

**RECEIVED**

**Jun 27 2023**

**SC Court of Appeals**

**FORM 6  
NOTICE OF APPEAL FROM  
ADMINISTRATIVE TRIBUNAL**

THE STATE OF SOUTH CAROLINA

In the South Carolina Workers Compensation Commission

\_\_\_\_\_  
IN the SC Court of Appeals

COMMISSIONER MIKE CAMPELL, COMMISSIONER MELODY L. JAMES  
COMMISSIONER AISHA TAYLOR

\_\_\_\_\_  
APPELLATE CASE No. 2023-000512

ALICIA MONIQUE SMITH  
ALICIA MONIQUE RUFFIN, Claimant  
Alicia Monique Ruffin

Appellant,  
Equitable Beneficiary,

v.

SCWCC  
Builders First Source, Inc. Employer, and  
Liberty Mutual Insurance Corp., Carrier

Respondent,

\_\_\_\_\_  
NOTICE OF APPEAL (Amended)  
\_\_\_\_\_

This NOTICE OF APPEAL has been amended to include the BILL OF COMPLAINT/NOTIFICATION OF NEW ASSIGNMENT this has been served to the Honorable Paula H. Thomas, Honorable Stephanie P. McDonald, and Honorable Blake A. Hewitt and the RESPONDENT'S ATTORNEYS filed on June 27, 2023. *Copies shared via email.* Appellant received an email notice of entry of the order on June 15, 2023.

June 27, 2023,

s/ALICIA MONIQUE SMITH,  
Alicia Monique Ruffin, jus personarum  
Equal Beneficiary  
563 Duncan Station Drive  
Greenville, South Carolina 29334  
(864) 814-8350  
Representative for Appellant

Other Counsel of Record:

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate St., Columbia, South Carolina 29201  
[ctappingfilings@sccourts.org](mailto:ctappingfilings@sccourts.org)

Atty. South Lewis, Esquire  
325 Rocky Slope Road, Suite 201  
Greenville, South Carolina 29334  
[jslewis@wjlaw.net](mailto:jslewis@wjlaw.net)

Atty. Richard Keith, Esquire  
1333 Main St. Suite 500  
Columbia, South Carolina 29601  
[keroberts@wcc.sc.gov](mailto:keroberts@wcc.sc.gov)

Atty. Mary Kate Littlejohn, Esquire  
325 Rocky Slope Rd., Suite 201  
Greenville, South Carolina 29607  
[mklittlejohn@wjcblaw.com](mailto:mklittlejohn@wjcblaw.com)  
[mary.littlejohn@eoc.gov](mailto:mary.littlejohn@eoc.gov)

Atty. Amanda Neely, Esquire  
55 East Camperdown Way, Ste 300  
Greenville, SC 29602  
[Amanda.neely@mgcllaw.com](mailto:Amanda.neely@mgcllaw.com)

June 27, 2023

South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Appellate Case numbers: 2022-0001394 and 2023-00512

DEAR Office of the COURT OF APPEALS,

This is a letter is to express the grievance in the above case matter, abiding by the SC Rules 243 (a)(b)(c). It is my belief that based on my information, I am unable to receive a fair hearing or trial concerning the matters of the SCWCC Case No: 1815744, Court of Appeals Numbers: 2022-001394, and 2023-00512.

According to McNally v. U.S., 483 U.S., 350,371-372 and U.S. v. Holzer, 316F. sd. 304,307. This court had a **FIDUCIARY RESPONSIBILITY** to protect the interests of the TRUST. Which the TRUST was and is the public interest or it's citizens. And based on the findings there has been a clear view of bias. The Justices voted previously that there was nothing procedural wrote with how SC Workers' Compensation handle and conducted the hearing as they involved the Appellant. But the fact the Commissioners operating and rendering judgement without jurisdiction, would be one.

Under Rescue Army v. Municipal Court of Los Angeles, 381 U.S. 549 91 K., ed., 166m 67 § Ct., 1949, "A court has no jurisdiction to determine to won jurisdiction., for basic issue in any case before A tribunal is its powers to act, and a court must have the authority to decide that questions the first instance.", and "If the record does not show upon its face the facts necessary to give jurisdiction , they will be presumed not to have existed. "Norman v. Zieber Or at 202-03" would also be another point. Based, on the violations that the Appellant reported that was committed by the Commissioners, the Respondents case should have been dismissed in favor of the Appellant. December 19, 2022, Judicial Review involved Procedures, that involved those of Commissioner Avery Wilkerson, Commissioner Gene McGaskill, Commissioner, Commissioner Mike Campbell, and Commissioner T. Scott Beck. And the morning of the Review Commissioner T. Scott Beck rendered a decision concerning the evidence that included the "Mis- Appropriated" \$80,000. And then then the Panel included Commissioner Mike

Campbell. How is possible that Commissioner Campbell could be a part of rendering a decision on procedures that concerned himself.? The Commissioners reported that hearings took place that never occurred.

