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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2021-000330

Case No. 2019-CP-40-03582

Julia B. Brooker,.....Respondent

v.

Beacham O. Brooker, Jr., in his individual capacity as Trustee
and individually as a Beneficiary of the Janet B. Brooker Trust,
and Ellen B. Corontzes individually and as a Beneficiary of the
Janet B. Brooker Trust,.....Appellants

AMENDED RECORD ON APPEAL-VOL 1

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2019-CP-40-03582 (Appeal)
	)	2017-GC-40-0036 (Probate Case)
	)	
Julia B. Brooker,	)	
	)	
Respondent	)	
-vs-	)	ORDER AFFIRMING RULING
	)	OF THE PROBATE COURT
Beacham O. Brooker, Jr., in his official	)	
capacity as Trustee and individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
and Ellen B. Corontzes individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
Appellants	)	
_____	)	

PROCEDURAL HISTORY

This matter is before the Court on appeal from a decision of the Probate Court of three orders, the first dated June 22, 2019 and filed June 20, 2019; second, an Order Allowing Attorney's Fees dated August 5, 2019; and lastly, an Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCF dated October 29, 2019.

The appeals originated from a Petition for Declaratory Relief filed in Richland County Probate Court filed on March 17, 2017 by Julia Brooker against Beacham Brooker, in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen Corontzes, individually as a Beneficiary of the Janet B. Brooker Trust; which sought relief based on the interpretation of the Trust Agreement, specifically an equalization provision. Cross motions for Summary Judgment were denied on October 16, 2018. The action was tried from February 5 to February 7, 2019. On February 28, 2019, Respondent filed an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses. A hearing on the issue of attorneys' fees was held on May 22, 2019. On June 20, 2019, Judge McCulloch issued her Order Calculating Equalization Distribution of Lifetime Gifts. Appellants appealed this Order on July 1, 2019

(Appeal Case No. 2019-CP-40-03582), and filed a Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRC in the Probate Court and Motion for Limited Remand in the Circuit Court. On August 5, 2019, Judge McCulloch issued her Order Allowing Attorney Fees. Beacham and Ellen appealed this order on August 13, 2019 (Appeal Case No. 2019-CP-40-004463). On August 27, 2019, the Circuit Court entered the Consent Order for Limited Remand and to Stay. On October 28, 2019, Judge McCulloch denied the motion for reconsideration via Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRC. Beacham and Ellen appealed this Order on November 5, 2019 (Appeal Case No. 2019-CP-40-06229). On November 13, 2019, the Parties filed a Consent Motion to consolidate the appeals. By Order dated November 19, 2019, the Order Consolidated the Appeals under Civil Action Number 2019-CP-40-03582.

FACTS

The Decedent, Janet B. Brooker, died on April 15, 2015. At her death, she had three children: Beacham O. Brooker, Jr., Ellen Corontzes, and Julia B. Brooker. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and has no children.

Before her death, W. Steven Johnson represented the Decedent. In 2007, Mr. Johnson assisted the decedent in the creation of estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, named Beacham O. Brooker, Jr. to serve as Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust. Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the trust were her three children, Beacham, Ellen and Julia. Beacham

was named Trustee of the Trust. Contemporaneously with the execution of the Will and Trust, Beacham was appointed as Agent by the Decedent under a Durable Power of attorney.

A family meeting occurred on September 25, 2007. The Decedent, Appellants and Respondent were present, along with W. Steven Johnson. During this meeting, Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate. As a part of this plan, all children of the Decedent received equal gifts, and the spouses and issue of Beacham and Ellen received gifts. Pursuant to the Trust, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the decedent. To accomplish this, the Trust provided for an equalization distribution that reads as follows:

(2) Equalization distribution to the Settlor's Daughter Julia B. Brooker. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughters siblings' spouses or siblings' issue which equalizing distributions will be determined as follows:

- (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
- (b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
- (c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor

Following the death of Janet B. Brooker, Beacham, Ellen and Julia had a meeting with Mr. Johnson that included discussion of the lifetime gifts made by the Settlor/Decedent and the equalization distribution to Julia. Subsequently, Beacham, in his role as Trustee, made two separate offers to Julia with regard to the equalization distribution. Julia rejected those offers, and

thereafter filed a Petition for Declaratory Relief in the Richland County Probate Court. After a two day hearing, the Probate Court awarded Respondent \$1,471,031.84 as her equalization distribution of the Janet B. Brooker Trust. The Probate Court also awarded Respondent attorneys' fees pursuant to S.C. Code Ann. § 62-7-1004. Respondents' Motion for Reconsideration was denied on October 28, 2019.

Appellants raise four issues on appeal:

- I. Did the Probate Court Err in Ruling that the Settlor Intended for Lifetime Gifts to Predate the Trust Agreement, which was Dated October 16, 2007?
- II. Did the Probate Court Err in allowing testimony that violated the Dead Man's Statute and ignoring the testimony of the estate planner W. Stephen Johnson and his law partner William Reynolds?
- III. Did the Probate Court Err in Admitting and Relying on the Testimony of the Settlor's Daughter, Julia Brooker in violation of the Dead Man's Statute?
- IV. Did the Probate Court Err in Awarding Attorney's Fees to Julia Brooker?

STANDARD OF REVIEW

A circuit court, sitting in an appellate capacity with respect to probate court orders, must apply the same standard of review that the Supreme Court or the Court of Appeals would apply on appeal. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). A proceeding in probate court may be at law or in equity, depending on the nature of the action. *In re Estate of Holden*, 343, S.C. 267, 278, 539 S.E.2d 703, 709 (2000). "Whether the action is one at law or in equity is determined by the nature of the pleadings and the character of the relief sought." *Id.* An action to construe or interpret a trust is equitable in nature. *Waddell v. Kahdy*, 309 S.C. 1, 4-5, 419 S.E.2d 783, 785-86 (1992) (stating "[i]t is firmly recognized as a rule and principle of law in this State

that all possible trusts, whether express or implied, are within the jurisdiction of the chancellor... if [t]here is an element of trust in this case, which, wherever it exists, always confers jurisdiction in equity.”)

In an action in equity, tried by a Judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Townes Associates Ltd. v. City of Greenville*, 221 S.E.2d 773 (1976). This standard of review is de novo. Jean Hoefer Toal, et al., *Appellate Practice in South Carolina* 224 (3d ed. 2016). However, this broad scope of review does not require the Appellate court to disregard the findings below or ignore the fact that the trial Judge is in the better position to assess the credibility of witnesses. *Dorchester County Department of Social Services v. Miller*, 477 S.E.2d 476 (Ct. App. 1996). Moreover, the Appellant is not relieved of his burden of convincing the appellate court that the trial judge committed error in his findings. *Id.*

De novo review is the broadest form of appellate review, as it permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court’s findings. *Lewis v. Lewis*, 392 S.C. 381, 709 S.E.2d 650 (2011).

RULING

The Probate Court found that the Settlor of the Trust intended for Julia not to be disadvantaged or treated differently because she did not have a spouse or children, and that Julia should be equalized at the time of the Settlor’s death. The Probate Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. See *Schulmyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct.App. 1989). The Probate Court considered the plain language of the Trust as a

whole, and found that the phrase “equal shares” appeared twice, indicating the Settlor’s desire for her children to receive equally under the Trust. The plain language of the Trust required the Settlor’s personal and household effects be distributed to her children in approximately equal shares. Further, Article VI, Trust Estate to Settlor’s Issue, requires the Trust Estate shall be held in trust or paid over and distributed to the Settlor’s surviving children in equal shares. The Probate Court considered the context in which the phrase “equal shares” is used elsewhere in the Trust document and concluded that the intent of the equalization provision was also to ensure her children received equally, and that Julia would be made equal as to all lifetime gifts made to the spouses and children of Beacham and Ellen.

The Probate Court further found that the language of the equalization provision in the Trust is ambiguous. In determining the intent of the Settlor with regard to the equalization provision, the Probate Court relied on the testimony of W. Steven Johnson, who testified on behalf of the Respondents. Johnson testified that the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen because she was not married and had no children. Based on this desire of the Settlor, Johnson testified he told the Settlor that he could add a provision to “catch up” Julia for gifts made to Beacham and Ellen’s spouses and children. The Probate Court further relied on a Draft First Codicil to the Last Will and Testament of Janet Bloom Brooker, which while never executed, exhibited the Settlor’s intent to “equalize for gifts given to any child of mine during my life.” The Draft Codicil made no distinction between gifts made before and after the Trust was created.

Additionally, the Probate Court relied upon the To Do List of Mr. Johnson’s estate paralegal, which states, “Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in May 1997. The amount

of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia.” The Probate Court’s ruling that the Settlor intended for Lifetime Gifts to predate the Trust is supported by evidence in the record, and the Court finds no basis to reverse the Probate Court’s ruling.

Appellants argue that the Probate Court allowed testimony from Julia Brooker which violated the Dead Man’s Statute, and ignored the testimony of W. Steven Johnson and William Reynolds with regard to the Settlor’s intent as to Lifetime Gifts made before the execution of the Trust on October 16, 2007. At the hearing, Julia was permitted to testify as to what she believed her mother’s intent was as to the 2007 estate plan and Trust. The hearing transcript shows that the Probate Court limited the scope of Julia’s testimony with regard to communications with her mother regarding the provisions of the Trust. She was permitted to testify about family meetings and that W. Steven Johnson told her that her mother intended to “catch her up at the end.”

The Probate Court relied upon the testimony and documents of W. Steven Johnson in determining the Settlor’s intent. As stated previously, Mr. Johnson testified the Settlor’s Intent was to catch Julia up at the end and because she did not want Julia disadvantaged.

The admission of evidence is within the trial court's discretion. *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct.App.2000) (citing *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994)); *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct.App.2000), 353 S.C. 481, 579 S.E.2d 293 (2003); *Cudd v. John Hancock Mut. Life Ins. Co.*, 279 S.C. 623, 310 S.E.2d 830 (Ct.App.1983). The court's ruling to admit or exclude evidence will only be reversed if it constitutes an abuse of discretion amounting to an error of law. *R & G Construction* at 439, 540 S.E.2d at 121; *Elledge v. Richland/Lexington School Dist. Five*, 352 S.C. 179, 185, 573 S.E.2d 789, 792 (2002); *see also Whaley v. CSX Transp., Inc.*, 362 S.C.

456, 609 S.E.2d 286 (2005) (observing admission of evidence will not be reversed absent an abuse of discretion); *Gamble v. Int'l Paper Realty Corp.*, 323 S.C. 367, 474 S.E.2d 438 (1996) (noting admission or exclusion of evidence will not be disturbed on appeal absent clear abuse). The trial judge's decision will not be reversed on appeal unless it appears she clearly abused her discretion and the objecting party was prejudiced by the decision. *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 548 S.E.2d 880 (Ct.App.2001); *Sullivan v. Davis*, 317 S.C. 462, 454 S.E.2d 907 (Ct.App.1995); *Cudd*, 279 S.C. 623, 310 S.E.2d 830. The Court finds no evidence was admitted in violation of the Dead Man's Statute.

Appellants claim that the Probate Court erred in ordering Julia B. Brooker's attorney's fees and cost reimbursements be paid from the corpus of the Trust. Pursuant to S.C. Code Ann. § 62-7-1400, the Probate Court has the authority to award attorney's fees in a trust matter. S.C. Code Ann. § 62-7-1400 states, "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party to be paid by another party or from the trust that is the subject of the controversy." The Probate Court's award of fees and costs must be affirmed if any evidence supports it. *Deborah Dereede Living Trust dated December 18, 2013 v. Karp*, 427 S.C. 336, 831 S.E.2d 435 (Ct.App. 2019), *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993).

Here, the Probate Court reviewed the legal bills and professional fees of both Appellants and Respondent and found them comparable. The Probate Court found after balancing the equities of the case, the prevailing party was entitled to reimbursement for legal fees and costs. This Court finds no grounds to reverse the fee and costs award.

Based upon the foregoing, the Orders of the Probate Court are AFFIRMED.

AND IT IS SO ORDERED this _____ day of March 2021.

R. Kirk Griffin
Presiding Judge
Fifth Judicial Circuit

Sumter, South Carolina



Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julie B Brooker

Case Number: 2019CP4003582

Type: Order/Form 4

So Ordered

s/ R. Kirk Griffin 2768

Electronically signed on 2021-03-19 15:47:53 page 10 of 10

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
)
 COUNTY OF RICHLAND) Estate No.: 2017-GC-40-0036
)
 IN THE MATTER OF:) Civil Action Number: 2019-CP-40-03582
) Civil Action Number: 2019-CP-40-04463
) Civil Action Number: 2019-CP-40-06229

The Janet B. Brooker Trust)
 (C.A. No. 2015-ES40-00662))
)

Julia B. Brooker,)
)
 Petitioner,)
)
 vs.)

**ORDER CONSOLIDATING APPEALS
 AND BRIEFING SCHEDULE**

Beacham O. Brooker, Jr., in his official)
 capacity as Trustee and individually as a)
 Beneficiary of the Janet B. Brooker Trust,)
 and Ellen B. Corontzes individually as a)
 Beneficiary of the Janet B. Brooker Trust,)
)
 Respondents.)

This matter came before the Court upon Consent Motion of Petitioner Julia B. Brooker (“Julia”) and Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust (“Beach”) and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust (“Ellen”) to consolidate three appeals by Beach and Ellen of three probate court orders (“Orders”) and for a briefing schedule for the consolidated appeal pursuant to Rule 214 of the South Carolina Appellate Rules. Because the three appeals of three orders involve the same questions and issues, it is hereby ORDERED the three appeals be consolidated under the first appeal filed bearing case number 2019-CP-40-03582.

In addition, the following briefing schedule based on Section 62-1-308 is hereby ordered under case number 2019-CP-40-03582:

1. The Amended Statement Issues on Appeal shall be filed within 30 days after this Order is entered;
2. Beach and Ellen shall file their brief and Designation of Matter within 30 days after the Amended Statement of Issues on Appeal is filed.
3. Julia shall file her brief within 30 days after the service of Beach and Ellen's brief; and,
4. Beach and Ellen shall file their Reply Brief within 10 days after service of Julia's brief; and
5. Beach and Ellen shall file the Record on Appeal within 30 days after service of Julia's brief.

IT IS HEREBY ORDERED.

The Honorable Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

November _____, 2019
Columbia, South Carolina



Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julia B Brooker
Case Number: 2019CP4006229
Type: Order/Consolidate

So Ordered

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

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STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	Civil Action Number- 2019-CP-40-04463
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	

Julia B. Brooker,	)
Petitioner,	)

vs.	)
-----	---

Beacham O. Brooker, Jr., in his official	)
capacity as Trustee and individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
and Ellen B. Corontzes individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
Respondents.	)

**CONSENT ORDER FOR
LIMITED REMAND AND TO STAY**

This matter is before this Court on Respondents' Motion for Limited Remand filed with this Court on July 1, 2019 2019-CP-40-03582¹. This matter is an appeal of an Order Calculating Equalization Distribution of Lifetime Gifts ("Order") issued by the Probate Court for Richland County. The Respondents have appealed this Order to this Court, but they also filed a Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP ("Motion for Reconsideration") with the Probate Court. Respondents also filed the present motion with this Court so that the Probate Court could hear and rule on the Motion for Reconsideration in the

¹ Respondents have filed a separate appeal bearing Civil Action Number 2019-CP-40-04463, in which Respondents appeal an Order regarding the award of attorney's fees. This second appeal arises, however, out of the same probate litigation. In this Consent Order, Respondents seek the same relief of a stay in both appeals until the Probate Court rules on the Motion for Reconsideration.

interests of judicial economy and efficiency. Specifically, Respondents request that this Court (1) remand this case to the Probate Court solely for the purpose of considering and ruling on the Motion for Reconsideration and any other post-trial motions, if any, and (2) hold all appellate deadlines in abeyance until the Probate Court rules on the Motion for Reconsideration. Petitioner has consented to the present motion, and this Court finds that the Motion for Limited Remand is in the interests of judicial economy and efficiency.

WHEREFORE, this matter is remanded to the Probate Court solely for the purpose of considering and ruling on the Motion for Reconsideration. All appellate deadlines in Civil Action No. 2019-CP-40-03582 and Civil Action No. 2019-CP-40-04463 shall be held in abeyance until the Probate Court rules on the Motion for Reconsideration. Once the Motion for Reconsideration is heard and ruled upon, this Court will resume jurisdiction over the matter.

IT IS SO ORDERED.

The Honorable Jocelyn Newman
Chief Administrative Judge for the
Fifth Judicial Circuit

WE SO MOVE:

s/Bess J. DuRant

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WE SO CONSENT:

s/James M. Griffin

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Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al VS Julie B Brooker

Case Number: 2019CP4003582

Type: Order/Stay

So Ordered

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

Electronically signed on 2019-08-27 14:30:00 page 4 of 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Case Number: 2017-GC-40-00036

IN THE MATTER OF THE)
JANET B. BROOKER TRUST)

Julia B. Brooker,)
Petitioner,)

vs.)

Beacham O Brooker, Jr., in his official)
Capacity as Trustee and individually as a)
Beneficiary of the Janet B. Brooker Trust;)
and Ellen B. Corontzes individually as a)
Beneficiary of the Janet B. Brooker Trust,)

Respondents.)

ORDER REGARDING MOTION FOR
RECONSIDERATION AND TO
ALTER OR AMEND UNDER RULES
52 AND 59(e), SCRCF

THIS MATTER COMES BEFORE THE COURT upon the filing of a Motion to Reconsider and to Alter or Amend Under Rules 52 and 59(e) (hereinafter "Motion") by Beacham O. Brooker (hereinafter "Beacham"), in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontez (hereinafter "Ellen"), individually as a Beneficiary of the Janet B. Brooker Trust, (hereinafter collectively "Respondents") through their attorneys Thornwell F. Sowell, III and Bess J. DuRant, filed on July 1, 2019. Julia B. Brooker (hereinafter "Julia"), through her attorneys James M. Griffin and Margaret N. Fox, filed a Response in Opposition to the Motion for Reconsideration on August 29, 2019. Rule 59(f), SCRCF, allows for a Rule 59(e) motion "in the discretion of the Court [to] be determined on briefs filed by the parties without oral argument."

The Motion asks this Court to reconsider and to alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts (hereinafter "Order") dated June 22, 2019 and filed June 20, 2019. In the Order, the Court concludes that the language "lifetime gifts" in the equalization provision of the Janet B. Brooker Trust (hereinafter "Trust") included gifts Janet B. Brooker (hereinafter "Decedent" or "Settlor") made to the spouses and children of Beacham and Ellen prior to the creation of the Trust on October 16, 2007. The Court found that it was the Decedent's intent to have Julia B. Brooker (hereinafter "Julia") equalized at her death, therefore, the equalization provision was interpreted so that Julia would receive half of the sum total of all

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lifetime gifts made to the spouses and children of Beacham and Ellen, plus five percent interest, as calculated on the date of payment so that she may be equalized.

Respondents request the Court explicitly rule on the threshold question of whether the Trust Agreement is ambiguous (Motion at 2). Respondents also argue that the Court ignored the intent of the Settlor in making its findings and rendered the phrase “[f]rom the date of this trust forward, the Trustee shall...” meaningless (Motion at 2, 3). Respondents’ further claim the Court erroneously relied on the testimony of Julia in violation of the Dead Man’s Statute and the parol evidence rule (Motion at 3, 4).

This Court considers Respondent’s Motion and offers clarifications of its Order as set forth below.

The Equalization Provision of the Janet B. Brooker Trust Is Ambiguous

Respondents argue that the Court did not explicitly rule on the threshold question of whether the Trust Agreement or its equalization provision is ambiguous (Motion at 2). The Court has previously determined that the equalization provision is ambiguous, however, for clarification, the Court explicitly rules that the equalization provision of the Janet B. Brooker Trust is ambiguous. Even Beachum and his witness, drafting attorney Steven Johnson, had different interpretations of the Settlor’s intent regarding how to interpret the equalization calculation in the Trust document.

The Court Made Specific Findings and Conclusions Regarding the Settlor’s Intent

Respondents argue that the Court ignored the intent of the Settlor in making its findings (Motion at 2). The Court determined that the Settlor’s intent was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children and that Julia should be equalized at the time of Janet’s death (Order at 10, 11). The Court based this determination on the plain language of the Janet B. Brooker Trust as well as the situation and purposes of the parties at the time the Trust was created. *See Schulmeyer v. State Farm Fire and Casualty Company*, 353 S.C. 491, 579 S.E.2d 132 (2003); *Columbia East Associates v. Bi-Lo Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

When considering the plain language of the Trust as a whole, “equal shares” appears twice, indicating that the Settlor intended her children to receive equally under the Trust:

- Article V (1)(b), General Distribution of Personal and Household Effects with a Mandatory Memorandum: “In default of such memoranda, or to the extent that such memoranda do not completely or effectively dispose of such property, the rest of the

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Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares..."

- Article VI, Trust Estate to Settlor's Issue: "Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's General Estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares..."

Considering the context in which the Trust uses the phrase "equal shares" to indicate that the Settlor's intent was for her surviving children to receive equal shares of personal and household effects and of the Trust Estate, it follows that the Settlor's intent of the equalization provision in Article V(2) was also to ensure her children received equally, and therefore that Julia would be made equal as to all the lifetime gifts made to the spouses and children of Beacham and Ellen upon the Settlor's death.

Further, in determining the situation and purposes of the Settlor at the time the Trust was created, the Court also relied on the testimony of Steven Johnson, who testified on behalf of the Respondents. According to Johnson, the Settlor did not want Julia to be disadvantaged as a result of the lifetime gifts to the spouses and children of Beacham and Ellen since Julia was not married and had no children (Trial Tr. 102:6-11). Based on this express desire by the Settlor, Johnson testified that he told the Settlor that he could put in a provision to "catch up" Julia for gifts made to Beacham and Ellen's spouses and children (Trial Tr. 102:11-14).

Mr. Johnson further testified that, after the family meeting on September 25, 2001, he asked his paralegal to "prepare a codicil with an equalization provision in it" (Trial Tr. 135:4-8). The Court found persuasive the Draft First Codicil to Last Will and Testament of Janet Bloom Brooker, Plaintiff's Exhibit 9, which in pertinent part reads:

"I give, devise and bequeath such amount necessary to equalize for gifts given to any child of mine during my life. Thus, to the extent that I have not equalized for such gifts during my lifetime, I direct that at the time of my death my Personal Representative determine what gifts I made and whether I accomplished equalization and if not then I direct my Personal Representative to make equalizing gifts to my children or to such child's issue, per stirpes. Such equalization shall be made for the value of the gift given at the time such gift was made with no interest thereon."

Mr. Johnson agreed that this draft codicil created by his paralegal does not make a distinction between gifts given before and after the Trust was created (Trial Tr. 136:25 – 137: 1-5).

Additionally, the Court relies on the To Do List of Mr. Johnson's estate paralegal, submitted as Plaintiff's Exhibit 11, which states: "Need to know the amount of annual exclusion gifts to the children of Beach and Ellen, as well as the spouses of Beach and Ellen, beginning in

3/8/11 am

May of 1997. The amount of these gifts will accrue interest at 5% from the date of the gift until the amount is distributed to Julia.” This exhibit clearly indicates the Trust’s equalization provision included the lifetime gifts made before the Trust was created.

Based on the above testimony and the evidence submitted, the Court considered the Settlor’s intent and determined that it was for Julia not to be disadvantaged or treated differently because she did not have a spouse or children (Order at 10, 11). As such, the Court determined that all lifetime gifts made to the spouses and children of Beacham and Ellen were to be included in the equalization distribution in order to ensure Julia were made equal (Order at 8).

The Court Determined that the Phrase “[f]rom the Date of This Trust Forward, the Trustee Shall...” Indicates the Beginning of Beacham’s Duties as Trustee

Respondents argue that the Court rendered the phrase “[f]rom the date of this trust forward, the Trustee shall...” within the equalization provision meaningless (Motion at 3). The Court determined that this phrase plainly marks the beginning of Beacham’s duties as Trustee.

Respondents argue that this language was not “imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust and the Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust” (Motion at 3.) Respondents quote *In re Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995), claiming that “no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous....” however the portion cited applies to statute interpretation, not contract interpretation. Contract precedent determines that interpretation of the language in a testamentary trust must be reasonably supported by a plain reading of the document as a whole. *See Epworth Children’s Home v. Beasley*, 365 S.C. 157, 167, 616 S.E.2d 710, 715 (2005); *Harper v. South Carolina Tax Commission*, 267 S.C. 144, 149, 226 S.E.2d 699, 701 (1976). Therefore, the Court determined that the plain reading of the phrase “[f]rom the date of this trust forward, the Trustee shall...” indicates the beginning of the Trustee’s duties.

Further, although the Settlor may have had substantially better knowledge of the gifts she made to each child and grandchild prior to the Trust, the gifts were accurately identified by accountant George Durant via bank and investment statements of the Settlor (Order at 12). The sum total of all lifetime gifts was calculated to be \$997,869.83 (Order at 8). Therefore, this point is moot.

The Court’s Order is not Based on Evidence Prohibited by the Dead Man’s Statute

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Respondents contend the Court erroneously relied on Julia's testimony in violation of the Dead Man's Statute and the parol evidence rule (Motion at 3-4). This argument is without merit. There is no indication under the "Findings of Facts and Conclusions of Law" section of the Order that supports the assertion that the Court's decision is based, in whole or in part, on the testimony of Julia Brooker. The only allusion to Julia's testimony in the Order is found under a summary of all testimony provided by witnesses at the hearing. As set forth in the summary, Julia was permitted to testify as to what she believed her mother's intent was "as to the 2007 estate plan and the Trust" (Order at 5). A review of the transcript of her testimony illustrates that the Court carefully circumscribed the scope of her testimony. Julia was not permitted to testify as to any communications she had with her mother about her mother's intentions regarding the equalizing provision in the Trust. Rather, she was permitted to provide background information and to testify that in family meetings with Steve Johnson, she was told by Steve Johnson that her mother intended to "catch her up at the end" (Trial Tr. 254:1). This Court correctly ruled that such testimony is not prohibited by the Dead Man's Statute, nor is it prohibited from the Court's consideration based on a claim of attorney-client privilege (Id. at 254:23-255:11).

