

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

JUL 12 2013

O. Davie Burgdorf, Master-in-Equity

S.C. SUPREME COURT

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Petitioner

APPENDIX

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Petitioner

Other counsel of record in appeal:

Richard B. Ness
Ness & Jett, LLC
Post Office Box 909
Bamberg, South Carolina 29003
(803) 245-5178
Attorney for Respondents

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(803) 245-5178
Attorney for Respondents

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In re: Estate of Atn Burns Livingston, Emma Lou
Livingston Martin as Personal Representative of the
Estate of Atn Burns Livingston, and Emma Lou
Livingston Martin, Respondents/Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.;
Citibank South Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and American First Federal,
Inc., Defendants, Of whom Clyde B. Livingston is,
Appellant/Respondent.

~~Appellate Case No. 2010-179986~~

Appeal From Orangeburg County
Olin Davie Burgdorf, Master-in-Equity

Opinion No. 5078
Heard December 11, 2012 – Filed January 30, 2013

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Andrew S. Radeker, of Harrison and Radeker, P.A., of
Columbia, for Appellant/Respondent.

Richard B. Ness, of Ness and Jett, LLC, of Bamberg, for
Respondents/Appellants.

KONDUROS, J: In this cross-appeal, the parties dispute the master's findings concerning farmland in North, South Carolina, devised in a will. Clyde Livingston argues the master erred in concluding (1) the United States Department of Agriculture (the USDA) benefits were estate property and (2) the statute of limitations barred Emma Livingston Martin's claim to collect repayment of those benefits. Emma, both personally and on behalf of the estate, contends the master erred by (1) failing to apply the probate code, (2) applying section 15-61-25 of the South Carolina Code (2009), governing partition, (3) allowing Clyde to retain one-half of the USDA subsidies, and (4) concluding judgments of an heir-at-law affects the ability of a personal representative (PR) of an open estate to convey good title to real estate. We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

Attn Burns Livingston died in 1999. His will named his two children, Emma and Clyde, as sole heirs and PRs of his estate. In 2000, Clyde applied for farm operator status with the USDA. Clyde signed the application in two capacities, signing as the farmer applicant and noting he was signing on behalf of the estate, which was the owner of the land. From 2000 to 2008, Clyde received USDA subsidy payments totaling \$29,902.

On January 18, 2002, the probate court removed Clyde as co-PR of the estate on the ground that he and Emma could not cooperate. Emma has served as the sole PR of the estate since that time. In April 2002, Emma received a letter from the USDA regarding Clyde's status as a farm operator. She spoke with officials at the local USDA office, who informed her that Clyde had been receiving farm subsidy payments.

Emma notified her attorney, who had been assisting her with the closing of the estate, about the subsidy payments. Her attorney discussed this issue with Clyde's attorney and on May 30, 2006, Emma brought a claim seeking reimbursement for the USDA subsidies on behalf of the estate. The case was filed in the probate court and was removed to circuit court in April 2007. The case was then referred to the master on August 19, 2008. Also in 2008, Emma, as PR of the estate, began receiving the USDA subsidies. Because the issues before the master were so numerous, the case was trifurcated.

Prior to trial, the master heard Clyde's motion for summary judgment on Emma's claim concerning the USDA payments, but deferred ruling on the motion until after hearing the evidence at trial. When trial began on March 24, 2010, Emma testified and introduced the USDA records and a summary of benefit amounts paid. Clyde moved for an involuntary nonsuit on the grounds that the USDA payments were not property of the estate and the statute of limitations in section 15-3-530 of the South Carolina Code (2005) would bar the claim. The master deferred ruling on the motion.

On November 17, 2010, the master granted Clyde's motions for summary judgment and involuntary nonsuit in part and denied them in part. The master found the USDA payments were part of the estate and found Clyde liable for receiving them; however the master limited Emma's recovery to \$11,690 because the "[t]he statute of limitations limits [Emma]'s recovery, on behalf of the estate, to the USDA payments that were made within three years before this action was commenced." The master determined the recoverable portion of Emma's claim involved only \$23,380, and because Clyde was a devisee entitled to one half of the estate, Emma had the right to \$11,690. The master further based his decision on section 62-3-619 of the South Carolina Code (2009), *executor de son tort*, finding half of the farm subsidy payments would have gone to Clyde because he and Emma were the sole and equal devisees of the estate despite any limitation in recovery. The master denied Emma's request for prejudgment interest because she did not plead that prejudgment interest should be awarded. Both parties appealed.

STANDARD OF REVIEW

Rule 41(b) permits the defendant, "[a]fter the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence," to move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. Rule 41(b), SCRCP (emphasis added); *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 284, 543 S.E.2d 563, 565 (Ct. App. 2001); *See also Johnson v. J.P. Stevens & Co.*, 308 S.C. 116, 118, 417 S.E.2d 527, 529 (1992) (holding Rule 41(b), allows the judge as the trier of facts to weigh the evidence, determine the facts, and render a judgment against the plaintiff at the close of his case if justified). Because a dismissal under these circumstances has the same effect as summary judgment, the standard for summary judgment applies.

Id. at 284-85, 543 S.E.2d at 566; *Ex parte United Servs. Auto. Ass'n*, 365 S.C. 50, 53, 614 S.E.2d 652, 653 (Ct. App. 2005).