And then there was the matter of the last Opposing Counsel, Atty. South Lewis II. "An attorney for the (Defense or Plaintiff cannot admit evidence to the court; he is either and attorney or a witness." **(Trainey v. Pagliaro D.C. Pa.1964,299F.Supp.647)** And this was allowed, even the Claimant at the time did not object, because the Claimant did not know at the time that this was illegal; TRUSTEE still has a Fiduciary Responsibility to the TRUST. "When there are no deposition, admissions, or affidavits the court has no facts to rely on for a summary determination." (Trainey v. Pagliaro, D.C. Pa. 1964 229 F. Supp. 647) Everything that Atty. South Lewis II, stated or claimed was 'HEARSAY". And the Claimant did state this on the record and this was ignored by the Commission that was conducted 'OFF-RECORD" on May 27, 2022 and at the Judicial hearing conducted on December 19, 2023. The on Justices on Appeals; did not protect the interests of the TRUST. And the Appellant cannot go without mentioning the illegal actions of both Attorneys Amanda Neely and Mary-Kate Littlejohn. The hearings themselves SHOULD NULL/ VOID, the SCWCC DECISIONS, after violating Rules 67-101, rules that conducted off record can not be adjudicated. But according to 6 Judges and 1 Chief Justice at the level of the Court of Appeals, no one found anything procedurally wrong? And lastly, there is a BOND BILLS OF EXCHANGE, that was conducted without the (FULL) knowledge or consent of the Appellant. NO level office or government has clearly provided an Affidavit to request the use of the APPELLANT'S TRUST. FULL ACCOUNTING WILL BE MET.

In order to follow the Rules of SC Rules 243, this is a letter to formally request the Transcripts of hearing or hearings that were conducted to decide September 13, 2021, February 13, 2023, and June 15, 2023, Decisions conducted by JUDGE JOHN D. GEATHERS, JUDGE PAULA H. THOMAS, STEPHANIE P. Mc DONALD and JUDGE THOMAS C. HUFF. JUDGE APHRODITE K. KONDUROS, and JUDGE JAMES E. LOCKEMY In the interests of the Appellant and to Ensure that Justice is served, the Equitable Beneficiary of the Appellant must file these grievances with the SC Supreme Court and file claims with the State Secretary's Office and Treasury; in order to seek relief.

RESPECTFULLY I SUBMIT,

s/ALICIA MONIQUE SMITH & ALICIA MONIQUE SMITH,  
Alicia Monique Ruffin, jus personarum  
Equal Beneficiary  
563 Duncan Station Drive  
Greenville, South Carolina 29334  
(864) 814-8350  
Representative for Appellant

CC: J. South Lewis, Esquire  
325 Rocky Slope Road, Suite 201

Greenville, South Carolina 29334  
jslewis@wjlw.net

Richard Keith, Esquire  
1333 Main St. Suite 500  
Columbia, South Carolina 29601  
keroberts@wcc.sc.gov

Mary Kate Littlejohn, Esquire  
325 Rocky Slope Rd., Suite 201  
Greenville, South Carolina 29607  
mklittlejohn@wjcblaw.com  
[mary.littlejohn@eeoc.gov](mailto:mary.littlejohn@eeoc.gov)

Amanda Neely, Esquire  
55 East Camperdown Way, Ste 300  
Greenville, SC 29602  
Amanda.neely@mgcllaw.com

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate St., Columbia, South Carolina 29201  
ctappingfilings@sccourts.org



**Holder, and not an infant/minor**, Hereinafter “Complainant”. As such I am exercising as well as retaining and reserving all rights, Natural, private commercial, incorporeal or otherwise and does tender this claim and makes the claim that the tender was special deposited the tender was special deposited on the accounts receivables books of the court, via the Respondent’s commercial filings and /or other deposits into the courts registry (CRIS), who by their own admission of the complaint showing or causing to show the existence of a qualified endorsement. The Respondents has come in this matter related to a trust in the capacity that is unsustainable, and thus, is perceived as standing in its unadulterated non-immune capacity and is liable for all damages incurred, assessments as well as penalties.