Moreover, the information provided to Julia in her testimony was duplicative of the information provided through Steve Johnson's testimony and documents introduced in to evidence. As recognized by the Court (Id. at 254:5-8), Mr. Johnson mimicked Julia's testimony that it was the Settlor's intent to catch Julia up at the end because Janet did not want Julia to be disadvantaged (Id. at 102:6-14). The gifts made by Janet Brooker prior to 2007, as testified by George Durant, were identified by the bank and investment account statements of Janet Brooker. Given the introduction of this evidence from permissible sources other than Julia, Respondents cannot support their argument that the Order necessarily relied on impermissible testimony provided by Julia.

The Court's Order Need Not Address the Admissibility of Parol Evidence

Lastly, Respondents never objected to parol evidence being considered by the Court during the hearing. A party cannot use a motion to alter or amend a judgment to present an issue that the party could have raised prior to judgment but failed to do so. *MailSource, LLC v. M.A. Bailey & Associates, Inc.*, 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003). Therefore, the Court need not address the admissibility of parole evidence.

Upon review of the Order and consideration of Respondent's Motion for Reconsideration and to Alter or Amend and Petitioner's Response, the Court confirms and clarifies its Order

526 a

Calculating Equalization Distribution of Lifetime Gifts dated June 22, 2019 and filed June 20, 2019.

THEREFORE, IT IS HEREBY ORDERED THAT respondents Motion to Reconsider and to Alter or Amend the Order issued by this Court dated June 22, 2019 and filed June 20, 2019, has been considered, and the Court hereby clarifies its Order.

AND IT IS SO ORDERED.


The Honorable Amy McCulloch
Judge, Richland County Probate Court

October 28, 2019
Columbia, South Carolina

W. J. K. an

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-GC-40-00036

IN THE MATTER OF THE
JANET B. BROOKER TRUST

Julia B. Brooker,
Petitioner,

vs.

Beacham O Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust;
and Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,
Respondents.

FILED
2019 AUG -5 P 3:29
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

ORDER ALLOWING ATTORNEY'S FEES

THIS MATTER COMES BEFORE THE COURT upon the filing of an Affidavit in Support of Award of Attorney's Fees and Reimbursement of Expenses, by Attorney James. M. Griffin on behalf of his client Julia Brooker ("Petitioner") on February 28, 2019. The Affidavit asks for this Court to award attorney's fees and reimbursement to Julia Brooker for cost paid by her in the matter of the Janet B. Brooker Trust, case number 2017-GC-40-00036, from the Janet B Brooker Trust ("Trust"). Respondents, through their attorneys Thornwell F. "Biff" Sowell, III and Bess J. DuRant, of the law firm Sowell Durant, filed a Memorandum in Opposition to Petitioner's Fee Affidavit on April 10, 2019.

A hearing on the matter was scheduled and held on May 22, 2019. All parties were sent Notice of Hearing. All parties were present at the hearing with their respective counsels.

At the hearing, the Court heard arguments from both sides about the appropriateness of awarding attorney's fees in this case, including arguments based on the experience of the attorneys' on either side, and the differences in hourly rate charged by each set of attorneys based on that experience. Mr. Griffin argued that Respondents' legal fees are being paid by the Janet B. Brooker Trust, while Petitioner personally paid the fees and costs of her attorney. This court notes that after the hearing on the fee issue, this court issued its ruling in the case in favor of the Petitioner.

Because the remaining Trust corpus is to be split evenly between Respondents and Petitioner after the distribution ordered in this Court's Order filed June 20, 2019, having the Trust be responsible for some attorney's fees advantages some beneficiaries over others, reducing the amount of corpus left to be distributed to all beneficiaries. The Court views this as inequitable. For

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this reason, the Court required Respondents' to provide their itemized legal bill so that a comparison could be made with that of the Petitioner's.

The Probate Court has authority to award attorney's fees in this trust matter pursuant to S.C. Code Ann. § 62-7-1004 which states "In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

After reviewing the legal bills and professional fees of both Respondents and Petitioner and finding them comparable, and weighing the equities of the case, Petitioner's Motion for Attorney's Fees and Reimbursement **IS HEREBY GRANTED.**

THE COURT FURTHER ORDERS THAT Petitioner's attorney's fees and reimbursement be paid out of the corpus of the Janet B. Brooker Trust, along with Respondents' attorney's fees.

IT IS SO ORDERED.



Amy W. McCulloch Judge
Richland County Probate Court

August 5, 2019
Columbia, South Carolina

202an

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-GC-40-36

IN THE MATTER OF THE
JANET B. BROOKER TRUST

Julia B. Brooker,
Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust;
and Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,
Respondents.

**ORDER
CALCULATING EQUALIZATION
DISTRIBUTION OF LIFETIME GIFTS**

FILED
2019 JUN 20 P 1:18
AMY W. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter “Julia” or “Petitioner”), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also “Decedent” or “Settlor”) in the equalization clause of the Janet B. Brooker Trust and Decedent’s meaning of the words *lifetime gifts*, as it is used within the Decedent’s Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter “Beacham”) and Ellen B. Corontzes (hereinafter “Ellen”) (hereinafter collectively “Respondents”) are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. “Biff” Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

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additionally, that the amount of \$525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children.

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Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

- (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
- (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
- (c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [*to be made*], [*that will be made*], [*that Settlor intends to make pursuant to the gifting program*] to such daughter's siblings' spouses or siblings' issue."

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Petitioner believes that the use of past tense “**lifetime gifts made** to such daughter’s siblings’ spouses or siblings’ issue” is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner’s Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents’ Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner’s position is that Respondent “cannot create ambiguity in contract when it does not exist within the four corners...[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.” Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen’s spouse and children prior to October 16, 2007 of \$502,755.92 and after October 16, 2007 of \$396,305.23 plus the total of gifts made to Beacham’s spouse and children prior to October 16, 2007 of \$495,113.92 and after October 16, 2007 of \$408,194.00 for a total of \$1,802,369.07 plus interest of \$1,139,694.81 (as of the date of the hearing) for a final total of **\$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that “[f]rom the date of this trust forward,” the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) “If the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.”.

Respondents’ position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent’s death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner’s construction of the Trust, if Beacham’s family received \$100,000.00 and Ellen’s family received \$100,000.00, Julia would

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receive \$200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of \$100,000.00 because Beacham's family received \$100,000.00, Ellen's received \$100,000.00, yet Julia received \$200,000.00. Therefore, Respondents believe that the payment of **\$525,528.08, plus some calculation of interest after death**, is correct.

Summary of Issues to be Resolved

- 1. Did the offer of \$525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
- 2. What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
- 3. How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of \$525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

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of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling \$437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: \$24,000.00 (\$12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and \$240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

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include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to “catch up” Julia for any gifts made to her children’s spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent’s death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham’s spouse and children versus Ellen’s spouse and children, and then add the interest to achieve Petitioner’s share.
- The calculation of the equalization amount offered of \$525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson’s file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is “to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia”. Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson’s law partner, supported Mr. Johnson’s testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

7810 am

Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: \$24,000.00 (\$12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and \$240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beachum reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled \$804,499.23. Of that total gift amount, \$396,305.23 was received by the spouse, and issue of Ellen, and \$408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of \$997,869.83. Of this prior gift amount, \$495,113.92 was received by the spouse and issue of Beacham and \$502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of \$525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

8 of 10 am

was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to “ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments...”
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor’s daughter Julia upon the Settlor’s death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent’s estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of \$997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

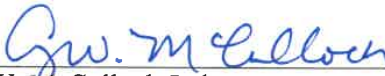
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12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is \$1,802,369.07, with \$899,061.15 to spouse and issue of Ellen and \$903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was \$1,139,694.81.
17. The total of \$2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was \$1,471,031.94 ($\$2,942,063.88 / 2$).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

- A. Julia B. Brooker was entitled to \$1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.
- B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.



Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

10 8 10 am

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-GC-40-00036

IN THE MATTER OF THE
JANET B. BROOKER TRUST

JULIA B. BROOKER,
Petitioner,

vs.

BEACHAM O. BROOKER, JR. in his
official capacity as Trustee and
Individually as a Beneficiary of the Janet
B. Brooker Trust; and ELLEN B.
CORONTZES individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

ORDER DENYING
MOTIONS FOR SUMMARY
JUDGMENT

AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

2018 OCT 24 PM 3:35

FILED

THIS MATTER COMES BEFORE THE COURT upon presentment of Petitioner's Motion for Summary Judgment and Respondents' Motion for Summary Judgment, both filed August 3, 2018. Following briefing by the parties on these motions, the Court held a hearing concerning the same on October 16, 2018. Based on the filings with the Court and argument of counsel at the hearing, the Court DENIES Petitioners' Motion for Summary Judgment and DENIES Respondents' Motion for Summary Judgment.

IT IS SO ORDERED.


The Honorable Amy McCulloch
Richland County, SC Probate Judge

October 24, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	

Julia B. Brooker,	)
Petitioner,	)

vs.	)
-----	---

Beacham O. Brooker, Jr., in his official	)
capacity as Trustee and individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
and Ellen B. Corontzes individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
	)
Respondents.	)

**MOTION FOR
LIMITED REMAND**

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust¹ (“Appellants”) hereby file this motion for a limited remand to the Probate Court for the sole purpose of ruling on Appellants’ post-trial motion and other post-trial motions (if any), with all appellate timelines being held in abeyance pending the Probate Court’s ruling(s) on the same. The grounds for this motion are as follows:

¹ The Respondents/Appellants are Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust (“Beach and Ellen”). Beach and Ellen were the Respondents in the lower Probate Court matter. They are the Appellants in this appeal. For purposes of this motion, Beach and Ellen will identify themselves as the Appellants.

1. On June 20, 2019, the Probate Court for Richland County, South Carolina issued its Order Calculating Equalization Distribution of Lifetime Gifts (“Order”) in the above referenced estate matter.

2. On July 1, 2019, Appellants filed Respondents’ Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCPP (“Motion for Reconsideration”) with the Probate Court, a filed copy of which is attached hereto as **Exhibit A**.

3. Soon thereafter, on July 1, 2019 Appellants filed a Notice of Intent to Appeal to Circuit Court with the Richland County Circuit Court pursuant to section 62-1-308 of the South Carolina Code of Laws. A copy of the notice of each Appellant is attached hereto as **Exhibit B**.

4. In the interests of judicial economy and efficiency, Appellants desire for the Probate Court to rule on the Appellants’ Motion for Reconsideration and any other post-trial motions before the parties engage in the appellate process, other than filing the Notice of Intent to Appeal to the Circuit Court.

5. Therefore, Appellants request that this Court (1) remand this case to the Probate Court solely for the purpose of considering and ruling on Appellants’ Motion for Reconsideration and other post-trial motions, if any, and (2) hold all appellate deadlines in abeyance until the Probate Court rules on the same.

For the above reasons, Appellants respectfully request that this Court remand this case to the Probate Court solely for the purpose of considering and ruling on Appellants’ Motion for Reconsideration and other post-trial motions, if any, by the Probate Court. Additionally, Appellants request that all appellate deadlines are held in abeyance pending a decision on the same.

[Signature page follows.]

Respectfully submitted,

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capacity as Trustee and individually as a Beneficiary of
the Janet B. Brooker Trust and Ellen B. Corontzes
individually as Beneficiary of the Janet B. Brooker Trust***

Columbia, South Carolina
July 1, 2019

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official	)	
capacity as Trustee and individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
and Ellen B. Corontzes individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT A

MOTION FOR LIMITED REMAND

Respondents' Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP

FILED

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF RICHLAND)
2019 JUL -1 P 2:45 Civil Action No.: 2017-GC-40-0036
IN THE MATTER OF:)
The Janet B. Brooker Trust)
(C.A. No. 2015-ES40-00662))

Julia B. Brooker,)
Petitioner,)
vs.)
Beacham O. Brooker, Jr., in his official)
capacity as Trustee and individually as a)
Beneficiary of the Janet B. Brooker Trust,)
and Ellen B. Corontzes individually as a)
Beneficiary of the Janet B. Brooker Trust,)
Respondents.)

**RESPONDENTS' MOTION FOR
RECONSIDERATION AND TO
ALTER OR AMEND UNDER RULES
52 AND 59(e), SCRPC**

Pursuant to Rules 52 and 59(e) of the South Carolina Rules of Civil Procedure, Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust ("Beach"), and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust ("Ellen"), hereby move the Court to reconsider and/or alter or amend its Order Calculating Equalization Distribution of Lifetime Gifts ("Order"), dated June 22, 2019¹ and filed June 20, 2019. Respondents received written notice of the entry of this Court's Order via an email from this Court's Judicial Law Clerk, Matthew Brock, on June 20, 2019. The grounds for this motion are as follows:

¹ Respondents believe the Order was inadvertently dated June 22, 2019 because the Order was filed on and Respondents received notice of the Order on June 20, 2019.

First, this Court did not explicitly rule on the threshold question of whether the Trust Agreement is ambiguous. The question of whether a trust is ambiguous is a question of law. *See Wallace v. Day*, 390 S.C. 69, 74-75, 700 S.E.2d 446, 449 (Ct. App. 2010). The answer to this question determines if extrinsic or parol evidence may be used. “If the language of the trust instrument is plain and capable of legal construction, that language determines the force and effect of the instrument. Under such circumstances, extrinsic evidence will not be admitted to alter the plain language of the instrument. Conversely, when there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor’s intent.” *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) (internal citations omitted). Here, the Order contains no explicit finding as to whether the Trust Agreement or its equalization distribution provision is ambiguous, which would allow for parol or extrinsic evidence. The question of ambiguity should be explicitly ruled upon by the Court.

Second, the Settlor Janet Brooker’s (“Settlor” or “Janet”) intent was ignored by this Court. The Settlor’s intent is of paramount concern. *Bowles v. Bradley*, 319 S.C. at 380, 461 S.E.2d at 813. If this Court determined that the Trust Agreement was ambiguous, it should have relied upon the testimony of the estate lawyer, W. Steven Johnson, Esquire, and his partner, William Reynolds, III, Esquire, who knew the Settlor’s intent, unlike any of the other witnesses who testified. Yet, Johnson’s testimony that the Settlor did not intend for the equalization distribution to capture any gifts prior to the execution of the Trust Agreement was not relied upon by this Court. (*See, e.g.* Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23, attached hereto as **Exhibit A.**) Similarly, Reynolds’ testimony that Johnson accurately captured the Settlor’s intent was not relied upon by this Court. (Trial Tr. 182:8 – 183:6, attached hereto as **Exhibit B.**) If the Trust Agreement is

ambiguous, the only witnesses competent to testify about the Settlor's intent are Johnson and Reynolds, but their testimony about the Settlor's intent was ignored. Importantly, their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced appropriately.

Additionally, the Court's interpretation of the equalization provision renders the phrase "[f]rom the date of this trust forward, the Trustee shall" meaningless, which is not favored by South Carolina courts. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) (holding "an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." (internal citation and quotation marks omitted)). The Settlor was not imposing a duty on the Trustee to equalize Beach, Ellen, and Julia for gifts made prior to the Trust. The Settlor had substantially better knowledge as to the gifts she made to each child and grandchild prior to the Trust. To the extent the Court's Order intended to adopt Petitioner's argument that the phrase, "From the date of this trust forward ..." simply serves to establish the date the Trustee began exercising his authority, it would be redundant to his actual appointment as Trustee in the same instrument. The Court should read the clause so "that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous." *In re Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. *Statutes* § 346). The Settlor expressed her intent through this phrase, and her intent was for Beach, as Trustee, to calculate all of the gifts from the date of the Trust forward to provide the figures for the equalization distribution. The Settlor's intent should not be thwarted.

Third, this Court erroneously relied on the testimony of Petitioner Julia Brooker ("Julia"), which is in violation of both the Dead Man's Statute and the parol evidence rule. Even if the Court ruled the Trust Agreement is ambiguous, Julia's testimony regarding the Settlor's intent cannot be

permitted or relied upon by this Court. The Dead Man's Statute precludes testimony from a witness in four classes:

1. A party to the action;
2. A person having an interest which may be affected by the trial's outcome;
3. A person who previously had an interest which may be affected by the trial; and,
4. An assignor of the thing in controversy.

Estate of Mason v. Mason, 289 S.C. 273, 278 n.2 346 S.E.2d 28, 31 (Ct. App. 1986); S.C. Code Ann. § 19-11-20 (Dead Man's Statute). Julia, as Petitioner and beneficiary, clearly falls under the scope of the Dead Man's Statute, and she was allowed to testify, over the objection and motion in limine of Respondents, regarding communications and transactions at issue. (See, e.g. Trial Tr. 8:15 – 14:19; 250:16 – 255:11, attached hereto as **Exhibit C**.) Under the Dead Man's Statute, Julia should not have been allowed to testify as to any matters related to her mother's intent, gift giving, or estate planning.

In addition to the Dead Man's Statute, the parol evidence rule should have precluded her from offering any testimony regarding the Trust Agreement if this Court determined the Trust Agreement was unambiguous. See *Penton v. J.F. Cleckley & Co.*, 326 S.C. 275, 280, 486 S.E.2d 742, 745 (1997) ("Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of an integrated agreement. However, where a contract is ambiguous, parol evidence is admissible to ascertain the true meaning and intent of the parties." (internal citations omitted)). This Court allowed such testimony, and it appears from the Order that the Court relied on the same in contravention of the Dead Man's Statute and possibly the parol evidence rule. Stated simply, Julia should not have been allowed to testify if the Trust Agreement was ambiguous or unambiguous. Rather, the only witnesses competent to testify under the Dead Man's Statute

are Johnson and Reynolds, and their testimony was ignored. Their testimony compels the conclusion that Respondents' construction of the Settlor's intent is the correct construction, and the amount awarded to Petitioner should be reduced accordingly.

For the above reasons, Respondents respectfully request the Court to reconsider and/or alter or amend its Order, dated June 22, 2019 and filed June 20, 2019, consistent with the points made herein.

Respectfully submitted,

By: 

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Columbia, South Carolina
July 1, 2019

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official	)	
capacity as Trustee and individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
and Ellen B. Corontzes individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	

EXHIBIT A

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRPC

Trial Tr. 100:23 – 101:4; 103:5-13 & 141:8 – 146:23

State of South Carolina) In the Probate Court
)
 County of Richland) Case No: 2017-GC-40-00036

IN THE MATTER OF:
 The Estate of Janet B.
 Brooker Trust
 (C.A. 2015-ES-40-00662

Julia B. Brooker

Petitioner,

vs.

Beacham O. Brooker, Jr., in
 his official capacity as
 Trustee and individually as a
 Beneficiary of the Janet B.
 Brooker Trust and Ellen B.
 Corontzes individually as
 Beneficiary of the Janet B.
 Brooker Trust

Respondents.

Transcript

of

Proceeding

The within proceeding was taken before Jennifer L. Thompson, CVR-M, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., February 5 & 7, 2019, at the Richland County Judicial Center, Probate Court, Columbia, South Carolina.

Reported by:

Jennifer L. Thompson, CVR-M

February 5&7, 2019

Julia B. Brooker v. Beacham O. Brooker, Jr., et al.

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February 5&7, 2019

Julia B. Brooker v. Beacham O. Brooker, Jr., et
al.

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February 5&7, 2019

Julia B. Brooker v. Beacham O. Brooker, Jr., et al.

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1 of the children. And when I mentioned to her
2 about making gifts to the spouses --

3 MR. GRIFFIN: Your Honor, I'm not sure if
4 he's still in this family meeting or some other,
5 so I'm going to object.

6 THE COURT: This is a private conversation
7 with her?

8 THE WITNESS: This was a conversation on
9 September 25th, and I believe at that time, Your
10 Honor, my time records will indicate that all the
11 family members were there. That it was a
12 family --

13 THE COURT: I also think I found a case that
14 deals with it. It's the concept of a lawsuit
15 between the beneficiary's heirs that the
16 conversations between the deceased and the
17 deceased's attorney are not privileged in the
18 sense that the testimony of that particular
19 witness is necessary to resolve litigation between
20 the heirs of the devisees, which is what we have
21 here, in my opinion.

22 BY MR. SOWELL:

23 Q All right. Now, was there ever any discussion
24 with Janet Brooker about an equalization for
25 retrospective gifts?

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1 A No.

2 Q Was the only conversation with her related to
3 prospective gifts?

4 A Yes.

5 Q Now, when you drafted the Trust Agreement and
6 specifically paragraph 2(a) (b) and (c, which is
7 denominated equalizing distribution to the
8 Settlor's daughter Julia B. Brooker, was that
9 intended by Mrs. Brooker and by you to state that
10 this equalization was only to be made going
11 forward as indicated by subparagraph (a)'s
12 language, "From the date of this trust forward?"

13 A That is correct?

14 MR. GRIFFIN: Objection, Your Honor, as to
15 Mrs. Brooker's intent. He can testify to his
16 intent; he can testify what she told him, but he's
17 in her mind now and that's not permissible.

18 MR. SOWELL: That's precisely what he's here
19 to testify about is her intent.

20 THE COURT: Right.

21 MR. SOWELL: He's the only person who can do
22 it.

23 THE COURT: He can testify about the
24 conversation that they had. What she said is more
25 important that what he thinks she said, is the

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Julia B. Brooker v. Beacham O. Brooker, Jr., et
al.

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1 conversations that were retrospective in the
2 equalization. If you want to ask him a different
3 question that gets more to your point.

4 BY MR. SOWELL:

5 Q Did Janet Brooker make statements to you that led
6 you to believe that she only wanted to equalize
7 going forward?

8 A We never had a discussion about retroactive gifts,
9 so the discussion, the whole discussion centered
10 around gifts going forward.

11 Q Was there ever any discussion whatsoever about
12 gifts going backward?

13 A No.

14 Q I'm going to show you Defendant's Exhibit No. 1
15 and ask you if you can identify it?

16 A Yes, this is a schedule that was done by a
17 paralegal in my office that comes up with a figure
18 of \$525,528, which is the amount that we computed
19 in determining the amount of the equalization that
20 we felt was due to Julia.

21 Q Do you continue to believe, along with the
22 Trustee, that amount, the 525,000 and some odd
23 dollars is the amount owed to Julie for the
24 equalization?

25 A Yes. With this exception: That computation of

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February 5&7, 2019

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1 A Apparently so, yes.

2 Q Is there any reason you didn't give them to
3 Mrs. Brooker when she was there signing the
4 documents?

5 A I don't remember why they were given to Dino, but
6 I would not have given them to Dino had Janet not
7 told me it was okay to give them to Dino.

8 Q I understand. And you have a specific
9 recollection of discussing with her the terms of
10 the equalization provision?

11 A I do. I said we'll catch Julie up at death for
12 gifts made from the Trust Agreement forward so
13 that she won't be prejudiced.

14 Q You remember saying "from the Trust Agreement
15 forward?"

16 A I do.

17 MR. GRIFFIN: Your Honor, this is the
18 deposition that Mr. Johnson gave on January 12,
19 2018. I'd like to show it to him. It's sealed.
20 I'm going to unseal it. For the record, it's
21 being unsealed.

22 THE COURT: The deposition of Mr. Johnson is
23 completely attached to your Motion in Limine. A
24 full copy, right?

25 MR. SOWELL: Yes, Your Honor.

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February 5&7, 2019

Julia B. Brooker v. Beacham O. Brooker, Jr., et al.

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1 BY MR. GRIFFIN:

2 Q Mr. Johnson, if you'll turn to page 27 of your
3 deposition.

4 A Okay.

5 Q And I'm asking you beginning at line 10 about her
6 Will and Trust, and then at line 13, I say, "Do
7 you recall whether you explained to her or not."
8 And your answer was, at line 15?

9 A Right.

10 Q And you said "I do," correct?

11 A Right.

12 Q Then line 16 I asked you, "What do you recall
13 doing." And if you'll read your answer in the
14 record, please.

15 A (As read) I recall saying to her we're going from
16 a straight will, which she had in 1988, to a will
17 and revocable trust. And I remember discussing
18 with her that we would be funding the trust. I
19 remember discussing the equalization provision
20 with her, and I remember telling her that her
21 estate, as far as Julie was concerned, would go
22 outright to Julie, but the portion that would go
23 to Ellen and Beach would go to them in the form of
24 a trust.

25 Q And then page 20, I asked, "Do you recall any

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- 1 questions she had of you about the equalization
2 provision." And your answer was?
- 3 A "I don't recall any question she had about it."
- 4 Q And then 28, line 4, I said, "When you spoke with
5 her, did you use the phrase "lifetime gifts?" And
6 you said what?
- 7 A "I don't know."
- 8 Q And then you said, then I asked, "Do you know
9 whether you explained to her that there could be a
10 difference in lifetime gifts, I mean gifts given
11 prior to the date of the execution of the trust
12 versus gifts given after the entry of the trust?"
13 And you said?
- 14 A "The whole conversation with Janet was about
15 prospective gifts, not retrospective gifts."
- 16 Q And I said "okay," and you said it was going
17 forward not looking back?
- 18 A Right.
- 19 Q So that was the conversation?
- 20 A Right.
- 21 Q And then I asked you, "Is there any language in
22 the Trust Agreement that references past gifts?"
23 In line 18, you say "no." Is that right?
- 24 A That's right.
- 25 Q But there is -- I mean, in the Trust Agreement, it

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1 says that Settlor has previously made lifetime
2 gifts, correct?