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

LAW/ANALYSIS

I. USDA BENEFITS

Clyde argues the USDA benefits are not estate property because they were a product of a contract between himself and the USDA based on his status as a farmer operator. He maintains the estate was not a farm operator, and as such he is solely entitled to the benefits. Furthermore, he suggests he is a cotenant entitled to possess the whole of the land, which includes the USDA benefits. We disagree.

Section 62-3-101 of the South Carolina Code (2009) states:

The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates, including the exercise of the powers of the [PR]. *Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse,*

renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, subject to the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the [PR] under [s]ections 62-3-709, 62-3-710, and 62-3-711, and his personal property devolves, first, to his [PR], for the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the [PR] under [s]ections 62-3-709, 62-3-710, and 62-3-711, and, at the expiration of three years after the decedent's death, if not yet distributed by the [PR], his personal property devolves to those persons to whom it is devised by will or who are his heirs in intestacy, or their substitutes, as the case may be, just as with respect to real property.

(emphasis added). Notwithstanding the immediate passage of title to heirs and devisees, the PR is entitled to possession of all real property during administration and has broad powers over real property during administration. S.C. Code Ann. § 62-3-709 (2009); S.C. Code Ann. § 62-1-201(33) (2009).

Section 62-3-709 provides in part:

Except as otherwise provided by a decedent's will, every [PR] has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the [PR], possession of the property by him will be necessary for purposes of administration.

The PR does not need to prove to the possessor of estate properties that such properties are needed for administration. *Id.* Section 62-3-709 further provides, "The request by a [PR] for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the [PR] is necessary for purposes of administration." This statute imposes upon the PR the responsibility and authority to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession." *Id.*

Section 62-3-711(a) of the South Carolina Code (2009) outlines the powers of the PR and states:

Until termination of his appointment or unless otherwise provided in Section 62-3-910, a [PR] has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. Except as otherwise provided in subsection (b), this power may be exercised without notice, hearing, or order of court.

The Reporter's comments to section 62-3-711 note, "Under this section, [s]ection 62-3-101, and [s]ection 62-3-709, title to personal property (as well as real property) devolves at or soon after death to heirs and devisees; and not to the [PR]." The Reporter's comments to section 62-3-709 state:

Section 62-3-101 provides that title to real and personal property devolves on death or thereafter to heirs or devisees "subject . . . to administration." Section 62-3-711 vests in the [PR] a power over title to real and personal property during administration. This section deals with the [PR]'s duty and right to possess assets, real and personal. It proceeds from the assumption that it is desirable wherever possible to avoid disruption of the possession of the decedent's assets by his heirs or devisees. But if the [PR] considers it advisable he may take possession and his judgment is made conclusive. It is likely that the [PR]'s judgment could be questioned in a

later action but this possibility should not interfere with the [PR]'s administrative authority as it relates to possession of the estate.

Under section 62-3-101, real property immediately passes to the named heirs. However, Emma has the authority as PR to retain the real property under section 62-3-711. Section 62-3-711 states that "this power may be exercised without notice, hearing, or order of court." Because Emma retained the authority over the estate as the PR, the property did not pass to Clyde despite his status as a named heir in the will. The probate code presents this as an absolute right derived out of necessity to manage the estate. Thus, when a PR asserts his or her authority over the property, the PR usurps the rights of the heirs regarding the control of the real property while the estate is still being administered. In this case, the estate is still being administered; thus, Emma has the authority to retain and control the property in her capacity as PR. § 62-3-709; § 62-1-201(33). Emma's right to retain the authority over the estate supersedes Clyde's argument that he was acting within his authority as a cotenant of Emma's based on his status as an heir.

Clyde also asserts the lease agreement grants him the right to contract with the USDA. The lease agreement does not convey the right or express permission to contract with the USDA or the authority to sign for the property as the owner of the land. Also, on the application for benefits, Clyde noted the estate owned the land not him as an heir. Without express authority through ownership or contract, Clyde did not have the authority to enter a contractual relationship with the USDA. Therefore, the master properly determined the USDA benefits belonged to the estate.

II. STATUTE OF LIMITATIONS

Clyde argues the master erred in concluding the statute of limitations did not bar Emma's claim for USDA subsidies. Clyde suggests because Emma became aware in 2002 that he was receiving subsidies, the statute of limitations began to run upon Emma's discovery. Thus, allowing recovery based on the amount of payments he received within three years before the action was brought was in error. We disagree.

The statute of limitations begins to run when a cause of action ought to have reasonably been discovered. *Dean v. Ruscon Corp.*, 321 S.C. 360, 468 S.E.2d 645 (1996). In *Dean*, the supreme court stated:

The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct. We have interpreted the "exercise of reasonable diligence" to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist. Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial.

Id. at 363-64, 468 S.E.2d at 647 (citations omitted). "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355-57, 559 S.E.2d 327, 336 (Ct. App. 2001). "Reasonable diligence is intrinsically tied to the issue of notice." *Id.* In *Joubert v. South Carolina Department of Social Services*, the court explained, "We have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on notice that a claim against another party might exist." 341 S.C. 176, 191, 534 S.E.2d 1, 8 (Ct. App. 2000) (quoting *Dean*, 321 S.C. at 364, 468 S.E.2d at 647).