On its face it appears that the Respondent’s intent and purpose, was to take up the election to treat the within reference complaint as a draft, rather than a promise to pay. A complaint is a promise pay, and a draft is an order to pay, and the person holding the instrument can treat it as either. **The court converted the complaint to a draft** (a form of currency conversion). There might be cause for one to raise and/or complain that they lack understanding, that such information is foreign to them; and it is at that time that such an individual documents their lack of knowledge, for overseeing such a matter that such an individual documents their lack of knowledge, for overseeing such matter that specifically deals; with an

**express trust and the estate of an infant**, which invokes exclusive jurisdiction and not concurrent jurisdiction. This court acts as an administrative venue as a result of the administrative acts the presidential proclamation 2038, 2039, and 2040 – for which the presidents of the United States have exercised “Emergency Powers Jurisdiction” continuously, from 1966 to the present, according to the Senate report on national emergencies associated with the National Emergencies Act. To insure this Information is not ambiguous, nor is it foreign to government, for the Senate of the United States Congress has verified the aforementioned facts.

### **Equities Implied Expression of a Trust**

*Minor means an individual under the age 18 years. The term minor is also used to refer to an individual who has attained the age of 18 years but has yet taken control of the securities contained in his or her minor account. Minor account means an account that a custodian controls on behalf of a minor, this is referred to as a resulting trust the definition of a resulting trust is: A Resulting trust (From the Latin ‘resalire’ meaning “to jump back’) is the creation of an implied trust by operation of law, Where property is transferred to someone who pays nothing for it; and then is implied t have held the property for benefit of another person.*

### **JURISDICTION AND VENUE**

Jurisdiction is proper ‘other jurisdiction’ wherein the Constitution, whereby

Judicial Power, SECTION authorizes such out of necessity. The judicial power shall be vested in one Supreme court, (who may extend such powers in a Court of Appeals, in District Courts, in County Courts, Metropolitan Courts), and in such other courts and may be established by positive law i.e. equity, as equity is the law, equity is everything and law without equity must still render equity. Therefore, this court has the power to decree in equity upon this Express Trust matter in-camera/chambers, and may enforce the Bill of Rights put forth in this bill as expressed in the Constitution.

We must remember as shall be discussed briefly in a moment, that an Attorney who represents an individual who has not yet attained the age of majority, is said to represent a ward of the court. An attorney holds an administrative position as an officer of the court and such, the attorney becomes for the ward an appointed guardian ad litem. **Now in proof that the trust exists**, and is for all necessities and purposes a ‘RESULTING TRUST’, in that upon attaining, the securities, assets, properties of the infant estate become **that rightful property of the infant estate become the rightful property of the beneficiary who has attained the age of majority**. Seeing that this is a “Resulting Trust”, by operation of law and as a result of the principles of equity, and that it involves a minor and or/infant and/ or the properties of an infant, the proper jurisdiction is the equity, who has and maintains a right to such inherent jurisdiction.

## **RULE OF LAW**

Whereby this cause, being a complaint in **exclusive equity jurisdiction**, (as It directly involves the property/estate/securities of an infant/minor), cites the rule. of law as follows upon:

### **Bill of Rights**

No person's (to include infants/minors) property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person, and, when taken, except for the use of the State, such **compensation shall be first made, or secured by deposit of money.**

## **JURISDICTION OF COURTS OVER THE ESTATES OF INFANTS**

**Jurisdiction over the estate of an infant is inherent in equity**, but it may also Be vested by administrative constitutional and administrative statutory provisions in particular courts; the administrative institution of proceedings affecting an Infant's property makes the infant a ward of the court (held in trust, for such the seizure of rights and/or property could only be instituted because of a Prior relationship i.e., a special relationship, whereby the infant/minor is the Beneficiary, the state (court) the settlor and its agents and/or officers' trustees, Constituting a trust relationship, in equity), which has broad powers and the **duty** to protect his or her interests.

## **Courts of equity have GENERAL AND INHERENT JURISDICTION**

**over the property of infants.** Primary jurisdiction over the estate of infants may, under administrative constitutional or administrative statutory provision, be vested in the probate, county, district, or other specific court.