3 A Yeah, but, Jim, that was just to give a history of
4 what had happened, you know. I mean, that was my
5 drafting style.

6 Q Now, you're drafting style also -- you're saying
7 that we can read from your drafting style that the
8 sum of (a) and (b) above shall be distributed to
9 Settlor's daughter to mean that you look at the
10 pots of gifts and you give her the greatest
11 amount?

12 A I wanted to determine the gifts that had been
13 given to Ellen's side of the family, the gifts
14 that had been given to Beach's side of the family,
15 and then to add five percent to the greater
16 amount. And that was equalizing for Julie; that
17 was making sure that Julie was not disadvantaged;
18 that she received at least the higher number.
19 That's what I intended to do; that's what Janet
20 Brooker intended to do. Under your reading of the
21 Trust Agreement, she gets twice as much. There is
22 no way that Janet Brooker wanted Julie to get
23 twice as much as Beach or Ellen. That is just not
24 what she wanted.

25 Q Let's talk about the language you used. The sum

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1 of (a) and (b) above. So is (a), when we say (a)
2 and (b), we're talking (a), in the same paragraph,
3 right?

4 A Well, first you've got to determine the amount of
5 the gifts.

6 Q And that would be in (a)?

7 A Yeah, but you've got to determine what was given
8 to Ellen and you've got to -- Ellen's side of the
9 family and what was given to Beach's side of the
10 family.

11 Q And then from that you add the interest?

12 A The five percent onto those two amounts. You
13 create two columns, Ellen's column and Beach's
14 column, and then you add five percent, and
15 whichever would be the higher. I didn't want
16 Julie to be disadvantaged. Whichever the higher,
17 she would get. Now what was confusing about that
18 is Beach kept the gifts even.

19 Q Let's go to the language. Would you agree that
20 there's no word "higher" in (a), (b), or (c)?

21 A I would agree to that.

22 Q Do you agree that there is nothing in (a), (b), or
23 (c) that talks about separating the pots out from
24 Ellen's issue and spouses to Beach's issue and
25 spouses?

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1 A Well, if there's ambiguity there, I want you to
2 understand what Janet Brooker wanted. And she
3 wanted her daughter, Julie, to not be
4 disadvantaged because gifts had been given to
5 spouses and grandchildren. And this schedule
6 accomplishes that.

7 Q Are you aware that before the date of this Trust,
8 that Mrs. Janet Brooker had given the spouses and
9 issues of Ellen and Beach \$900,000 in gifts?

10 A I wasn't aware of that, but Janet, you know, was
11 only going from 2007 forward.

12 Q So you think she was aware that she had been
13 giving Ellen and Beach \$900,000 in gifts?

14 A I don't know, but I'll tell you what, she never
15 brought it up. If she did, if she'd have said to
16 me Julie should be equalized for that, I would
17 have said to her let's equalize it right this
18 minute, let's make a gift to her right this
19 minute, let's give her -- let's make a gift to
20 Julie right now if she's been so disadvantaged.
21 We're trying to reduce the size of your estate,
22 let's give her an amount right now that will make
23 her equal.

24 Q So then after Mrs. Brooker passes away, the -- was
25 a -- well, let me just ask you. What's this

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	)	
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	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official	)	
capacity as Trustee and individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
and Ellen B. Corontzes individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT B

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

Trial Tr. 182:8 – 183:6

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1 provision that we've been discussing today.

2 Q Did you do that?

3 A I did that.

4 Q What did you conclude from reviewing that
5 provision?

6 A I thought it was appropriate for the circumstances
7 that I knew about.

8 Q And what circumstances did you understand before
9 you had that conversation?

10 A I knew that Janet Brooker had a fairly large
11 taxable estate. There was an attempt, pretty
12 aggressive attempt, to give nontaxable gifts, but
13 also an attempt to equalize for Julia Brooker.
14 And so that was the context I looked at the
15 provision for.

16 Q Was there ever any discussion with Steve about
17 equalizing these payments going backwards?

18 A No. He basically told me this is a -- because
19 we're starting this aggressive gifting program,
20 and of course, annual exclusion gifts, gifts for
21 tuitions, for medical payments, are really the
22 lowest hanging fruit in estate planning. There
23 was never any discussion about retrospective or
24 looking back. I think, at least in my experience,
25 if you look back, you gotta start somewhere. And

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1 if they had decided to look back, Steve would have
2 asked Mrs. Brooker what were the gifts you've
3 given thus far; let's start with an amount or
4 let's write a check to even up Julia. But that
5 was never part of the discussion between Steve and
6 I.

7 Q Looking at this document, which is the Trust
8 Agreement, and we're looking here at the board,
9 which is 2(a), is there any reference in there to
10 a starting date for looking backwards?

11 A Well, the date that he references in 2(a), says,
12 "From the date of this Trust forward."

13 Q Right. Which was October of 2007?

14 A Right.

15 Q Now, you've heard the arguments Mr. DuRant made
16 about (a)+(b). What you think is the proper
17 interpretation and what did you think then was the
18 proper interpretation of (a), (b), and (c)?

19 A Well, when I first looked at it, reading the first
20 paragraph number 2, the main paragraph, it shows
21 what Janet's intent was. It was clear that she
22 said Julia's not married, she doesn't have
23 children; Ellen's married and has children; Beach
24 is married and has children, and we want to
25 equalize going forward. And (a) says to determine

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Julia B. Brooker,	)
	)
Petitioner,	)
	)
vs.	)
	)
Beacham O. Brooker, Jr., in his official	)
capacity as Trustee and individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
and Ellen B. Corontzes individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
	)
Respondents.	)
	)

EXHIBIT C

RESPONDENTS' MOTION FOR RECONSIDERATION AND TO ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCF

Trial Tr. 8:15 – 14:19; 250:16 – 255:11

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1 be number one and hand it up to the Court.

2 MR. SOWELL: No objection.

3 (Whereupon, Trust Agreement was
4 introduced as Petitioner's Exhibit No.
5 1.)
6

7 MR. GRIFFIN: Your Honor, we have two
8 witnesses, Julia Brooker and then George DuRant.
9 And I'll call Ms. Brooker at this time.
10 Whereupon,

11 Julia Brooker,
12 being duly sworn and cautioned to speak the truth, the
13 whole truth, and nothing but the truth, testified as
14 follows:

15 MS. DURANT: Your Honor, if I may object
16 right now just to Ms. Brooker's testimony today as
17 outlined in our motion in limine. We believe
18 Ms. Julia Brooker is an interested party and
19 therefore disqualified under the dead man's
20 statute. Interestingly enough the dead man's
21 statute is not about the admissibility of
22 Ms. Brooker's testimony; it's more about the
23 competency of her to testify. I do have a case
24 for you, Your Honor. This is Estate of Mason B
25 Mason 289 SC 273, Court of Appeals 1986. And if I

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1 may approach, Your Honor.

2 THE COURT: I may have it. Let me just look
3 and see. I'm going to let you hand it to me.

4 MS. DURANT: And what I've done, Your Honor,
5 is marked the salient provisions and I've also
6 marked the salient provisions for Mr. Griffin,
7 Ms. Fox and you and your law clerk. If you'll
8 note where I have the blue flag, Your Honor, I've
9 highlighted the relevant language that talks about
10 how the dead man's statute has to deal with
11 competency and not admissibility. It starts on
12 page 31 of the South Carolina Reporter, it's page
13 four of this PDF. And then at 278 of the
14 Southeastern 2nd Reporter, it says, "the dead
15 man's statute §19-11-20 Code of Laws of South
16 Carolina in substance provides that a witness may
17 not testify (will not be a competent witness)
18 should the witness be in either of the four
19 designated classes." And as outlined in our
20 brief, Your Honor, we believe Ms. Brooker is in
21 all four classes and therefore she's disqualified
22 from testifying in toto.

23 THE COURT: All right, Mr. Griffin.

24 MR. GRIFFIN: Your Honor, the case that she
25 cited goes on to say that if you're in that

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1 category, then you can't testify if one, the
2 testimony is regarding any communication or
3 transaction between the witness and the deceased;
4 two, if the testimony is offered against the party
5 prosecuting or defending the action as executor or
6 administrator, heir-at-law, next of kin, assignee,
7 devisee, or survivor; and three, does the
8 testimony potentially affect the present or
9 previous interest of the witness.

10 So the first of those three tests, we don't
11 intend to offer any testimony, Your Honor, from
12 Ms. Julia Brooker about communications or the
13 transaction. I'd also -- and so the dead man's
14 statute does not preclude her testimony. There's
15 also a number of exceptions to the dead man's
16 statute. I'll hand up the case to Your Honor,
17 Hanahan v. Simpson. There's a flag on it that
18 says it's been overruled and superseded by
19 statute. I'll tell Your Honor the statute they're
20 talking about is the Frivolous Civil Proceedings
21 Act. It's a sanction statute that doesn't really
22 have -- had nothing to do with the dead man's
23 statute. And then in the case, the -- there's a
24 number of exceptions to the dead man's statute.
25 And it's -- it says first, the benefit of the

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1 statute may be waived; they're not waving it.
2 Second, the testimony of an attorney preparing the
3 will is generally held admissible on the ground
4 that he's not an interested person. Third, a
5 witness is prohibited from testifying only if his
6 or her present or previous interest would be
7 affected by the event of trial, and if such, a
8 person is only disqualified if he has certain
9 legal and vested equitable interest which may be
10 affected. Fourth, a party may testify against his
11 own interest. Fifth, a witness may testify to a
12 transaction between the deceased and a third
13 party. Sixth, the statute's directed to the
14 competency of witnesses rather than the
15 transaction or communication itself, and thus, it
16 does not prohibit the introduction of documentary
17 evidence. And seventh, the Court has recognized
18 that notwithstanding the testimony of an
19 interested witness may generally fall within the
20 inhibition of the statute as to evidence of
21 transactions or communications with the decedent.
22 He may testify to acts, demeanor, or conduct of
23 the decedent where the testimony is offered on the
24 bearing of mental competency. So those are some
25 of the exceptions. I do have documents I plan to

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1 introduce through Ms. Brooker that would not be
2 precluded under the dead man's statute. And, like
3 I said, her testimony proffered she plans to
4 testify as to who her mother was, who her father
5 was, who her sister is, her brother is, her nieces
6 and nephews are and the dates of their births and
7 the family history and the assets of the mother as
8 well as, frankly, the mother's history of gift
9 giving to the third parties. That would be the
10 proffer of the testimony.

11 MS. DURANT: Your Honor, briefly, I don't
12 disagree with Mr. Griffin's recitation of the
13 exceptions. However, I don't think any of them
14 apply with maybe the exception that it does not
15 prohibit -- the dead man's statute does not
16 prohibit the obstruction of documentary evidence.
17 The problems that I do have with what he said that
18 Ms. Brooker may testify to are the assets of the
19 mother and the history of the gift giving. That
20 goes straight to the communications and
21 transactions that are at issue in this case. And
22 Ms. Brooker should be precluded from testifying
23 regarding the mother's intent or history of gift
24 giving and the assets of the mother. That goes
25 directly to communications and transactions

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1 between Ms. Julia Brooker and the decedent,
2 Ms. Janet Brooker.

3 MR. GRIFFIN: The issue in the case is the
4 interpretation of a trust agreement entered into
5 October of 2007, I believe it was, October 17th
6 or 19th, 2007. She's not going to testify about
7 any communication she had with her mother about
8 that agreement, about any catch up provisions, or
9 anything of that nature.

10 THE COURT: I do think the dead man statute
11 applies to certain potential testimony she may
12 want to tell us. It doesn't preclude her from
13 being a witness. We'll get started; I'm sure
14 you've instructed her what she should or shouldn't
15 get into, and I'm sure you'll be careful with your
16 questions, and I'll hear you. If you hear
17 something that is objectionable, please rise.

18 MS. DURANT: Yes, Your Honor, I will. And
19 may I add one more point and then I'll sit down
20 and be quiet?

21 THE COURT: Certainly.

22 MS. DURANT: I do want to add, Your Honor,
23 that under Merck v Merck, 89 SC 347 South Carolina
24 Supreme Court 1911, the term "transaction" under
25 the dead man's statute is a very comprehensive

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1 term. It means the carrying of or through any
2 matter or affair. So not only is she precluded
3 from talking about the communications with the
4 mother, but we are talking about a very broad
5 transaction that renders Ms. Julia Brooker
6 incompetent from testifying about those matters.
7 And with that, I will be quiet.

8 THE COURT: I'll certainly hear you. If you
9 think we're tiptoeing into an area you're
10 concerned about, I will hear you.

11 MS. DURANT: Yes, Your Honor, thank you.

12 THE COURT: It's complicated. This is a very
13 complicated family dynamic; it's a complicated
14 prohibition that you can't talk about
15 communication within the family. So that lay
16 witnesses and people that are struggling with
17 this, it's an honest struggle. Can I get you just
18 to move that behind the table so that it doesn't
19 in any way interfere with Ms. Brooker's --

20 MR. SOWELL: If you don't need it, we'll just
21 put it down. You've got the document.

22 THE COURT: I do, but if you want it just to
23 stay in the room as a reminder to everybody, just
24 put it behind. Thank you. Of all the cases I've
25 been in statute, I didn't have this. And let me

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1 Bring your water and your glasses and anything
2 else you need. Just a reminder you're still under
3 oath, okay.

4 THE WITNESS: Thank you.

5 - - - - -

6 FURTHER EXAMINATION (Julia Brooker)

7 BY MR. GRIFFIN:

8 Q Julia, I want to talk about first your efforts to
9 determine the amount of lifetime gifts. Now, I
10 know there's an issue as to what those encompass,
11 what period of time, but I just want to ask what
12 steps did you undertake to try to determine how
13 your mother's money was spent since 2007 when
14 Beach Brooker was given power of attorney?

15 A How was it spent?

16 Q What efforts did you undertake to try to find out
17 after your mother died what you were entitled to
18 under this clause?

19 A Can I start from kind of the beginning or
20 whatever?

21 Q Sure.

22 A Back in 1997, May of '97, my mother started doing
23 some estate planning. She opened up three family
24 trusts for my brother, sister and myself that we,
25 you know, put money in it. She wanted to -- she

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1 called me and brought me over and said that she
2 was talking to me --

3 MS. DURANT: Your Honor, if I may, move to
4 strike that testimony. That's squarely within the
5 dead man's statute. She's talking about
6 communications with her mother.

7 THE WITNESS: Okay.

8 THE COURT: Well, maybe that last little
9 piece, but the history of this, unless it's false
10 information, should be very easily documented.
11 And I just need it to understand what her
12 timeframe is. If these trusts were created in May
13 of 1997, you can tell me that. They obviously
14 exist. Do you disagree that Mrs. Brooker created
15 three trusts for her children to May of '97?

16 MS. DURANT: No, ma'am.

17 THE COURT: This is just a factual piece that
18 I'm gonna capture. I hear you suggesting that --
19 tread carefully.

20 MR. GRIFFIN: You can't talk about what your
21 mother said about anything.

22 BY MR. GRIFFIN:

23 Q So you created these trusts?

24 A Uh-huh.

25 Q She did in 1997?

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1 A Uh-huh. Gave gifts of about \$400,000.

2 Q To each of you?

3 A No, total gifts. I believe if you look in the
4 gift rank in 1997, there's over \$400,000 that she
5 gave gifts to. I think it's included. She did
6 DeBordieu in '92. She -- wait a minute, let me
7 get my dates right. We did a qualified
8 residential trust too where she did the
9 condominium at DeBordieu at thistime, and in
10 about '94, I've got where she gave us gifts too,
11 or said that she was going to start giving us
12 gifts.

13 MS. DURANT: Again, Your Honor, she just
14 referenced what her mother did.

15 THE COURT: Yeah, I'm not sure what we're
16 doing here. I know you want to tell the whole
17 story and I know it would feel really good that
18 you tell the whole story, but we've got to be
19 really careful.

20 THE WITNESS: Okay.

21 THE COURT: Can we just go back to the
22 timeframe about -- I thought we were talking about
23 interest timeframe. Where were you going with
24 your first question?

25 MR. GRIFFIN: I'm trying to figure it out.

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1 THE COURT: I think your question was, and
2 it's legitimate, what efforts did she personally
3 make to determine what gifts her mother had made
4 that met this provision.

5 MR. GRIFFIN: Yes.

6 BY MR. GRIFFIN:

7 Q I guess, let's just start here. You see this
8 document?

9 A Yes.

10 Q At some point in time, did you get a copy of this
11 document?

12 A Yes.

13 Q Did you agree with the numbers on this document?

14 A No.

15 Q Why did you not agree with the numbers on this
16 document? And when I say "this document," I'm
17 talking about Defendant's Exhibit No. 1. And
18 don't tell me what your mother said.

19 A Can I tell you what Steve said?

20 Q Tell us what Steve said, yes.

21 A Okay. The family had two meetings with Steve.
22 One after my mother died and one prior to my
23 mother dying. He brought us in and talked about
24 that mother was going to exaggerate some gifts,
25 give more gifts, and that what she was going to do

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1 is catch me up at the end.

2 MS. DURANT: Again, Your Honor --

3 Q That's what Steve said, not your mother.

4 A That's what Steve said.

5 MS. DURANT: She said -- and then she said,
6 "my mother" --

7 THE COURT: That's already been testified by
8 Mr. Johnson.

9 MS. DURANT: I'm just really, Your Honor, I'm
10 just preserving the record.

11 THE COURT: And I hear you, but I heard her
12 say that's what Mr. Johnson said to her at the
13 family meeting. Did you hear her say that's what
14 her mother said?

15 MS. DURANT: I heard that Mr. Johnson said my
16 mother said she wants to catch up.

17 MR. GRIFFIN: That's certainly not precluded
18 by the dead man's statute.

19 THE COURT: I am hearing that Mr. Johnson has
20 already testified and told Julia at the very
21 family meeting he testified about that it was the
22 intention to catch her up at her mother's death.

23 MS. DURANT: Your Honor, Mr. Sowell brings up
24 a good point. Mr. Johnson is or was Ms. Janet
25 Brooker's lawyer, so he is just repeating what his

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1 client said. So I think that also falls on the
2 teeth of the dead man's statute.

3 THE COURT: I'm going to disagree on the
4 concept that number one, he's already testified to
5 that himself, and at a family meeting, he is
6 sharing this information. He had a family
7 meeting, which means you have on some level a
8 waiver of the attorney-client privilege as to the
9 issues he's talking about at the family meeting
10 that he had with the family. The deceased
11 Mrs. Brooker was there. So overruled.

12 BY MR. GRIFFIN:

13 Q In the meeting after your mother died, what was
14 discussed?

15 A The lifetime gifts and that the lifetime gifts, I
16 was gonna be equalized with the lifetime gifts
17 that were given to my brother and sister.

18 Q Your brother and sisters' children?

19 A Children, family. Brother and sister's family.
20 Children and family.

21 Q Then when you got this document at some point in
22 time, you said you didn't disagree with it, but
23 you didn't agree with it. What were the parts you
24 didn't agree with?

25 A The year that the gifts began.

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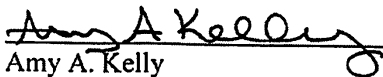
CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the document hereinbelow specified by electronic mail and by hand delivery to the following address(es):

Document: RESPONDENTS' MOTION FOR RECONSIDERATION AND TO
ALTER OR AMEND UNDER RULES 52 AND 59(e), SCRCP

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Amy A. Kelly

July 1, 2019

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF RICHLAND	)	Estate No.: 2017-GC-40-0036
	)	Civil Action Number- 2019-CP-40-03582
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	
Julia B. Brooker,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Beacham O. Brooker, Jr., in his official	)	
capacity as Trustee and individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
and Ellen B. Corontzes individually as a	)	
Beneficiary of the Janet B. Brooker Trust,	)	
	)	
Respondents.	)	
	)	
	)	

EXHIBIT B

MOTION FOR LIMITED REMAND

Notice of Intent to Appeal to Circuit Court

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF RICHLAND) Estate Number: 2017-GC-40-36
)
IN THE MATTER OF:)
THE JANET B. BROOKER TRUST)
)
Julia B. Brooker,)
Petitioner,)
vs.) NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT
)
Beacham O. Brooker, Jr., in his official)
capacity as Trustee and individually as a)
Beneficiary of the Janet B. Brooker Trust, and)
Ellen B. Corontzes individually as a)
Beneficiary of the Janet B. Brooker Trust,)
Respondents.)

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 but filed on June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

SWORN to before me this 15th
day of July, 2019.

Notary Public for: South Carolina
My Commission Expires: May 27, 2021

Respectfully submitted,

Signature: [Signature]
Print Name: Beacham O. Brooker, Jr.
Address: 754 Kilborne Road
Columbia, SC 29205

Telephone (Work):
(Home): (803) 771-9096
(Cell): (803) 315-8951
Email: b_brooker@bellsouth.net
Relationship to Decedent/Estate: Trustee, Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant, LLC
Address: 1325 Park Street, Suite 100
Columbia, SC 29201
Telephone: (803) 722-1100
Email: bsowell@sowelldurant.com
bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.
2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(I) and the South Carolina Appellate Court Rules, as applicable.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:
THE JANET B. BROOKER TRUST

Julia B. Brooker,

Petitioner,

vs.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust, and
Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

) IN THE PROBATE COURT

) Estate Number: 2017-GC-40-36

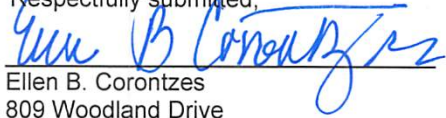
) NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated June 22, 2019 and filed June 20, 2019. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on June 20, 2019. A copy of said Final Order is attached.

SWORN to before me this 15th
day of July, 2019.

Ang A. Koon
Notary Public for: South Carolina
My Commission Expires: May 27, 2024

Respectfully submitted,

Signature: 

Print Name: Ellen B. Corontzes

Address: 809 Woodland Drive

Columbia, SC 29205

Telephone (Work):

(Home): (803) 782-6161

(Cell): (803) 238-6223

Email: ecorontzes@sc.rr.com

Relationship to Decedent/Estate: Beneficiary and Respondent

Attorney: Thornwell F. Sowell & Bess J. DuRant
Sowell & DuRant, LLC

Address: 1325 Park Street, Suite 100
Columbia, SC 29201

Telephone: (803) 722-1100

Email: bsowell@sowelldurant.com

bdurant@sowelldurant.com

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE PROBATE COURT
Estate Number: 2017-GC-40-36

IN THE MATTER OF THE
JANET B. BROOKER TRUST

Julia B. Brooker,
Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust;
and Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,
Respondents.

**ORDER
CALCULATING EQUALIZATION
DISTRIBUTION OF LIFETIME GIFTS**

FILED
2019 JUN 20 P 1:58
AMY W. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, SC

THIS MATTER COMES BEFORE THE COURT upon the filing of a Summons and Petition for Declaratory Relief by Julia B. Brooker (hereinafter “Julia” or “Petitioner”), through her attorneys James M. Griffin, and Margaret N. Fox, on March 17, 2017. In the Petition, the Petitioner asks this Court to determine the intent of Janet B. Brooker (hereinafter also “Decedent” or “Settlor”) in the equalization clause of the Janet B. Brooker Trust and Decedent’s meaning of the words *lifetime gifts*, as it is used within the Decedent’s Trust document, to calculate the amount that should be paid to Julia to equalize her share of the Janet B. Brooker Trust. Beacham O. Brooker (hereinafter “Beacham”) and Ellen B. Corontzes (hereinafter “Ellen”) (hereinafter collectively “Respondents”) are the only other beneficiaries of the Janet B. Brooker Trust.

Beacham and Ellen were served with the Summons and Petition by certified mail as evidenced by the signed Certified Return Receipts filed with the Court on March 29, 2017 and April 3, 2017 respectively.

Respondents are represented by Thornwell F. “Biff” Sowell, III and Bess J. DuRant. Respondents filed an Answer to the Petition on May 17, 2017. The Respondents contend that their understanding and interpretation of the lifetime gift provision should control, and

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additionally, that the amount of \$525,528.08 offered to Julia as her disputed equalization share of the Janet B. Brooker Trust is accurate.

A bench trial was scheduled for and held on February 4, 2019. All parties were mailed Notice of Hearing and all parties were present with their attorneys. Additional witnesses were certified forensic accountant, George Durant and attorneys, W. Steven Johnson and William H. Reynolds, III.

Summary of Facts

The Decedent died on April 15, 2015. At her death she had three children: Beacham, Ellen, and Julia. Beacham is married to Beth Brooker and his children are Elizabeth Brooker and Grace Brooker. Ellen is married to Dino Corontzes and her children are Arthur Corontzes and Beacham Corontzes. Julia is not married and does not have children.

Before her death, the Decedent was represented by attorney W. Steven Johnson of the law firm of Todd and Johnson, LLP, in the creation of her 2007 estate planning documents. The Last Will and Testament of the Decedent, executed on October 16, 2007, names Beacham to serve as the Personal Representative and transfers the assets of the Decedent's Estate into a Trust known as the Janet B. Brooker Trust (hereinafter the "Trust"). Upon the death of the Decedent, the Trust was fully funded from the Estate. The beneficiaries of the Trust are her three children, Beacham, Ellen, and Julia. Beacham is the Trustee of the Trust. At the same time the Will and Trust were executed, the Decedent also appointed Beacham as her Agent under a Durable Power of Attorney.

