr. Jeffcoat bought ownership in a residential

property in Charleston, South Carolina, more particularly described in the deed attached hereto as Exhibit "A". Shortly after his purchase, on July 1, 2000, Mr. Jeffcoat conveyed a half interest to Ms. Perkins in exchange for a mortgage in the amount of $43,550.00. See Exhibits "B" and "C". It is undisputed that Ms. Perkins paid all of the principal and interest (at 7.5% fixed rate for 15 years) on the mortgage and that the mortgage has since been released. See Exhibit "D". Accordingly, on or about June 1, 2015, Ms. Perkins held an unencumbered estate in fee simple in the subject property with Mr. Jeffcoat as joint tenants with right of survivorship and not as tenants in common.

Prior to her death in November of 2015, Ms. Perkins suffered from advanced dementia. Her condition began to rapidly deteriorate in the summer of 2015 and after being informed by Mr. Jeffcoat of her mother's infirmities, Ms. Williams drove to Charleston in order to assess the situation. Upon observing her mother's condition and determining that, as Ms. Perkins' only child, she would be the most appropriate person to provide for her mother's care going forward, Ms. Williams left Charleston on or about June 16, 2015 and brought Ms. Perkins back to Alabama to live with her.

After consulting with legal counsel in Alabama, Ms. Williams decided that the best way to provide for her mother was to become her Guardian and Conservator. Correspondingly, Ms. Williams petitioned the Probate Court of Baldwin County and was issued permanent Letters of Guardianship/Conservatorship on September 15, 2015. See Exhibit "E".

Thereafter, as fiduciary, Ms. Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." *Ala. Code* § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had

paid valuable consideration for her interest in the subject property, and that as conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, she consulted with the Law Firm of Clawson & Staubes LLC in South Carolina. Based on the advice of Clawson & Staubes LLC, Ms. Williams, as conservator, decided to pursue a partition action on behalf of Ms. Perkins against Mr. Jeffcoat.

In early November 2015, while Clawson & Staubes LLC was working on drafting the complaint for this partition action, Ms. Williams received the unfortunate news that her mother's health had suddenly taken a turn for the worse, and death was imminent. Given that the subject property was still in the names of Ms. Perkins and Mr. Jeffcoat and held as joint tenants with right of survivorship, the death of Ms. Perkins would result in Mr. Jeffcoat being the sole owner of said property. As a result, Ms. Williams upon advice of counsel, decided that the best way to fulfil her duties was to sever her mother's joint tenancy and then pursue partition.

Accordingly, pursuant to the advice of her Alabama and South Carolina counsel, Ms. Williams conveyed Ms. Perkins' interest in the subject property to herself on November 16, 2015, severing the joint tenancy and creating a tenancy in common with Mr. Jeffcoat. See Exhibit "F". Ms. Perkins died on November 27, 2015. In conveying the subject property to herself, Ms. Williams acted in the only way possible to retain the asset on behalf of Ms. Perkins' estate until determining its ultimate disposition. She took this action in accordance with *Ala. Code* § 26-2A-152(c)1 (1975). The conveyance was approved by order of the Probate Court of Baldwin County on January 15, 2016 while applying *Ala. Code* § 26-2A-152(c)1 (1975). See Exhibit "G".

The November 16, 2015 deed conveying Ms. Perkins' interest to Ms. Williams did not require court approval because it was not a disposition for cash or credit, and was done in order to hold, maintain, and preserve assets of Ms. Perkins' estate. The legal title was conveyed to Ms. Williams acting as agent for Ms. Perkins' estate and with said estate's best interests in mind. See Affidavit of Leslie T. Fields, Esq. attached hereto as Exhibit "H". Given Ms. Perkins' rapidly declining health in the late summer and early fall of 2015 it would have been imprudent for Ms. Williams to allow the property to remain in the joint tenancy.

Having severed the joint tenancy with Mr. Jeffcoat by destroying the unity of time, Ms. Williams then sought judicial partition pursuant to *S.C. Code Ann.* § 15-61-10 *et seq* (1986), by complaint filed in this Honorable Court on November 23, 2015. Mr. Jeffcoat disputes the legitimacy of the actions taken by Ms. Williams as contrary to Alabama and South Carolina Law.

Issues

There is no genuine issue of material fact presented by the evidence. The issues before the Court are twofold:

1. Whether a unilateral conveyance by one tenant who holds property with another tenant as joint tenants with right of survivorship to a third party effectively severs the joint tenancy and creates a tenancy in common?

2. Whether under Alabama law, a conservator may convey real property of her ward, without prior court approval, pending its ultimate disposition?

Standard of Review

Summary Judgment is governed by Rule 56(c), SCRCP." *Turner v. Milliman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* at 122, 708 S.E.2d at 769; *see also* Rule 56(c), SCRCP. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams,* 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.,*365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.*

Law and Analysis

1. A joint tenancy with right of survivorship is severed by a tenant's conveyance of property interest to a third party.

S.C. Code Ann. § 27-7-40 (1986) provides several non-exclusive mechanisms by

which a joint tenancy with right of survivorship may be created and severed in South Carolina. Section 27-7-40 in its entirety states:

> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
> (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.
> (iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.
> (v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.
> (vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.
> (vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.
> (viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.
> (ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the

joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

The most important words in this statute with respect to the facts of the case at bar are contained in the very first clause: "[i]n addition to any other methods for the creation of a joint tenancy in real estate which may exist by law". The statute plainly envisages that there are other ways to create a joint tenancy in South Carolina. Furthermore, S.C. Code Ann. § 62-2-804(a) (1986) clearly states that the statute is not the only mechanism by which a joint tenancy in real estate may exist by law. Accordingly, statutory creation of a joint tenancy is not exclusive and common law rules for the creation of a joint tenancy are still recognized. The Court of Appeals affirmed this rule in *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass*, 359 S.C. 407 (Ct..App.2004), opining:

> Appellant asserts that, at most, Rosemary's 1985 deed created a tenancy in common. "The common law method of creating a joint tenancy requires a conveyance to have four unities: unity of interest, unity of title, unity of time, and unity of possession." *Smith v. Rucker,* 357 S.C. 532, 593 S.E.2d 497, 499 (Ct.App.2004) (citing *Jenkins v. Jenkins,* 8 S.C.L. (1 Mill

Const.) 48, 52 (1817)).

Therefore, a joint tenancy with right of survivorship is established where the grant or devise conveys unity of title, unity of interest, and unity of possession to two or more tenants at the same time.

By implication, statutory severance is likewise not the exclusive mechanism for destroying a joint tenancy. The common law rules for severance still apply and the destruction of one of the required unities of title destroys the joint tenancy and renders property holders "tenants in common." This is the law in South Carolina as well as many other states.[1] In *Smith v. Cutler*, 623 S.E.2d 644 at 647 (S.C. 2005), Chief Justice Toal held that in South Carolina, "unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."

Applying the law to the facts of the case at bar results in a tenancy in common with the Plaintiff, Ms. Williams and the Defendant Mr. Jeffcoat each holding a one-half interest in the subject property. The subject property was conveyed from Ms. Perkins, who held a joint survivorship interest with Mr. Jeffcoat, to Ms. Williams on November 16, 2015. This conveyance severed the unity of time requirement with respect to the new tenancy, which in turn severed the joint tenancy with right of survivorship. The Supreme

[1] *Nunn v. Keith*, 289 Ala. 518 (1972); *Smith v. Kofstad*, 206 P.3d 441 (Alaska 2009); *Estate of England*, 233 Cal.App.3d 1 (1991); *Alexander v. Boyer*, 253 Md. 511 (Md. 1969); *Matter of Estate of Bates*, 492 N.W.2d 704 (Iowa App. 1992); *Harmes v. Sprague*, 105 Ill.2d 215 (Ill. 1984); *Home Trust Mercantile Bank v. Staggs*, 714 S.W.2d 792 (Mo.App. E.D. 1986); *Smith v. Tang*, 100 Ariz. 196 (1996); *Reicherter v. McCauley*, 47 Kan.App.2d 968 (Kan.App. 2012); *Estate of Knickerbocker, In re*, 912 P.2d 969 (Utah 1996); *Estate of Gulledge*, 673 A.2d 1278 (D.C. 1996); *Marchel v. Estate of Marchel*, 349 Wis.2d 707 (Wis.App. 2013); *Hoover v. El Paso Nat. Bank*, 498 S.W.2d 276 (Tex.Civ.App. —El Paso 1973); *Ianotti v. Ciccio*, 219 Conn. 36 (Conn. 1991); *Edwin Smith LLC v. Synergy Operating LLC*, 2012 -NMSC- 034 (N.M. 2012); *Johnson v. Gray*, 533 N.W.2d 57 (Minn.App. 1995); *Valdez v. Occupants of 3908 SW 24th Street*, 270 P.3d 143 (Okla. 2011); *Williamson v. Williamson*, 157 A.2d 110 (R.I. 1960); *Lyon v. Lyon*, 100 Wn.2d 409 (Wash. 1983); *In re Estate of Bernecker*, 654 A.2d 246 (Pa.Cmwlth. 1995); *Foucart v. Paul*, 516 So.2d 1035 (Fla.App. 5 Dist. 1987); *Taylor v. Canterbury*, 92 P.3d 961 (Colo. 2004); *Shockly v. Halbig*, 75 A.2d 512 (Del.Ch. 1950); *Halleck v. Halleck*, 216 Or. 23 (Or. 1959);

Court in *Smith v. Cutler* spells out exactly what language to include in the granting clause and habendum clause of a deed to create an indestructible tenancy in common:

> "[w]e hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor." 366 S.C. at 551, 623 S.E.2d at 647.

Had Ms. Perkins and Mr. Jeffcoat chosen the above language, then the conveyance by Ms. Perkins to Ms. Williams would have failed. Having opted instead for joint tenancy with right of survivorship, the parties contemplated the fact that either party may sever the joint tenancy by conveyance to a third party.

The Defendant has also attempted to rely on *S.C. Code Ann.* § 27-7-40(a)iii (1986) which provides that a joint tenancy may only be encumbered by the consent of all joint tenants. In so doing, the Defendant attempts to conflate ownership interests with encumbrances. Conveyance of ownership in property is not an encumbrance. Encumbrances and ownership rights are mutually exclusive and the fact that the legislature specifically excluded "ownership interests" from the definition of encumbrance under the South Carolina Code, is dispositive of the issue.

In South Carolina, encumbrance with respect to real estate is defined as any property interest that is not an ownership interest.[2] As the Defendant has rightly pointed out, there is no case in South Carolina that holds otherwise. Encumbrances lessen the property value because the lien, mortgage, or other attachment can be satisfied to the detriment of the non-consenting party. An outright unilateral conveyance perhaps results in an unwanted partner, but in no way lessens the value to the other tenant, who

[2] S.C. Code Ann § 36-9-102 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property; Black's Law Dictionary (10th ed. 2014), encumbrance;

would still be entitled to the full value of the interest held in the property unencumbered. South Carolina law even recognizes that a joint tenant or tenant in common may force a partition of real property without requiring consent of all the parties.[3] The statutes would appear to be in conflict if a conveyance were to be viewed as synonymous with encumbrance.

2. Alabama Law permits a conservator to collect, hold and retain property without prior Court approval.

Defendant argues that Alabama Law does not permit a conservator to transfer property to herself without prior Court approval. This is an incorrect interpretation with respect to the facts of this case. *Code of Alabama* § 26-2A-152(d)(3) (1975) proscribes the disposal of real property for cash or credit. The Plaintiff, by contrast, sought to protect a valuable asset of Ms. Perkins' estate by conveying it to herself as fiduciary. As fiduciary, Ms. Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." *Ala. Code* § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, and the fact that as conservator, she was required by law to retain and protect the assets of her mother and/or mother's estate, Ms. Williams consulted with legal counsel in Alabama and South Carolina in order to determine how to sever the joint tenancy.

Without the conveyance, a valuable asset of her ward's estate would have been lost to the survivorship clause in the July 1, 2000 deed in contradiction of Ms. Williams' duties under Alabama law. Furthermore, the conveyance was subsequently approved under *Ala. Code* § 26-2A-152(c)(1) by the Judge of Probate in Baldwin County,

[3] S.C. Code Ann. § 15-61-10 *et seq.*

Alabama. See Exhibit "G". Section 26-2A-152(c)(1) provides that a conservator may act without prior court authorization to:

> Collect, **hold**, and retain assets of the estate including **land in another state** and stocks of private corporations, **until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.**

Thus, it is appropriate and permissible for a conservator to hold property in her own name in order to determine the final disposition of said property. The statute manifestly provides for conservators to act in the very manner that Ms. Williams did in this scenario, just as her ward could have done had she the mental capacity to do so. It is likewise impossible for this statute to have any meaning with respect to land if it does not allow for conveyances as it is futile to attempt a transfer of property without a deed.

Moreover, the Plaintiff has consulted with an Elder Law expert in Alabama that agrees with the foregoing analysis. Leslie T. Fields, Esquire states unequivocally in her attached affidavit that the actions of Ms. Williams were lawful, and that the Defendant's attempt to conflate the conveyance as a sale or disposition of the real property interest for cash or credit is misguided. See Exhibit "H".

Conclusion

South Carolina law, like the majority of states, recognizes the common law creation of a joint tenancy provided that the four unities of title are present. It logically must follow and that such a tenancy can be destroyed by the unilateral act of one tenant by conveying its interest to a third party. The common law in South Carolina harmoniously agrees with this analysis. Consequently, Ms. Perkins' conveyance to her daughter Ms. Williams severed the joint tenancy with right of survivorship and resulted

in a tenancy in common with Mr. Jeffcoat, which is subject to partition under South Carolina statute.

Moreover, Alabama law is clear that a conservator may hold property in its own name in order to preserve assets of the ward's estate. This is allowed even if the property in question concerns land in another state. The only way to hold property in land is through a deed of conveyance. In this case, Ms. Williams followed the statute perfectly to achieve this result.

WHEREFORE, the premises considered, Plaintiff prays that this Honorable Court enter an Order to partition the subject real property between Plaintiff Vanessa Williams and Defendant Bradford Q. Jeffcoat, Jr. either by allotment or order sale of the real property and a division of the proceeds according to the rights of the parties hereto..

Respectfully submitted,

CLAWSON AND STAUBES, LLC

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Charleston, South Carolina
January 12, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel on the 12th day of January, 2017 via:

BK N 346PG023

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WHEREAS, it was unanimously resolved that the undersigned Officer(s) or Partner(s) convey the hereinafter described property to the below named Grantee(s) for the consideration expressed below.

DEED

KNOW ALL MEN BY THESE PRESENTS, That JANE L DENNIS D/B/A BLUE HERON CO., (hereinafter called "Grantor"), for and in consideration of the sum of ONE HUNDRED FORTY NINE THOUSAND FIVE HUNDRED AND NO/100 ($149,500.00) DOLLARS, to it in hand paid at and before the sealing of these presents by BRADFORD Q JEFFCOAT, JR. (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee(s), his successors and assign(s) forever,

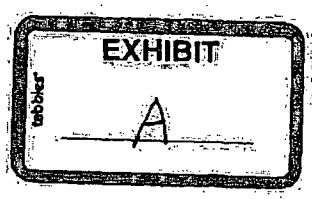
ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G Pennington, R.L.S., and recorded in the RMC Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS Conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the RMC Office for Charleston County, South Carolina.

BEING a portion of the property conveyed to the Grantor herein by deed of Lee Belle Murray dated 3/26/98 and recorded in Book T299, Page 843 in the RMC Office for Charleston County.

TMS# 355-09-00-108

GRANTEES ADDRESS: 2151 Pinehurst Ave CHAS SC. 29414



TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the Grantee(s) hereinabove named, and Grantee(s) Heirs and Assigns forever.

And the Grantor(s) do(es) hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the Grantee(s) hereinabove named, and the Grantee's Successors and Assigns against itself and its successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others; including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and by its undersigned Officer(s) or Partner(s) and its seal to be hereto affixed.

DATE: April 28, 2000

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

JANE L DENNIS D/B/A BLUE HERON CO.,

by _____
its Her Atty. In Fact

STATE OF SOUTH CAROLINA]
]
COUNTY OF CHARLESTON]

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me by the within Officer(s)/Partner(s) this 28 day of April, 2000.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/09

BK N 346PG026

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The Property was transferred by JANE L DENNIS D/B/A BLUE HERON CO., to BRADFORD Q JEFFCOAT, JR. on April 28, 2000.

3. The Deed is:
a. XXXX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or month's worth.

4. Check one of the following if either item 3a or item 3b above has been checked.
a. XXXX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $149,500.00.

5. Check YES____ or NOXXXX to the following:
A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer.

6. The DEED recording fee is computed as follows:
a. $149,500.00 the amount listed in item 4 above.
b. -0- the amount listed in 5 above (no amount place 0)
c. $149,500.00 Subtract line 6b from Line 6a and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Bradford Q. Jeffcoat Jr.
GRANTEE

BRADFORD Q JEFFCOAT, JR.
PRINT OR TYPE NAME HERE

SWORN to before me this
14 day of April, 2000.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/09

C. J. Manos

LTV

BK N 346PG027

FILED

N346-23

2000 APR 28 PM 12:15

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording Fee	10.00
State Fee	398.70
County Tax	164.45
Postage	
TOTAL	563.15 B

RECEIVED FROM RMC

MAY 2 2000

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

TMS VERIFIED

BAC MLH

DTD 5/2/00

BKD 364PG107

This Instrument Prepared By (but no title search performed):
And to Be Returned to:
Elaine H. Fowler
Turner, Padget, Graham & Laney, P.A.
Post Office Box 22129
Charleston, SC 29413-2129

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Bradford Q. Jeffcoat, Jr. (hereinafter whether singular or plural, "GRANTOR"), in the State aforesaid, for and in consideration of the sum of Five and 00/100 Dollars ($5.00) and other valuable consideration, to GRANTOR in hand paid at and before the sealing and delivery of these presents by Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins, jointly with right of survivorship, and not as tenants in common (hereinafter collectively referred to as "GRANTEE"), in the State aforesaid (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said GRANTEE the following described property (the "Property"):

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the ROD Office for Charleston County, South Carolina.

Derivation: The foregoing property being the same property conveyed to the Grantor by Jane L. Dennis d/b/a Blue Heron Co., by deed dated April 28, 2000 and recorded in the Office of the Register of Deeds for Charleston County on April 28, 2000 in Deed Book N346 at Page 023.

TMS#: 355-09-00-108

GRANTEE'S ADDRESS: 1955 Old Fort Avenue
Charleston, South Carolina 29414

This conveyance is made subject to all obligations, restrictions, limitations, covenants and easements of record and governmental ordinances and regulations affecting the Property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

EXHIBIT
B

H:\EHF\Jeffcoat-Perkins\deed

DEF026

TO HAVE AND TO HOLD, all and singular the premises before mentioned, unto the said GRANTEE, its successors and assigns forever.

And the GRANTOR hereby binds GRANTOR and GRANTOR'S Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the said GRANTEE and GRANTEE'S successors and assigns against GRANTOR and GRANTOR'S Heirs, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS GRANTOR'S Hand and Seal, as of the 1st day of July, 2000.

Signed, Sealed and Delivered
In The Presence of:

Elaine H. Fowler

Mary C. Zahn

Bradford Q. Jeffcoat, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by Bradford Q. Jeffcoat, Jr., Grantor, to be the free and voluntary act and deed of the Grantor.

WITNESS my signature as of the 1st day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

BK0 3048105

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

Date of Transfer of Title
(Closing Date) July 1st, 2000

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **BRADFORD Q. JEFFCOAT, JR. to BRADFORD Q. JEFFCOAT, JR. and SANDRA P. PERKINS, jointly with right of survivorship, and not as tenants in common, on July 1st, 2000.**

3. Check one of the following: ***The DEED is***
   (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_____ EXEMPT from the deed recording fee because (exemption#_____)
   (Explanation if required)
   (If exempt, please skip items 4-6 and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $74,750.00.
   (b)_____ The fee is computed on the fair market value of the realty which is _____.
   (c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ____ or NO XX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) $74,750.00 the amount listed in item 4 above
   (b) -0- the amount listed in item 5 above (no amount place zero)
   (c) $74,750.00 subtract line 6(b) from line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Grantor, Grantee, or Legal Representative
connected with this transaction

Bradford Q. Jeffcoat, Jr.
Print or Type Name here

Sworn to before me as of the 1st
day of July, 2000.

Elaine W. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

H:\EHF\Jeffcoat-Perkins\Charleston Affidavit

DEF028

Turner Padget, Graham

P.O. Box 22129

Chas SC 29413

BKD 364PG110

FILED

D364-107

2001 FEB 16 PM 3:49

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording Fee	10.00
State Fee	195.00
County Fee	82.50
Postage	
TOTAL	287.50

TMS VERIFIED

BAC LMG

DTD 2-21-01

RECEIVED FROM RMC

FEB 21 2001

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

BKE 364PG021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MORTGAGE

THIS MORTGAGE, given as of the 1st day of July, 2000, by Sandra P. Perkins ("Mortgagor"), whose address is 1955 Old Fort Avenue, Charleston, South Carolina 29414 and Bradford Q. Jeffcoat, Jr. ("Mortgagee") whose address is 1955 Old Fort Avenue, Charleston, South Carolina 29414.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of $43,550.00, together with interest thereon, as evidenced by that certain Promissory Note of even date herewith, executed by Mortgagor and delivered to Mortgagee, the final payment of which is due on demand, but not later than June 1, 2015, as provided therein (the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein; and

WHEREAS, Mortgagor has agreed to give to Mortgagee this Mortgage to secure the payment of the indebtedness secured by the Note;

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all covenants and conditions in the Note (and in any renewal, extension or modification thereof) and in this Mortgage, all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorneys' fees; Mortgagor does hereby grant, bargain, convey, mortgage, unto Mortgagee and Mortgagee's heirs, successors and assigns forever, all right, title and interest of Mortgagor in and to the following property, together with any improvements or fixtures located thereon, and any easements appurtenant to said property (the "Mortgaged Property"):

See Exhibit "A" attached hereto.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and Mortgagee's heirs, successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee all the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instrument securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewals, extensions or modifications thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed thereunder, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void; but it shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

H:\EHF\Jeffcoat-Perkins\mortgage

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT C

ARTICLE ONE

COVENANTS OF MORTGAGOR

1.01 Performance of Note, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of the Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by the Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Mortgaged Property and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the land and real property hereby mortgaged and every part thereof; that the Mortgaged Property is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, listed on the title insurance policy issued to Mortgagee upon his acquisition of the Mortgaged Property. Mortgagor fully warrants the title to the Mortgaged Property, and will forever defend the same against the claims of all persons whomsoever, except Mortgagee or persons claiming through him.

1.03 Zoning and Environmental Laws. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Mortgaged Property permit the use and occupancy of the Improvements for the intended purposes and further covenants and warrants that it will comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property.

1.04 Taxes, Assessments and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attached or any penalty is incurred.

(b) Mortgagor shall not permit or suffer for more than thirty (30) days any mechanics', or laborers', materialmen's, statutory or other liens upon any of the Mortgaged Property.

1.05 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may require but in no event exceeding the full insurable value, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood, hurricane and windstorm damage, and shall pay promptly when due any premiums on such insurance policies and the companies issuing the same shall be acceptable to Mortgagee. All such policies and

renewals thereof shall be held by Mortgagee and shall contain a non-contributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall include the improvements now or hereafter located on the Mortgaged Property. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. The Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of call unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its discretion, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee alone, and not to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by the Mortgagee in the collection or handling of such funds, Mortgagee may apply the net proceeds at its option, either toward restoring the Improvements or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future. If the Mortgagee elects to restore the Improvements, any balance of such monies after restoration shall at Mortgagee's option either be applied toward the reduction of indebtedness and other sums secured hereby or shall be paid to Mortgagor. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) Mortgagor shall, at its sole expense, obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Mortgaged Property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in a form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

1.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State where the Mortgaged Property is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured permanently, the entire indebtedness and other sums secured hereby shall, in the event of such condemnation or taking, at the option of the Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of actions and proceeds of, or on account of damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto are hereby assigned by Mortgagor to Mortgagee, who, after deducting there from all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sum secured hereby and to any prepayment charge provided in the Note, this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any

compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.07 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building, structure or other improvement presently or hereafter on the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee. Mortgagor may sell or otherwise dispose of, furniture, furnishing, equipment, tools, appliances, or machinery, which may become worn out, or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage, except as otherwise provided in this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor, provided that Mortgagee assigns to Mortgagor available insurance proceeds, if any, for the purpose of restoration. Subject to Mortgagee's right to make certain other elections as provided in this Mortgage, if a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee.

1.08 Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or re-filed at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, financing statements, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, or to continue and preserve the obligation of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether no owned or hereafter acquired by Mortgagor. Upon failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or re-file any and all such mortgages, instruments of further assurance, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.09 After-Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with the Mortgaged Property or any part thereof.

1.10 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or dispute in which Mortgagee is or might be made a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, this Mortgage or any other instrument securing the Note, or the Mortgaged Property or any part thereof, or the interests the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect or part of the Mortgage property or any action to protect the security hereof. All costs, charges and expenses (except where Mortgagor and Mortgagee are adverse parties and Mortgagor is ultimately the prevailing party) so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts to incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.11 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observation of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same; and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred are paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.12 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books off the Mortgaged Property. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish financial statements, records and such other information as may be reasonably requested by Mortgagee to examine Mortgagor's financial condition and/or the income and expenses for the Mortgaged Property.

1.13 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby and whether or not any offsets or defenses exist against such principal and interest or other sums.

ARTICLE TWO

DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) An event of default under the Note or any other instrument securing the note.

(b) A breach by Mortgagor of any of the covenants, agreements and conditions of Article One hereof.

(c) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage, or any other instrument securing the note or any other instrument collateral to the Note or executed in connection with the sums secured hereby, including a default by Mortgagor as landlord under any leases covering all or any part of the Mortgaged Property.

(d) If either (i) Borrower (or any of them, if more than one), Mortgagor, any subsidiary thereof, or any guarantor or endorser of the Note: (a) files a voluntary petition in bankruptcy, or (b) is adjudicated as a bankrupt or insolvent, or (c) files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (d) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (e) makes any general assignment for the benefit of creditors, or (f) makes an admission in writing of its inability to pay its debts generally as they become due; or (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Borrower (or any of them, if more than one), Mortgagor, any subsidiary thereof, or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (iii) any trustee, receiver or liquidator of Mortgagor or any subsidiary thereof, of any guarantor or endorser of the Note, of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and pay. thereon, and all other sums secured hereby, to be due and payable immediately and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under a judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee may take action either by such proceedings or by the exercise of its powers with respect to the entry or taking possession or both, as the Mortgagee may determine.

2.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint may enter and take possession of all the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, use, manage and control the Mortgaged Property, and from time to time:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and repairs, renewals, replacements, additions, betterments and improvements, thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Mortgaged Property insured;

(3) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;

(4) enter into agreements with others to exercise the powers here granted to Mortgagee;

All as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive any income, revenues, rents and issues and profits of the same including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (i) the reasonable compensation, expenses and disbursements of the agents and attorneys; (ii) the cost of insurance, taxes, assessment and other proper charges upon the Mortgaged Property or any part thereof; (iii) the deposits for taxes and assessments and insurance premiums due; and (iv) the payment of accrued interest and principal of the Note.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good, if Mortgagee has not declared the entire principal balance due and payable. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.05 Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability. In the event that the bid at the foreclosure sale is in excess of sums due Mortgagee under the terms of this Mortgage, such excess shall be paid promptly to Mortgagor.

2.06 Application of Indebtedness Toward Purchase Price. If permitted by law, upon such foreclosure sale, and after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, Mortgagee may, in paying the purchase price, apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other

instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of the sale, be payable thereon.

2.07 [This Section has been intentionally deleted.]

2.08 [This Section has been intentionally deleted.]

2.09 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

2.10 Application of Monies by Mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon Mortgagee's demand, and in case of foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment against the property for any portion thereof remaining unpaid, with interest.

(b) Any monies collected or received by Mortgagee under this paragraph 2.10 shall be applied as follows: first, to the payment of reasonable compensation, expenses and disbursements of the Mortgagee's agents and attorneys; and second, to the payment of amounts due and unpaid under the Note, this Mortgage and any other instruments securing the Note.

2.11 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon.

2.12 [This Section has been intentionally deleted.]

2.13 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

2.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other

instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

2.15 Sale, Transfer and Encumbrance Restrictions. It shall be a default hereunder if, without the Mortgagee's prior written consent, the Mortgaged Property, or any interest therein, whether equitable or otherwise is sold, transferred, conveyed or further encumbered in any way.

ARTICLE THREE

MISCELLANEOUS PROVISIONS

3.01 Heirs, Successors and Assigns Included. Whenever one of the Parties hereto is named or referred to herein, the heirs, successors and permitted assigns of such party shall be included and all covenants and agreements contained in the Mortgage, by or on behalf of mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and permitted assigns, whether so expressed or not.

3.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience or reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.03 Invalid Provision to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.04 Changes, Etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the Party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.05 Governing Law. This Mortgage is made by Mortgagor covering collateral located in the State of South Carolina; and this Mortgage and the rights and remedies provided herein shall be construed, interpreted, enforced and governed by and in accordance with the laws of South Carolina.

3.06 Default Rate. The Default Rate shall be the rate provided under the Note, plus three (3%) percent per annum.

3.07 Notice. Any notices provided herein shall be deemed properly given upon the mailing to the party entitled to notice of written notice, sent by certified mail, return receipt requested, or personally delivered, at the addresses set forth on the first page of this Mortgage, or at such other address as the parties shall have given each other prior written notice.

3.08 Exception for Joint Owner. Notwithstanding anything to the contrary herein, if Mortgagee and Mortgagor are joint owners of the Mortgaged Property, Mortgagor makes no warranties or agreements of any nature with respect to Mortgagee's interest in the Mortgaged Property or any actions taken by Mortgagee, and nothing in this Mortgage shall adversely affect any obligations of Mortgagee under that certain Agreement Regarding Real Property between Mortgagor and Mortgagee dated the same date as this mortgage.

3.09 **Waiver of Appraisal. The Mortgagor does hereby waive any rights it has to require an appraisal of the property in the event of default, foreclosure and sale as may be provided by S.C. Code Ann., Section 29-3-680 et seq. (1976).**

IN WITNESS WHEREOF, the undersigned have signed and sealed this instrument the day and year above first written.

WITNESS:

Elaine H. Fowler

Mary C. Zeledon

Mortgagor:

Sandra P. Perkins

Sandra P. Perkins

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

PERSONALLY APPEARED before me the within named Sandra P. Perkins, who being personally known to me, signed, sealed and as her act and deed, delivered the within document as of the 1st day of July, 2000.

Elaine H. Fowler

Notary Public for South Carolina
My Commission Expires: 10/31/06

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the ROD Office for Charleston County, South Carolina.

Derivation: The foregoing property being the same property conveyed to the Grantor by Jane L. Dennis d/b/a Blue Heron Co., by deed dated April 28, 2000 and recorded in the Office of the Register of Deeds for Charleston County on April 28, 2000 in Deed Book N346 at Page 023.

TMS#: 355-09-00-108

Turner, Padgett, Graham
P.O. Box 22129
Chas SC 29413

BE# 364PG032

FILED

E364-21

2001 FEB 16 PM 3:50

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

17.00
B

JVA

BP0569411

PGS: 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SATISFACTION OF MORTGAGE
Ref.: Book E364 at Page 021

PURSUANT TO SECTION 29-3-330 (B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976

The undersigned, Bradford Q. Jeffcoat, Jr., being the mortgagee of record or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record, under a written agreement duly recorded, of either of the foregoing, certifies:

The debt secured by the mortgage/deed of trust** recorded February 16, 2001 in the office of the Register of Deeds of Charleston County in Book E364 at page 021 is:

[X] paid in full and the lien or the foregoing instrument has been released; or

[ ] the lien of the foregoing instrument has been released.

The Register of Deeds for Charleston County may enter this cancellation into record.

Under penalties of perjury, I declare that I have examined this affidavit this 20 day of ~~February~~ June 2016 and, to the best of my knowledge and belief, it is true, correct, and complete.

WITNESS my/our hand this 20 day of ~~February~~ June, 2016.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Olga Ustymenko
Witness 1

Pamela Wirtz
Witness 2

Bradford Q. Jeffcoat, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

THE foregoing instrument was acknowledged before me by Bradford Q. Jeffcoat, Jr. this 20 day of ~~February~~ June, 2016.

(L.S.)
Notary Public for: South Carolina
My Commission Expires: ~~My commission expires~~ on November 17, 2016

**Mortgagor: Sandra P. Perkins

EXHIBIT
tabbies
D

RECORDER'S PAGE

***NOTE*: This page MUST remain with the original document**

Filed By:

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

RECORDED

Date: July 19, 2016
Time: 2:41:04 PM

Book	Page	DocType
0569	411	Sat/Mtg

Charlie Lybrand, Register
Charleston County, SC

MAKER:
PERKINS SANDRA P

RECIPIENT:
JEFFCOAT BRADFORD Q JR

Original Book: E364

Original Page: 021

of Pages: 2
of Sats:
of References:

Note:

Recording Fee	$ 5.00
Extra Reference Cost	$ -
Extra Pages	$ -
Postage	$ -
Chattel	$ -
TOTAL	$ 5.00

DRAWER: Drawer 2
CLERK: JBA

0569	411	07/19/2016	2
Book	Page	Recorded Date	# Pgs

E364	021	M	14:41:04
Original Book	Original Page	Doc Type	Recorded Time

THE STATE OF ALABAMA

COUNTY OF BALDWIN

PROBATE COURT

Case No. 32367

LETTERS OF GUARDIANSHIP/CONSERVATORSHIP

Letters of Guardianship/Conservatorship over the estate of **SANDRA P. PERKINS**, an incapacitated person, are hereby granted to **VANESSA L. WILLIAMS**, who has duly qualified and given bond as required by law, and is authorized to discharge all the functions attached to said guardianship/conservatorship.

Dated this 15th day of September, 2015.

JUDGE OF PROBATE

PLAINTIFF'S EXHIBIT E

PENGAD 800-631-6989

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE: ESTATE OF

SANDRA P. PERKINS, CASE NO. 32367

an incapacitated person

DECREE

This being the day appointed for the hearing of the Petition of **VANESSA L. WILLIAMS** and praying for an inquisition thereof, and it appearing to the satisfaction of the Court that the said **SANDRA P. PERKINS** is over the age of nineteen years, and is a citizen and resident of Baldwin County, Alabama, having an estate herein; and it being further shown to the Court that it would not be consistent with the health and safety of **SANDRA P. PERKINS** to have her present at the trial at said time, and that **SANDRA P. PERKINS** did not have Counsel to represent her at said hearing, and the Court appointed **PATSY L. JOHNSON**, who is a duly licensed Attorney at Law, as her attorney to represent the interests of the said **SANDRA P. PERKINS**, and upon such hearing, and she did deny the allegations of the said Petition and did represent the said **SANDRA P. PERKINS** and

Now comes **VANESSA L. WILLIAMS**, as the Petitioner, and **PATSY L. JOHNSON**, as attorney for **SANDRA P. PERKINS**, and this Court having heard the evidence and the argument of Counsel,

It is, therefore, **ORDERED, ADJUDGED and DECREED** by the Court that the said **SANDRA P. PERKINS** be, and she is hereby, adjudged to be a mentally incapacitated person; and that the said Petition and all other proceedings thereon be recorded.

Done this 15th day of September, 2015.

JUDGE OF PROBATE

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE: ESTATE OF

SANDRA P. PERKINS, CASE NO. 32367

an incapacitated person

ORDER GRANTING LETTERS OF GUARDIANSHIP/CONSERVATORSHIP

Now comes **VANESSA L. WILLIAMS**, the Petitioner, and **PATSY L. JOHNSON**, the attorney heretofore appointed as Guardian ad Litem to represent and protect the interest of the said **SANDRA P. PERKINS**, and this Court having proceeded to hear the testimony of the Petitioner and the other witnesses and this Court having found that **SANDRA P. PERKINS** is a mentally incapacitated person; and it appearing that all notices and other requirements of the statutes in such cases made and provided have been complied with; and the Court is satisfied and finds that the said **SANDRA P. PERKINS** is incapacitated to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions and that the appointment of a Guardian/Conservator is necessary and desirable as a means of providing continuing care and supervision of the person and property of the said **SANDRA P. PERKINS**; and it being shown by evidence satisfactory to the Court that the allegations of the petition are substantially true, and **VANESSA L. WILLIAMS** now entering into bond, conditioned and payable as provided by the law in the sum of $485,000.00 DOLLARS with **OHIO CASUALTY INSURANCE COMPANY** as surety, which bond with said security has been taken and approved by the Judge of this Court; it is

ORDERED, ADJUDGED and DECREED that Letters of Guardianship/Conservatorship on the Estate of **SANDRA P. PERKINS**, an incapacitated person, be forthwith issued to **VANESSA L. WILLIAMS** as in her application prayed.

It is **ORDERED** by the Court that the costs of this proceeding and cost of such bond be paid by the Estate of **SANDRA P. PERKINS** by the Guardian/Conservator, for which execution may issue.

It is further **ORDERED** by the Court that said Guardian shall file written reports annually with the Court on the Condition of the ward, the first of which reports shall be due September 15, 2016.

It is further **ORDERED** by the Court that said guardian/conservator shall file an inventory of said estate within 90 days of her appointment and also file an annual accounting with this Court, with the first said accounting being due September 15, 2016; and said guardian/conservator is to make a partial settlement every three years with this Court, at which time said written accountings will be formally approved.

DONE this 15th day of September, 2015.

JUDGE OF PROBATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED BY CLAWSON & STAUBES, LLC

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Sandra P. Perkins**, for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and love and affection to me in hand paid at and before the sealing of these presents by **Vanessa L. Williams**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said **Vanessa L. Williams**, her heirs and assigns, all of my one half undivided interest in and to the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

BEING the same property conveyed to Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins by deed of Bradford Q. Jeffcoat, Jr. dated July 1, 2000 and recorded February 6, 2001 in Book D364, at Page 107 in the RMC Office for Greenville County, South Carolina.

TMS# 355-09-00-108

Grantee's Address: 32183 Waterworks Ln
Lillian, AL 36549

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said **Vanessa L. Williams**, her heirs and assigns forever a one half undivided interest.

AND, subject to the Exceptions, I do hereby bind myself and my heirs, personal representatives and administrators to warrant and forever defend, all and singular, the said premises unto the said **Vanessa L. Williams**, her heirs and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
F

WITNESS my hand and seal this 16th day of November, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(First Witness signs here)

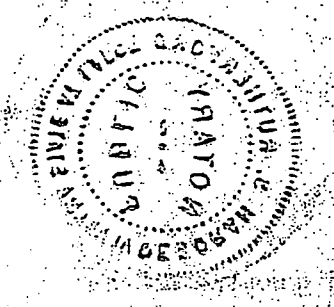
Vanessa L. Williams (L.S.)
Sandra P. Perkins, by Vanessa L. Williams,
Guardian and Conservator of Sandra P. Perkins

(Second Witness or Notary signs here)

STATE OF Alabama)
)
COUNTY OF Baldwin)

THE foregoing instrument was acknowledged before me by Sandra P. Perkins, by Vanessa L. Williams, Guardian and Conservator of Sandra P. Perkins this 16th day of November, 2015.

Deborah S. Ruthven (L.S.)
Notary Public for Alabama
My Commission Expires: 8-19-17



STATE OF ~~SOUTH CAROLINA~~ Alabama)
COUNTY OF CHARLESTON Baldwin)

AFFIDAVIT

Date of Transfer of Title
November _____, 2015

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Sandra P. Perkins to Vanessa L. Williams on November ____, 2015.

3. Check one of the following: **The DEED is**
   (a)__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)__ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)__x__ EXEMPT from the deed recording fee because (exemptions #1)
   (Explanation, if required (transferring one half interests less than $100.00)
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a)__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $.
   (b)__ The fee is computed on the fair market value of the realty which is $_____.
   (c)__ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES __ or NO __ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (A)$_____the amount listed in item 4 above
   (b)$_____the amount listed in item 5 above (no amount place zero)
   (c)$_____Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.

8. Check if Property other than Real Property is being transferred to this Deed.
   (a) _____ Mobile Home
   (b) _____ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

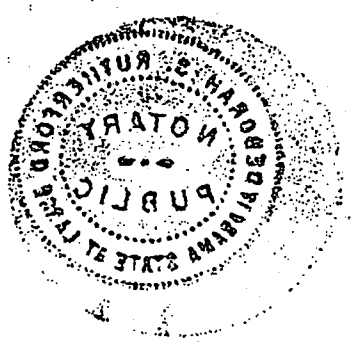
Sworn to before me on this 16th day of November, 2015

Deborah S. Rutherford (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-19-17

DEBORAH S. RUTHERFORD NOTARY PUBLIC ALABAMA STATE AT LARGE

Vanessa L. Williams
Legal Representative

Vanessa L. Williams
Print Name


NOTARY
PUBLIC

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
an incapacitated person	*	**STATE OF ALABAMA**

CASE NO. 32367

ORDER

This matter came on to be heard on the "Motion to Approve Transfer of Real Property" filed by **VANESSA L. WILLIAMS**, Court appointed Guardian and Conservator of Sandra P. Perkins, and the Court being of the opinion that said Motion should be granted, **IT IS, THEREFORE,**

ORDERED, ADJUDGED and **DECREED** that pursuant to Code of Alabama, Sections 26-2A-152 (c) (1), the conveyance and transfer of all of Sandra P. Perkins' interest in that certain real property described below to Vanessa L. Williams, by Vanessa L. Williams acting as conservator of said Ms. Perkins, is hereby approved.

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

TMS No.: 355-09-00-108

DONE AND ORDERED this 15th day of January, 2016.

JUDGE OF PROBATE

PLAINTIFF'S EXHIBIT G

PENGAD 800-631-6989

IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

Vanessa Williams and Vanessa Williams, As Conservator and Guardian of Sandra P. Perkins, vs. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. Defendants.	CASE NO. 2015-CP-10-6379

AFFIDAVIT OF LESLIE T. FIELDS

On this day personally appeared before me, Leslie T. Fields, Esquire, who being duly sworn, did depose and say as follows:

1. I am a practicing attorney with the law firm of Davis & Fields, P.C., 27180 Pollard Road, Daphne, Alabama. I have practiced probate and trust law in Alabama for twenty years working primarily in the areas of guardianships, conservatorships, decedent's estates, wills and trusts.

2. I obtained my Juris Doctor degree in 1995 from The University of Alabama, *magna cum laude*, being awarded The Order of the Coif, and serving as Senior Lead Articles Editor of the *Alabama Law Review*. I obtained my Bachelor of Arts degree from The University of South Alabama, *summa cum laude*.

3. I am a member in good standing of the Alabama Bar Association, the Mobile County, Alabama and Baldwin County, Alabama Bar Associations, having served on the Probate Committees of said bar associations; a member of the National Academy of Elder Law Attorneys, and a former adjunct Elder Law professor of the University of South Alabama. I am a frequent speaker on the

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT H

topics of probate, elder law, and estate planning, having been an invited speaker at the 2013 Alabama Probate Judges' Mid-Winter Conference.

4. I submit this affidavit to explain Alabama probate and trust law related to the actions of a Conservator to safeguard the property of her incapacitated Ward.

5. In preparing this affidavit, I have reviewed copies of the relevant pleadings in the above-captioned lawsuit, as well as the relevant laws, cases, and doctrinal writing relating to a Conservator's powers in the State of Alabama.

6. Code of Alabama, Section 26-2A-152(c)1, states that a conservator, acting as a fiduciary in efforts to accomplish the purpose of the appointment, may act ***without court authorization*** or confirmation, to:

> ***Collect, hold, and retain assets of the estate including land in another state*** and stocks of private corporations, ***until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested; (Emphasis added).***

The deed of conveyance dated November 16, 2015, by Vanessa Williams, Conservator, of her Ward, Sandra P. Perkin's, one-half interest in the subject real property, was not, contrary to Defendant's assertion, "a sale or disposition of the real property interest" that would require any prior court approval as anticipated in Code of Alabama, Section 26-2A-152(d)(3). Prior Court approval is required under this particular cited section for "disposing of real property for cash or on credit." Section 26-2A-152(d)(3). The transfer for Vanessa Williams was not a disposition for cash or on credit. The transfer was to Vanessa Williams, as agent, to hold, retain and preserve assets of her Ward. Section 26-2A-152(c)(1), Code of Alabama .

Alabama law acknowledges that a constructive trust arises when one person, occupying a fiduciary position, or having placed himself in such a position to another that good faith requires him to act for the other and not himself, acquires title to the property in himself, in place of cestui que. While the elements of a constructive trust in the instant case may be met, it is not necessary for the Court to impose a constructive trust on the transfer because Vanessa Williams acknowledges that she held the subject property interest solely as agent for her Ward. *See commentary* to Code of Alabama, Section 19-3B-1301.

In *Hopkins v. Hopkins*, 983 So.2d 382 (2007) citing *Brothers v. Moore*, 349 So. 2d 1107 (Ala. 1977), the Alabama Supreme Court, stated that the issue of whether or not a constructive trust is imposed is one of fact. *Hopkins* at 387. In the absence of fraud, the court must find a confidential relationship between the transferor and transferee. *Hopkins* at 387. A confidential relationship exists where there is a fiduciary relationship such as between a guardian and ward where the transferor does in fact often make decisions based upon the direction of the transferee. *Hopkins* at 388. Further, the transferor must be justified in believing that the transferee will act in the best interest of the transferor. *Hopkins* at 388. "The trust alleged by the party asserting a confidential relationship must be both believable and verifiable from the objective facts..." *Hopkins* at 391. Vanessa Williams held a confidential relationship with her Ward and transferred the property interest to put herself in the position to act in the best interest of her Ward.

7. Affiant is of the opinion that under Alabama probate and trust law, Vanessa Williams, as Conservator, had the authority, without prior Probate Court approval, to transfer her Ward's one-

half interest in the subject real property to herself, as agent, holding said property as such agent, for the benefit of her Ward and the estate of her Ward.

8. Affiant further acknowledges that Baldwin County Probate Court, the Court having jurisdiction over the conservatorship of Sandra P. Perkins, did in fact, ratify and confirm the November 16, 2015 deed of conveyance to Vanessa Williams, as agent, and the applicability of Section 26-2A-152(c)(1), Code of Alabama, to the transaction.

Further affiant sayeth naught.

LESLIE T. FIELDS

Sworn to before me on this the 8TH day of November, 2016,

Notary Public, State of Alabama
My Commission Expires: 8/13/2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **MEMORANDUM OF DEFENDANT BRADFORD Q. JEFFCOAT, JR. IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

FILED
2017 MAR 27 PM 1:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiff Vanessa Williams, acting in her own individual capacity and in the various fiduciary capacities she assumed during the last days of her mother's life and the course of this litigation, has now moved for partial summary judgment in her favor on her claim that the value of her late mother's interest in her home be awarded to her. Her motion is predicated upon mischaracterizations of numerous relevant facts and complete omission of others, designed to fit this case into a forced reading of the law. Defendant Bradford Q. Jeffcoat would respectfully request that the motion be denied. Defendant would further respectfully request that the Court order that a new deed to the real property at the heart of this action be issued in his name as set out in the original deed granting that property to himself and Sandra Perkins, and to the survivor of them.

STANDARD OF REVIEW

Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. S.C.R.C.P 56(e); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *NationsBank v. Scott Farm*, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996).

FACTS

The actual facts of this case are few and uncontested. Bradford Jeffcoat and Sandra Perkins owned a home located at 1955 Old Fort Avenue, Charleston. They purchased it in 2000 and lived there continuously since that time. Vanessa Williams is Sandra Perkins' only child. Sandra Perkins died on November 26, 2015. Beyond those basic statements, however, the details are substantially in dispute, and the interpretation of many of them perhaps even more so.

The first substantive sentence of Plaintiffs' motion is, as noted, accurate: Vanessa Williams is the daughter of Sandra Perkins, now deceased. The second, however, commences

the complete mischaracterization of the underlying facts. Defendant and Ms. Perkins were not "roommates." At the time of Ms. Perkins' death in November, 2015, they had lived together, as life partners in a committed and dedicated relationship, for approximately twenty (20) years. At the point when the residential property at issue in this action was purchased, they had already been living as a family for some time; the property was purchased in order to be their home, together. The decision to make the purchase solely in the name of Defendant, with a subsequent purchase by Ms. Perkins of one-half, was purely financial, and Ms. Perkins' subsequent decision to execute a Note and pay one-half of the mortgage amount was made because she wished to make a contribution to the home the two of them were buying. The immediate sale of one-half of the home to Ms. Perkins reflected the intention of the couple to buy the house together and make it their permanent residence. Similarly, the fact that the deed was conveyed to them as joint tenants with right of survivorship reflected their intention that it remain at all times their singular property, regardless of the eventuality of the death of one or the other of them.

The parties are in agreement about the fact that Ms. Perkins developed Alzheimer's disease, and that by the spring of 2015 her condition had begun to deteriorate. Defendant asked Williams if she wished to come to Charleston to see and stay with her mother, which she did; the parties also agree that part of the purpose of this visit was to assist Defendant with Ms. Perkins' care. On June 16, 2015, Defendant left the family home to go to work. Williams was to take her mother to a scheduled doctor's appointment. Instead, and without saying a word to her mother's life partner, Williams packed up some of her mother's possessions and took her to Alabama.

It appears that one of the first things Williams did when she arrived in Charleston to help care for her mother was to have herself added as a signatory to her mother's checking account. Williams testified that in April of 2015, her mother was in the hospital and "had dementia."

Depo. of Vanessa Williams, p. 34. At the same time, Williams had her mother add her a signatory to her mother's checking account at South State Bank. Williams Depo., p. 36. In the course of paying her mother's bills during the brief period of time she remained in South Carolina, she also used that checking account to purchase a mobile home for her own husband to live in, *id.*, and paid for her family's groceries, her daughter's college tuition, and whatever else was necessary to help cover "our expenses [of] around 22 or 2,300 a month for a family of four." Williams Depo., p. 37, l. 15 – 16. P. 46, l. 14 – 24.