No direct case law discusses USDA benefits and statute of limitations in this context in South Carolina. However, our courts have examined the role of the statute of limitations in other settings. In the insurance context, the general rule is the renewal of a policy of insurance for a fixed term is in effect a new contract and must contain all the essential elements of a valid contract. *Knight v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 20, 22-23, 374 S.E.2d 520, 522 (Ct. App. 1988). This is true even though the parties' renewal contract continues to enforce the terms of the expiring contract and no new policy of insurance is issued. *Id.* The exception to the general rule is when the renewal is consummated in pursuance of

a provision in the expiring policy. *Id.* In such instance, the renewal is an extension of the old contract. *Id.*

The supreme court has held that when a nuisance is continuing and the injury is abatable, the statute of limitations does not run merely from the time of the original intrusion on the property and cannot be a complete bar. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 287, 543 S.E.2d 563, 567 (Ct. App. 2001). Rather, a new statute of limitations begins to run after each separate invasion of the property. *Id.*; see *Cutchin v. S. C. Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (stating if the injury is permanent, the plaintiff has a single cause of action that cannot be split; however, if the cause of the injury is abatable, each injury gives rise to a new cause of action (citing *Webb v. Greenwood Cnty.*, 229 S.C. 267, 277, 92 S.E.2d 688, 692 (1956))).

The master properly determined the statute of limitations was not a complete bar on the USDA benefits. Similar to the supreme court and this court's rulings in other statute of limitations cases, because each application with the USDA was for a fixed duration, it required a separate renewal each year and the benefit was contingent upon an offer and acceptance by the USDA. Therefore, the master properly determined the statute of limitations was not an absolute bar on Emma's rights to collect on a portion of the USDA benefits.

This action was commenced in 2006. Under section 15-3-530, any claim between 2000 to 2002 would be barred by the three-year statute of limitations. The remaining USDA applications for benefits from 2003 to 2007 were appropriately before the master. Accordingly, we affirm the master's finding the statute of limitations was not a complete bar.

III. PARTITION

Emma argues the master erred in relying on section 15-61-25 of the South Carolina Code (2009) because this is a partition action brought under section 62-3-911 of the South Carolina Code (Supp. 2012), which is contained in the probate code. Emma contends because the action originated in the probate court, the probate code continues to apply to the partition. She suggests the order of priority for abatement would be ignored by not applying the proper statute. We find the master should have applied the probate code's partition statute.

The master relied on section 15-61-25 in ordering partition of the property, which states:

For the purposes of this section, "joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

The probate code's partition statute, contained in section 62-3-911, states:

When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the [PR] or one or more of the heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in kind if it can be fairly and equitably partitioned in kind. If not subject to fair and equitable partition in kind, the court shall direct the [PR] to sell the property and distribute the proceeds.

In *Waddell v. Kahdy*, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992), the supreme court found the probate code governs an action when it is moved to circuit court, and remains primarily within the scope of the probate code. *Id.* The court under an assumption that the action was removed pursuant to section 62-1-302 of the South Carolina Code (1991) based its decision on the fact the action originated in the probate court. *Waddell*, 309 S.C. at 4, 419 S.E.2d at 785. Here, the case was removed to circuit court pursuant to section 62-1-302 for the purpose of partition.

While no case has addressed the application of the revised circuit court statute, we find *Waddell* controlling. Because the action remains primarily an action governed by the probate code, we find the probate code should have continued to be applied after the removal to the master. *Waddell*, 309 S.C. at 4, 419 S.E.2d at 785. Furthermore, because a partition statute is provided in the probate code, the master should have relied upon that statute in addressing the partition issue. *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect."). Therefore, we reverse and remand this issue for the master to apply the probate code's statute.

IV. EXECUTOR DE SON TORT

~~Emilia maintains the master erred in allowing Clyde to retain one-half of the value~~ of the benefits to the estate pursuant to the *executor de son tort* statute. She argues ~~this ruling allows Clyde to retain one-half of the gross value of the estate's~~ receivables, which would require her to shoulder the entire burden of the administration of the estate. She argues the master erred in concluding Clyde ~~would have received half of the USDA subsidies. She maintains the estate was~~ entitled to all of the payments and Clyde's share would be distributed after administration of the estate. We agree and find this ruling was premature.

The master's finding bypassed the distribution and order of abatement proscribed in the probate code; thus awarding one-half of the value of the property was an error of law. Section 62-3-902 of the South Carolina Code (2009) specifically states the order of abatement in which testamentary gifts are reduced to pay debts or other claims against the estate. By allowing Clyde to retain one-half of the value of the estate benefits, the master ignored the plain language of the abatement statute and completely disregarded the possibility that the assets of the estate were insufficient to pay all debts, claims, and devises. Without considering the estate as a whole from the purview of the probate court, there is no conceivable method by which the master could divide the subsidy award in half. Therefore, we reverse and remand the master's finding that Clyde was entitled to one-half of the USDA benefits prior to the estate's distribution pursuant to section 62-3-902.

V. TITLE OF PROPERTY

Emma maintains the trial court erred in concluding that judgments of an heir-at-law affect the ability of a PR of an open estate to convey good title to real estate. Based on our determination that this case be reversed to address the partition statute and the division of estate property, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CONCLUSION

Based on all of the foregoing, the order of the master is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

SHORT and LOCKEMY, JJ., concur.