All parties agree that a family meeting occurred on September 25, 2016 where all parties were present with W. Steven Johnson. All parties agree that Mr. Johnson advised them about an aggressive gifting program to the spouses and issue of Beacham and Ellen in an effort to minimize the amount of estate taxes that could be levied against the Decedent's estate at her death. As a part of this plan, all children of the Decedent received equal gifts, the additional gifts to the spouses and issue of Beacham and Ellen were to be equalized for Julia at the death of the Decedent. To accomplish this, the Trust provides for an equalization distribution that reads as follows:

(2) **Equalization distribution to the Settlor's Daughter Julia B. Brooker.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children.

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Because the Settlor's daughter Julia B. Brooker is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

- (a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., as well as the spouses of Ellen B. Corontzes and Beacham O. Brooker, Jr.
- (b) To such amount specified above from the date of such gift an interest rate of five (5 %) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.
- (c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter Julia B. Brooker, if she shall survive the Settlor.

Argument of the Petitioner

Petitioner argues that an examination of the plain language found within the four corners of the Trust necessitates a finding that Petitioner is entitled to an equalizing share equivalent to the sum of **all** lifetime gifts to Respondents' spouses and children, with five (5%) percent interest applied to the amount of each gift. Petitioner believes that the first sentence of the applicable provision in Settlor's Trust that reads that the Settlor "*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children" is evidence of her intent that gifts made prior to the Trust's creation should be included in the equalization calculation.

Petitioner argues that Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts" to take the position that the calculation should be only gifts made after the Trust's creation. Petitioner believes that the language "from the date of this trust forward," merely establishes the date on which Beacham could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts.

Petitioner believes that if the Decedent had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts [*to be made*], [*that will be made*], [*that Settlor intends to make pursuant to the gifting program*] to such daughter's siblings' spouses or siblings' issue."

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Petitioner believes that the use of past tense “**lifetime gifts made** to such daughter’s siblings’ spouses or siblings’ issue” is clear.

Finally, Petitioner argues that pursuant to the plain language of the Trust document, Petitioner’s Equalizing Share is calculated by adding the (a) the sum of all lifetime gifts to Respondents’ Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. Petitioner’s position is that Respondent “cannot create ambiguity in contract when it does not exist within the four corners...[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.” Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Serrine & Co., 33 S.E.2d 501, 509 (1945).

Pursuant to this method of calculating, Petitioner believes she should receive the total of gifts made to Ellen’s spouse and children prior to October 16, 2007 of \$502,755.92 and after October 16, 2007 of \$396,305.23 plus the total of gifts made to Beacham’s spouse and children prior to October 16, 2007 of \$495,113.92 and after October 16, 2007 of \$408,194.00 for a total of \$1,802,369.07 plus interest of \$1,139,694.81 (as of the date of the hearing) for a final total of **\$2,942,063.87**.

Argument of the Respondents

Respondents argue that the unambiguous terms of the Trust provide that Petitioner is entitled to a distribution from the date of the Trust until the death of the Settlor as the plain language of the Trust provides that “[f]rom the date of this trust forward,” the Trustee shall determine the amount of the gifts made to the children and spouses. Respondents point to *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003) “If the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.”.

Respondents’ position is that Petitioner is entitled to the sum of all gifts made to the children and spouses from October 16, 2007 until the date of Decedent’s death on April 16, 2015, divided by two (2), with the addition of interest in the amount of 5%. To make the point of their calculation, Respondents by example argue that Petitioner is not entitled to the sum of all gifts made to the grandchildren and spouses, plus 5% interest, because to do so would bestow a great windfall to the Petitioner. For example, under Petitioner’s construction of the Trust, if Beacham’s family received \$100,000.00 and Ellen’s family received \$100,000.00, Julia would

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receive \$200,000.00 plus the 5% interest. Consequently, Julia would receive a windfall of \$100,000.00 because Beacham's family received \$100,000.00, Ellen's received \$100,000.00, yet Julia received \$200,000.00. Therefore, Respondents believe that the payment of **\$525,528.08, plus some calculation of interest after death**, is correct.

Summary of Issues to be Resolved

1. **Did the offer of \$525,528.08 include all gifts? As stipulated by Mr. Sowell at the trial, it did not.**
2. **What time frame did the Decedent mean by lifetime gifts – all lifetime gifts or only gifts after the creation of the Trust?**
3. **How is the equalization to be calculated – add all gifts together to equalize, add all gifts together then divide by two, or add the gifts of Ellen's family and separately add the gifts of Beacham's family and determine which is larger and equalize Julia by the larger?**

Findings by the Court during the Hearing

During the hearing, this court made certain findings with regard to the offer of \$525,528.08 and interest related to when that offer was officially rejected. This Court also indicated to the parties that only after Trust gifts were being considered. After a full review of the hearing, the testimony, and the exhibits in evidence, those decisions are amended as the remainder of this order will document.

Testimony

Julia testified about her family, the manner in which their parents acquired their wealth, the individual trusts for each child created in 1997 by her parents, the trusts for each grandchild created close to their births by the Decedent, the Family Partnership, and what she believed to be her mother's intent with her estate plan as to the 2007 estate plan and the Trust that is the source of this litigation. She believes that the calculation of Decedent's lifetime gifts should include all gifts.

George Durant, a certified forensic accountant, testified, over the objection of Respondents' counsel, regarding his review of Decedent's brokerage statements, bank records and checks, Decedent's gift tax returns, deposition transcripts, and other spreadsheets and his calculations regarding the equalization for Petitioner, as directed by Mr. Griffin. Mr. Durant described how he calculated the amounts of the lifetime gifts received by the spouses and issue

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of Beacham and Ellen. Mr. Durant provided the Court with a list of all documents reviewed and a table showing all the lifetime gifts given by the Decedent before the execution of the Trust and the interest of that amount calculated at five percent (5%) until the day of the trial. He also provided the same calculations for gifts given after the execution of the Trust as well as the addition of those figures representing the total lifetime gift amounts given.

Over the initial objection and disagreement of Respondents, payments made to Hammond School, the school attended by all of the grandchildren, totaling \$437,445.48, were included in Mr. Durant's calculations as gifts. Respondents argued that those payments should not be included because Mr. Durant could not determine what was tuition payments versus what were donations made by the Decedent. The court requested that Respondents review their tuition invoices for those years to be able to separate any donations. This court allowed all payments to Hammond School as gifts to the grandchildren to be included in the equalization calculations.

Additionally, at the time of his original calculation offered into evidence by the Petitioner, Mr. Durant included the following in his pre-Trust calculation: \$24,000.00 (\$12,00.00 x 2) for annual gifts to spouses made by Beacham on September 26, 2007 and \$240,000.00 paid into 529 plans for grandchildren made by Beacham on October 1, 2007. After the court's request to include these gifts with the gifts made after the Trust's creation, as Beacham had included them in his original gift calculations as they were made in anticipation of the Trust's creation, all parties were in agreement to the accuracy of the numbers and calculations provided by Mr. Durant. These calculations have now become less relevant as the findings below will show.

Mr. Durant's testimony and calculations were relied on heavily by this court and ultimately agreed upon by all parties. All documents that were reviewed by Mr. Durant were admitted as a flash drive as Respondents Exhibit 8. These same documents were available for all parties throughout the discovery and deposition phase of this litigation.

W. Steven Johnson, estate planning attorney for the Decedent, testified about his conversations with the Decedent and her intent regarding the equalizing distribution summarized as follows:

- Beginning in September 2007, there was a heightened awareness of a need to make gifts on behalf of Decedent to lessen the estate taxes.
- In September of 2007, Mr. Johnson met with the Brooker family to discuss the need to accelerate the gifts that the Decedent needed to make to children, grandchildren and spouses of children, to

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include college and private school tuition and 529 plans for the grandchildren.

- Decedent did not want to disadvantage Julia so Mr. Johnson said he could put a provision in the will or trust to “catch up” Julia for any gifts made to her children’s spouses and children.
- Decedent did not want Julia to suffer as a result of these gifts.
- He does not recall if the meaning of lifetime gifts was ever discussed or if he defined that for the Decedent or the family at the family meeting.
- Mr. Johnson spoke with his law partner Mr. Reynolds about the equalization provision he drafted because he wanted a second set of eyes to review the language of the Trust.
- He does not recall the Decedent asking any questions about the lifetime gift equalization but he does remember that their conversations were about prospective gifts, not retrospective gifts.
- If there had been a discussion about prior gifts, Mr. Johnson would have recommended to the Decedent to catch up Julia for the prior gifts at that time, not at the Decedent’s death.
- Mr. Johnson was not aware that the Decedent had already given large sums as gifts to the spouses and children of Beacham and Ellen before the creation of the Trust.
- The way the equalization was to be calculated was from the date of the Trust forward to take the larger of the two gifting groups, Beacham’s spouse and children versus Ellen’s spouse and children, and then add the interest to achieve Petitioner’s share.
- The calculation of the equalization amount offered of \$525,528.08 was made based on the numbers Beacham provided to the paralegal for Mr. Johnson.
- Neither Mr. Johnson nor his paralegal were given the bank statements or tax returns to calculate the equalization amount.
- In a document from Mr. Johnson’s file that he explained was created by his paralegal as a to do list, appearing to be created post death of the Decedent, noted is “to determine gifts made to the spouse and children of Beach and Ellen from May of 1997 forward to be distributed with five (5) percent interest to Julia”. Mr. Johnson explained that he told his paralegal that was incorrect.

William H. Reynolds, III, Mr. Johnson’s law partner, supported Mr. Johnson’s testimony because he reviewed the draft of the equalization provision. He testified that if a client wanted to look back, he would want to capture what those gifts had been to calculate the number to equalize. Mr. Reynolds agreed that the Petitioner should be equalized with the higher amount given to Beacham or Ellen.

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Beacham testified he made the following pre-Trust gifts after the family meeting with Mr. Johnson in anticipation of the creation of the Trust: \$24,000.00 (\$12,00.00 x 2) for annual gifts to spouses on September 26, 2007 and \$240,000.00 for 529 plans for grandchildren on October 1, 2007, and agreed they should be included in the equalization calculation that he offered Petitioner but that after the lawsuit he withdrew that as part of his calculation. On October 16, 2007, he became Trustee of the Trust; however, the Trust was not funded until the death of the Decedent in April of 2016. Beacham began the accelerated gifting program as the Decedent's signatory or agent under a Power of Attorney and does not remember if the Decedent individually continued gifting after the Trust. Specifically, Beacham reviewed the financial documents and could not find where she independently acted or gifted after the Trust's creation.

Beacham testified that he relied heavily on Dino Corontzes, who was the broker for the Decedent's investment accounts and the husband of Ellen, to make the annual gifts. Beacham agreed that the Decedent paid full tuition to Hammond School for his children and Ellen's children before the creation of the Trust and that he considered the payments a gift. He further stated that while he continued to pay Hammond School tuition for the grandchildren as signatory on the Decedent's account after the creation of the Trust, he did not consider it to be a part of the definition of lifetime gift for equalization in the Trust. He testified that he is not aware of other donations the Decedent made to Hammond School.

Beacham, after a one-day recess during the trial and his ability to go back through his records, agreed to Mr. Durant's review of the financial documents and Mr. Durant's calculations. Based on Mr. Durant's review and calculation, from the time Beacham took over managing the Decedent's gifting in September of 2007, the gift amount totaled \$804,499.23. Of that total gift amount, \$396,305.23 was received by the spouse, and issue of Ellen, and \$408,194.00 was received by the spouse and issue of Beacham. Prior to the creation of the Trust, the Decedent had previously given gifts in the amount of \$997,869.83. Of this prior gift amount, \$495,113.92 was received by the spouse and issue of Beacham and \$502,755.92 was received by the spouse and issue Ellen.

On May 31, 2016, an email was sent by Beacham offering the equalization distribution to his sister Julia in the amount of \$525,528.08. This offer was a result of calculations by Mr. Johnson's paralegal based on numbers she received from Beacham regarding annual gift amounts to each spouse and their issue. While there is some disagreement about when the offer

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was received or when the offer was officially rejected, it is clear that the Petitioner received the offer and wanted additional documents to review to be able to determine if the amount was correct. This equalization distribution was ultimately rejected by Julia on or about August 31, 2016, due to her own investigation of previous lifetime gifts she believed should have been included in the equalization distribution calculation.

Having carefully considered all testimony, exhibits, and arguments presented at the hearing and the other submissions of the parties, the Court makes the following:

FINDING OF FACTS AND CONCLUSIONS OF LAW

1. Janet B. Brooker died on April 16, 2015 as a resident of Richland County, South Carolina, therefore the Probate Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-1-302(a)(3), 1976, as amended and venue is proper pursuant to S.C. Code Ann. 62-3-201(a)(1), 1976, as amended.
2. The Last Will and Testament of Janet B. Brooker, executed October 27, 2007, provides that the totality of her estate be poured over into the Janet B. Brooker Trust, established October 27, 2007.
3. Pursuant to S.C. Code Ann. § 62-7-201, 1976, as amended, the Probate Court has exclusive jurisdiction, to “ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including, questions of construction of trust instruments...”
4. The Janet B. Brooker Trust is governed by the laws of the State of South Carolina.
5. The beneficiaries of the Trust are the children of Janet B. Brooker: Beacham, Ellen, and Julia.
6. The Trust provides for an equalization distribution for the Settlor’s daughter Julia upon the Settlor’s death, for all lifetime gifts given to the spouses and issue of Beacham and Ellen.
7. Prior to the October 16, 2007 execution of the Trust, W. Steven Johnson, as drafting attorney, represented the Settlor and met with the family to explain the Decedent’s estate plan.
8. At the time of the execution of the Trust instrument, the Decedent had previously given lifetime gifts in the amount of \$997,869.83 to the spouses and issue of Beacham and Ellen.
9. These previous gifts were not discussed with Mr. Johnson.
10. The Decedent did not want Julia to be disadvantaged or treated differently because she did not have a spouse or children.
11. The Decedent wanted Julia equalized at her death.

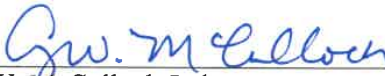
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12. Mr. Durant was able to capture gifts to the spouses and issue of Beacham and Ellen from approximately 1992 forward by a review of all account statements and tax returns available.
13. The phrase in the Trust document that "the Settlor has previously given lifetime gifts and will continue" is evidence that the Settlor intended that the previous lifetime gifts be included in the equalization calculation for Julia and comports with her desire for Julia to be treated the same.
14. Gifts such as private school tuition, college plan contributions, and college tuition are to be included as gifts in the equalization calculation.
15. The sum total of the lifetime gifts to the spouses and issue of Beacham and Ellen, as calculated by Mr. Durant is \$1,802,369.07, with \$899,061.15 to spouse and issue of Ellen and \$903,307.92 to the spouse and issue of Beacham.
16. Five percent interest on that amount through the date of February 5, 2019 was \$1,139,694.81.
17. The total of \$2,942,063.88 will be divided by two to allow for Julia to be equalized to but not receive more than either the spouse and issue of Ellen or Beacham.
18. As of the trial date, the amount owed to Julia to equalize her to the lifetime gifts to her siblings' spouses and children was \$1,471,031.94 ($\$2,942,063.88 / 2$).
19. This same formula shall be used to calculate date of payment amount.

THEREFORE, IT IS HEREBY ORDERED THAT:

- A. Julia B. Brooker was entitled to \$1,471,031.94 as of February 5, 2019, as her equalization distribution of the Janet B. Brooker Trust.
- B. The Trustee of the Janet B. Brooker Trust shall pay the amount due to Julia B. Brooker using the formula as outlined above to calculate interest and final payment.

IT IS SO ORDERED.


Amy W. McCulloch Judge
Richland County Probate Court

June 22, 2019
Columbia, South Carolina

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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
)
 COUNTY OF RICHLAND) Estate No.: 2017-GC-40-0036
)
 IN THE MATTER OF:) Civil Action Number: 2019-CP-40-03582
) Civil Action Number: 2019-CP-40-04463
) Civil Action Number: 2019-CP-40-06229

The Janet B. Brooker Trust)
 (C.A. No. 2015-ES40-00662))
 _____)

Julia B. Brooker,)
 Petitioner,)

vs.)

Beacham O. Brooker, Jr., in his official)
 capacity as Trustee and individually as a)
 Beneficiary of the Janet B. Brooker Trust,)
 and Ellen B. Corontzes individually as a)
 Beneficiary of the Janet B. Brooker Trust,)

Respondents.)
)
 _____)

**CONSENT MOTION FOR
 CONSOLIDATION OF APPEALS AND
 TO ESTABLISH BRIEFING
 SCHEDULE**

Pursuant to Rule 214 of the South Carolina Appellate Court Rules, Petitioner Julia B. Brooker (“Julia”) and Respondents Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust (“Beach”) and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust (“Ellen”) move this Court for an Order consolidating the three appeals by Beach and Ellen of three probate court orders (“Orders”) and for a briefing schedule for the consolidated appeal. The grounds for this motion are as follows:

1. On March 17, 2017, Julia filed a petition in the Probate Court for Richland County, in which she sought relief based on the interpretation of a trust agreement (“Trust”) signed by her

mother Janet Brooker. She filed her petition against her two siblings Beach, individually and as Trustee of the Trust, and Ellen, individually.

2. The matter was tried before the Honorable Amy W. McCulloch, and then she issued three orders, which have all been appealed to this Court by Beach and Ellen.

3. The three orders, their filing dates, the dates on which they were appealed to this Court, and the resulting case number given to the appeal are as follows:

Name of Order	Filing Date of Order	Date of Appeal	Appeal Number
Order Calculating Equalization Distribution of Lifetime Gifts	June 20, 2019	July 1, 2019	2019-CP-40-03582
Order Allowing Attorney's Fees	August 5, 2019	August 13, 2019	2019-CP-40-04463
Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP	October 28, 2019	November 5, 2019	2019-CP-40-06229

4. These three orders all arise from the trial of allegations asserted in Julia's Petition. The Order Allowing Attorney's Fees was issued based on the fees and expenses incurred by Julia in connection with her prosecution of her case. The Order Regarding Motion for Reconsideration and to Alter or Amend Under Rules 52 and 59(e), SCRCP is a ruling on Beach's and Ellen's motion for the Probate Court to reconsider its Order Calculating Equalization Distribution of Lifetime Gifts. In other words, these three orders are related and involve the same questions. See Rule 214, SCACR ("Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated."); see, e.g., *State v. Thompson*, 420 S.C. 192, 196 n.1, 802 S.E.2d 623, 625 (Ct. App. 2017) (consolidating appeals of

defendants tried jointly); *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 196 n.6, 750 S.E.2d 78, 82 (2013) (consolidating appeals when one of the orders was an order on attorney's fees); *Crawford v. Central Mortg. Co.*, 404 S.C. 39, 44, 744 S.E.2d 538, 540 (2013) (consolidating appeals is appropriate when orders involve same legal issues).

5. Judicial economy and efficiency require these three appeals from three orders to be consolidated as all three orders involve the same issues and arise from the same Petition and trial.

6. Should this Court agree and consolidate the three appeals into one appeal, the parties wish to establish a briefing schedule for the consolidated appeal.

7. Section 62-1-308 of the South Carolina Code provides proposed deadlines for the various stages of the appeal. The parties aim to establish a briefing schedule consistent with the timeframes outlined in section 62-1-308. To that end, the parties propose a briefing schedule as follows:

- a. Amended Statement Issues on Appeal:¹ 30 days after this Court's order on this matter is issued;
- b. Transcript of Proceeding: Already provided to the Court;
- c. Designation of Matter: 30 days after service of the statement of issues on appeal;
- d. Briefs:
 - i. Beach and Ellen's Brief: 30 days after service of the statement of issues on appeal (contemporaneously filed and served with the designation of matter);

¹ Beach and Ellen need to amend their statement of issues on appeal. Beach and Ellen filed a motion for reconsideration with the Probate Court after they filed their first notice of appeal. Then Beach and Ellen filed a motion for limited remand with this Court so that the Probate Court could rule on the motion for reconsideration. Before this Court could rule on the motion for limited remand, the deadline under § 62-1-308(b) for filing statement of issues on appeal occurred, requiring Beach and Ellen to file their statement of issues on appeal before Judge McCulloch ruled on the motion for reconsideration. This Court subsequently granted the motion for limited remand, and Judge McCulloch clarified her order when she ruled on the motion for reconsideration. Her order on the motion for reconsideration has changed the statement of issues on appeal, and therefore, Beach and Ellen need to amend their statement of issues.

- ii. Julia's Brief: 30 days after the service of Beach and Ellen's brief;
 - iii. Beach and Ellen's Reply Brief: 10 days after service of Julia's brief;
 - e. Record on Appeal: 30 days after service of Julia's brief.
8. Consolidation and the briefing schedule serve to streamline the appellate process and preserve resources, both for the judiciary and the parties.
9. The parties request that if the Court grants the motion to consolidate, that it consolidates the three appeals under one case number to streamline the filing process.

WHEREFORE, the parties request that this Court consolidate the three appeals, bearing case numbers (a) 2019-CP-40-03582; (b) 2019-CP-40-04463; and, (c) 2019-CP-40-06229 into one appeal, having one case number. Should the Court grant this motion to consolidate, the parties also request that the Court adopt the briefing schedule as detailed above. Consolidating these three appeals and issuing a briefing schedule will greatly simplify the appellate process and encourage judicial economy and efficiency.

[Signature page follows.]

WE SO MOVE AND CONSENT:

s/Bess J. DuRant

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***Attorneys for Beacham O. Brooker, Jr., in
his official capacity as Trustee and
individually as a Beneficiary of the Janet
B. Brooker Trust and Ellen B. Corontzes
individually as Beneficiary of the Janet B.
Brooker Trust***

WE SO MOVE AND CONSENT:

s/James M. Griffin

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Attorneys for Petitioner Julia B. Brooker

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:
The Janet B. Brooker Trust
(C.A. No. 2015 – ES40 – 00662)

IN THE PROBATE COURT

C.A. 2017-EC-40-0030

FILED
2017 MAR 17 AM 11:44
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Julia B. Brooker,

Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust; and
Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

SUMMONS

TO THE RESPONDENTS LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Petitioner listed above at the following address:

James M. Griffin & Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to Answer the Petition within that time, the Petitioner will ask the Court for a judgment by default for the relief demand in the Petition.



Attorney for Petitioner

March 17, 2017

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

The Janet B. Brooker Trust

(C.A. No. 2015 – ES40 – 00662)

IN THE PROBATE COURT

C.A. 2017-6C-40-6036

FILED
2017 MAR 17 AM 11:44
AMY W. MCCULLOCH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Julia B. Brooker,

Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust; and
Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

**PETITION FOR
DECLARATORY RELIEF**

Petitioner Julia B. Brooker, by and through undersigned counsel, files the foregoing
Petition against the above-named Respondents and alleges as follows:

PARTIES

1. Petitioner Julia B. Brooker (“Julia” or “Petitioner”) is a citizen of South Carolina and resides within Richland County at 1325 Sinkler Road in Columbia, South Carolina. She is a beneficiary of the Janet B. Brooker Trust dated October 16, 2007.

2. The Janet B. Brooker Trust (the “Trust”) is an inter vivos trust that was fully funded upon the death of Janet B. Brooker (“Mother” or “Settlor”) through her last will and testament dated October 16, 2007 and is part of the estate probate pending before this Court, C.A. No. 2015 – ES40 – 00662.

3. Beacham O. Brooker, Jr. (“Respondent Brooker”) is a citizen of Richland County, South Carolina and the trustee, as well as a beneficiary, of the Trust.

4. Ellen B. Corontzes (“Respondent Corontzes”) is a citizen of Richland County, South Carolina and a beneficiary of the Trust.

JURISDICTION/VENUE

5. This Court has exclusive jurisdiction to determine questions arising in the distribution of the Trust, including questions of its construction. *See* S.C. Code § 62-7-201.

6. Venue is appropriate in Richland County because the Trust was created by a will being administered in this county and the estate is not yet closed. *See* S.C. Code Ann. § 62-7-204.

FACTS

7. Settlor is the mother of Petitioner Brooker, Respondent Brooker and Respondent Corontzes (collectively the “Beneficiaries”).

8. Following the death of Mother’s spouse, she gave monetary gifts (“Lifetime Gifts”) to the Beneficiaries as well as to the children of Respondent Brooker and Respondent Corontzes and their spouses (collectively the “Respondents’ Children and Spouses”).

9. Petitioner Julia is not married and has no children and from the time Mother began making the Lifetime Gifts it was always Mother’s intent that Petitioner Julia would be given an amount equal to what was given to Respondents and Respondents’ Children and Spouses at Mother’s death.

10. Thus, to account for the Lifetime Gifts given to Respondents’ Children and Spouses, Mother included an “Equalizing Distribution” in the Trust for Julia’s benefit.

11. Mother executed her last will and testament and the Trust on October 16, 2007. *See* Last Will & Testament and Trust Agreement, attached hereto as Exhibit A.

12. The Trust contains the following language regarding the “Equalizing Distribution,”

(2) **Equalizing Distribution to the Settlor’s Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue

such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

13. The Equalizing Distribution was one of two distributions of Settlor's estate that was carved out from the Trust Estate available for distribution to the Beneficiaries. *See* Trust Article V(3) & Article VI.

14. Thus, per the terms of the Trust, Julia's "Equalizing Distribution" is not available for distribution to the Respondents.

15. Following Mother's death on April 16, 2015, Mother's estate entered probate before this Court.

16. Despite the explicit language of the Trust explaining that **Mother "has previously made lifetime gifts** and intends to continue such gifting program until the date of the [Mother's] death" and that "[Mother] intends that at the [Mother's] death, **an equalizing distribution will be made to the Settlor's said daughter [Julia] pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue,"** *See* Ex. A, Article V(2),

Respondent Brooker, as Trustee, interprets the “lifetime gifts” language to be limited to gifts made after the date of the Trust.