Williams had herself appointed as Conservator and Guardian of her mother on September 15, 2015. Defendant had, by this time, been completely locked out of the care of his long-time partner, and was never allowed to contact her. Williams could not be reached, and made no effort to let him know where she was or how she was doing; he only became aware of the appointment after the instant action was filed. In fact, he was never told of her death – on his behalf, counsel was relegated to looking through death records in Alabama to discover that she had passed. Neither he nor any other member of her family was informed of, or invited to, the funeral. Williams Depo. p. 19.

ARGUMENT

I. Joint Tenancies With Right of Survivorship Under South Carolina Law

Williams relies heavily on her version of the relationship between Brad Jeffcoat and her mother to support the legal reasons why her unilateral acts attempting to convey Ms. Perkins' interest in their family home, having herself appointed to a position where she could legally justify paying her own expenses, a down payment on a home for herself, and her daughter's tuition, are legitimate. She claims that her mother, who she acknowledges shared a bed with Brad and who she now alleges, without any support, was concerned that he was "cheating" on

her, was no more than a disinterested roommate, Williams Depo. pp. 64 – 65. The entire purpose of her characterization of their relationship, and of the manner in which she both spirited her mother away from home and subsequently manipulated the legal system, is to avoid the basic principal that a deed is to be interpreted so as to achieve the intention of the parties. *Davis v. Davis*, 223 S.C. 182, 75 S.E.2d 46 (1953).

Davis continues to form the basis from which joint tenancies with rights of survivorship are evaluated. The *Davis* court declined to rely on the strict language of "joint," "tenant in common," or "tenancies by the entireties," and looked instead to whether the language of the document creating the shared tenancy – the deed itself – evidenced a clear intent to ensure that at the death of one of the parties an absolute estate should vest in the other. Whether lay people, such as Sandra Perkins and Brad Jeffcoat, fully understand the meaning of joint or common tenancies, is immaterial. The focus is, as it must be, on whether they intended that the home they purchased should remain fully the property of the survivor of them.

Plaintiff is correct that S.C. Code § 62-2-804 allows for both statutory and common law creation of a joint tenancy. It is quite a leap, however, to go from that to Plaintiff's conclusion that statutory severance is therefore not the exclusive means of defeating a joint tenancy with right of survivorship. The citation of *Smith v. Cutler*, 366 S.C. 546, 623 S.E.2d 644 (2005) is inapposite, and the quotation from Justice Toal's opinion is taken out of context. In fact, the conclusion reached in *Cutler* was that the future interest created by a right of survivorship is indestructible. That being the case, property deeded with right of survivorship is not subject to partition.

Furthermore, *Cutler* also makes it clear that the only manner in which even a joint tenancy in which the right of survivorship is not found to be indestructible can be severed is by

statutory means. Plaintiff's quotation omits the remainder of Justice Toal's analysis. She did say that some joint tenancies may be defeated by the unilateral act of one joint tenant. However, she immediately directs attention to S.C. Code § 27-7-40 for a list of the permissible actions that can be taken by the joint tenant attempting to end the joint ownership. She does not include any common law or extraneous means; the statute itself provides an exclusive list of the allowable means.

Section 27-7-40(a), therefore, overrides any decision by one joint tenant to simply end the joint tenancy by unilaterally conveying his or her interest to a third party. The list allows for severance of the interests by the death of one of the joint tenants (when the entire interest vests automatically in the other), by conveyance by one joint tenant to the other, or by some action of a court of competent jurisdiction.

Plaintiff has, furthermore, completely missed the point as far as Defendants' reliance on S.C. Code § 27-7-40(a)(iii), which prohibits the encumbrance of the interest of one joint tenant without the consent of the other. Defendant does not contend that encumbrances and ownership interests are identical. Defendant's use of this subsection, which limits the ability of one joint tenant to alienate his interest – to an extent lesser than the transfer of ownership – without the consent of the other is to demonstrate that the legislature intended that NO unilateral alienation of such an interest is permitted. In fact, even the attempt to convey this lesser interest unilaterally has been found to constitute slander of the title of the other joint tenant. *See, e.g., Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012).

Defendant fully agrees with Plaintiff that a joint tenant may force a partition of real property without the consent of the other joint tenant. That is, in fact, precisely what a partition action is for. Partition actions are covered by Section 27-7-40, which expressly provides that a

court of competent jurisdiction may sever the joint tenancy. Here, however, the partition action has not taken place, and no court allowed Plaintiff to sever the joint title by conveying her mother's interest to herself. Section 27-7-40 is specifically intended to set out the exclusive means by which a joint tenancy may be terminated. Plaintiff's unilateral conveyance is not one of the listed methods, and is completely ineffective.

II. Breach of Fiduciary Duty Under Alabama Probate Law

Defendant has also previously raised substantial questions regarding Plaintiff's compliance with Alabama law in the management of her mother's property as Conservator, and her breach of fiduciary duty with respect to her management of her mother's property. Those questions remain.

Plaintiff contends that Alabama law only requires leave of court for a conservator's decision to transfer real property when that property is disposed of for cash or credit. Code of Ala. § 26-2A-152(d)(3). In this case, she alleges, because she attempted to transfer her mother's interest in her home to herself – and, as the deed shows, the attempted transfer was to Vanessa Williams individually, not to the Conservator or the Estate – the attempt is outside the statute as it represents an exercise of the Conservator's fiduciary duty to protect assets of the estate. This argument is totally contradicted by an examination of the facts of this case.

First, as noted, Vanessa Williams, as Conservator, granted her mother's interest in the jointly owned family home not to the Conservatorship or to the Estate, where it could have been protected and used for the support and care of her mother, but to herself, individually. Had there truly been an intention to protect property in order to ensure that Ms. Perkins' care continued, the property would have been conveyed to the entity established to maintain that care: the Conservatorship. Instead, having already used her mother's money to pay many of her own

expenses, Williams attempted to remove any interest her mother might have had in her own home by giving it to herself. A court of competent jurisdiction could have, if necessary, forced a partition of the joint interests of Ms. Perkins and Brad Jeffcoat, if that partition were found to be necessary in order to take care of Ms. Perkins. Once the property interest is solely in the name of Vanessa Williams, however, it is moved outside the jurisdiction of the court.

Section 26-2A-152(c)(1) of the Alabama Code, cited by Plaintiff, does allow the Conservator to "collect, hold, and retain assets of the estate including land in another state. . ." It says nothing about allowing the Conservator to hold such assets by removing them from the conservatorship or estate by deeding them to herself. Although using trust language, the Alabama Supreme Court was talking about a conservatorship when it said that

> [t]here is no dispute that Stanton breached his fiduciary duty to the estates of his grandchildren by taking title to the Robertsdale properties in his own name. *See* Restatement (Second) of Trusts, § 179 (1959)(stating that a trustee 'is under a duty to the beneficiary to keep the trust property separate from his individual property' and to ensure 'that the property is designated as property of the trust.').

Ex parte Lawyers Sur. Corp., 719 So. 2d 833, 835 (Ala. 1998). The conveyance to herself individually falls outside the parameters of permissible acts of the Conservator.

There is no doubt but that the Conservator of the Estate of an incompetent owes a fiduciary duty to that incompetent, both by statute and under the common law of Alabama. The statutory process commences with the conclusion that an incapacitated person is in need of "protective proceedings." Code of Ala. § 26-2A-130. The Commentary points out that the purpose is that of "conserving the disabled person's property, [and] also to ensure that the property is managed in such a way that she or he may obtain needed income." There is also no question but that self-dealing is, under any circumstances, a breach of fiduciary duty, whether in the context of a Conservatorship or any other relationship in which such a duty exists.

As in most jurisdictions, the definition of fiduciary duty in Alabama is the long-settled common law one. Whether trustee, conservator, or guardian, "he shall conduct himself faithfully and exercise a sound discretion." *Birmingham Trust Nat'l Bank v. Henley*, 371 So.2d 883, 894 (Ala. 1979)(*quoting Harvard College v. Amory*, Mass (9 Pick.) 446, 461 (1830)). "Absent express authority . . . a corporate trustee is guilty of a breach of fiduciary duty where it purchases property which it owns for a trust administered by it." *Id.* The same concept applies as readily to an individual conservator as it does to a corporate trustee. Even if the attempt to transfer title to Ms. Perkins' interest in her home to the a third party would have been effective under South Carolina law, the transfer of valuable property, for a nominal sum, by the Conservatorship to herself individually is blatantly improper under Alabama law.

Second, it is interesting that after Defendant initially pointed out that the attempted transfer was in violation of the Alabama requirement of prior court approval, Plaintiff returned to the Alabama court and obtained such leave retroactively. It is impossible to determine what evidence might have been presented to the Probate Court at the time this order was obtained, although given that Ms. Perkins had died before it was issued, and that the Conservatorship itself was consequently no longer in existence, it is also immaterial. A later order does not, in this case, operate to make the extrajudicial act proper. With all due respect to Leslie Fields, Esquire, Plaintiff's Alabama Elder Law expert, what Plaintiff tried to do was completely irregular under Alabama law. She was not making any attempt to hold or protect estate assets. She was attempting to transfer her mother's interest in her mother's home to herself absolutely.

Plaintiff has provided no legal basis for her contention that her unilateral attempt to destroy a joint tenancy is permissible under South Carolina law. The fact that a joint tenancy may be created by means not enumerated by statute does not automatically translate to a

conclusion that it may be terminated by methods other than those expressly listed in a statute written for that purpose and cited to by the South Carolina Supreme Court as the exclusive manner in which such severance may be accomplished. Neither her reliance upon counsel nor her claim that giving herself the property somehow protects Conservatorship assets does anything to alter the clearly expressed intention of the parties that the survivor of them retain the entire interest in their home.

Williams' extrajudicial conveyance of what she herself asserts is a substantial asset of her mother's estate to herself is clearly not allowed under Alabama law, and is a breach of her fiduciary duty as Conservator. Prior to acting as Conservator, she paid her own expenses from her mother's accounts, including making a large down payment on a home; following that appointment, as Conservator, she tried to give herself her mother's house. She received court approval long after the fact, and after her mother was already dead and the Conservatorship had ceased to exist. She has provided no authority for the proposition that placing Conservatorship property in her own name is anything other than a breach of her fiduciary duty.

CONCLUSION

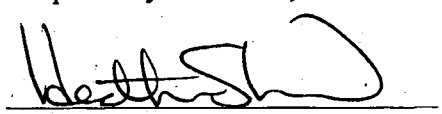
Williams has colored the facts of this case, and of the long-lasting committed relationship between Brad Jeffcoat and her mother in an attempt to convince the Court that it would have been her mother's wish that she force Brad from his home. The language of the deed contradicts that position, and the fact that even by Williams' own testimony every time her mother came to visit she wanted to go home, back to Charleston, to her house, to her life with Brad Jeffcoat.

There is no support in law or in fact for Williams' actions. The deed signed by the Conservator, purporting to convey the interest of Sandra Perkins in her home to Vanessa Williams individually, is completely invalid and without meaning. Upon the death of Sandra

Perkins, the property located at 1955 Old Fort Avenue, Charleston, South Carolina 29414, vested entirely in the name of Bradford Q. Jeffcoat by operation of the original deed conveying that property to him and his long-time partner jointly and the remainder to the survivor of them.

Defendant Bradford Q. Jeffcoat would respectfully request that Plaintiffs' Motion for Partial Summary Judgment be denied, that the deed purporting to convey an interest in his home to Vanessa Williams be set aside, and that a deed to the property be issued in his name alone. In the alternative, Defendant would respectfully request that the Motion be denied and this matter set for trial on the merits.

Respectfully submitted,



Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
510 Mill Street, Suite 2B
Charleston, SC 29464
Phone: (843) 377-1686
Fax: (843) 793-3143
heather@shawfamilylaw.com

March 27, 2017
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

VANESSA WILLIAMS AND
VANESSA WILLIAMS as Conservator
and Guardian of Sandra P. Perkins,
Plaintiff,

v. Case No: 2015-CP-10-6379

BRADFORD Q. JEFFCOAT, JR., AND
BLUE HERON BUILDERS, INC.,
Defendants.

LIVE VIDEO DEPOSITION TESTIMONY OF
VANESSA WILLIAMS

September 28, 2016
9:30 a.m.
REPORTED BY: Jamie Ritter-McCracken, CCR

In accordance with Rule 5(d) of The Alabama Rules of Civil Procedure, as Amended, effective May 15, 1988, I, Jamie Ritter-McCracken, am hereby delivering to Heather S. Shaw, Attorney at Law, the original transcript of the oral testimony taken on the 28th day of September, 2016, along with original exhibits, if any.

Please be advised that this is the same and not retained by the Court Reporter, nor filed with the Court.

STIPULATION

IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of VANESSA WILLIAMS, may be taken before Jamie Ritter-McCracken, Commissioner and Notary Public for the State of Alabama at Large, at the Law Office of Caldwell, Wenzel & Asthana, 218 North Alston Street, Foley, Alabama, on the 28th day of September, 2016.

IT IS FURTHER STIPULATED AND AGREED that the signature to the deposition by the witness is waived, said deposition to have the same force and effect as if full compliance had been had with all laws and rules of court relating to taking of deposition.

IT IS FURTHER STIPULATED AND AGREED that it shall not be necessary for any objections to be made by counsel as to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of trial, or at the time said deposition is offered in evidence, or prior thereto.

IT IS FURTHER STIPULATED AND AGREED that notice of the filing of the deposition by the Commissioner is waived.

APPEARANCES

BEFORE:
Jamie Ritter-McCracken, CCR and Notary Public

APPEARING ON BEHALF OF THE PLAINTIFF:
VANESSA WILLIAMS AND
VANESSA WILLIAMS as Conservator
and Guardian of Sandra P. Perkins,
John Andrew Wenzel, Esquire
Caldwell, Wenzel & Asthana, PC
281 North Alston Street
Foley, Alabama 36535

Chris Staubes, Esquire (via live video)
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

APPEARING ON BEHALF OF THE DEFENDANTS:
BRADFORD Q. JEFFCOAT, JR., AND
BLUE HERON BUILDERS, INC.,
Heather S. Shaw, Esquire
Shaw Law Firm, LLC
510 Mill Street, Suite 2B
Mount Pleasant, South Carolina 29464

17

THE WITNESS: Dee would know. Dee tried to ask him for that. Dee asked him for that.
A. Last year when she passed away in the -- I would say November.
BY MS. SHAW:
Q. So you asked him --
A. Yes.
Q. You asked him last year when she passed away?
A. Yes, I tried to get that information and I couldn't -- I was not able to get --
Q. Then how -- How did -- How did you reach out to him?
A. My lawyer contacted him.
Q. Which lawyer is that?
A. It's Dee.
Q. I'm sorry?
A. Ms. Dee contacted him.
Q. You said Ms. Dee?
A. Yes.
Q. Okay. Do you know how she contacted him?
A. I believe it was a phone call -- conversation.
Q. Okay. Do you know when?
A. It was right -- it -- either November or December; it was right after she died.
Q. Did you have a memorial for your mother?

18

A. Yes.
Q. When was that?
A. A week after she died at Saint Joseph Catholic Church in Lillian, Alabama.
Q. Okay. Saint Jo's where?
A. Saint Joseph Catholic Church in Lillian, Alabama.
Q. And what was her date of death?
A. November 26, 2015.
Q. November 26th? So --
A. Or it was the day after -- it was black Friday; it was the day after Thanksgiving.
Q. Black Friday?
A. Uh-huh (affirmative).
Q. So about a week later you had the memorial service?
A. Yes, ma'am, after -- it takes them -- as soon as we got her back from being cremated --
Q. Okay.
A. -- we had the service.
Q. Okay. And so at what point did you reach out to the family members?
A. I tried to reach out to get the information through my lawyer but they -- there was -- I -- Brad said there was no information in the house so we

19

never got the information.
Q. But -- When was it that you did that?
A. After she died.
Q. How long after she died?
A. I would say, maybe, two weeks, three weeks -- two or three weeks.
Q. Okay. And to this day, do you know if her siblings have been notified?
A. Um, from what I -- No, the -- from what I understand, they haven't.
Q. Okay. Okay. Okay. Can you tell me a little bit about your husband's family; does he have -- I know you said his mother is living and his father is deceased; is that correct?
A. Yes.
Q. And what are their names?
A. Sammy Williams and -- that's his mother, and Jerry Williams was his father.
Q. I'm sorry, what was the father's name?
A. Jerry Williams -- Jerry.
Q. Jerry?
A. Uh-huh (affirmative).
Q. And when did he pass?
A. May of 2006 or '09 -- it was right after Hurricane Katrina. Was that '06? I think that was

20

'06.
Q. And where is his mother living now?
A. She lives in Gulfport, Mississippi.
Q. Does he have any brothers and sisters?
A. He has an older brother and a younger sister.
Q. What are their names?
A. Byron -- Byron Williams and Loraine Quant.
Q. Byron Williams?
A. Uh-huh (affirmative), and Loraine Quant, Q-U-A-N-T.
Q. And do you know where they're living?
A. Byron lives in Gulfport and Loraine lives in D'Iberville the last time I -- I mean, I think that's where they're -- they're living --
Q. Can you, please, spell --
A. -- they could've moved.
Q. -- that, I'm having a hard time?
A. Gulfport and D'Iberville?
Q. Gulfport -- yeah, D'Iberville.
A. D'Iberville, uh-huh (affirmative).
Q. Can you spell that for me, please?
A. D-'-I-B-E-R-V-I-L-L-E, Mississippi.
Q. Does he have contact with his siblings?
A. No.
Q. When's the last time he had contact with them?

33

Q. Okay. What years was she doing that?
A. When did we move there? What, 2000 -- 2000 to 2006. It might've been closer to 1998 to 2006, I mean, I don't know the exact dates but --
Q. Okay. Okay. All right. But, at any rate, she gave you $18,000 to put down on the house?
A. Yes.
Q. Okay. And it came from her IRA?
A. Yes.
Q. Okay. When you sold the house, was that money given back to your mother?
A. No, she had already passed away. She was already deceased.
Q. Okay. Okay. So you'-- Let's see. I have that you moved out of it in June of 2015; did you move out before you sold it?
A. Yes.
Q. All right. What was the reason for that?
A. Because we were in the process of moving to Florida -- Pensacola, Florida, and Alabama since my husband got a new job. My mother got sick in April of 2015. I was contacted from Brad that I needed to come up there, she was in the hospital. And in the meantime, my husband started his job at the naval air station on December 1, 2015 -- or -- no, 2 -- he

34

started December 1, 2014. And we had our house on the market for nine months to be sold.
In the meantime, my mother had gotten sick in April of 2015. I went to stay with her for five weeks 'cause I was contacted from Brad saying that she was in the hospital; he was gonna have to put her in the hospital, she was sick. And when my mother -- when I moved my mother because she wasn't doing well, I moved her to Alabama because I did not want to move her more than one time because she had dementia.
Q. So you had both places of residence prior to you coming to Charleston?
A. No. My husband was living in a mobile home, a RV, on the naval air station while he was working Monday through Friday, and going home to Mississippi on the weekends while we were trying to sell our house in Mississippi. And I was in Charleston during all this time when he started his job because that's when she got sick.
When I moved her -- in June is when I moved her from Charleston to Alabama.
Q. Okay. Did you move her into the RV that you're talking about?
A. No, we moved into the trailer; he had purchased

35

a trailer.
Q. Okay.
A. A small trailer in Waterworks.
Q. Okay. And how did he have the money to buy the trailer?
A. Well, at the time, I was not working so my mother helped us with the closing costs and we bought the trailer, and I believe that was around 4,300.
Q. Okay. All right. And then the house sold in -- when, the house in Alabama -- I'm sorry -- Mississippi?
A. When did it sell? It sold in December of 2015.
Q. The money you received from your mother, was it a -- a -- was it a loan, was it a gift?
A. She wrote a check.
Q. Was it a loan or was it a gift?
A. It was a gift.
Q. And how did -- So she just wrote you a check?
A. Right.
Q. You said it came from her -- came from IRA; did she have a checkbook attached to her IRA?
A. Or might've -- it might've been her checking -- I think it was her checking account. She had added me to her checking account.

36

Q. When did she do that?
A. She added me in April of 2015 to her checking account at South State Bank in --
Q. And it was your -- I'm sorry. South State?
A. Yes, ma'am.
Q. So did you write the check or did she?
A. I wrote the check out of her account.
Q. Did she know that you wrote the check?
A. Yes, ma'am.
Q. What other checks did you write out of her account?
A. Uh, I mean, groceries, her doctors' bills. I was not working at the time; I was her caregiver.
Q. Did she add you as a signer to the account or --
A. Yes, ma'am. I was joint on her checking account.
Q. And you said that happened in April of 2015?
A. Yes.
Q. That was when you were here after Mr. Jeffcoat had asked you to come?
A. Yes.
Q. So you wrote checks for all sorts of living expenses; is that what you said?
A. And doctor bills, yes, and my daughter's

37

college.
Q. How much money was in your mother's checking account when you were added to it?
A. 41,000-and-something.
Q. Did she have money coming into it monthly or on a regular basis?
A. Yes.
Q. And do you know how much that was?
A. She had about 2,200 coming in for retirement a month.
Q. Anything else?
A. No.
Q. And how much would you say you -- you spent from that account?
A. Well, I mean, our expenses were around 22 or 2,300 a month for a family of four.
Q. So she began paying all of the family expenses?
A. Not all of them. My husband paid the mortgage and electric bill and all the expenses to the home --
Q. Okay.
A. -- but groceries and her doctor bills, my daughter's tuition for college, gas, groceries came out of her account while I was not working and taking care of her.

38

Q. So that started in April and she passed in November, is that right?
A. Yes.
Q. And how much would you say was in the account in November when she passed?
A. I don't know. I would have to look.
Q. Do you have statements from that account somewhere?
A. I can get them.
Q. Did you have access to any other monies of your mother?
A. Can you repeat the question?
Q. Did you have access to any other monies of your mother's aside from the one checking account that you wrote checks on?
A. When the -- what's the -- what time of the -- I mean, when I got here, I contacted my lawyer and got guardianship of my mother and was named as conservator, and that was in the middle of July, maybe, August.
Q. And at that point you were --
A. I was on all of her accounts after that.
Q. -- on all of her accounts?
A. Yes, ma'am.
Q. What accounts --

39

A. I'm sorry?
Q. What accounts --
A. Her IRA account, her retirement account, and her checking account.
Q. So she had one IRA account?
A. Yes.
Q. One retirement account, what is that?
A. She has a retirement account.
Q. What do you mean by retirement?
A. Her Edward Jones IRA account.
Q. Okay.
A. And then her checking account at South State Bank.
Q. So all the accounts that you were familiar with and had access to were at Edward Jones and/or South State --
A. Yes.
Q. -- is that right?
A. Yes.
Q. Okay. So was there -- Okay. So you don't know how much was left in checking at the time of her death. Had you accessed the Edward Jones for any reason --
A. Yes.
Q. -- prior to her death?

40

A. Yes.
Q. And what -- what -- what was that for?
A. College tuition, living expenses, and lawyer fees.
Q. You accessed Edward Jones for those things?
A. Yes, ma'am.
Q. Okay.
A. And I did pay some lawyer fees out of her checking account also.
Q. Okay. All right. You said you were out of work at the time that Brad had asked you to come here in April of 2015.
A. No. I was on paid -- I was on Family Medical Leave. I took Family Medical Leave and left my job and went up there. I worked at the Beau Rivage for nine years in their accounts receivable department.
Q. In their what --
A. He called me in April and said she was sick and I went on Family Medical Leave for five weeks. I came back for a week and-a-half, and the therapist called me that was taking care of her and told me that she wasn't doing well, I needed to come back to Charleston. At that time, I resigned from my job and took over as her caregiver full time.
Q. I'm sorry. You said you worked for nine

45

A. That's when he started making the pay increase of 80 -- around 80,000.
Q. That's what I'm trying to say. Okay.
A. Okay. Sorry.
Q. All right. And when did your daughter start college?
A. 2014.
Q. And she's at Auburn you said?
A. Well, yeah -- now, yes.
Q. Where was she then?
A. She was at Mississippi Gulf Coast Community College in Perkinston, Mississippi, for two years.
Q. And so she started --
A. And then we moved here; she was at South Alabama for a year; and this -- she just started at Auburn this semester.
Q. When did your mother start paying for her tuition?
A. She had a scholarship for two years at Perk; she didn't pay for -- she didn't start paying till she went to South Alabama, I'd say, two years ago. When I quit working, she started helping me with her tuition.
Q. When you came here and got on her bank account?
A. No, when I was -- started taking care of her

46

full time as her caregiver is when she started helping me with her tuition.
Q. Okay. She was in full blown dementia then; wasn't she?
A. I don't know when it started. I know Brad had told me she was sick back in '09, but a lot of stuff was hidden from us -- from me and my husband. So, yes, when I went up there in April of 2015, she was -- she was sick.
Q. She was sick in full blown dementia.
A. Well, the doctor said she was okay but she was sick losing weight.
Q. What was her diagnosis?
A. She had frontotemporal dementia.
Q. So she started paying for your daughter's school when you took over her checkbook because she was incompetent.
A. No, she --
MR. WENZEL: Object to the form.
A. -- she was not incompetent.
BY MS. SHAW:
Q. She was not incompetent?
A. No, that's not -- I mean, she had signs of dementia and was sick and was being neglected but the doctor said she was still of sound mind.

47

Q. Okay. The first check that was written for your daughter's college tuition, it was written by you, is that right, from her account; it wasn't written by her?
A. Correct, yes.
Q. Okay. Okay.
MS. SHAW: I'd like to take a break at some point; I think we've been at it a little over an hour. Mr. Wenzel, do you want to chime in on an appropriate break time? I'm thinking, maybe, 15 minutes or so.
MR. WENZEL: Sounds good.
BY MS. SHAW:
Q. All right, Ms. Williams, have you ever been arrested?
A. No.
Q. Have you ever been fired from a job?
A. No.
Q. Never been fired?
A. No.
Q. Have you ever filed for unemployment benefit?
A. No.
Q. Have you ever filed bankruptcy?
A. No.
Q. Have you ever been sued?

48

A. No.
Q. Have you ever been in foreclosure?
A. No.
Q. Have you ever been evicted?
A. No.
Q. Have you ever been involved in a lawsuit before?
A. Only where the -- with my mother-in-law --
Q. Okay.
A. -- when my husband's signature was forged.
Q. Okay. Ever received any personal injury settlement?
A. No.
Q. Never filed for disability?
A. No.
Q. Okay. And are you a party to that lawsuit with your husband --
A. No.
Q. -- and his mother? Okay.
A. I mean, I'm just his spouse, I mean --
Q. Right.
A. -- I'm not on -- that's -- I'm not on the business.
Q. Have you testified in that case?
A. No.

61

Q. What kind of position -- What kind of position was that?
A. Front -- Their -- At their hotel for front desk clerk, clerical work.
Q. You applied for two positions there?
A. Yeah, administrative work.
Q. At the Base?
A. Yes.
Q. And when did you -- when did you fill out those applications?
A. I don't know, it's been a few months; I don't know the exact date.
Q. Have you filled out any other applications anywhere?
A. No.
Q. Okay. What can you tell me about your mother's trust?
MR. WENZEL: Object to the form.
BY MS. SHAW:
Q. Please answer.
A. It's part of her IRA account.
Q. Her --
A. It's included in her one account.
Q. When did you learn that your mother had a trust?

62

A. She -- Back in -- I've always known she had a trust account.
Q. Were you ever granted power in the trust account to access those funds prior to her -- prior to you being granted conservatorship or guardian?
A. No.
Q. Did you, in fact, receive monies from the trust at times over the years?
A. I don't know.
Q. Did you receive money from your mother at times over the years?
A. Yes.
Q. Tell me about -- Tell me about that. I know that you received 18,000 when you purchased your home; when else did your mother give you money?
A. She paid for my daughter's catholic school when she was in high school; and then she paid for her -- some of my daughter's expenses for school.
Q. What other monies did she give you?
A. That's about -- That's all.
Q. That was it?
A. Yes.
Q. So for your daughter.
A. Uh-huh (affirmative).
Q. And for your house.

63

A. Yes.
Q. Okay. So you've always known she had a trust; how did you know; did she talk to you about it?
A. Well, when my father died, she had full military benefits, she told me that. And she worked for Edwards --
Q. Your mom --
A. -- she worked for the stockmarket for 30 years so she knew -- she would tell me about, you know, her IRA and things that were going on in the stockmarket, and that I need to open an IRA, and, I mean, I knew that.
Q. Okay. Did she talk to you about how much money she had in there?
A. No, I didn't know how much was in there.
Q. Did she talk to you about her plans for that money?
A. Well, she said when she passed away, that it would be for us and for her grandchildren.
Q. Okay. Can you tell me about the relationship between your mother and Mr. Jeffcoat?
A. They were partners. They were roommates.
Q. They were roommates --
A. Uh-huh (affirmative).
Q. -- not partners?

64

A. Roommates, basically.
Q. They were roommates?
A. Yeah. And when she got sick, he did not wanna take care of her anymore. When I tried to move her several times, he got upset about it and would come and get her.
Q. You use the word partners; do you mean romantic partners?
A. No, they were just -- they lived together.
Q. The lived together --
A. They split everything. Everything -- They had an agreement where they split everything; that's what I was told by Brad; that's what I understood that she said, everything was split.
Q. What did she say?
A. She said that they have --
Q. I'm --
A. -- they split all their housing expenses.
Q. Right. Okay. What did she say about her relationship with Brad?
A. Well, they lived together. She did think he was he was cheating on her in the end there.
Q. So it was a --
A. It wasn't a good relationship.
Q. Was it a romantic relationship?

65

A. No.
Q. They were strictly roommates?
A. Yes.
Q. When you say he was cheating on her, what does that mean then?
A. Well, supposedly he had -- she thought he was having affairs. He was seeing other people. They were seeing each other. They lived together but she said he was seeing other people.
Q. So they were seeing each other?
A. For a -- For a little while. I don't -- at the end, he wasn't -- I mean, weren't romantically involved.
Q. Do you know when it ended between them, romantically?
A. Around 2009, 2010, 'cause he had told --
Q. Why do you say --
A. -- he told me that he -- she was not doing well and he did not want to take care of her when she got old. And she was having issues. And I told him that she needed to come stay with us, but he did not want her to leave.
Q. And this was in '09, 2009, 2010?
A. Yes.
Q. What did he say was wrong with her in 2009,

66

2010?
A. He said -- He said she was showing -- the doctor said she was showing signs of Alzheimer's, but it wasn't Alzheimer's, it was dementia from what I found out when I finally got with doctors in 2015.
Q. Okay. All right. So -- And at what point are you saying the romantic -- they were no longer romantically involved after 2009?
A. Right.
Q. Or '10?
A. Right.
Q. Okay. But they continued to live together?
A. Yes.
Q. Okay. Prior to 2009, they were romantically a couple; is that right?
A. They were friends; she, you know -- they lived together. They weren't married. They lived together.
Q. Were they intimate with one another, do you think?
A. Probably in the beginning, but I know after 2009, they weren't 'cause she told me that.
Q. Okay. Okay. But you used the word partners at one point to describe them; is that right?
A. Well, roommates, partners, they lived together.

67

Q. Okay. And when did her relationship with him begin; do you know?
A. After one of the hurricanes in Charleston, he did some work for her. I wanna say, maybe, 2000-and -- 2003, maybe, there was a hurricane that hit Charleston; she had some damage to her home and he helped -- she contacted him to help her repair her house.
Q. Okay. And when did you meet him?
A. Well, it must've been 2000. I mean, I don't know the exact dates. I don't know. I can just guess that it was, you know -- my daughter was five at the time, 2000.
Q. And how did you meet him? Do you recall meeting him?
A. We came up for a holiday, I believe it was Thanksgiving; my grandmother was there from England, and my mom and Brad had just purchased the house in Charleston, and we came up there to visit for the holidays, and that's when I met him.
Q. That was the first time you met him was after they had purchased the house together?
A. Yes.
Q. And it was here in Charleston?
A. Yes.

68

Q. And how many times do you think you met him or saw him over those years from the time you met until present?
A. A lot. We saw them about two or three times a year.
Q. And was that here or was that where you lived --
A. Both.
Q. -- that you would see them?
A. Both.
Q. Both. So you would visit her at the home that she owned with Mr. Jeffcoat?
A. Yes.
Q. And did you stay in the home when you came to visit?
A. Yes.
Q. Did you bring your family?
A. Yes.
Q. How long would a visit typically last?
A. Usually a week.
Q. And did she sleep in the same bedroom with Mr. Jeffcoat when you were visiting?
A. Yes.
Q. And what -- he would come with her to visit you; is that --

BP0519167

PGS: 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED BY CLAWSON & STAUBES, LLC

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Sandra P. Perkins,** for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and love and affection to me in hand paid at and before the sealing of these presents by **Vanessa L. Williams,** in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said **Vanessa L. Williams,** her heirs and assigns, all of my one half undivided interest in and to the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

BEING the same property conveyed to Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins by deed of Bradford Q. Jeffcoat, Jr. dated July 1, 2000 and recorded February 6, 2001 in Book D364, at Page 107 in the RMC Office for Greenville County, South Carolina.

TMS# 355-09-00-108

Grantee's Address: 32183 Waterworks Ln
Lillian, AL 36549

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said **Vanessa L. Williams,** her heirs and assigns forever a one half undivided interest.

AND, subject to the Exceptions, I do hereby bind myself and my heirs, personal representatives and administrators to warrant and forever defend, all and singular, the said premises unto the said **Vanessa L. Williams,** her heirs and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 16th day of November, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(First Witness signs here)

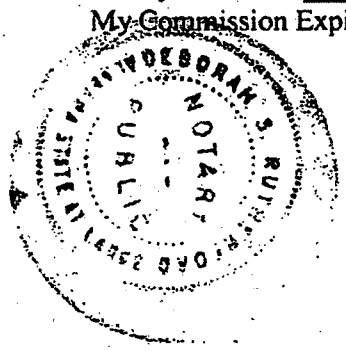
(Second Witness or Notary signs here)

Vanessa L. Williams (L.S.)
Sandra P. Perkins, by Vanessa L. Williams,
Guardian and Conservator of Sandra P. Perkins

STATE OF Alabama)
)
COUNTY OF Baldwin)

THE foregoing instrument was acknowledged before me by Sandra P. Perkins, by Vanessa L. Williams, Guardian and Conservator of Sandra P. Perkins this 16th day of November, 2015.

Deborah S. Rutherford (L.S.)
Notary Public for Alabama
My Commission Expires: 8-19-17



STATE OF ~~SOUTH CAROLINA~~ Alabama)
COUNTY OF ~~CHARLESTON~~ Baldwin)

AFFIDAVIT

Date of Transfer of Title
November 16, 2015

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Sandra P. Perkins to Vanessa L. Williams on November 16, 2015.

3. Check one of the following: **The DEED is**
   (a)__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)__ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_x_ EXEMPT from the deed recording fee because (exemptions #1)
   (Explanation, if required (transferring one half interests less than $100.00)
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a)__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $.
   (b)__ The fee is computed on the fair market value of the realty which is $_____.
   (c)__ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES __ or NO __ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (A)$_____the amount listed in item 4 above
   (b)$_____the amount listed in item 5 above (no amount place zero)
   (c)$_____Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.

8. Check if Property other than Real Property is being transferred to this Deed.
   (a) _____ Mobile Home
   (b) _____ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

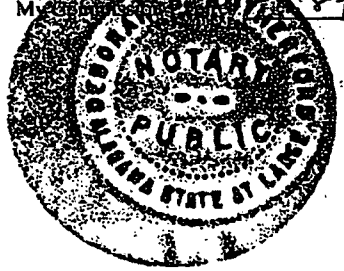
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me on this 16th day of November, 2015

Vanessa L. Williams
Legal Representative

Deborah S. Rutherford (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-19-17

Vanessa L. Williams
Print Name



BKD 364PG107

This Instrument Prepared By (but no title search performed):
And to Be Returned to:
Elaine H. Fowler
Turner, Padget, Graham & Laney, P.A.
Post Office Box 22129
Charleston, SC 29413-2129

STATE OF SOUTH CAROLINA)
) **GENERAL WARRANTY DEED**
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, That Bradford Q. Jeffcoat, Jr. (hereinafter whether singular or plural, "GRANTOR"), in the State aforesaid, for and in consideration of the sum of Five and 00/100 Dollars ($5.00) and other valuable consideration, to GRANTOR in hand paid at and before the sealing and delivery of these presents by Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins, jointly with right of survivorship, and not as tenants in common (hereinafter collectively referred to as "GRANTEE"), in the State aforesaid (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said GRANTEE the following described property (the "Property"):

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the ROD Office for Charleston County, South Carolina.

Derivation: The foregoing property being the same property conveyed to the Grantor by Jane L. Dennis d/b/a Blue Heron Co., by deed dated April 28, 2000 and recorded in the Office of the Register of Deeds for Charleston County on April 28, 2000 in Deed Book N346 at Page 023.

TMS#: 355-09-00-108

GRANTEE'S ADDRESS: 1955 Old Fort Avenue
Charleston, South Carolina 29414

This conveyance is made subject to all obligations, restrictions, limitations, covenants and easements of record and governmental ordinances and regulations affecting the Property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned, unto the said GRANTEE, its successors and assigns forever.

And the GRANTOR hereby binds GRANTOR and GRANTOR'S Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the said GRANTEE and GRANTEE'S successors and assigns against GRANTOR and GRANTOR'S Heirs, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS GRANTOR'S Hand and Seal, as of the 1st day of July, 2000.

Signed, Sealed and Delivered
In The Presence of:

Elaine H. Fowler

Mary C. Zahida

Bradford Q. Jeffcoat, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by Bradford Q. Jeffcoat, Jr., Grantor, to be the free and voluntary act and deed of the Grantor.

WITNESS my signature as of the 1st day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

H:\EHF\Jeffcoat-Perkins\deed

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

Date of Transfer of Title
(Closing Date) July 1st, 2000

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred **by BRADFORD Q. JEFFCOAT, JR. to BRADFORD Q. JEFFCOAT, JR. and SANDRA P. PERKINS, jointly with right of survivorship, and not as tenants in common, on July 1st, 2000.**

3. Check one of the following: ***The DEED is***
   (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_____ EXEMPT from the deed recording fee because (exemption#_____)
   (Explanation if required)
   (If exempt, please skip items 4-6 and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $74,750.00.
   (b)_____ The fee is computed on the fair market value of the realty which is _____.
   (c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ____ or NO XX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) $74,750.00 the amount listed in item 4 above
   (b) -0- the amount listed in item 5 above (no amount place zero)
   (c) $74,750.00 subtract line 6(b) from line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Grantor, Grantee, or Legal Representative
connected with this transaction

Bradford Q. Jeffcoat, Jr.
Print or Type Name here

Sworn to before me as of the 1st
day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

H:\EHF\Jeffcoat-Perkins\Charleston Affidavit

Heather S. Shaw
Attorney At Law

510 Mill Street, Suite 2B
Mt. Pleasant, SC 29464

Telephone: (843) 377-1686
Fax: (843) 793-3143
heather@shawfamilylaw.com

March 27, 2017

VIA HAND DELIVERY
Clerk of Court
Charleston County Circuit Court
100 Broad Street
Charleston, SC 29401

Re: Williams v. Jeffcoat
Case No.: 2015-CP-10-6379

Dear Clerk:

Enclosed for filing is the original and two (2) copies of the Memorandum of Defendant Bradford Q. Jeffcoat, Jr. in Opposition to Plaintiffs' Motion for Partial Summary Judgment and Cross Motion for Partial Summary Judgment. Also, enclosed for filing is the original and two (2) copies of the Affidavit of Defendant Bradford Q. Jeffcoat, Jr. in Opposition to Plaintiffs' Motion for Partial Summary Judgment.

By copy of this correspondence, we are serving Plaintiffs' attorney with a copy of each of these documents.

With kindest regards, I am

Sincerely yours,

Heather S. Shaw

HSS/slf
Enclosures
cc: Chris Staubes (w/copy of enclosure)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **AFFIDAVIT OF DEFENDANT BRADFORD Q. JEFFCOAT, JR. IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGEMENT**

FILED
2017 MAR 27 PM 1:10
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Bradford Q. Jeffcoat, Jr., being first duly sworn and cautioned, states and affies as follows:

1. I am a Defendant in this action, and am personally knowledgeable about the facts set forth herein.

2. Sandra Perkins and I lived together for almost 20 years.

3. In 2000, and after Sandra Perkins and I were already living together as a committed couple, I purchased a home, the property at issue in this action.

4. Although I originally purchased the home in my name only, I subsequently transferred one-half interest in the property to Sandra, and we executed a new deed to the property as joint tenants with right of survivorship.

5. Sometime after I purchased the home, and independent of the deed, Sandra executed a note to me because she wanted to contribute toward the home since we lived there together.

6. Before executing the new deed, Sandra and I discussed at length that when one of us passed away, it was our wish and intent that the house would automatically go to the survivor, which is why we chose to do a joint tenancy with right of survivorship.

7. We relied upon the advice of an attorney in preparing a deed which would ensure that our home would always remain the property of both of us and would pass automatically to the survivor of us without having to go through any probate proceedings. Neither Sandra Perkins nor I have any legal training and we executed documents prepared by counsel and intended to accomplish this goal.

8. We continued to live together as a committed couple until 2015.

9. Sandra developed Alzheimer's disease and eventually had to quit her job due to increasing memory loss as a result of this disease.

10. In the spring of 2015, I asked her daughter, Plaintiff Vanessa Williams, if she could come to Charleston and help me take her mother to doctor's appointments, as I had to work.

11. On June 16, 2015, while I was at work, Vanessa packed her mother's belongings and, instead of taking her to her doctor, she took Sandra to her home in Alabama without saying one word to me about her plans.

12. Upon arriving in Alabama, and without notice to me as the long-time life partner of Sandra Perkins, Vanessa Williams immediately filed an emergency motion in the Probate Court of Baldwin County, Alabama, alleging that her mother was a resident of Alabama and was incompetent and seeking to have herself appointed as Guardian of her mother and Conservator of her mother's estate. That request was granted.

13. Sandra had never expressed to me any desire to leave our home or to move anywhere else. Although she had visited Alabama in order to spend time with her daughter, she had always expressed a strong desire to return to and remain in.Charleston.

14. I was given no information about her whereabouts or condition after Vanessa absconded with her. I tried repeatedly to contact Sandra and Vanessa, but my calls were never answered, messages left were never returned, and letters I mailed were returned unclaimed. I had no knowledge that Vanessa had been appointed as Sandra's guardian or conservator. I didn't even know Sandra had passed away until a mutual friend of Sandra's and mine mentioned it. I was only able to confirm this after my attorney's office began checking probate records in Alabama and found that Sandra's death certificate had been filed with the Baldwin County (AL) Probate office.

15. I was quite upset that Vanessa not only wouldn't respond to my attempts to contact Sandra or her, but didn't even have the courtesy to let me know Sandra had died, considering her mother and I had been in a loving relationship and cared deeply for each other for so many years.

16. In early October 2015, I received a letter from an attorney in Alabama that Vanessa had retained. In that letter, I was asked if I was interested in purchasing one-half of my home again since Vanessa claimed that her mother needed financial support.

17. I declined to purchase again the property I already owned.

18. Vanessa Williams has also laid claim to all of the furniture and other property in my home, excepting only one bedroom suite. Despite her claim of ownership of all of the personal property in the residence, as well as her claim of ownership and conversion of her mother's vehicle, she made no attempt to retrieve any of this property during any of her visits to

Charleston, including the November 27, 2015 trip during which she ostensibly conveyed one-half of my home to herself.

19. While in Charleston, Vanessa made no attempt to contact me or come to my home to retrieve the remainder of Sandra's personal items or car, items that Vanessa may have been able to sell to generate funds since her attorney had stated such a great need for financial assistance to care for Sandra.

20. Immediately upon receiving a demand for possession of Sandra's vehicle, I gave that vehicle to Vanessa Williams. I never converted any property belonging to Sandra Perkins, and the furniture and other personal property remaining in the residence is the joint property of both of us.

21. For years following Sandra's diagnosis, I took care of her solely, with no physical or financial assistance from anyone.

22. I loved Sandra and was happy to care for her. It was only when her condition deteriorated such that it became a safety concern for her to be alone while I was working or taking her to doctor appoints, that I finally had an in-home aide come to our home to be with Sandra when I was working.

23. I ultimately decided to call Vanessa and ask if she would be able to come stay for a short time to help. Never in my wildest imagination did I think Vanessa would remove her mother from her own home and take her from the care of doctors who had been treating her and were most familiar with her illness.

24. Prior to this time, Vanessa only saw her mother once or twice each year and this was usually when Sandra and I would go to visit her.

25. Neither Sandra nor I wanted the other to have any problems from our respective beneficiaries in regard to our home.

26. At no time did Sandra Perkins and I ever intend for our joint home to pass to anyone other than the survivor of us, as this was purchased as and intended to remain our family residence.

FURTHER AFFIANT SAYETH NAUGHT!

BRADFORD Q. JEFFCOAT, JR.

Sworn to and subscribed before me
This 27th day of March, 2017

Notary Public, State of South Carolina
My Commission expires: 2-2-19

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins Plaintiffs, v. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-6379 **SECOND AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**

2016 FEB 23 PM 3:16
CLERK OF COURT
BY

Defendant Bradford Q. Jeffcoat, Jr., by and through his undersigned attorney, hereby responds to the First Amended Complaint of the Plaintiffs as follows:

ANSWER

1. All allegations of the Complaint not specifically admitted or denied are denied.

2. As to paragraph 1 of the Complaint, Defendant denies that Plaintiff Williams has any ownership interest in the real property located in Charleston County that is the subject of this action. Defendant admits that this Plaintiff is a resident of the State of Alabama.

3. As to paragraph 2 of the Complaint, upon information and belief, Defendant alleges that this Plaintiff was a resident of Charleston County, South Carolina in the years preceding her demise, although she had been involuntarily transported to the State of Alabama shortly before her death.

4. Defendant denies the allegations of paragraphs 3 and 4 of the Complaint, and affirmatively states that the Probate Court of Baldwin County, Alabama, had no jurisdiction over the person or estate or Sandra P. Perkins at the time Plaintiff Vanessa Williams was purportedly appointed by said Court to be the Guardian and Conservator of Sandra P. Perkins.

5. Defendant admits the allegations of paragraph 5 of the Complaint.

6. Defendant denies for want of information the allegations of paragraph 6 of the Complaint.

7. Defendant admits the allegations of paragraphs 7, 8 and 9 of the Complaint.

8. Paragraph 10 of the Complaint requires no response.

9. Defendant denies the allegations of paragraph 11, 12, and 13 of the Complaint.

10. Defendant admits so much of paragraphs 14 and 15 of the Complaint as allege that this Court has jurisdiction over the instant action. The remaining allegations are incapable of response and state legal conclusions.

12. Defendant denies the allegations of paragraphs 16 and 17 of the Complaint.

13. Paragraph 18 of the Complaint requires no response.

14. Defendant admits the allegations of paragraphs 19 and 20 of the Complaint.

15. Defendant denies the allegations of paragraphs 21, 22 and 23 of the Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

16. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

17. Defendant alleges that this action should be dismissed against him pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, for failure to state facts sufficient to constitute a cause of action.

FOR A SECOND AFFIRMATIVE DEFENSE
(Unclean Hands)

18. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

19. Plaintiff Vanessa Williams is barred from any equitable relief because of Plaintiff's own inequitable actions, which are more fully set forth below.

FOR A THIRD AFFIRMATIVE DEFENSE
(Lack of Standing)

20. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

21. Plaintiff Vanessa Williams lacks standing to institute the instant action.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Additional Defenses)

22. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

23. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Reply to assert any such defense.

FOR A FIFTH AFFIRMATIVE DEFENSE
AND FIRST COUNTERCLAIM AGAINST
PLAINTIFF VANESSA WILLIAMS
(Fraud)

24. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

25. Defendant and Sandra P. Perkins resided together in a domestic partnership for approximately fifteen (15) years.

26. On or about July 1, 2000, Defendant Bradford Q. Jeffcoat, Jr. conveyed an interest in the certain real property at issue herein to Sandra P. Perkins, by general warranty deed, specifying in the deed that the conveyance was to Defendant and Perkins as joint tenants with right of survivorship and not as tenants in common.

27. It was and remained the intention of these parties, at all relevant times, that the real property at issue remain solely and exclusively the property of the other in the event of the death of either.

28. In mid June, 2015, Defendant asked Plaintiff Williams if she would come to South Carolina for a brief visit in order to assist in the care of Perkins, her mother.

29. Perkins had a medical appointment scheduled for June 16, 2015.

30. In lieu of taking her to her medical appointment, as discussed by the parties, Williams removed Perkins from this jurisdiction, taking her from her own home to Williams' home in Alabama.

31. Immediately upon her return to Alabama, Williams petitioned the court of Baldwin County, Alabama, to appoint her as conservator and guardian of her mother.

32. On November 16, 2015, as Conservator of the Estate of Sandra P. Perkins, Vanessa Williams executed a General Warranty Deed purporting to convey Perkins' interest in the real property owned by Perkins and Defendant, as joint tenants with rights of survivorship, to herself, individually, for the sum of Ten ($10.00) Dollars.

33. This transfer was conducted in violation of Code of Ala. § 26-2A-150, which makes voidable any sale or encumbrance from a conservator to, *inter alia*, any person related to the conservator.

34. This transfer was further conducted in violation of Code of Ala. § 26-2A-152(d)(3), which requires prior court authorization before a conservator may dispose of real property belonging to the incompetent.

35. Any supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins is fraudulent, voidable, and contrary to Alabama and South Carolina law.

36. The supposed transfer of the interest of Perkins in the real property titled jointly in the names of Defendant and Perkins constitutes a fraud upon the Court.

37. Defendant has been damaged by the fraudulent and unlawful actions of Plaintiff Williams, in an amount to be determined at trial.

FOR A SIXTH AFFIRMATIVE DEFENSE AND SECOND COUNTERCLAIM AGAINST PLAINTIFF VANESSA WILLIAMS (Breach of Fiduciary Duty)

38. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

39. Plaintiff Vanessa Williams, having removed Sandra Perkins from this jurisdiction without the consent of said Sandra Perkins, had herself appointed as Conservator and Guardian of the estate and person of Sandra Perkins.

40. On November 16, 2015, as Conservator of the Estate of Sandra P. Perkins, Vanessa Williams executed a General Warranty Deed purporting to convey Perkins' interest in the real property owned by Perkins and Defendant, as joint tenants with rights of survivorship, to herself, individually, for the sum of Ten ($10.00) Dollars.