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
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of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

PETITION FOR REHEARING OR REHEARING *EN BANC*
AND MEMORANDUM IN SUPPORT

Appellant/Respondent (hereinafter, sometimes, "Clyde") hereby moves and petitions, pursuant to Rules 219 and 221(a), SCACR, as well as all other applicable law, for an Order granting rehearing or rehearing *en banc* in this case and submits the memorandum below in support of the same. Appellant/Respondent respectfully submits that the Court may have overlooked or misapprehended certain points, as the following shows:

I. To hold that the Estate owns the land in question contravenes existing law.

As part of its reasoning that the USDA payments at issue belonged to the Estate of Atn Livingston (hereinafter “the Estate”), the Court reasoned that because Respondents/Appellants (hereinafter “Emma”) “retained the authority over the estate as the [Personal Representative], the property did not pass to Clyde despite his status as a named heir in the will.” It appears that the Court overlooked or misapprehended that this conclusion contravenes both statutory law and existing precedent of the South Carolina Supreme Court.

The Court correctly notes that S.C. Code Ann. § 62-3-101 provides that, upon a decedent’s death, title to his realty passes to the decedent’s heirs or devisees. The Probate Code sections cited by the Court for the proposition that title to realty passes to the personal representative until the estate is no longer being administered do not stand for the proposition that the personal representative owns the decedent’s land while estate administration is occurring; rather, they deal with *powers* a personal representative has with respect to land. The sections of the Probate Code cited by the Court do nothing to undo the operation of S.C. Code Ann. § 62-3-101. This petition examines each of those Probate Code sections.

Section 62-3-709 of the Probate Code provides a personal representative with the power to take “possession or control of” real property a decedent owned when, “in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration.” It deals with the power of the personal representative to take possession or control of real property, not with the personal representative taking or receiving ownership of the property. The personal representative’s power is to invade the real estate in furtherance of administration of

the estate. It is something akin to a lien on the realty. Further, there is no evidence in the record that during the time Clyde received USDA payments, Emma had taken possession or control of the real estate at issue or had made a request to do so.

Section 62-3-711(a) of the Probate Code also addresses the powers of a personal representative, not ownership of anything by an estate or personal representative. Specifically, it addresses the personal representative's "power over title to property *of the estate*[" S.C. Code Ann. § 62-3-711(a) (emphasis added). As S.C. Code Ann. § 62-3-101 states, real property a decedent owned during his life is not property of his estate but, rather, property of his heirs or devisees.

Sections 62-3-709 and 62-3-711 address the personal representative's power, possession, and control and nowhere purport to vest ownership of real estate in a personal representative or estate. Ownership of realty is addressed by S.C. Code Ann. § 62-3-101 and existing precedent of the Supreme Court of South Carolina. The decisions of the Supreme Court bind the Court of Appeals as precedents. S.C. Const. Art. V, § 9; Daniels v. City of Goose Creek, 314 S.C. 494, 497, 431 S.E.2d 256, 260 (Ct. App. 1993). The Supreme Court has stated the following:

By the common law, and under the statutes in most of the states, the title to real property vests in the heir or heirs immediately on the death of the intestate, subject in most jurisdictions, as in South Carolina, to the exercise of such special powers as may be conferred upon the administrator by statute, such as the right to sell for payment of debts. A different rule prevails with reference to personal property. Title to real estate cannot remain in abeyance; it must be vested in someone. When, therefore, a person seized of real estate dies intestate, the title to such estate vests at once in his heirs, if he leaves any.

Carter v. Wroten, 187 S.C. 432, 198 S.E. 13, 15 (1938) (internal citations omitted).

Per the highest court in this state, an estate cannot hold legal title to land. Taylor v.

Jennings, 233 S.C. 600, 607, 106 S.E.2d 391, 395-96 (1958); Fischer v. Bennett, 202 S.C. 534, 25 S.E.2d 746, 748 (1943); Carter, 198 S.E. at 16. Though this is not explained in the opinion, it seems from this Court's opinion in the instant case that the Court sees the right to receive USDA subsidy payments as a profit of land ownership. (Clyde disagrees with this position, as discussed below and in his briefs in this case.) Our Supreme Court has addressed the question of whether those who inherit real property are immediately entitled to the land's rents and profits, and the Court noted that rights to rents and profits pass to heirs or devisees along with the land at the moment the decedent dies. Burkhalter v. Townsend, 160 S.C. 134, 158 S.E. 221, 223 (1931). Accordingly, even if the right to receive the USDA payments were a right that inhered in the real estate, it would belong to Clyde as a tenant in common, not to the Estate. Id.

Appellant/Respondent respectfully submits that this Court overlooked or misapprehended the effect of S.C. Code Ann. § 62-3-101 and existing precedent of the Supreme Court of South Carolina on the controversy at hand.

II. Clyde's contract with the USDA provided only for Clyde, the farm operator, to receive the payments, not for the Estate to receive them.

While Clyde may have signed the contract document with the USDA on behalf of himself and the Estate, the contract was for Clyde, not the Estate, to be paid the USDA payments. Ordinarily, the only parties who have any rights under a contract are the promisor and the promisee. See Professional Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985). The only parties who were in the positions of promisor and promisee under the contract were Clyde and the USDA. Clyde's contract with the USDA was not a third-party contract for the benefit of the estate; thus, this general principle applies here. Cf. id. The USDA's obligation to pay

Clyde money was based solely on its contract with him as a farm operator, not on the basis of who owned the land. The estate was not a party to that contract and had no interest in the payments.

Appellant/Respondent respectfully submits that this Court overlooked or misapprehended what the nature of the USDA payments was. They were payments to Clyde for farm operation. Neither Emma, the lower court, nor this Court has stated any authority, factual or legal, to the contrary. Accordingly, this Court's opinion fails to explain why it is that the USDA payments were property of the estate. Appellant/Respondent respectfully submits that is because they were not.