**The jurisdiction can be exercised only when the court has acquired**  
**Jurisdiction as to the particular infant/minor or subject matter** (jurisdiction over estates/trusts are exclusive in nature over which courts of equity have exclusive jurisdiction, and such matters must be heard at equity). The commencement of a proceeding affecting the infant's property vest the court with jurisdiction over his or her estate, pursuant to which the court acts in loco-Parentis or as a guardian, and the infant becomes its ward. **It is the duty of the Court to safeguard the infant's property interests with great care i.e. in trust.**

After the jurisdiction of the court has attached, either through an appearance Which equates to submitting the court's jurisdiction, and/or a plea being entered by the infant/minor, the court in its administrative capacity has broad, comprehensive and plenary powers over the estate of the infant/ minor, however, courts of equity have exclusive jurisdiction over the property of the infant/minor. This court may adjudicate the rights and equities of the infant and property, **yet only in equity**, and it may cause to be done whatever may be necessary to preserve and protect the infant's estate which includes the property/assets of said estate. However, the exercising of such powers must be tempered with reasonable limitations, and one

major limitation is that courts of equity have exclusive jurisdiction over the property/asset of an infant. Therefore, **the court cannot act in violation of administrative constitutional or statutory limitations on its powers**, or permit the impounding of the infant's funds for the **creation of a trust**, which the court or parties have done by establishing the instant matter, and thus attempt to deprive the infant minor of the right to the absolute enjoyment of the funds of one who has come forth now, and is **appearing at the age of majority in correction of any presumptions by previous actions or appearances in this manner**.

An infant is not competent to waive the administrative statutory requirements enacted for his or her benefit and protection, with respects to the manner in which the jurisdiction of the court may be exercised, unless and until they attain they attain the age of majority, then they can either petition for the removal of minor's disabilities and disabilities and or express the trust.

### **JURISDICTION OF COURTS OVE ESTATES OF INFANTS/MINORS- JUDICIAL ALLOWANCES FOR SUPPORT, MAINTENANCE, AND EDUCATION.**

Respondent(s) could not have had a valid claim against infant/minor without personal knowledge and copy of Photo, Fingerprints, A Force Plea, Coercion, Threats, False imprisonment, a False Commercial claim is/are not considered Lawful evidence and/or knowledge, because such copies are held as a forgery,

Evidence of involuntary servitude.

Furthermore, courts in conducting “Commercial” Business of the court must give/disclose to or upon a party upon demand the bookkeeping entries (both receivables and payables) with an affidavit, and demand is hereby made for immediate production or all evidence is hearsay evidence into the court record. The infant/minor having attained the age of majority hereby challenges the bookkeeping and demands the full accounting on the accounts receivables and accounts payables and all dividends, profits, rents, escrows, etc. resulting from the deposit of TRUST/Estate of the ward /Beneficiary onto the court’s accounts receivables and other general intangibles.

### **MOVEMENT FOR RELIEF**

**Complainant is entitled to the relief of damages in equity**, as ‘equity must cause equity to be done, though the heavens fall’: Appellant is entitled to relief in the form of damages for the following reasons:

Respondent(s) has taken the private property of the complainant under extreme duress and threat of violence against Appellant’s life, property, liberties without just compensation, without the expressed and/or written consent of Appellant. Respondent had a duty to respond to all complaints and questions because of the legal **special relationship** of the parties and by

not responding the Respondent is in breach of trust because the infant estate and duty of care associated therewith/thereto is an express trust:

**“Verified Memorandum of Principles of Law and Points of Authorities on Express Special Relationship Trusts”**

The court and its officers are a legal title holder of not only the express Trust, but also the Constructive Trust. As now has been placed on the I share the same or similar name as the named defendant in their CASES# {APCN#2023-000461} {APCN#2023-000512}. However, for clarification, I am not acting in the capacity as the named Appellant and Plaintiff, I am the beneficiary and equitable title holder. None of this information is foreign to the court, this matter must proceed in equity, failure and/or refusal to proceed at equity, under exclusive jurisdiction, will constitute contempt of justice.

**ELEMENTS OF A TRUST:**

1. **Settlor/Grantor/Trustor** – intended to create a trust, which is perceived by the reasonable observer, as in the case of the New Deal and the several Federal Acts and associated State regulations-
  - a. The Emergency Banking Relief Act of March 9<sup>th</sup>, 1933
  - b. The Social Security Act of 1934, the Trust Indenture Act

- c. The Social Security Trust
- d. The Treasury Trust Fund
- e. The Public Trust and the Administration thereof

These are each Specific and Special RELATIONSHIP Agreements, as they are specifically designed and voluntarily submitted to as required by the 13<sup>th</sup> Amendment Authorizing such.