41. This purported sale by Vanessa Williams to Vanessa Williams, having occurred while Vanessa Williams was the Conservator of the Estate of Sandra Perkins and for no consideration of any value, constitutes a breach of the fiduciary duty of the Conservator.

42. Defendant has been damaged by the breach of fiduciary duty.

43. Defendant has been damaged by the fraudulent and unlawful actions of Plaintiff Williams, in an amount to be determined at trial.

FOR A SEVENTH AFFIRMATIVE DEFENSE AND THIRD COUNTERCLAIM AGAINST PLAINTIFF VANESSA WILLIAMS (Slander of Title)

44. Defendant realleges the allegations of the preceding paragraphs as though fully set forth herein.

45. Plaintiff has no legitimate interest in the real property owned by Defendant.

46. Plaintiff has wrongfully and with malice published the false statement that she owns one-half of the real property owned by Defendant.

47. The publication of this statement is derogatory to Defendant's title.

48. The false assertion of an unfounded claim against Defendant's property constitutes slander of title.

49. Plaintiff has acted in a reckless, willful, wanton and malicious manner in wrongfully asserting and recording an interest in Defendant's real property.

50. Defendant has suffered special damages as a direct and proximate result of Plaintiff's slander of his title.

51. Defendant has incurred attorney's fees as a direct and proximate result of Plaintiff's slander of his title.

52. Defendant is entitled to compensation for the damages incurred as result of Plaintiff's slander of his title.

53. Defendant is further entitled to punitive damages for the reckless and malicious conduct of Plaintiff.

WHEREFORE, having fully answered the Complaint of the Plaintiffs, Defendant Bradford Q. Jeffcoat prays that the Court inquire into the matters set forth above, and that the Court grant him relief as follows:

A. To dismiss the Complaint of the Plaintiffs;

B. To find that the alleged transfer of interest in the real property at issue in this action from Plaintiff Sandra P. Perkins to Plaintiff Vanessa Williams is fraudulent and without effect;

C. To order that a Deed to the real property at issue in this action be issued in the sole and exclusive name of Bradford Q. Jeffcoat, Jr.;

D. To award Defendant Jeffcoat damages in an amount to be determined at the trial of this action, including but not limited to his attorney's fees;

E. To award Defendant Jeffcoat special damages for the slander of his title to his real property;

F. To punitive damages for Plaintiff's reckless, willful, wanton, and malicious actions in asserting an unwarranted claim against Defendant's real property; and

G. To grant such other relief as may be just and proper.

Heather S. Shaw
Attorney at Law
Shaw Law Firm, LLC
510 Mill St., Ste. 2B
Mt. Pleasant, SC 29464
Phone: (843) 377-1686
Fax: (843)793-3143

February 28, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins

Plaintiff,

vs.

Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-06379

PLAINTIFF'S REPLY TO SECOND AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.

2018 MAR 19 P
JULIE J. ARM
CLERK OF

COMES NOW, Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams as Personal Representative of the Estate of Sandra P. Perkins, by and through counsel, and in response to the Second Amended Answer and Counterclaims of Defendant Bradford Q. Jeffcoat, Jr., alleges and says as follows:

1. The allegations of paragraph 1 do not require a response.

2. The allegations of paragraph 2 do not require a response.

3. The allegations of paragraph 3 pertaining to the alleged involuntary transport of Sandra P. Perkins are denied and strict proof is demanded thereof. The rest of the allegations of paragraph 3 do not require a response.

4. The allegations of paragraph 4 are conclusions of law and do not require a response.

2018 MAR 19 PM 1:49
JULIE J. ARMSTRONG
CLERK OF COURT

5. The allegations of paragraph 5 do not require a response.

6. The allegations of paragraph 6 do not require a response.

7. The allegations of paragraph 7 do not require a response.

8. The allegations of paragraph 8 do not require a response.

9. The allegations of paragraph 9 do not require a response.

10. The allegations of paragraph 10 do not require a response.

11. The allegations of paragraph 12 do not require a response.

12. The allegations of paragraph 13 do not require a response.

13. The allegations of paragraph 14 do not require a response.

14. The allegations of paragraph 15 do not require a response.

15. The allegations of paragraph 16 do not require a response.

16. The allegations of paragraph 17 are denied and strict proof is demanded thereof.

17. The allegations of paragraph 18 do not require a response.

18. The allegations of paragraph 19 are denied and strict proof is demanded thereof.

19. The allegations of paragraph 20 do not require a response.

20. The allegations of paragraph 21 are denied and strict proof is demanded thereof.

21. The allegations of paragraph 22 do not require a response.

22. The allegations of paragraph 23 do not require a response.

23. The allegations of paragraph 24 are denied and strict proof is demanded thereof.

24. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 25 and therefore denies same and demands strict proof thereof.

25. The allegations of paragraph 26 are admitted.

26. The allegations of paragraph 27 are denied and strict proof is demanded thereof.

27. The allegations of paragraph 28 are denied and strict proof is demanded thereof.

28. Plaintiff is without sufficient information to admit or deny the allegations contained in paragraph 29 and therefore denies same and demands strict proof thereof.

29. The allegations of paragraph 30 are denied and strict proof is demanded thereof.

30. The allegations of paragraph 31 are denied and strict proof is demanded thereof.

31. The allegations of paragraph 32 are admitted.

32. The allegations of paragraph 33 are denied and strict proof is demanded thereof.

33. The allegations of paragraph 34 are denied and strict proof is demanded thereof.

34. The allegations of paragraph 35 are denied and strict proof is demanded thereof.

35. The allegations of paragraph 36 are denied and strict proof is demanded thereof.

36. The allegations of paragraph 37 are denied and strict proof is demanded thereof.

37. The allegations of paragraph 38 do not require a response.

38. The allegations of paragraph 39 are denied and strict proof is demanded thereof.

39. The allegations of paragraph 40 are admitted.

40. The allegations of paragraph 41 are denied and strict proof is demanded thereof.

41. The allegations of paragraph 42 are denied and strict proof is demanded thereof.

42. The allegations of paragraph 43 are denied and strict proof is demanded thereof.

43. The allegations of paragraph 44 do not require a response.

44. The allegations of paragraph 45 are denied and strict proof is demanded thereof.

45. The allegations of paragraph 46 are denied and strict proof is demanded thereof.

46. The allegations of paragraph 47 are denied and strict proof is demanded thereof.

47. The allegations of paragraph 48 are denied and strict proof is demanded thereof.

48. The allegations of paragraph 49 are denied and strict proof is demanded thereof.

49. The allegations of paragraph 50 are denied and strict proof is demanded thereof.

50. The allegations of paragraph 51 are denied and strict proof is demanded thereof.

51. The allegations of paragraph 52 are denied and strict proof is demanded thereof.

52. The allegations of paragraph 53 are denied and strict proof is demanded thereof.

53. The Plaintiff denies each and every allegation not hereinabove specifically admitted or denied.

FOR A FIRST AFFIRMATIVE DEFENSE
(Unclean Hands)

54. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

55. Defendant's counter-claims are barred, in whole or in part under the Doctrine of Unclean Hands.

FOR A SECOND AFFIRMATIVE DEFENSE
(Defendant's Misconduct)

56. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

57. Defendant's counter-claims are barred, in whole or in part by his own misconduct and course of dealings.

FOR A THIRD AFFIRMATIVE DEFENSE
(Ala. Code §26-2A-152(c)(1))

58. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

59. Plaintiff pleads that at all times relevant to the underlying dispute in this case, that she was acting within the scope of Code of Alabama Section 26-A-152(c)(1).

FOR A FOURTH AFFIRMATIVE DEFENSE
(Good Faith)

60. Each and every allegation set forth above is incorporated by reference as

if repeated herein verbatim.

61. Plaintiff pleads that at all times relevant to the underlying dispute in this case, that she acted in good faith.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

62. Each and every allegations set forth above is incorporated by reference as if repeated herein verbatim.

63. Plaintiff pleads that Defendant has failed to mitigate damages.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)

64. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

65. That the claims of Defendant Bradford Q. Jeffcoat, Jr., fail to state sufficient facts to constitute a cause of action upon which relief may be granted and therefore the claim should be dismissed pursuant to the provisions of Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Reservation of Defenses)

66. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

67. Plaintiff reserves the right to amend its reply to allege such other affirmative defenses as may become available.

FOR A EIGHTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel)

68. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

69. Defendant Bradford Q. Jeffcoat, Jr.'s counterclaims are barred by the doctrines of waiver and/or estoppel.

FOR A NINTH AFFIRMATIVE DEFENSE
(Standing)

70. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

71. Defendant Bradford Q. Jeffcoat, Jr. lacks standing to assert his counterclaims.

FOR A TENTH AFFIRMATIVE DEFENSE
(True Publications)

72. Each and every allegation set forth above is incorporated by reference as if repeated herein verbatim.

73. Plaintiff pleads that publications made by her are true.

Respectfully submitted,

CLAWSON and STAUBES, LLC

Andrew M. Sullivan
SC Bar No.: 100464
1612 Marion Street, Suite 200
Columbia, SC 29201
Phone: (800) 774-8242
Fax: (843) 722-2867
Email: asullivan@clawsonandstaubes.com
Attorneys for Plaintiff

Columbia, South Carolina
March 14, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel on the 14 day of March 2018 via:

X	United States Postal Service
	Facsimile
X	Electronic Email

Andy Blackwell

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

2010 APR -2 PM 2:22
CLERK OF COURT
BY
FILED

COMES NOW, the Plaintiffs, Vanessa Williams individually, as Conservator and Guardian of Sandra P. Perkins, and as Personal Representative of the Estate of Sandra P. Perkins, by and through undersigned counsel, and respectfully requests this Honorable Court to enter Partial Summary Judgment on all allegations made by Plaintiffs on Partition by Allotment or Sale, and in support thereof, shows as follows:

1. That there exists no genuine issue of material fact.
2. That Plaintiffs are entitled to judgment as a matter of law.

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Facts

Plaintiff, Vanessa Williams, is the daughter of Sandra Perkins. The Defendant, Bradford Q. Jeffcoat, Jr. and Ms. Perkins have been roommates for approximately fifteen (15) years. On April 28, 2000, Mr. Jeffcoat bought ownership in a residential

property in Charleston, South Carolina, more particularly described in the deed attached hereto as Exhibit "A". Shortly after his purchase, on July 1, 2000, Mr. Jeffcoat conveyed a half interest to Ms. Perkins in exchange for a mortgage in the amount of $43,550.00. See Exhibits "B" and "C". It is undisputed that Ms. Perkins paid all of the principal and interest (at 7.5% fixed rate for 15 years) on the mortgage and that the mortgage has since been released. See Exhibit "D". Accordingly, on or about June 1, 2015, Ms. Perkins held an unencumbered estate in fee simple in the subject property with Mr. Jeffcoat as joint tenants with right of survivorship and not as tenants in common.

Prior to her death in November of 2015, Ms. Perkins suffered from advanced dementia. Her condition began to rapidly deteriorate in the summer of 2015 and after being informed by Mr. Jeffcoat of her mother's infirmities, Ms. Williams drove to Charleston in order to assess the situation. Upon observing her mother's condition and determining that, as Ms. Perkins' only child, she would be the most appropriate person to provide for her mother's care going forward, Ms. Williams left Charleston on or about June 16, 2015 and brought Ms. Perkins back to Alabama to live with her.

After consulting with legal counsel in Alabama, Ms. Williams decided that the best way to provide for her mother was to become her Guardian and Conservator. Correspondingly, Ms. Williams petitioned the Probate Court of Baldwin County and was issued permanent Letters of Guardianship/Conservatorship on September 15, 2015. See Exhibit "E".

Thereafter, as fiduciary, Ms. Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." *Ala. Code* § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had

paid valuable consideration for her interest in the subject property, and that as conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, she consulted with the Law Firm of Clawson & Staubes LLC in South Carolina. Based on the advice of Clawson & Staubes LLC, Ms. Williams, as conservator, decided to pursue a partition action on behalf of Ms. Perkins against Mr. Jeffcoat.

In early November 2015, while Clawson & Staubes LLC was working on drafting the complaint for this partition action, Ms. Williams received the unfortunate news that her mother's health had suddenly taken a turn for the worse, and death was imminent. Given that the subject property was still in the names of Ms. Perkins and Mr. Jeffcoat and held as joint tenants with right of survivorship, the death of Ms. Perkins would result in Mr. Jeffcoat being the sole owner of said property. As a result, Ms. Williams upon advice of counsel, decided that the best way to fulfil her duties was to sever her mother's joint tenancy and then pursue partition.

Accordingly, pursuant to the advice of her Alabama and South Carolina counsel, Ms. Williams conveyed Ms. Perkins' interest in the subject property to herself on November 16, 2015, severing the joint tenancy and creating a tenancy in common with Mr. Jeffcoat. See Exhibit "F". Ms. Perkins died on November 27, 2015. In conveying the subject property to herself, Ms. Williams acted in the only way possible to retain the asset on behalf of Ms. Perkins' estate until determining its ultimate disposition. She took this action in accordance with *Ala. Code* § 26-2A-152(c)1 (1975). The conveyance was approved by order of the Probate Court of Baldwin County on January 15, 2016 while applying *Ala. Code* § 26-2A-152(c)1 (1975). See Exhibit "G".

The November 16, 2015 deed conveying Ms. Perkins' interest to Ms. Williams did not require court approval because it was not a disposition for cash or credit, and was done in order to hold, maintain, and preserve assets of Ms. Perkins' estate. The legal title was conveyed to Ms. Williams acting as agent for Ms. Perkins' estate and with said estate's best interests in mind. See Affidavit of Leslie T. Fields, Esq. attached hereto as Exhibit "H". Given Ms. Perkins' rapidly declining health in the late summer and early fall of 2015 it would have been imprudent for Ms. Williams to allow the property to remain in the joint tenancy.

Having severed the joint tenancy with Mr. Jeffcoat by destroying the unity of time, Ms. Williams then sought judicial partition pursuant to *S.C. Code Ann.* § 15-61-10 *et seq* (1986), by complaint filed in this Honorable Court on November 23, 2015. Mr. Jeffcoat disputes the legitimacy of the actions taken by Ms. Williams as contrary to Alabama and South Carolina Law.

Issues

There is no genuine issue of material fact presented by the evidence. The issues before the Court are twofold:

1. Whether a unilateral conveyance by one tenant who holds property with another tenant as joint tenants with right of survivorship to a third party effectively severs the joint tenancy and creates a tenancy in common?

2. Whether under Alabama law, a conservator may convey real property of her ward, without prior court approval, pending its ultimate disposition?

Standard of Review

Summary Judgment is governed by Rule 56(c), SCRCP." *Turner v. Milliman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* at 122, 708 S.E.2d at 769; *see also* Rule 56(c), SCRCP. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams,* 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.,*365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.*

Law and Analysis

1. A joint tenancy with right of survivorship is severed by a tenant's conveyance of property interest to a third party.

S.C. Code Ann. § 27-7-40 (1986) provides several non-exclusive mechanisms by

which a joint tenancy with right of survivorship may be created and severed in South Carolina. Section 27-7-40 in its entirety states:

> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
> (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.
> (iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.
> (v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.
> (vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.
> (vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.
> (viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.
> (ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the

joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

The most important words in this statute with respect to the facts of the case at bar are contained in the very first clause: "[i]n addition to any other methods for the creation of a joint tenancy in real estate which may exist by law". The statute plainly envisages that there are other ways to create a joint tenancy in South Carolina. Furthermore, S.C. Code Ann. § 62-2-804(a) (1986) clearly states that the statute is not the only mechanism by which a joint tenancy in real estate may exist by law. Accordingly, statutory creation of a joint tenancy is not exclusive and common law rules for the creation of a joint tenancy are still recognized. The Court of Appeals affirmed this rule in *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass*, 359 S.C. 407 (Ct..App.2004), opining:

> Appellant asserts that, at most, Rosemary's 1985 deed created a tenancy in common. "The common law method of creating a joint tenancy requires a conveyance to have four unities: unity of interest, unity of title, unity of time, and unity of possession." *Smith v. Rucker,* 357 S.C. 532, 593 S.E.2d 497, 499 (Ct.App.2004) (citing *Jenkins v. Jenkins,* 8 S.C.L. (1 Mill

Const.) 48, 52 (1817)).

Therefore, a joint tenancy with right of survivorship is established where the grant or devise conveys unity of title, unity of interest, and unity of possession to two or more tenants at the same time.

By implication, statutory severance is likewise not the exclusive mechanism for destroying a joint tenancy. The common law rules for severance still apply and the destruction of one of the required unities of title destroys the joint tenancy and renders property holders "tenants in common." This is the law in South Carolina as well as many other states.[1] In *Smith v. Cutler*, 623 S.E.2d 644 at 647 (S.C. 2005), Chief Justice Toal held that in South Carolina, "unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."

Applying the law to the facts of the case at bar results in a tenancy in common with the Plaintiff, Ms. Williams and the Defendant Mr. Jeffcoat each holding a one-half interest in the subject property. The subject property was conveyed from Ms. Perkins, who held a joint survivorship interest with Mr. Jeffcoat, to Ms. Williams on November 16, 2015. This conveyance severed the unity of time requirement with respect to the new tenancy, which in turn severed the joint tenancy with right of survivorship. The Supreme

[1] *Nunn v. Keith*, 289 Ala. 518 (1972); *Smith v. Kofstad,* 206 P.3d 441 (Alaska 2009); *Estate of England*, 233 Cal.App.3d 1 (1991); *Alexander v. Boyer*, 253 Md. 511 (Md. 1969); *Matter of Estate of Bates*, 492 N.W.2d 704 (Iowa App. 1992); *Harmes v. Sprague*, 105 Ill.2d 215 (Ill. 1984); *Home Trust Mercantile Bank v. Staggs*, 714 S.W.2d 792 (Mo.App. E.D. 1986); *Smith v. Tang*, 100 Ariz. 196 (1996); *Reicherter v. McCauley*, 47 Kan.App.2d 968 (Kan.App. 2012); *Estate of Knickerbocker, In re*, 912 P.2d 969 (Utah 1996); *Estate of Gulledge*, 673 A.2d 1278 (D.C. 1996); *Marchel v. Estate of Marchel*, 349 Wis.2d 707 (Wis.App. 2013); *Hoover v. El Paso Nat. Bank*, 498 S.W.2d 276 (Tex.Civ.App. —El Paso 1973); *Ianotti v. Ciccio*, 219 Conn. 36 (Conn. 1991); *Edwin Smith LLC v. Synergy Operating LLC*, 2012 -NMSC- 034 (N.M. 2012); *Johnson v. Gray*, 533 N.W.2d 57 (Minn.App. 1995); *Valdez v. Occupants of 3908 SW 24th Street,* 270 P.3d 143 (Okla. 2011); *Williamson v. Williamson*, 157 A.2d 110 (R.I. 1960); *Lyon v. Lyon*, 100 Wn.2d 409 (Wash. 1983); *In re Estate of Bernecker*, 654 A.2d 246 (Pa.Cmwlth. 1995); *Foucart v. Paul*, 516 So.2d 1035 (Fla.App. 5 Dist. 1987); *Taylor v. Canterbury*, 92 P.3d 961 (Colo. 2004); *Shockly v. Halbig*, 75 A.2d 512 (Del.Ch. 1950); *Halleck v. Halleck*, 216 Or. 23 (Or. 1959);

Court in *Smith v. Cutler* spells out exactly what language to include in the granting clause and habendum clause of a deed to create an indestructible tenancy in common:

> "[w]e hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor." 366 S.C. at 551, 623 S.E.2d at 647.

Had Ms. Perkins and Mr. Jeffcoat chosen the above language, then the conveyance by Ms. Perkins to Ms. Williams would have failed. Having opted instead for joint tenancy with right of survivorship, the parties contemplated the fact that either party may sever the joint tenancy by conveyance to a third party.

The Defendant has also attempted to rely on *S.C. Code Ann.* § 27-7-40(a)iii (1986) which provides that a joint tenancy may only be encumbered by the consent of all joint tenants. In so doing, the Defendant attempts to conflate ownership interests with encumbrances. Conveyance of ownership in property is not an encumbrance. Encumbrances and ownership rights are mutually exclusive and the fact that the legislature specifically excluded "ownership interests" from the definition of encumbrance under the South Carolina Code, is dispositive of the issue.

In South Carolina, encumbrance with respect to real estate is defined as any property interest that is not an ownership interest.[2] As the Defendant has rightly pointed out, there is no case in South Carolina that holds otherwise. Encumbrances lessen the property value because the lien, mortgage, or other attachment can be satisfied to the detriment of the non-consenting party. An outright unilateral conveyance perhaps results in an unwanted partner, but in no way lessens the value to the other tenant, who

[2] S.C. Code Ann § 36-9-102 (32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property; Black's Law Dictionary (10th ed. 2014), encumbrance;

would still be entitled to the full value of the interest held in the property unencumbered. South Carolina law even recognizes that a joint tenant or tenant in common may force a partition of real property without requiring consent of all the parties.[3] The statutes would appear to be in conflict if a conveyance were to be viewed as synonymous with encumbrance.

2. Alabama Law permits a conservator to collect, hold and retain property without prior Court approval.

Defendant argues that Alabama Law does not permit a conservator to transfer property to herself without prior Court approval. This is an incorrect interpretation with respect to the facts of this case. *Code of Alabama* § 26-2A-152(d)(3) (1975) proscribes the disposal of real property for cash or credit. The Plaintiff, by contrast, sought to protect a valuable asset of Ms. Perkins' estate by conveying it to herself as fiduciary. As fiduciary, Ms. Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." *Ala. Code* § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, and the fact that as conservator, she was required by law to retain and protect the assets of her mother and/or mother's estate, Ms. Williams consulted with legal counsel in Alabama and South Carolina in order to determine how to sever the joint tenancy.

Without the conveyance, a valuable asset of her ward's estate would have been lost to the survivorship clause in the July 1, 2000 deed in contradiction of Ms. Williams' duties under Alabama law. Furthermore, the conveyance was subsequently approved under *Ala. Code* § 26-2A-152(c)(1) by the Judge of Probate in Baldwin County,

[3] S.C. Code Ann. § 15-61-10 *et seq.*

Alabama. See Exhibit "G". Section 26-2A-152(c)(1) provides that a conservator may act without prior court authorization to:

> Collect, **hold**, and retain assets of the estate including **land in another state** and stocks of private corporations, **until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested**.

Thus, it is appropriate and permissible for a conservator to hold property in her own name in order to determine the final disposition of said property. The statute manifestly provides for conservators to act in the very manner that Ms. Williams did in this scenario, just as her ward could have done had she the mental capacity to do so. It is likewise impossible for this statute to have any meaning with respect to land if it does not allow for conveyances as it is futile to attempt a transfer of property without a deed.

Moreover, the Plaintiff has consulted with an Elder Law expert in Alabama that agrees with the foregoing analysis. Leslie T. Fields, Esquire states unequivocally in her attached affidavit that the actions of Ms. Williams were lawful, and that the Defendant's attempt to conflate the conveyance as a sale or disposition of the real property interest for cash or credit is misguided. See Exhibit "H".

Conclusion

South Carolina law, like the majority of states, recognizes the common law creation of a joint tenancy provided that the four unities of title are present. It logically must follow and that such a tenancy can be destroyed by the unilateral act of one tenant by conveying its interest to a third party. The common law in South Carolina harmoniously agrees with this analysis. Consequently, Ms. Perkins' conveyance to her daughter Ms. Williams severed the joint tenancy with right of survivorship and resulted

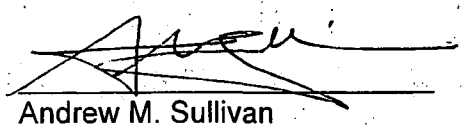
in a tenancy in common with Mr. Jeffcoat, which is subject to partition under South Carolina statute.

Moreover, Alabama law is clear that a conservator may hold property in its own name in order to preserve assets of the ward's estate. This is allowed even if the property in question concerns land in another state. The only way to hold property in land is through a deed of conveyance. In this case, Ms. Williams followed the statute perfectly to achieve this result.

WHEREFORE, the premises considered, Plaintiff prays that this Honorable Court enter an Order to partition the subject real property between Plaintiff Vanessa Williams and Defendant Bradford Q. Jeffcoat, Jr. either by allotment or order sale of the real property and a division of the proceeds according to the rights of the parties hereto..

Respectfully submitted,

CLAWSON AND STAUBES, LLC



Andrew M. Sullivan
Bar No.: 100464
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: asullivan@clawsonandstaubes.com
Attorney for Plaintiffs

March 22, 2018

2015-CP-10-6379

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel on the 22 day of March 2018 via:

X	United States Postal Service
	Facsimile
	Electronic Email

Andy Blackwell

FILED
2018 APR -2 PM 2:22
CLERK OF COURT
BY

BK N 346PG023

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WHEREAS, it was unanimously resolved that the undersigned Officer(s) or Partner(s) convey the hereinafter described property to the below named Grantee(s) for the consideration expressed below.

DEED

KNOW ALL MEN BY THESE PRESENTS, That JANE L DENNIS D/B/A BLUE HERON CO., (hereinafter called "Grantor"), for and in consideration of the sum of ONE HUNDRED FORTY NINE THOUSAND FIVE HUNDRED AND NO/100 ($149,500.00) DOLLARS, to it in hand paid at and before the sealing of these presents by BRADFORD Q JEFFCOAT, JR. (hereinafter called "Grantee") in the State aforesaid, (the receipt of which is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee(s), his successors and assign(s) forever,

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G Pennington, R.L.S., and recorded in the RMC Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS Conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the RMC Office for Charleston County, South Carolina.

BEING a portion of the property conveyed to the Grantor herein by deed of Lee Belle Murray dated 3/26/98 and recorded in Book T299, Page 843 in the RMC Office for Charleston County.

TMS# 355-09-00-108

GRANTEES ADDRESS: 2151 Pinehurst Ave CHAS SC. 29414

EXHIBIT

tabbies A

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the Grantee(s) hereinabove named, and Grantee(s) Heirs and Assigns forever.

And the Grantor(s) do(es) hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the Grantee(s) hereinabove named, and the Grantee's Successors and Assigns against itself and its successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others; including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and by its undersigned Officer(s) or Partner(s) and its seal to be hereto affixed.

DATE: April 28, 2000

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

JANE L DENNIS D/B/A BLUE HERON CO.,

by Jane L Dennis by Michael E Lee
its Her Atty. in fact

STATE OF SOUTH CAROLINA]
]
COUNTY OF CHARLESTON]

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me by the within Officer(s)/Partner(s) this 28 day of April, 2000.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/09

BK N 346PG026

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The Property was transferred by JANE L DENNIS D/B/A BLUE HERON CO., to BRADFORD Q JEFFCOAT, JR. on April 28, 2000.

3. The Deed is:
a.XXXX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or month's worth.

4. Check one of the following if either item 3a or item 3b above has been checked.
a.XXXX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $149,500.00.

5. Check YES____ or NOXXXX to the following:
A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer.

6. The DEED recording fee is computed as follows:
a.$149,500.00 the amount listed in item 4 above.
b.-0- the amount listed in 5 above (no amount place 0)
c.$149,500.00 Subtract line 6b from Line 6a and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Bradford Q. Jeffcoat Jr.
GRANTEE

BRADFORD Q JEFFCOAT, JR.
PRINT OR TYPE NAME HERE

SWORN to before me this
19 day of April, 2000.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2/17/09

C. J. Manos

and

LTV

BK N 346PG027

FILED

N346-23

2000 APR 28 PM 12:15

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording Fee 10.00

State Fee 398.70

County Fee 164.45

Postage

TOTAL 563.15 B

RECEIVED FROM RMC

MAY 2 2000

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

TMS VERIFIED

BAC MLH

DTD 5/2/00

BKD 364PG107

This Instrument Prepared By (but no title search performed):
And to Be Returned to:
Elaine H. Fowler
Turner, Padget, Graham & Laney, P.A.
Post Office Box 22129
Charleston, SC 29413-2129

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Bradford Q. Jeffcoat, Jr. (hereinafter whether singular or plural, "GRANTOR"), in the State aforesaid, for and in consideration of the sum of Five and 00/100 Dollars ($5.00) and other valuable consideration, to GRANTOR in hand paid at and before the sealing and delivery of these presents by Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins, jointly with right of survivorship, and not as tenants in common (hereinafter collectively referred to as "GRANTEE"), in the State aforesaid (the receipt whereof is hereby acknowledged), has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said GRANTEE the following described property (the "Property"):

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the ROD Office for Charleston County, South Carolina.

Derivation: The foregoing property being the same property conveyed to the Grantor by Jane L. Dennis d/b/a Blue Heron Co., by deed dated April 28, 2000 and recorded in the Office of the Register of Deeds for Charleston County on April 28, 2000 in Deed Book N346 at Page 023.

TMS#: 355-09-00-108

GRANTEE'S ADDRESS: 1955 Old Fort Avenue
Charleston, South Carolina 29414

This conveyance is made subject to all obligations, restrictions, limitations, covenants and easements of record and governmental ordinances and regulations affecting the Property.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

EXHIBIT
tabbies
B

H:\EHF\Jeffcoat-Perkins\deed

DEF026

TO HAVE AND TO HOLD, all and singular the premises before mentioned, unto the said GRANTEE, its successors and assigns forever.

And the GRANTOR hereby binds GRANTOR and GRANTOR'S Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the said GRANTEE and GRANTEE'S successors and assigns against GRANTOR and GRANTOR'S Heirs, and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS GRANTOR'S Hand and Seal, as of the 1st day of July, 2000.

Signed, Sealed and Delivered
In The Presence of:

Elaine H. Fowler

Mary C. Zaleski

Bradford Q. Jeffcoat, Jr.

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

I, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by Bradford Q. Jeffcoat, Jr., Grantor, to be the free and voluntary act and deed of the Grantor.

WITNESS my signature as of the 1st day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

BRU 3041010

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

Date of Transfer of Title
(Closing Date) July 1st, 2000

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **BRADFORD Q. JEFFCOAT, JR. to BRADFORD Q. JEFFCOAT, JR. and SANDRA P. PERKINS, jointly with right of survivorship, and not as tenants in common, on July 1st, 2000.**

3. Check one of the following: ***The DEED is***
   (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)_____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_____ EXEMPT from the deed recording fee because (exemption#_____)
   (Explanation if required)
   (If exempt, please skip items 4-6 and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $74,750.00.
   (b)_____ The fee is computed on the fair market value of the realty which is _____.
   (c)_____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ____ or NO XX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (a) $74,750.00 the amount listed in item 4 above
   (b) -0- the amount listed in item 5 above (no amount place zero)
   (c) $74,750.00 subtract line 6(b) from line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Grantor, Grantee, or Legal Representative
connected with this transaction

Bradford Q. Jeffcoat, Jr.
Print or Type Name here

Sworn to before me as of the 1st
day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

H:\EHF\Jeffcoat-Perkins\Charleston Affidavit

DEF028

Turner, Padgett, Graham
P.O. Box 22129
Chas SC 29413

BKD 364PG110

FILED
D364-107
2001 FEB 16 PM 3:49
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording Fee	10.00
State Fee	195.00
County Fee	82.50
Postage	
TOTAL	287.50

TMS VERIFIED
BAC LMG
DTD 2-21-01

RECEIVED FROM RMC
FEB 21 2001
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MORTGAGE

THIS MORTGAGE, given as of the 1st day of July, 2000, by Sandra P. Perkins ("Mortgagor"), whose address is 1955 Old Fort Avenue, Charleston, South Carolina 29414 and Bradford Q. Jeffcoat, Jr. ("Mortgagee") whose address is 1955 Old Fort Avenue, Charleston, South Carolina 29414.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of $43,550.00, together with interest thereon, as evidenced by that certain Promissory Note of even date herewith, executed by Mortgagor and delivered to Mortgagee, the final payment of which is due on demand, but not later than June 1, 2015, as provided therein (the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein; and

WHEREAS, Mortgagor has agreed to give to Mortgagee this Mortgage to secure the payment of the indebtedness secured by the Note;

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all covenants and conditions in the Note (and in any renewal, extension or modification thereof) and in this Mortgage, all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorneys' fees; Mortgagor does hereby grant, bargain, convey, mortgage, unto Mortgagee and Mortgagee's heirs, successors and assigns forever, all right, title and interest of Mortgagor in and to the following property, together with any improvements or fixtures located thereon, and any easements appurtenant to said property (the "Mortgaged Property"):

See Exhibit "A" attached hereto.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee and Mortgagee's heirs, successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee all the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instrument securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewals, extensions or modifications thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed thereunder, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void; but it shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

H:\EHF\Jeffcoat-Perkins\mortgage



ARTICLE ONE

COVENANTS OF MORTGAGOR

1.01 Performance of Note, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of the Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by the Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Mortgaged Property and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the land and real property hereby mortgaged and every part thereof; that the Mortgaged Property is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, listed on the title insurance policy issued to Mortgagee upon his acquisition of the Mortgaged Property. Mortgagor fully warrants the title to the Mortgaged Property, and will forever defend the same against the claims of all persons whomsoever, except Mortgagee or persons claiming through him.

1.03 Zoning and Environmental Laws. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Mortgaged Property permit the use and occupancy of the Improvements for the intended purposes and further covenants and warrants that it will comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property.

1.04 Taxes, Assessments and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attached or any penalty is incurred.

(b) Mortgagor shall not permit or suffer for more than thirty (30) days any mechanics', or laborers', materialmen's, statutory or other liens upon any of the Mortgaged Property.

1.05 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts as Mortgagee may require but in no event exceeding the full insurable value, insuring the Mortgaged Property against fire, extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood, hurricane and windstorm damage, and shall pay promptly when due any premiums on such insurance policies and the companies issuing the same shall be acceptable to Mortgagee. All such policies and

renewals thereof shall be held by Mortgagee and shall contain a non-contributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall include the improvements now or hereafter located on the Mortgaged Property. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. The Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of call unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its discretion, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Mortgagee alone, and not to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by the Mortgagee in the collection or handling of such funds, Mortgagee may apply the net proceeds at its option, either toward restoring the Improvements or as a credit on any portion of the indebtedness and other sums secured hereby, whether then matured or to mature in the future. If the Mortgagee elects to restore the Improvements, any balance of such monies after restoration shall at Mortgagee's option either be applied toward the reduction of indebtedness and other sums secured hereby or shall be paid to Mortgagor. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) Mortgagor shall, at its sole expense, obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, liability insurance policies relating to the Mortgaged Property, in such amounts, with such companies and in such form as may be reasonably required by Mortgagee. Mortgagee may require such policies to contain an endorsement, in a form satisfactory to Mortgagee, naming Mortgagee as an additional insured thereunder. Mortgagor shall pay promptly, when due, any premiums on such insurance policies and renewals thereof.

1.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the State where the Mortgaged Property is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured permanently, the entire indebtedness and other sums secured hereby shall, in the event of such condemnation or taking, at the option of the Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of actions and proceeds of, or on account of damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto are hereby assigned by Mortgagor to Mortgagee, who, after deducting there from all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sum secured hereby and to any prepayment charge provided in the Note, this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any

compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.07 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building, structure or other improvement presently or hereafter on the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee. Mortgagor may sell or otherwise dispose of, furniture, furnishing, equipment, tools, appliances, or machinery, which may become worn out, or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage, except as otherwise provided in this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be any insurance proceeds therefor, provided that Mortgagee assigns to Mortgagor available insurance proceeds, if any, for the purpose of restoration. Subject to Mortgagee's right to make certain other elections as provided in this Mortgage, if a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee.

1.08 Further Assurances. At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or re-filed at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, financing statements, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate, complete, or to continue and preserve the obligation of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether no owned or hereafter acquired by Mortgagor. Upon failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or re-file any and all such mortgages, instruments of further assurance, financing statements, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.09 After-Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with the Mortgaged Property or any part thereof.

1.10 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or dispute in which Mortgagee is or might be made a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, this Mortgage or any other instrument securing the Note, or the Mortgaged Property or any part thereof, or the interests the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect or part of the Mortgage property or any action to protect the security hereof. All costs, charges and expenses (except where Mortgagor and Mortgagee are adverse parties and Mortgagor is ultimately the prevailing party) so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts to incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.11 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observation of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same; and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred are paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.12 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books off the Mortgaged Property. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish financial statements, records and such other information as may be reasonably requested by Mortgagee to examine Mortgagor's financial condition and/or the income and expenses for the Mortgaged Property.

1.13 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby and whether or not any offsets or defenses exist against such principal and interest or other sums.

ARTICLE TWO

DEFAULTS

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) An event of default under the Note or any other instrument securing the note.

(b) A breach by Mortgagor of any of the covenants, agreements and conditions of Article One hereof.

(c) Failure by Mortgagor to duly keep, perform and observe any other covenant, condition or agreement in the Note, this Mortgage, or any other instrument securing the note or any other instrument collateral to the Note or executed in connection with the sums secured hereby, including a default by Mortgagor as landlord under any leases covering all or any part of the Mortgaged Property.

(d) If either (i) Borrower (or any of them, if more than one), Mortgagor, any subsidiary thereof, or any guarantor or endorser of the Note: (a) files a voluntary petition in bankruptcy, or (b) is adjudicated as a bankrupt or insolvent, or (c) files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (d) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (e) makes any general assignment for the benefit of creditors, or (f) makes an admission in writing of its inability to pay its debts generally as they become due; or (ii) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Borrower (or any of them, if more than one), Mortgagor, any subsidiary thereof, or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future Federal, State or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (iii) any trustee, receiver or liquidator of Mortgagor or any subsidiary thereof, of any guarantor or endorser of the Note, of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and pay. thereon, and all other sums secured hereby, to be due and payable immediately and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property under a judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee may take action either by such proceedings or by the exercise of its powers with respect to the entry or taking possession or both, as the Mortgagee may determine.

2.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint may enter and take possession of all the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, use, manage and control the Mortgaged Property, and from time to time:

(1) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and repairs, renewals, replacements, additions, betterments and improvements, thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(2) insure or keep the Mortgaged Property insured;

(3) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;

(4) enter into agreements with others to exercise the powers here granted to Mortgagee;

All as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive any income, revenues, rents and issues and profits of the same including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (i) the reasonable compensation, expenses and disbursements of the agents and attorneys; (ii) the cost of insurance, taxes, assessment and other proper charges upon the Mortgaged Property or any part thereof; (iii) the deposits for taxes and assessments and insurance premiums due; and (iv) the payment of accrued interest and principal of the Note.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good, if Mortgagee has not declared the entire principal balance due and payable. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.05 Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability. In the event that the bid at the foreclosure sale is in excess of sums due Mortgagee under the terms of this Mortgage, such excess shall be paid promptly to Mortgagor.

2.06 Application of Indebtedness Toward Purchase Price. If permitted by law, upon such foreclosure sale, and after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, Mortgagee may, in paying the purchase price, apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other

instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of the sale, be payable thereon.

2.07 [This Section has been intentionally deleted.]

2.08 [This Section has been intentionally deleted.]

2.09 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

2.10 Application of Monies by Mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon Mortgagee's demand, and in case of foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment against the property for any portion thereof remaining unpaid, with interest.

(b) Any monies collected or received by Mortgagee under this paragraph 2.10 shall be applied as follows: first, to the payment of reasonable compensation, expenses and disbursements of the Mortgagee's agents and attorneys; and second, to the payment of amounts due and unpaid under the Note, this Mortgage and any other instruments securing the Note.

2.11 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon.

2.12 [This Section has been intentionally deleted.]

2.13 Discontinuance of Proceedings; Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgage shall be restored to their former positions and rights hereunder and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

2.14 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other

instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

2.15 Sale, Transfer and Encumbrance Restrictions. It shall be a default hereunder if, without the Mortgagee's prior written consent, the Mortgaged Property, or any interest therein, whether equitable or otherwise is sold, transferred, conveyed or further encumbered in any way.

ARTICLE THREE

MISCELLANEOUS PROVISIONS

3.01 Heirs, Successors and Assigns Included. Whenever one of the Parties hereto is named or referred to herein, the heirs, successors and permitted assigns of such party shall be included and all covenants and agreements contained in the Mortgage, by or on behalf of mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and permitted assigns, whether so expressed or not.

3.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience or reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

3.03 Invalid Provision to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.04 Changes, Etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the Party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.05 Governing Law. This Mortgage is made by Mortgagor covering collateral located in the State of South Carolina; and this Mortgage and the rights and remedies provided herein shall be construed, interpreted, enforced and governed by and in accordance with the laws of South Carolina.

3.06 Default Rate. The Default Rate shall be the rate provided under the Note, plus three (3%) percent per annum.

3.07 Notice. Any notices provided herein shall be deemed properly given upon the mailing to the party entitled to notice of written notice, sent by certified mail, return receipt requested, or personally delivered, at the addresses set forth on the first page of this Mortgage, or at such other address as the parties shall have given each other prior written notice.

3.08 Exception for Joint Owner. Notwithstanding anything to the contrary herein, if Mortgagee and Mortgagor are joint owners of the Mortgaged Property, Mortgagor makes no warranties or agreements of any nature with respect to Mortgagee's interest in the Mortgaged Property or any actions taken by Mortgagee, and nothing in this Mortgage shall adversely affect any obligations of Mortgagee under that certain Agreement Regarding Real Property between Mortgagor and Mortgagee dated the same date as this mortgage.

3.09 **Waiver of Appraisal. The Mortgagor does hereby waive any rights it has to require an appraisal of the property in the event of default, foreclosure and sale as may be provided by S.C. Code Ann., Section 29-3-680 et seq. (1976).**

IN WITNESS WHEREOF, the undersigned have signed and sealed this instrument the day and year above first written.

WITNESS:

Elaine H. Fowler

Mary C. Zaleski

Mortgagor:

Sandra P. Perkins

Sandra P. Perkins

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

PERSONALLY APPEARED before me the within named Sandra P. Perkins, who being personally known to me, signed, sealed and as her act and deed, delivered the within document as of the 1st day of July, 2000.

Elaine H. Fowler
Notary Public for South Carolina
My Commission Expires: 10/31/06

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as LOT #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

THIS conveyance is made SUBJECT to any and all restrictions, easements and/or rights-of-way affecting the above-described property as recorded in the ROD Office for Charleston County, South Carolina.

Derivation: The foregoing property being the same property conveyed to the Grantor by Jane L. Dennis d/b/a Blue Heron Co., by deed dated April 28, 2000 and recorded in the Office of the Register of Deeds for Charleston County on April 28, 2000 in Deed Book N346 at Page 023.

TMS#: 355-09-00-108

Turner, Padgett, Graham
P.O. Box 22129
Chas SC 29413

BK E 364PG032

FILED

E364-21

2001 FEB 16 PM 3:50

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

17.00
B

JTA

BP0569411

PGS: 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

SATISFACTION OF MORTGAGE
Ref.: Book E364 at Page 021

PURSUANT TO SECTION 29-3-330 (B)(3) OF THE SOUTH CAROLINA CODE OF LAWS, 1976

The undersigned, Bradford Q. Jeffcoat, Jr., being the mortgagee of record or the legal representative, agent or officer, or attorney-in-fact of the mortgagee of record, under a written agreement duly recorded, of either of the foregoing, certifies:

The debt secured by the mortgage/deed of trust** recorded February 16, 2001 in the office of the Register of Deeds of Charleston County in Book E364 at page 021 is:

[X] paid in full and the lien or the foregoing instrument has been released; or

[ ] the lien of the foregoing instrument has been released.

The Register of Deeds for Charleston County may enter this cancellation into record.

Under penalties of perjury, I declare that I have examined this affidavit this 20 day of ~~February~~ June, 2016 and, to the best of my knowledge and belief, it is true, correct, and complete.

WITNESS my/our hand this 20 day of ~~February~~ June, 2016.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Olga Ustymenko
Witness 1

Mikayla Wirth
Witness 2

Bradford Q. Jeffcoat, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

THE foregoing instrument was acknowledged before me by Bradford Q. Jeffcoat, Jr. this 20 day of ~~February~~ June, 2016.

(L.S.)
Notary Public for: South Carolina
My Commission Expires: ~~My commission expires on~~ November 17, 2016

**Mortgagor: Sandra P. Perkins

EXHIBIT
D

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

CLAWSON & STAUBES
126 SEVEN FARMS DR.
SUITE 200
CHARLESTON SC 29492 (BOX)

RECORDED

Date:	July 19, 2016
Time:	2:41:04 PM

Book	Page	DocType
0569	411	Sat/Mtg

Charlie Lybrand, Register
Charleston County, SC

MAKER:
PERKINS SANDRA P

RECIPIENT:
JEFFCOAT BRADFORD Q JR

Original Book: E364

Original Page: 021

of Sats:

of Pages: 2

of References:

Note:

Recording Fee	$	5.00
Extra Reference Cost	$	-
Extra Pages	$	-
Postage	$	-
Chattel	$	-
TOTAL	$	5.00

DRAWER: Drawer 2
CLERK: JBA

0569 — Book
411 — Page
07/19/2016 — Recorded Date
2 — # Pgs

E364 — Original Book
021 — Original Page
M — Doc Type
14:41:04 — Recorded Time

THE STATE OF ALABAMA

COUNTY OF BALDWIN

PROBATE COURT

Case No. 32367

LETTERS OF GUARDIANSHIP/CONSERVATORSHIP

Letters of Guardianship/Conservatorship over the estate of **SANDRA P. PERKINS**, an incapacitated person, are hereby granted to **VANESSA L. WILLIAMS**, who has duly qualified and given bond as required by law, and is authorized to discharge all the functions attached to said guardianship/conservatorship.

Dated this 15th day of September, 2015.

Tim Russell

JUDGE OF PROBATE

EXHIBIT

tabbies

E

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE: ESTATE OF

SANDRA P. PERKINS, CASE NO. 32367

an incapacitated person

DECREE

This being the day appointed for the hearing of the Petition of **VANESSA L. WILLIAMS** and praying for an inquisition thereof, and it appearing to the satisfaction of the Court that the said **SANDRA P. PERKINS** is over the age of nineteen years, and is a citizen and resident of Baldwin County, Alabama, having an estate herein; and it being further shown to the Court that it would not be consistent with the health and safety of **SANDRA P. PERKINS** to have her present at the trial at said time, and that **SANDRA P. PERKINS** did not have Counsel to represent her at said hearing, and the Court appointed **PATSY L. JOHNSON**, who is a duly licensed Attorney at Law, as her attorney to represent the interests of the said **SANDRA P. PERKINS**, and upon such hearing, and she did deny the allegations of the said Petition and did represent the said **SANDRA P. PERKINS** and

Now comes **VANESSA L. WILLIAMS**, as the Petitioner, and **PATSY L. JOHNSON**, as attorney for **SANDRA P. PERKINS**, and this Court having heard the evidence and the argument of Counsel,

It is, therefore, **ORDERED, ADJUDGED and DECREED** by the Court that the said **SANDRA P. PERKINS** be, and she is hereby, adjudged to be a mentally incapacitated person; and that the said Petition and all other proceedings thereon be recorded.

Done this 15th day of September, 2015.

JUDGE OF PROBATE

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN RE: ESTATE OF

SANDRA P. PERKINS, CASE NO. 32367

an incapacitated person

ORDER GRANTING LETTERS OF GUARDIANSHIP/CONSERVATORSHIP

Now comes **VANESSA L. WILLIAMS**, the Petitioner, and **PATSY L. JOHNSON**, the attorney heretofore appointed as Guardian ad Litem to represent and protect the interest of the said **SANDRA P. PERKINS**, and this Court having proceeded to hear the testimony of the Petitioner and the other witnesses and this Court having found that **SANDRA P. PERKINS** is a mentally incapacitated person; and it appearing that all notices and other requirements of the statutes in such cases made and provided have been complied with; and the Court is satisfied and finds that the said **SANDRA P. PERKINS** is incapacitated to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions and that the appointment of a Guardian/Conservator is necessary and desirable as a means of providing continuing care and supervision of the person and property of the said **SANDRA P. PERKINS**; and it being shown by evidence satisfactory to the Court that the allegations of the petition are substantially true, and **VANESSA L. WILLIAMS** now entering into bond, conditioned and payable as provided by the law in the sum of $485,000.00 DOLLARS with **OHIO CASUALTY INSURANCE COMPANY** as surety, which bond with said security has been taken and approved by the Judge of this Court; it is

ORDERED, ADJUDGED and DECREED that Letters of Guardianship/Conservatorship on the Estate of **SANDRA P. PERKINS**, an incapacitated person, be forthwith issued to **VANESSA L. WILLIAMS** as in her application prayed.

It is **ORDERED** by the Court that the costs of this proceeding and cost of such bond be paid by the Estate of **SANDRA P. PERKINS** by the Guardian/Conservator, for which execution may issue.

It is further **ORDERED** by the Court that said Guardian shall file written reports annually with the Court on the Condition of the ward, the first of which reports shall be due September 15, 2016.

It is further **ORDERED** by the Court that said guardian/conservator shall file an inventory of said estate within 90 days of her appointment and also file an annual accounting with this Court, with the first said accounting being due September 15, 2016; and said guardian/conservator is to make a partial settlement every three years with this Court, at which time said written accountings will be formally approved.

DONE this 15th day of September, 2015.

JUDGE OF PROBATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED BY CLAWSON & STAUBES, LLC

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Sandra P. Perkins**, for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and love and affection to me in hand paid at and before the sealing of these presents by **Vanessa L. Williams**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said **Vanessa L. Williams,** her heirs and assigns, all of my one half undivided interest in and to the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

BEING the same property conveyed to Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins by deed of Bradford Q. Jeffcoat, Jr. dated July 1, 2000 and recorded February 6, 2001 in Book D364, at Page 107 in the RMC Office for Greenville County, South Carolina.

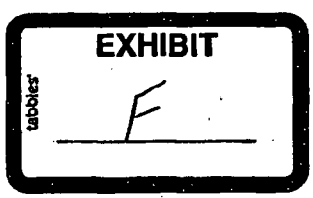
TMS# 355-09-00-108

Grantee's Address: 32183 Waterworks Ln
Lillian, AL 36549

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said **Vanessa L. Williams,** her heirs and assigns forever a one half undivided interest.

AND, subject to the Exceptions, I do hereby bind myself and my heirs, personal representatives and administrators to warrant and forever defend, all and singular, the said premises unto the said **Vanessa L. Williams**, her heirs and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.