III. The Court's opinion conflates renewal of Clyde's contract with the USDA with an unlawful act of Clyde toward the Estate.

The only act Clyde did with regard to contracting for and receiving USDA payments that the lower court found gave rise to liability was that "[w]hen [Clyde] entered into his agreement with the USDA, he breached his duty to the estate as co-personal representative" because Clyde "occupied dual roles" (as an individual and a co-personal representative) when he made that agreement. Clyde was removed as Personal Representative of the Estate by court order in 2002. Accordingly, at no time during the three years preceding this filing of this action did Clyde have *any* duty to the Estate or Emma; he was not a personal representative of the Estate. Clyde did *not* "occup[y] dual roles" when he submitted renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007. Neither Emma, the lower court, nor this Court has stated any authority, factual or legal, to support a finding that Clyde committed any unlawful act toward the Estate by submitting renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007. Appellant/Respondent

respectfully submits that this Court overlooked or misapprehended this in reaching its decision in this case with regard to the statute of limitations.

IV. The Court's analysis of the interplay between S.C. Code Ann. § 15-61-25 and S.C. Code Ann. § 62-3-911 misapprehends or overlooks existing law concerning statutory interpretation.

This Court held that “[b]ecause the action remains primarily an action governed by the probate code, we find the probate code should have continued to be applied after the removal to the master. Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992)]. Furthermore, because a partition statute is provided in the probate code, the master should have relied upon that statute in addressing the partition issue. Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (‘Where there is one statute addressing an issue in general terms and

another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.’).” The Court’s decision appears to assume that because the Probate Code applies to this partition action, S.C. Code Ann. § 15-61-25 does not.

Waddell does not say that the Probate Code *and no other law* is applicable in an action removed from the probate court. 309 S.C. at 4. Regardless of how the Court reads Waddell, however, simply because the Court determines that the Probate Code governs in this partition action does not mean that S.C. Code Ann. § 15-61-25 does not apply. The words of S.C. Code Ann. § 15-61-25 make it applicable to “a petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). No distinction is made between petitions for partition brought pursuant to the Probate Code and those brought otherwise. Id. In fact, the statute specifically states that “[f]or the purposes of this section, ‘joint tenants and

tenants in common' include heirs and devisees." Id. The statute unambiguously says it applies to "a petition for partition of property owned by joint tenants or tenants in common[.]" including property of heirs and devisees. S.C. Code Ann. § 15-61-25(A).

"In construing a statute, a court cannot read into the statute something not within the manifest intention of the legislature as gathered from the statute itself."

State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001) (internal quotation marks omitted). "The first question of statutory interpretation is whether the statute's

meaning is clear on its face." Eagle Container Co., LLC v. County of Newberry, 366

S.C. 611, 622 S.E.2d 733, 738 (Ct. App. 2005) (internal quotation marks omitted). If

so, "a court's inquiry is at an end." Rosmer v. Pfizer Incorp., 263 F.3d 110, 117 (4th

Cir. 2001). "When the terms of a statute are clear, the court must apply those terms

according to their literal meaning." Eagle Container, 622 S.E.2d at 739 (internal quotation marks omitted).

The terms of S.C. Code Ann. § 15-61-25 are clear: the statute applies to any "petition for partition of property owned by joint tenants or tenants in common." S.C. Code Ann. § 15-61-25(A). Accordingly, it applies equally to partition actions brought in the probate court and those brought in the circuit court.

In reaching its decision, it appears the Court misapprehended or overlooked precedent concerning statutory interpretation. As this Court has previously stated, "[i]t is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation." Witzig v. Witzig, 325 S.C. 363, 366, 479 S.E.2d 297, 299 (Ct. App. 1996); accord Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993) ("[g]enerally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation"); State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993)

(same). Where there is a conflict between statutes, the more recent and specific legislation controls. Porter v. S.C. Pub. Serv. Comm'n., 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997).

Here, between S.C. Code Ann. §§ 15-61-25 and 62-3-911, § 15-61-25 is the more specific statute, and it is certainly the more recent. Appellant/Respondent respectfully submits that this Court overlooked or misapprehended these principles of statutory interpretation in reaching its decision in this case, and application of these principles shows that § 15-61-25 applies to the instant action.

V. The Court's analysis of the *executor de son tort* statute overlooked that Emma never presented any evidence that the Estate has any claims to pay or expenses related to administration.

This Court's opinion states that "Section 62-3-902 of the South Carolina Code (2009) specifically states the order of abatement in which testamentary gifts are reduced to pay debts or other claims against the estate. By allowing Clyde to retain one-half of the value of the estate benefits, the master ignored the plain language of the abatement statute and completely disregarded the possibility that the assets of the estate were insufficient to pay all debts, claims, and devises." Appellant/Respondent respectfully submits that this Court overlooked or misapprehended that Emma never presented to the lower court any evidence that the Estate has any claims or expenses to pay. In the absence of evidence that such claims or expenses exist, it would be proper for the lower court to offset any judgment against Clyde in the Estate's favor by taking into account that Clyde is entitled to a distribution of half of all the Estate's assets.

VI. This case involves a conflict with existing precedent along with novel questions that warrant an *en banc* rehearing.

An *en banc* rehearing “ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.”