17. Respondent Brooker’s interpretation is contrary to the plain language of the Trust and contrary to the Mother’s intent to make an equalizing distribution from the Trust to Julia for all Lifetime Gifts previously made to the Respondents’ Children and Spouses.

18. Therefore, there is a judicable controversy between the parties as to the meaning of the term “lifetime gifts” used in the language of the Trust and whether through the use of such language Mother intended for her daughter Julia to receive an equal share of all lifetime gifts made to the Respondents’ Children and Spouses, or did Mother only intend for Julia to receive an equal share of those gifts made during the part of Mother’s life beginning on October 16, 2007, the date of the Trust.

FOR A FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT
(S.C. Code § 15-53-30 and §62-7-201)

19. The allegations of the preceding paragraphs are incorporated herein by reference as if set forth herein verbatim.

20. S.C. Code Ann. § 15-53-30 permits Petitioner Brooker to “obtain a declaration of rights, status or other legal relations” of the Beneficiaries under the Trust.

21. S.C. Code Ann. § 62-7-201(a)(1) grants the probate court exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts, including the construction of a trust instrument and declaration of the rights of the beneficiaries under a trust.

22. As set forth in the Trust, Petitioner Brooker’s Equalizing Distribution is for “**any lifetime gifts made** by the Settlor to issue of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [*sic*] O. Brooker, Jr.” *See* Ex. A, Article V(2)(a). The language is not limited to those gifts made after the execution of the Trust.

23. The Trust agreement delegates to the Trustee the authority to make the determination of the amount of “any lifetime gifts.” Specifically, the Trust states that “[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts.” *See* Ex. A, Article V(2)(a). This provision however was not intended to limit Julia’s Equalizing Share to only those gifts made by Mother to the Respondents’ Children and Spouses from the date of execution of the Trust, October 16, 2007.

24. Instead, the plain language of the Trust expresses Mother’s intent to include all Lifetime Gifts made to the Respondents’ Children and Spouses in the Equalizing Distribution to Julia.

25. If Mother had intended otherwise, the Trust language would have been worded in the future tense, such as “Settlor intends that at the Settlor’s death, an equalizing distribution will be made to the Settlor’s said daughter pursuant to the terms of this paragraph for lifetime gifts *[to be made]*, *[that will be made]*, *[that Settlor intends to make pursuant to the gifting program]* to such daughter’s siblings’ spouses or siblings’ issue.” *See* Ex. A, Article V(2)

26. Instead, the Trust using the past tense of the verb “make,” stating that “an equalizing distribution will be made to the Settlor’s said daughter pursuant to the terms of this paragraph for **lifetime gifts made** to such daughter’s siblings’ spouses or siblings’ issue.” *Id.*

27. Accordingly, Petitioner Brooker moves this Court for an order declaring the Equalizing Share to include all Lifetime Gifts Mother previously made to the Respondents’ Children and Spouses, which includes those gifts made before the date of the Trust, October 16, 2007, and those gifts made pursuant to the gifting program that Mother continued after the date of the Trust.

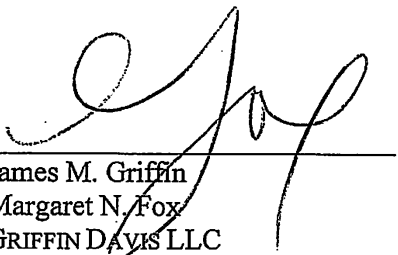
28. In the alternative, Petitioner Brooker moves this Court to reform the Trust so as to effectuate the intent of the Settlor to have Petitioner Brooker's Equalizing Distribution include all Lifetime Gifts to the Respondents' Children and Spouses – including those made before October 16, 2007. *See* S.C. Code § 62-7-415.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Brooker prays for judgment against Respondents providing Petitioner with the following relief:

- a) An order declaring the Equalizing Share to include all Lifetime Gifts, including those made previous to October 16, 2007, to Respondents' Children and Spouses, or in the alternative, to reform the Trust so as to effectuate the Settlor's intent that Petitioner Brook's "Equalizing Distribution" include all Lifetime Gifts, including those prior to October 16, 2007;
- b) An order determining the date and the amount of all Lifetime Gifts made by the Settlor to Respondents' Children and Spouses, as required under Article V of the Trust;
- c) An order determining the total amount of distributions to which Julia is entitled under Article V(2)(c) of the Trust;
- d) An order compelling Respondent Brooker to make such distribution to Julia as required under Article V(2)(c) of the Trust;
- e) Attorney fees and costs of this action; and
- f) For such other and further relief as this Court deems just and proper.

By:



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Attorneys for Petitioner Julia B. Brooker

March 17, 2017
Columbia, South Carolina

EXHIBIT A

Last Will & Testament and Trust of Janet B. Brooker

FILED

2017 MAR 17 AM 11:45

AMY W. MCCULLOUGH
PROBATE JUDGE
RICHLAND COUNTY, S.C.

**LAST WILL AND TESTAMENT
OF
JANET B. BROOKER**

FILED
2017 MAR 17 AM 11:45
PROBATE JUDGE
RICHLAND COUNTY, S.C.
HCCULLOR

Introductory Clause. I, **JANET B. BROOKER**, a resident of and domiciled in the County of Richland and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have three living children: **ELLEN B. CORONTZES**, **JULIA B. BROOKER**, and **BEACHAM O. BROOKER, JR.**

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda; or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM II

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER.**

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust

for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

JPB
(P)

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

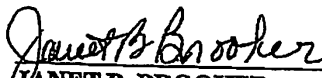
I direct that:

(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or

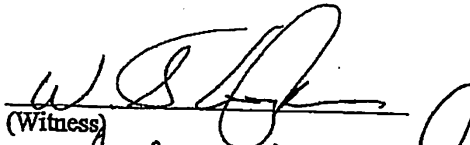
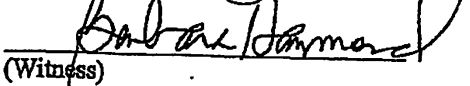
against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, JANET B. BROOKER, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


JANET B. BROOKER

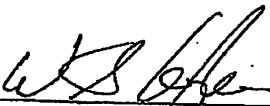
We, W. Steven Johnson and Barbara Hammond, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.


(Witness)

(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by JANET B. BROOKER, the Testatrix, and subscribed and sworn to before me by Barbara Hammond, witness, this the 16th day of October, 2007.

 (Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

TRUST AGREEMENT

FILED
2017 MAR 15
FILE COPY
AMY W. MCDONALD
PROBATE JUDGE
RICHLAND COUNTY, S.C.

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beachum

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER**.

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) Trustee Accountings and Settlement. The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) Trustee Accountings. If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) Settlement of Trustee Accounting. During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) Settlement of Trustee Accounting by Beneficiaries. The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) Settlement of Trustee Accounting Upon Termination of Trust. Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(7) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

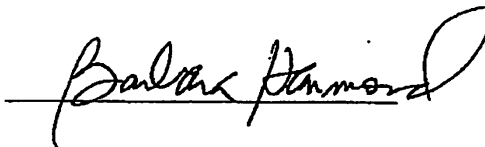
ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

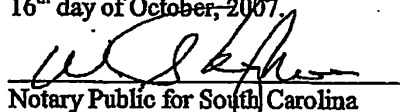
)
) PROBATE
)

Personally appeared the undersigned witness and made oath that she saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.



Sworn to before me this

16th day of October, 2007.


Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE



STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF RICHLAND	)	Civil Action No.: 2017-GC-40-0036
	)	
IN THE MATTER OF:	)	
The Janet B. Brooker Trust	)	
(C.A. No. 2015-ES40-00662)	)	

Julia B. Brooker,	)
Petitioner,	)

vs.

**ANSWER TO PETITION FOR
DECLARATORY RELIEF**

Beacham O. Brooker, Jr., in his official	)
capacity as Trustee and individually as a	)
Beneficiary of the Janet B. Brooker Trust,	)
and Ellen B. Corontzes individually as	)
Beneficiary of the Janet B. Brooker Trust,	)
	)
Respondents.	)

Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust ("Respondents") hereby answer Petition for Declaratory Relief ("Petition") in this action and deny each and every allegation thereof not hereinafter specifically admitted, qualified, or explained, and further alleges as follows:

FOR A FIRST DEFENSE

1. Respondents admit the allegations of paragraph 1 of the Petition, upon information and belief.
2. Respondents admit the allegations of paragraph 2 of the Petition.
3. Respondents admit the allegations of paragraph 3 of the Petition.
4. Respondents admit the allegations of paragraph 4 of the Petition.
5. The allegations of paragraph 5 of the Petition state a legal conclusion to which no

response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 5 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

6. The allegations of paragraph 6 of the Petition state a legal conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 6 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

7. Respondents admit the allegations of paragraph 7 of the Petition.

8. Respondents admit the allegations of paragraph 8 of the Petition.

9. Responding to paragraph 9 of the Petition, Respondents admit that Petitioner Julia B. Brooker (“Petitioner”) is not married and has no children, but Respondents deny the remaining allegations of paragraph 9 of the Petition.

10. Responding to paragraph 10 of the Petition, Respondents admit that their mother Janet B. Brooker (“Settlor”) included a section entitled “Equalizing Distribution to the Settlor’s Daughter, JULIA B. BROOKER” in the Trust Agreement (“Trust”), but Respondents deny the remaining allegations of paragraph 10 of the Petition.

11. Respondents admit the allegations of paragraph 11 of the Petition, upon information and belief. Further responding to paragraph 11 of the Petition, the Last Will & Testament and Trust Agreement attached to Petition appears to be incomplete as it is missing page 13 of the Trust Agreement, which presumably is the signature page of the Trust Agreement.

12. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 12 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

13. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 13 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

14. Respondents crave reference to the Trust, and to the extent the allegations of paragraph 14 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

15. Respondents admit the allegations of paragraph 15 of the Petition.

16. Responding to paragraph 16 of the Petition, Respondents admit that Respondent Brooker, as Trustee, interprets the “lifetime gifts” language to be limited to gifts made after the date of the Trust. Responding to the remaining allegations of paragraph 16 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 16 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

17. Respondents deny the allegations of paragraph 17 of the Petition.

18. Responding to paragraph 18 of the Petition, Respondents admit a justiciable controversy exists.

19. Paragraph 19 of the Petition incorporates prior paragraphs. To the extent a response is required, Respondents reincorporate their responses to prior paragraphs.

20. The allegations of paragraph 20 of the Petition are statements of law or legal conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 20 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

21. The allegations of paragraph 21 of the Petition are statements of law or legal

conclusion to which no response is required. To the extent a response is required, Respondents crave reference to the cited statute, and to the extent the allegations of paragraph 21 are inconsistent with said statute, Respondents deny the same and demand strict proof thereof.

22. Responding to paragraph 22 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 22 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof. Further responding to paragraph 22 of the Petition, Respondents deny that the calculation of the equalizing distribution includes gifts made prior to the execution of the Trust.

23. Responding to paragraph 23 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 23 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof. Further responding to paragraph 23 of the Petition, Respondents deny that the calculation of the equalizing distribution includes gifts made prior to the execution of the Trust.

24. Respondents deny the allegations of paragraph 24 of the Petition.

25. Respondents deny the allegations of paragraph 25 of the Petition.

26. Responding to paragraph 26 of the Petition, Respondents crave reference to the Trust, and to the extent the allegations of paragraph 26 of the Petition are inconsistent with said document, Respondents deny the same and demand strict proof thereof.

27. Responding to paragraph 27 of the Petition, Respondents deny that Petitioner is entitled to her requested order.

28. Responding to paragraph 28 of the Petition and the Prayer for Relief, Respondents deny that Petitioner is entitled to her requested relief.

FOR A SECOND DEFENSE

29. Respondents plead the applicable statute of limitations.

FOR A THIRD DEFENSE

30. Petitioner's claims are barred or limited by all equitable doctrines available to Respondents, including but not limited to, waiver, estoppel, and laches.

WHEREFORE, having fully answered the Petition, Respondents pray that this matter be dismissed, with costs, and for such other and further relief as is just and proper.

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: 
Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
1310 Gadsden Street (29201)
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust

Columbia, South Carolina
May 17, 2017

CERTIFICATE OF SERVICE

I, the undersigned employee of the law offices of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes, individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Answer to Petition for Declaratory Relief

Counsel Served: James M. Griffin
 Margaret N. Fox
 GRIFFIN | DAVIS
 PO Box 999
 Columbia, South Carolina 29201

Attorneys for Petitioner Julia B. Brooker



Amy E. Lovette

May 17, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:
The Janet B. Brooker Trust
(C.A. No. 2015 – ES40 – 00662)

IN THE PROBATE COURT

C.A. 2017-GC-40-0036

Julia B. Brooker,

Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust; and
Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

**PETITIONER'S MOTION FOR
SUMMARY JUDGMENT**

Petitioner Julia B. Brooker (“Petitioner”) by and through undersigned counsel, files her motion for summary judgment and moves the Court for an Order declaring Petitioner is entitled to an Equalizing Share comprised of all Lifetime Gifts made to Respondents’ Children and Spouses by or on behalf of Settlor, to include those made before and after October 16, 2017, along with applicable interest. Summary judgment in favor of Petitioner is appropriate because the plain language of the Trust is unambiguous and evidences Settlor’s clear intent that the Equalizing Distribution was to account for all gifts made to Respondents’ Children and Spouses during the lifetime of the Settlor.

FACTS

The Janet B. Brooker Trust (the “Trust”) is an inter vivos trust that was fully funded upon the death of Janet B. Brooker (“Mother” or “Settlor”) through her last will and testament dated October 16, 2007 and is part of the estate probate pending before this Court, C.A. No. 2015 –

ES40 – 00662. See Last Will & Testament and Trust Agreement, attached hereto as **Exhibit A**. Following Mother's death on April 16, 2015, Mother's estate entered probate before this Court.

Settlor was the mother of Petitioner, Respondent Beacham O. Brooker, Jr. ("Respondent Brooker"), and Ellen B. Corontzes ("Respondent Corontzes") [collectively the "Beneficiaries"]. Following the death of her spouse, Mother gave monetary gifts ("Lifetime Gifts") to the Beneficiaries as well as to the children of Respondent Brooker and Respondent Corontzes and their spouses (collectively the "Respondents' Children and Spouses"). Petitioner Julia is not married and has no children and from the time Mother began making the Lifetime Gifts it was always Mother's intent that Petitioner Julia would be given an amount equal to what was given to Respondents and Respondents' Children and Spouses at Mother's death. Thus, to account for the Lifetime Gifts given to Respondents' Children and Spouses, Mother included an "Equalizing Distribution" in the Trust for Julia's benefit.

Mother executed her last will and testament and the Trust on October 16, 2007. The Trust contains the following language regarding the "Equalizing Distribution,"

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift

which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

See Ex. A, Article V(2). Despite the explicit language of the Trust explaining that Mother **"has previously made lifetime gifts** and intends to continue such gifting program until the date of the [Mother's] death" and that "[Mother] intends that at the [Mother's] death, **an equalizing distribution will be made to the Settlor's said daughter** [Julia] pursuant to the terms of this paragraph **for lifetime gifts made to such daughter's siblings' spouses or siblings' issue,**" see id. (emphasis added), Respondent Brooker, as Trustee, interprets the "lifetime gifts" language to be limited to gifts made after the date of the Trust. See Dep. of B. Brooker Jr., Jan. 24, 2018, 27:10-24, excerpts attached hereto as **Exhibit B**.

STANDARD OF REVIEW

Summary judgment must be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c); see Citizens & S. Nat'l Bank of South Carolina v. Lanford, 443 S.E.2d 549, 551 (S.C. 1994). The Court must view "the evidence and all reasonable inferences ... in the light most favorable to the non-moving party." Fleming v. Rose, 567 S.E.2d 857, 860 (S.C. 2002) "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Rite v. Hitachi Constr. Mach. Ltd., 609 S.E.2d 565, 568 (S.C. Ct. App. 2005).

The moving party bears the initial burden of showing an absence of a genuine issue of material fact. Regions Bank v. Schmauch, 582 S.E.2d 432, 438 (S.C. Ct. App. 2003). Once this initial hurdle is met, "the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Id. "Rather, the nonmoving party must come forward with specific facts showing

there is a genuine issue for trial.” Id.

ARGUMENT

The unambiguous language of the Trust evidences Mother’s intent that Petitioner’s Equalizing Share was to include **any lifetime gifts** by or on behalf of the Settlor to Respondents’ Children and Spouses. The Court’s primary consideration when interpreting and construing a trust is to discern the settlor’s intent. Holcombe-Burdette v. Bank of America, 640 S.E.2d 480, 484 (S.C. Ct. App. 2006) (citing Epworth Children's Home v. Beasley, 616 S.E.2d 710, 715 (S.C. 2005); Bowles v. Bradley, 461 S.E.2d 811, 813 (S.C. 1995)). The intent of the settlor must be ascertained from the four corners of the instrument. See S.C. Code Ann. § 62-7-112 (“The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property”) and Allison v. Wilson, 411 S.E.2d 433, 436 (S.C. 1991) (“In seeking to ascertain the intent of a testator, his intent must be ascertained from the four corners of the will.”) “[I]f the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument.” Holcombe-Burdette, 640 S.E.2d at 485 (citing Chiles v. Chiles, 242 S.E.2d 426, 429 (S.C. 1978)). “Extrinsic evidence is not admissible to alter the plain language of a trust instrument.” Id. (citing Bowles, 461 S.E.2d at 813).

Examination of the plain language found in the four corners of the Trust necessitates a finding that Petitioner is entitled to an Equalizing Share equivalent to the sum of all lifetime gifts to Respondents’ Children and Spouses, with five (5%) percent interest applied to the amount of each gift. That Settlor intended for this provision to apply to all lifetime gifts is evidenced by her acknowledgement in the first sentence of the applicable provision that she “*previously made lifetime gifts* and intends to continue such gifting program until the date of the Settlor’s death to

the Settlor's children, the Settlor's issue and spouses of the Settlor's children." See Ex. A, Article V(2) (emphasis added).

Contrary to Respondents' position, Petitioner's Equalizing Share is not limited to only those gifts made after execution of the Trust on October 16, 2007.¹ In support of this argument, Respondents rely on the following Trust language, "[f]rom the date of this trust forward, the Trustee shall determine the date and the amount of any lifetime gifts." See Ex. A, Article V(2)(a); Ex. C, 28:22-29:11. However, the language - "from the date of this trust forward," merely establishes the date on which Respondent Brooker could begin exercising the authority delegated to him as Trustee to determine the date and amount of lifetime gifts. It cannot be read to negate the Settlor's intent that the Equalizing Share was to account for all lifetime gifts as clearly expressed from the outset of this operative provision.

Moreover, if Mother had intended otherwise, the Trust language would have been worded in the future tense, such as "Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts *[to be made]*, *[that will be made]*, *[that Settlor intends to make pursuant to the gifting program]* to such daughter's siblings' spouses or siblings' issue." See Ex. A, Article V(2). However, such language does not exist. Instead, the Trust using the past tense of the verb "make," stating that "an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this

¹ On this point, the attorney who prepared the Trust, Steven Johnson, (see Dep. of S. Johnson, Jan. 12, 2018, 10:4-17, excerpts attached as **Exhibit C**) and the Trustee disagree. Mr. Johnson includes certain gifts made prior to the execution of the trust document in the equalizing distribution calculation. See Johnson Lifetime Gifts Spreadsheet, attached hereto as **Exhibit D**. The Trustee, Respondent Brooker, however contends that only gifts made after the date of the execution of the Trust are to be included. See Ex. B, 27:10-33:7.

paragraph for **lifetime gifts made** to such daughter's siblings' spouses or siblings' issue." Id. (emphasis added).

Finally, pursuant to the plain language of the Trust document, it is clear that Petitioner's Equalizing Share should be calculated by adding the (a) the sum of all lifetime gifts to Respondents' Children and Spouses and (b) five (5%) percent interest from there date of such gift to the date of distribution. For example, if Respondents' Spouses and Children all received a gift of \$10,000 on January 1, 2017, Petitioner's Equalizing Share would be \$63,000 on January 1, 2018 (\$60,000 (2 spouses and 4 children) plus 5% interest from the date the gifts were made). Respondents argue that the Trust provision should be construed so as to divide Petitioner's Equalizing Share in half. See Ex. B, 38:19-40:14; Ex. C 32:1-35:24. Thus, in the previous hypothetical, Petitioner's Equalizing Share would be \$31,500 under Respondents' unsupported construction of the Trust. However, such interpretation must be rejected because it is contrary to the plain language of the Equalizing Distribution and if Settlor had intended for such result, she could have included language to effectuate the same. See Silver v. Abstract Pool & Spas, 658 S.E.2d 539 (S.C. Ct. App. 2008) (quoting McPherson v. J.E. Sirrine & Co., 33 S.E.2d 501, 509 (1945) ("Party cannot create ambiguity in contract when it does not exist within the four corners...[h]ence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.")).²

Because the Settlor's intent is clear from the plain language found within the four corners of the document, extrinsic evidence of Settlor's intent is not admissible. See Holcombe-Burdette, 640 S.E.2d at 485 (citing Bowles v. Bradley, 461 S.E.2d 811, 813 (S.C. 1995)). Accordingly,

² Petitioner's expert George DuRant, CPA, has accurately identified the lifetime gifts to be included and correctly calculated the distribution to which Petitioner is entitled, along with interest through May 31, 2018. See DuRant Expert Report, attached hereto as **Exhibit E**.

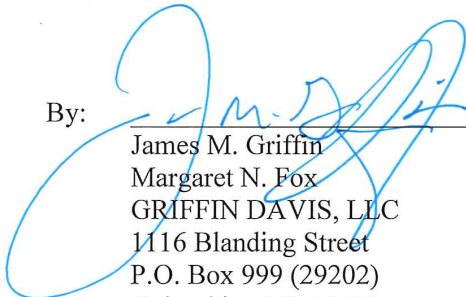
Petitioner is entitled to summary judgment because there exists no evidence from which Respondent could argue the existence of a material issue of fact.

CONCLUSION

Accordingly, the Court should grant Petitioner's motion and enter judgment in favor of Petitioner declaring the Equalizing Share includes all Lifetime Gifts Mother previously made to the Respondents' Children and Spouses, to include all gifts made prior to the date of the Trust, October 16, 2007, and those gifts made pursuant to the gifting program that Mother continued after the date of the Trust.

Respectfully submitted,

By:



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Margaret N. Fox
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Attorneys for Petitioner Julia B. Brooker

August 3, 2018
Columbia, SC

Exhibit A

Last Will & Testament and Trust Agreement

**LAST WILL AND TESTAMENT
OF
JANET B. BROOKER**

Introductory Clause. I, **JANET B. BROOKER**, a resident of and domiciled in the County of Richland and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

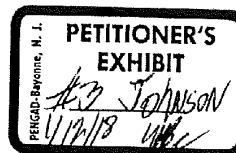
I have three living children: **ELLEN B. CORONTZES**, **JULIA B. BROOKER**, and **BEACHAM O. BROOKER, JR.**

ITEM I

General Bequest of Personal and Household Effects With a Mandatory Memorandum. I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda; or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.



ITEM II

Pour-Over Gift to Trustee of Testatrix's Inter Vivos Trust. I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee under that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007. My Trustee shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Trust Agreement, including any amendments thereto made before my death.

ITEM III

Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid. In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** as Trustee executed prior to the execution of this Will on the 16th day of October, 2007, which Trust Agreement including any amendments thereto made before my death is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein. If for any reason **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER** are unable or unwilling to serve then I hereby nominate, constitute and appoint as successor or substitute Trustee such Trustee or Trustees as are set forth in the above referenced Trust Agreement.

ITEM IV

Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters. The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) **Naming an Individual Personal Representative.** I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my son, **BEACHAM O. BROOKER, JR.** and direct that he shall serve without bond.

(2) **Naming Individual Successor or Substitute Personal Representative.** If my individual Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **JULIA B. BROOKER**.

(3) **Final Succession If Individual Successor Personal Representative Cannot Act.** If my individual successor Personal Representative should fail to qualify as Personal Representative hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Personal Representative who shall also serve without bond shall be my daughter, **ELLEN B. CORONTZES**.

(4) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

ITEM V

Definition of Personal Representative. Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VI

Powers for Personal Representative. By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

ITEM VII

Provision for Personal Representative to Act as Trustee for Beneficiary Under Age Twenty-One. If any share or property hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years or if any real property shall be devised to a person who has not attained the age of Twenty-one (21) years at the date of my death, then such share or property shall immediately vest in the beneficiary, but notwithstanding the provisions herein, my Personal Representative acting as Trustee shall retain possession of the share or property in trust



for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share or property as my Personal Representative deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent my Personal Representative deems advisable any other income or resources of the beneficiary or his or her parents known to my Personal Representative. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share or property shall be paid over, distributed and conveyed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. Whenever my Personal Representative determines it appropriate to pay any money for the benefit of a beneficiary for whom a trust is created hereunder, then the amounts shall be paid out by my Personal Representative in such of the following ways as my Personal Representative deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the care, support and education of the beneficiary; (4) by my Personal Representative using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act. My Personal Representative as trustee shall have with respect to each share or property so retained all the powers and discretions conferred upon it as Personal Representative.