WITNESS my hand and seal this 16th day of November, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(First Witness signs here)

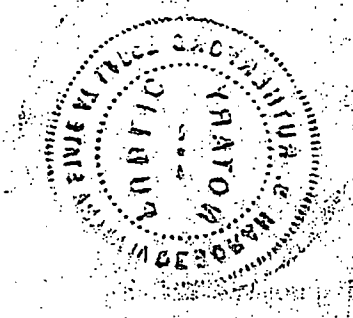
(Second Witness or Notary signs here)

Vanessa L. Williams (L.S.)
Sandra P. Perkins, by Vanessa L. Williams,
Guardian and Conservator of Sandra P. Perkins

STATE OF Alabama)
)
COUNTY OF Baldwin)

THE foregoing instrument was acknowledged before me by Sandra P. Perkins, by Vanessa L. Williams, Guardian and Conservator of Sandra P. Perkins this 16th day of November, 2015.

Deborah S. Rutherford (L.S.)
Notary Public for Alabama
My Commission Expires: 5-19-17



STATE OF ~~SOUTH CAROLINA~~ Alabama)
COUNTY OF ~~CHARLESTON~~ Baldwin)

AFFIDAVIT

Date of Transfer of Title
November _____, 2015

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Sandra P. Perkins to Vanessa L. Williams on November ____, 2015.

3. Check one of the following: **The DEED is**
   (a)__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   (b)__ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
   (c)_x_ EXEMPT from the deed recording fee because (exemptions #1)
   (Explanation, if required (transferring one half interests less than $100.00)
   (If exempt, please skip items 4-6, and go to item 7 of this affidavit)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   (a)__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $.
   (b)__ The fee is computed on the fair market value of the realty which is $_____.
   (c)__ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES __ or NO __ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If yes, the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   (A)$_____the amount listed in item 4 above
   (b)$_____the amount listed in item 5 above (no amount place zero)
   (c)$_____Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.

8. Check if Property other than Real Property is being transferred to this Deed.
   (a) _____ Mobile Home
   (b) _____ Other

9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

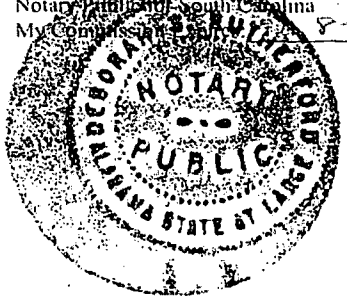
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

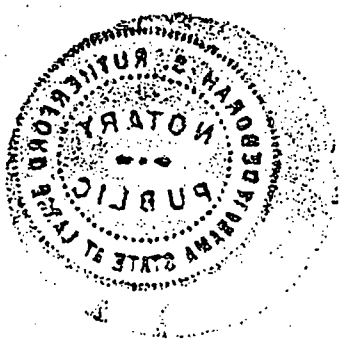
Sworn to before me on this 16th day
of November, 2015

Vanessa L. Williams
Legal Representative

Deborah S. Ruthford (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-19-17

Vanessa L. Williams
Print Name




NOTARY
PUBLIC

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
an incapacitated person	*	**STATE OF ALABAMA**

CASE NO. 32367

ORDER

This matter came on to be heard on the "Motion to Approve Transfer of Real Property" filed by **VANESSA L. WILLIAMS**, Court appointed Guardian and Conservator of Sandra P. Perkins, and the Court being of the opinion that said Motion should be granted, **IT IS, THEREFORE,**

ORDERED, ADJUDGED and **DECREED** that pursuant to Code of Alabama, Sections 26-2A-152 (c) (1), the conveyance and transfer of all of Sandra P. Perkins' interest in that certain real property described below to Vanessa L. Williams, by Vanessa L. Williams acting as conservator of said Ms. Perkins, is hereby approved.

> All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

TMS No.: 355-09-00-108

DONE AND ORDERED this 15th day of January, 2016.

JUDGE OF PROBATE

EXHIBIT
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IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT

Vanessa Williams and Vanessa Williams, As Conservator and Guardian of Sandra P. Perkins, vs. Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. Defendants.	CASE NO. 2015-CP-10-6379

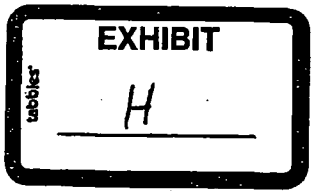
AFFIDAVIT OF LESLIE T. FIELDS

On this day personally appeared before me, Leslie T. Fields, Esquire, who being duly sworn, did depose and say as follows:

1. I am a practicing attorney with the law firm of Davis & Fields, P.C., 27180 Pollard Road, Daphne, Alabama. I have practiced probate and trust law in Alabama for twenty years working primarily in the areas of guardianships, conservatorships, decedent's estates, wills and trusts.

2. I obtained my Juris Doctor degree in 1995 from The University of Alabama, *magna cum laude*, being awarded The Order of the Coif, and serving as Senior Lead Articles Editor of the *Alabama Law Review*. I obtained my Bachelor of Arts degree from The University of South Alabama, *summa cum laude*.

3. I am a member in good standing of the Alabama Bar Association, the Mobile County, Alabama and Baldwin County, Alabama Bar Associations, having served on the Probate Committees of said bar associations; a member of the National Academy of Elder Law Attorneys, and a former adjunct Elder Law professor of the University of South Alabama. I am a frequent speaker on the



topics of probate, elder law, and estate planning, having been an invited speaker at the 2013 Alabama Probate Judges' Mid-Winter Conference.

4. I submit this affidavit to explain Alabama probate and trust law related to the actions of a Conservator to safeguard the property of her incapacitated Ward.

5. In preparing this affidavit, I have reviewed copies of the relevant pleadings in the above-captioned lawsuit, as well as the relevant laws, cases, and doctrinal writing relating to a Conservator's powers in the State of Alabama.

6. Code of Alabama, Section 26-2A-152(c)1, states that a conservator, acting as a fiduciary in efforts to accomplish the purpose of the appointment, may act ***without court authorization*** or confirmation, to:

> ***Collect, hold, and retain assets of the estate including land in another state*** and stocks of private corporations, ***until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested; (Emphasis added).***

The deed of conveyance dated November 16, 2015, by Vanessa Williams, Conservator, of her Ward, Sandra P. Perkin's, one-half interest in the subject real property, was not, contrary to Defendant's assertion, "a sale or disposition of the real property interest" that would require any prior court approval as anticipated in Code of Alabama, Section 26-2A-152(d)(3). Prior Court approval is required under this particular cited section for "disposing of real property for cash or on credit." Section 26-2A-152(d)(3). The transfer for Vanessa Williams was not a disposition for cash or on credit. The transfer was to Vanessa Williams, as agent, to hold, retain and preserve assets of her Ward. Section 26-2A-152(c)(1), Code of Alabama .

Alabama law acknowledges that a constructive trust arises when one person, occupying a fiduciary position, or having placed himself in such a position to another that good faith requires him to act for the other and not himself, acquires title to the property in himself, in place of cestui que. While the elements of a constructive trust in the instant case may be met, it is not necessary for the Court to impose a constructive trust on the transfer because Vanessa Williams acknowledges that she held the subject property interest solely as agent for her Ward. *See commentary* to Code of Alabama, Section 19-3B-1301.

In *Hopkins v. Hopkins*, 983 So.2d 382 (2007) citing *Brothers v. Moore*, 349 So. 2d 1107 (Ala. 1977), the Alabama Supreme Court, stated that the issue of whether or not a constructive trust is imposed is one of fact. *Hopkins* at 387. In the absence of fraud, the court must find a confidential relationship between the transferor and transferee. *Hopkins* at 387. A confidential relationship exists where there is a fiduciary relationship such as between a guardian and ward where the transferor does in fact often make decisions based upon the direction of the transferee. *Hopkins* at 388. Further, the transferor must be justified in believing that the transferee will act in the best interest of the transferor. *Hopkins* at 388. "The trust alleged by the party asserting a confidential relationship must be both believable and verifiable from the objective facts..." *Hopkins* at 391. Vanessa Williams held a confidential relationship with her Ward and transferred the property interest to put herself in the position to act in the best interest of her Ward.

7. Affiant is of the opinion that under Alabama probate and trust law, Vanessa Williams, as Conservator, had the authority, without prior Probate Court approval, to transfer her Ward's one-

half interest in the subject real property to herself, as agent, holding said property as such agent, for the benefit of her Ward and the estate of her Ward.

8. Affiant further acknowledges that Baldwin County Probate Court, the Court having jurisdiction over the conservatorship of Sandra P. Perkins, did in fact, ratify and confirm the November 16, 2015 deed of conveyance to Vanessa Williams, as agent, and the applicability of Section 26-2A-152(c)(1), Code of Alabama, to the transaction.

Further affiant sayeth naught.

LESLIE T. FIELDS

Sworn to before me on this the 8TH day of November, 2016,

Notary Public, State of Alabama
My Commission Expires: 8/13/2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO.: 2015-CP-10-6379
Vanessa Williams and Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins,)	**MOTION FOR SUMMARY JUDGMENT OF DEFENDANT BRADFORD Q. JEFFCOAT, JR.**
v.)	
)	
Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.,)	

FILED
2018 APR 17 PM 2:43
CLERK OF COURT

The instant action was filed by Plaintiff Vanessa Williams, individually and in her capacity as Conservator and Guardian of Sandra Perkins, seeking partition of a parcel of real property located in Charleston County, South Carolina. For the reasons which follow, Defendant Brad Jeffcoat is entitled to summary judgment in his favor, and would respectfully request that this Court issue a deed to the property in his name alone.

I. FACTS

As of mid-summer, 2015, Brad Jeffcoat ("Brad") and Sandra Perkins ("Sandra") had lived together in a loving and committed relationship for approximately 20 years. During that time, Brad purchased the residential real property at issue in this case. Almost immediately after the purchase, he transferred one-half of the interest in the property to Sandra,[1] via a new deed executed in both of their names. The new deed stated that the property would be held "as joint tenants with right of survivorship, not as tenants in common." Brad and Sandra included this language, because they specifically desired that all interest in the property should pass, upon the death of one party, wholly to the other party. From 2000 until mid-2015, Brad and Sandra continue to live together in the home they shared.

[1] Sandra mortgaged her one-half interest to Brad; that mortgage has been paid in full and is not relevant to the present matter.

Sandra developed Alzheimer's and, for many years, Brad assumed responsibility for her care, with little to no assistance from her family, including her daughter, Plaintiff Vanessa Williams ("Vanessa"). Sandra eventually stopped working due to her cognitive impairments and by 2015, she required constant care and supervision. As Brad was still employed fulltime, he worried about Sandra's safety during the times he could not monitor her activities. He asked Vanessa to come to Charleston for a few weeks, to assist him in caring for Sandra. On June 16, 2015, several days after her arrival, Vanessa was supposed to take Sandra to a doctor's appointment. Instead, she packed some of her mother's belongings. Without informing Brad of her decision, she removed Sandra from South Carolina and relocated her to Vanessa's home state, Alabama.

On many occasions, Brad attempted to contact Sandra and Vanessa through phone calls, emails, and letters, but Vanessa refused to communicate with him. Brad, who had no communication with either Sandra or Vanessa, was despondent over the loss of his longtime partner, and worried for her safety. Sandra had never indicated any desire to leave her home of many years, or to make a permanent move to another state. By the time Vanessa absconded with her, Sandra's mental condition had deteriorated to the point that it was unlikely that she understood the permanence of the change, or even where she was or who with whom she was living.

On September 15, 2015, Vanessa filed an action in the Probate Court of Baldwin County, Alabama. The Court subsequently appointed her Conservator and Guardian of the person and estate of her mother, alleging – quite accurately – that her mother suffered from a major cognitive disorder and could no longer manage her own affairs. Vanessa never informed him of her conservatorship.

On November 16, 2015, Vanessa returned to Charleston. She made no attempt to contact Brad, or retrieve any of her mother's possessions, including the vehicle in her mother's name (said vehicle originally being part of this action). She did, however, have Charleston County issue a new deed for the real property. Specifically, for the sum of $10.00, and love and affection, she, as Conservator, transferred her mother's one-half joint interest in the property to herself, individually.

Sandra Perkins died, in Alabama, on November 27, 2015. Brad did not find out about her death until weeks later, through a mutual friend. Vanessa filed this action three days prior to Sandra's death, alleging conversion of the personal property she neglected to retrieve upon her last visit to Charleston, and seeking partition of the real property.

II. DISCUSSION

A. Standard of Review

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C.R.C.P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. S.C.R.C.P 56(e); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *NationsBank v. Scott Farm*, 320 S.C.

299, 465 S.E.2d 98 (Ct. App. 1995). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *Hamiter v. Retirement Div. of South Carolina*, 326 S.C. 93, 484 S.E.2d 586 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996). Regardless of inferences, however, where there is no factual dispute and the law so dictates, summary judgment should be granted.

B. Joint and Survivorship Property Cannot Be Unilaterally Partitioned

At common law, a joint tenant could unilaterally transfer, *inter vivos*, his or her share in the property, to a third party, thus resulting in the original tenant and the new tenant holding the property as tenants in common and extinguishing the right of survivorship in the remaining original tenant. However, in 2000, the state legislature enacted §27-7-40, which replaced the common law and defined joint tenancy with right of survivorship and enumerated *all* of the ways in which a joint tenancy may be severed. S.C. Code Ann. §27-7-40. None of them allow for a unilateral partition by one of the owners.

The statute reads, in its entirety:

> **(a)** In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
> **(i)** In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> **(ii)** In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests

equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

(v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally

construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

The statute first addresses the creation of joint tenancy, specifically allowing creation "In addition to any other methods ... which may exist by law ... by use of the words 'as joint tenants with rights of survivorship, and not as tenants in common'". Importantly, in contrast to the language used in explaining the creation of joint tenancy (*i.e.* "in addition to any other methods... which may exist by law") the destruction of joint tenancy is specifically "limited to" the ways enumerated in the statute. S.C. Code 27-40(a) The death of one of the tenants terminates the joint tenancy and automatically vests the entire interest of the deceased tenant in the other. A court of competent jurisdiction may sever the tenancy in the context of a divorce or an action in partition. Finally, any of the joint tenants may freely convey his or her interest to the others.

There is absolutely no provision that would allow the unilateral action of one of the joint tenants to sever the tenancy and convey an interest to a third party. In fact, the Code is clear that property held in a joint tenancy may only be encumbered by the consent of all joint tenants. S.C. 27-7-40(a)(iii). Although an "encumbrance" is usually read to mean a mortgage, there is no doubt that an attempted sale of a portion of the property also creates an encumbrance. There are no other means for severing the joint tenancy provided for by the statute. Furthermore, if the taking out of a loan without the consent of the other joint tenant is impermissible under the law, it would seem obvious that the purported transfer of an even greater interest – of the total interest of one of the tenants – would also be impermissible. Defendant has been unable to locate any South Carolina cases dealing with the attempt by one joint tenant to convey the entirety of his interest to a third party. However, there are cases in which one joint tenant has attempted to

mortgage his share without the consent of the other tenant; such mortgages are entirely invalid, and some courts have found that the recording of such a mortgage constitutes slander of title. *See, e.g., Solley v. Navy Fed.Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (App.2012).

Finally, S.C. Code §27-7-40(c), notes that the statute should be construed liberally, as to carry out the intent of the parties. Since the property at issue was, at all relevant times prior to Ms. Perkins' death, held as survivorship property, it may be presumed that he parties to the original deed intended it to pass to the survivor of them. Defendant intended such to be the case, and Ms. Perkins, who was unquestionably suffering from severe Alzheimer's, could not have expressed any intent to the contrary.

The Code is written in simple and plain language. It provides the exclusive means by which a joint tenancy with rights of survivorship may be severed. Other than the death of one tenant, in which event the interest passes to the other as a matter of law, or the conveyance by one tenant to the other, there is no provision for severance that does not involve either the full consent of the other tenant, or an order by a court of competent jurisdiction.

It should be noted that Vanessa improperly relies on *Smith v. Cutler*, a South Carolina case that dealt with the differences between common law joint tenancies with a right of survivorship, and a court created instrument called a tenancy in common with a right of survivorship. *See,* 366 S.C. 546 , 623 S.E.2d 644 (2005). The *Davis* Court was attempting to protect the rights of married women, as South Carolina did not (and still does not) recognize the common law tenancy by the entirety. Under *Davis*, the South Carolina Supreme court created an indestructible survivorship right in the tenancy in common with right of survivorship. *Id.*, at 187, 75 S.E. 2d at 48. In order to establish a tenancy in common with an indestructible right of survivorship, the parties must use specific language.

It is undisputed that Brad and Sandra did not use that language, thus creating a joint tenancy with right of survivorship, not a tenancy in common with right of survivorship. The right in the former is severable under certain circumstances; the right in the latter is not. However, Brad does not argue that it is impossible to sever a joint tenancy, merely that it is not severable in the manner in which Vanessa has attempted. Vanessa's reliance on *Davis* is misguided, because while *Davis* acknowledges that joint tenancies are sometimes severable by unilateral act, there is nothing in *Davis* that validates the unilateral severance of a joint tenancy in the favor of a third party under §27-7-40. In fact, the Court refers to the Code to illustrate the methods for severance, stating, "See S.C. Code. Ann §27-7-40(a)(v)(vii) and (viii) (depicting actions that can be taken by one joint tenant to effectively sever the joint tenancy)." *Smith*, 366 S.C. at 550-51, 623 S.E.2d at 647. Hence, Vanessa cannot rely on *Smith* to prove that a joint tenancy can be severed by a unilateral action of one tenant other than those specifically set forth in the Code, particularly the statutorily omitted conveyance to a third party.

C. Even if a joint tenancy could be legally transferred to a third party through a unilateral *inter vivos* conveyance, Vanessa's self-serving actions, made in bad faith, are in direct contrast with her mother's intentions, and contrary to both South Carolina and Alabama law.

1. South Carolina law provides that in any severance of a joint tenancy, the intent of the parties remains paramount.

South Carolina Code Section §27-7-40(c) states, "the provisions of this section must be liberally construed to carry out the intentions of the parties." In a joint tenancy, conflicts over the rights of survivorship often arise in situations where one or more of the tenants is incapacitated or has died. As in the instant case, family members may object to property passing via the right of survivorship. Unfortunately, the parties who originally created the property interest may be unavailable to reiterate their intentions as to the property. The legislature likely anticipated such

conflicts, and, in an attempt to protect the interests of a decedent or an incompetent person and a surviving joint tenant, reiterated the supremacy of the joint tenants' collective intent.

In that vein, it is clear from the record that Sandra intended for the property to pass to Brad, and only Brad, and that he would have wished the same for her, had he predeceased her. When Brad bought the property, he transferred an interest to Sandra, so that they could be equal owners and partners. They discussed their mutual intent for the property to be held with a right of survivorship. In their deed, they included language stating that the property was to be held as "joint tenants with right of survivorship, not as joint tenants." Sandra executed a valid will in 2009, in which she made no mention of disposition of her real property—a conclusive indication that she believed the property would, at her death, transfer, as stated in the deed, to Brad via a right of survivorship. She provided for her daughter via a revocable trust, and but made no mention of any real property to be distributed to Vanessa.

In addition, while the couple never married, they lived in a committed, loving relationship for almost two decades. Unlike many spouses, Brad stayed with Sandra in "sickness and in health," caring for her for years as she slipped further into the dark fog of dementia. It was not until several months before Sandra's death, by which time she had little to no clear cognitive functioning and was in frail physical condition, that Vanessa took advantage of her mother's impairment, for her own benefit, by removing her from South Carolina. Sandra could not have expressed a valid desire to move to Alabama, any more than she could have expressed a valid intention to change the nature of her property interest in her Charleston home. She was, as the Alabama court properly found, fully mentally incapacitated, and required a conservator to look to her best interests.

2. Both South Carolina and Alabama law stress that a conservator must act in good faith, and in the best interests of her ward, in all transactions.

South Carolina and Alabama have a mutual emphasis on good faith and a lack of self-dealing related to the duties of a conservator. As Sandra's conservator, Vanessa had a fiduciary relationship with her mother. Hence, determination of the propriety of Vanessa's action requires an understanding of the manner in which both states define fiduciary relationships—and there are marked similarities. In both South Carolina and Alabama case law, there is a reference to the standard set by *Corpus Juris Secondum*: "A fiduciary relationship exists... where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." 25 *Corpus Juris Secondum* §9; *see also, Tolleson v. Henson*, 207 Ala. 529, 531, 93 So.2d 458, 459, (Ala.1922), *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (S.C.1992). In *Burwell v. South Carolina Nat'l Bank*, the South Carolina Supreme Court noted that the fiduciary should "act not on [her] own behalf, but in the interest of the party so reposing." 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986). The Alabama Supreme Court has expressed similar sentiments. In *Williams v. Williams*, the Court stated that fiduciaries must act with the "...utmost good faith and loyalty." 497 So.2d 481, 483 (Ala.1986). The fiduciary is also required to act "in another person's best interests." *Brushwitz v. Ezell*, 757 So.2d 423, 431 (Ala.2001).

Vanessa has provided an affidavit, from an Alabama lawyer, which purports to justify her actions as valid under the Alabama conservatorship laws through which she acted. As noted, the Alabama statute reads, "a conservator... shall observe the standards in dealing with the estate of the protected person that would be observed by a *prudent person in dealing with the property of another*." Ala. Code. Ann. §26-2A-152 *(emphasis added)*. The language of the statute raises two

important points, 1) despite her lack of mental acuity, the property with which Vanessa was finagling was still Sandra's property, and 2) it would seem that the "prudent" handling of someone else's property, especially given Sandra's condition, would require following the intent she clearly portrayed when she possessed her complete faculties. At the very least, prudence requires something other than the self-dealing sale of a substantially valuable asset for the sum of ten dollars. In disposing of Sandra's property in this manner, Vanessa could not have been acting in the interest of any party but herself.

While Vanessa's expert emphasizes Vanessa's duty to act prudently to protect "the assets of her mother's estate," the expert fails to acknowledge that in "protecting" those assets, it is clear that Vanessa was acting exclusively for her own benefit, as Sandra's only heir at law. It follows that she neglected her fiduciary duty to act in the interests of her ward, Sandra, who, during the lucid periods of her life, never expressed any intent other than to transfer the property to her longtime romantic partner, companion, and best friend, Brad. Vanessa's expert discusses what may indeed be a legitimate interest, and indeed a fiduciary requirement, of many conservators (to protect assets of the ward's estate). In doing so, she ignores the facts of this particular case —all of which point strongly to a bad faith, manipulative, and self-serving breach of Vanessa's fiduciary duty to carry out her mother's wishes. All her actions, from the time she first arrived in Charleston in 2015, are indicative of her plan to circumvent Sandra's intentions for her own benefit, including her virtual kidnapping of the incapacitated Sandra, her refusal to communicate with Brad, her attempted transfer of the deed, and her instigation of the partition action.

It should be reiterated, that Sandra already provided for Vanessa, her sole heir, through a trust, leaving her considerable sum of money. Through her expert's testimony, Vanessa is

attempting to cloak her true motivation under the guise of protecting her mother's interest. Her mother's true interests clearly indicate another course of action.

D. Under Alabama conservatorship laws, any action by Vanessa that disposed of, or "changed the character" of, her ward's real property, required a judge's prior authorization.

Brad does not concede that Sandra moved to Alabama voluntarily, or that she intended to make her home in Alabama, such that an Alabama court had proper jurisdiction to appoint a conservator or guardian for her. The fact remains that it was done, however, and Vanessa had herself appointed to both positions. Alabama Code § 26-2A-152 discusses conservatory powers and responsibilities, including those powers a conservator may exercise with, and without, prior court authorization. The statute discusses collecting, holding, retaining, and acquiring real and personal property, as well as disposing of the same.

Vanessa's expert interprets her actions as "holding" or "retaining," her mother's assets for her estate. Conversely, one could just as easily argue that the asset she was attempting to "hold," or "retain," was not solely Sandra's to begin with—the property also belonged to Brad. Therefore, under the expert's logic, Vanessa sough to "retain" not only her mother's property, but Brad's as well. Such an action would be wholly outside of her power as Sandra's conservator. Her actions are more along the lines of "disposal" of the property, as she attempted to transfer the interest away from Sandra, to herself. It should be noted that, as Sandra was still alive at the time of the purported transfer, the transfer was not made to her estate, but to Vanessa individually. Since Vanessa was legally acting as Sandra, in the eyes of the law, it was a transfer from Sandra, of Sandra's property interest, to a separate third party—not a "holding" of the asset for Sandra, or her estate. The fact that Vanessa would be Sandra's sole heir at law does not mean that she, as an individual, *is her mother's estate*. According to Alabama law, disposal of a ward's

real property by a conservator requires a judge's prior authorization. Ala. Code. Ann. §26-2A-152(d)(3).

Even if the transfer is not deemed to be a disposal, however, it still cannot reasonably be understood as a "holding" or "retaining." If it is not a disposal, it is more in line with a "change in the character" of the real property—and action which also requires a judge's prior authorization. Ala. Code. Ann. §26-2A-152(d)(3). By attempting to sever the joint tenancy, making herself a tenant in common with Brad and extinguishing his right of survivorship, Vanessa attempted to fundamentally alter the character of the property interest. If she changes the legal title to the property, and forces a partition of the property through sale, she is altering the heart of the property's character—it will no longer be Brad's home.

In addition to the essential impropriety of her attempts to dispose of or change the character of the property, Vanessa neglected to get timely permission from the Baldwin County Probate Court to take either action. She did not obtain court approval in Alabama until approximately two months *after* her final November 2015 visit to Charleston. Hence, she acted to obtain a new deed in Charleston County with no knowledge of or approval by the Alabama Court. The statute specifically requires *prior* authorization to dispose of or change the character of a ward's real property. Ala. Code. Ann. §26-2A-152(d)(3). Vanessa's obtaining of the Court's permission in arrears, on January 15, 2016, nearly two months after her mother's death, does not satisfy the statutory requirements. By the time the Alabama court issued its order, Sandra's interest had already passed, as a matter of law, to Brad.

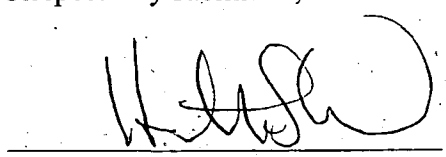
CONCLUSION

There are no disputed facts in this case. She attempted to unilaterally sever a joint and survivorship tenancy, an act that cannot be accomplished without the order of court of competent

jurisdiction. Furthermore, her signature as Conservator of the Estate of Sandra Perkins is invalid to transfer real property, as she failed to obtain the approval of the Probate Court as required by Alabama law, ignored her mother's intent, and acted in violation of statutory guidelines defining conservator and guardianship powers. Under the relevant law of both states, she breached her fiduciary duty, as a conservator, to act in good faith and protect her mother's interests.

For all the foregoing reasons, Defendant Brad Jeffcoat is entitled summary judgment as a matter of law and would respectfully request that the Court order that a new deed be issued showing at the entirety of the real property at issue in this action is held in his name alone.

Respectfully submitted,



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April 17, 2018
Charleston, SC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

FILED
2016 APR 26 PM 2:39
CHARLESTON COUNTY
CLERK OF COURT

COMES NOW, the Plaintiffs, Vanessa Williams individually, as Conservator and Guardian of Sandra P. Perkins, and as Personal Representative of the Estate of Sandra P. Perkins, by and through undersigned counsel, and file this response to the Defendant's motion for summary judgment and would show unto the court as follows:

Facts

To the extent the facts stated in the Defendant's motion for summary judgment conflict with those stated in the Plaintiffs' motion for summary judgment, the plaintiff relies on the facts stated in the latter.

Issues

There is no genuine issue of material fact presented by the evidence. The issues before the Court are twofold:

1. whether a unilateral conveyance by one tenant who holds property with another tenant as joint tenants with right of survivorship to a third party effectively severs the

joint tenancy and creates a tenancy in common; and

2. whether under Alabama law, a conservator may convey real property of her ward which lies in another state pending its ultimate disposition.

Standard of Review

Summary Judgment is governed by Rule 56(c), SCRCP." *Turner v. Milliman,* 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* at 122, 708 S.E.2d at 769; *see also* Rule 56(c), SCRCP. "To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." *McLaughlin v. Williams,* 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct.App.2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.,* 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." *Miller v. Blumenthal Mills, Inc.,*365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct.App.2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Id.*

Law and Analysis

1. A Joint Tenancy with right of survivorship is severed by a Tenant's conveyance of property interest to a third party

S.C. Code Ann. § 27-7-40 (1986) provides several non-exclusive mechanisms by which a joint tenancy with right of survivorship may be created and severed in South Carolina. Section 27-7-40 in its entirety states:

> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
> (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.
> (iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.
> (v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.
> (vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.
> (vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.
> (viii) The interest of any joint tenant in a joint tenancy in real estate sold

or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

As argued in the Plaintiffs' motion for summary judgment, the statute acknowledges common law methods for created a joint tenancy with right of survivorship, to wit: "[i]n addition to any other methods for the creation of a joint tenancy in real estate which may exist by law". The statue plainly envisages that there are other ways to create a joint tenancy in South Carolina. Accordingly, statutory creation of a joint tenancy is not exclusive and common law rules for the creation of a joint tenancy are still recognized. The Court of Appeals affirmed this rule in *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass*, 359 S.C. 407 (Ct..App.2004), opining:

Appellant asserts that, at most, Rosemary's 1985 deed created a tenancy

> in common. "The common law method of creating a joint tenancy requires a conveyance to have four unities: unity of interest, unity of title, unity of time, and unity of possession." *Smith v. Rucker,* 357 S.C. 532, 593 S.E.2d 497, 499 (Ct.App.2004) (citing *Jenkins v. Jenkins,* 8 S.C.L. (1 Mill Const.) 48, 52 (1817)).

Therefore, a joint tenancy with right of survivorship is established where the grant or devise conveys unity of title, unity of interest, and unity of possession to two or more tenants at the same time.

By implication, statutory severance is likewise not the exclusive mechanism for destroying a joint tenancy. The common law rules for severance still apply and the destruction of one of the required unities of title destroys the joint tenancy and renders property holders "tenants in common." This is the law in South Carolina as well as many other states.[1] In *Smith v. Cutler*, 623 S.E.2d 644 at 647 (S.C. 2005), Chief Justice Toal held that in South Carolina, "unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."

Contrary to this holding, the Defendant reads into the statute that destruction of the joint tenancy is "limited to" the ways enumerated in *S.C. Code* 27-7-40(a). The statute does state that a "joint tenancy includes and is limited to, the following incidents of ownership:" and then goes on to list eight ways in which an interest of a joint tenant

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[1] *Nunn v. Keith*, 289 Ala. 518 (1972); *Smith v. Kofstad,* 206 P.3d 441 (Alaska 2009); *Estate of England*, 233 Cal.App.3d 1 (1991); *Alexander v. Boyer*, 253 Md. 511 (Md. 1969); *Matter of Estate of Bates*, 492 N.W.2d 704 (Iowa App. 1992); *Harmes v. Sprague*, 105 Ill.2d 215 (Ill. 1984); *Home Trust Mercantile Bank v. Staggs*, 714 S.W.2d 792 (Mo.App. E.D. 1986); *Smith v. Tang*, 100 Ariz. 196 (1996); *Reicherter v. McCauley*, 47 Kan.App.2d 968 (Kan.App. 2012); *Estate of Knickerbocker, In re*, 912 P.2d 969 (Utah 1996); *Estate of Gulledge*, 673 A.2d 1278 (D.C. 1996); *Marchel v. Estate of Marchel*, 349 Wis.2d 707 (Wis.App. 2013); *Hoover v. El Paso Nat. Bank*, 498 S.W.2d 276 (Tex.Civ.App. —El Paso 1973); *Ianotti v. Ciccio*, 219 Conn. 36 (Conn. 1991); *Edwin Smith LLC v. Synergy Operating LLC*, 2012 -NMSC- 034 (N.M. 2012); *Johnson v. Gray*, 533 N.W.2d 57 (Minn.App. 1995); *Valdez v. Occupants of 3908 SW 24th Street,* 270 P.3d 143 (Okla. 2011); *Williamson v. Williamson*, 157 A.2d 110 (R.I. 1960); *Lyon v. Lyon*, 100 Wn.2d 409 (Wash. 1983); *In re Estate of Bernecker*, 654 A.2d 246 (Pa.Cmwlth. 1995); *Foucart v. Paul*, 516 So.2d 1035 (Fla.App. 5 Dist. 1987); *Taylor v. Canterbury*, 92 P.3d 961 (Colo. 2004); *Shockly v. Halbig*, 75 A.2d 512 (Del.Ch. 1950); *Halleck v. Halleck*, 216 Or. 23 (Or. 1959);

may vest upon the death, conveyance, divorce, or judicial sale. The legislative history of this section, however, suggests that there was no intention of subsuming the common law on the issue of severance.

S.C. Code 27-7-40(a) was introduced for the first time in March of 2000. The bill underwent several revisions before its adoption. Most notably, in the original bill, Section 27-7-40(a)(iii) & (iv) read as follows:

> (iii) The fee interest in real estate held in joint tenancy may not be encumbered **or conveyed** to a third party or parties by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **or conveyance**.
>
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **or deed of conveyance**, the interest in the real estate shall be effectively encumbered **or conveyed** to a third party or parties.[2]

Subsequent revisions, however, resulted in the current language of the statute that removes the language contemplating unilateral conveyances, and those sections now read as follows (with previous language struck):

> (iii) The fee interest in real estate held in joint tenancy may not be encumbered **[~~or conveyed~~]** by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **[~~or conveyance~~]**.
>
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **[~~or deed of conveyance~~]**, the interest in the real estate is effectively encumbered **[~~or conveyed~~]** to a third party or parties.

The implication of the legislature removing language that would undeniably prohibit the unilateral severance of a joint tenancy seems to be that it did not intend to proscribe this common law method of severing joint tenancies. The Defendant further argues that encumbrance and conveyance are synonymous for the purposes of this statute, but given the legislative history and the plain meaning of encumbrance which

[2] S.C. Gen. Assemb. Act No. 398, Section 2. Reg. Sess. 1999-2000 (2000).

excludes conveyances, this is obviously not tenable. According to *Black's Law Dictionary*, encumbrance means:

> encumbrance *n.* (16c) A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. • An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled *incumbrance.* — **encumber,** *vb*

or:

> Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.[3]

Applying the law to the facts of the case at bar results in a tenancy in common with the Plaintiff, Vanessa Williams and the Defendant Bradford Q. Jeffcoat, Jr. each holding a one-half interest in the subject property. The subject property was conveyed from Sandra P. Perkins, who held a joint survivorship interest with Bradford Q. Jeffcoat, Jr., to Vanessa Williams on November 16, 2015. This conveyance severed the unity of time requirement with respect to the new tenancy, which in turn severed the joint tenancy with right of survivorship. The Supreme Court in *Smith v. Cutler* spells out exactly what language to include in the granting clause and habendum clause of a deed to create an indestructible tenancy in common:

> "[w]e hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor." 366 S.C. at 551, 623 S.E.2d at 647.

Had Sandra P. Perkins and Bradford F. Jeffcoat, Jr. chosen the above language, then the conveyance by Ms. Perkins would have failed. Having opted instead for joint tenancy with right of survivorship, the parties contemplated the fact that either party may

[3] *Black's Law Dictionary* (10th ed. 2014), encumbrance

sever the joint tenancy by conveyance to a third party.

2. Alabama Law permits a Conservator to Collect Hold and Retain property in another state

The Defendant argues that Alabama Law does not permit a conservator to transfer property to herself without court approval. *Code of Alabama* § 26-2A-152(d)(3) (1975) proscribes the disposal of real property for cash or credit. The Plaintiff, by contrast sought to protect a valuable asset of Ms. Perkins' estate by conveying it to herself as fiduciary. As fiduciary, Mrs. Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." *Ala. Code* § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, the fact that her mother named her as power of attorney, and the fact that as a conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, Mrs. Williams consulted with legal counsel in Alabama and South Carolina in order to determine how to sever the joint tenancy. This was not an act of "bad faith" or one of "self-dealing." It was done in consultation with professionals in both states in a manner that was designed to follow the law of both states.

Without the conveyance, a valuable asset of the estate would have been lost to the survivorship clause in the July 1, 2000 deed in contradiction of Mrs. Williams duties under Alabama law. Section 26-2A-152(c)(1) provides that a conservator may act without court authorization to:

> Collect, **hold**, and retain assets of the estate including **land in another state** and stocks of private corporations, **until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator**

is personally interested.

Thus, it is appropriate and permissible for a conservator to hold property in her own name in order to determine the final disposition of said property. The statute manifestly provides for conservators to act in the very manner that Mrs. Williams did in this scenario, just as her ward could have done had she the mental capacity to do so. It is likewise impossible for this statute to have any meaning with respect to land if it does not allow for conveyances such as this one as it is futile to attempt a transfer of property without a deed.

Furthermore, the allegations that Mrs. Williams "kidnapped" Ms. Perkins are spurious and insensitive. Mrs. Perkins had named her daughter, Mrs. Williams as her power of attorney, and her actions at all times were disclosed and were undertaken under the supervision of the Probate Court of Baldwin County, Alabama. Despite the purported affection Mr. Jeffcoat claims toward Ms. Perkins prior to her death, the fact remains that he was not her first choice for caregiver or fiduciary, and had absolutely no rights to act on behalf of Ms. Perkins, to be informed of her status or otherwise. Mrs. Williams on the other hand, accepting her appointed role did the best she could to care for her mother and protect her assets. This required her to move her into her home, which was the reason for the move to Alabama. Any assertion to the contrary is fallacious and defamatory.

Conclusion

South Carolina law, like the majority of states, recognizes the common law creation of a joint tenancy provided that the four unities of title are present. It logically must follow that such a tenancy can be destroyed by the unilateral act of one tenant by

conveying its interest to a third party. The common law in South Carolina harmoniously agrees with this analysis. Consequently, Ms. Perkins' conveyance to her daughter Vanessa Williams severed the joint tenancy with right of survivorship and resulted in a tenancy in common with Mr. Jeffcoat, which is subject to partition under South Carolina statute.

Moreover, Alabama Law is clear that a conservator may hold property in her own name in order to preserve assets of the ward's estate. This is allowed even if the property in question concerns land in another state. The only way to hold property in land is through a deed of conveyance. In this case, Ms. Williams followed the statute perfectly to achieve this result.

WHEREFORE, the premises considered, the Plaintiff prays that this honorable court partition the subject Real Property between the Plaintiff Vanessa Williams and the Defendant Bradford Q. Jeffcoat, Jr. either by allotment or order sale of the Real Property and a division of the proceeds according to the rights of the parties hereto.

Respectfully submitted,

CLAWSON and STAUBES, LLC

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Attorneys for Plaintiff

Columbia, South Carolina
April _____, 2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins, Plaintiffs, vs. Bradford Q. Jeffcoat Jr., and Blue Heron Builders, LLC, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2015-CP-10-06379 **PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

2018 MAY 25 PM 2:55
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, the Plaintiffs, Vanessa Williams individually, as Conservator and Guardian of Sandra P. Perkins, and as Personal Representative of the Estate of Sandra P. Perkins, by and through undersigned counsel, and file this supplemental Brief in support of its motion for summary judgment and would show unto the court as follows:

Law and Analysis

A Joint Tenancy with right of survivorship is severed by a Tenant's conveyance of property interest to a third party

In the hearing conducted on April 30, 2018, your Honor queried our authority for the position that at common law a joint tenant could unilaterally sever a joint tenancy by conveying her interest to a third party thereby destroying the unities required for the creation of a joint tenancy at common law. It is difficult to point directly to the primary source of this rule just as it is difficult to source the direct cases from the ancient common law that established joint tenancies or tenancies in common. Numerous

cases, however in common law jurisdictions refer to the form of severance contemplated by the Plaintiff in this case.[1] Furthermore, other academic and secondary source publications make reference to this common law property rule. "In the ancient language of the law, joint tenants were said to hold *per my et per tout*".[2] The preceding phrase is defined as "[b]y the half and by the whole". It is further described as:

> [T]he estate [undivided share] held by joint tenants; *by the half* for purposes of survivorship, *by the whole* for purposes of alienation.[3]

Accordingly, the concept of joint tenancy under the common law allows each owner to hold an undivided share which vests in the survivor upon the death of the first joint tenant, but which is also a wholly owned share which may be completely alienated during the lifetime of the tenant.[4]

As argued in our response to the Defendant's motion for summary judgment, the legislature, in passing *S.C. Code Ann.* § 27-7-40 (1986) did not intend to change the common law with respect to a joint tenant's right to alienate property. This is made clear by the earlier versions of the bill, which made references to conveyances. Most notably, in the original bill, Section 27-7-40(a)(iii) & (iv) read as follows:

---

[1] *Nunn v. Keith*, 289 Ala. 518 (1972); *Smith v. Kofstad,* 206 P.3d 441 (Alaska 2009); *Estate of England*, 233 Cal.App.3d 1 (1991); *Alexander v. Boyer*, 253 Md. 511 (Md. 1969); *Matter of Estate of Bates*, 492 N.W.2d 704 (Iowa App. 1992); *Harmes v. Sprague*, 105 Ill.2d 215 (Ill. 1984); *Home Trust Mercantile Bank v. Staggs*, 714 S.W.2d 792 (Mo.App. E.D. 1986); *Smith v. Tang*, 100 Ariz. 196 (1996); *Reicherter v. McCauley*, 47 Kan.App.2d 968 (Kan.App. 2012); *Estate of Knickerbocker, In re*, 912 P.2d 969 (Utah 1996); *Estate of Gulledge*, 673 A.2d 1278 (D.C. 1996); *Marchel v. Estate of Marchel*, 349 Wis.2d 707 (Wis.App. 2013); *Hoover v. El Paso Nat. Bank*, 498 S.W.2d 276 (Tex.Civ.App. —El Paso 1973); *Ianotti v. Ciccio*, 219 Conn. 36 (Conn. 1991); *Edwin Smith LLC v. Synergy Operating LLC*, 2012 -NMSC- 034 (N.M. 2012); *Johnson v. Gray*, 533 N.W.2d 57 (Minn.App. 1995); *Valdez v. Occupants of 3908 SW 24th Street,* 270 P.3d 143 (Okla. 2011); *Williamson v. Williamson*, 157 A.2d 110 (R.I. 1960); *Lyon v. Lyon*, 100 Wn.2d 409 (Wash. 1983); *In re Estate of Bernecker*, 654 A.2d 246 (Pa.Cmwlth. 1995); *Foucart v. Paul*, 516 So.2d 1035 (Fla.App. 5 Dist. 1987); *Taylor v. Canterbury*, 92 P.3d 961 (Colo. 2004); *Shockly v. Halbig*, 75 A.2d 512 (Del.Ch. 1950); *Halleck v. Halleck*, 216 Or. 23 (Or. 1959).

[2] *Wilkins v. Young* (1895) 144 Ind 1.

[3] *Black's Law Dictionary* (10th ed. 2014), ("*per my et per tout*").

[4] *What acts by one or more of joint tenants will sever or terminate the tenancy* 64 A.L.R. 2d 918 § 2 (Originally published in 1959); 1. C.J.S. *Estates* § 19; *Joint Tenancy* §§ 2, 4, 7-9.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered **or conveyed** to a third party or parties by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **or conveyance**.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **or deed of conveyance**, the interest in the real estate shall be effectively encumbered **or conveyed** to a third party or parties.[5]

Subsequent revisions, however, resulted in the current language of the statute that removes the language contemplating unilateral conveyances, and those sections now read as follows (with previous language struck):

(iii) The fee interest in real estate held in joint tenancy may not be encumbered **[~~or conveyed~~]** by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **[~~or conveyance~~]**.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **[~~or deed of conveyance~~]**, the interest in the real estate is effectively encumbered **[~~or conveyed~~]** to a third party or parties.

Applying the law to the facts of the case at bar results in a tenancy in common with the Plaintiff, Vanessa Williams and the Defendant Bradford Q. Jeffcoat, Jr. each holding a one-half interest in the subject property. The subject property was conveyed from Sandra P. Perkins, who held both a one half interest for the purposes of alienation and a joint survivorship interest with Bradford Q. Jeffcoat, Jr. for the purposes of survivorship, to Vanessa Williams on November 16, 2015. This conveyance severed the four unities of title requirement with respect to the new tenancy, which in turn severed the joint tenancy with right of survivorship.

Conclusion

South Carolina law, like the majority of states, recognizes the common law

[5] S.C. Gen. Assemb. Act No. 398, Section 2. Reg. Sess. 1999-2000 (2000).

creation of a joint tenancy provided that the four unities of title are present. Based on those common law rules and the fact that a joint tenant holds a one half interest for the purposes of alienation, a joint tenancy can be destroyed by the unilateral act of alienation during the lifetime of that tenant, which destroys the four unities. The common law in South Carolina harmoniously agrees with this analysis. Consequently, Ms. Perkins' conveyance to her daughter Vanessa Williams severed the joint tenancy with right of survivorship and resulted in a tenancy in common with Mr. Jeffcoat, which is subject to partition under South Carolina statute.

WHEREFORE, the premises considered, the Plaintiff prays that this honorable court partition the subject Real Property between the Plaintiff Vanessa Williams and the Defendant Bradford Q. Jeffcoat, Jr. either by allotment or order sale of the Real Property and a division of the proceeds according to the rights of the parties hereto.

Respectfully submitted,

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Columbia, South Carolina
May 23, 2018

8472

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

RECEIVED
AUG 03 2018
SC Court of Appeals

Case No. 2015-CP-10-06379

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins.....Respondents,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.....Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is .....Appellant.

NOTICE OF APPEAL

Appellant Bradford Q. Jeffcoat, Jr. appeals the order of the Honorable Mikell Scarborough dated June 28, 2018. Appellant received written notice of the entry of the order on July 5, 2018.

Dated: 08/01/2018

Jason Scott Luck
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Attorney for Respondents

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 2015-CP-10-06379

VANESSA WILLIAMS,

PLAINTIFF,

VS.

BRADFORD Q. JEFFCOAT,

DEFENDANT.

TRANSCRIPT OF RECORD

APRIL 1, 2016
CHARLESTON, SC

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JUDGE

A P P E A R A N C E S:

NICK SANDERS, ESQUIRE
Attorney for the Plaintiff

HEATHER SHAW, ESQUIRE
Attorney for the Defendant

* *

Ruth C. Weese, RDR

(Proceedings commenced at @ 11:58 a.m.)

THE COURT: Williams vs. Jeffcoat. If you will identify yourselves and the party or parties you represent.

MS. SHAW: Your Honor, Heather Shaw for the Defendant, Bradford Jeffcoat.

MR. SANDERS: Good morning, Your Honor. May it please the Court, my name is Nick Sanders. I'm here on behalf of the Plaintiff, Vanessa Williams, Vanessa Williams as conservator of the estate for -- and guardian Sandra Perkins.

THE COURT: Okay. It's a motion to dismiss. Is it based solely on the pleadings?

MS. SHAW: Yes, Your Honor. The pleadings and the facts set forth in our motion. Well, the argument set forth in our motion.

THE COURT: Well, I understand the motion, but my question is are we relying on the four corners of the instrument and not converting the motion to dismiss to a summary judgment?

MS. SHAW: I think we are, Your Honor.

THE COURT: Or which? Did you perceive this as a motion to dismiss based solely on the pleadings?

MR. SANDERS: I do believe it is, Your

Honor.

THE COURT: That's fine. So that we understand, we won't go outside the pleadings. I will be happy to hear from you.

MS. SHAW: Thank you, Your Honor. May it please the Court, the parties and the important persons in this action begin with Sandra Perkins. She is the mother and the former ward of Plaintiff, Vanessa Williams. She passed on November 17th of 2015 of Alzheimer's disease from which she suffered for many years. The Defendant, Bradford Jeffcoat, was Ms. Perkins partner for 20 years prior to her death, the last 15 of which they made a home together at 1955 Old Fort Avenue, West Ashley which they owned together as joint tenants with right of survivorship. This is the property at issue.

Ms. Williams' action for partition of this home is based on a deed executed and filed the day before her mother passed which purported to transfer her mother's interest in the home.

THE COURT: Ms. Shaw, I need to interrupt you because I'm looking at the complaint. And the complaint is basically as you stated for a partition action and for conversion.

MS. SHAW: Yes.

THE COURT: And from my reading of it it appears those are properly pled. Whether or not they can survive I don't know, but clearly you're challenging the deed. You are challenging somehow the ownership, certainly that's a legitimate challenge. But it's not to dismiss it. I mean that's what the trial is all about, to determine whether or not that person has any interest and who has interest because obviously -- is it your claim that your client is the sole owner of the property?

MS. SHAW: Yes, Your Honor. Since the -- since Sandra Perkins has passed. She died after the filing of the action so Ms. Williams is no longer conservator, so that claim doesn't stand. And --

THE COURT: Well, the partition action stands, doesn't it? Who are the beneficiaries under the will? Or did she die without a will?

MS. SHAW: I don't know that she had a will.

THE COURT: See, I don't either and the problem is --

MS. SHAW: The property passed on automatically it is without dispute --

THE COURT: We don't know how is it.

That's the problem. I have got to go outside the pleadings. The pleadings themselves set up an action. They frame an action. It's proper. May be a summary judgment, you may be right, but it's not based on just dismissing it on the pleadings. You may win on summary judgment. I'm not quarreling with you and your legal positions. But the problem is I can't dismiss this on the pleadings because the pleadings on its face sets out a cause of action.

Now, he has got to prove it and apparently there may be some issues that he can't prove, but that's not -- that's for another day. So your motion to dismiss is denied.

MS. SHAW: Thank you, Your Honor.

THE COURT: But clearly it's only on the pleadings. That's why I went through that because I'm not -- I'm not converting this to a summary judgment. You have a lot of things that may moot this whole thing. I don't know.

MS. SHAW: Yes, Your Honor. Thank you.

(These proceedings were concluded at 2:02 p.m., April 1, 2016, Charleston County, South Carolina.)

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomate Reporter, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of September, 2018 at Pearland, Texas.