Rule 219(a), SCACR. “[W]hile Rule 219 lists certain grounds on which rehearing *en banc* may be granted, it provides only that rehearing *en banc* ‘ordinarily will not be ordered’ except upon the listed grounds. Rule 219, SCACR (2007) (emphasis added).

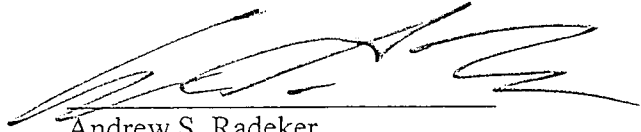
The Court of Appeals has discretion as to whether or not to accept rehearing[.]”

Williamson v. Middleton, 383 S.C. 490, 494, 681 S.E.2d 867, 869 (2009).

This is an appropriate case for *en banc* rehearing. As discussed above, it appears that the opinion issued in this case is at odds with existing precedent, both of this Court and our Supreme Court, in several respects. Furthermore, as the Court noted in its opinion, no appellate case in this state before the instant one has addressed S.C. Code Ann. § 15-61-25, nor has any South Carolina case directly discussed USDA benefits and the statute of limitations in this context. The importance of uniformity of this Court’s decisions with regard to existing precedent and the novel questions presented by this case warrants an *en banc* rehearing.

WHEREFORE Appellant/Respondent prays for an Order granting rehearing or rehearing *en banc* in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew S. Radeker", written over a horizontal line.

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

February 14, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

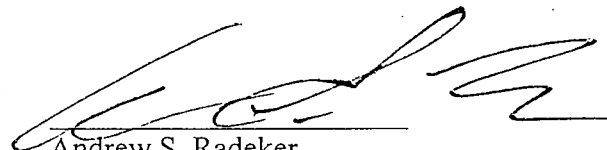
Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

PROOF OF SERVICE

I certify that I served the foregoing petition for rehearing or rehearing *en banc*
and memorandum in support on counsel for the Respondents/Appellants by
depositing a copy of it on the date shown below in the United States Mail, postage
prepaid, addressed as follows:

Richard B. Ness, Esq.
Ness & Jett, LLC
P.O. Box 909
Bamberg, SC 29003



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

February 14, 2013



The South Carolina Court of Appeals

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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 14, 2013

Mr. Richard B. Ness
PO Box 909
Bamberg SC 29003

Mr. Andrew Sims Radeker
PO Box 50143
Columbia SC 29250

Re: Est. of Livingston v. Livingston, Clyde
Appellate Case No. 2010-179986

Dear Counsel:

This will acknowledge receipt of the Petition for Rehearing. By copy of this letter, opposing counsel is requested to file an original and six (6) copies of a return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny Abbott Kitchings".
CLERK

RECEIVED MAR 15 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable O. Davie Burgdorf, Master-in-Equity, Presiding

Case No. 2007-CP-38-826

In Re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns
Livingston and Emma Lou Livingston Martin,.....Respondents—Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
Banking and Trust Company of South Carolina; and American First Federal, Inc.,
Defendants, of whom Clyde B. Livingston is Appellant—Respondent.

Respondents—Appellants' Return to Appellant—Respondent's Petition for Rehearing
and Suggestion for Rehearing *En Banc*

Richard B. Ness
Norma A. T. Jett
Alison Dennis Hood
NESS & JETT, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

Respondents—Appellants (Emma) hereby respond to and oppose Appellant—Respondent's (Clyde's) Petition for Rehearing and Suggestion for Rehearing *En Banc*. Respondents—Appellants assert the Court of Appeals, in its unanimous decision, correctly applied the law and correctly affirmed the decision of the trial court; that the Court did not overlook nor misapprehend any point of law or fact; and, that Appellant—Respondent is not entitled to rehearing, for the reasons set forth herein. Respondents—Appellants further assert rehearing *en banc* is likewise not appropriate in this case.

**THE COURT DID NOT MISAPPREHEND OR CONTRAVENE SOUTH CAROLINA
LAW IN HOLDING THE PERSONAL REPRESENTATIVE OF AN ESTATE IS
ENTITLED TO POSSESSION OF ALL REAL PROPERTY DURING
ADMINISTRATION OF AN OPEN ESTATE**

Section 62-3-101, South Carolina Code, describing devolution of title, states:

"The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this Code to facilitate the prompt settlement of estates, including the exercise of the powers of the personal representative. Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving...circumstances affecting the devolution of testate estates..."

Section 62-3-711, South Carolina Code, further describes the powers of a Personal Representative. In general, "Until termination of his appointment...a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust, however, for the benefit of the creditors and others interested in the estate." S.C. Code Ann. §62-3-711(A).

In its opinion, *In Re Estate of Atn Burns Livingston*, S.C. Court of Appeals, Opinion Number 5078, January 30, 2013, citing S.C. Code Ann. Sections 62-3-709 and 62-1-201(33) (2009), the Court of Appeals correctly held: "Notwithstanding the immediate passage of title to heirs and devisees, the PR is entitled to possession of all real property during administration and has broad powers over real property during administration."

The Court of Appeals, applying numerous consistent provisions of the S.C. Probate Court, correctly held that title to real property devolves on death or thereafter to heirs or devisees, subject to sound administration of the estate, which takes priority. Citing the Reporter's comments to section 62-3-709, the Court affirmed: "If the Personal Representative considers it advisable he may take possession and his judgment is made conclusive." *See Livingston*. In this case, Emma has the authority and obligations as PR to manage the real property, under section 62-3-711, during the pendency of the Estate, and if necessary, to sell or mortgage the property to properly administer the Estate.