2. Rights Must Be Identified

- a. As evidence by Due Process of Statutory Provisions and the 14<sup>th</sup> Amendment section 1 & 4

3. Identification of Beneficiary – Whom the property is held on behalf of (held in-trust)

4. Shares/Assets/Property must be Identified

5. The Trust Must Be Workable

6. Must have an ending i.e., can't last forever

All Elements of a Trust Are Present – 31 C.F.R §§ [363.6](#)

***Minor means an individual under the age 18 years. The term minor is also used to refer to an individual who has attained the age of 18 years but has yet taken control of the securities contained in his or her minor account.***

*Minor account means an account that a custodian controls on behalf of a minor, that is linked to The custodian's primary account. (See 31 CFR §§ [363.10](#) and [363.27](#) for more information about minor*

Accounts.)

**The Settlor is Federal Government** directly and through the state and local Government (this indication is specified by the use of the Lower Cased “state and “government”, and other proper nouns). Through various acts of Congress, and through the **Age of Majority Act’s**.

The identity of the **Equitable Beneficial Title Holder is the Minor** both un-attained and attained, until they control the Securities /Shares in the trusted account.

The Rights are Identified by **the right to attain the Age of Majority, to Gain Control of Securities held in one’s Minor Account**, and to be free from Minors Disabilities.

The Trust is workable in that the Custodian/Fiduciary/Trustee/Ministerial Clerk must *hold the minor/infant account in trust* on/for the benefit/benefit of a minor/infant, that is linked to the custodian’s primary account (in Most Instances the Federal and State Treasuries).

The Trust may not last forever as it and the duties of all parties end upon the attaining the age of Majority, and documenting such in definitive manner by attaching and affidavit attesting such to his or her BIRTH CERTIFICATE-

NOTE THE PRINCIPLE: Minnesota Rule 2020

**“the register of title is authorized to receive for registration of Memorials upon any outstanding certificate of an official birth certificate Pertaining to a registered owner named and said certificate of title showing the date of birth of said registered owner, providing there is attached to said certificate and affidavit of an affiant who states that he/she is familiar with the facts recited, stating that the party named and said birth certificate is the same party as one of the owners name and said certificate of title, and that thereafter the register of titles shall treat registered owner as having obtained the age of majority as of the date of 18 years after the date of birth shown on said certificate” ...**

The aforementioned is a general court rule, meaning that it applies in Principle in all birth certificate attaining related matter, an administrative proceedings. **A Power of Attorney** titled in part- “ALICIA MONIQUE SMITH and/or ALICIA MONIQUE RUFFIN power-of -attorney-general **IN FACT**”, #XXXXXXXXXXXXXXXXXXXXF382, **A PRIVATE SPECIAL RELATIONSHIP EXPRESS TRUST**, encompassing all Related matters and associated properties are at issue invoking **EXCLUSIVE JURISDICTION AT/IN EQUITY**.

**This matter does not involve a statutory and/or constitutional provision**

**Respecting a minor and or infant, this matter exclusively and specifically  
Involves an estate/trust and the property of an infant/minor under equitable  
law.**

Generally, an infant may acquire property rights, but he or she is not regarded as capable of managing his or her property. Hence, the law does not entrust him or her with the custody or control of his or her estate. The reason, an infant/minor is not capable of managing his or her own property, is because they have not yet attained the age of 18 and or taken control of the securities, assets, properties held in their minor account, general principle of equitable law.

Generally, as an equitable principal, the statute of limitations, is suspended As against infants during their disability, or either do not begin to run against an infant until the obtaining of majority, or where infancy does not toll the statutes, **the infant is allowed a statutory period after attaining majority** to contest any adverse possessions which commence during infancy. Here, the inference is upon the infant attaining the majority, the same with respects to a minor and/or juvenile, and as noted, such a person/individual shall remain a minor and or infant until such time as they gain control of the assets held in their minor account through equity.

With this supporting affidavit, the Complainant states that this court in good Conscience and good reason shall aid the Complainant in his prayer or **show cause Via facts and conclusions of equitable law** why he is not entitled to just compensation and other equitable relief to which he is entitled as equitable beneficial title Holder.

Complainant prays to this court for damages in the amount as specified in in the contract and the value of the full estate plus interest, for the court is under obligation in the exercise of its inherent equitable powers to do equity.