Ruth C Weese

Ruth C. Weese
Registered Diplomate
Reporter

STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF CHARLESTON)	Case No. 2015-CP-10-06379
)	
VANESSA WILLIAMS,)	
)	
Plaintiff,)	
)	
VS.)	Transcript of Record
)	
BRADFORD Q. JEFFCOAT, JR,)	
)	
Defendant.)	DATE: March 29, 2017
)	

B E F O R E:

The Honorable Thomas Hughston

A P P E A R A N C E:

BARRETT RAY BREWER
Attorney for the Plaintiff

HEATHER S. SHAW
Attorney for the Defendant

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

MR. BREWER: May it please the Court. Basically, what we have here -- the facts of the case are detailed in the memos that have been provided, but I will give you a brief background. Essentially, this is a property that was owned by Mr. Jeffcoat. And then he subsequently mortgaged half interest to the decedent. And that's Ms. Williams's mother and that is Mrs. Perkins in this case.

And they became, through that new deed and the mortgage, they became joint tenants with a right of survivorship, Your Honor. And what happened was, as Mrs. Perkins, unfortunately, declined in health, Ms. Williams, her only daughter, came to South Carolina to take care of her, essentially. And she thought it would be best to bring Ms. Perkins back to Alabama where she was living to take care of her.

And, subsequently, her health, Mrs. Perkins's health, declined further. And Mrs. Williams was appointed as her conservator through the Alabama courts. And then as a result of her being appointed as a conservator, she subsequently, to protect the assets of Mrs. Perkins as she declined in health, conveyed this half interest in the Jeffcoat property that was bought by Mrs. Perkins to herself. As a conservator, she conveyed it to herself as the only daughter.

And what our argument is, Your Honor, is that that conveyance severed the joint tenancy with the right of

survivorship and turned it into a tenancy in common. And, therefore, it should be partitioned through our courts.

And today what we wanted to argue is the law. They are going to talk about a lot of the facts here and say that there's facts that are in contention. And that's --

THE COURT: So let me make sure. So your client claims she owns the whole thing now; is that correct?

MR. BREWER: No, Your Honor. Ms. Williams is saying that she is the owner of the half interest, as opposed to Mr. Jeffcoat. When Ms. Perkins passed away, he's claiming that the joint tenancy with right of survivorship did not get severed by the conveyance that occurred by Ms. Williams. So Ms. Williams, as the conservator of Mr. Perkins, conveyed the property to herself, a third-party. And we are arguing that according to our law, a joint tenancy with right of survivorship is severed by a conveyance to a third-party.

And regardless of what position Ms. Williams is in, when you talk about there's two parties and the joint tenancy, she's the third-party.

THE COURT: So who is Jeffcoat? I may have misunderstood. Who else is involved with the property?

MR. BREWER: Mr. Jeffcoat is the original owner of the property. He mortgaged and then subsequently deeded half interest to Mrs. Perkins. They lived together on the property.

THE COURT: I see.

MR. BREWER: And then she was declining in health. Ms. Williams came, as her only daughter, to take care of her, became appointed as conservator, and transferred that one half interest to herself to protect the interest in the property, Your Honor. And what we are saying is that that transference severed the joint tenancy and created a tenant in common which is subject to partition.

So what I was saying earlier is, they are going to talk about a lot of the facts. And what we want to talk about is the law of the case. And Ms. Williams has not disputed that Ms. Williams was legally appointed by the court of Alabama to be the conservator of Ms. Perkins. And as the conservator, she has a fiduciary duty and obligation to protect Ms. Perkins's assets when she was not able to. And that transfer -- they are going to argue that the transfer was a breach of her fiduciary duty to Ms. Perkins.

THE COURT: Doesn't sound too good to start with.

MR. BREWER: Well, Your Honor, I'm just telling you the facts of the case.

THE COURT: Go ahead. I'm just telling you my first impression.

MR. BREWER: I understand, Your Honor. We do have an order from the Alabama court. The conveyance that occurred was approved by the court, the probate court. And what we are

saying here is that approval by the Alabama court makes that the law of the case. That is an order from the Alabama court that says she had a proper conveyance to herself as the conservator to a third-party. It was proper. It was approved by the Alabama court. And, therefore, according to the Full Faith and Credit Clause, we have to use that order from the Alabama court as the law in this case. And that conveyance, which is legal in the state of Alabama, effectively severs the joint tenancy with the right of survivorship.

And we have case law, Your Honor, if you will allow me, *Smith v. Cutler*, that shows that in this state, it still has common law -- to form a joint tenancy, the common law still applies.

Now, they are going to argue that the only way you can form a joint tenancy these days is through Section 27-740 of South Carolina Code. And there's also 62-2-804 of the South Carolina Code, are the only ways you can form or sever a joint tenancy in South Carolina. And we are arguing that the common law still applies here.

And *Smith v. Cutler* is a supreme court case, South Carolina 2005, that displays the court stating that a joint tenancy with a right of survivorship is actionable by an action of one of the parties. If it was a joint -- or if it was a tenancy in common with the right of survivorship, it would be indestructible. But here, the court states, unlike a tenancy

in common with a right of survivorship, is capable of being defeated by the unilateral act of one joint tenant. And they cite South Carolina Code 27-740. May I pass that up to you, Your Honor?

THE COURT: Sure.

MR. BREWER: So our argument, essentially, is that according to the law of this case that was established by the daughter being appointed as a conservator and then her conveyance to herself that was approved by the Alabama court, effectively severs the joint tenancy here. And, basically, what it says, our case law states, a joint tenancy is created by four unities: Unity in time; unity in possession; and unity in interest; and one other one.

And we are stating that the unity of time and the unity of interest was severed by the conveyance. And, therefore, it's now a tenancy in common between Ms. Vanessa Williams and Mr. Jeffcoat. And it should be subject to partition, Your Honor.

THE COURT: Okay. All right.

Now, you are Ms. Shaw, right?

MS. SHAW: Yes, Your Honor.

THE COURT: What would you like to say in response to that?

MS. SHAW: Well, I would like to start by saying I think the facts are very bad, as Your Honor may have --

THE COURT: Doesn't sound good, to me anyway.

MS. SHAW: And I think if we were to recite the facts, it would probably sound even worse. But, really, our arguments are not on the facts, because there are no set of facts under which Mrs. Williams could have done what she did. The parties to the original purchase of the house, Mr. Jeffcoat and Sandra Perkins, were life partners of 20 years. For reasons that are not uncommon or unusual in older relationships, they chose not to marry. But they set up house as a married couple and stayed that way for 20 years.

The last several years, Mrs. Perkins was suffering from Alzheimer's. And several months before her death, Mr. Bradford Jeffcoat asked her daughter to come and help him by taking her to some doctors appointments and that sort of thing while he was at work. And she did. She came, but she didn't take her to the doctor's appointment, she took her back to Alabama, and then refused any contact thereafter.

And before she left for Alabama, she had her mother add her to her bank account. She started spending large amounts of money for her daughter's college tuition, her own downpayment on a home, groceries, that sort of thing. But, nevertheless, when she gets back to Alabama with her mother, her mother was in the very end stages of Alzheimer's and died just a couple of months later on Sandra's ... I'm sorry, Vanessa's couch.

The problem here is that Mrs. Williams, once she was appointed conservator, transferred or tried to transfer her mother's interest in the home to herself. And it was held as joint tenants with right of survivorship. And joint tenants with right of survivorship is governed by statute. And it's South Carolina Code 27-740.

And I really wish I had printed that because I could read right from it. But that statute, the plaintiff's point out that the beginning of the statute starts with acknowledging that there are other ways to create a joint tenancy with right of survivorship. But then it goes on to say that once having been created, the last sentence of that paragraph says: This joint tenancy includes and is limited to the following incidents of ownership.

So we would argue, Your Honor, that once the joint tenancy with right of survivorship is created, you cannot destroy it in any way other than what's enumerated in the statute. It's a general principle of law that inclusion of enumerated things in a statute means the exclusion of all things unenumerated. And the statute itself clarifies that the joint tenancy is limited to the following incidents of ownership. And what is listed there are the ways that a joint tenancy, right of survivorship, could be destroyed. And it's by court order, by partition, by agreement of the parties.

You can't even encumber -- it details that you can't

even encumber your own interest by a mortgage. You can't even give your interest to other joint tenants unless it's given equally. So it's very limited what you can do, because of that survivorship interest.

And the plaintiffs cite this case *Smith v. Cutler*, evidence that somehow there are other means outside of the statute, which is what they need to show in order to even begin to make their client's actions acceptable. But the quote that they cite is only part of the important part of that paragraph. So they say that a joint tenancy with right of survivorship is capable of being defeated by the unilateral act of one joint tenant. But it goes on to cite the code sections and ways in which it can happen. And it doesn't say there are any ways outside of the code. And it couldn't, because the code is what governs. And that's the way you do it, is by the code.

They weren't able to do it by the code. And in their brief, acknowledged they intended to do it by partition, because that is the proper way to do it, but then they couldn't because the ward passed.

Also note that she initially went and applied to the Alabama court for approval of what she had done. I mean, she knew that what she had done wasn't allowable under Alabama code governing conservators. So she went to the court and asked for permission. Well, she was granted permission retroactively, but it was after the fact. It was after Ms. Perkins had passed

and the conservatorship had ended. So you really can't retroactively allow a conservator to do something after a conservatorship has already ended.

And the fact that if you overcome the law that says you can't unilateral dispose of joint tenancy and create a tenancy in common, if you overcome that threshold, then they have to prove that somehow, as conservator, it was okay for her to give herself her ward's property for $10. And, certainly, they can't do that. And they rely upon an affidavit from an Alabama attorney who relies on Ms. Williams's assertion that this was her mother's wishes. And that's just contrary to any of the facts.

Her mother had never left Mr. Jeffcoat in 20 years together, had never done anything to evidence that she wanted to change the deed. The deposition testimony was clear that there had been no conversation where her mother said to her anything of the sort in the past several years. And so, I mean, really, they can't overcome the law, number one.

But even if it were possible for that type of change in title to occur, under these facts, it certainly wasn't appropriate or fair.

THE COURT: All right. What do you want to say briefly in response?

MR. BREWER: In response, Your Honor, I think we agree that they were not married. It was not illegal for Ms.

Williams to take her mother and protect her assets as conservator.

The first sentence that she was referring to, Section 27-740 is, in addition to any on the methods for the creation of a joint tenancy in real estate which may exist, by law, these are the ways you can do it. It doesn't subscribe to having other ways to do it. Says, these are the ways we listed, but that's not in addition to the other ways.

And we would argue, according to *Smith v. Cutler*, and also *Sherman Ex Rel Maddock v. Estate of Ex Rel. Sherman ex rel Snodgrass*, both of those cases are 2004 and 2005, show that the common law still applies to joint tenancy and those interest unity, title unity and title unity of possession rules.

So those we would argue still apply. And the conveyance severs those. We would also argue that she's saying she knew it wasn't allowable by the court. The case here is we have the law of the case. And the law of the case is that she was appointed conservator and the court said this conveyance is proper. So if they want to go to Alabama court and say this conveyance is not proper and she's violating her duty, that's outside of this argument. This argument is arguing the law of the case.

And it also says in Alabama code that the conservator is welcome to -- or has the duty to collect, hold and retain assets of the estate, including land in other states, et

cetera. So it's her duty to collect and hold all of the valuable assets of her mother as her ward. And since the ward couldn't do it, she conveyed it to herself because there was no one else to convey it to to protect the asset before she passed away, which would have triggered the right of survivorship.

THE COURT: All right. I appreciate that. I will take the matter under advisement then and we will be in touch.

(Whereupon, a recess transpired.)

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins,

Plaintiff,

vs. CASE NO. 2015-CP-10-6379

Bradford Q. Jeffcoat, Jr., and Blue Heron Builders, LLC,

Defendants.

Hearing before the Honorable Mikell R. Scarborough, reported by Christine A. Smith, Court Reporter and Notary Public, at 10:22 a.m. on April 30, 2018 at 100 Broad Street, Courtroom 2A, Charleston, South Carolina.

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PROCEEDINGS

THE COURT: We have Williams versus Jeffcoat. We have cross Motions for Summary Judgment. It's going to be determined on whether or not it appears to the Court if one, is this a joint tenancy with a right of survivorship; two, can that joint tenancy with right of survivorship be severed unilaterally? And then what's the answer to that? When was it done in the proper fashion is what it looks like to me. Okay?

I'm trying to figure out who filed the first motion, who got the motion filed first?

MR. WENZEL: Your Honor, we -- the Plaintiffs filed the first motion.

THE COURT: Very good.

MR. WENZEL: I'm Drew Wenzel. I'm a lawyer from Alabama. I would like to thank the Court for allowing us to practice pro hac vice here today.

THE COURT: Very good. You're with Mr. Sullivan and --

MS. ASTHANA: I'm Deepti Asthana.

MR. WENZEL: This is my partner, Deepti Asthana, who is also here pro hac vice.

THE COURT: Where in Alabama are you-all?

MR. WENZEL: Foley, Alabama is where our office is.

THE COURT: I don't know where --

MR. WENZEL: Lower Alabama.

THE COURT: LA, lower Alabama.

MR. WENZEL: Very close to Gulf Shores.

THE COURT: I've got it. Gulf Shores, okay. Very good. The first time I heard of LA I said that doesn't sound like the town I've been to. It was lower Alabama. All right. Thank you. Mr. Wenzel, go ahead.

MR. WENZEL: Yes, Your Honor. Do you need us to summarize the facts of the case?

THE COURT: Go ahead and make your record.

MR. WENZEL: So in this matter -- we'll start back in 2000 when the Defendant, Mr. Jeffcoat, he held a piece of property here in Charleston County in fee simple. He was in a relationship with Ms. Saundra Perkins, who is now deceased. We represent her daughter, Ms. Vanessa Williams.

He conveyed an undivided half interest to her as a joint tenant with right of survivorship. We're not disputing at all that that deed was a survivorship deed. We accept that. When he did that he took back the mortgage. I believe it was a little

over $40,000 which she paid off over the course of 15 years. It's now been released.

Well, in 2015, I believe the late spring or it may have been the summer of 2015, Ms. Perkins was suffering from advanced dementia and her condition was worsening. Her daughter, Ms. Williams, who lived at the time in Mississippi was in the process of moving to Alabama. I believe her husband works for the military and he was being moved to Pensacola. A lot of folks live in our area because we're close to the Panhandle of Florida.

THE COURT: You-all have a name for that, too, don't you? What's that?

MR. WENZEL: The Redneck Riviera? Is that the one you've heard?

THE COURT: Well, no. That's where I live right now. No, something of Florida.

MR. WENZEL: Panhandle of Florida.

THE COURT: Yes. Isn't that where they throw the fish across the state line?

MR. WENZEL: Yes, Your Honor. That's close to us as well.

THE COURT: I know more about it -- I've never been, but I know more about it than I care to.

MR. WENZEL: I've never been either. At any

rate, Ms. Williams was her mother's power of attorney in both her healthcare and financial power of attorney. When she found out about her mother's condition she came to Charleston and decided that it was in her best interest to move her to live with her in Alabama so she could take care of her. That's when she consulted with us about the best way to handle that with respect to Alabama law, and we recommended that she file for conservatorship and guardianship there in Baldwin County, which she did.

In the course of doing so, when she was appointed as Guardian -- by the way, Ms. Perkins was appointed Guardian ad Litem. We had a hearing in the Probate Court to determine her incapacity. She was found to be incapacitated. At that point, Ms. Williams was appointed as Guardian and Conservator and we went about trying to protect her property as best we could.

So in consultation with South Carolina counsel with Clawson and Staubes, we thought we could convey her half interest to Vanessa and could sever that tenancy or sever the joint tenancy and tenants in common. So that was done shortly before Ms. Perkins died. She died in late November. We actually also filed a partition action prior to her death, just a

few days prior to her death. So that's essentially the undisputed material facts, I think, in this case.

THE COURT: Alabama adopted the Uniform Probate Codes. Is our code similar?

MR. WENZEL: Your Honor, I think it is different. We do not have -- I do not think we actually have the Uniform Probate Code. I think maybe it is -- I may be mistaken. If it is I know there are some modifications. Comparing the relevant sections, I think there are some differences.

However, the first issue and we believe the issue that is dispositive of this case is whether a joint tenant can still convey unilaterally their interest in a property, and when I say convey I mean their ownership interest and effectively sever the joint tenancy. So in common law you had to have the four unities of title to create this joint tenancy with right of survivorship.

So the common law way that it was done in 2000 would not have worked because Mr. Jeffcoat had actually -- he couldn't convey everything at the same time. He already held the interest and so he wasn't -- they weren't getting it all at the same time. However, South Carolina, like many other states, has adopted statutes reflecting intent of the

grantors and if you -- in both Section 62-2-804 as well as Section 27-7-40 provide that using the language as joint tenants with right of survivorship and not as tenants in common as they did in this case creates a joint survivorship issue or joint survivorship interest.

So our central argument is that was the purpose of 27-7-40, but it also says in addition to any other methods, so it didn't destroy the common law method of creating a joint tenancy, and our best reading is it also did not destroy the common law method of severing the joint tenancy.

The Defendant has argued that under 27-7-40(a)(2) -- I'm sorry (3) and (4) -- which deals with incidents of ownership between the joint tenants that the statute has addressed this. It says that in the event of the death of a joint tenant survived by more -- let me restart everything.

It says, the Fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

Section (4) says that if all joint tenants who own real estate held in joint tenancy join in an encumbrance the interest in real estate is

effectively encumbered to a third party or parties. The Defendant essentially argues that this is analogous or this is the same as an encumbrance. We believe that it's not. We can't find any case in the State of South Carolina that treats an encumbrance or a deed of conveyance where we're talking about ownership interest as an encumbrance, and we've also looked for definitions of encumbrance. For what it's worth, Black's Law Dictionary provides that an encumbrance is a claim or liability that is attached to property or some other right that may lessen its values such as a lien or mortgage, any property right that is not an ownership interest, or encumbrance means a right other than an ownership interest in real property.

So we believe that the terms are somewhat mutually exclusive, that it can't be an ownership interest, an encumbrance can't be. At the very least that creates an ambiguity in the statute, so if there's an ambiguity then it's proper to look to the legislative history, which we've done in this case, and in the first revision of this, which was passed in the late spring of the year 2000, Section (3) actually read differently -- (3) and (4) both read differently. Section (3) read, The fee interest in

real estate held in joint tenancy may not be encumbered or conveyed to a third party or parties by joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance or conveyance.

Section (4) read that all the joint tenants who owned real estate held in joint tenancy joined in an encumbrance or deed of conveyance, the interest in real estate shall be effectively encumbered or conveyed to a third party or parties.

So the legislature clearly contemplated that there could be encumbrances or conveyances and in the final version of the bill they left out the part about the conveyance to a third party, which we interpreted to mean that they intended it only to apply to encumbrances and not to conveyance of ownership interest. We think that is -- so therefore we think that the common law method of severance is still possible between joint tenants with right of survivorship.

The second issue I believe that was raised in this case was whether --

THE COURT: Before you go there --

MR. WENZEL: Yes, Your Honor?

THE COURT: In your memoranda you talked in

terms of creation of the joint tenancy through the four unities of title. What authority do you have for the unwinding of the joint tenancy under common law?

MR. WENZEL: Your Honor, I could not find a case directly on point in this state, however, I've -- in other states I've found case law and I've listed a bunch of them there that talk about the ancient common law. This was the way that you could sever it by a conveyance of one joint tenant conveying their interest to another party, but in full disclosure, Your Honor, I can't find a case directly on point now.

In the case of -- I do cite to a case -- I believe it was Smith and Cutler where Justice Toal -- he said that --

THE COURT: That was a she.

MR. WENZEL: I'm sorry --

THE COURT: Jean, J-e-a-n, Jean Toal.

MR. WENZEL: -- I made that mistake.

THE COURT: That's all right. If you would have known her you would have known.

MR. WENZEL: Her Honor ruled that unlike a tenancy in common with right of survivorship, a joint tenancy with right of survivorship is capable of

being defeated by the unilateral tenant. However, I will in full disclosure point out that she does follow that by pointing to Sections (3) and (4) of the statute. I can't -- I believe by implication the common law method of destroying the joint tenancy is still valid.

THE COURT: All right. Very good. You can move forward then.

MR. WENZEL: Okay. Your Honor, on the next issue, the Defendant has argued that we essentially acted improperly in the way that we severed the -- or in the way that we dealt with the property in another state under the Alabama probate code. Our position is that Alabama law permits a conservator to collect, hold, and entertain property in another state until its ultimate disposition. They rely on a section of the code that prescribes the disposal of real property for cash or credit without approval of the Court.

Although we believe everything was done in the light of day, we did not seek court approval when we first executed the deed of conveyance. We sought counsel here in South Carolina, and we sought counsel from some other Alabama lawyers, but we thought that we were acting within the scope of 26-2(a)152(c) that

provides that a conservator may act with Court authorization to collect, hold, retain assets of the estate including land in another state in stocks by private corporation until determining that the disposition of the assets should be made and that the assets may be retained even though they include an asset in which the conservator is personally interested.

Our logic in conveying it to Vanessa was we can't hold this property by implication. There has to be a deed in the name of another party or it won't survive to the benefit of her estate, and that was essentially our argument.

THE COURT: The survivorship aspect of the deed would take over, right?

MR. WENZEL: That's right, Your Honor. Now, the Defendant has -- in their allegations they basically assert that we've acted in bad faith in doing that. They've asserted that we kidnapped Ms. Perkins and brought her to the state. We would simply say that those are spurious and insensitive arguments. We even -- after the fact when there became a question, when Ms. Shaw raised the question about whether it was appropriate under Alabama law, we petitioned the Probate Court to approve it, and we

made full disclosure.

I have that motion, Your Honor, if you would like to see it, that it was a joint tenancy with right of survivorship. Again, Ms. Perkins was represented by a Guardian ad Litem. We made full disclosure. Granted, Mr. Jeffcoat was not present. Under our statute he wouldn't have really had any right to be given notice of that hearing because he was not a relative or an appointed POA.

We would simply say that we did everything in the light of day. There is absolutely no attempt to act in bad faith, and if we're wrong on the severance, Your Honor, then he has not attempted to sell the property. He's not damaged by the deed that is currently in place.

THE COURT: Okay. Are you relying on the language of "may" in that statute? Is that what you're relying on?

MR. WENZEL: Yes, Your Honor.

THE COURT: They're not required to get Court authority but they may?

MR. WENZEL: Yes, Your Honor.

THE COURT: Okay.

MR. WENZEL: And Your Honor, the Court approved it under the statute that we discussed, the

one that states that they may act without Court approval.

THE COURT: Probate Court?

MR. WENZEL: Probate Court after --

THE COURT: Probate Court approval.

MR. WENZEL: After the fact, Your Honor.

THE COURT: All right. So what's the status of her estate today? Is that still ongoing? Is this part of what needs to be done with that?

MS. ASTHANA: The estate is open as we speak in Probate Court until the resolution of this case.

THE COURT: Thank you. Okay.

MR. WENZEL: I believe that's our submissions, Your Honor.

THE COURT: Very good. Thank you. Ms. Shaw?

MS. SHAW: Thank you, Your Honor. Heather Shaw for Defendant Bradford Jeffcoat. I guess I'll start with the question of the deed. The facts are really undisputed. My client and his long-time partner, Saundra, he purchased this home just months before conveying a half interest to her. They really did this home together. In fact, I think they built the home together and lived in it exclusively together until she was taken by her daughter out of state.

His partner Saundra, had Alzheimer's for many years before her daughter came. That's her only daughter, and she's lived out of state for a decade at least, I think. They saw each other once or twice a year. Mr. Jeffcoat was still working and trying to care for Saundra, and it became very difficult. He called her daughter and asked if she would come and help.

In particular, she had a doctor's appointment coming up. I think it was just a few days out and he called and said, Could you come help and take her to the doctor? I'm working. I really could use some help. She came and she stayed for a couple of days. The day of the doctor's appointment, instead of taking her mother to the doctor she took her out of state and never again returned a phone call from Mr. Jeffcoat. She never notified him of her mother's death. He learned weeks later. She just cut off all contact.

THE COURT: What was the time period from the time she came -- what was that doctor's appointment date until the time that she died? How much time are we talking about?

MS. SHAW: That was April of 2015. She died in November of 2015. From the time she took her

mother to Alabama, three months elapsed exactly, the residency requirement, and she gained conservatorship. Then I think less than 60 days after that she transferred her mother's portion of the house to herself.

We think two things: One, it wasn't properly conveyed by the statute. We acknowledge that common law -- this wouldn't have been a proper way to handle it, but the statute was enacted. It's very clear on its face. It said that in addition to other methods for creation of a joint tenancy, and then it lists the ways it can be created now.

In terms of everything that follows after the creation it says specifically, Joint tenancy includes and is limited to the following incidents of ownership. So it very clearly limits what you can do once it's created. That's the problem. They're relying on Smith v. Cutler for the proposition that you can unilaterally sever the survivorship. Smith v. Cutler really stands for the exact opposite proposition. It was a married couple that were trying to create a survivorship, and the Court in Smith v. Cutler overturned the lower court and said, We need to focus on the intent of the parties. The intent was that the survivorship remain intact for

the benefit of the surviving owner.

Specifically, the section they're pointing to, it does acknowledge that the unilateral act of one joint tenant can sever their survivorship, but it points you back to the statute. These are the ways. It doesn't indicate any other methods. I think it's plain.

So the legislative intent that they're trying to discern from the creation -- I think it doesn't come into play when you look at the plain language. But if you want to discern the intent of the statute, it's in the statute. Right in Paragraph C, it says, The provisions of this section must be literally construed to carry out the intention of the parties. It's clearly the intention of the parties to have a survivorship interest.

THE COURT: That was one of my factual questions. Apparently Mr. Jeffcoat was the original owner? The title came in his name?

MS. SHAW: Well, yes. They built the house together, but it was in his name. He obtained a mortgage. I'm sorry. He didn't. I think he paid cash, and then he mortgaged a half interest to her just a couple of months later. He never lived in the house without her. It was all intended to be

together.

THE COURT: But by virtue of that mortgage was when the deed of conveyance was created to create the joint tenancy; is that right?

MS. SHAW: That's correct. That's correct, Your Honor.

THE COURT: And the timing on that was when?

MS. SHAW: It was just three months after the home was originally purchased.

THE COURT: The 2000 timeframe?

MS. SHAW: That's right.

THE COURT: All right. And your argument would be that you have to look at the intent of the time of the creation of the document, correct?

MS. SHAW: Exactly. And going forward until her death, she clearly never had a change of intent because she never filed an action for partition. She never executed a deed on her own if she thought she could have done it that way.

It wasn't until her daughter obtained conservatorship based on her incapacity. She had no capacity to change her intent at that point. So clearly her intent all along -- she made provisions for her daughter in other ways. She had a will. She had substantial accounts with cash monies and her

daughter was a joint holder on some of those accounts.

Everything passed to her daughter but the house. The house was omitted from the will, presumably because she knew it would pass automatically to Mr. Jeffcoat. Saundra's intent was clear at the beginning at the time they executed the deed, and she never changed her intent. Her daughter --

THE COURT: As conservator?

MS. SHAW: As conservator decided to sell the property to herself for $10. If she was trying to help her mother's intent, I think she would have held it -- until after the interest of her ward, she could have transferred it to herself as conservator but not directly to herself. She essentially sold off an asset of her mother's for $10 to herself as conservator. There's no indication anywhere that that was Saundra's intent. It could not have been. She was incapacitated.

So we do think -- we certainly don't think that the attorneys acted improperly, but we do think she, as conservator, did, that she knew her mother's intent and the whole fiduciary duty that she had as conservator was to take care of her ward and act in

the interest of her ward, and her ward had no interest in selling off a piece of property for $10. She lived with this man for 15 years. He cared for her for years and years while she suffered from Alzheimer's.

She would never have wanted him to be put out of her house. That's exactly what Smith v. Cutler talks about, that you know, the harsh result that can happen if you're not looking at the intent of the parties and how important it is to do that, to not put someone out of their house when clearly the intent of the parties was for them to both live there until they passed.

So we do think she acted improperly and intentionally improperly and that she didn't -- we've got counterclaims for breach of fiduciary duty among others and some discovery has been pretty horrendous about the acts that she engaged in when she came to town and took her mother. She was spending from joint accounts for college tuition, for houses, you know. Her mother didn't need the $10 for that half of the house. That was not in the interest of her ward. That was in her interest. So she certainly wasn't securing it for the benefit of her ward.

THE COURT: Your position is she was acting as

fiduciary? She was self-dealing, right?

MS. SHAW: Oh, completely. Completely self-dealing, I mean, on its face. If she intended it to be for the benefit of the ward, she would have transferred it to herself as conservator or some other -- into a trust or something along those lines. She just gave it straight to herself for $10. She did this 11 days before her mother's death.

THE COURT: Was there ever any -- were you-all ever parties to any litigation prior to Ms. Perkins' death?

MS. SHAW: I think this instant action was about four days before her death brought by her daughter, which would have been the proper thing to do. I mean, if she wanted to sever the survivorship, that's the way to do it under the statute. You have to have a court order to sever it. You can't just do it by a deed. We talked about the encumbrance and the language being changed, our argument is not so much that an encumbrance is the same as a conveyance, but rather it's obvious that if the legislature wants you to not be able to even encumber it without consent of all the parties, why would they permit you to sell it?

I think they certainly didn't need that

language in there because of the language limited to the following: The only way that you can sever that survivorship is through Court order in context of a divorce or a partition action. So if Saundra, before her passing had that intent, she certainly could have done that.

THE COURT: You acknowledge that it could have been done in that fashion. I'm assuming they were never actually married; is that right?

MS. SHAW: That's correct. I think there were --

THE COURT: So a divorce decree was not going to work, but a partition action would have been or could have been effective?

MS. SHAW: Exactly. There's a statute that provides for that which wouldn't be necessary if you could just do it by transfer of a deed. I think the statute -- the plain language is very clear. It says, it's limited to the following ways, and she did not follow those ways, nor could she have.

THE COURT: Not on her own certainly, which is why you go out and you get a guardian or a conservatorship, which is what happened here.

MS. SHAW: Right. Right. But she certainly didn't -- for 15 years she lived with him, and she

was suffering from Alzheimer's for many years before passing. If she had the intent to sever that survivorship and give something to her daughter, she could have done that long before the week of her death. The fact is that by the time her daughter took her, she was in a space where she couldn't care for herself in any way.

THE COURT: Okay. Mr. Wenzel, let me ask you this: The first thing that I notice when I read the Smith versus Cutler case is the Petitioner argues that -- under law and analysis -- Petitioner argues that the deed at issue creates a tenancy in common with an indestructible right of survivorship we agree. So my question to you -- and then we go on to -- sort of towards the end -- we hold that the use of the phrase indicates an intention of the parties to share a tenancy in common for life with remainder in fee to the ultimate survivor, and then there's a discussion here about what can you do in the meanwhile? However with a tenancy in common with a right of survivorship the property will go only to the survivor of the parties. Future interest does not vest until the death of one of the co-owners. We further hold this conveyance does not unreasonably prevent the alienation of the property because a

restriction exists only until the first tenant in common dies.

Isn't that the whole purpose of a creation of a joint tenancy? As I understand it, let me just state this for the record: I've always understood that tenants in common is owned by whatever their percentage interest is. If you've got ten people owning a piece of property, they've all got 10 percent of it. As a joint tenancy I always understood that everybody owns by the whole, so they own the whole thing.

She was Chief Justice for a long time. Yes. She was Chief Justice then. She talks about an indestructible right of survivorship. So that's my question to you. How do we destruct that right of survivorship? How do you get to where you want to be?

MR. WENZEL: Your Honor, we would argue that if a joint tenant, their interest may be as a whole, but they still -- there's still a property interest. They can alienate, I guess, is our position.

THE COURT: But by statute they can only alienate or they can only encumber it -- let's make sure I use the right term here. They can only encumber it together, right? It would be invalid

if -- if only one of them had signed the mortgage, it would be invalid as to the whole, right?

MR. WENZEL: Yes, Your Honor.

THE COURT: And so because you own by the whole it wouldn't apply. I've foreclosed on properties before where somebody with an 8/13ths interest mortgages the whole thing. Well, that mortgage only applies to the 8/13ths interest that that individual owns, right? Here we're talking about they're owned by the whole, so it would only be effective if they all do it.

In this case you have a conveyance, not by the grantee but by the --

MR. WENZEL: Conservator?

THE COURT: -- the conservator of the grantee. So that's where I'm trying to -- I want to make sure I follow your logic.

MR. WENZEL: Yes, sir. Your Honor, I think our logic is simply that she had -- we believe that it's -- I won't call it a dilemma, but she felt like as fiduciary that she did not know how long her mother was going to live. She was looking for assets. She was looking for what might occur in protecting those assets, and we, to the best of our understanding of the common law, thought that a joint

tenant could sell that interest to a third party.

I guess if the other joint tenant were to join in -- let's just say he didn't object to it, would she be able to do it then?

THE COURT: Clearly, that would require his signature, would it not? If Mr. Jeffcoat's signature is on there it would be no problem, right?

MR. WENZEL: Yes, sir.

THE COURT: They're acting as one?

MR. WENZEL: Right.

THE COURT: But that didn't happen in this case?

MR. WENZEL: That did not happen.

THE COURT: All right.

MS. ASTHANA: I was just going to explain in terms of the intent, if it's a tenancy in common with a right of survivorship, that's the intent that you would look at in terms of the fact that they cannot be partitioned. That's the law. A joint tenancy with right of survivorship, that is something that you can alienate. That's the understanding that we gleaned from the law, from looking at all of the cases that we have cited.

THE COURT: Well, we're going to apply South Carolina law to the real estate transaction, are we

not?

MS. ASTHANA: What's that, Your Honor? I'm sorry.

THE COURT: We're going to apply South Carolina law to the real estate transaction, correct?

MS. ASTHANA: Yes, sir, absolutely. But there is -- we couldn't find any governing law, but if you look at the intent -- if they really did not want this interest partition in any shape or form, the right terminology to use would have been tenancy in common with right of survivorship which they did not use. So anything other than that can be partitioned. So that's our argument. A joint tenant can unilaterally convey that interest to a third party and sever the joint tenancy, however, if it was a tenancy in common with right of survivorship, that cannot be done. We're speaking to intent.

I know that the Defendants went a little bit into the facts of the case, but I do want to mention that in the very beginning when Ms. Williams came to us, Ms. Perkins -- we were working with Clawson and Staubes to file a partition action on behalf of Ms. Perkins.

Your Honor, our client's testimony has been that her mother has mentioned to her numerous times

that she wanted to convey her interest and that when -- again, I know this is not super pertinent, but Defendants raised this.

When Ms. Williams went to her mom's house to take care of her upon Mr. Jeffcoat asking her to do so, she found her mom in a very terrible state. She was not taken care of. She can best describe it. It's her mother. She did find that her mom had to be removed from that situation. I don't want to go into that, but there were grounds based on which Ms. Williams removed her mom for her better care.

THE COURT: That will be a matter for trial one day, right?

MS. ASTHANA: Yes, Judge.

THE COURT: So what is your authority on the distinction between the tenancy in common with right of survivorship and the joint tenancy with right of survivorship? What's your authority on that?

MR. WENZEL: Well, Your Honor, I think the Smith and Cutler case is what deals with that. They mention that. The central question, I guess, is whether Ms. Shaw is correct, that the legislature intended only for a joint tenancy to be severed by Section 27-7-40.

Then that also, I guess, created an

indestructible joint tenancy if one person becomes incapacitated or the other person doesn't want to join into it. I think this is a little bit of an atypical situation since they weren't married. Like I said, there's a partition, but the partition dies with the person filing the partition.

THE COURT: That begs another question to me. Have we amended the -- yes. We have Ms. Williams in as personal representative of the estate now. It started out as conservative guardian. Okay. I wanted to make sure we got that, that we have that authority going on there. All right.

I think I understand you-all's positions. Here's what I would like to do: I'm going to take the matter under advisement. What my usual practice is is to request that you-all submit to me written proposed orders within 30 days. I prefer that they come in Word because I generally always manipulate them.

So I've got cross Motions for Summary Judgment. One would be -- the ruling would be dispositive as to the case if the Court grants either motion as I understand it. I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right

of survivorship can be alienated. I think that's the legal question for the Court to have to address. So I'll do that.

It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?

I do tend to agree with you. It's a question of law. If we get into the trial there will be lots of questions of fact, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

If there's any additional authority or anything that you-all want to cite to, I'll certainly look at it. I don't always look into the legislative history, so I was impressed by that. We'll just have to see. I can tell you one thing, I don't get to rewrite statutes any more than I get to rewrite the contracts. I just have to enforce them. Okay? Thank you-all very much. Thank you for the presentation. I appreciate it.

(The proceedings were concluded at 11:12 a.m.)

State of South Carolina)
)
County of Charleston) C E R T I F I C A T E

I, Christine A. Smith, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 28th day of August, 2018 at Charleston, Charleston County, South Carolina.

_____
Christine A. Smith
Notary Public
My Commission Expires
May 12, 2021

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
An alleged incapacitated person	*	**STATE OF ALABAMA**
	*	
		CASE NO.: 32367
	*	

EMERGENCY PETITION FOR GUARDIANSHIP/CONSERVATORSHIP

COMES NOW your Petitioner, VANESSA L. WILLIAMS, who pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT and ALABAMA UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT, respectfully represents as follows:

1. The aforesaid SANDRA P. PERKINS is 73 years old and her date of birth is March 27, 1942.

2. That SANDRA P. PERKINS has been residing in Baldwin County, Alabama for the last seven (7) days from the date hereof.

3. That prior to residing in Baldwin County, Alabama, SANDRA P. PERKINS resided in Charleston, South Carolina.

4. That the current health and mental state of SANDRA P. PERKINS is such that she is unable to take care of herself, physically and financially, and her health, safety and welfare are in jeopardy.

5. That SANDRA P. PERKINS is a widow and the Petitioner is her only child.

6. That the Petitioner is a resident of Baldwin County and currently resides with her husband and her mother, SANDRA P. PERKINS at 32183 Waterworks Lane, Lillian, Alabama 36549.

7. That for her mother's health, safety and welfare, the Petitioner recently moved her mother, SANDRA P. PERKINS, into the Petitioner's home in Lillian, Alabama.

8. That the Petitioner is over the age of nineteen (19) years and is in no way disqualified under the law from serving as Guardian and Conservator.

9. Pursuant to Alabama Code Section 26-2B-201(a)(1), this Petition is an Emergency Petition. The current health and mental state of SANDRA P. PERKINS is such that she is unable to take care of herself, physically and financially, and her health, safety and welfare are in jeopardy.

10. Additionally and pursuant to Alabama Code Sections 26-2B-201(a)(3) and 26-2B-201(b), SANDRA P. PERKINS has significant connection with County of Baldwin, State of Alabama. SANDRA P. PERKINS's only child resides in Lillian, Alabama and a substantial amount of her assets are held in a brokerage firm in Foley, Alabama.

11. Furthermore, on November 19, 2009, SANDRA P. PERKINS executed a durable springing power of attorney wherein your Petitioner is listed as her first choice for an attorney-in-fact.

12. That pursuant to Alabama Code Section 26-2B-203, a petition for an appointment of a guardian or order is not pending in a court in the State of South Carolina.

13. That pursuant to Alabama Code Section 26-2B-210, your Petitioner avers that she has not participated, as a party or witness or in any other capacity, in any other proceeding concerning the guardianship or conservatorship of SANDRA P. PERKINS; your Petitioner avers that she has no knowledge of any proceeding that could affect the current proceeding, including, but not limited to, proceedings for the establishment, modification, termination, or enforcement of a protective order; your Petitioner avers that she knows of no person not a party to the proceeding who has physical custody of SANDRA P. PERKINS; and your Petitioner knows of no person not

a party to the proceeding who holds an appointment or alternate appointment as legal agent of SANDRA P. PERKINS.

WHEREFORE, the premises considered, your Petitioner prays that Your Honor will take jurisdiction of this cause and set a hearing to appoint VANESSA L. WILLIAMS as guardian and conservator over SANDRA P. PERKINS, and pursuant to § 26-2A-102(b) *Alabama Code* 1975, appoint a guardian ad litem to represent the said SANDRA P. PERKINS; and appoint a physician or other qualified person to examine SANDRA P. PERKINS and submit a written report of findings to this Honorable Court. Your Petitioner further prays that personal service of this Petition be made on the said SANDRA P. PERKINS, and your petitioner prays for such other relief to which she may be entitled.

Vanessa L. Williams
VANESSA L. WILLIAMS
PETITIONER

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public, in and for State at large, hereby certify that VANESSA L. WILLIAMS, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 25th day of June, 2015.

Deborah S. Rutherford
Notary Public, Baldwin County, Alabama
My Commission Expires: 8-19-2017

Deepti Asthana
Deepti Asthana (AST001)
Attorney for Petitioner
Caldwell Wenzel, & Asthana P.C.

P.O. Box 2158
Foley, Alabama 36536
(251) 948-2168

STATE OF ALABAMA
2015 JUL 01 A 10:32
BALDWIN COUNTY

THE STATE OF ALABAMA | PROBATE COURT

COUNTY OF BALDWIN | Case No. 32367

TEMPORARY LETTERS OF GUARDIANSHIP

Temporary Letters of Guardianship over the estate of **SANDRA P. PERKINS**, an alleged incapacitated person, are hereby granted to **VANESSA L. WILLIAMS**, who has duly qualified as required by law, and is authorized to discharge all the functions attached to said guardianship, pursuant to §26-2A-107, for a period of fifteen (15) days from this date, with the exception that said guardian does not have authority to expend any funds of said ward.

Dated this 7th day of July, 2015.

JUDGE OF PROBATE

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
An alleged incapacitated person	*	**STATE OF ALABAMA**
	*	
		CASE NO. 32367
	*	

PETITION FOR GENERAL GUARDIANSHIP/CONSERVATORSHIP

COMES NOW your Petitioner, VANESSA L. WILLIAMS, by and through her undersigned counsel, and pursuant to Alabama Code §26-2A-107, files her Petition for General Guardianship/Conservatorship over SANDRA P. PERKINS, an alleged incapacitated person, as follows:

1. On July 7, 2015, your Petitioner was granted Temporary Letters of Guardianship over SANDRA P. PERKINS, an alleged incapacitated person.
2. Your Petitioner is now seeking general Guardianship/Conservatorship over SANDRA P. PERKINS, to protect and manage the person, assets and financial affairs of SANDRA P. PERKINS.
3. Furthermore, pursuant to Alabama Code Sections 26-2B-201(a)(3) and 26-2B-201(b), SANDRA P. PERKINS continues to have significant connection with County of Baldwin, State of Alabama. SANDRA P. PERKINS' only child resides in Lillian, Alabama and a substantial amount of her assets are held in a brokerage firm in Foley, Alabama.

WHEREFORE, your Petitioner, VANESSA L. WILLIAMS, requests this Honorable Court set a date for a hearing on the incapacity of SANDRA P. PERKINS, where it will:

a. Request and accept a written report from Dr. George M. Knefely, Jr., on SANDRA P. PERKINS' mental incapacity;
b. Appoint VANESSA L. WILLIAMS as general Guardian and Conservator of SANDRA P. PERKINS;
c. Grant VANESSA L. WILLIAMS the powers of a general Guardian as set forth in Alabama Code (1975), §26-2A-108 which include those set forth in Alabama Code (1975), §26-2A-78(b), (c), and (d); and
d. Grant such other, further and different relief as may be appropriate, the premises considered.

VANESSA L. WILLIAMS
PETITIONER

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned, a Notary Public, in and for State at large, hereby certify that VANESSA L. WILLIAMS, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 9th day of July, 2015.

NOTARY PUBLIC
My Commission Expires: 8-19-17

DEEPTI ASTHANA
Attorney for Petitioner
Caldwell Wenzel & Asthana P.C.
P. O. Box 2158
Foley, Alabama 36536
(251) 948-2168

CERTIFICATE OF SERVICE

I the undersigned counsel do hereby certify that I have this day served by United States Mail, first class postage prepaid and properly addressed, the foregoing upon:

Patsy L. Johnson, Esq.
22881 State Highway 59 S
Robertsdale, AL 36567

DEEPTI ASTHANA

THE FOLLOWING SHALL BE SERVED VIA SPECIAL PROCESS SERVER:

Ms. Sandra P. Perkins
32183 Waterworks Lane
Lillian, AL 36549

STATE OF ALABAMA
2015 JUL 17 P 4:10
BALDWIN COUNTY

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
An alleged incapacitated person	*	**STATE OF ALABAMA**
	*	
		CASE NO. 32367
	*	

AFFIDAVIT

George M. Knefely, Jr., M.D., first being duly sworn, deposes and says as follows: My name is George M. Knefely, Jr., M.D. I am a Medical Doctor, licensed in the State of Florida.

I have treated Sandra P. Perkins, who is a white female, 73 years of age, whose date of birth is March 27, 1942.

In my opinion, Ms. Perkins suffers from the following physical and/or mental problems: Major Cognitive Disorder, moderately Severe. I have only seen her once and have not had a chance to review past records nor own studies other than my exam.

In my opinion, Ms. Perkins is no longer able to handle her own affairs. It is my opinion that it would be in Ms. Perkins' best interest for the Court to appoint a Guardian and Conservator to handle her affairs. This affidavit is being provided to assist the Court in making its ruling concerning whether Ms. Perkins is an incapacitated person.

GEORGE M. KNEFELY, JR., M.D.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 10th DAY OF JULY, 2015.

NOTARY PUBLIC
My Commission Expires:

LAURA KICK
MY COMMISSION # EE 121186
EXPIRES: August 11, 2015
Bonded Thru Notary Public Underwriters

07/08/2015 WED 12:39 FAX 2519818732 002/002

IN THE MATTER OF	*	**IN THE PROBATE COURT OF**
SANDRA P. PERKINS,	*	**THE COUNTY OF BALDWIN**
An alleged incapacitated person	*	**STATE OF ALABAMA**
	*	
		CASE NO. 32367
	*	

MOTION TO APPROVE TRANSFER OF REAL PROPERTY

COMES NOW, VANESSA L. WILLIAMS, Court appointed Guardian and Conservator of Sandra P. Perkins, by and through her undersigned counsel, and requests this Court to approve the transfer of certain real property, and in support thereof, would show as follows:

1. That Sandra P. Perkins owned real property located at 1955 Old Fort Avenue in Charleston, South Carolina in Charleston County, South Carolina (the "**Real Property**"), and is more particularly described as follows:

   All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

   TMS No.: 355-09-00-108

2. That Ms. Perkins owned said Real Property with Bradford Jeffcoat as joint tenants with right of survivorship.
3. In November 2015, the law firm of Clawson & Staubes LLC in South Carolina was assisting Ms. Perkins with drafting a complaint requesting that said Real Property be partitioned via sale and the proceeds from sale be divided between Ms. Perkins and Mr. Jeffcoat.

4. On or about November 16, 2015, Conservator, Vanessa Williams communicated to the law firm of Caldwell Wenzel & Asthana, PC that Ms. Perkins had suffered a severe decline in her health, was not eating or drinking, and that death was imminent.

5. Given that the Real Property was still in the names of Ms. Perkins and Mr. Jeffcoat and held as joint tenants with right of survivorship, the death of Ms. Perkins would result in Mr. Jeffcoat being the sole owner of said Real Property.

6. In order to preserve the Estate asset, lawyers from Caldwell Wenzel & Asthana, PC consulted with the lawyers at Clawson & Staubes LLC and a decision was made to immediately transfer said Real Property from Ms. Perkins to her daughter and only child, Vanessa Williams. Doing so, would convert the joint tenancy into tenancy in common and preserve said Estate asset. Additionally, a prior review of Ms. Perkins' estate planning documents revealed that she left all of her assets to her only child, Vanessa Williams.

7. In so doing, reference was made to Code of Alabama, Sections 26-2A-152 (c) (1) and 26-2A-152 (c) (6). Specifically, Section 26-2A-152 (c) (1) allows a conservator, acting as a fiduciary in efforts to accomplish the purpose of the appointment to collect, hold, and retain assets of the estate including land in another state...until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.

8. Furthermore, given the circumstances and that time was of the essence, prior court approval for said transfer was not possible.

9. Consequently, a deed was prepared by Clawson & Staubes LLC and, upon the advice of legal counsel, Vanessa Williams signed said deed as conservator conveying said Real Property from Ms. Perkins to herself. See attached, Exhibit "A".

10. But for this step, Ms. Perkins' interest in said Real Property would be lost forever, as Ms. Perkins departed this life November 27, 2015.

WHEREFORE, request is made that this Honorable Court approve the aforementioned conveyance of real property and enter an Order consistent therewith.

Respectfully submitted this 11th day of January, 2016,

DEEPTI ASTHANA
Attorney for Vanessa L. Williams
Caldwell Wenzel & Asthana P.C.
P. O. Box 2158
Foley, Alabama 36536
(251) 948-2168

CERTIFICATE OF SERVICE

I the undersigned counsel do hereby certify that I have this day served by United States Mail, first class postage prepaid and properly addressed, the foregoing upon:

Patsy L. Johnson, Esq.
22881 State Highway 59 S
Robertsdale, AL 36567

DEEPTI ASTHANA

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED BY CLAWSON & STAUBES, LLC

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **Sandra P. Perkins**, for and in consideration of the sum of **Ten and 00/100 Dollars ($10.00)** and love and affection to me in hand paid at and before the sealing of these presents by **Vanessa L. Williams**, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do, subject to all covenants, restrictions and easements of record ("Exceptions"), grant, bargain, sell and release unto the said **Vanessa L. Williams**, her heirs and assigns, all of my one half undivided interest in and to the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in St. Andrews Parish Charleston County, State aforesaid, and known and designated as Lot #25B on a plat entitled "PLAT TO SUBDIVIDE 1.38 ACRES, LOTS 13 & 25, MAGNOLIA RANCH S/D LOCATED IN ST. ANDREWS PARISH, CHARLESTON COUNTY, SOUTH CAROLINA", as shown on plat thereof dated June 2, 1998 and revised June 1, 1998 drawn by James G. Pennington, R.L.S., and recorded in the ROD Office for Charleston County in Plat Book EC at Page 618. Reference to said plat is hereby craved to a more complete description.

BEING the same property conveyed to Bradford Q. Jeffcoat, Jr. and Sandra P. Perkins by deed of Bradford Q. Jeffcoat, Jr. dated July 1, 2000 and recorded February 6, 2001 in Book D364, at Page 107 in the RMC Office for Greenville County, South Carolina.