ITEM VIII

Discretion Granted to Personal Representative in Reference to Tax Matters. My Personal Representative as the fiduciary of my estate shall have the discretion, but shall not be required when allocating receipts of my estate between income and principal, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representative believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others; provided, however, my Personal Representative shall not exercise its discretion in a manner which would cause the loss or reduction of the marital deduction as may be herein provided. In determining the state or federal estate and income tax liabilities of my estate, my Personal Representative shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as state or federal estate tax deductions or as state or federal income tax deductions. If my estate plan includes a revocable trust agreement and it contains directions to my Personal Representative, I direct my Personal Representative to follow the directions in such trust agreement.

ITEM IX

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Will, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For

purposes of this my last will and testament the anti-lapse statute shall not apply as I have named successor takers where it is my intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Will, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ITEM X

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

ITEM XI

Simultaneous Death Provision Presuming Beneficiary Predeceases Testatrix. If any beneficiary and I should die under such circumstances as would make it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that the beneficiary predeceased me.

ITEM XII

Direction to Pay Debts with Discretionary Refinancing by Personal Representative. I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death. I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM XIII

I direct that:

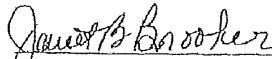
(1) **Direction to Pay All Taxes from Residuary Estate.** Except as provided in (2) herein, all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), be paid out of my residuary estate and shall not be charged to or



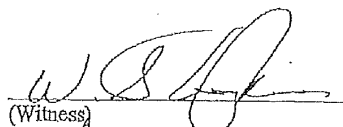
against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

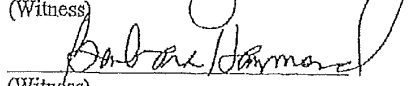
(2) **Apportion Taxes on Nonprobate Property.** All such taxes in respect to any property or interests in property included in my gross estate under Sections 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, and 2044 of the Internal Revenue Code shall be charged against and paid by the recipient or beneficiary of such property or interest in property or from the property or interest in the property, provided, however, there shall be no apportionment against any donee or recipient of any such property or interest in property which is a qualified charity under Section 2055 and the property or interest in property was allowed in my federal estate tax proceedings as a charitable deduction. The amount of the tax to be charged against such donee or recipient shall be determined by multiplying a fraction (the numerator of which shall be the federal estate tax value of the property to be apportioned as finally determined in my federal estate tax proceedings and the denominator of which shall be the total value of my taxable estate for such federal estate tax purposes) times the net amount of such taxes payable by my estate after the application of all credits against such taxes.

Testimonium, Attestation and Self-Proving Affidavit. I, JANET B. BROOKER, the Testatrix, sign my name to this instrument this the 16th day of October, 2007, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.


JANET B. BROOKER

We, W. Steven Johnson and Barbara Hammond, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testatrix signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the Testatrix, hereby signs this will as witness to the Testatrix's signing, and that to the best of our knowledge the Testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

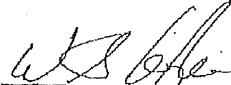

(Witness)


(Witness)

The State of South Carolina

County of Richland

Subscribed, sworn to, and acknowledged before me by JANET B. BROOKER, the Testatrix, and subscribed and sworn to before me by BARBARA HAMMOND, witness, this the 16th day of October, 2007.

 (Seal)
Notary Public for South Carolina

My Commission Expires: 2/24/2013

TRUST AGREEMENT

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Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beachum

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) Trustee Accountings and Settlement. The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) Trustee Accountings. If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) Settlement of Trustee Accounting. During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) Settlement of Trustee Accounting by Beneficiaries. The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) Settlement of Trustee Accounting Upon Termination of Trust. Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(7) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and facade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

W. S. [Signature]
Barbara [Signature]

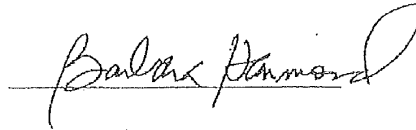
Janet Brooke Brooker
JANET B. BROOKER

SETTLOR
Janet Brooker
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

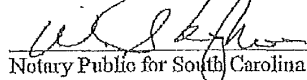
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) PROBATE

Personally appeared the undersigned witness and made oath that s/he saw the within named Settlor and Trustee sign, seal and as their act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.



Sworn to before me this

16th day of October, 2007.


Notary Public for South Carolina

My Commission expires: 2/24/2013

SCHEDULE "A"

List of Assets

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE

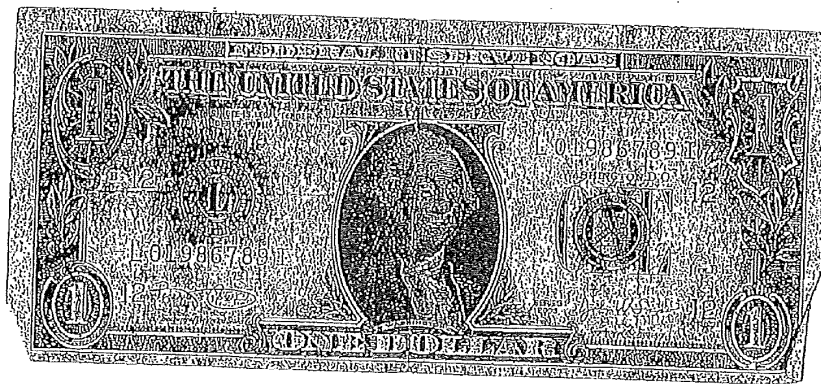


Exhibit B

Beacham Brooker's Deposition Excerpts

In the Matter Of:

Julia B. Brooker v.
Beacham O. Brooker, Jr., et al.

Beacham O. Brooker, Jr.

January 24, 2018



A. William Roberts, Jr. & Associates

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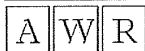
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND
3
4 IN THE MATTER OF:
5 THE JANET B. BROOKER TRUST
6 (C.A. NO. 2015-ES40-00662)
7
8 JULIA B. BROOKER,
9
10 Petitioner,
11
12 vs. C.A. 2017-GC-40-0036
13
14 BEACHAM O. BROOKER, JR., IN HIS OFFICIAL
15 CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A
16 BENEFICIARY OF THE JANET B. BROOKER TRUST;
17 AND ELLEN B. CORONTZES INDIVIDUALLY AS A
18 BENEFICIARY OF THE JANET B. BROOKER TRUST,
19
20 Respondents.
21
22 DEPOSITION OF: BEACHAM O. BROOKER, JR.
23
24 DATE: January 24, 2018
25
26 TIME: 2:02 P.M.
27
28 LOCATION: Law Offices of Griffin Davis
29 1116 Blanding Street
30 Columbia, SC
31
32 TAKEN BY: Counsel for the Petitioner
33
34 REPORTED BY: Wanda K. Cecil
35 Certified Court Reporter

21 A. WILLIAM ROBERTS, JR. & ASSOCIATES
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1 Q. Okay: You indicated earlier it was
2 discussed at the meeting. Is that accurate?

3 A. Sure.

4 Q. Do you remember the contents of those
5 discussions?

6 A. No. Just that we would begin an
7 aggressive gifting to non-blood relatives, spouses
8 and grandchildren, and then would catch Julia up in
9 the unequal amount upon her mother's death.

10 Q. Okay. What was your understanding as to
11 the date that the equalization provision began?

12 A. The date of the trust.

13 Q. Where did you get that understanding?

14 A. Because there was no equalization
15 provision in any of the estate documents prior to
16 that time.

17 Q. Did anyone tell you that date?

18 A. The date of the trust? I have a copy of
19 it.

20 Q. Right. I'm asking if an individual ever
21 said to you that October 16, 2007 is the date that
22 the equalization provision begins?

23 A. No. But it's obvious from the face of
24 the document.

25 Q. All right. Did you attend any other

1 meetings when the equalization provision was
2 discussed?

3 A. Not that I know of, no.

4 Q. I asked because your response to one of
5 your requests for -- to our interrogatories, excuse
6 me, did not list the conversation that you just
7 mentioned. So I just want to make sure that there
8 are no other instances in which you had a
9 conversation about the equalizing provision.

10 A. I remember a meeting at Steve Johnson's
11 office where we executed all of these latest estate
12 documents, the will and the trust, and that was when
13 he explained everything to us, how it would work.

14 Q. He explained it the day that you signed
15 it?

16 A. I think so. Well, I don't know.
17 According to this, it was in September. The
18 execution of the trust was in late October, I
19 believe.

20 Q. Okay.

21 (Off-the-record conference.)

22 BY MS. FOX:

23 Q. In response to one of my questions
24 regarding the equalization clause, you indicated
25 that your understanding was that it was meant to

1 facilitate aggressive gift giving to non-blood
2 family members and grand kids?

3 A. That's correct.

4 Q. Okay. Was the funding of \$240,000 for
5 the 529 education plans part of that?

6 A. No. No, it's not.

7 Q. Why?

8 A. Because the 529 plan was funded prior to
9 the revocable trust being established.

10 Q. Do you know when it was funded?

11 A. Early October of 2007, I believe.

12 Q. So it was funded after the meeting on
13 9/25?

14 A. Yes, I believe that's correct.

15 Q. Okay. And this was the meeting in which
16 you discussed that the goal was aggressive gift
17 giving?

18 A. Correct.

19 Q. Also in that meeting, you said that you
20 discussed the will; correct?

21 A. Correct.

22 Q. Do you ever remember any mention of a
23 codicil?

24 A. No, I do not.

25 Q. Okay. Let me --

1 A. Let me back up and amend an answer I
2 gave you a minute ago of, no, the 529 funding was
3 not part of this, what I referred to as aggressive
4 gift giving to spouses and children. It's a
5 separate gift tax exemption that we took advantage
6 of. We were doing other things other than the
7 annual exclusionary gifting. The QPRTs with the two
8 homes and that sort of thing. The family limited
9 partnership, which was called BBB&C, that was part
10 of it as well.

11 Q. So is it your position that tuition
12 payments are not gifts?

13 A. They are not part of the aggressive
14 gifting that we established in that trust going
15 forward.

16 Q. And your position is based on what?

17 A. Well, based on the fact that the
18 Internal Revenue Service Code allows grandparents or
19 anyone, I would presume, to fund education without
20 exceeding the annual exclusion for gift tax.

21 Q. Okay.

22 A. In other words, on top of the annual
23 exclusion.

24 MR. GRIFFIN: Let's take a quick break.

25 (A recess transpired.)

1 BY MS. FOX:

2 Q. Go back on the record. Did you have any
3 conversations with your mother about the \$240,000
4 tuition payment made to the grandchildren?

5 A. Not specifically as to that dollar
6 figure, but I presume that is some IRS limit, 60,000
7 per child.

8 Q. So that's a no?

9 A. No.

10 (PET. EXH. 11, Respondents' Answers to
11 Petitioner's First Set of
12 Interrogatories, was marked for
13 identification.)

14 BY MS. FOX:

15 Q. And in your -- I'm going to hand you
16 what I'm marking as Petitioner's Exhibit 11.

17 A. (Reviewing.)

18 Q. If you'll look at Number 4, your
19 response to Number 4.

20 A. Yes. (Complying.)

21 MR. GRIFFIN: That's Exhibit 9?

22 THE COURT REPORTER: Eleven.

23 MR. GRIFFIN: Eleven? I'm sorry.

24 THE WITNESS: I've read it.

25 BY MS. FOX:

1 Q. Do you have personal knowledge of the
2 oral statements referred to in this answer between
3 Janet Brooker and Steve Johnson?

4 A. I do not.

5 Q. So what information and belief is the
6 this based upon?

7 A. I do not know.

8 Q. But your mother never had a discussion
9 with you about whether the \$240,000 was intended to
10 be a gift?

11 A. Well, it didn't -- if you're talking
12 about gifts as defined by the Internal Revenue
13 Service Code, then you have a \$13,000 -- and it has
14 changed over the years. I believe at some time it
15 was a \$10,000 annual exclusion that doesn't trigger
16 a gift tax. A contribution to a 529 plan is a
17 separate section of the IRS Code, which, yes, it is
18 a gift; but it is not a gift in the terms of pay
19 outs under the \$13,000 annual gift tax exclusion.

20 Q. Okay. My question has nothing to do
21 with tax consequences.

22 A. Right.

23 Q. Regardless of what the IRS Code says,
24 did your mother ever have a conversation with you
25 wherein she said the \$240,000 that was put into the

1 529 accounts for the grandchildren was not part of
2 the aggressive gift giving that you referred to when
3 you answered my question earlier?

4 A. Did she ever say that that was not part
5 of the aggressive gift giving?

6 Q. Yes.

7 A. No.

8 Q. Okay. All right. Did I give you 12
9 yet? I don't think I did.

10 (PET. EXH. 12, Todd & Johnson Invoice to
11 Janet B. Brooker, Dated October 29,
12 2007, was marked for identification.)

13 BY MS. FOX:

14 Q. I've marked this as Exhibit 12.

15 A. (Reviewing.)

16 Q. I'm going to hand you --

17 MR. GRIFFIN: And I'll leave you alone.

18 MS. FOX: You promise?

19 MR. GRIFFIN: Yes, I promise.

20 (PET. EXH. 13, First Codicil to Last
21 Will and Testament of Janet Bloom
22 Brooker, was marked for identification.)

23 BY MS. FOX:

24 Q. I'm going to hand you 13 as well. Look
25 at that in conjunction.

1 codicil or about the trust?

2 A. Did he mention anything?

3 Q. Anything to her about the codicil.

4 A. No.

5 Q. Did he explain anything to her about the
6 equalization provision in the trust?

7 A. I do not know. Do not recall.

8 Q. Okay. So you know he definitely didn't
9 talk about the codicil, but you don't recall whether
10 he talked about the trust? Is that your answer?

11 A. Obviously, he would have talked about it
12 because he was having her sign it.

13 Q. I'm referring to a substantive
14 conversation explaining to her how it would operate.

15 A. I do not recall that.

16 Q. Okay. Let's see. If you will turn to
17 Page 3 for me.

18 A. (Complying.)

19 Q. Are you familiar with the language of
20 Paragraph 2?

21 A. I am.

22 Q. Okay. And let me ask you. If under
23 this language, if for example, you and your family,
24 including your wife and grand kids, received \$10,000
25 and Ellen's family, including her spouse and grand

1 kids received \$10,000, how much would Julia be
2 entitled to?

3 A. \$10,000 plus five percent from the date
4 of.

5 Q. Okay. And where do you get \$10,000
6 from?

7 A. I thought your \$10,000 was a
8 hypothetical.

9 Q. It is, but the language in (a) says the
10 sum of (a), which reads as the amount of lifetime
11 gifts made to the issue of Ellen and of Beacham. So
12 under that language, it would be 10 plus 10 equals
13 20?

14 A. It would be unless you read Paragraph 2
15 and then it's -- the intent is to equalize the
16 amount given to each of myself and Ellen's spouses
17 and children, an equal -- equal amount to Julia.

18 Q. So you're dividing (a) by two based on
19 which specific language in Paragraph 2?

20 A. Settlor intends that at settlor's death
21 an equalizing distribution will be made to settlor's
22 said daughter pursuant to the terms of this
23 paragraph for lifetime gifts made to such daughter's
24 siblings' spouses or siblings' issue, which
25 equalizing distribution will be determined as

1 follows.

2 Q. And it's your position that supports
3 dividing it by two?

4 A. Yes. Otherwise it wouldn't be equal.

5 Q. Okay. Well, how about if Ellen gets 20,
6 her family gets 20 and you get 10, then how much
7 does Julia get?

8 A. I don't know. I would think 10.

9 Q. Why?

10 A. So Julia would get an equal amount given
11 to the other two children and the spouses.

12 Q. If one gets 20 and the other gets 10,
13 Julia gets 10?

14 A. I don't know.

15 Q. Following your mother's death, was there
16 ever a disagreement between you and Steve Johnson
17 regarding the date the equalization provision began?

18 A. No. We both were in agreement that it
19 was the date of the revocable trust.

20 Q. Okay. So why would Steve Johnson's
21 office request the total amount of lifetime gifts to
22 the spouses and grandchildren since 1997?

23 A. Probably because of a demand by Julie's
24 previous counsel, Mr. Siddons.

25 (PET. EXH. 15, E-main Chain from Beacham

Exhibit C

Steven Johnson's Deposition Excerpts

In the Matter Of:

Julia B. Brooker vs.
Beacham O. Brooker, Jr.

W. Steven Johnson

January 12, 2018



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF RICHLAND
3
4 IN THE MATTER OF:
5 THE JANET B. BROOKER TRUST
6 (C.A. NO. 2015-ES40-00662)
7
8 JULIA B. BROOKER,
9
10 Petitioner,
11
12 vs. C.A. 2017-GC-40-0036
13
14 BEACHAM O. BROOKER, JR., IN HIS OFFICIAL
15 CAPACITY AS TRUSTEE AND INDIVIDUALLY AS A
16 BENEFICIARY OF THE JANET B. BROOKER TRUST;
17 AND ELLEN B. CORONTZES INDIVIDUALLY AS
18 BENEFICIARY OF THE JANET B. BROOKER TRUST,
19
20 Respondents.

21 DEPOSITION OF: W. STEVEN JOHNSON
22
23 DATE: January 12, 2018
24
25 TIME: 10:55 A.M.
26
27 LOCATION: Law Offices of Griffin Davis
28 1116 Blanding Street
29 Columbia, SC
30
31 TAKEN BY: Counsel for the Petitioner
32
33 REPORTED BY: Wanda K. Cecil
34 Certified Court Reporter

35
36 A. WILLIAM ROBERTS, JR. & ASSOCIATES
37
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45



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1 Janet B. Brooker and Trust Agreement,
2 was marked for identification.)

3 BY MR. GRIFFIN:

4 Q. Mr. Johnson, I'll show you what I've
5 marked as Petitioner's Exhibit 3, which is really
6 two documents. One is the Last Will and Testament
7 and then attached to that is the Janet B. Brooker
8 Trust. Do you recognize these documents?

9 A. I do.

10 Q. Okay. Did you prepare these documents?

11 A. I did.

12 Q. And on Page 3 of the trust document,
13 which is under Article V, Section 2, there's a
14 provision entitled equalization distribution to
15 settlor's daughter, Julia B. Brooker. Did you
16 prepare that paragraph?

17 A. I did.

18 Q. Okay. The software that you mentioned
19 that produces wills and trusts after you insert the
20 data, does it contain a template for equalization
21 distribution?

22 A. No.

23 Q. So Paragraph 2 here on Page 3, was it
24 generated as a result of any template that you have?

25 A. No.

1 Q. Do you recall any questions that she had²⁸
2 of you about the equalization provision?
3 A. I don't.
4 Q. When you spoke with her, did you use the
5 phrase lifetime gifts?
6 A. I don't know.
7 Q. Do you know whether you explained to her
8 that there could be a difference in lifetime gifts?
9 I mean, gifts given prior to the date of the
10 execution of the trust versus gifts given after the
11 entry of the trust?
12 A. The whole conversation with Janet was
13 about prospective gifts, not retrospective gifts.
14 Q. Okay.
15 A. It was going forward, not looking back.
16 Q. Is there language in the trust agreement
17 that references past gifts?
18 A. No.
19 Q. Okay. If you'll look at Page 3 of the
20 trust.
21 A. (Complying.)
22 Q. And under Paragraph 2, says the settlor
23 has previously made lifetime gifts and continues --
24 and intends to continue such gifting program until
25 the date of settlor's death. When there's reference

1 here to previously made lifetime gifts, isn't that
2 referencing gifts that had been made before the
3 execution of this trust?

4 A. Yes, but that was -- that was qualified
5 by Paragraph (a), which says from the date of this
6 trust forward. You have to read the four corners of
7 Paragraph 2 and it says from the date of the trust
8 forward looking at the lifetime gifts.

9 Q. The trustee shall determine the date and
10 amount of any lifetime gifts?

11 A. From the date of the trust.

12 Q. Okay. And we can quarrel -- and I don't
13 want to quarrel with you, Mr. Johnson; but is there
14 room to read this to say that, from the date of the
15 trust forward, the trustee will make that
16 determination as to what the lifetime gifts are and
17 have been?

18 A. No.

19 MS. DuRANT: Object to the form.

20 BY MR. GRIFFIN:

21 Q. Okay. So let's go from this, from the
22 date of this trust forward, the trustee shall
23 determine the amount and any lifetime gifts made by
24 the settlor to the issue of Ellen Corontzes. The
25 issue of Ellen Corontzes would be her children?

1 Q. Okay. So under Paragraph (a) for
2 example, just follow me on a hypothetical. If in
3 2010, Ms. Janet Brooker gave cumulatively between
4 the four grandchildren and the two spouses,
5 cumulative for those six individuals, round number
6 \$100,000 in 2010.

7 A. Each one got --

8 Q. No. Cumulative they all got \$100,000,
9 you know, gross between all six of them. So would
10 the total gifts for that year under my hypothetical
11 be \$100,000?

12 A. Correct.

13 Q. And then compounding interest at five
14 percent a year would be 5,000?

15 A. Not compounding.

16 Q. I'm sorry. Non-compound. So straight
17 interest would be 5,000 a year?

18 A. Right.

19 Q. And it says until the distribution is
20 satisfied, but let's just make it simple and say
21 five years under my hypothetical. That'd be five
22 years of interest at \$25,000?

23 A. That's correct if the math is correct.

24 Q. Yes. Right.

25 A. Okay.

1 Q. And that's a leap of faith. I
2 appreciate that. So then the total under -- if my
3 math is correct, would be \$125,000 under this
4 hypothetical; correct? And that would be -- if
5 there's nothing else that happened, then that would
6 be Ms. Julia Brooker's equalized distribution?

7 A. You have to divided that by two to keep
8 her equal with -- I mean, if Ellen got half of that
9 money -- Ellen's family got half of that money and
10 Beach's family got half of that money, of that
11 \$125,000, then to keep Julie equal with them, she
12 would get half that figure.

13 Q. Is that what Subparagraph (b) says?

14 A. That's what it says to me.

15 Q. I'm sorry. What does Subparagraph (c)
16 say?

17 A. The sum of (a) and (b) shall be
18 distributed to the settlor's daughter.

19 Q. Under my --

20 A. So the equalizing distribution.
21 Equalizing distribution, plus the five percent would
22 be given to Julie.

23 Q. Well, under my hypothetical --

24 A. It wouldn't be -- it wouldn't be
25 equalizing if she got the whole 125,000. She would

1 be that much ahead of the other two because they had³⁴
2 to divide it by two in your example.
3 Q. Well, let me read the language here. It
4 says the sum of (a) and (b) above shall be
5 distributed to the settlor's daughter. So if we
6 apply the sum of (a) and (b) in my hypothetical,
7 would you agree you'd get \$125,000 to Julia?
8 A. No. She'd get half that figure.
9 Q. All right. So the sum of (a) in my
10 hypothetical is \$100,000 to all six.
11 A. But the intent is to keep her equal with
12 the others.
13 Q. Okay.
14 A. Not for her to get ahead, but to keep
15 her equal.
16 Q. Well, are you aware that the gift tax
17 returns show that Ms. Janet Brooker gifted over
18 \$400,000 to Beach and Ellen's children up until
19 October 2007?
20 A. I'm not sure about your math, but I
21 reviewed the gift tax returns and I know significant
22 gifts were made to the spouses and to the
23 grandchildren.
24 Q. Right. Well, can you point to any
25 language in (a), (b) or (c) that says you divide (a)

1 in half before you distribute it under (c)?

2 A. Jim, if you -- if you read the four
3 corners of Paragraph 2, it intends to keep Julie
4 equal with what Beach got and what Ellen got, but
5 not to get her ahead. It says an equal. Equal
6 means equal to me.

7 Q. And under your analysis, Julia gets
8 ahead if you only consider the gifts given after
9 October 2008 -- 2007, I'm sorry?

10 A. Under the example you gave me, if you
11 don't divide it by two, Julie would get ahead,
12 because she would get 100,000. Okay? Or 125,000.
13 And then Ellen and Beach would have to split
14 125,000. So under your scenario, she would get
15 ahead.

16 Q. Well, let me throw up one more
17 hypothetical in there. What if in Year 2005, Ms.
18 Brooker gave those same six individuals cumulative
19 \$200,000?

20 A. Well, the equalization only took place
21 from 2007 forward.

22 Q. Right. And that's to my point. Under
23 your analysis, Julia only gets ahead if you ignore
24 what happens before 2007; correct?

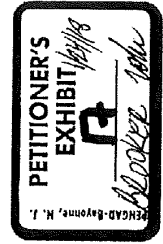
25 MS. DuRANT: Object to the form.