**THE COURT PROPERLY HELD THAT CLYDE WAS NOT ENTITLED TO RECEIVE
USDA FARM SUBSIDY PAYMENTS PRIOR TO THE ADMINISTRATION OF THE
ESTATE**

The Court of Appeals, citing Sections 62-3-709 and 62-1-201(33), properly held: "In this case, the estate is still being administered; thus, Emma has the authority to retain and control the property in her capacity as PR. Emma's right to retain the authority over the estate supersedes Clyde's argument that he was acting

within his authority as cotenant of Emma's based on his status as an heir." *See Livingston*.

In his Petition for Rehearing, Clyde argues the Estate cannot be a party to a contractual arrangement between the USDA and Clyde, individually. This statement ignores the fact that the Estate is still open, Clyde's interest is subject to the administration of the Estate, and Clyde filled out the application Clyde noted that the estate owned the land, not him as heir. R. pp. 265-286. The Court of Appeals held: "Without express authority through ownership or contract, Clyde did not have the authority to enter a contractual relationship with the USDA." *See Livingston*. Clyde, in signing the USDA documents as PR, clearly recognized the paramount position of the Estate.

As Clyde, individually, lacked the authority to so contract, the terms of the contract are irrelevant, and the Court of Appeals correctly dismissed them.

THE COURT PROPERLY APPLIED THE STATUTE OF LIMITATION

The Court of Appeals correctly applied the applicable statute of limitations. As each USDA application was for a fixed term, each annual application should be treated as an isolated and discrete event, triggering its own statute of limitation. *See Knight v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 20, 22-23, 374 S.E. 2d 520, 522 (Ct. App. 1988). The Discovery Rule does not operate to prohibit the continuing nuisance of annual application for USDA benefits, especially where Clyde continued to apply as PR years after his removal from that office. *See Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355-57, 559 S.E.2d 327, 336 (Ct. App. 2001); R. pp. 275, 281.

The Court of Appeals correctly applied Section 15-3-530, holding any claims for USDA application benefits from 2003-2007 were appropriately before the lower court.

THE COURT DID NOT MISAPPREHEND OR OVERLOOK PRECEDENT IN APPLYING THE SOUTH CAROLINA PROBATE CODE PARTITION STATUTE

In his Petition for Rehearing, Clyde urges the Court to reconsider Section 15-61-25 as the appropriate partition statute to use in the purely probate matter. The Court of Appeals correctly held Section 62-3-911 is the applicable partition statute to use in the probate setting: "Because the action remains primarily an action governed by the probate code, we find the probate code should have continued to be applied after the removal to the master." *See Waddell v. Kahdy*, 309 S.C. 1, 419, S.E.2d 783 (1992).

Quite simply, the Probate Code applies to probate matters, regardless of the removal to Circuit Court. The Court did not err in its reasoning.

THE COURT PROPERLY APPLIED THE *Executor De Son Tort* STATUTE IN CONJUNCTION WITH THE OTHER PROVISIONS OF THE SOUTH CAROLINA PROBATE CODE

The Court correctly ruled that the *Executor De Son Tort* statute cannot be applied until the final administration of the Estate. This is necessary to give meaning to the order of abatement proscribed by the probate code. The Court properly found: "By allowing Clyde to retain one-half of the value of the estate benefits, the master ignored the plain language of the abatement statute and completely disregarded the possibility that the assets of the estate were insufficient

to pay all debts, claims, and devises. Without considering the estate as a whole from the purview of the probate court, there is no conceivable method by which the master could divide the subsidy award in half." *See Livingston*. Allowing the *Executor De Son Tort* statute to preempt the just administration of the Estate is improper and would usurp the PR's statutory and fiduciary obligations.

The Court of Appeals correctly ruled that the master erred in this regard.

REHEARING *EN BANC* IS NOT APPROPRIATE IN THIS CASE, AS IT IS NOT NECESSARY TO THE UNIFORMITY OF THE COURT'S DECISIONS, NOR IS THE QUESTION PRESENTED OF EXCEPTIONAL IMPORTANCE OR NOVEL

Pursuant to SCACR 219(a), "A....rehearing en banc is not favored and ordinarily will not be ordered except (1) when necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance." To every party, his or her case is the most important case ever. The decision of the Court of Appeals did not, however, stray from precedent, and a rehearing *en banc* is not necessary to secure or maintain uniformity of the Court's decisions. The case does not present a question of exceptional importance, except, of course, to the litigants involved. The Court's decision is consistent with precedent, and does not threaten to change the manner in which Estates are traditionally probated in South Carolina. The case, therefore, does not justify an *en banc* hearing.

While the Court of Appeals has discretion, pursuant to Rule 219, SCACR (2007), to grant a rehearing or a rehearing en banc, the Court's opinion on this

matter involved the straight-forward application of the South Carolina Probate Code, and a rehearing is not warranted.

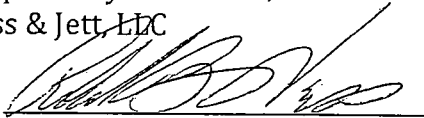
CONCLUSION

The Court of Appeals correctly applied South Carolina law to the facts of this matter, and correctly affirmed the decision of the trial court. No rehearing is necessary, as the law and the record are clear. A Petition for Rehearing is intended to draw the Court's attention to points of law or fact, which were overlooked or misapprehended. There are neither in this case. The Petition for Rehearing should be denied. Respondent asserts the decision of the Court of Appeals should stand, and the Petition for Rehearing should be denied.