TMS# 355-09-00-108

Grantee's Address: 32183 Waterworks Ln
Lillian, AL 36549

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the said premises before mentioned unto the said **Vanessa L. Williams**, her heirs and assigns forever a one half undivided interest.

AND, subject to the Exceptions, I do hereby bind myself and my heirs, personal representatives and administrators to warrant and forever defend, all and singular, the said premises unto the said **Vanessa L. Williams**, her heirs and assigns, against me and my heirs and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 16th day of November, 2015.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(First Witness signs here)

(Second Witness or Notary signs here)

Vanessa L. Williams (L.S.)
Sandra P. Perkins, by Vanessa L. Williams,
Guardian and Conservator of Sandra P. Perkins

STATE OF Alabama)
)
COUNTY OF Baldwin)

THE foregoing instrument was acknowledged before me by Sandra P. Perkins, by Vanessa L. Williams, Guardian and Conservator of Sandra P. Perkins this 16th day of November, 2015.

Deborah S. Rutherford (L.S.)
Notary Public for Alabama
My Commission Expires: 8-19-17

IN THE PROBATE COURT OF BALDWIN COUNTY, ALABAMA

IN THE MATTER OF	)	
	)	
SANDRA P. PERKINS,	)	**CASE NO. 32367**
	)	
an incapacitated person.	)	

RESPONSE TO THE

MOTION TO APPROVE TRANSFER OF REAL PROPERTY

COMES NOW, PATSY L. JOHNSON, as Guardian ad Litem, and hereby responds to the Motion to Approve Transfer of Real Property as follows:

After review of 26-2A-152(c) Code of Alabama, 1975, as amended, I find that the Conservator as the fiduciary for the estate of the Ward may "collect, hold and retain" real property that may be in another state for the benefit of the Ward even if the Conservator may have a personal interest in such real property as stated by the Petitioner in said Motion.

I have no objection to the Motion to Approve Transfer of Real Property filed by Vanessa L. Williams, Conservator for Sandra P. Perkins.

For the information of the Court in determining a reasonable guardian ad litem fee, the undersigned certifies that approximately one (1) hour of time was devoted to reviewing documents and information in this matter.

Done this 19th day of January 2016.

PATSY L. JOHNSON (JOH210)
Guardian ad Litem
22881 State Highway 59 South
Robertsdale, Alabama 36567
Ofc: (251) 970-5047
Fax: (866) 908-8693
E-mail: pjohnson@gulftel.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this 19th day of January 2016 served a copy of the foregoing instrument on all parties to this proceeding by mailing the same by United States mail, first class postage prepaid, and properly addressed to the persons named below.

Deepti Asthana
Caldwell Wenzel & Asthana P.C.
P.O. Box 2158
Foley, Alabama 36536

PATSY L. JOHNSON

STATE OF SOUTH CAROLINA)
) HEALTH CARE POWER OF ATTORNEY
COUNTY OF CHARLESTON)

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE; YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY

(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, Sandra P. Perkins, hereby appoint:
(Principal)
Vanessa Leigh Perkins
(Agent)
18128 Highway 49, Lot# 7; Saucier, Mississippi 39574
(Address)

Home Telephone: _____ Work Telephone: _____
as my agent to make health care decisions for me as authorized in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence.

3. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by Section E, below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily

function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation;

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death;

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service;

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:
None

4. ORGAN DONATION (INITIAL ONLY ONE)

My agent may SP ; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

5. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

6. STATEMENT OF DESIRES AND SPECIAL PROVISIONS

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 4 PARAGRAPHS)

(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) .AB DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

OR

(4) ___ DIRECTIVE IN MY OWN WORDS:

_____

_____

_____

7. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that (INITIAL ONLY ONE)

. SP I do not want to receive these forms of artificial nutrition and hydration, and they may be withheld or withdrawn under the conditions given above.

OR

____ I do want to receive these forms of artificial nutrition and hydration.

IF YOU DO NOT INITIAL EITHER OF THE ABOVE STATEMENTS, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

8. SUCCESSORS

If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each may act alone and successively, in the order named.

A. First Alternate Agent: Bradford Jeffcoat

Address: 1955 Old Fort Avenue; Charleston, SC 29414

Telephone: 843-766-0484

B. Second Alternate Agent: _____

Address: _____

Telephone: _____

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

10. UNAVAILABILITY OF AGENT

If at any relevant time the Agent or Successor Agents named herein are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this 19 day of November, 2009. My current home address is: 1955 Old Fort Ave; Charleston, SC 29414.

Signature: Sandra P. Perkins

Name: Sandra P. Perkins

WITNESS STATEMENT

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that the principal signed or acknowledged this Health Care Power of Attorney in my presence, and the principal appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon the principal's decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the

attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: _____ Date: 11/19/09

Print Name: Ralph E. Hunt Telephone: 843-216-5643

Residence Address:

2197 Hartford's Bluff Circle

Mount Pleasant, SC 29466

Witness No. 2

Signature: _____ Date: 11/19/09

Print Name: Barry C. Holden Telephone: 843-886-5844

Residence Address:

1432 Page Tree Lane

Mount Pleasant, SC 29464

BP0094553

RMC Bk 0094 Pg 553 : pg 1 *

STATE OF SOUTH CAROLINA)
) POWER OF ATTORNEY
COUNTY OF CHARLESTON)

DURABLE SPRINGING POWER OF ATTORNEY OF SANDRA P. PERKINS

ARTICLE I
CREATION

I, Sandra P. Perkins, ("Principal") residing at 1955 Old Fort Avenue; Charleston, South Carolina 29414 hereby appoint Vanessa Leigh Perkins of 18128 Highway 49; Lot #49; Saucier, Mississippi 39574, as my Attorney-in-Fact ("Agent"). In the event Vanessa Leigh Perkins is unable or unwilling to serve or continue to serve then I appoint Brad Jeffcoat to serve as my Agent.

I hereby revoke any and all general powers of attorney and special powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to my health care that previously have been signed by me.

This Power of Attorney shall not be affected by physical disability or mental incompetence of the Principal which renders the Principal incapable of managing the Principal's own estate thereafter, except as may be provided for directly herein or as otherwise by an applicable state statute. This is a Durable Power of Attorney. Unless revoked by me providing written notice to my Agent, this Power of Attorney shall continue effective until my death.

ARTICLE II
EFFECTIVE DATE

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY,

RMC Bk 0094 Pg 553 : pg 2 *

MY AGENT MAY NOT ACT UNLESS AND UNTIL THE EVENTS DESCRIBED IN SUBSECTIONS 1 OR 2 OF THIS ARTICLE HAVE OCCURRED.

1. Incapacity of Principal.

This power of attorney shall become effective upon my disability or incapacity. Notwithstanding any provision herein to the contrary, this instrument shall not be effective unless (a) I am deemed to be incapacitated as further defined herein or (b) I have executed a written document certifying that from the date of such execution thereof my Agent is fully authorized to act under this instrument, as further specified below.

My incapacity shall be deemed to exist when (a) I have been so declared by a court of competent jurisdiction or a conservator and/or guardian has been appointed for me and such appointment is based on incapacity or (b) on presentation to my Agent of a statement executed by two licensed physicians, (one of whom shall be my regular attending physician), which states that in their professional opinion I am incapable of caring for myself and that I am physically or mentally incapable of managing my financial affairs.

The effective date of such incapacity shall be the date of the order or decree adjudicating the incapacity, the date of the order or decree appointing the guardian or conservator, or the date of the written statement of the two physicians described above, whichever first occurs. A certified copy of the order or decree declaring incapacity or appointing a guardian or conservator or the written statement of the physicians described above shall be attached to the original of this instrument, and photocopies thereof shall be attached to photocopies of this instrument, and if this instrument is filed or recorded among public records, then such order, decree or certificate shall also be similarly filed or recorded if permitted by applicable law.

I will be deemed under this instrument to have

regained capacity if there is a finding to that effect by a court of competent jurisdiction or when my conservatorship or guardianship has been judicially terminated or on presentation to my Agent of a written statement executed by two licensed physicians which states in the opinion of such physicians that I am capable of caring for myself and that I am physically and mentally capable of managing my financial affairs. A certified copy of the order or decree declaring my capacity or judicially terminating the guardianship or conservatorship or the certificate of the physicians described above shall be attached to the original of this instrument, and photocopies thereof shall be attached to photocopies of this instrument, and if this instrument is filed or recorded among public records, then such order, decree or certificate shall also be similarly filed or recorded if permitted by applicable law.

If this power of attorney becomes effective because of my disability or incapacity and subsequently I am no longer disabled or incapacitated, as evidenced in the manner provided above, this power of attorney shall not be revoked but shall become effective again on my subsequent disability or incapacity as provided above or on my subsequent certification that such power shall be or has become effective.

I hereby waive voluntarily any physician-patient privilege or psychiatrist-patient privilege that may exist in my favor and I authorize physicians and psychiatrists to examine me and disclose my physical or mental condition to others, including but not limited to my herein appointed Agent, and to determine my incapacity or capacity, for purposes of this instrument.

2. Declaration by Principal

If I have executed the CERTIFICATION OF AUTHORIZATION BY PRINCIPAL attached as "Exhibit A" to this power of attorney, or a similar such written statement substantially in conformity with the above, then

effective on the date of execution of such, and notwithstanding any provision herein to the contrary, this power of attorney shall be immediately and fully effective.

ARTICLE III
AGENT POWERS

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

   a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.

   b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.

   c. Have access to any safe deposit box that I might own, including its contents.

2. Sell, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property.

RMC Bk 0094 Pg 553 : pg 5 *

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

4. Take any and all legal steps necessary to collect any amount or debt owed to me, or to settle any claim, whether made against me or asserted on my behalf against any other person or entity.

5. Enter into binding contracts on my behalf.

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures or other investments.

7. Maintain and/or operate any business that I may own.

8. Exercise any power or perform any act, (including the power to amend or revoke if such has been granted to or retained by me generally), any Trust, Partnership, Limited Liability Company, Corporation or other entity over which I may have such ability.

9. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.

10. Sell, convey, lease, mortgage, manage, insure, improve, repair, or perform any other act with respect to any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any homestead that I now own or may own in the future.

11. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, and local and other governmental bodies.

RMC Bk 0094 Pg 553 : pg 6 *

b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).

c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

12. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent except as herein further specified specifically or as an incidental result of any otherwise authorized act.

13. Transfer, sell or convey any assets of mine on any terms, the primary purpose of which shall be to coordinate the preservation of my assets, (in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have), with qualification for any public or private benefits to which I may be entitled or be entitled to by as a result of such transfer. Such power shall specifically not be limited by the fact such may be deemed to create a gift or transfer assets to any other person, (including my agent), provided the primary purpose and motivation in such a transaction is as specified in this paragraph.

14. Transfer, sell or convey any assets of mine on any terms, the primary purpose of which shall be to minimize tax liability of my estate, (in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have). Such power shall specifically not be limited by the fact such may be deemed to create a gift or transfer assets to any other person, (including my agent), provided the primary purpose and motivation in such a transaction is as specified in this paragraph.

RMC Bk 0094 Pg 553 : pg 7 *

15. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.

16. Disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate.

This Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing (a) my income to be taxable to my Agent, (b) my assets to be subject to a general power of appointment by my Agent, and (c) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

ARTICLE IV
THIRD PARTY RELIANCE & AGENT LIABILITY

For the purpose of inducing all persons, organizations, corporations and entities, including but not limited to any bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or other party, all of whom will be referred to in this Article as a "Person," to act in accordance with the instructions of my Agent as authorized in this instrument with respect to my property matters, I hereby represent, warrant and agree that:

1. Third Party Liability for Revocation and Amendments.

If this instrument is revoked or amended for any reason, I, my estate, and my personal representative will hold any person, organization, corporation or entity, hereinafter referred to in the aggregate as "Person," harmless from any loss suffered, or

RMC Bk 0094 Pg 553 : pg 8*

liability incurred by such Person in acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual written notice of any such revocation or amendment.

2. No Liability to Third Parties for Reliance on Agent.

No Person who relies in good faith on the authority of my Agent under this instrument shall incur any liability to me, my estate or my personal representative. In addition, no Person who acts in reliance on any representations my Agent may make as to;

a. the fact that my Agent's powers are then in effect,

b. the scope of my Agent's authority granted under this instrument,

c. my competency at the time this instrument is executed,

d. the fact that this instrument has not been revoked or amended, or

e. the fact that my Agent continues to serve as my Agent;

shall incur any liability to me, my estate or my personal representative for permitting my Agent to exercise any such authority, nor shall any Person who deals with my Agent be responsible to determine or insure the proper application of funds or property by my Agent.

Any Person dealing with any named Agent (including any named Alternate Agent hereunder) may rely on as conclusively correct an affidavit or certificate of such Agent attesting to any of the above.

RMC Bk 0094 Pg 553 : pg 9 *

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

3. Authorization to Release Information to Agent.

All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate or my personal representative for complying with my Agent's requests.

4.Limitation of Agent Liability to Principal.

My Agent shall not be liable to the Principal for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

ARTICLE V
MISCELLANEOUS AND ADMINISTRATIVE

1. Reimbursement and Compensation of Agent.

My Agent shall be entitled to reimbursement for all reasonable costs and expenses, including reasonable attorney's fees, actually incurred and paid by my Agent on my behalf at any time under any provision of this instrument. My Agent shall not be entitled to compensation for services rendered hereunder.

2. Severability.

If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining

RMC Bk 0094 Pg 553 : pg 10 *

provisions of this instrument.

3. Governing Law and Foreign Jurisdiction Applicability.

This instrument shall be governed by the laws of the State of South Carolina in all respects, including its validity, construction, interpretation and termination. To the extent permitted by law, this power of attorney shall be applicable to all property of mine, real, personal, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located and whether such property is now owned by me or hereafter acquired by me or for me by my Agent.

4. Definitions.

Whenever the word:

a. "Agent" or any modifying or equivalent word or substituted pronoun therefor is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof.

b. "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary, appointed by a court of competent jurisdiction or by other lawful means, responsible for the person and/or the property of an individual.

5. Revocation, Amendment and Resignation.

This instrument may be amended or revoked by me at any time by the execution by me of a written instrument of revocation or amendment, delivered to my Agent and to all Alternate Agents. If this instrument has been filed or recorded in the public records, then the instrument of revocation or amendment shall be filed or recorded in the same public records. My Agent and

RMC Bk 0094 Pg 553 : pg 11 *

any Alternate Agent may resign by the execution of a written resignation delivered to me or, if I am mentally incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me or, in the case of an Agent's resignation, by delivery to the Alternate Agent. If my spouse has been appointed my Agent or an Alternate Agent hereunder and subsequent to the execution of this instrument my spouse and I are legally separated or divorced, or in the event that such an action is pending, such legal separation, divorce, or pending action shall automatically and without notice remove my spouse as Agent or Alternate Agent.

6. Counterpart Originals.

If this instrument has been executed in multiple counterpart originals, each such counterpart original shall have equal force and effect.

7. Photocopies.

My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. Each photocopy shall have the same force and effect as any original.

8. Binding Effect.

This instrument and actions taken by my Agent properly authorized hereunder shall be binding on me, my estate and my personal representative.

IN WITNESS WHEREOF, I have executed this Power of Attorney this 19 day of NOVEMBER, 2009, and I have directed that photographic copies of this power be made which shall have the same force and effect as an original.

Witnessed Signature: Sandra P. Perkins 11/19/09
Sandra P. Perkins - Principal

RMC Bk 0094 Pg 553 : pg 12 *

11/19/09
Ralph E. Hunt -Witness

11/19/09
Barry C. Holden -Witness

State of South Carolina)
) Probate
County of Charleston)

Personally appeared before me the undersigned witness who made oath that (s)he saw the within named Sandra P. Perkins, sign, seal and as his act and deed deliver the within written General Power of Attorney and that (s)he with the other witness subscribed above witnessed the execution thereof.

X 11/19/09
Ralph E. Hunt -witness date

BARRY C. HOLDEN NOTARY PUBLIC SOUTH CAROLINA

SWORN TO BEFORE me this 19
Day of NOVEMBER, 2009.

11/19/09
Barry C. Holden - Notary Public
for the State of South Carolina
My Commission Expires: 4/27/2017

RMC Bk 0094 Pg 553 : pg 13 *

Exhibit A

CERTIFICATION OF AUTHORIZATION OF PRINCIPAL

I, the undersigned Sandra P. Perkins, being the Principal under a certain Durable Springing Power of Attorney to which this Certificate of Authorization is attached, do hereby declare such, (pursuant to provisions therein allowing for such), to be fully and immediately effective as of the below written date.

Dated: _____

Witnessed: Signature: _____/__/__
Sandra P. Perkins - Principal

_____/__/__
Witness Signature

_____/__/__
Witness Signature

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

BARRY CRAIG HOLDEN

#7 - 916 PALM BLVD
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RMC Bk 0094 Pg 553 : pg 14 *

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Case No. 2018-000761

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins ..... Respondents,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc. ..... Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is ..... Appellant.

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APR 08 2019
SC Court of Appeals

BRIEF OF APPELLANT

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North Charleston, SC 29405
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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ISSUES ON APPEAL 1

STATEMENT OF THE FACTS 1

STATEMENT OF THE CASE 5

ARGUMENT 7

I. The Baldwin County Probate Court lacked subject matter jurisdiction in Perkins' guardianship/conservatorship. 8

A. Standard of Review – Subject Matter Jurisdiction. 8

B. The proceedings before the Baldwin Count Probate Court violated the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. 9

II. The evidence in the record of Williams' misconduct was sufficient to defeat Williams' motion for summary judgment. 14

A. Standard of Review – Motion for Summary Judgment. 14

B. There is a genuine issue of material fact as to Williams' unclean hands. 16

C. There is a genuine issue of material fact as to Williams' fraud. 17

D. There is a genuine issue of material fact as to Williams' breach of her fiduciary duties. 18

E. There is a genuine issue of material fact as to Williams' slander of Jeffcoat's title to his home. 23

F. There is a genuine issue of material fact as to Williams' lack of standing. 23

III. Williams was unable to sever Perkins' and Jeffcoat's joint tenancy by her purported transfer of the property. 24

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct.App.1993) 18

ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 669 S.E.2d 337 (2008) 24

Bethea v. Floyd, 177 S.C. 521, 181 S.E. 721 (1935) 16

C & S Nat'l Bank v. Modern Homes Constr. Co., 248 S.C. 130, 149 S.E.2d 326 (1966) 17

Caughman v. Caughman, 247 S.C. 104, 146 S.E.2d 93 (1965) 8

Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997) 8

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) 21

Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014) 15

Dolbeare v. Bowser, 149 N.E. 626 (Mass. 1925) 20

Dowdy v. Jordan, 196 S.E.2d 160 (Ga.App. 1973) 22

Easterly v. Burgett, No. 3:16-cv-00288-DRH-SCW (S.D.Ill. Order dated October 26, 2016) 10, 23

Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004) 8

Ex parte Punturo, 928 So.2d 1030 (Ala. 2002) 13

First State Sav. & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (1989) 17

Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 673 S.E.2d 803 (2009) 15, 16

In re Conservatorship of Groves, 109 S.W.3d 317 (Tenn. Ct. App. 2003) 2

Kahn Const. Co. v. South Carolina National Bank of Charleston, 275 S.C. 381, 271 S.E.2d 414 (1980) 18

Lebovitz v. Mudd, 293 S.C. 49, 358 S.E.2d 698 (1987) 18

M & M Grp., Inc. v. Holmes, 379 S.C. 468, 666 S.E.2d 262 (Ct. App. 2008) 14

Masters v. Rodgers Dev. Group, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) 4

McLeod v. Sandy Island Corp., 260 S.C. 209, 195 S.E.2d 178 (1973) 9

Minnehan v. Minnehan, 147 N.E.2d 533 (Mass. 1958) 20

Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) 19

Moorhead v. First Piedmont Bank & Trust Co., 273 S.C. 356, 256 S.E.2d 414 (1979) ... 17

Morris v. Morris, 273 F.2d 678 (7th Cir. 1960) 23

Mosteller v. Cty. of Lexington, 336 S.C. 360, 520 S.E.2d 620 (1999) 15, 21

O'Hagan v. U.S., 86 F.3d 776 (8th Cir. 1996) 26

Oxenden v. Lord Compton, 2 Ves. Jr. 69 (Ch. 1793) 20

Peoples Nat'l Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857 (1954) 8
Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 574 S.E.2d 502 (Ct.App.2002) 18
Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002) 23
Powell v. American Charter Fed. S. & L., 514 N.W.2d 326 (Neb. 1994) 26
PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988) 15
RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012) 19
Rogers v. Norfolk Southern Corp., 356 S.C. 85, 588 S.E.2d 87 (2003) 16
Simmons v. Simmons, 370 S.C. 109, 634 S.E.2d 1 (Ct.App.2006) 13
South Carolina Dep't of Soc. Servs. v. Wheaton, 323 S.C. 299, 474 S.E.2d 156 (Ct.App.1996) 26
Tatnall v. Gardner, 350 S.C. 135, 564 S.E.2d 377 (Ct.App. 2002). 8
Wendt v. Hane, 401 N.W.2d 457 (Minn. App. 1987) 26
Whitlock v. Creswell, 190 S.C. 315, 2 S.E.2d 838 (1939) 16
Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004) 15
Zimmerman v. Marsh, 365 S.C. 383, 618 S.E.2d 898 (2005) 16

Statutes

Ala. Code § 26-2A-145 19
Ala. Code § 26-2A-150 ..... 12, 21, 22
Ala. Code § 26-2A-152 ..... 12, 20, 21
Ala. Code § 26-2A-155 19
Ala. Code § 26-2B-101 9
Ala. Code § 26-2B-104 10
Ala. Code § 26-2B-105 10
Ala. Code § 26-2B-202 9
Ala. Code § 26-2B-203 ..... 10, 12
Ala. Code § 26-2B-204 11
Ala. Code § 26-2B-206 12
Ala. Code § 26-2B-207 13
Ala. Code § 26-2B-208 11
Ala. Code § 26-2B-210 12
S.C. Code § 27-23-10 18

S.C. Code § 27-7-40 ..... 24, 26, 27
S.C. Code § 62-2-700 9
S.C. Code § 62-5-309 11
S.C. Code § 62-5-417 19
S.C. Code § 62-5-422 22
S.C. Code § 62-5-427 19
S.C. Code § 62-5-716 ..... 13, 23

Other Authorities

Black's Law Dictionary (7th ed.1999) 17

Rules

Rule 212, SCACR 4
Rule 201, SCRE 4
Rule 56, SCRCP 15

Treatises

11 Moore's Federal Practice § 56.95 (2016) 15

ISSUES ON APPEAL

I. Did the Master-in-Equity err in ordering partition and sale of Bradford Jeffcoat's home based on orders of the Baldwin County, Alabama, Probate Court, when said court did not possess subject matter jurisdiction over Vanessa Williams' guardianship/conservatorship petitions?

II. Did the Master-in-Equity err in ordering partition and sale of Bradford Jeffcoat's home pursuant to a summary judgment motion when the record contained substantial evidence of misconduct that would have prohibited such relief?

III. Did the Master-in-Equity err in ordering partition and sale of Bradford Jeffcoat's home when the other tenant's ownership interest was obtained in violation of South Carolina law?

STATEMENT OF THE FACTS

As of mid-summer 2015, Appellant Bradford Jeffcoat and Sandra Perkins had been living together in a loving and committed relationship for approximately 20 years. (R. pp. 69, 155). During the course of this relationship, Jeffcoat purchased 1955 Old Fort Avenue, Charleston, in April of 2000 as the couple's home. (R. pp. 71-72, 155-156, 159, 187). Jeffcoat and Perkins intended that 1955 Old Fort would transfer outside probate to the survivor of their relationship, so Jeffcoat deeded the property to himself and Perkins "jointly with right of survivorship, and not as tenants in common" on July 1, 2000.[1] (R. pp. 69, 151, 155-156, 159). In order to contribute toward the home, Perkins executed a

[1] According to Jeffcoat's trial counsel, Perkins did not address 1955 Old Fort in her will, indicating that she had already addressed its disposition via the July 1, 2000 deed. (R. p. 292).

note and mortgage in favor of Jeffcoat, which has since been satisfied. (R. pp. 69, 155-156, 195, 207).

Jeffcoat and Perkins lived together at 1955 Old Fort as a committed couple. (R. p. 70). In approximately 2009, Perkins began developing symptoms consistent with Alzheimer's disease. (R. pp. 69, 145, 147, 156.). Eventually, Perkins quit her job due to her worsening memory loss. (R. pp. 69, 156). Jeffcoat served as Perkins' sole caregiver until her condition deteriorated to the point he hired an in-home aide for when he was at work. (R. pp. 156, 158). In April of 2015, Jeffcoat asked Williams, Perkins' only child, to come to Charleston to help him care for Perkins. (R. pp. 143, 156-158). Prior to this time, Williams only saw her mother once or twice each year, usually when Jeffcoat and Perkins would visit her. (R. pp. 71, 158).

One of Williams' earliest activities when she arrived in South Carolina in April of 2015 was to add herself to Perkins' checking account. (R. p. 143). Williams acknowledged that at that time Perkins was diagnosed with frontotemporal dementia,[2] and Perkins had been exhibiting symptoms of dementia since 2009 or 2010. (R. pp. 143, 145-147). Shortly after gaining signatory authority over Perkins' checking account, Williams wrote a check out of Perkins' account to pay the closing costs for a mobile home in Alabama. (R. p. 143).

During this time Williams would help take Perkins to her doctors' appointments. (R. pp. 69, 156). However, on June 16, 2015, Williams did not take Perkins to her

[2] Williams testified that Perkins believed that Jeffcoat was "cheating on her" as early as 2009 or 2010 (R. pp. 146-147), which is behavior consistent with dementia. See In re Conservatorship of Groves, 109 S.W.3d 317, 338-39 (Tenn. Ct. App. 2003) (setting forth the progression of Alzheimer's Disease, which includes "suspicion and accusation" as the patient's condition deteriorates).

doctor's appointment: instead, she packed some of Perkins' belongings and spirited her away to Alabama, leaving Perkins' automobile and "...certain other items of personal property, including without limitation, furniture and apparel..." (R. pp. 11, 15, 65, 69, 156). After absconding with Perkins, Williams locked Jeffcoat out of his long-time companion's life, and Williams did not respond to Jeffcoat's subsequent attempts to contact her or Perkins. (R. pp. 70, 142, 157). Williams also shut Perkins' two siblings out of her life.[3] (R. pp. 141-142). As Perkins' only child, Williams now had exclusive access to Perkins.

From April of 2015 until Perkins' death in November, Williams used funds from Perkins' checking and retirement accounts[4] to pay for her family's groceries, her daughter's college tuition, and any other "expenses [of] around [$2,200] or [$]2,300 a month for a family of four." (R. pp. 144-145). Perkins' income at this time (from her retirement) was only $2,200.00 a month. (R. p. 144).[5]

Almost immediately after arriving in Alabama, Williams sought emergency guardianship and conservatorship powers over Perkins in the Baldwin County, Alabama Probate Court. (R. pp. 70, 157).[6] Williams' June 25, 2015, petition fails to mention that

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[3] Williams had no contact information for Perkins' family members when Perkins died. (R. p. 142). Williams made a fruitless attempt to contact Perkins' siblings one to two weeks after Perkins' memorial service. (R. p. 142). At the time of Williams' deposition, nearly a year after Perkins' death, she had not notified Perkins' siblings of their sister's death. (R. pp. 141-142).

[4] Perkins appears to have also been the beneficiary of a trust, but the record contains few details of this instrument. (R. p. 146).

[5] When Williams took control of Perkins' checking account in April of 2015, it contained approximately $41,000.00. (R. p. 144). Williams was unable to testify as to the value of Perkins' checking account when she died in November of that year. (R. p. 144).

[6] This petition and other Baldwin County Probate Court filings are being provided to this Court in the Appendix to the Record on Appeal. (R. pp. 305-318). All parties have

Perkins had resided with Jeffcoat at 1955 Old Fort since 2000. (R. pp. 305-308). Williams also did not notify Jeffcoat of this petition. (R. pp. 70, 157). Pursuant to this petition, the Probate Court issued Temporary Letters of Guardianship on July 7, 2015. (R. p. 309). These Temporary Letters of Guardianship issued to Williams explicitly stated "said guardian does not have authority to expend any funds of said ward." (R. p. 309). On July 17, 2015, Williams petitioned the Probate Court for a general guardianship/conservatorship, "to protect and manage the person, assets and financial affairs of [Perkins]." (R. p. 310). This petition, which Jeffcoat never received notice of, again omitted any information about Perkins' approximately fifteen years of residence with Jeffcoat in South Carolina. (R. pp. 70, 156, 310-311).

The Baldwin County Probate Court issued general Letters of Guardianship/Conservatorship on September 15, 2015. (R. p. 116). On October 7, 2015, Williams, through her attorney, requested Jeffcoat purchase Perkins' interest in 1955 Old Fort, ostensibly because Perkins needed financial assistance. (R. pp. 65-66, 70-71, 157). Williams, through her attorney, also requested at that time the return of Perkins' car, furniture, and personal property, despite having made no attempt to retrieve them since June of 2015. (R. pp. 65-66, 71-72). Jeffcoat returned Perkins' car, but declined to purchase her interest in 1955 Old Fort. (R. pp. 157-158).

According to Williams, Perkins' health began to decline precipitously in early November of 2015. (R. pp. 83, 175). Williams knew at this time that full title to 1955 Old Fort would vest in Jeffcoat upon Perkins' death. (R. pp. 83, 175). In order to prevent

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consented to this supplementation of the record. See Rule 212(b), SCACR. Further, this Court may take judicial notice of these filings. See Masters v. Rodgers Dev. Group, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) (appellate judicial notice); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

Perkins' title from vesting in Jeffcoat, on November 16, 2015, Vanessa Williams, acting as purported guardian/conservator of Perkins, deeded[7] Perkins' interest in 1955 Old Fort to Vanessa Williams for $10.00 "and love and affection".[8] (R. p. 61). At roughly the same time, Williams authorized her South Carolina attorneys to proceed with a partition action against Jeffcoat, which was ultimately filed November 24, 2015. (R. pp. 8, 15).

Perkins died on November 26, 2015. (R. p. 142). Williams held a memorial service roughly a week later, after Perkins' remains returned from the crematory. (R. p. 142). Williams did not notify Jeffcoat or Perkins' siblings of this service. (R. pp. 70-72, 142, 157). Bradford Jeffcoat eventually learned of the death of Sandra Perkins, his lover and companion of nearly 20 years, from a mutual friend. (R. pp. 70, 157).

STATEMENT OF THE CASE

The underlying action in this appeal is a contested partition action regarding Perkins' and Jeffcoat's home located at 1955 Old Fort Avenue, Charleston, South Carolina. The action was filed on November 24, 2015, by Respondent Vanessa Williams, as the daughter and purported guardian/conservator of Sandra Perkins, against joint tenant and Appellant Bradford Jeffcoat and Blue Heron Builders, LLC, a mortgagee. (R. pp. 7-15). At this time, the Complaint also asserted an action for conversion of "certain other items of personal property, including without limitation, furniture and apparel..."[9]

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[7] Jeffcoat's testimony contradicts the probate of this deed, which states it was executed in Alabama; Jeffcoat believes the deed was executed in South Carolina. (R. pp. 70-71, 157-158).

[8] Months later, in response to Jeffcoat's questions as to the validity of Williams' deed, Williams sought and received retroactive approval of this transaction from the Baldwin County Probate Court. (R. pp. 50, 285-286, 313-315, 318).

[9] This cause of action was eventually resolved and is not before this Court.

(R. p. 11). Jeffcoat filed his Answer on December 29, 2015, and asserted a counterclaim against Williams for fraud. (R. pp. 17-21). Jeffcoat filed an Amended Answer and Counterclaims on February 3, 2016, adding counterclaims for breach of fiduciary duty and slander of title. (R. pp. 22-28). Jeffcoat also filed a Motion to Dismiss on February 3, 2016. (R. pp. 29-32). Williams filed a Reply to the original Answer and Counterclaim on February 16, 2016 and to the Amended Answer and Counterclaims on March 18, 2016. (R. pp. 35-38, 40-45). Williams also filed a Response to Jeffcoat's Motion to Dismiss on March 30, 2016. (R. pp. 46-49). The Motion to Dismiss was heard by Judge Markley Dennis on April 1, 2016. Judge Dennis denied the Motion to Dismiss by order dated April 6, 2016. (R. pp. 1, 253-258).

On August 3, 2016, Jeffcoat filed a Motion for Summary Judgment and an Affidavit in Support of the same. (R. pp. 51-72). Jeffcoat withdrew this motion, without prejudice, via a consent order dated January 5, 2017. (R. p. 2).

On January 11, 2017, Williams amended her Complaint to appear as the Personal Representative of Perkins' Estate, as Sandra Perkins died on November 26, 2015. (R. pp. 74-80, 142). On January 17, 2017, Williams filed a Motion for Partial Summary Judgment (R. pp. 81-129). On March 27, 2017, Jeffcoat filed a Response to this motion and asserted a cross-motion for Summary Judgment; he also filed another affidavit in support of his position. (R. pp. 130-159). On February 28, 2018, Jeffcoat filed a Second Amended Answer and Counterclaims. (R. pp. 160-166). Williams filed a Reply on March 19, 2018 (R. pp. 167-172). Judge Thomas Hughston heard the pending Motions for Summary Judgment on March 29, 2017, and denied them by order dated May 9, 2017. (R. pp. 3, 259-272). Judge Hughston's order held: "Plaintiff's Motion...is **denied**,

viewing the evidence in the light most favorable to the non-moving party [Jeffcoat] and finding a scintilla of evidence exists giving rise to a genuine issue of material fact." (R. p. 3) (emphasis in original).

On April 2, 2018, Williams filed another Motion for Partial Summary Judgment, which was substantially similar to Williams' January 17, 2017 motion. (R. pp. 173-222). On April 17, 2018, Jeffcoat filed his own Motion for Summary Judgment. (R. pp. 223-236). Williams responded to Jeffcoat's motion on April 26, 2018. (R. pp. 237-246). Pursuant to an Order of Reference, Charleston County Master-in-Equity Mikell Scarborough heard these motions on April 30, 2018. (R. pp. 273-304). On May 25, 2018 (after the hearing), Williams filed a Supplemental Brief in support of her motion. (R. pp. 247-250). The Master-in-Equity issued his order on June 28, 2018, compelling the partition of 1955 Old Fort and further holding: "[a]ny relief specifically not addressed herein, is denied." (R. p. 6). Jeffcoat timely filed his Notice of Appeal on August 3, 2018. (R. p. 251).

ARGUMENT

The Master-in-Equity's order fails to consider the substantial evidence of Vanessa Williams' misconduct in this action, ranging from taking financial advantage of the vulnerable Perkins, to fraudulently obtaining a guardianship/conservatorship over Perkins, to her self-dealing real estate transaction. These acts divested the Baldwin County Probate Court of jurisdiction and provided the scintilla of evidence necessary to defeat Williams' Motion for Summary Judgment. Further, the Master-in-Equity's ruling that Williams could alienate Perkins' interest in 1955 Old Fort was a reversible error of law.

I. The Baldwin County Probate Court lacked subject matter jurisdiction in Perkins' guardianship/conservatorship.

The Master-in-Equity's decision was based on both Williams' purported legal authority to act as guardian and conservator and the Baldwin County Probate Court's ratification of her self-dealing transaction. (R. p. 4). However, the Baldwin County Probate Court never possessed (and still does not possess) subject matter jurisdiction[10] over this matter, and therefore its orders are void.

A. Standard of Review – Subject Matter Jurisdiction.

The issue of subject matter jurisdiction may be raised at any time, including when raised for the first time to an appellate court. See Tatnall v. Gardner, 350 S.C. 135, 137, 564 S.E.2d 377, 378 (Ct.App. 2002). When raised for the first time at the appellate court, the appellate court may take its own view of whether the preponderance of the evidence supports jurisdiction. Edens v. Bellini, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004).

"It is well settled that want of jurisdiction over either the person or the subject matter is open to inquiry where a judgment rendered in one state is challenged in another." Peoples Nat'l Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 275, 84 S.E.2d 857, 866 (1954); see also Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997). "[A] judgment may be [impeached] in a collateral

[10] To the extent Jeffcoat's subject matter jurisdiction argument may be construed as a challenge to personal jurisdiction, Jeffcoat's Answers affirmatively disputed the Baldwin County Probate Court's "jurisdiction over the person or the estate [of] Sandra P. Perkins..." (R. pp. 17, 22, 160). Even if this defense had not been preserved, Perkins' incapacity would allow Jeffcoat to advance a personal jurisdiction argument. See Caughman v. Caughman, 247 S.C. 104, 109, 146 S.E.2d 93, 95 (1965) ("[T]he duty to protect the rights of incompetents has precedence over procedural rules otherwise limiting the scope of review.").

proceeding on the ground of fraud where the fraud goes to the jurisdiction of the court, or to the method of acquiring jurisdiction or appears on the face of the record." McLeod v. Sandy Island Corp., 260 S.C. 209, 215, 195 S.E.2d 178, 180 (1973) (citations omitted).

B. The proceedings before the Baldwin Count Probate Court violated the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("the Act") (Ala. Code. § 26-2B-101 *et seq.*)[11] is "the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult." Ala. Code § 26-2B-202. Judge David Herndon of the Southern District of Illinois provides an excellent explanation of why this legislation was necessary:

> The process for granting guardianship occurs in state court. Accordingly, we have more than 50 different systems for adjudicating guardianship matters. The guardianship process becomes especially difficult when guardianship questions cross state lines, such as when more than one person applies for guardianship of the same person in different jurisdictions. Historically, there has been a lack of guidance regarding how to resolve dueling interstate guardianships. Additionally, state courts are not required to give another state's judgment on guardianship full faith and credit. As a consequence, interstate guardianship matters often result in protracted litigation that harms families and opens the door to abusive practices.
>
> Of particular concern is a tactic known as "granny snatching." The AARP has described granny snatching as "a deplorable tactic by which someone who wants control over a vulnerable individual and their assets — usually when there's a sizeable estate involved — 'snatches' that individual across state lines and immediately files for guardianship, preventing control or contact with the individual by other family members."
>
> Elder law practitioners uniformly decry the practice, arguing that it isolates and exploits vulnerable seniors; results in expensive, protracted

[11] This uniform act is codified in South Carolina at 62-2-700 *et seq.*

> litigation that may deplete an estate; aggravates family disputes; delays needed care; and facilitates elder abuse.
>
> In an effort to address this and other problematic practices in the field of adult guardianship, the Uniform Adult Guardianship and Protective proceedings Jurisdiction Act ("the Act") was established. The Act provides clear guidelines for determining which state has jurisdiction when guardianship disputes cross state boundaries. Typically, the senior's "home" state (where the senior has been physically present over the last six months) will have original jurisdiction.
>
> The Act's uniform system avoids the legal and personal fiascos that are created when guardianship matters are being pursued in two states simultaneously. Accordingly, practitioners across the Country consistently promote the Act as a vital tool in protecting vulnerable seniors and their families. Indeed, since its enactment, the Act has been endorsed by elder law practitioners and numerous authoritative organizations in the field of elder law. Additionally, the Act has been adopted by 45 states, the District of Columbia, and Puerto Rico.

Easterly v. Burgett, No. 3:16-cv-00288-DRH-SCW (S.D.Ill. Order dated October 26, 2016) (footnotes removed) *available at* https://ecf.ilsd.uscourts.gov/doc1/06913629338 (last visited November 19, 2018). The Act also provides a mechanism for communication and cooperation between courts of different states to determine jurisdiction. Ala. Code §§ 26-2B-104 & 26-2B-105. An Alabama court has jurisdiction over an incapacitated adult if Alabama is (1) the person's "home state" as defined by Ala. Code § 26-2B-201 (a)(2), (2) a "significant connection" state as defined by Ala. Code § 26-2B-201 (a)(3), (3) if the "home state" and the "significant connection" state decline jurisdiction, or (4) if there is "special jurisdiction" (*i.e.* emergency jurisdiction). Ala. Code § 26-2B-203.

Williams never met the requirements of the Act, and therefore the Baldwin County Probate Court never acquired jurisdiction over Perkins' guardianship and conservatorship. On June 25, 2015, Williams filed an Emergency Petition for Guardianship/Conservatorship, claiming the circumstances were an "emergency"

(presumably pursuant to Ala. Code § 26-2B-201(a)(1)), but this petition does not disclose that South Carolina was Williams' "home state" as defined by section 26-2B-201(a)(2).[12] (R. pp. 305-8) Disclosing that Perkins' "home state" was South Carolina would also require Williams to disclose that Perkins lived in South Carolina for almost 20 years. (R. pp. 69, 155). Because the Baldwin County Probate Court was empowered to communicate with other courts, withholding this information prevented the Probate Court from inquiring further into this matter before issuing letters. This is important, because if the Baldwin County Probate Court assumed "special jurisdiction" over this "emergency" matter, a South Carolina court would have had the ability to dismiss this action upon request. Ala. Code § 26-2B-204(b).

Further, because South Carolina was Perkins' "home state", the Alabama Code provides that notice be given to "those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state". Ala. Code § 26-2B-208. Jeffcoat, who had "care and custody" of Perkins, was entitled to notice of any guardianship proceeding under then-existing South Carolina law. S.C. Code § 62-5-309 (Supp. 2015). Jeffcoat received no notice of Perkins' emergency petition, or any subsequent petition or document relating to the wardship of Sandra Perkins. (R. pp. 69-71, 156-57, 286).

Pursuant to Williams' fraudulent and materially deficient emergency petition, and without proper notice, the Probate Court issued Temporary Letters of Guardianship on July 7, 2015. (R. p. 309). These Temporary Letters of Guardianship issued to Williams

[12] Williams only disclosed the following regarding Perkins' time in South Carolina: "That prior to residing in Baldwin County, Alabama, SANDRA P. PERKINS resided in Charleston, South Carolina." (R. p. 305).

explicitly stated "said guardian does not have authority to expend any funds of said ward."[13] (R. p. 309). On July 17, 2015, Williams petitioned the Probate Court for a General Guardianship/Conservatorship, "to protect and manage the person, assets and financial affairs of [Perkins]." (R. pp. 310-11). This petition again omits the fact that South Carolina was Perkins' "home state" under section 26-2B-201(a)(2). The petition also omits facts necessary for a determination that Baldwin County, Alabama should exercise jurisdiction pursuant to Ala. Code 26-2B-203(B)(iii) & 26-2B-206(c). Consequently, the order appointing Williams contains no consideration of the factors that the court shall consider under 26-2B-206(c).[14]

Williams also had an affirmative duty under the Act to inform the Probate Court of "...any proceeding that could affect the current proceeding..." Ala. Code § 26-2B-210. Jeffcoat filed his original Answer and Counterclaim on December 29, 2015, alleging misconduct on the part of Williams and seeking to set aside the deed Williams executed as Perkins' guardian and conservator. (R. pp. 17-21) Jeffcoat's original counterclaim also specifically alleges Williams violated Ala. Code §§ 26-2A-150 & -152 and that the

[13] As set forth above, at this time Williams did use funds from Perkins' checking and retirement accounts to pay for her family's groceries, her daughter's college tuition, and any other "expenses [of] around [$2,200] or [$]2,300 a month for a family of four." (R. pp. 144-45).

[14] These factors are: (1) any expressed preference of the respondent; (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation; (3) the length of time the respondent was physically present in or was a legal resident of this or another state; (4) the distance of the respondent from the court in each state; (5) the financial circumstances of the respondent's estate; (6) the nature and location of the evidence; (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; (8) the familiarity of the court of each state with the facts and issues in the proceeding; and (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator. Ala. Code 26-2B-206(c).

Baldwin County Probate Court lacked jurisdiction. (R. pp. 17, 20). There is no record that Williams informed the Probate Court of this action. Williams' January 11, 2016 "Motion to Approve Transfer of Real Property", appears to have been an attempt to address Jeffcoat's counterclaim without informing the Probate Court of the existence of this litigation. The Probate Court's order on this motion, issued January 15, 2016, was also issued without the input of Perkins' guardian ad litem, who did not provide her response until January 19, 2016. (R. pp. 50, 318).

As set forth above, Williams has failed to meet the requirements of the Act and perpetuated a fraud on the Baldwin County Probate Court by withholding information necessary for that court to assume jurisdiction and failing to notify Jeffcoat.[15] Consequently, the Baldwin County Probate Court lacked subject matter jurisdiction over this dispute, and all of its orders from The Matter of Sandra P. Perkins are void. See Ex parte Punturo, 928 So.2d 1030, 1035 (Ala. 2002); Simmons v. Simmons, 370 S.C. 109, 116, 634 S.E.2d 1, 4 (Ct.App.2006) ("It is axiomatic that an order entered by a court without subject matter jurisdiction is utterly void."). Accordingly, Williams was never legally the guardian and conservator of Sandra Perkins, Williams never had the authority to transfer 1955 Old Fort, and Williams never even had the authority to institute this action.[16] The Master-in-Equity committed reversible error in finding that the November

[15] Williams' withholding of information also prevented the Baldwin County Probate Court from declining jurisdiction and sanctioning Williams for her "unjustifiable conduct". See Ala. Code § 26-2B-207 (Allowing court to decline jurisdiction due to "unjustifiable conduct" and providing for sanctions against the party attempting to invoke jurisdiction.).

[16] Williams also never filed her Letters of Guardianship/Conservatorship in Charleston County as a foreign judgment pursuant to S.C. Code § 62-5-716, and thus she never had standing to pursue an action as a guardian or conservator. See Argument II.F, *infra*.

16, 2015 conveyance of 1955 Old Fort was lawful, and this Court must reverse his decision and award any such other and further relief it deems appropriate.

II. The evidence in the record of Williams' misconduct was sufficient to defeat Williams' motion for summary judgment.

In South Carolina, a mere scintilla of evidence of a material issue of fact can defeat a motion for summary judgment. The record, especially when viewed in a light most favorable to Jeffcoat,[17] contains at least a scintilla of evidence of Williams' misconduct, ranging from taking financial advantage of the vulnerable Perkins, to fraudulently obtaining a guardianship/conservatorship over Perkins, to her self-dealing real estate transaction. These acts support Jeffcoat's counterclaims and affirmative defenses, and it was reversible error for the Master-in-Equity to grant Williams summary judgment with this evidence present in the record.[18]

A. Standard of Review – Motion for Summary Judgment.

"In reviewing an order for summary judgment, the appellate court applies the same standard which governs the trial court under Rule 56 of the South Carolina Rules of Civil Procedure." M & M Grp., Inc. v. Holmes, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

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[17] Judge Hughston, in denying Williams' first Motion for Summary Judgment, held: "Plaintiff's Motion…is **denied**, viewing the evidence in the light most favorable to the non-moving party [Jeffcoat] and finding a scintilla of evidence exists giving rise to a genuine issue of material fact." (R. p. 3) (emphasis in original). Williams' second Motion for Summary Judgment (R. pp. 173-222) is virtually identical to her first Motion for Summary Judgment (R. pp. 81-129).

[18] Jeffcoat would argue that no evidence exists in the record to controvert the allegations of his counterclaims and affirmative defenses, and thus he should have prevailed in his cross-motion for summary judgment.

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Id. (quoting Rule 56(c), SCRCP). A material issue is one that constitutes a legal defense or that affects the result of the action. PPG Indus., Inc. v. Orangeburg Paint & Decorating Ctr., 297 S.C. 176, 375 S.E.2d 331 (Ct. App. 1988).

"On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below." Id. (quoting Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004)). Summary judgment should not be granted if further development of the facts would assist in the application of the law. Mosteller v. Cty. of Lexington, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. Id.

"Matters subject to judicial notice are properly considered on a summary judgment motion." 11 Moore's Federal Practice § 56.95 (2016); c.f. Doe v. Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014) (Courts may take judicial notice of facts when considering a Rule 12(b)(6) motion); see also Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

"[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The South Carolina Supreme Court has defined a "scintilla" as "'a gleam,' 'a glimmer,' 'a spark,' 'the least particle,' 'the smallest trace.'" Bethea v.

Floyd, 177 S.C. 521, 181 S.E. 721, 724 (1935); see also Rogers v. Norfolk Southern Corp., 356 S.C. 85, 588 S.E.2d 87 (2003) (Burnett, J., dissenting) ("A scintilla is defined as 'a trace' of evidence.") (citing Black's Law Dictionary 1347 (7th ed.1999)). In cases requiring a heightened burden of proof (*e.g.* fraud), the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. Hancock at 330-31, 673 S.E.2d at 803.

B. There is a genuine issue of material fact as to Williams' unclean hands.

Williams' misconduct particularly implicates Jeffcoat's defense of unclean hands. (R. pp. 18-19, 23-24, 162-164). A partition action is an action in equity. Zimmerman v. Marsh, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). The defense of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. First Union National Bank of S.C. v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); see also Whitlock v. Creswell, 190 S.C. 315, 2 S.E.2d 838 (1939) (One who comes into a court of equity must do so with clean hands.).

Viewing the facts in a light most favorable to Jeffcoat, the record contains substantial evidence (at the very least, a scintilla) that Williams does not come to the court with clean hands. As soon as Williams arrived in South Carolina, she began to take control of her mother's finances, despite being aware of Perkins' dementia. (R. pp. 143, 145-146) From April to November of 2015, Williams used her mother's assets to pay a down payment for a mobile home, pay her daughter's college tuition, and generally support her family. (R. pp. 143-144). Williams was aware that Jeffcoat would assume full title to 1955 Old Fort upon Perkins' death. (R. pp. 83, 225). In order to further enrich

herself, she misused her putative authority as a conservator to transfer 1955 Old Fort to her for $10.00 "and love and affection" while her mother was in her final illness. All of these acts worked to the obvious detriment and prejudice of Jeffcoat, who now faces the sale of, and eviction from, his home of 18 years. The Master-in-Equity failed to acknowledge the existence of this evidence of unclean hands,[19] which prevents any award of summary judgment for Williams. This Court must reverse his order and remand this case for a trial on the merits.