Exhibit D

Johnson Lifetime Gifts Spreadsheet

Janet B. Brooker Estate
Gifts made from 2007 through 2015

		Gifts	Interest	Total
09/26/07	Tuition for grandchildren	85,850.00		
Interest	Interest from 9/26/07 to 4/16/15		32,446.60	118,296.60
09/26/07	\$12,000 X 2	24,000.00		
Interest	Interest from 9/26/07 to 4/16/15		9,070.68	33,070.68
10/01/07	\$60,000 X 4	240,000.00		
Interest	Interest from 10/1/07 to 4/16/15		90,542.47	330,542.47
01/09/08	\$12,000 X 2	24,000.00		
Interest	Interest from 1/5/08 to 4/16/15		8,725.48	32,725.48
01/08/09	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/09 to 4/16/15		24,457.81	102,457.81
01/05/10	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/10 to 4/16/15		20,589.86	98,589.86
01/05/11	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/11 to 4/16/15		16,689.86	94,689.86
01/05/12	\$13,000 X 6	78,000.00		
Interest	Interest from 1/5/12 to 4/16/15		12,789.86	90,789.86
01/02/13	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/13 to 4/16/15		9,596.71	93,596.71
01/02/14	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/14 to 4/16/15		5,396.71	89,396.71
01/02/15	\$14,000 X 6	84,000.00		
Interest	Interest from 1/2/15 to 4/16/15		1,196.71	85,196.71
	Total Gifts and Interest	937,850.00	231,502.75	1,169,352.75
	One half given is Ellen's family		584,676.37	
	One half given is Beach's family		584,676.37	1,169,352.74
	Amount due to Julia to equalize		584,676.38	



Janet B. Brooker Estate
Gifts made from 2007 through 2015

Gifts	Interest	Total
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Exhibit E

DuRant Expert Report

GEORGE DURANT, LLC

GEORGE W. DURANT, CPA/ABV, ASA, CFF

May 31, 2018

James M. Griffin, Esquire
Margaret N. Fox, Esquire
Griffin Davis
1116 Blanding Street
Columbia, South Carolina

Re: In the Matter of: The Janet B. Brooker Trust; Julia Brooker v. Beacham O. Brooker, Jr. et al.
Case No.: 2017-GC-40-0036

Dear Mr. Griffin and Ms. Fox:

The following is a summary of lifetime gifts made by Janet B. Brooker to the spouse and issue of Ellen B. Corontzes and to the spouse and issue of Beacham O. Brooker, Jr. Interest was calculated at the annual rate of 5% from the date of each gift through May 31, 2018. Appendix 1 hereto is a detailed listing of lifetime gifts and interest calculations. Appendix 2 hereto is a detailed listing of payments made to Hammond School on behalf of Mrs. Brooker's four grandchildren (the total of payments to Hammond School and interest thereon was divided by four and included as a lifetime gift to each grandchild in the detailed listing in Appendix 1).

	Lifetime Gifts	Interest	Total
Spouse & issue of Ellen B. Corontzes:			
Dino Corontzes	139,926.23	59,207.01	199,133.24
Arthur B. Corontzes	384,926.33	251,954.57	636,880.90
Beacham O. Corontzes	374,208.58	238,304.49	612,513.07
Totals - spouse & issue of Ellen B. Corontzes	899,061.15	549,466.07	1,448,527.21
Spouse & issue of Beacham O. Brooker, Jr.:			
Beth Brooker	158,400.00	60,089.12	218,489.12
Elizabeth K. Brooker	371,219.33	245,338.77	616,558.11
Grace H. Brooker	373,688.58	238,056.88	611,745.46
Totals - spouse & issue of Beacham O. Brooker, Jr.	903,307.92	543,484.78	1,446,792.70
TOTALS	1,802,369.06	1,092,950.85	2,895,319.91

Article V, Section 2 of the Janet B. Brooker Trust Agreement dated October 16, 2007 requires an equalizing distribution to Julia B. Brooker equal to the sum of lifetime gifts to the spouses and issue of Ellen B. Corontzes and Beacham O. Brooker, Jr., plus interest. In my opinion, the required equalizing distribution is \$2,895,319.91 as of May 31, 2018 (daily interest thereafter is \$246.90).

The following information was considered in forming my opinion:

P.O. Box 2746
COLUMBIA, SOUTH CAROLINA 29202
(803) 212-8974
GEORGE@GDURANT.COM

- Salomon Smith Barney account number 607-61224-12 for the period September 1999 through September 2010. This account was closed during September 2010 by transfer of remaining assets to Stephens account number 137607881. This was Janet Brooker's IRA account. No distributions were made to a subject beneficiary from this account during the period reviewed.
- Salomon Smith Barney account number 607-81026-10 for the period December 1998 through November 2010. Substantially all of the assets in this account were transferred during August 2010 to Stephens account number 137616296. This was a personal investment account of Janet Brooker from which she wrote checks and made transfers to and for the benefit of the subject beneficiaries.
- Salomon Smith Barney account number 607-10172-11 for the period December 1998 through September 2007 when substantially all assets were transferred to Salomon Smith Barney account number 607-81026-01.
- Salomon Smith Barney account number 607-81027-19 for the period December 1998 through June 2002 when substantially all of the assets were transferred to other Salomon Smith Barney accounts including those of the subject beneficiaries. This account was designated as Janet Brooker's "Special Account."
- Stephens account number 137616296 for the period August 6, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-81026-10) through June 2015. Substantially all of the assets held in this account were transferred to Stephens account number 322500645 during May 2015 subsequent to Janet Brooker's death.
- Stephens account number 322500645 for the (when opened with the transfer of period beginning May 29, 2015 through January 2018. This account is owned by the Janet B. Brooker Irrevocable Trust under Trust dated October 16, 2007.
- Stephens account number 137607881 for the period beginning September 16, 2010 (when opened with the transfer of substantially all assets held in the Salomon Smith Barney account number 607-61224-12) through August 11, 2015 (when the account was closed by transfers to IRA accounts for Beacham, Julia and Ellen).
- Stephens account number 208048369 for the period beginning May 21, 2015 through January 2018. This is the Estate of Janet B. Brooker account.
- First Community Bank account number __0729 for the period April 2000 through January 31, 2018 when the account was closed. This was Mrs. Brooker's savings account.
- First Community Bank account number __1536 for the period May 12, 2015 through January 31, 2018. This is the Estate of Janet Brooker account.
- First Community Bank account number __1063 for the period December 23, 2002 through May 22, 2015 when the account was closed. This account was a personal account primarily used by Mrs. Brooker to pay living expenses.
- First Community Bank account number __8788 for the period January 31, 2008 through May 22, 2015 when the account was closed. This was Mrs. Brooker's money market account; transfers out were only made to First Community account number __1063.

- Documents produced by William Sellars – SELLARS1-1492.
- Documents produced by W. Steven Johnson – T&J0001-4946.
- Deposition transcripts of Julia B. Brooker on September 1, 2017; Ellen B. Corontzes on January 24, 2018; Beacham O. Brooker, Jr., on January 24, 2018; W. Steven Johnson on January 12, 2018; and William Sellars on January 11, 2-18.
- Copy of the Petition in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "George W. DuRant". The signature is written in a cursive, flowing style with a prominent horizontal line at the end.

George W. DuRant

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	6/1/92	191 sh. Martin Marietta	Arthur B. Corontzes	9,979.75	9,495	12,980.51	SELLARS	10 03W-101125		
	1/8/93	146 sh. Martin Marietta	Arthur B. Corontzes	9,891.00	9,274	12,565.63	SELLARS	104		
	1/10/94	230 sh. Martin Marietta	Arthur B. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Arthur B. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164		
	1/1/96	130 sh. Lockheed Martin	Arthur B. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Arthur B. Corontzes	8,436.48	7,805	9,020.10	SELLARS	194		
	1/16/97	100 sh. First Community	Arthur B. Corontzes	1,100.00	7,805	1,176.10	SELLARS	194		
	1/15/98	98 sh. Lockheed Martin	Arthur B. Corontzes	9,793.88	7,441	9,983.05	SELLARS	354		
	1/4/99	215 sh. Ansoth	Arthur B. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81040-01	Arthur B. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012 SB607-81027-19	Sellars	436
	1/11/01	607-81040-01	Arthur B. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057 SB607-81027-19	SELLARS	469
1031	4/25/01	Arthur B. Corontzes	Arthur B. Corontzes	110.00	6,245	94.10	MORGAN ST	1511 SB607-81026-10		
	4/17/02	607-81040-01	Arthur B. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101 SB607-81027-19	SELLARS	518
1233	4/17/04	Arthur B. Corontzes	Arthur B. Corontzes	114.00	5,157	80.53	MORGAN ST	4448 SB607-10172-11		
472	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	50.00	4,905	33.60	First Com Ban	323	1063	
	12/25/04	Arthur B. Corontzes	Arthur B. Corontzes	100.00	4,905	67.19	First Com Ban	323	1063	
1295	12/24/05	Arthur B. Corontzes	Arthur B. Corontzes	100.00	4,541	62.21	MORGAN ST	2577 SB607-81026-10		
1234	4/15/06	Arthur B. Corontzes	Arthur B. Corontzes	115.00	4,429	69.77	MORGAN ST	4520 SB607-10172-11		
1337	4/17/06	Arthur B. Corontzes	Arthur B. Corontzes	116.00	4,427	70.35	MORGAN ST	2646 SB607-81026-10		
1162	12/26/06	Arthur B. Corontzes	Arthur B. Corontzes	350.00	4,174	200.12	First Com Ban	402	1063	
1182	4/26/07	Arthur B. Corontzes	Arthur B. Corontzes	117.00	4,053	64.96	First Com Ban	390	1063	
1633	10/1/07	Future Scholar	Arthur B. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3070 SB607-81026-10	SELLARS	567
	2/28/08	Arthur B. Corontzes	Arthur B. Corontzes	190.00	3,745	97.47	MORGAN ST	3249 SB607-81026-10		
226	5/1/08	Arthur B. Corontzes	Arthur B. Corontzes	118.00	3,682	59.52	First Com Ban	429	1063	
	12/31/08	Cash	Arthur B. Corontzes	12,000.00	3,438	5,651.51	SELLARS	668		
	1/8/09	607-81040-01	Arthur B. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585 SB607-81026-10		
114	4/9/09	Arthur B. Corontzes	Arthur B. Corontzes	119.00	3,339	54.43	First Com Ban	475	1063	
211	12/24/09	Arthur B. Corontzes	Arthur B. Corontzes	200.00	3,080	84.38	First Com Ban	559	1063	
	1/6/10	607-81040-01	Arthur B. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885 SB607-81026-10		
	1/6/10	607-81040-01	Arthur B. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885 SB607-81026-10		
302	4/12/10	Arthur B. Corontzes	Arthur B. Corontzes	120.00	2,971	48.84	First Com Ban	545	1063	
	1/5/11	Gift to A/C 114517817 A B Corontzes	Arthur B. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
343	5/9/11	Arthur Corontzes	Arthur B. Corontzes	121.00	2,579	42.75	GWD	174	1063	
	1/5/12	125 sh. JP Morgan Chase & Co. Arthur B. Corontzes	Arthur B. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh. Intel Arthur B. Corontzes	Arthur B. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh. Progress Energy Inc. Arthur B. Corontzes	Arthur B. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	12/13	Arthur Corontzes	Arthur B. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Arthur Corontzes	Arthur B. Corontzes	1,000.00	1,938	265.48	STEPHENS	652	137616296	
	1/3/14	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Arthur Corontzes	Arthur B. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Arthur B. Corontzes	109,361.37		68,361.44				
		Arthur B. Corontzes Total	Arthur B. Corontzes	384,926.33		251,954.57				
	8/10/93	125 sh. Martin Marietta	Beacham O. Corontzes	10,000.00	9,060	12,410.96	SELLARS	105		
	1/10/94	230 sh. Martin Marietta	Beacham O. Corontzes	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Beacham O. Corontzes	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Beacham O. Corontzes	9,880.00	8,176	11,065.60	SELLARS	174		

APPENDIX 1

PAGE 1

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	1/16/97	96 sh. Lockheed	Beacham O. Corontzes	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Beacham O. Corontzes	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Beacham O. Corontzes	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh. AmSouth	Beacham O. Corontzes	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81033-01	Beacham O. Corontzes	9,500.00	6,708	8,729.59	MORGAN ST	5012	SB607-81027-19	SELLARS 436
	1/11/01	607-81033-01	Beacham O. Corontzes	9,573.15	6,349	8,326.02	MORGAN ST	5057	SB607-81027-19	SELLARS 469
1080	4/17/02	Beacham Owens Corontzes	Beacham O. Corontzes	100.00	6,174	84.58	MORGAN ST	1595	SB607-81026-10	
	7/6/03	Besch I Corontzer	Beacham O. Corontzes	9,913.20	5,888	7,995.74	MORGAN ST	5101	SB607-81027-19	SELLARS 518
1080	7/6/06	Beacham O Corontzes	Beacham O. Corontzes	100.00	5,443	74.56	MORGAN ST	1978	SB607-81026-10	
1081	7/25/07	Beacham O Corontzes	Beacham O. Corontzes	113.00	4,347	67.29	First Com Ban	344	1063	
1211	10/1/07	Future Scholar	Beacham O. Corontzes	114.00	3,963	61.89	First Com Ban	381	1063	
			Beacham O. Corontzes	60,000.00	3,895	32,013.70	MORGAN ST	3069	SB607-81026-10	SELLARS 566
1658	7/13/08	Beacham Corontzes	Beacham O. Corontzes	115.00	3,609	56.85	MORGAN ST	3418	SB607-81026-10	
	12/31/08	Cash	Beacham O. Corontzes	12,000.00	3,438	5,651.51	SELLARS	667		
1690	1/6/09	Beacham O. Corontzes	Beacham O. Corontzes	100.00	3,432	47.01	MORGAN ST	3614	SB607-81026-10	
	1/8/09	607-81033-01	Beacham O. Corontzes	12,774.60	3,430	6,002.31	MORGAN ST	3585	SB607-81026-10	
147	7/2/09	Beacham O Corontzes	Beacham O. Corontzes	116.00	3,255	51.72	First Com Ban	464	1063	
212	12/24/09	Beacham O Corontzes	Beacham O. Corontzes	200.00	3,080	84.38	First Com Ban	559	1063	
	1/6/10	607-81033-01	Beacham O. Corontzes	6,598.79	3,067	2,772.40	MORGAN ST	3885	SB607-81026-10	
	1/6/10	607-81033-01	Beacham O. Corontzes	6,380.66	3,067	2,680.75	MORGAN ST	3885	SB607-81026-10	
310	7/5/10	Beacham O Corontzes	Beacham O. Corontzes	117.00	2,887	46.27	First Com Ban	533	1063	
	1/5/11	Gift to A/C 138770708 B O Corontzes	Beacham O. Corontzes	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
349	7/5/11	Beach Corontzes	Beacham O. Corontzes	118.00	2,522	40.77	GWD	176	1063	
	1/5/12	125 sh. JP Morgan Chase & Co. Beacham	Beacham O. Corontzes	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh. Intel Beacham Corontzes TT	Beacham O. Corontzes	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh. Progress Energy Inc. Beacham Co	Beacham O. Corontzes	3,531.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Beach Corontzes	Beacham O. Corontzes	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Beach Corontzes	Beacham O. Corontzes	1,000.00	1,938	265.48	STEPHENS	651	137616296	
	1/3/14	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,609	3,085.75	STEPHENS	862	137616296	
	1/2/15	Beach Corontzes	Beacham O. Corontzes	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Beacham O. Corontzes	109,361.37		68,361.44				
			Beacham O. Corontzes Total	374,208.58		238,304.49				
1094	10/8/01	Elizabeth K. Brooker	Beth Brooker	3,400.00	6,079	2,831.32	MORGAN ST	1595	SB607-81026-10	
	9/26/07	Beth Brooker	Beth Brooker	12,000.00	3,900	6,410.96	MORGAN ST	3011	SB607-81026-10	SELLARS 563
	1/9/08	Beth Brooker	Beth Brooker	12,000.00	3,795	6,238.36	MORGAN ST	3190	SB607-81026-10	
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	664		
	12/31/08	Cash	Beth Brooker	12,000.00	3,438	5,651.51	SELLARS	667		
	1/8/09	Beth Brooker	Beth Brooker	13,000.00	3,430	6,108.22	MORGAN ST	3585	SB607-81026-10	
	1/6/10	Beth Brooker	Beth Brooker	13,000.00	3,067	5,461.78	MORGAN ST	3885	SB607-81026-10	
	1/5/11	Gift to A/C 207459752 E K Brooker Tr	Beth Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	Elizabeth K. Brooker	Beth Brooker	13,000.00	2,338	4,163.56	STEPHENS	379	137616296	
	1/2/13	Beth Brooker	Beth Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	1/10/13	Beth Brooker	Beth Brooker	13,000.00	1,967	3,502.88	STEPHENS	625	137616296	
	2/12/13	Beth Brooker	Beth Brooker	1,000.00	1,934	264.93	STEPHENS	652	137616296	
	1/3/14	Beth Brooker	Beth Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Beth Brooker	Beth Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	

APPENDIX 1

PAGE 2

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
			Beth Brooker Total	158,400.00		60,089.12				
	12/31/95	Debt forgiveness on 6/28/95 note	Dino Corontizes	9,883.00	8,187	11,083.85	SELLARS	163		
	9/26/07	607-81034-01	Dino Corontizes	12,000.00	3,900	6,410.96	MORGAN ST	3011 SB607-81026-10	SELLARS	564
	1/9/08	607-81034-01	Dino Corontizes	12,000.00	3,795	6,238.36	MORGAN ST	3190 SB607-81026-10		
	12/31/08	Cash	Dino Corontizes	12,000.00	3,438	5,651.51	SELLARS	664		
	1/8/09	Dino Corontizes	Dino Corontizes	13,000.00	3,430	6,108.22	MORGAN ST	3585 SB607-81026-10		
158	7/18/09	Dino Corontizes	Dino Corontizes	43.23	3,239	19.18	First Com Ban	465 1063		
	1/6/10	607-81034-01	Dino Corontizes	13,000.00	3,067	5,461.78	MORGAN ST	3885 SB607-81026-10		
	1/5/11	Gift to A/C 160600418 Dino Corontizes	Dino Corontizes	13,000.00	2,703	4,813.56	STEPHENS	134 137616296		
	1/5/12	Gift to Dino A. Corontizes	Dino Corontizes	13,000.00	2,338	4,163.56	STEPHENS	379 137616296		
	1/2/13	Dino Corontizes	Dino Corontizes	13,000.00	1,975	3,517.12	STEPHENS	625 137616296		
	2/8/13	Dino Corontizes	Dino Corontizes	1,000.00	1,938	265.48	STEPHENS	652 137616296		
	1/3/14	Dino Corontizes	Dino Corontizes	14,000.00	1,609	3,085.75	STEPHENS	862 137616296		
	1/2/15	Dino Corontizes	Dino Corontizes	14,000.00	1,245	2,387.67	STEPHENS	1092 137616296		
		Dino Corontizes Total		139,926.23		59,207.01				
	6/1/92	191 sh. Martin Marietta	Elizabeth K. Brooker	9,979.75	9,495	12,980.51	SELLARS	10 03W-101125		
	1/8/93	146 sh. Martin Marietta	Elizabeth K. Brooker	9,891.00	9,274	12,563.63	SELLARS	104		
	1/10/94	230 sh. Martin Marietta	Elizabeth K. Brooker	9,975.00	8,907	12,170.87	SELLARS	127		
	1/10/95	217 sh. Martin Marietta	Elizabeth K. Brooker	9,982.00	8,542	11,680.31	SELLARS	164		
	1/11/96	130 sh. Lockheed Martin	Elizabeth K. Brooker	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Elizabeth K. Brooker	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Elizabeth K. Brooker	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Elizabeth K. Brooker	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh. Ansouth	Elizabeth K. Brooker	9,675.00	7,087	9,392.70	SELLARS	400		
	1/8/00	607-81025-01	Elizabeth K. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011 SB607-81027-19	SELLARS	436
	1/11/01	607-81025-01	Elizabeth K. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5037 SB607-81027-19	SELLARS	469
	4/17/02	607-81025-01	Elizabeth K. Brooker	9,913.20	5,888	7,995.74	MORGAN ST	5101 SB607-81027-19	SELLARS	518
108	6/27/06	Elizabeth Brooker	Elizabeth K. Brooker	115.00	4,356	68.62	First Com Ban	344 1063		
	10/1/07	Future Scholar	Elizabeth K. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3069 SB607-81026-10	SELLARS	567
	1/8/09	607-81025-01	Elizabeth K. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585 SB607-81026-10		
144	6/23/09	Elizabeth Brooker	Elizabeth K. Brooker	118.00	3,264	52.76	First Com Ban	464 1063		
175	7/5/09	Elizabeth Brooker	Elizabeth K. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885 SB607-81026-10		
	1/6/10	607-81025-01	Elizabeth K. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885 SB607-81026-10		
	1/5/11	Elizabeth K. Brooker	Elizabeth K. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134 137616296		
	1/5/12	125 sh JP Morgan Chase & Co. Elizabeth	Elizabeth K. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382 137616296		
	1/5/12	200 sh Intel Elizabeth K. Brooker TR	Elizabeth K. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382 137616296		
	1/5/12	65 sh Progress Energy Inc. Elizabeth K.	Elizabeth K. Brooker	3,531.45	2,338	1,131.03	STEPHENS	381 137616296		
	1/2/13	Elizabeth Brooker	Elizabeth K. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625 137616296		
	2/8/13	Elizabeth Brooker	Elizabeth K. Brooker	1,000.00	1,938	265.48	STEPHENS	651 137616296		
	1/3/14	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863 137616296		
	1/2/15	Elizabeth Brooker	Elizabeth K. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092 137616296		
		AVG HAMMOND / GRANDCHILD	Elizabeth K. Brooker	109,361.37		68,361.44				
		Elizabeth K. Brooker Total		371,219.33		245,338.77				
	8/10/93	125 sh. Martin Marietta	Grace H. Brooker	10,000.00	9,060	12,410.96	SELLARS	105		
	1/10/94	230 sh. Martin Marietta	Grace H. Brooker	9,975.00	8,907	12,170.87	SELLARS	127		

APPENDIX 1

PAGE 3

DETAILED LISTING OF LIFETIME GIFTS AND INTEREST

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
	1/10/95	217 sh. Martin Marietta	Grace H. Brooker	9,982.00	8,542	11,680.31	SELLARS	164		
	1/1/96	130 sh. Lockheed Martin	Grace H. Brooker	9,880.00	8,176	11,065.60	SELLARS	174		
	1/16/97	96 sh. Lockheed	Grace H. Brooker	8,436.48	7,805	9,020.10	SELLARS	193		
	1/16/97	100 sh. First Community	Grace H. Brooker	1,100.00	7,805	1,176.10	SELLARS	193		
	1/15/98	98 sh. Lockheed Martin	Grace H. Brooker	9,793.88	7,441	9,983.05	SELLARS	353		
	1/4/99	215 sh. AmSouth	Grace H. Brooker	9,675.00	7,087	9,392.70	SELLARS	400		
	1/18/00	607-81032-01	Grace H. Brooker	9,500.00	6,708	8,729.59	MORGAN ST	5011 SB607-81027-19	SELLARS	436
	1/11/01	607-81023-01	Grace H. Brooker	9,573.15	6,349	8,326.02	MORGAN ST	5057 SB607-81027-19	SELLARS	469
	4/17/02	607-81032-01	Grace H. Brooker	9,913.20	5,888	7,993.74	MORGAN ST	5101 SB607-81027-19	SELLARS	518
1219	7/25/03	Grace H. Brooker	Grace H. Brooker	100.00	5,424	74.30	MORGAN ST	4702 SB607-10172-11		
1288	7/25/05	Grace H. Brooker	Grace H. Brooker	112.00	4,693	72.00	MORGAN ST	2478 SB607-81026-10		
1086	7/26/06	Grace Brooker	Grace H. Brooker	113.00	4,327	66.98	First Com Ban	340	1063	
	10/1/07	Future Scholar	Grace H. Brooker	60,000.00	3,895	32,013.70	MORGAN ST	3070 SB607-81026-10	SELLARS	566
1659	7/13/08	Gradi Brooker	Grace H. Brooker	115.00	3,609	56.85	MORGAN ST	3362 SB607-81026-10		
	12/31/08	Cash	Grace H. Brooker	12,000.00	3,438	5,651.51	SELLARS	666		
	1/8/09	607-81032-01	Grace H. Brooker	12,774.60	3,430	6,002.31	MORGAN ST	3585 SB607-81026-10		
162	7/24/09	Grace Brooker	Grace H. Brooker	116.00	3,233	51.37	First Com Ban	461	1063	
	1/6/10	607-81032-01	Grace H. Brooker	6,598.79	3,067	2,772.40	MORGAN ST	3885 SB607-81026-10		
	1/6/10	607-81032-01	Grace H. Brooker	6,380.66	3,067	2,680.75	MORGAN ST	3885 SB607-81026-10		
313	7/9/10	Grace Brooker	Grace H. Brooker	117.00	2,883	46.21	First Com Ban	533	1063	
	1/5/11	Gift to A/C 253004244 G H Brooker TR	Grace H. Brooker	13,000.00	2,703	4,813.56	STEPHENS	134	137616296	
	1/5/12	125 sh JP Morgan Chase & Co. Grace H. Brooker	Grace H. Brooker	4,460.00	2,338	1,428.42	STEPHENS	382	137616296	
	1/5/12	200 sh Intel Grace H. Brooker TR	Grace H. Brooker	5,080.00	2,338	1,626.99	STEPHENS	382	137616296	
	1/5/12	65 sh Progress Energy Inc. Grace H. Bro	Grace H. Brooker	3,551.45	2,338	1,131.03	STEPHENS	381	137616296	
	1/2/13	Grace Brooker	Grace H. Brooker	13,000.00	1,975	3,517.12	STEPHENS	625	137616296	
	2/8/13	Grace Brooker	Grace H. Brooker	1,000.00	1,938	263.48	STEPHENS	651	137616296	
	1/3/14	Grace Brooker	Grace H. Brooker	14,000.00	1,609	3,085.75	STEPHENS	863	137616296	
	1/2/15	Grace Brooker	Grace H. Brooker	14,000.00	1,245	2,387.67	STEPHENS	1092	137616296	
		AVG HAMMOND / GRANDCHILD	Grace H. Brooker	109,361.37		68,361.44				
		Grace H. Brooker	Grace H. Brooker	373,688.58		238,056.88				
		Grand Total	Grand Total	1,802,369.06		1,092,950.85				