Complainant additionally prays for an **injunction to issue Respondent(s)** and the Attorney for an attempted taking of trust property, private information and solicitation against the complainant where he is not entitled to act against the trust with just or any other cause, for such is construed as intermeddling with the estate of the infant/minor, for which they are strict and severe penalties.

Sources Cited:

§336. Damages – The power to award damages in a proper case, as a necessary incident other purely equitable relief and in the same decree, is fully admitted, and even to award damages alone in very special cases; but the jurisdiction has been exercised with the utmost caution and reserve. See

**JUDICIAL INTERPRETATION OF JURSDICTION**, Pomeroy, Equity J

Jurisprudence.

A court equity grants the relief of compensatory damages in connection with some other specific relief, and under very peculiar circumstances it decrees the payment of damages alone. Several kinds of equitable suits are wholly pecuniary in their relief, as those for contribution and exoneration.

See **JUDICIAL INTERPRETATION OF JURISDICTION.**, Pomeroy.

Equity Jurisprudence:

Maxims of Equity and Adjudication States that a court of equity (§56) to protect and enforce rights to property the object of suits in chancery. The term “property”, as used in this section, includes that is the subject of exclusive individual ownership; or to be more specific, includes not only lands, houses, goods and chattel, rights, and credits, but also, a man’s person, and his wife and minor children, and his right to work, and sell and acquire property, and engage in any lawful business, and his and their reputation, health and capacity to labor, and his and their right to enjoy the senses of sight, smell, hearing and taste, and his and their right of speech and locomotion, and his and their to enjoy their sense of moral propriety when normal. As men live by their labor and property, no man is presumed to part with either without receiving or expecting an

equivalent in value. Hence, whenever one person has obtained either the labor or property of another he should pay or account therefor, unless he can prove it was a gift: and so whatever injury one person does to another's property or person or capacity to labor should be made good.

I declare under the laws of the United States of America that foregoing is true and correct. Executed on this \_\_\_\_ Day of \_\_\_\_\_ 2023

By: \_\_\_\_\_  
As: Appellant and Equitable Beneficiary

## **EXHIBIT A**

### **Verified Memorandum of Law and Points of Authorities on Trust**

#### **The Creation of a Trust**

##### **Cases consistent with section stated herein:**

1. The formation of a Trust is generally accomplished when one party contracts With a second for the benefit of a third party. In so doing the first party is referred to as a Trustor, a Grantor, or Settlor (hereinafter any of the three Synonymous title may be used interchangeably, and the plural means the Singular means the plural), the second party is referred to as the Trustee and And the third party is referred to as the Beneficiary(ies) (hereinafter the Singular refers to the singular a plural). American Jurisprudence (AmJur) Second Edition (2<sup>nd</sup>) explains this well and is a matter of record in accord With Federal Rules of Evidence Rule 803, “Hearsay Exception”.
2. The Trustee retains control of “Legal title” to that property, but typically Gives up “Equitable title” and use to the Beneficiary.
3. The definition of trust can be found in The Restatement of the Law of Trust. 2<sup>nd</sup> Ed.,

#### **“§2. Definitions of Trust”**

A trust, as the term is used in the restatement of this subject, when not qualified by the word “charitable”, “resulting” or “constructive,” is a fiduciary relationship with respects to property, subjecting the person by whom the title to the property is held to equitable duties to

deal with property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”

**“h. Element of a trust.** As it appears in this Section, a trust involves three elements, namely (1) **a trustee**, who holds the trust property and is subject to equitable duties to deal with it for the benefits of another; (2) **a beneficiary**, to whom the trustee owes equitable duties to deal with the trust property for his benefit; a beneficiary acquires equitable proprietary rights in property held on express trust. The beneficiary also acquires the right to require an account from the trustees and personal rights against the trustees in the event of a breach of trust.

## **§25. Effect of fraud, misrepresentation, or violation of law, generally.**

Upon a proper showing of fraud inducing his subscription, a subscriber to shares in a business trust may rescind the subscription and recover the amount paid by him thereon, or he may maintain an action for damages....

## **§26. What amounts to fraud or misrepresentation.**

A false representation by a person selling shares in a business trust that the organization was a corporation organized under the laws of the state has been held to constitute such a material misrepresentation would constitute a defense to an action. *Wine v. Farmer's &*

*Stockmen's Loan & Invest Asso. (Tex Civ App) 278 SW 932, affd (Tex Com App) 287 SW 1091*

A shareholder may maintain an action against the trust based on fraud and misrepresentation in

Inducing her to subscribe for the shares, without any accounting or dissolution of the trust.