C. There is a genuine issue of material fact as to Williams' fraud.

Jeffcoat has also alleged, both as a defense[20] and counterclaim, Williams' fraudulent behavior prohibits her recovery and requested that Perkins' deed to Williams be set aside. (R. pp. 18-19, 23-24, 162-164). The elements of an action for fraud based on a representation include: (1) a representation; (2) falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. First State Sav. & Loan v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (1989); Moorhead v. First Piedmont Bank & Trust Co., 273 S.C. 356, 256 S.E.2d 414 (1979). The plaintiff must prove these elements by clear, cogent, and convincing evidence. Kahn Const. Co. v. South Carolina National Bank of Charleston,

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[19] The violations of law described in Argument I (lack of subject matter jurisdiction), Argument II.D (breach of fiduciary duty), and Argument II.F (lack of standing) also support an unclean hands defense, as equity follows the law. C & S Nat'l Bank v. Modern Homes Constr. Co., 248 S.C. 130, 133, 149 S.E.2d 326, 327 (1966).

[20] It is well-settled that fraud is a defense to partition of land. E.g. Holland v. Shaffer, 178 P.2d 235 (Kan. 1947) (stating that it is a defense to partition that the partition would become an instrument of fraud and oppression).

275 S.C. 381, 384, 271 S.E.2d 414 (1980). "'To establish constructive fraud, all elements of actual fraud except the element of intent must be established.'" Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 333, 574 S.E.2d 502, 509 (Ct.App.2002) (quoting Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct.App.1993)).[21]

Viewing the facts in a light most favorable to Jeffcoat, the record contains substantial evidence (far more than a scintilla) that Williams has obtained her interest in 1955 Old Fort by fraud and has otherwise injured Jeffcoat. On June 16, 2015, Williams misrepresented her intention to take Perkins to her doctor, when she truly intended to abscond with Perkins to Alabama. (R. pp. 69, 156). As co-caretaker of Perkins, Jeffcoat had every right to rely on Williams' honesty, which he did. As a result of Williams' dishonesty, Jeffcoat was shut out of Perkins' life, allowing Williams to appropriate all of Perkins' assets and eventually to obtain via fraud a one-half interest in 1955 Old Fort. Jeffcoat now faces the sale of, and eviction from, his home of 18 years. The Master-in-Equity failed to acknowledge the existence of this evidence, which prevents any award of summary judgment for Williams and supports the argument that Jeffcoat is entitled to damages. This Court must reverse his order and remand this case for a trial on the merits.

D. There is a genuine issue of material fact as to Williams' breach of her fiduciary duties.

Jeffcoat has also alleged as a counterclaim that Williams has breached her fiduciary duty. (R. pp. 26-27, 164-165). "To establish a claim for breach of fiduciary

[21] This counterclaim could also be construed as a counterclaim for fraudulent conveyance (a/k/a The Statute of Elizabeth), as Williams' conveyance to herself was an attempt to defraud Jeffcoat of his lawful interest in 1955 Old Fort. See S.C. Code § 27-23-10; Lebovitz v. Mudd, 293 S.C. 49, 358 S.E.2d 698 (1987) (protection of Statute of Elizabeth extends to other types of parties defrauded in connection with the conveyance of property).

duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owed to the plaintiff by the defendant, and (3) damages proximately resulting from the wrongful conduct of the defendant." RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 335-36, 732 S.E.2d 166, 173 (2012). "A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." Moore v. Moore, 360 S.C. 241, 250, 599 S.E.2d 467, 472 (Ct. App. 2004). "To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will not act in [its] own behalf but in the interest of the party so reposing." Id. at 251, 599 S.E.2d at 472. "The evidence must show the entrusted party actually accepted or induced the confidence placed in [it]." Id.

According to the Alabama Code, a conservator is a fiduciary who must act as a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 see also S.C. Code § 62-5-417 (equivalent South Carolina law).

> In (i) investing the estate, (ii) selecting assets of the estate for distribution under subsections (a) and (b) of Section 26-2A-153, and (iii) utilizing powers of revocation or withdrawal available for the support of the protected person and exercisable by the conservator or the court, **the conservator and the court shall take into account any estate plan of the protected person known to them, including a will, any revocable trust of which the person is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected person with provisions for payment or transfer of benefits or interests at the person's death to another or others.** The conservator may examine the will of the protected person.

Ala. Code § 26-2A-155 (emphasis added) see also S.C. Code § 62-5-427 (equivalent South Carolina law). Similarly:

> It was stated in England many years ago that "in managing the estate of a lunatic the general principle is to attend solely to the interest of the owner without any regard to the succession"; and that "the courts have always shut out of their view all consideration of eventual interests; and consider only the immediate interest of the person under their care."

Dolbeare v. Bowser, 149 N.E. 626, 628-29 (Mass. 1925) (quoting Oxenden v. Lord Compton, 2 Ves. Jr. 69, 72 (Ch. 1793)); accord Minnehan v. Minnehan, 147 N.E.2d 533, 671 (Mass. 1958) ("Unless necessary for the ward's maintenance [a conservator] cannot vary or change the ward's property so as to affect any alteration in its succession."). The deed that created the joint tenancy made clear that the parties' intent was to allow title to the property to vest in the survivor of the relationship. (R. pp. 191-192). This intent is further supported by Jeffcoat's testimony and the lack of disposition of the property in Perkins' will. (R. pp. 69, 71-72, 155-156, 159, 292). Williams' self-dealing sale of her mother's share of 1955 Old Fort to Williams for $10.00 "and love and affection" is contrary to Perkins' estate plan, *i.e.* that full title to the property vest in Jeffcoat at her death. This is a violation of Williams' fiduciary duty.[22]

An Alabama conservator has a limited number of activities he or she may conduct without court approval, none of which apply here. See Ala. Code § 26-2A-152(c). Williams has advanced the affidavit of Leslie T. Fields in support of the contention that Williams' sale of the 1955 Old Fort for $10, changing the estate from a joint tenancy with a right of survivorship to a tenancy in common, and subsequent partition action did not violate Ala. Code § 26-2A-152(d)(3). (R. pp. 219-222). This statute requires prior court approval to: "Dispose of any real property, including land in another state, for cash or on

[22] Judge Hughston recognized the significance of this transfer early in the hearing on Williams' first Motion for Summary Judgment: "Doesn't sound too good to start with." (R. p. 262).

credit, at public or private sale, and manage, develop, improve, partition, or change the character of estate real property". Ala. Code § 26-2A-152(d)(3). Fields argues that Williams' acts were permissible under Ala. Code § 26-2A-152(c)(1), which allows a conservator, without prior court order, to: "Collect, hold, and retain assets of the estate including land in another state and stocks of private corporations, until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested". Not only is Fields' argument contradicted by the plain language of the statute,[23] her affidavit is nothing more than legal argument, and is thus inadmissible. See Dawkins v. Fields, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003) ("In general, expert testimony on issues of law is inadmissible."); Id. at 66-67, 580 S.E.2d at 437 (finding the trial court properly refused to consider an affidavit that was a legal argument as to why summary judgment should be denied).

Williams also never fully addressed her conflicts of interest and self-dealing in her conservatorship. Williams was presumably the beneficiary of Perkins' trust. (R. p. 146). The terms of this trust are not part of the record, and for this reason alone summary judgment was premature and should have never been issued. See Mosteller v. Cty. of Lexington, 336 S.C. 360, 362, 520 S.E.2d 620, 621 (1999) (Summary judgment should not be granted if further development of the facts would assist in the application of the law.). Williams was a signatory on Perkins' checking account; if she was using these

[23] Even if Williams' self-dealing sale of 1955 Old Fort to Williams for $10.00 "and love and affection" were permissible without prior court approval, Williams would nonetheless need court approval for such an act of self-dealing under Ala. Code § 26-2A-150. While Williams did eventually obtain approval of this transaction, section 26-2A-150 requires notice, and Jeffcoat, whose property interest would be affected by this transfer, was never notified.

joint funds to avoid drawing on trust assets that she would eventually inherit, there existed a conflict of interest. E.g. Dowdy v. Jordan, 196 S.E.2d 160 (Ga.App. 1973) (conflict of interest because guardian depleted other assets in order to maximize his inheritance).

Alabama law provides:

> Any sale or encumbrance to or purchase from a conservator, the spouse, agent, attorney of a conservator, any person related to the conservator by blood or marriage within the fourth degree, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator which is affected by a substantial conflict between fiduciary and personal interests is voidable unless the transaction is approved by the court after notice as directed by the court.

Ala. Code § 26-2A-150 see also S.C. Code § 62-5-422 (substantially equivalent South Carolina law). From April to November of 2015, Williams, as signatory, used her mother's assets to help buy a mobile home, pay her daughter's college tuition, and generally support her family. (R. p. 143). Not only did these acts violate the July 7, 2015 Temporary Letters of Guardianship (which prohibited expending any of Perkins' funds), none of the orders of the Baldwin County Probate Court address the conflict between Williams as co-owner of Perkins' accounts and Williams as conservator of Perkins' assets.

The Master-in-Equity failed to acknowledge the existence of the evidence set forth above, which prevents any award of summary judgment for Williams and establishes that Jeffcoat is entitled to damages. This Court must reverse his order and remand this case for a trial on the merits.

E. There is a genuine issue of material fact as to Williams' slander of Jeffcoat's title to his home.

Jeffcoat has also alleged as a counterclaim that Williams has slandered his title through the filing of her deed, which he claims is invalid. (R. pp. 27-28, 165-166). "[T]o maintain an action for slander of title in South Carolina, the plaintiff must establish: (1) the publication (2) with malice (3) of a false statement (4) that is derogatory to plaintiff's title and (5) causes special damages (6) as a result of diminished value of the property in the eyes of third parties." Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 21-22, 567 S.E.2d 881, 892 (Ct. App. 2002) (quotations removed). As set forth earlier in this brief, Williams' title to 1955 Old Fort is void, and her assertion of legal title prevents Jeffcoat from providing marketable title to his property. The Master-in-Equity failed to acknowledge the existence of this evidence, which prevents any award of summary judgment for Williams and establishes that Jeffcoat is entitled to damages. This Court must reverse his order and remand this case for a trial on the merits.

F. There is a genuine issue of material fact as to Williams' lack of standing.

Jeffcoat has alleged as a defense Williams' lack of standing. (R. pp. 19, 24, 162). South Carolina is not required by the "full faith and credit" clause to recognize guardianship/conservatorship orders of other states. E.g. Easterly, *supra* (citing Morris v. Morris, 273 F.2d 678, 681 (7th Cir. 1960)). However, South Carolina's version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act does allow such recognition, provided a certified copy of the relevant order is filed of record with the Clerk of Court as a foreign judgment, and the certificate then issued by the Clerk of Court is filed with the Register of Deeds. S.C. Code § 62-5-716. There is no record that Williams performed any of these tasks, thus she has no right under South Carolina law to

any action as a guardian or conservator in this state. Accordingly, as a matter of law Williams lacked standing to pursue her action against Jeffcoat and the Master-in-Equity must be reversed. Id.; see generally ATC S., Inc. v. Charleston Cty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (standing).

III. Williams was unable to sever Perkins' and Jeffcoat's joint tenancy by her purported transfer of the property.

At common law, a joint tenant could unilaterally transfer, *inter vivos*, his or her share in the property, to a third party, thus resulting in the original tenant and the new tenant holding the property as tenants in common and extinguishing the right of survivorship in the remaining original tenant. However, in 2000, the state legislature enacted section 27-7-40, which displaced the common law of joint tenancy and, significantly for this action, enumerated the limited incidents by which a joint tenancy with a right of survivorship may be severed. None of these incidents allow for a unilateral partition by one tenant:

> SECTION 27-7-40. Creation of joint tenancy; filing; severance.
>
> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
>
> > (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> >
> > (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased

joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

(v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint

> tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.
>
> (c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

S.C. Code § 27-7-40. While this statute references that a joint tenancy with a right of survivorship may be created by "other methods...which may exist by law", it explicitly limits the destruction of a joint tenancy with a right of survivorship to the incidents enumerated in the statute. A well-settled rule of statutory construction is that any legislation which is in derogation of common law must be strictly construed and not extended in application beyond clear legislative intent. South Carolina Dep't of Soc. Servs. v. Wheaton, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App.1996). This rule applies to joint tenancy statutes. See e.g. Wendt v. Hane, 401 N.W.2d 457 (Minn. App. 1987); Powell v. American Charter Fed. S. & L., 514 N.W.2d 326 (Neb. 1994); O'Hagan v. U.S., 86 F.3d 776 (8th Cir. 1996). Section 27-7-40 is clear and unambiguous, and it provides the exclusive means by which a joint tenancy with rights of survivorship may be severed. Other than the death of one joint tenant, in which the interest passes to the other as a matter of law, or the conveyance by one tenant to another, there is no provision for severance that does not involve either the full consent of the other tenant or the order of a court of competent jurisdiction. Neither of these incidents are present here, and thus

Perkins (via Williams, her purported conservator) was not capable of alienating her interest in 1955 Old Fort as occurred in this action.

This result is entirely consistent with the intent of section 27-7-40, which provides: "The provisions of this section must be liberally construed to carry out the intentions of the parties." S.C. Code § 27-7-40(c). The record is replete with evidence of Sandra Perkins' intent to allow her interest in 1955 Old Fort to pass to Bradford Jeffcoat upon her death:

(a) The deed states this intent. (R. p. 61).

(b) According to Jeffcoat's July 12, 2016 affidavit:

> ...Before executing the new deed, Sandra and I discussed at length that when one of us passed away, it was our wish and intent that the house would automatically go to the survivor, which is why we chose to do a joint tenancy with a right of survivorship.
> ...
> Neither Sandra nor I wanted the other to have any problems from our respective beneficiaries in regard to our home. What Vanessa [Williams] is now doing is exactly what her mother did not want to happen, and what we worked diligently to avoid happening. Just as I would have never wanted any beneficiary(ies) of mine to attempt to put Sandra out of our/her home had I pre-deceased her, she also did not want any beneficiary(ies) of hers to try to take our/my home away from me.

(R. pp. 69, 71-72) (emphasis in original) (see also R. pp. 155-56, 159).

(c) According to Jeffcoat's trial counsel:

> Everything passed to [Perkins'] daughter [Williams] but the house. The house was omitted from the will, presumably because she knew it would pass automatically to Mr. Jeffcoat. [Perkins'] intent was clear at the beginning at the time they executed the deed, and she never changed her intent...

(R. p. 292). Accordingly, the Master-in-Equity's order was controlled by an error of law and this order must be reversed.

CONCLUSION

For the argument set forth above, Bradford Jeffcoat asks this Court to reverse the June 28, 2018 Order of the Charleston County Master-in-Equity and award Jeffcoat all such other and further relief as this Court deems just and proper.

Dated: 4/1/19

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

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SC Court of Appeals

Appellate Case No. 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins.....Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, Inc.....Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is.....Appellant.

FINAL BRIEF OF THE RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

ISSUES ON APPEAL.....1

STATEMENT OF THE FACTS.....1

ARGUMENT.....3

I. The Baldwin County Probate Court held subject matter jurisdiction over the guardianship and conservatorship proceedings regarding Sandra Perkins.....3

A. Attacks on Subject Matter Jurisdiction are limited in nature.....3

B. The Baldwin County Probate Court was properly informed on its jurisdiction and properly followed the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.....4

II. There are no material facts in dispute despite the Appellant's mischaracterization of Williams's actions.....8

A. Standard of Review.....8

B. Appellant is estopped from claiming issues of material fact when he took the opposite position in his motion for summary judgment.....9

C. Appellant's arguments that there are multiple issues of material fact are duplicitous considering his arguments at the trial court level.....10

III. Williams' transfer of real property on behalf of her ward, Perkins was lawful.....10

A. A Joint Tenancy with right of survivorship is severed by a Tenant's conveyance of property interest to a third party.....10

B. Alabama Law permits a Conservator to Collect Hold and Retain property in another state.....16

CONCLUSION.....17

TABLE OF AUTHORITIES

Cases

Alexander v. Boyer, 253 Md. 511 (Md. 1969) 11

Edwin Smith LLC v. Synergy Operating LLC, 2012-NMSC-034 (N.M. 2012) 11

Estate of England, 233 Cal.App.3d 1 (1991) 11

Estate of Gulledge, 673 A.2d 1278 (D.C. 1996) 11

Estate of Knickerbocker, In re, 912 P.2d 969 (Utah 1996) 11

Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass, 359 S.C. 407 (Ct. App. 2004) 13

Foucart v. Paul, 516 So.2d 1035 (Fla.App. 5 Dist. 1987) 11

Halleck v. Halleck, 216 Or. 23 (Or. 1959) 11

Harmes v. Sprague, 105 Ill.2d 215 (Ill. 1984) 11

Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997) 9

Home Trust Mercantile Bank v. Staggs, 714 S.W.2d 792 (Mo.App. E.D. 1986) 11

Hoover v. El Paso Nat. Bank, 498 S.W.2d 276 (Tex.Civ.App. -- El Paso 1973) 11

Ianotti v. Ciccio, 219 Conn. 36 (Conn. 1991) 11

In re Estate of Bernecker, 654 A.2d 246 (Pa.Cmwlth. 1995) 11

Jenkins v. Jenkins, 8 S.C.L. (1 Mill Const.) 48, 52 (1817) 13

Johnson v. Gray, 533 N.W.2d 57 (Minn. App. 1995) 11

Kelly v. Foti, 77 F.3d 819, 823 (5th Cir. 1996) 10

Kensington Rock Island L.P. v. American Eagle Historic Partners, 921 F.2d 122, 124-25 (7th Cir. 1990) 10

Lyon v. Lyon, 100 Wn.2d 409 (Wash. 1983) 11

Marchel v. Estate of Marchel, 349 Wis.2d 707 (Wis. App. 2013) 11

Matter of Estate of Bates, 492 N.W.2d 704 (Iowa App. 1992) 11

McLaughlin v. Williams, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct. App. 2008).....9

Millikin v. Meyer, 311 U.S. 457 (1940).....3

Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005).....9

Nunn v. Keith, 289 Ala. 518 (1972).....11

Reicherter v. McCauley, 47 Kan.App.2d 968 (Kan. App. 2012) 11

Shockly v. Halbig, 75 A.2d 512 (Del.Ch. 1950).....11

Smith v. Cutler, 623 S.E.2d 644 at 647 (S.C. 2005).....14, 16

Smith v. Kofstad, 206 P.3d 441 (Alaska 2009) 11

Smith v. Rucker, 357 S.C. 532, 593 S.E.2d 497, 499 (Ct. App. 2004).....13

Smith v. Tang, 100 Ariz. 196 (1996) 11

Taylor v. Canterbury, 92 P.3d 961 (Colo. 2004) 11

Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011).....8

V.L. v. E.L., 136 S.Ct. 1017 (2016).....3

Valdez v. Occupants of 3908 SW 24th Street, 270 P.3d 143 (Okla. 2011) 11

Wilkins v. Young (1895) 144 Ind 1.....11

Williamson v. Williamson, 157 A.2d 110 (R.I. 1960) 11

Statutes

Ala. Code § 26-2A-145.....2, 16

Ala. Code § 26-2A-152.....3, 16, 17

Ala. Code § 26-2B-201.....4, 5

Ala. Code § 26-2B-203.....4, 5

Ala. Code § 26-2B-204.....5

Ala. Code § 26-2B-208.....6

S.C. Code § 15-61-10.....3

S.C. Code § 27-7-40 .....12, 14, 15

S.C. Code § 62-5-309.....6, 7

Other Authorities

Black's Law Dictionary (10th ed. 2014).....11, 15

Journals

What acts by one or more of joint tenants will sever or terminate the tenancy 64 A.L.R. 2d 918 § 2 (Originally published in 1959); 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7-9.....11

Legislative History

S.C. Gen. Assemb. Act No. 398, Section 2. Reg. Sess. 1999-2000 (2000).....15

Rules

Rule 56, SCRCP.....8, 9

ISSUES ON APPEAL

The Respondent disagrees with the following issue raised by the Appellant in this matter.

II. Did the Master-in-Equity err in ordering partition and sale of Bradford Jeffcoat's home pursuant to a summary judgment motion when the record contained substantial evidence of misconduct that would have prohibited such relief?

For the reasons addressed herein, the Appellant should be precluded from raising the newly argued issues of alleged substantial evidence of misconduct as articulated in Argument section II.

FACTS

Respondent, Vanessa Williams ("Williams" or "Respondent"), is the daughter of Sandra Perkins ("Perkins"). Prior to her move to Alabama, Perkins and the Appellant, Bradford Q. Jeffcoat, Jr. ("Jeffcoat" or "Appellant") had been roommates for approximately fifteen (15) years (R. pp. 146-147). On April 28, 2000, Jeffcoat bought ownership in a residential property in Charleston, South Carolina. (R. p. 69 lines 2-5; pp. 155-156 lines 2-6; pp. 93-97). Shortly after his purchase, on July 1, 2000, Jeffcoat conveyed a half interest to Perkins in exchange for a mortgage in the amount of $43,550.00. (R. p. 69, lines 2-5). It is undisputed that Perkins paid all of the principal and interest (at 7.5% fixed rate for 15 years) on the mortgage and that the mortgage has since been released. (R. pp. 102-113; pp. 114-115). Accordingly, on or about June 1, 2015, Perkins held an unencumbered estate in fee simple in the subject property with Jeffcoat as joint tenants with right of survivorship and not as tenants in common.

Prior to her death in November of 2015, Perkins suffered from advanced dementia. (R. p. 145). Her condition began to rapidly deteriorate in the summer of 2015 and after being informed by Jeffcoat of her mother's infirmities, Williams drove to Charleston in order to assess the situation. (R. p. 143). Upon observing her mother's condition and determining that, as Perkins' only child, she would be the most appropriate person to provide for her mother's care going

forward, Williams left Charleston on or about June 16, 2015 and brought Perkins back to Alabama to live with her. (R. p. 143).

After consulting with legal counsel in Alabama, Williams concluded that the best way to provide for her mother was to become her Guardian and Conservator. Correspondingly, Williams petitioned the Probate Court of Baldwin County and was issued permanent Letters of Guardianship/Conservatorship on September 15, 2015. (R. p. 209).

Thereafter, as fiduciary, Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, and that as conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, she consulted with the Law Firm of Clawson & Staubes, LLC in South Carolina. Based on the advice of counsel, Williams, as conservator, decided to pursue a partition action on behalf of Perkins against Jeffcoat. (R. p. 83, line 5).

In early November 2015, while counsel was working on drafting the complaint for this partition action, Williams received the unfortunate news that her mother's health had suddenly taken a turn for the worse, and death was imminent. (R. p. 83, lines 7-9; p. 175, lines 7-9). Given that the subject property was still in the names of Perkins and Jeffcoat and held as joint tenants with right of survivorship, the death of Perkins would result in Jeffcoat being the sole owner of said property. As a result, Williams, upon advice of counsel, decided that the best way to fulfil her duties was to sever her mother's joint tenancy and then pursue partition. (R. p. 83, lines 10-14; p. 175, lines 10-14).

Accordingly, pursuant to the advice of her Alabama and South Carolina counsel, Williams conveyed Perkins' interest in the subject property to herself on November 16, 2015, severing the

joint tenancy and creating a tenancy in common with Jeffcoat. (R. pp. 120-121). Perkins died on November 27, 2015. (R. p. 142). In conveying the subject property to herself, Williams acted in the only way possible to retain the asset on behalf of Perkins' estate until determining its ultimate disposition. She took this action in accordance with Ala. Code § 26-2A-152(c)1 (1975). The conveyance was approved by order of the Probate Court of Baldwin County on January 15, 2016 while applying Ala. Code § 26-2A-152(c)1 (1975). (R. p. 125). Having severed the joint tenancy with Jeffcoat by destroying the unity of time, Williams then sought judicial partition pursuant to S.C. Code Ann. § 15-61-10 et seq. (1986), by complaint filed in this Honorable Court on November 23, 2015. (R. pp. 7-16).

ARGUMENT

I. The Baldwin County Probate Court held subject matter jurisdiction over the guardianship and conservatorship proceedings regarding Sandra Perkins.

Williams' authority to act as guardian and conservator was appropriately granted by the Baldwin County Probate Court after proper notice and an open hearing on the facts of the case. Moreover, collateral challenges to subject matter jurisdiction in another state are limited to inquiries as to whether a judgment on its face shows that it was rendered by a court of competent jurisdiction but are not subject to attack on the merits of its decision. V.L. v. E.L., 136 S.Ct. 1017 (2016).

A. Attacks on Subject Matter Jurisdiction are limited in nature

A court in another state may explore the jurisdictional basis of a foreign court's order, but only in a limited way. It is well established law that where "the judgment on its face appears to be a 'record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or the record itself." Millikin v. Meyer, 311 U.S. 457 (1940); V.L. v. E.L., 136 S.Ct. 1017 (2016).

B. The Baldwin County Probate Court was properly informed on its jurisdiction and properly followed the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

The Baldwin County Probate Court has jurisdiction to appoint guardians pursuant to Ala. Code §§ 26-2B-203. Under this section there are several scenarios by which a petitioner may invoke the subject matter jurisdiction of the Baldwin County Probate Court. The first way is if Alabama is the home state of the respondent. Ala. Code § 26-2B-203(a)(1). "Home State" is defined by Ala. Code § 26-2B-201(a)(2) as follows:

> The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

There is no dispute that Alabama was not the home state of Perkins at the time of Williams' petition for guardianship and conservatorship and the adjudication of this matter.

The second way jurisdiction is invoked is through a significant connection to the state of Alabama as well as the following additional considerations promulgated in Ala. Code § 26-2B-201(B):

> (i) a petition for an appointment or order is not filed in the respondent's home state;
>
> (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and
>
> (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 26-2B-206;

Moreover, in order to evaluate whether there is a "significant connection" the court is required by Ala. Code § 26-2B-201(a)(3) to consider the following factors:

> (1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Accordingly, the determination as to subject matter jurisdiction with respect to "significant connection" requires an analysis by the Judge of Probate at the time of the hearing.

Contrary to the allegations made by the Appellant, the emergency petition that was filed in this matter and the subsequent petition for permanent guardianship does not conceal the fact that South Carolina was Perkins home state. The emergency petition states in paragraph 2 "[t]hat SANDRA P. PERKINS has been residing in Baldwin County, Alabama for the last seven (7) days from the date hereof." Paragraph 3 states "[t]hat prior to residing in Baldwin County, Alabama, SANDRA P. PERKINS resided in Charleston, South Carolina." Paragraph 10 states "[a]dditionally and pursuant to Ala. Code. §§ 26-2B-201(a)(3) and 26-2B-201(b), SANDRA P. PERKINS has significant connection with County of Baldwin, State of Alabama. SANDRA P. PERKINS's only child resides in Lillian, Alabama and a substantial amount of her assets are held in a brokerage firm in Foley, Alabama." (R. pp. 305-308). The petition further disclosed that "pursuant to 26-2B-203, a petition for appointment of a guardian or order is not pending in a court in the State of South Carolina." (R. pp. 305-308). It is abundantly clear that the petition acknowledges South Carolina as Perkins' home state and further pleads that the court take jurisdiction pursuant to Perkins' significant connection to Alabama. (R. pp. 305-308).

Likewise, the Probate Court did not assume special jurisdiction over this matter as there were no submissions or allegations made in either petition with respect to Ala. Code. § 26-2B-204(b). Accordingly, the speculative argument that a South Carolina court would have had the

ability to dismiss this action upon request of the Alabama court is without merit. Since the Alabama court was never asked to consider its special jurisdiction and clearly acted pursuant to jurisdiction obtained through significant connection to Alabama, the Appellants are attacking a strawman and attempting to distract from the fact that the petitioner was transparent in her assertion that Perkins had been moved from South Carolina to Alabama only seven days prior to the petition; that Williams was her only child; that Perkins was not married; that Williams was appointed by Perkins as her first choice as attorney-in-fact which would come into effect in the event of disability or incapacity; and that all of these factors were considered by the Probate Court where Perkins was represented by a guardian *ad litem*. (R. pp. 319-326; pp. 327-339; pp. 310-312). The idea that information regarding Perkins home state was withheld from the Probate Court of Baldwin County demonstrates a selective and gratuitous reading of the petition.

The Appellants' argument that Jeffcoat was entitled to notice of the hearing in Alabama is equally baseless. The law in Alabama requires that if Alabama is not the home state of the respondent, then the petitioner must give notice to those persons who would be entitled to notice if the petition was brought in the respondent's home state. Ala. Code § 26-2B-208. Looking to S.C. Code § 62-5-309, the Appellants assert that Jeffcoat had "care and custody" of Perkins at the time of the petition. Care and custody is not a clearly defined term in the statute, but there can be no dispute that Perkins was in the care and custody of Williams at the time of the petition and hearing. Williams was designated as Health Care Agent for Perkins pursuant to a Health Care Power of Attorney executed on November 19, 2009. (R. pp. 319-326). Jeffcoat, while admittedly living with Perkins prior to the move to Alabama, never had care or custody of Perkins at the time of the petition or immediately before it. There is nothing in the record that indicates that Jeffcoat was under any obligation to care for Perkins nor did he have a right to her custody. Despite the

fact that Perkins lived with Jeffcoat for over fifteen years, there was no familial or legal relationship between him and her, which would have required notice to Jeffcoat pursuant to S.C. Code § 62-5-309.

The contention by the Appellant that Williams failed to inform the Probate Court of the South Carolina proceedings is also untrue. This fallacious allegation ignores the motion filed on January 11, 2016, which discloses the exact course of action taken by Williams in South Carolina and further explains the rationale of her decision to transfer Perkins' half interest in the property in question in order to preserve it for her estate. (R. pp. 313-317). The Appellants suggest that Williams' motion was "an attempt to address Jeffcoat's counterclaim without informing the Probate Court of the existence of the litigation." The motion states that "in November 2015, the law firm of Clawson & Staubes LLC in South Carolina was assisting Perkins with drafting a complaint requesting that said Real Property be partitioned via sale and the proceeds from sale be divided between Perkins and Jeffcoat." (R. pp. 313-317). The actual lawsuit was filed on November 23, 2015, which was only four days before Perkins death. The counterclaim by Jeffcoat disputing the transfer in question was filed on December 29, 2015. Given the circumstances, the Probate Court of Baldwin County was made aware of the South Carolina lawsuit in a timely fashion and the Motion to Approve Transfer of Real Property filed on January 11, 2016, was a transparent effort to inform the court of the circumstances of the transfer and the pending partition action.

A plain reading of the petitions filed in the Probate Court of Baldwin County shows that the decree granting Guardianship and Conservatorship to Williams was on its face rendered by a court of competent jurisdiction. Ruling otherwise requires a presumption that the court did not make the inquiries required of it in the statute. The court was clearly made aware of the fact that

the petitioner sought to invoke jurisdiction through Williams significant connection to the state of Alabama, and it was within its power to find jurisdiction even if it did not publish those reasons in its Order granting Letters of Guardianship and Conservatorship. (R. p. 117-119). The material facts were presented to the court; all parties entitled to notice were in fact notified; and there is nothing in the record or extrinsic evidence that shows otherwise. This Court, therefore, has no grounds to further review the subject matter jurisdiction of Probate Court of Baldwin County, and should therefore not disturb its rulings.

II. There are no material facts in dispute despite the Appellant's mischaracterization of Williams's actions.

Following the mere scintilla rule, the record, when viewed in a light most favorable to Jeffcoat fails to create a material issue of fact. All of the transactions were done under the supervision of the court and on advice of legal counsel. Williams was Perkins only child and only immediate family member. Furthermore, Williams held a power of attorney, which would have allowed her to undertake all of the same actions without court supervision if she was seeking to be deceitful. As the Appellant acknowledged in his own motion for summary judgment, there is no factual dispute to be litigated. (R. p. 235, line 21; p. 265, lines 2-5; p. 287, lines 18-19). Upon losing his arguments on summary judgment, the Appellant is now seeking to reopen factual inquiries that he previously viewed as immaterial.

A. Standard of Review

Summary Judgment is governed by Rule 56 of the South Carolina Rules of Civil Procedure. Turner v. Milliman, 392 S.C. 116, 121-22, 708 S.E.2d 766, 769 (2011). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Id. at 122, 708 S.E.2d at 769. "To determine whether any triable issues of fact exist, the reviewing court

must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party." McLaughlin v. Williams, 379 S.C. 451, 455-56, 665 S.E.2d 667, 670 (Ct. App. 2008). To withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.

"The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 220, 616 S.E.2d 722, 730 (Ct. App. 2005). "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, ... the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id.

B. Appellant is estopped from claiming issues of material fact when he took the opposite position in his motion for summary judgment.

Judicial estoppel prevents a party from taking a position contrary to one taken earlier in the litigation. Hayne Federal Credit Union v. Bailey, 327 S.C. 242 (1997). The Appellant filed a motion for summary judgment on April 17, 2018. (R. p. 235, line 21). In his motion, the Appellant asked the court to accept the facts as presented therein and rule that the transfer of title by Perkins by her conservator, Williams was invalid because the transfer did not comply with severance requirements under South Carolina law, and because Williams did not comply with Alabama statutes regarding a conservator's ability to dispose of real property in another state. (R. pp. 235-236). The Appellant concluded that there were no disputed facts in the case and asked the Master in Equity to rule only on the transfer of real property and whether it was in accordance with Alabama and South Carolina Law. (R. p. 235, line 21). It is clear that this was an apathetic attempt to have it both ways. The Appellant essentially takes the position that so long as the Master in Equity agrees with our position on the law, then we accept that there are no material issues of fact;

however, if otherwise, then there are material issues that underlie the entire action that will render the actions of the Respondent void.

C. Appellant's arguments that there are multiple issues of material fact are duplicitous considering his arguments at the trial court level.

While not binding on this court, the 7th Circuit has opined that an argument cannot be preserved if it is only raised in a "perfunctory and underdeveloped manner" Kensington Rock Island L.P. v. American Eagle Historic Partners, 921 F.2d 122, 124-25 (7th Cir. 1990). Likewise, the 5th Circuit has ruled that in preserving arguments, a party must "press and not merely intimate" an argument. Kelly v. Foti, 77 F.3d 819, 823 (5th Cir. 1996). It is clear that the Appellant did not press its arguments with respect to disputed facts, and actually believed that those alleged disputed facts were immaterial to the transfer of real property. If he had thought otherwise, then the Appellant would not have filed a motion for summary judgment with the Master in Equity. Unlike the superficial emphasis on counterclaims and affirmative defenses found in its motion for summary judgment, Jeffcoat now conveniently argues that the factual allegations advanced on his counterclaims were actually material underpinnings to the alleged unlawful transfer of real property. This is a different position than the one advanced in Jeffcoat's motion for summary judgment, and it is plain that Jeffcoat expected the entire matter of the transfer of real property to be decided as a question of law. (R. pp. 225-236). Framing the issues on appeal now as questions of fact that were not considered by the Master in Equity conveniently ignores the Appellant's previous theory of the case and introduces new issues that were not pressed in the second summary judgment hearing or at best were introduced in a heedless manner.

III. Williams' transfer of real property on behalf of her ward, Perkins was lawful.

A. A Joint Tenancy with right of survivorship is severed by a Tenant's conveyance of property interest to a third party.

It is difficult to point directly to the primary source of the rules governing the severance of

tenancies at common law just as it is difficult to source the direct cases from the ancient common law that established joint tenancies or tenancies in common. Numerous cases, however, in common law jurisdictions refer to the form of severance contemplated by the Respondent in this case.[1] Furthermore, other academic and secondary source publications make reference to this common law property rule. "In the ancient language of the law, joint tenants were said to hold ***per my et per tout***".[2] The preceding phrase is defined as "[b]y the half and by the whole". It is further described as:

> [T]he estate [undivided share] held by joint tenants; by the half for purposes of survivorship, by the whole for purposes of alienation.[3]

Accordingly, the concept of joint tenancy under the common law allows each owner to hold an undivided share which vests in the survivor upon the death of the first joint tenant, but which is also a wholly owned share which may be completely alienated during the lifetime of the tenant.[4]

S.C. Code § 27-7-40 provides several non-exclusive mechanisms by which a joint tenancy with right of survivorship may be created and severed in South Carolina. Section 27-7-40 in its

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[1] Nunn v. Keith, 289 Ala. 518 (1972); Smith v. Kofstad, 206 P.3d 441 (Alaska 2009); Estate of England, 233 Cal.App.3d 1 (1991); Alexander v. Boyer, 253 Md. 511 (Md. 1969); Matter of Estate of Bates, 492 N.W.2d 704 (Iowa App. 1992); Harmes v. Sprague, 105 Ill.2d 215 (Ill. 1984); Home Trust Mercantile Bank v. Staggs, 714 S.W.2d 792 (Mo. App. E.D. 1986); Smith v. Tang, 100 Ariz. 196 (1996); Reicherter v. McCauley, 47 Kan.App.2d 968 (Kan. App. 2012); Estate of Knickerbocker, In re, 912 P.2d 969 (Utah 1996); Estate of Gulledge, 673 A.2d 1278 (D.C. 1996); Marchel v. Estate of Marchel, 349 Wis.2d 707 (Wis. App. 2013); Hoover v. El Paso Nat. Bank, 498 S.W.2d 276 (Tex. Civ. App. -- El Paso 1973); Ianotti v. Ciccio, 219 Conn. 36 (Conn. 1991); Edwin Smith LLC v. Synergy Operating LLC, 2012 -NMSC- 034 (N.M. 2012); Johnson v. Gray, 533 N.W.2d 57 (Minn. App. 1995); Valdez v. Occupants of 3908 SW 24th Street, 270 P.3d 143 (Okla. 2011); Williamson v. Williamson, 157 A.2d 110 (R.I. 1960); Lyon v. Lyon, 100 Wn.2d 409 (Wash. 1983); In re Estate of Bernecker, 654 A.2d 246 (Pa.Cmwlth. 1995); Foucart v. Paul, 516 So.2d 1035 (Fla. App. 5 Dist. 1987); Taylor v. Canterbury, 92 P.3d 961 (Colo. 2004); Shockly v. Halbig, 75 A.2d 512 (Del. Ch. 1950); Halleck v. Halleck, 216 Or. 23 (Or. 1959).

[2] Wilkins v. Young (1895) 144 Ind 1.

[3] Black's Law Dictionary (10th ed. 2014), ("per my et per tout").

[4] What acts by one or more of joint tenants will sever or terminate the tenancy 64 A.L.R. 2d 918 § 2 (Originally published in 1959); 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7-9.

entirety states:

(a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:

(i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.

(ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

(v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

(ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.

(b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.

(c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

As argued in the Williams' motion for summary judgment, the statute acknowledges common law methods for creating a joint tenancy with right of survivorship, to wit: "[i]n addition to any other methods for the creation of a joint tenancy in real estate which may exist by law". The statute plainly envisages that there are other ways to create a joint tenancy in South Carolina. Accordingly, statutory creation of a joint tenancy is not exclusive and common law rules for the creation of a joint tenancy are still recognized. The Court of Appeals affirmed this rule in Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass, 359 S.C. 407 (Ct. App. 2004), opining:

> Appellant asserts that, at most, Rosemary's 1985 deed created a tenancy in common. "The common law method of creating a joint tenancy requires a conveyance to have four unities: unity of interest, unity of title, unity of time, and unity of possession." Smith v. Rucker, 357 S.C. 532, 593 S.E.2d 497, 499 (Ct. App. 2004) (citing Jenkins v. Jenkins, 8 S.C.L. (1 Mill Const.) 48, 52 (1817)).

Therefore, a joint tenancy with right of survivorship is established where the grant or devise

conveys unity of title, unity of interest, and unity of possession to two or more tenants at the same time.

By implication, statutory severance is likewise not the exclusive mechanism for destroying a joint tenancy. The common law rules for severance still apply and the destruction of one of the required unities of title destroys the joint tenancy and renders property holders "tenants in common." In Smith v. Cutler, 623 S.E.2d 644 at 647 (S.C. 2005), Chief Justice Toal held that in South Carolina, "unlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."

Contrary to this holding, the Appellant reads into the statute that destruction of the joint tenancy is "limited to" the ways enumerated in S.C. Code 27-7-40(a). The statute does state that a "joint tenancy includes and is limited to, the following incidents of ownership:" and then goes on to list eight ways in which an interest of a joint tenant may vest upon the death, conveyance, divorce, or judicial sale. The legislative history of this section, however, suggests that there was no intention of subsuming the common law on the issue of severance.

S.C. Code 27-7-40(a) was introduced for the first time in March of 2000. The bill underwent several revisions before its adoption. Most notably, in the original bill, § 27-7-40(a)(iii) & (iv) read as follows:

> (iii) The fee interest in real estate held in joint tenancy may not be encumbered **or conveyed** to a third party or parties by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance **or conveyance**.
>
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance **or deed of conveyance**, the interest in the real estate shall be effectively encumbered **or conveyed** to a third party or parties.[5]

Subsequent revisions, however, resulted in the current language of the statute that removes the

[5] S.C. Gen. Assemb. Act No. 398, Section 2. Reg. Sess. 1999-2000 (2000).

language contemplating unilateral conveyances, and those sections now read as follows (with previous language struck):

> (iii) The fee interest in real estate held in joint tenancy may not be encumbered ~~[or conveyed]~~ by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance ~~[or conveyance]~~.
>
> (iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance ~~[or deed of conveyance]~~, the interest in the real estate is effectively encumbered ~~[or conveyed]~~ to a third party or parties.

The implication of the legislature removing language that would undeniably prohibit the unilateral severance of a joint tenancy seems to be that it did not intend to proscribe this common law method of severing joint tenancies. Furthermore, it is clear that "encumbrance" and "conveyance" are not synonymous for the purposes of this statute. Given the legislative history and the plain meaning of encumbrance, conveyances are excluded from the definition. According to Black's Law Dictionary, encumbrance means:

> encumbrance n. (16c) A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. • An encumbrance cannot defeat the transfer of possession, but it remains after the property or right is transferred. — Also spelled incumbrance. — encumber, vb
>
> or:
>
> Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.[6]

Applying the law to the facts of the case at bar results in a tenancy in common with Williams and Jeffcoat each holding a one-half interest in the subject property. The subject property was conveyed from Sandra P. Perkins, who held a joint survivorship interest with Bradford Q. Jeffcoat, Jr., to Vanessa Williams on November 16, 2015. This conveyance severed the unity of time requirement with respect to the new tenancy, which in turn severed the joint tenancy with

[6] Black's Law Dictionary (10th ed. 2014), encumbrance

right of survivorship. The Supreme Court in Smith v. Cutler spells out exactly what language to include in the granting clause and habendum clause of a deed to create an indestructible tenancy in common:

> "[w]e hold that the use of the phrase "for and during their joint lives and upon the death of either of them, then to the survivor of them" indicates an intention of the parties to share a tenancy in common for life, with cross remainders for life, with remainder in fee to the ultimate survivor." 366 S.C. at 551, 623 S.E.2d at 647.

Had Perkins and Jeffcoat chosen the above language, then the conveyance by Perkins would have failed. Having opted instead for joint tenancy with right of survivorship, the parties impliedly contemplated the fact that either party may sever the joint tenancy by conveyance to a third party.

B. Alabama Law permits a Conservator to Collect Hold and Retain property in another state.

The Appellant argues that Alabama Law does not permit a conservator to transfer property to herself without court approval. Ala. Code § 26-2A-152(d)(3) (1975) proscribes the disposal of real property for cash or credit. The Respondent, by contrast, sought to protect a valuable asset of Perkins' estate by conveying it to herself as fiduciary. As fiduciary, Williams owed a duty to manage the estate of her ward with the skill of a "prudent person dealing with the property of another." Ala. Code § 26-2A-145 (1975). Considering the wishes of her mother, the fact that her mother had paid valuable consideration for her interest in the subject property, the fact that her mother named her as power of attorney, and the fact that as a conservator, she was required to retain and protect the assets of her mother and/or mother's estate by law, Williams consulted with legal counsel in Alabama and South Carolina in order to determine how to sever the joint tenancy. This was not an act of "bad faith" or one of "self-dealing." It was done in consultation with professionals in both states in a manner that was designed to follow the law of both states.

Without the conveyance, a valuable asset of the estate would have been lost to the

survivorship clause in the July 1, 2000 deed in contradiction of Williams duties under Alabama law. § 26-2A-152(c)(1) provides that a conservator may act without court authorization to:

> Collect, hold, and retain assets of the estate including land in another state and stocks of private corporations, until determining that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested.

Thus, it is appropriate and permissible for a conservator to hold property in her own name in order to determine the final disposition of said property. The statute manifestly provides for conservators to act in the very manner that Williams did in this scenario, just as her ward could have done had she the mental capacity to do so. It is likewise impossible for this statute to have any meaning with respect to land if it does not allow for conveyances such as this one as it is futile to attempt a transfer of property without a deed.

Furthermore, the allegations that Williams "kidnapped" Perkins are spurious and insensitive. Perkins had named her daughter, Williams, as her power of attorney, and her actions at all times were disclosed and were undertaken under the supervision of the Probate Court of Baldwin County, Alabama. Despite the purported affection Jeffcoat claims toward Perkins prior to her death, the fact remains that he was not her first choice for caregiver or fiduciary, and had absolutely no rights to act on behalf of Perkins, to be informed of her status or otherwise. Williams on the other hand, accepting her appointed role, did the best she could to care for her mother and protect her assets. This required Williams to move her mother into her own home, which was the reason for Perkins' move to Alabama.

CONCLUSION

Based on the forgoing arguments, Vanessa Williams prays this honorable court deny Bradford Jeffcoat's appeal and sustain the June 28, 2018 Order of the Charleston County Master-

in-Equity. Vanessa Williams prays for such other and further relief as this Court deems just and proper.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough
Master-in-Equity

Case No. 2018-000761

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SC Court of Appeals

Vanessa Williams, Vanessa Williams, as
Conservator and Guardian of Sandra P. Perkins,
and Vanessa Williams, as Personal Representative
of the Estate of Sandra P. Perkins ..... Respondents,

v.

Bradford Q. Jeffcoat, Jr. and
Blue Heron Builders, Inc. ..... Defendants,
of whom
Bradford Q. Jeffcoat, Jr. is ..... Appellant.

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT IN REPLY 1

I. Jeffcoat is properly attacking the jurisdiction of the Baldwin County Probate Court. 1

II. Jeffcoat never lost the right to assert his counterclaims in this matter, which were dismissed in violation of Rule 56, SCRCP. 5

III. Williams does not properly interpret section 27-7-40 of the South Carolina Code. 7

IV. Williams maintains a strained interpretation of section 26-2A-152 of the Alabama Code to support her post-hoc justification of self-dealing. 9

V. Williams' durable springing power of attorney supports a finding of breach of fiduciary duty against her. 9

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997) 1

Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004) 6

Fender v. Fender, 285 S.C. 260, 329 S.E.2d 430 (1985) 10

Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997) 6

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) 7

Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000) 7

Huggins v. Huggins, 107 S.C. 470, 93 S.E. 129 (1917) 11

McLeod v. Sandy Island Corp., 260 S.C. 209, 195 S.E.2d 178 (1973) 1

Middleton v. Suber, 300 S.C. 402, 388 S.E.2d 639 (1990) 11

Peoples Nat'l Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857 (1954) 1

South Carolina Dep't of Soc. Servs. v. Wheaton, 323 S.C. 299, 474 S.E.2d 156 (Ct.App.1996) 8

V.L. v. E.L., 136 S.Ct. 1017 (2016) 1

Statutes

Act No. 398, 2000 S.C. Acts ___ 8

Ala. Code § 26-2A-152 ..... 9, 10

Ala. Code § 26-2B-101 1

Ala. Code § 26-2B-201 2

Ala. Code § 26-2B-203 ..... 2, 3

Ala. Code § 26-2B-206 4

S.C. Code § 27-7-40 ..... 7, 8

S.C. Code § 62-5-309 (Supp. 2015) 4

S.C. Code § 62-8-108 10

S.C. Code § 62-8-201 10

Treatises

Blacks Law Dictionary (8th ed. 2004) 11

ARGUMENT IN REPLY

I. Jeffcoat is properly attacking the jurisdiction of the Baldwin County Probate Court.

Jeffcoat agrees with Williams' argument that collateral attacks on foreign judgments are limited in nature. (Resp. Brief pp. 3-4). Jeffcoat's attack on the subject matter jurisdiction and personal jurisdiction of the Baldwin County Probate Court is exactly the type of limited inquiry allowed by law. E.g. Peoples Nat'l Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857 (1954); Colonial Pacific Leasing Corp. v. Taylor, 326 S.C. 529, 484 S.E.2d 595 (Ct. App. 1997); McLeod v. Sandy Island Corp., 260 S.C. 209, 195 S.E.2d 178 (1973). The case law cited by Williams further supports Jeffcoat's entitlement to seek relief:

> **Where a judgment rendered in one state is challenged in another, a want of jurisdiction over either the person or the subject matter is of course open to inquiry.** But if the judgment on its face appears to be a "record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself." In such case the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based. Whatever mistakes of law may underlie the judgment…it is "conclusive as to all the *media concludendi*."

Millikin v. Meyer, 311 U.S. 457, 462 (1940) (emphasis added) (citations removed).[1] Probate Courts in the state of Alabama are courts of limited jurisdiction, and their jurisdiction in guardianship and conservatorship matters is governed by the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Ala. Code § 26-2B-101 *et seq.*

[1] V.L. v. E.L., 136 S.Ct. 1017 (2016), also cited by Williams, likewise stands for the proposition that a foreign judgment may be attack for lack of jurisdiction.

All of the Baldwin County Probate Court's orders, on their face, are silent as to the basis for the court's jurisdiction over Sandra Perkins. (R. pp. 209-212, 309). Williams contends that the Baldwin County Probate Court had "significant connection" jurisdiction.[2] (Resp. Brief pp. 4-8). A determination that Alabama is a "significant-connection state" is fact-intensive and requires the consideration of many factors:

> ...
> (3) SIGNIFICANT-CONNECTION STATE. A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.
>
> (b) In determining under Section 26-2B-203 and subsection (e) of Section 26-2B-301 whether a respondent has a significant connection with a particular state, the court shall consider:
>
> (1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
>
> (2) the length of time the respondent at any time was physically present in the state and the duration of any absence;
>
> (3) the location of the respondent's property; and
>
> (4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Ala. Code § 26-2B-201.

> (a) A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:
>
> ...
>
> (2) on the date the petition is filed, this state is a significant-connection state and:

[2] It appears that all parties to this appeal agree that the Baldwin County Probate Court did not have jurisdiction over Sandra Perkins under any other type of jurisdiction (*e.g.* "home state" or "special jurisdiction"). See Ala. Code §§ 26-2B-203(a)(1), (a)(3), & (a)(4).