Check No.	Date	Description	Beneficiary	Amount	No. Days	Interest	Bates #	Account	File	Ref
1153	3/4/00	Hammond School	Average (4)	1,000.00	6,662	912.60	MORGAN ST	4147 SB607-10172-11		
1154	6/5/00	Hammond School	Average (4)	25,800.00	6,569	23,216.47	MORGAN ST	4171 SB607-10172-11	SELLARS	456
1034	5/30/01	Hammond School	Average (4)	28,900.00	6,210	24,584.79	MORGAN ST	1512 SB607-81026-10	SELLARS	503-506
1119	1/28/02	Hammond School	Average (4)	100.00	5,967	81.74	MORGAN ST	1679 SB607-81026-10		
1124	3/2/02	Hammond School	Average (4)	2,000.00	5,934	1,625.75	MORGAN ST	1679 SB607-81026-10		
1145	5/24/02	Hammond School	Average (4)	31,500.00	5,851	25,247.47	MORGAN ST	1715 SB607-81026-10		
1169	8/26/02	Hammond School	Average (4)	17.00	5,757	13.41	MORGAN ST	1806 SB607-81026-10		
1207	2/12/03	Hammond School	Average (4)	2,000.00	5,587	1,530.68	MORGAN ST	1887 SB607-81026-10		
1061	6/23/03	Hammond School	Average (4)	33,440.00	5,456	24,992.96	MORGAN ST	1941 SB607-81026-10		
1231	2/9/04	Hammond School	Average (4)	2,000.00	5,225	1,431.51	MORGAN ST	2105 SB607-81026-10		
1238	3/17/04	Hammond Parent Assoc	Average (4)	200.00	5,188	142.14	MORGAN ST	2148 SB607-81026-10		
1245	5/26/04	Hammond School	Average (4)	37,205.00	5,118	26,084.27	MORGAN ST	2169 SB607-81026-10		
1313	2/17/05	Hammond School	Average (4)	2,000.00	4,851	1,329.04	MORGAN ST	2355 SB607-81026-10		
1324	5/23/05	Hammond School	Average (4)	200.00	4,796	131.40	First Com Ban	314	1063	
1294	11/18/05	Hammond Auction	Average (4)	40,963.00	4,756	26,687.68	MORGAN ST	2416 SB607-81026-10		
1328	1/13/06	Hammond School	Average (4)	200.00	4,577	123.40	MORGAN ST	2538 SB607-81026-10		
1330	2/21/06	Hammond School	Average (4)	100.00	4,521	61.93	MORGAN ST	2577 SB607-81026-10		
1339	5/8/06	Hammond School	Average (4)	2,000.00	4,482	1,227.95	MORGAN ST	2623 SB607-81026-10		
1341	5/8/06	Hammond School	Average (4)	11,620.00	4,406	7,013.39	MORGAN ST	2667 SB607-81026-10		
1342	5/8/06	Hammond School	Average (4)	11,115.00	4,406	6,708.59	MORGAN ST	2668 SB607-81026-10		
1343	5/8/06	Hammond School	Average (4)	11,115.00	4,406	7,013.39	MORGAN ST	2668 SB607-81026-10		
1140	11/1/06	Hammond School	Average (4)	200.00	4,229	115.86	First Com Ban	330	1063	
1356	2/6/07	Hammond School	Average (4)	4,000.00	4,132	2,264.11	MORGAN ST	2850 SB607-81026-10		
1235	5/14/07	Hammond School	Average (4)	48,030.49	4,035	26,548.36	MORGAN ST	4538 SB607-10172-11		
1371	6/21/07	Hammond School	Average (4)	166.00	3,997	90.89	MORGAN ST	2930 SB607-81026-10		
1631	2/27/08	Hammond School	Average (4)	1,000.00	3,746	513.15	MORGAN ST	3249 SB607-81026-10		
1635	3/11/08	Hammond School	Average (4)	2,000.00	3,733	1,022.74	MORGAN ST	3249 SB607-81026-10		
1648	5/26/08	Hammond School	Average (4)	38,250.00	3,657	19,161.68	MORGAN ST	3334 SB607-81026-10		
1693	2/2/09	Hammond School	Average (4)	1,000.00	3,405	466.44	MORGAN ST	3614 SB607-81026-10		
1699	3/14/09	Hammond School	Average (4)	2,000.00	3,365	921.92	MORGAN ST	3639 SB607-81026-10		
1620	6/8/09	Hammond School	Average (4)	13,225.00	3,279	5,940.38	MORGAN ST	3691 SB607-81026-10		
142	6/13/09	Hammond School	Average (4)	13,403.00	3,274	6,011.15	First Com Ban	469	1063	
142	6/15/09	Hammond School	Average (4)	13,225.00	3,272	5,927.70	First Com Ban	468	1063	
248	1/20/10	Hammond School	Average (4)	1,000.00	3,053	418.22	First Com Ban	554	1063	
220	3/2/10	Hammond School	Average (4)	1,000.00	3,012	412.60	First Com Ban	550	1063	
5/24/10	Hammond School	Average (4)		27,606.00	2,929	11,076.43	First Com Ban	535	1063	
421	4/7/11	Hammond School	Average (4)	1,000.00	2,611	357.67	GWD	173	1063	
346	6/7/11	Hammond School	Average (4)	15,245.00	2,550	5,325.31	GWD	175	1063	
		TOTAL HAMMOND		437,445.49		273,445.75				
		AVG HAMMOND / GRANDCHILD		109,361.37		68,361.44				

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

The Janet B. Brooker Trust

(C.A. No. 2015 – ES40 – 00662)

IN THE PROBATE COURT

C.A. 2017-GC-40-0036

Julia B. Brooker,

Petitioner,

v.

Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a
Beneficiary of the Janet B. Brooker Trust; and
Ellen B. Corontzes individually as a
Beneficiary of the Janet B. Brooker Trust,

Respondents.

CERTIFICATE OF SERVICE

I, Jaime Harmon, the undersigned employee of Griffin Davis LLC, attorneys for the
Petitioner in this matter do hereby certify that I have served a copy of the foregoing **Petitioner's**
Motion for Summary Judgment, in connection with the above-referenced case by Electronic and
U.S. Mail, to the following address:

Thornwell F. Sowell III
Bess J. DuRant
Sowell & Durant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
Bsowell@sowelldurant.com
Bdurant@sowelldurant.com



Jaime Harmon

August 3, 2018
Columbia, South Carolina

FILED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE MATTER OF:

The Janet B. Brooker Trust
(C.A. No. 2015-ES40-00662)

) IN THE PROBATE COURT

) 2018 AUG -3 PM 4:42

) Civil Action No.: 2017-GC-40-0036

) AMY W. HUBBARD
) PROBATE JUDGE
) RICHLAND COUNTY, S.C.

Julia B. Brooker,

)
) Petitioner,
)

)
) vs.
)

) **DEFENDANTS' MOTION FOR**
) **SUMMARY JUDGMENT**

)
) Beacham O. Brooker, Jr., in his official
) capacity as Trustee and individually as a
) Beneficiary of the Janet B. Brooker Trust,
) and Ellen B. Corontzes individually as a
) Beneficiary of the Janet B. Brooker Trust,
)

)
) Defendants.
)
)

Defendants Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust, and Ellen B. Corontzes individually as a Beneficiary of the Janet B. Brooker Trust hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment in their favor in this above-captioned matter. There are no genuine issues of material fact, and Defendants are entitled to judgment as a matter of law. The grounds for this motion are as follows:

First, the unambiguous terms of the Trust Agreement provide that Petitioner Julia Brooker ("Julia") is entitled to a distribution from the date of the trust until the death of her mother, the Settlor Janet Brooker ("Janet"). The distribution has been made available to her, and she has no viable claim against her siblings Defendants Beacham O. Brooker, Jr. ("Beach") and Ellen B. Corontzes ("Ellen"). *See Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495,

579 S.E.2d 132, 134 (2003) (“If the contract’s language is clear and unambiguous, the language alone determines the contract’s force and effect.”). The Trust Agreement, dated October 16, 2007, provides as follows:

(2) Equalizing Distribution to the Settlor’s Daughter, JULIA B. BROOKER. The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor’s death to the Settlor’s children, the Settlor’s issue and spouses of the Settlor’s children. Because the Settlor’s daughter, **JULIA B. BROOKER** is not married and has no children or issue, the Settlor intends that at the Settlor’s death, an equalizing distribution will be made to the Settlor’s said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter’s siblings’ spouses or siblings’ issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward, the Trustee shall determine the date and amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum [sic] O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor’s daughter, **JULIA B. BROOKER** if she shall survive the Settlor.

(Trust Agreement, Art. V, § 2 (emphasis added in underline; bold text in original.) A copy of the Trust Agreement is attached hereto as **Exhibit A.**). The plain language of the Trust Agreement provides that “[f]rom the date of this trust forward,” the Trustee Beach shall determine the amount of the gifts made to the children and spouses of Beach and Ellen. Once that figure is calculated, interest is added and the distribution is to be offered to Julia. This was accomplished, and Julia has no claim against her siblings, as a matter of law.

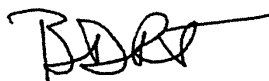
Second, Beach, as Trustee, has no power to calculate gifts made prior to the execution of the Trust. Under Julia’s theory of the case, she is entitled to include all gifts made to her siblings’ children and spouses for their lifetimes. However, Beach was not appointed as trustee until

October 16, 2007 when he and his mother signed the Trust Agreement. His mother provided that he should determine the date and amount of lifetime gifts to spouses and grandchildren “[f]rom the date of this trust forward[.]” (Ex. A. Art. V, § 2(a).) He lacked the authority, and from a practical perspective, did not need to (and could not) calculate any gifts that were made prior to October 16, 2007. His mother Janet knew those gifts already. This fact further supports the conclusion that the Trust Agreement is unambiguous. *See Stevens Aviation, Inc. v. DynCorp Intl LLC*, 394 S.C. 300, 307, 715 S.E.2d 655, 659 (Ct. App. 2011) (providing contracts are “unambiguous if they are not ‘susceptible to more than one reasonable interpretation’”)(quoting *TEG—Paradigm Envtl., Inc. v. U.S.*, 465 F.3d 1329, 1338 (Fed. Cir. 2006)). It is possible only for Beach to calculate the gifts once he has been given the authority and knows he needs to calculate the gifts. He was under no obligation to calculate the gifts prior to October 16, 2007 and had no authority to do so. He could not compute every gift his mother made to her grandchildren and the spouses of her children. There is only one reasonable interpretation of this Trust Agreement, and its clear and unambiguous terms provide that Julia’s claims fail as a matter of law.

This motion is based upon the pleadings in this case, as well as case law, statutory law, and any documents, affidavits, deposition testimony, discovery responses, or memorandum of law which may be submitted prior to the hearing on this matter.

[Signature page follows.]

SOWELL & DuRANT, LLC

By: 
Thornwell F. Sowell III, SC Bar No. 5197
Bess J. DuRant, SC Bar No. 77920
1325 Park Street, Suite 100
Columbia, South Carolina 29201
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bsowell@sowelldurant.com
bdurant@sowelldurant.com

*Attorneys for Beacham O. Brooker, Jr., in his official
capacity as Trustee and individually as a Beneficiary of
the Janet B. Brooker Trust and Ellen B. Corontzes
individually as Beneficiary of the Janet B. Brooker Trust*

Columbia, South Carolina
August 3, 2018

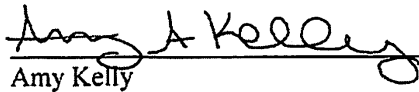
CERTIFICATE OF SERVICE

I, the undersigned paralegal of the law offices of Sowell & DuRant, LLC, attorneys for *Beacham O. Brooker, Jr., in his official capacity as Trustee and individually as a Beneficiary of the Janet B. Brooker Trust and Ellen B. Corontzes individually as Beneficiary of the Janet B. Brooker Trust*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Counsel Served: James M. Griffin
Margaret N. Fox
GRIFFIN | DAVIS
PO Box 999
Columbia, South Carolina 29201

Attorneys for Petitioner Julia B. Brooker


Amy Kelly

August 3, 2018

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF RICHLAND) Civil Action No.: 2017-GC-40-0036
)
IN THE MATTER OF:)
The Janet B. Brooker Trust)
(C.A. No. 2015-ES40-00662)

Julia B. Brooker,)
)
Petitioner,)
)
vs.)
)
Beacham O. Brooker, Jr., in his official)
capacity as Trustee and individually as a)
Beneficiary of the Janet B. Brooker Trust,)
and Ellen B. Corontzes individually as a)
Beneficiary of the Janet B. Brooker Trust,)
)
Defendants.)

EXHIBIT A

TRUST AGREEMENT

TRUST AGREEMENT

FILED
MAR 17 AM 11:46
FILE COPY

Introductory Clause. This Agreement made this the 16th day of October, 2007, between **JANET B. BROOKER**, hereinafter referred to as the Settlor and **BEACHAM O. BROOKER, JR. AND JANET B. BROOKER**, hereinafter referred to singularly as an individual trustee and hereinafter collectively referred to as the Trustee. During the lifetime of the Settlor and after the death of the Settlor but prior to final distribution herein this trust shall be known as the "**JANET B. BROOKER TRUST**".

ARTICLE I

Description of Property Transferred. The Settlor has paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement does hereby pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A, annexed hereto and made a part hereof, and may cause the Trustee to be designated as beneficiary of certain life insurance policies. Any insurance policies that may be delivered to the Trustee hereunder or under which the Trustee may be designated as beneficiary, the proceeds of all such policies being payable to the Trustee, and any other property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II

Provisions for Settlor During Lifetime. The Trustee shall hold, manage, invest and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

(1) During the lifetime of the Settlor, the Trustee shall pay to or apply for the benefit of the Settlor all the net income from this Trust.

(2) During the lifetime of the Settlor, the Trustee may pay to or apply for the benefit of the Settlor such sums from the principal of this Trust as in its sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance in reasonable comfort of the Settlor, taking into consideration to the extent the Trustee deems advisable, any other income or resources of the Settlor known to the Trustee.

ARTICLE III

Settlor's Rights to Amend, Change or Revoke the Trust Agreement. The Settlor may, by signed instruments delivered to the Trustee during the Settlor's life: (1) withdraw property from this Trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the Trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Trust Agreement in any other respect; (5) revoke this Trust in its entirety or any provision therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE IV

Discretionary Provisions for Trustee to Deal with Settlor's Estate and Make Payment of Debts and Taxes. After the Settlor's death, the Trustee, if in its discretion it deems it advisable, may pay all or any part of the Settlor's funeral expenses, legally enforceable claims against the Settlor or the Settlor's estate, reasonable expenses of administration of the Settlor's estate, any allowances by court order to those dependent upon the Settlor, any estate, inheritance, succession, death or similar taxes payable by reason of the Settlor's death, together with any interest thereon or other additions thereto, without reimbursement from the Settlor's personal representatives, from any beneficiary of insurance upon the Settlor's life, or from any other person. All such payments, except of interest, shall be charged generally against the principal of the Trust Estate includable in the Settlor's estate for Federal estate tax purposes and any interest so paid shall be charged generally against the income thereof; provided, however, any such payments of estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) shall be charged against the principal constituting the Trust Estate and any interest so paid shall be charged against the income thereof. If such share or trust was created as a fraction, then such taxes thus paid shall reduce the numerator of that share or trust and the Trust Estate, thus likewise reducing the denominator of the fraction. The Trustee may make such payments directly or may pay over the amounts thereof to the personal representatives of the Settlor's estate. Written statements by the personal representatives of such sums due and payable by the estate shall be sufficient evidence of their amount and propriety for the protection of the Trustee and the Trustee shall be under no duty to see to the application of any such payments. If administrative expenses are deducted on the estate's income tax return but paid from principal, then they shall be charged against the Trust Estate.

ARTICLE V

Specific Distributions. Upon the death of the Settlor, the Trustee shall make the following distributions:

(1) **General Distribution of Personal and Household Effects With a Mandatory Memorandum.** All the Settlor's personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, shall be distributed as follows:

(a) The Settlor may leave written memoranda disposing of certain items of tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of the Settlor's death. If no such written memoranda are found or identified by the Trustee within ninety (90) days after the Settlor's death, it shall be conclusively presumed that there are no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of the Settlor's death and for whom no effective alternate provision has been made shall pass according to the provisions of the following subparagraph, and not pursuant to any anti-lapse statute.

(b) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, the rest of the Settlor's personal and household effects of every kind shall be distributed to the Settlor's children surviving the Settlor, in approximately equal shares; provided, however, the issue of a deceased child surviving the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. If the Settlor's issue do not agree to the division of the property among themselves, the Trustee shall make such division among them, the decision of the Trustee to be in all respects binding upon the Settlor's issue. If any beneficiary hereunder is a minor, the Trustee may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of the Trustee.

(2) **Equalizing Distribution to the Settlor's Daughter, JULIA B. BROOKER.** The Settlor has previously made lifetime gifts and intends to continue such gifting program until the date of the Settlor's death to the Settlor's children, the Settlor's issue and spouses of the Settlor's children. Because the Settlor's daughter, JULIA B. BROOKER is not married and has no children or issue, the Settlor intends that at the Settlor's death, an equalizing distribution will be made to the Settlor's said daughter pursuant to the terms of this paragraph for lifetime gifts made to such daughter's siblings' spouses or siblings' issue which equalizing distribution will be determined as follows:

(a) From the date of this trust forward the Trustee shall determine the date and the amount of any lifetime gifts made by the Settlor to issue of Ellen B. Corontzes and Beachum O. Brooker, Jr. as well as the spouses of Ellen B. Corontzes and Beachum O. Brooker, Jr.

(b) To such amount specified above from the date of such gift an interest rate of five (5%) percent shall be applied to the amount of such gift which interest rate shall continue until this distribution is satisfied and which rate shall not compound.

(c) The sum of (a) and (b) above shall be distributed to the Settlor's daughter, JULIA B. BROOKER if she shall survive the Settlor.

(3) **Definition of Trust Estate.** As used in this Trust Agreement, the words "Trust Estate" shall mean the entire Trust Estate minus the specific distributions under this Article.

ARTICLE VI

Trust Estate to Settlor's Issue. Upon the death of the Settlor, the Trust Estate (which shall include any property which may be added from the Settlor's general estate) shall be held in trust or paid over and distributed to the Settlor's surviving children in equal shares, provided, however, the then living issue of a deceased child of the Settlor shall take per stirpes the share their parent would have taken had he or she survived the Settlor. Provided, further, that any share due the Settlor's son, Beachum O. Brooker, Jr., if he shall survive the Settlor and any share due the Settlor's daughter, Ellen B. Corontzes, if she shall survive the Settlor shall first be allocated to the lifetime generation skipping trusts created for such named children ("Beachum

O. Brooker, Jr. Family Trust dated May 12, 1997;" "Ellen B. Corontzes Family Trust dated May 12, 1997") but only to the extent that the Settlor's estate has available generation skipping tax exemption remaining to be allocated among such trusts. The Settlor intends that any available generation skipping tax exemption be allocated equally among the "Beacham O. Brooker, Jr. Family Trust dated May 12, 1997" and the "Ellen B. Corontzes Family Trust dated May 12, 1997."

ARTICLE VII

Trustee Succession, Trustee's Fees and Other Matters. The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) **Individual Trustees Succession.** If the individual Trustee should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, the remaining individual Trustee shall continue to serve without a successor or substitute.

(2) **Succession If Original Trustees Cannot Act.** If all the Settlor's original Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **JULIA B. BROOKER.**

(3) **Final Succession If All Individual Trustees Cannot Act.** If all the Settlor's individual Trustees should fail to qualify as Trustee hereunder, or for any reason should cease to act in such capacity, then the successor or substitute Trustee who shall also serve without bond shall be the Settlor's daughter, **ELLEN B. CORONTZES.**

(4) **Fee Schedule for Individual Trustee.** For its services as Trustee, the individual Trustee shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(5) **Delegation Among Trustees.** When there is more than one individual or entity serving as co-Trustees, then any Trustee may delegate to any other Trustee the power to exercise any or all of the powers granted to the Trustees in this Trust Agreement, including those powers, which are discretionary, to the extent allowed by law. Any delegating Trustee may revoke any such delegation with written notice to the other serving co-Trustees. The delegation of any such power, as well as the revocation of any such delegation, shall be evidenced by an instrument in writing signed by the delegating co-Trustee. As long as any such delegation is in effect, any of the delegated powers may be exercised by the Trustee receiving such delegation with the same force and effect as if the delegating Trustee had personally joined in the exercise of such power. Provided, however, that if such Trustee, or co-Trustee, shall also be a current beneficiary and such delegation shall be deemed to create in that Trustee a right that shall be deemed to be a general power of appointment, then such individual Trustee shall not be vested with such right to delegate such power.

(6) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Settlor has given to the Trustee to pay principal or income to such person, or for his or her benefit or in

relief of his or her legal obligations; provided, however, if an individual trustee (who is also a beneficiary) is the sole trustee or at any time is acting as the sole trustee, and such trustee has discretion to invade principal for himself or herself and such discretionary authority is limited by an ascertainable standard, then such trustee may invade principal (if limited by such standard) for himself or herself but not in relief of his or her legal obligations.

(7) **Trustee Accountings and Settlement.** The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(a) **Trustee Accountings.** If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least annually to each current income beneficiary and all beneficiaries entitled by law to receive an accounting. The Trustee may, but shall not be required to, file such accountings with the Court having jurisdiction of the Trust. The Settlor specifically waives any requirement for formal or court approved accounting. If the Trustee provides an accounting to each current income beneficiary and all beneficiaries entitled by law and those beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

(b) **Settlement of Trustee Accounting.** During the period of time that this Trust may be revoked by the Settlor, the Trustee may render an accounting of its administration of the Trust to the Settlor. The Settlor's written acceptance and approval of such accounting shall be binding upon all present and future Trust beneficiaries.

(c) **Settlement of Trustee Accounting by Beneficiaries.** The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(d) **Settlement of Trustee Accounting Upon Termination of Trust.** Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Settlor and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE VIII

Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply

equally to the Trustee or Co-trustees named herein and to any successor or substitute Trustee or Co-trustee acting hereunder, and such successor or substitute Trustee or Co-trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE IX

Powers for Trustee. The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) To collect trust property and accept or reject additions to the Trust Estate from a Settlor or any other person.

(2) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(3) To deposit trust money in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(6) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or on credit, at public or private sale, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(7) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(8) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(9) To sell or exercise stock subscription or conversion rights.

(10) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(11) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(12) To borrow money with or without security and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(13) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(14) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(15) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(16) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(17) To continue and operate any business or other enterprise owned by the Settlor at the Settlor's death, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(18) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(19) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(20) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(21) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(22) To compromise, adjust, arbitrate, sue on or defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(23) To exercise elections with respect to federal, state, and local taxes.

(24) To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(25) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(26) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(27) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(28) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(29) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(30) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(31) To purchase property, real or personal, from the Settlor's general estate upon such terms and conditions as to price and terms of payment as the Settlor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Settlor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(32) To lend funds to the Settlor's general estate or to a beneficiary upon such terms and conditions as to interest rates, maturities, and security as the Settlor's personal representatives and the Trustee shall consider to be fair and reasonable under the circumstances, the fact that they may be the same in no way affecting the validity of this provision.

(33) To receive property bequeathed, devised or donated to the Trustee by the Settlor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(34) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably

determines that the administration as a single trust is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(35) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Settlor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(36) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(37) If the Trustee shall act as the Personal Representative of the Settlor's estate, to elect to allocate any portion or all the Settlor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Settlor's death, to any portion or all of any other trusts or bequests in the Settlor's Will or any other transfer in which the Settlor is the transferor for purposes of the generation-skipping tax. Generally, the Settlor anticipates that the Settlor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then in such other manner as the Trustee deems appropriate, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Settlor's Personal Representative deems in the best interest of the Settlor's estate.

ARTICLE X

Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the medical care, education, support and maintenance in reasonable comfort of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

ARTICLE XI

Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the medical care, education, support and maintenance in reasonable comfort of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

ARTICLE XII

Discretion in Trustee to Terminate Small Trust and Distribute to Income Beneficiary. If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE XIII

Definitions of Family. The following definitions shall be used to define the family:

(1) **Definition of Children.** For purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. For purposes of this trust the anti-lapse shall not apply as the Settlor has named successor takers where it is the Settlor's intent so to do.

(2) **Inclusion of Adopted Children.** For purposes of this Trust, if a person, who at the time of such legal adoption proceeding is commenced is then under the age of twenty-one (21) years, has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his or her issue shall be considered as issue of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

(3) **Definition of Per Stirpes.** The term "per stirpes" as used herein has the identical meaning as the term "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XIV

Definition of Words Relating to the Internal Revenue Code. As used herein, words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Settlor's estate. For purposes of this Trust Agreement, the Settlor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Settlor's death reduced by the aggregate of (1) the amount, if any, of the Settlor's exemption allocated to lifetime transfers of the Settlor by the Settlor or by operation of law, and (2) the amount, if any, the Settlor has specifically allocated to other property of the Settlor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Settlor's death the Settlor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Settlor has not yet filed a return, it shall be deemed that the Settlor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Settlor's death.

ARTICLE XV

Simultaneous Death Provision Presuming Beneficiary Predeceases Settlor. If any beneficiary and the Settlor should die under such circumstances as would make it doubtful whether the beneficiary or the Settlor died first, then it shall be conclusively presumed for the purposes of this Trust that the beneficiary predeceased the Settlor.

ARTICLE XVI

State Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

ARTICLE XVII

Spendthrift Provision. Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the fiduciary hereunder, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

Testimonium Clause. IN WITNESS WHEREOF, the Settlor and the Trustee have executed this Trust Agreement.

WITNESSES:

W. S. Steffany
Barbara J. Steffany

Janet B. Brooker
JANET B. BROOKER

SETTLOR
Beacham O. Brooker, Jr.
BEACHAM O. BROOKER, JR. AND
JANET B. BROOKER

INDIVIDUAL TRUSTEE