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 26-2B-206;

Ala. Code § 26-2B-203.

(c) In determining whether it is an appropriate forum, the court **shall** consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

> (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
>
> (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Ala. Code § 26-2B-206 (emphasis added).

The Baldwin County Probate Court's orders do not address the vast majority of these factors (despite mandatory language found in section 26-2B-206(c)), and do not even cite these jurisdictional statutes. Williams even concedes as much in her brief: "The court was clearly made aware of the fact that the petitioner sought to invoke jurisdiction through Williams['] significant connection to the state of Alabama, and it was within its power to find jurisdiction even if it did not publish those reasons in its Order..." (Resp. Brief p. 8). Accordingly, this Court must find that the Baldwin County Probate Court lacked jurisdiction in this matter.

Williams acknowledges that S.C. Code § 62-5-309(A)(2) (Supp. 2015) requires notice of the guardianship/conservatorship proceedings to a person who has the "care and custody" of the subject of the proceedings. (Resp. Brief pp. 6-7). However, Williams argues that because Perkins had been removed from Jeffcoat's home in South Carolina, he no longer had "care and custody" of Perkins. This is a strained interpretation of this statute, and an interpretation that would frustrate the intent of South Carolina's guardianship law.[3] Further, Williams grafts to S.C. Code § 62-6-309(A)(2) a requirement

[3] Williams mentions a "Health Care Power of Attorney" in her brief. (Resp. Brief p. 6). This document was not part of the trial court's record, but if this Court considers it, it will find that Perkins named Jeffcoat as her successor health care agent (R. p. 324), which further supports Jeffcoat's argument he should have been provided notice of any guardianship or conservatorship proceedings.

that "care and custody" requires a "familial or legal relationship". This is also improper and runs contrary to the plain language of the statute.

Williams argues that the Baldwin County Probate Court was "made aware" of Williams' partition action (Resp. Brief p. 7), but the record only establishes that it was made aware that a complaint for partition was being drafted. (R. pp. 313-315). The record contains no evidence that Williams informed the Baldwin County Probate Court of the *filing* of the partition action or of the existence of Jeffcoat's counterclaims (particularly counterclaims alleging fraud) against the guardian and conservator.

II. Jeffcoat never lost the right to assert his counterclaims in this matter, which were dismissed in violation of Rule 56, SCRCP.

Williams argues that because this action was decided on matters of law under Rule 56, SCRCP, that Jeffcoat has somehow waived his right to assert counterclaims or is estopped from asserting them. (Resp. Brief pp. 8-11). This is contrary to the record and the law of South Carolina. At the hearing for the motions for summary judgment, the Master-in-Equity stated the scope of what was before him:

> So I've got cross Motions for Summary Judgment. One would be -- the rule would be dispositive as to the case if the Court grants either motion as I understand it. **I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right of survivorship can be alienated.** I think that's the legal question for the Court to have to address. So I'll do that.
>
> It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?
>
> I do tend to agree with you. It's a question of law. **If we get into the trial there will be lots of questions of fact**, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

(R. pp. 302-303) (emphasis added). Further, Williams' trial counsel understood there would be issues of fact that needed to be resolved at trial. When Williams' trial counsel began to discuss Perkins' condition when Williams found her in 2015, the trial court asked: "That will be a matter for trial one day, right?" (R. p. 301). Williams' trial counsel agreed. (R. p. 301).

Williams also mis-applies the doctrine of judicial estoppel in her arguments. Judicial estoppel applies only to inconsistent statements of fact, and it does not apply to conclusions of law or legal theories. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997). Jeffcoat has never wavered in his factual assertion that Williams has engaged in a wide variety of misconduct (see Appellant's Brief, Argument II). Further, judicial estoppel requires the satisfaction of five elements: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. Cothran v. Brown, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004). Even if Jeffcoat was taking an inconsistent position regarding the facts, Williams has not met (and cannot meet) her burden of proof of these elements; judicial estoppel is not appropriate.

Williams also argues that Jeffcoat did not preserve his counterclaims because he did not "press his arguments", citing out-of-state federal decisions. (Resp. Brief p. 10). However, in South Carolina arguments found in the pleadings are sufficient to preserve

an argument for appeal. See Holy Loch Distribs., Inc. v. Hitchcock, 340 S.C. 20, 531 S.E.2d 282 (2000) (holding issue preserved where alleged in complaint that was dismissed with prejudice). Jeffcoat's counterclaims properly set forth the basis of his claims against Williams, and the Master-in-Equity dismissed them via the last sentence of his order: "Any relief not specifically addressed herein, is denied." (R. p. 6). These arguments are preserved, and the Master-in-Equity committed reversible error in dismissing them.

III. Williams does not properly interpret section 27-7-40 of the South Carolina Code.

Williams admits that S.C. Code § 27-7-40(a) states a "joint tenancy includes, and is limited to, the following incidents of ownership:", but refuses to concede that the "is limited to" language limits joint tenants' incidents of ownership. (Resp. Brief p. 14). Williams' interpretation of section 27-7-40 is that joint tenants have implied incidents of ownership (*e.g.* an ability to sever via alienation) not enumerated in the statute. (Resp. Brief p. 14). This interpretation is contrary to the plain language of the statute, and this Court cannot countenance it. E.g. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

Further, Williams' interpretation does not take into account that the joint tenancy statute exists in derogation of the common law and thus must be strictly construed and not extended in application beyond clear legislative intent. South Carolina Dep't of Soc. Servs. v. Wheaton, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App.1996). While section

27-7-40 may recognize other means by which to create a joint tenancy, it strictly limits how joint tenants may use their rights in a manner that can only be expanded by the legislature. The legislature's intent can be found in the name of the act that created this statute:

> ...TO ADD SECTION 27-7-40 SO AS TO PROVIDE AN ADDITIONAL METHOD TO CREATE A JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP BY USING CERTAIN WORDS IN A DEED OF CONVEYANCE, TO PROVIDE CERTAIN INCIDENTS OF OWNERSHIP, TO PROVIDE FOR ITS SEVERANCE AND PROCEDURES FOR FILING...

Act No. 398, 2000 S.C. Acts ___. By the very name of the bill, the legislature intended to create an "additional" method to create a joint tenancy, but it "provide[s]" (*i.e.* stipulates) what the incidents of ownership, manner of severance, and procedures for filing are.[4]

While Williams does quote S.C. Code § 27-7-40(c) ("The provisions of this section must be liberally construed to carry out the intentions of the parties."), she does not address how the Master-in-Equity's interpretation of this statute somehow carries out Perkins' and Jeffcoat's intentions. This is because she cannot – the obvious intention of Perkins and Jeffcoat was to live together in 1955 Old Fort until one of them died, at which point the survivor would become the sole owner. The Master-in-Equity's interpretation of section 27-7-40 allowed Williams to completely circumvent the intention[5] of Perkins and Jeffcoat, leaving Jeffcoat facing the sale of, and his eventual eviction from, his home since April of 2000. This is an error of law and must be reversed.

---

[4] However, Jeffcoat believes that the language of the statute is plain and unambiguous, making statutory interpretation unnecessary.

[5] Jeffcoat would note that Williams, as conservator, is statutorily required to consider Perkins' wishes

IV. Williams maintains a strained interpretation of section 26-2A-152 of the Alabama Code to support her post-hoc justification of self-dealing.

Williams also continues to maintain that Ala. Code § 26-2A-152(c)(1) (the power to "[c]ollect, hold, and retain assets...including land") applies to Williams' November 16, 2015, transfer of 1955 Old Fort for $10.00 "and love and affection" to herself. Williams contends that she conveyed this property to herself "as a fiduciary", but the deed in question does not purport to do this. (R. pp. 61-62). Because Williams disposed of Perkins' property for cash (and eventually sought its partition), Ala. Code § 26-2A-152(d)(3) applies to Williams' conduct: "Dispose of any real property, including land in another state, for cash or on credit, at public or private sale, and manage, develop, improve, partition, or change the character of estate real property".[6] This conduct requires prior court approval. Ala. Code § 26-2A-152(d). Williams, who did not obtain prior court approval for any of her acts regarding 1955 Old Fort, seeks to use Ala. Code § 26-2A-152(c)(1) as a post-hoc justification of conduct that clearly violated Alabama law.[7] This violation of Alabama law precluded partition, and the Master-in-Equity has committed reversible error.

V. Williams' durable springing power of attorney supports a finding of breach of fiduciary duty against her.

Williams' Brief repeatedly references a "power of attorney" executed by Sandra Perkins that names Williams as her attorney-in-fact. (Resp. Brief pp. 6, 8, & 16). While

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[6] This argument assumes that Williams' conveyance was not a gift. Jeffcoat's counsel can find no authority under the Alabama law of conservatorship that authorizes gifts by a conservator. See Ala. Code § 26-2A-152.

[7] Williams also never addresses the issue of Perkins' trust, which could also bear upon Perkins' compliance with Alabama law and any potential breach of fiduciary duty (App. Brief pp. 22-23).

this document was never made part of the record below,[8] Williams' counsel has provided Jeffcoat's counsel with a durable springing power of attorney executed on November 19, 2009 and filed of record in Charleston County on December 1, 2009. (R. pp. 327-340). This document names "Vanessa Leigh Perkins" (presumably Williams' maiden name) as Perkins' attorney-in-fact and Jeffcoat as her successor, and that it takes effect upon Perkins' incapacity (established either by court order or the affidavits of two physicians). (R. pp. 327-329).

This power of attorney renders Williams a South Carolina fiduciary, subject to South Carolina law. (R. p. 336). When a court appoints a guardian or conservator, a South Carolina power of attorney's powers that are within the ambit of the guardian and/or conservator are terminated. S.C. Code § 62-8-108. A conservator in Alabama apparently does not have the power to make gifts of his or her ward's property. See Ala. Code § 26-2A-152. Perkins' power of attorney, however, does govern gifts – gifts to Perkins' family are allowed, but gifts to Williams are generally prohibited but allowed if and only if the "primary purpose and motivation" of the gift is: "the preservation of my assets…(in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have)…" (R. p. 332). This provision is consistent with the past and current law of South Carolina, which prohibits gifts from agent to principal without an express grant of authority. See Fender v. Fender, 285 S.C. 260, 329 S.E.2d 430 (1985); S.C. Code § 62-8-201.

[8] Because both Williams and Jeffcoat reference this document in their trial pleadings and this document was filed of record at the time of trial, Jeffcoat has no objection to this Court's consideration of it. (R. pp. 65, 245).

Williams' transfer of 1955 Old Fort from Perkins to Williams was made for the consideration of $10.00 and "love and affection". (R. pp. 61-64). This transfer is considered a gift under South Carolina law. E.g. Huggins v. Huggins, 107 S.C. 470, 93 S.E. 129 (1917); Middleton v. Suber, 300 S.C. 402, 388 S.E.2d 639 (1990); see also Blacks Law Dictionary 445 (8th ed. 2004) ("gift deed. A deed given for a nominal sum or for love and affection."). Accordingly, any gift of 1955 Old Fort must be "in accordance with my desires to provide a plan of inheritance through my Last Will and Testament and/or any Trust which I may have..." (R. p. 332). Perkins' will does not dispose of 1955 Old Fort. (R. p. 292). This is undoubtedly because the 2000 deed to 1955 Old Fort, establishing Perkins and Jeffcoat as joint tenants with right of survivorship, addressed the property's disposal upon Perkins' death. (R. pp. 69-72, 98-99, 155-159, 292). Restated, the evidence clearly establishes Perkins was to remain owner of her interest in 1955 Old Fort until death, at which time her interest would pass to Jeffcoat. Williams' acts effectuated the exact opposite of Perkins' intended estate plan: Perkins lost ownership of her interest in 1955 Old Fort during her lifetime in exchange for $10.00, and upon her death her interest did not pass to Jeffcoat, who now faces eviction. This is far more than a scintilla of evidence of Williams' breach of fiduciary duty, and the Master-in-Equity's dismissal of that cause of action was an error of law.

CONCLUSION

For the argument set forth above, Bradford Jeffcoat asks this Court to reverse the June 28, 2018 Order of the Charleston County Master-in-Equity and award Jeffcoat all such other and further relief as this Court deems just and proper.

Dated: 4/1/19

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Vanessa Williams, Vanessa Williams as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams as Personal Representative of the Estate of Sandra P. Perkins, Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC, Defendants,

Of whom Bradford Q. Jeffcoat, Jr. is the Appellant.

Appellate Case No. 2018-001464

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Opinion No. 5834
Heard March 4, 2021 – Filed July 14, 2021

AFFIRMED

Jason Scott Luck, of Luck VI Ltd. Co. d/b/a Jason Scott Luck, Attorney at Law, of Bennettsville, for Appellant.

Timothy Alan Domin, of Charleston, and John Andrew Wenzel, of Caldwell Wenzel & Asthana, PC, of Foley, Alabama, both for Respondent.

WILLIAMS, J.: This is an appeal from an action for partition of real property brought on behalf of Sandra P. Perkins (Decedent) by Vanessa Williams

(Daughter) as conservator and guardian of Decedent and as the personal representative of Decedent's estate. On appeal, Bradford Jeffcoat, Decedent's domestic partner of twenty years,[1] asserts the Alabama Probate Court lacked subject matter jurisdiction to appoint Daughter as the conservator and guardian for Decedent. Jeffcoat additionally contends the master-in-equity erred in granting Daughter's motion for summary judgment and compelling the partition and sale of the property at issue. We affirm.

FACTS/PROCEDURAL HISTORY

On April 28, 2000, Jeffcoat purchased real property in Charleston, South Carolina. On July 1, 2000, Jeffcoat conveyed a one-half interest in the property to Decedent in exchange for a mortgage in the amount of $43,550. The deed stated Jeffcoat and Decedent held the property "jointly with right of survivorship, and not as tenants in common." Decedent satisfied the mortgage in full in June 2015.

From 2000 to 2015, Decedent and Jeffcoat lived together on the property. In 2009, Decedent began to suffer from advanced dementia, and her condition steadily declined. In April 2015, Daughter, Decedent's only child, came to Charleston at Jeffcoat's request to help temporarily care for Decedent while Jeffcoat was at work. Decedent had previously appointed Daughter as her durable power of attorney and health care power of attorney. After assessing Decedent's condition, Daughter moved Decedent to Alabama, where Daughter resided, in June 2015.

Upon returning to Alabama, Daughter petitioned the Alabama Probate Court to become Decedent's conservator and guardian, and the probate court issued permanent letters of guardianship and conservatorship on September 15, 2015.[2]

In November 2015, Decedent's health began to rapidly decline. On the advice of counsel in Alabama and South Carolina, Daughter, in her capacity as Decedent's conservator, executed a deed transferring Decedent's one-half interest in the property to Daughter on November 16, 2015, to preserve Decedent's interest in the property. Thereafter, Daughter filed a complaint in the circuit court seeking the partition and sale of the subject property, and the case was referred to the master.

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[1] Jeffcoat and Decedent never married.

[2] The probate court previously issued temporary letters of guardianship over Decedent to Daughter on July 7, 2015, following Daughter's emergency petition for guardianship and conservatorship in which she asserted Decedent's health and mental state jeopardized her welfare and safety.

Jeffcoat timely filed answers and counterclaims. Decedent passed away on November 27, 2015.

Following Decedent's death, Daughter amended the pleadings to include her designation as the personal representative for Decedent's estate, and both Daughter and Jeffcoat filed motions for summary judgment. The master held a hearing on the motions and took the matter under advisement. On June 28, 2018, the master issued an order granting Daughter's motion for summary judgment and compelling the partition and sale of the property. This appeal followed.

ISSUES ON APPEAL

I. Did the Alabama Probate Court have subject matter jurisdiction to appoint Daughter as guardian and conservator for Decedent?

II. Did the master err in granting Daughter's motion for summary judgment and compelling the partition and sale of the property?

STANDARD OF REVIEW

"When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the" master pursuant to Rule 56, SCRCP. *Penza v. Pendleton Station, LLC*, 404 S.C. 198, 203, 743 S.E.2d 850, 852 (Ct. App. 2013). Summary judgment may be granted when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party." *Id.* at 203, 743 S.E.2d at 852–53. "Thus, the appellate court reviews all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party." *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct. App. 2009).

LAW/ANALYSIS

I. Subject Matter Jurisdiction

Jeffcoat contends the master erred in granting Daughter's motion for summary judgment and compelling the partition and sale of the property because the Alabama Probate Court lacked subject matter jurisdiction to appoint Daughter as Decedent's guardian and conservator. We disagree.

Subject matter jurisdiction is a court's "power to hear and determine cases of the general class to which the proceedings in question belong." *Simmons v. Simmons*, 370 S.C. 109, 113–14, 634 S.E.2d 1, 3 (Ct. App. 2006) (quoting *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995)).

"The Constitution provides that 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.'" *V.L. v. E.L.*, 577 U.S. 404, 406 (2016) (per curiam) (quoting U.S. Const., Art. IV, § 1). "That Clause requires each State to recognize and give effect to valid judgments rendered by the courts of its sister States." *Id.* at 406–07.

> A State is not required, however, to afford full faith and credit to a judgment rendered by a court that did not have jurisdiction over the subject matter or the relevant parties. Consequently, before a court is bound by [a] judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. That jurisdictional inquiry, however, is a *limited* one. [I]f the judgment on its face appears to be a record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be *presumed* unless disproved by extrinsic evidence, or by the record itself.

Id. at 407 (alterations in original) (emphases added) (citations and quotation marks omitted).

The Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (the Act)[3] provides Alabama courts with exclusive jurisdiction to appoint guardians or conservators for adults. *See* § 26-2B-202 ("This article provides *the exclusive jurisdictional basis* for a court of this state to appoint a guardian or issue a protective order for an adult." (emphasis added)). Under the Act, an Alabama court

> has jurisdiction to appoint a guardian or issue a protective order for a respondent if . . . on the date the petition is filed, [Alabama] is a significant-connection state and . . . the respondent has a home state, a petition for an

[3] Ala. Code §§ 26-2B-101 to -503 (West, Westlaw through Act 2021-118).

> appointment or order is not pending in a court of th[e home] state or another significant-connection state and before the court makes the appointment or issues the order: (i) a petition for an appointment or order is not filed in the respondent's home state; (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in [s]ection 26-2B-206.

§ 26-2B-203(a)(2)(B). The Act provides a state is considered a significant-connection state if the "respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available." § 26-2B-201(a)(3). In determining whether a state is a significant-connection state, the court must consider:

> (1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
> (2) the length of time the respondent at any time was physically present in the state and the duration of any absence;
> (3) the location of the respondent's property; and
> (4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

§ 26-2B-201(b).

Based on the foregoing, we find the Alabama Probate Court possessed subject matter jurisdiction to appoint Daughter as Decedent's guardian and conservator. The Act provides Alabama courts with exclusive jurisdiction to appoint conservators and guardians for adults. *See* § 26-2B-202 ("This article provides *the exclusive jurisdictional basis* for a court of this state to appoint a guardian or issue a protective order for an adult." (emphasis added)). Therefore, Alabama probate courts possess the "power to hear and determine cases of the general class to which the proceedings in question belong" if the requirements of section 26-2B-203 are met. *See Simmons*, 370 S.C. at 113, 634 S.E.2d at 3 (quoting *Watson*, 319 S.C. at 93, 460 S.E.2d at 395).

In making this determination, we must first assess Decedent's connection to Alabama. *See* § 26-2B-203(a)(1), (2) (providing that Alabama courts have jurisdiction to appoint a guardian for an adult if Alabama is the potential ward's home state or a significant-connection state). In her petitions for guardianship and conservatorship, Daughter never alleged that Alabama was Decedent's home state, instead asserting Alabama was a significant-connection state for Decedent. We agree. Daughter, who was Decedent's durable and health care power of attorney and only child, resided in Alabama. Additionally, Decedent possessed assets that were held in an account at a brokerage firm in Foley, Alabama. Therefore, we find Decedent had a significant connection to Alabama. *See* § 26-2B-201(b) (providing that when determining whether an individual has a significant connection to a state, the court must consider "(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding; (2) the length of time the respondent at any time was physically present in the state and the duration of any absence; (3) the location of the respondent's property; and (4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services").

Additionally, the record does not contain any evidence that when Daughter petitioned for appointment and while the petition was pending, a petition was simultaneously pending in South Carolina, Decedent's home state, or that objections to the Alabama court's jurisdiction were filed. *See* § 26-2B-203(a)(2)(B) (providing that before an Alabama court makes an appointment, it must determine that a petition for appointment has not been filed in the individual's home state or another significant-connection state and that no objections to the court's jurisdiction have been filed by a person who is required to receive notice of the proceeding). Although Jeffcoat contends he was an individual required to be notified of the appointment proceeding, this contention is without merit as Jeffcoat was not a spouse or relative of Decedent, did not serve as Decedent's power of attorney, and did not possess any other legal rights entitling him to notice of Decedent's welfare. *See* § 26-2B-208 ("If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state, if any."). Accordingly, we hold the Alabama Probate Court had subject matter jurisdiction to appoint Daughter as Decedent's conservator and guardian.

II. Summary Judgment[4]

Jeffcoat asserts the master erred in granting summary judgment to Daughter and compelling the partition and sale of the property because Daughter's conveyance of Decedent's one-half interest did not sever the joint tenancy and extinguish his right of survivorship.[5] Specifically, Jeffcoat argues section 27-7-40 of the South Carolina Code (2007) does not allow for one cotenant to convey his or her undivided interest in the property to a third party. As our jurisprudence has not addressed this inquiry specifically, this is a matter of first impression for this court. However, our precedent on related issues sufficiently informs our determination.

In South Carolina, parties may establish a joint tenancy through either common law or statute. Although South Carolina now construes deeds conveying a shared interest in property in favor of tenancies in common rather than joint tenancies, our jurisprudence still allows for the creation of common law joint tenancies. *See Smith v. Cutler*, 366 S.C. 546, 550–51, 623 S.E.2d 644, 646–47 (2005) (differentiating common law joint tenancies with tenancies in common with a right of survivorship); *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass*, 359 S.C. 407, 410–11, 597 S.E.2d 850, 851 (Ct. App. 2004) (indicating this court recognizes common law joint tenancies); *see also* § 27-7-40(a) ("*In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law*, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words 'as joint tenants with rights of survivorship, and not as tenants in common' the creation of a joint tenancy with

---

[4] Jeffcoat additionally contends the master erred in granting summary judgment to Daughter because genuine issues of material fact existed rendering summary judgment improper. However, in his motion for summary judgment, he asserted there were no issues of material fact. Additionally, at the motions hearing, the master stated no issues of material fact existed and the relevant matter was solely one of law. Jeffcoat neither objected to the master's assessment nor filed a Rule 59(e), SCRCP, motion to alter or amend the master's order. Therefore, we decline to address this issue on appeal. *See Miller v. Dillon*, 432 S.C. 197, 207, 851 S.E.2d 462, 468 (Ct. App. 2020) ("A party may not argue one ground at trial and an alternate ground on appeal." (quoting *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003))).

[5] The parties do not dispute that Jeffcoat and Decedent held a joint tenancy with a right of survivorship in the property.

rights of survivorship in the real estate is conclusively deemed to have been created." (emphasis added)).

Under the common law, a conveyance must possess the unities of interest, title, time, and possession to create a joint tenancy with a right of survivorship. *Snodgrass*, 359 S.C. at 410, 597 S.E.2d at 851. Possession of all four unities is essential to the existence of the joint tenancy; therefore, any act that destroys one of the four unities severs the joint tenancy and extinguishes the accompanying right of survivorship possessed by the cotenants. *See* 6 S.C. Jur. Cotenancies § 20. Thus, under the common law, a cotenant's conveyance of his or her interest in the property to a third party severs the joint tenancy resulting in a tenancy in common between the remaining cotenant and third party. *Id.*

Jeffcoat asserts section 27-7-40 prohibits common law severance of joint tenancies in South Carolina. It states:

> (a) In addition to any other methods for the creation of a joint tenancy in real estate which may exist by law, whenever any deed of conveyance of real estate contains the names of the grantees followed by the words "as joint tenants with rights of survivorship, and not as tenants in common" the creation of a joint tenancy with rights of survivorship in the real estate is conclusively deemed to have been created. This joint tenancy includes, and is limited to, the following incidents of ownership:
>
> > (i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.
> >
> > (ii) In the event of the death of a joint tenant survived by more than one joint tenant in the real estate, the entire interest of the deceased joint tenant vests equally in the surviving joint tenants who continues to own the entire interest owned by them as joint tenants with right of survivorship.

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

(v) If real estate is owned by only two joint tenants, a conveyance by one joint tenant to the other joint tenant terminates the joint tenancy and conveys the fee in the real estate to the other joint tenant.

(vi) If real estate is owned by more than two joint tenants, a conveyance by one joint tenant to all the other joint tenants therein conveys his interest therein equally to the other joint tenants who continue to own the real estate as joint tenants with right of survivorship.

(vii) Any joint tenancy in real estate held by a husband and wife with no other joint tenants is severed upon the filing of an order or decree dissolving their marriage and vests the interest in both the parties as tenants in common, unless an order or decree of a court of competent jurisdiction otherwise provides.

(viii) The interest of any joint tenant in a joint tenancy in real estate sold or conveyed by a court of competent jurisdiction where otherwise permitted by law severs the joint tenancy, unless the order or decree of such court otherwise provides and vests title in the parties as tenants in common.

> (ix) If real estate is owned by two or more joint tenants, a conveyance by all the joint tenants to themselves as tenants in common severs the joint tenancy and conveys the fee in the real estate to these individuals as tenants in common.
>
> (b) The surviving joint tenant or tenants may, following the death of a joint tenant, file with the Register of Deeds of the county in which the real estate is located a certified copy of the certificate of death of the deceased joint tenant. The fee to be paid to the Register of Deeds for this filing is the same as the fee for the deed of conveyance. The Register of Deeds must index the certificate of death under the name of the deceased joint tenant in the grantor deed index of that office. The filing of the certificate of death is conclusive that the joint tenant is deceased and that the interest of the deceased joint tenant has vested by operation of law in the surviving joint tenant or tenants in the joint tenancy in real estate.
>
> (c) Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entireties. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties. This section supersedes any conflicting provisions of Section 62-2-804.

Prior to the enactment of this statute, parties solely in possession of a property had to make an intervening conveyance to a "strawman" to effectively create a joint tenancy between themselves and additional cotenants in the previously owned property. *See* John V. Orth, *The Perils of Joint Tenancies*, 44 Real Prop. Tr. & Est. L.J. 427, 431 (2009). Over the years, states have enacted statutes to allow for the creation of such joint tenancies without the need for an intervening transfer. *See*

e.g., Cal. Civ. Code § 683 (West 2017); Colo. Rev. Stat. Ann. § 38-31-101 (West 2008); 765 Ill. Comp. Stat. Ann. § 1005/1b (West 2004). We find such was the purpose and intent behind section 27-7-40. *See Silva ex rel. Estate of Silva v. Allstate Prop. & Cas. Ins. Co.*, 424 S.C. 512, 517, 818 S.E.2d 753, 756 (2018) ("The cardinal rule of statutory interpretation is to ascertain the intent of the General Assembly."). Although the statute contains the limiting language "[t]his joint tenancy includes, and is limited to, the following incidents of ownership," we find this does not prohibit common law methods of severance but rather addresses the language below detailing a cotenant's rights in the property upon a cotenant's death and subsequent to any conveyances between the cotenants themselves. *See id.* ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose." (quoting *Jackson v. Charleston Cnty. Sch. Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994))). This interpretation is further strengthened when the statute is read as a whole. Moreover, our precedent supports this conclusion. *See Cutler*, 366 S.C. at 550, 623 S.E.2d at 647 ("[U]nlike a tenancy in common with a right of survivorship, a joint tenancy with a right of survivorship is capable of being defeated by the unilateral act of one joint tenant."); *id.* at 551, 623 S.E.2d at 647 ("[A] tenancy in common with a right of survivorship cannot be defeated by the act of one tenant absent the agreement of the other tenant."). Thus, we disagree with Jeffcoat's assertion that section 27-7-40 rendered the conveyance of Decedent's interest to Daughter void.

Accordingly, we hold the master properly found Daughter's conveyance of Decedent's one-half interest in the property to herself, in her capacity as Decedent's guardian and conservator, severed the joint tenancy between Decedent and Jeffcoat and extinguished Jeffcoat's right of survivorship. Therefore, Jeffcoat's rights to the property never vested as the conveyance to Daughter occurred prior to Decedent's passing. Thus, the master did not err in granting Daughter's motion for summary judgment and in compelling the partition and sale of the property. *See Penza*, 404 S.C. at 203, 743 S.E.2d at 852 (providing that summary judgment may be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law).[6]

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[6] Before the master, Jeffcoat additionally asserted that even if the conveyance severed the joint tenancy, the conveyance was void because Alabama law prevented Daughter from making a conveyance of Decedent's property to herself. Jeffcoat raises this as a genuine issue of material fact in his appellant's brief, which is unpreserved for appellate review. He also fails to challenge on appeal the master's conclusion of law that the conveyance was proper. Therefore, this court is

CONCLUSION

Based on the foregoing, the master's order is

AFFIRMED.

THOMAS and HILL, JJ., concur.

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precluded from addressing this issue. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) ("[A]n unappealed ruling, right or wrong, is the law of the case.").

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough
Master-in-Equity

Court of Appeals Case No.: 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins..... Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC..... Defendants,

of whom

Bradford Q. Jeffcoat, Jr. is the.....Appellant.

APPELLANT'S PETITION FOR REHEARING AND REHEARING *EN BANC*

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Appellant Bradford Jeffcoat, pursuant to Rule 221, SCACR, petitions this Court for rehearing of this matter, and, pursuant to Rule 219, SCACR, suggests that this Court should rehear the matter *en banc*.

ARGUMENT FOR REHEARING

I. Jeffcoat had "care and custody" of Sandra Perkins, and was entitled to notice.

The July 14, 2021, opinion (the "Opinion") correctly notes that Jeffcoat would be due notice of the guardianship/conservatorship action under Alabama law if he was due notice under South Carolina law. (Opinion p. 6). Respondent Vanessa Williams acknowledges that Jeffcoat was never notified of the guardianship/conservatorship petition of Sandra Perkins. (R 286). If Jeffcoat did not receive his due notice, then the Alabama Probate Court lacked jurisdiction and the Master-in-Equity must be reversed. (App. Brief pp. 9-14).

The South Carolina statute in effect in 2015 provided caregivers such as Jeffcoat were entitled notice of guardianship actions:

> (A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, the following persons must be properly served:
>
> > (1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;
> >
> > (2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62-5-501 **or who has his care and custody**;
> >
> > (3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

S.C. Code § 62-5-309 (Supp. 2015) (emphasis added). Jeffcoat was Perkins' sole, then primary, caregiver prior to her removal to Alabama. (R 156, 158). As a caregiver, Jeffcoat was a person with "care and custody" of Perkins who was entitled to notice. This interpretation of this former

section of the Probate Code is entirely consistent with the secondary sources interpreting it. *See* 21 S.C. Jur. *Guardian and Conservator* § 14 (Supp. 2021) ("[N]otice shall also be given to anyone serving as the person's guardian, conservator, attorney in fact under a durable power of attorney, **or primary caretaker.**") (citing version of S.C. Code § 62-5-309 relevant to this appeal) (emphasis added); 12 S.C. Jur. *Death and Right to Die* § 41 (Supp. 2021) (health care provider with "care and custody" of allegedly incapacitated person is entitled to notice) (citing version of S.C. Code § 62-5-309 relevant to this appeal). This interpretation is also consistent with legislative intent, as revealed in subsequent amendments to the Probate Code that removed the "who has his care and custody" language and replaced it with: "a person, other than an unrelated employee or health care worker, who is known or reasonably ascertainable by the petitioner to have materially participated in caring for the alleged incapacitated individual within the six-month period preceding the filing of the petition". S.C. Code § 62-5-303(B)(4)(d); *see also Buist v. Huggins*, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (noting that a subsequent statutory amendment may be interpreted as clarifying statutory intent). The Opinion's interpretation of this statute (p.6), on the other hand, gives no effect to the "care and custody" language of the prior statute, which is an improper interpretation. *See CFRE, L.L.C. v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating in reading a statute as a whole and in harmony with its purpose, the Court must read the statute in a manner such that "'no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law'" (internal citations omitted) (internal marks omitted)).

II. The Opinion impermissibly creates new decisional law.

The Opinion creates new law, allowing a joint tenant with right of survivorship to sever the tenancy in a manner not explicitly authorized by statute. (Opinion p. 11). It is inappropriate for the Court of Appeals to create new law or expand existing law. *See Rainey v. Charlotte-Mecklenburg Hosp. Auth.*, No. 2015-UP-209, 2015 WL 1880212 at *2 (S.C. Ct. App. Apr. 22, 2015) (citing Jean Hoefer Toal *et al.*, *Appellate Practice in South Carolina* 12-13 (2d ed. 2002) ("The Court of Appeals is an error-correction court, whereas the Supreme Court is a law-giving court.")). The only methods by which a statutory joint tenant with right of survivorship may sever the estate is specified in the statute, which must be strictly construed. *See* S.C. Code § 27-7-40 ("[t]his joint tenancy includes, and is limited to, the following incidents of ownership"); *South Carolina Dep't of Soc. Servs. v. Wheaton*, 323 S.C. 299, 302, 474 S.E.2d 156, 158 (Ct.App. 1996) (legislation in derogation of common law to be strictly construed); *see also Smith v. Cutler*, 366 S.C. 546, n.4, 623 S.E.2d 644, n.4 (2005) ("Joint tenancy was disfavored as a rule of construction…"). Recent scholarship, consistent with Jeffcoat's arguments, also shows the error of the Opinion's new exception:

> South Carolina Code § 27-7-40 does not specifically list as an incidence of ownership the right of unilateral alienation by one cotenant which would destroy the right of survivorship.
>
> * * *
>
> In order to convey property in an intervivos transaction involving property owned by joint tenants with a right of survivorship, all of the joint tenants must join in the deed. This is necessary in order to effectively convey or encumber the entire fee interest.

Joby C. Castine, *Deeds of Conveyance* 152-153 (S.C. Bar CLE Div. 2019).

III. Error was preserved.

The Opinion finds: "[Jeffcoat] also fails to challenge on appeal the master's conclusion of law that the conveyance [of 1955 Old Fort from Vanessa Williams to Vanessa Williams] was proper." (Opinion p. 11 n. 6). However, Jeffcoat's brief specifically challenges this finding:

> The Master-in-Equity committed reversible error in finding that the November 16, 2015 conveyance of 1955 Old Fort was lawful, and this Court must reverse his decision and award any such other and further relief it deems appropriate.

(App. Brief pp. 13-14).

The Opinion also finds the following argument was not preserved by trial counsel: "…if the conveyance severed the joint tenancy, the conveyance was void because Alabama law prevented Daughter from making a conveyance of Decedent's property to herself." (Opinion p. 11 n. 6). Jeffcoat's trial counsel made this argument in Jeffcoat's memorandum opposing Williams' motion for summary judgment:

> …[Williams'] self-serving actions, made in bad faith, are in direct contrast with her mother's intentions, and contrary to both South Carolina and Alabama law.

(R 230). Jeffcoat's trial counsel goes into greater detail later in this motion. (R 232-235). Opposing counsel also acknowledged this argument at hearing:

> MR. WENZEL: Okay. Your honor, on the next issue, [Jeffcoat] has argued that we essentially acted improperly in the way we severed the -- or in the way that we dealt with the property in another state under the Alabama probate code.

(R 284).

The Opinion also finds: "…in his motion for summary judgment, [Jeffcoat] asserted there were no issues of material fact. Additionally, at the motions hearing, the master stated no issues of material fact existed and the relevant matter was solely one of law. Jeffcoat neither objected to the master's assessment nor filed a Rule 59(e), SCRCP, motion to alter or amend the master's order." (Opinion p. 7 n. 4). Any statement by Jeffcoat's trial counsel that there were "no disputed facts"

in his motion for summary judgment referred to pure issue of law[1] regarding to the severance of a statutory joint tenancy with right of survivorship. (R 235-236). The Master-in-Equity was well aware of this qualification, and acknowledged the same at hearing:

> So I've got cross Motions for Summary Judgment. One would be -- the rule would be dispositive as to the case if the Court grants either motion as I understand it. **I think you-all pretty much agree that this is a question of law on this issue of whether or not the joint tenancy with right of survivorship can be alienated.** I think that's the legal question for the Court to have to address. So I'll do that.
>
> It's my practice to give you an answer within 30 days of that. If for some reason I deny both Motions for Summary Judgment then we're headed for trial, so I know that's the ultimate thing. That's just where we are. Okay?
>
> I do tend to agree with you. It's a question of law. **If we get into the trial there will be lots of questions of fact**, and that may or may not answer the legal question that really needs to be decided, so I understand that. Okay?

(R 302-303) (emphasis added). Further, when Williams' trial counsel began to discuss Perkins' condition in 2015, the Master-in-Equity asked: "That will be a matter for trial one day, right?" (R 301). Williams' trial counsel agreed. (R 301).

Jeffcoat's trial counsel agreeing that the severance issue was a pure issue of law does not in any way waive Jeffcoat's meritorious affirmative defenses and counterclaims, and it beggars belief that his trial attorney would abandon them. On the contrary, Jeffcoat's trial counsel asserted the counterclaims at hearing, and the Master-in-Equity acknowledged the same:

> [MS. SHAW:] So we do think she acted improperly and intentionally improperly and that she didn't – we've got counterclaims for breach of fiduciary duty among others and some discovery has been pretty horrendous[2] about the acts that she engaged in when [Williams] came to town and took her mother. She was spending from joint accounts for college tuition, for houses, you know. Her mother didn't need the $10 for that half of the house. That was not in the interest of her ward.

---

[1] Jeffcoat's prior motion to dismiss also acknowledges the severance issue was one of law. (R 32).

[2] Jeffcoat's trial counsel also alleged in a prior hearing that the Alzheimer's-stricken Perkins died in Williams' trailer, on her couch. (R 143, 265).

> That was in [Williams'] interest. So she certainly wasn't securing it for the benefit of her ward.
>
> THE COURT: Your position is she was acting as fiduciary? She was self-dealing, right?
>
> MS. SHAW: Oh, completely. Completely self-dealing, I mean, on its face. If she intended it to be for the benefit of the ward, she would have transferred it to herself as conservator or some other -- into a trust or something along those lines. She just gave it straight to herself for $10. She did this 11 days before her mother's death.

(R 293-294). The breach of fiduciary duty, and the violation of Alabama probate law, is also set forth in Jeffcoat's motion for summary judgment. (R 235-236). Ultimately, the Master-in-Equity recognized that Jeffcoat's counterclaims and affirmative defenses remained after his decision on joint tenancy, and he disposed of them in his order: "Any relief not specifically addressed herein, is denied." (R 6). *See Walsh v. Woods*, 371 S.C. 319, 325, 638 S.E.2d 85, 88 (Ct. App. 2006) (implicit denial of relief sufficient to preserve error for appeal).

IV. Williams gifted the property in question to herself.

The Opinion finds Williams conveyed 1955 Old Fort to herself "in her capacity as Decedent's guardian and conservator". (Opinion p. 11). The deed (R 213-216) does not support this finding – Williams received this property in her name, completely unencumbered and under no qualifications or conditions. Williams, not Perkins' estate, would be the sole beneficiary of any eventual sale of the one-half interest in 1955 Old Fort. As was argued by Jeffcoat at hearing and on appeal, such a self-dealing transaction is wholly inappropriate under South Carolina and Alabama law, and must be undone.

SUGGESTION FOR REHEARING *EN BANC*

As is set forth in Argument II, the Opinion *judicially* creates a mechanism to sever a *statutory* joint tenancy with right of survivorship. To the extent such an exception is consistent with legislative intent (it is not), this is the role of the South Carolina Supreme Court (or potentially the General Assembly), and the Opinion should be reheard *en banc* in order to maintain uniformity with the law of South Carolina.

CONCLUSION

The petition for rehearing should be granted, and this rehearing should be held *en banc*.

Dated: 07/20/2021

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough Master-in-Equity

Court of Appeals Case No.: 2018-001464

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins ..... Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC ..... Defendants,

of whom

Bradford Q. Jeffcoat, Jr. is the ..... Appellant.

RESPONDENT'S RETURN TO PETITION FOR REHEARING AND REHEARING *EN BANC*

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Respondent Vanessa Williams files this return at the request of this honorable court and would show the following.

ARGUMENT AGAINST REHEARING

I. Jeffcoat did not have care and custody of Sandra Perkins and was not entitled to notice.

Alabama law requires that if Alabama is not the home state of the respondent, then the petitioner must give notice to those persons who would be entitled to notice if the petition was brought in the respondent's home state. Ala. Code § 26-2B-208. At the time of the petition for guardianship the notice requirements under South Carolina Law were promulgated under S.C. Code § 62-5-309. The statute provided that notice should be provided to persons that had "care and custody" of the alleged incapacitated person. Care and custody was not a defined term in the statute and the Appellant, until now, has never framed this issue as one of statutory interpretation. The Appellant simply alleged that Jeffcoat was caring for Ms. Perkins at the time of the petition, despite the fact that Ms. Williams held power of attorney over Ms. Perkins; was caring for Ms. Perkins in the Respondent's home; and was her only living child and heir at the time of the petition for guardianship.

II. New Arguments and Authorities may not be presented for the first time in a petition for rehearing

In the petition for rehearing, the Appellant makes the new and tenuous argument that the language in the current statute can be read as a "statutory amendment" and that the court should view the language in the current statue as "clarifying statutory intent". First, and foremost, this is not the starting point for interpreting statutes under South Carolina Law. *See Wade v. Berkeley County*, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) (citing *Kennedy v. South Carolina Ret. Sys.*, 345 S.C. 339, 549 S.E.2d 243 (2001)).

Secondly, the jurisprudence cited by the Appellant on this issue is not the general rule which is provided in the same case cited by the Appellant "[g]enerally, the legislature's subsequent acts 'cast no light on the intent of the legislature which enacted the statute being construed.'..." *CFRE LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (S.C. 2011).

Moreover, this issue was given only cursory consideration by the Appellant in the initial brief where he dedicated only two sentences to the lack of notice issue and none on the meaning of "care and custody". (App. Brief p. 12). A party may not assert new arguments or authorities for the first time in a petition for rehearing. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001); *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011). Ordinarily no point will be considered which is not set forth in the statement of issues on appeal. *Gamble v. International Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996). A short passing reference to an argument is not sufficient to preserve an issue for appellate review. *Englert, Inc. v. Netherlands Ins. Co.*, 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993). *See also Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 298, 519 S.E.2d 583, 600 (Ct. App. 1999) (holding conclusory arguments may be treated as abandoned)

III. The Opinion of the Court does not create new law

The argument that allowing a joint tenant with right of survivorship to unilaterally sever a joint tenancy advanced in the Appellant's petition for rehearing is also inappropriately late. It was open to the Appellant to raise this issue in its initial brief and arguments, but he failed to do so. Specifically, the unbinding academic work, *Deeds of Conveyance*, was published in 2019 and could have been included as part of the

Appellant's argument in earlier submissions. It would be fundamentally unfair and prejudicial to allow this appeal to be reheard in such a piecemeal manner as the Appellant discovers arguments he should have made in his appeal brief.[1] Furthermore, the Opinion does not create new law. The Opinion specifically cites *Smith v. Cutler,* 366 S.C. 546, 550-51, 623 S.E.2d 644, 656-7 (2005), *Estate of Sherman ex rel. Maddock v. Estate of Sherman ex rel. Snodgrass,* 359 S.C. 407, 410-11, 597 S.E.2d 850, 851 (Ct. App. 2004) and Section 27-7-40 as precedent for its holdings in this appeal.

IV. Error was not preserved.

An argument cannot be preserved if it is only raised in a "perfunctory and underdeveloped manner" *Kensington Rock Island L.P. v. American Eagle Historic Partners,* 921 F.2d 122, 124-25 (7th Cir. 1990). Likewise, the 5th Circuit has ruled that in preserving arguments, a party must "press and not merely intimate" an argument. *Kelly v. Foti*, 77 F.3d 819, 823 (5th Cir. 1996). It is clear that the Appellant did not press its arguments with respect to disputed facts, and actually believed that those alleged disputed facts were immaterial to the transfer of real property. If he had thought otherwise, then the Appellant would not have filed a motion for summary judgment with the Master in Equity. Unlike the superficial emphasis on counterclaims and affirmative defenses found in the motion for summary judgment, Jeffcoat now conveniently argues that the factual allegations advanced on his counterclaims were actually material underpinnings to the alleged unlawful transfer of real property. This is a different position than the one advanced in Jeffcoat's motion for summary judgment, and it is plain that Jeffcoat expected the entire matter of the transfer of real property to be decided as a question of law. Framing the issues on appeal now as questions of fact that were not

[1] *Kentner v. Gulf Ins. Co.*, 298 Or. 69, 689 P.2d 955 (1984).

considered by the Master in Equity conveniently ignores the Appellant's previous theory of the case and introduces new issues that were not pressed in the second summary judgment hearing or at best were introduced in a heedless manner. Moreover, despite the allegations made by trial counsel and the *dicta* from the Master in Equity during the hearing on Summary Judgment cited in the Appellant's petition, the Appellant failed to file a Rule 59(e) motion to preserve this issue. *Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 347 S.E.2d 99, 289 S.C. 483 (S.C. 1986), *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct.App.1991).

V. Williams' conveyance of the property herself was proper under Alabama and South Carolina Law.

The argument that Williams did not hold the property as a fiduciary for her mother is also not properly preserved for the same reasons outlined above. Having not raised and pressed these issues at the trial court level, it is inappropriate to entertain them now. Moreover, to whom did Ms. Williams owe a duty? She certainly owed no fiduciary duty to Jeffcoat, and he cannot bootstrap a breach of fiduciary duty claim to the partition action where there is a clear statutory right to severance. Furthermore, in this case it is undisputed that Williams was Perkins' sole heir and sole beneficiary under Perkins' estate plan. Accordingly, the issue of how she held the property would ultimately be of no assistance in determining whether the severance was proper or lawful. Since the partition action was commenced prior to Perkins' death, Williams would have inherited Perkins' half interest under either scenario.

REHEARING *EN BANC* IS UNNECESSARY

The Opinion does not *judicially* create a mechanism to sever a *statutory* joint tenancy with right of survivorship as alleged by the Appellant. There is ample common law and statutory authority for this Opinion and an *en banc* hearing is unnecessary.

CONCLUSION

The petition for rehearing should be denied.

Dated: 08/17/2021

s/ Timothy A. Domin
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough
Master-in-Equity

Court of Appeals Case No.: 2018-001464

RECEIVED
Aug 20 2021
SC Court of Appeals

Vanessa Williams, Vanessa Williams, as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams, as Personal Representative of the Estate of Sandra P. Perkins ..... Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC ..... Defendants,

of whom

Bradford Q. Jeffcoat, Jr. is the ..... Appellant.

REPLY
(REHEARING)

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Attorney for Appellant

Appellant Bradford Jeffcoat submits the following reply to the Respondent's Response to his Petition for Rehearing and Rehearing *En Banc*:

1. Jeffcoat made his "care and custody" argument under the former S.C. Code § 62-5-309 in his brief (App. Brief p. 12), Williams addressed it in her brief (Resp. Brief pp. 6-7), and Jeffcoat replied (Reply Brief p. 4-5). This argument is preserved. Jeffcoat would note that Williams offers no authorities that refute the guidance of *South Carolina Jurisprudence*.

2. Williams likewise offers no authorities to refute *Deeds of Conveyance*, which squarely supports Jeffcoat's argument that Williams could not unilaterally alienate her mother's interest in 1955 Old Fort. To the extent the 2019 publication date of this book is even relevant (it is not), Jeffcoat would note that his initial brief in this matter was filed on November 26, 2018.

3. Williams' preservation arguments ignore Rule 221, SCACR, which entitles a litigant to file a petition for rehearing when issues have been "overlooked or misapprehended". Jeffcoat has identified such issues in this Court's July 14, 2021, opinion and filed a petition to address them, as he is entitled to under Rule 221, and required to under Rule 242(c) (requiring a petition for rehearing before a petition for certiorari is filed). Under Williams' interpretation of South Carolina's preservation law, any attempt to address issues "overlooked or misapprehended" in an appellate court's opinion would be an "unpreserved argument".

4. Williams' preservation arguments also rely on wholly inapplicable federal appellate law and questions of how hard Jeffcoat "pressed" his arguments (not if the arguments were made or not). "Our supreme court has cautioned that issue preservation 'is not a 'gotcha' game aimed at embarrassing attorneys or harming litigants.'" *Johnson v. Roberts*, 422 S.C. 406, 412, 812 S.E.2d 207, 210 (Ct. App. 2018) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)). Further, "'where the question of issue preservation is subject to

multiple interpretations, any doubt should be resolved in favor of preservation.'" *Id.* (quoting *Atl. Coast* at 333, 730 S.E.2d at 287 (Toal, C.J., concurring in result in part and dissenting in part)); *see also Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) (preservation of argument when reasonably clear from brief's argument, despite no technical mention in issues on appeal). To the extent there are questions as to the preservation of any issue in this appeal (there are none), this Court must err on the side of preservation.

CONCLUSION

The petition for rehearing should be granted, and this rehearing should be held *en banc*.

Dated: 08/20/2021

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The South Carolina Court of Appeals

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October 07, 2021

Mr. Jason Scott Luck, Esquire
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Re: Vanessa Williams v. Bradford Jeffcoat
Appellate Case No. 2018-001464

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. *See* Rule 219, SCACR.

Very truly yours,

V Claire Allen

CLERK

cc: John Andrew Wenzel, Esquire
Timothy Alan Domin, Esquire

The South Carolina Court of Appeals

Vanessa Williams, Vanessa Williams as Conservator and Guardian of Sandra P. Perkins, and Vanessa Williams as Personal Representative of the Estate of Sandra P. Perkins, Respondent,

v.

Bradford Q. Jeffcoat, Jr. and Blue Heron Builders, LLC, Defendants,

Of whom Bradford Q. Jeffcoat, Jr. is the Appellant.

Appellate Case No. 2018-001464

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Jason Scott Luck, Esquire
John Andrew Wenzel, Esquire

Timothy Alan Domin, Esquire
The Honorable Mikell R. Scarborough

FILED
Oct 07 2021