March 20, 2013

Bamberg, SC

Respectfully submitted,
Ness & Jett, LLC

By: 

Richard B. Ness

Norma A. T. Jett

Alison Dennis Hood

P.O. Box 909

Bamberg, SC 29003

(803) 245-5178

Attorney for

Respondents—Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

RECEIVED

MAR 26 2013

SC Court of Appeals

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

APPELLANT/RESPONDENT'S REPLY TO RESPONDENTS/APPELLANTS'
RETURN TO PETITION FOR REHEARING OR REHEARING *EN BANC*

Appellant/Respondent (hereinafter, sometimes, "Clyde") hereby replies to
Respondents/Appellants (hereinafter, sometimes, "Emma")'s return, served March
21, 2013, to Appellant/Respondent's petition for rehearing or rehearing *en banc*.
Appellant/Respondent respectfully takes issue with Respondents/Appellants'
positions in their return. This reply attempts not to repeat Clyde's petition any more
than is necessary to reply to Emma's response. Clyde notes the following in reply:

I. Emma's description of the Court's decision is incomplete.

Emma states that the Court "correctly held that title to the real property devolves on death or thereafter to heirs or devisees, subject to sound administration of the estate, which takes priority." Actually, as part of its decision that the USDA payments at issue belonged to the Estate of Atm Livingston (hereinafter "the Estate"), the Court stated that because Emma "retained the authority over the estate as the [Personal Representative], *the property did not pass to Clyde despite his status as a named heir in the will.*" (emphasis added). Title does not devolve "thereafter" to a decedent's heirs or devisees. As noted in Clyde's petition, S.C. Code Ann. § 62-3-101 and existing precedent of the South Carolina Supreme Court provide that, upon a decedent's death, title to his realty passes to the decedent's heirs or devisees. As is also noted in Clyde's petition, the Probate Code sections cited by the Court for the proposition that title to realty passes to the personal representative until the estate is no longer being administered do not stand for the proposition that the personal representative owns the decedent's land while estate administration is occurring. Those Code sections deal with *powers* a personal representative has with respect to land, and those powers are not described as exclusive of the rights, powers, and title of the heirs or devisees¹ who inherit land.

Further, Emma seems to be taking her return as an opportunity to try to get this Court to rule that her purported note (at interest) and mortgage from herself (as personal representative) to herself (individually) is valid, despite the fact that, under the trifurcation order, that is manifestly an issue to be tried at a later hearing in this case.

¹ As Atm Livingston died with a will, Clyde and Emma inherit as his devisees, not his heirs.

II. Emma ignores that the only person who was entitled to be paid the USDA benefits was the farm operator under the contract, Clyde.

Emma argues that because “the Estate is still open, Clyde’s interest is subject to the administration of the Estate, and [when] Clyde filled out the application Clyde noted that the estate owned the land, not him as an heir[.]” then, somehow, that makes money that the United States Department of Agriculture contract to pay Clyde belong not to Clyde but to the Estate. In doing so, Emma takes the same leap over a logical chasm that the Court did. Neither Emma’s return nor this Court’s opinion explains why it is that the things Emma mentioned supposedly made the USDA payments property of the estate. Clyde respectfully submits that is because they did not.

III. Emma’s return assumes that there is a “continuing nuisance” here when there is not.

Emma argues that “[t]he Discovery Rule does not operate to prohibit the continuing nuisance of annual application for USDA benefits[.]” “The traditional concept of a nuisance requires a landowner to demonstrate that the defendant unreasonably interfered with his ownership or possession of the land.” Silvester v. Spring Valley Country Club, 344 S.C. 280, 286, 543 S.E.2d 563, 566 (Ct. App. 2001). The first definition of nuisance given in Black’s Law Dictionary is “[a] condition or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property.” Black’s Law Dictionary 486 (2d. pocket ed. 2001). Both Emma and this Court’s opinion equate, without explanation, an application made to the USDA for renewal of benefits under a contract for the USDA to pay benefits to the applicant with a nuisance; however, there is nothing in the record to indicate that Clyde interfered with his sister’s co-ownership or possession of the land, much less that his application renewals caused anything like a loud noise or foul odor. Further,

Clyde is at a loss to see how anyone's filling out an application for anything could meet the definition of nuisance at all.

IV. Emma argues an exclusivity between statutes that does not exist.

Emma appears to argue that because the Probate Code applies to this partition action, S.C. Code Ann. § 15-61-25 does not.

In Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992), the Supreme Court of South Carolina did not say that the Probate Code *and no other law* is applicable in an action removed from the probate court. Simply because the Court determines that the Probate Code governs in this partition action does not mean that S.C. Code Ann. § 15-61-25 does not apply. The words of S.C. Code Ann. § 15-61-25 make it applicable to “a petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). No distinction is made between petitions for partition brought pursuant to the Probate Code and those brought otherwise. Id. In fact, the statute specifically states that “[f]or the purposes of this section, ‘joint tenants and tenants in common’ include heirs and devisees.” Id. The statute unambiguously says it applies to “a petition for partition of property owned by joint tenants or tenants in common[,]” including property of heirs and devisees. S.C. Code Ann. § 15-61-25(A).

“When the terms of a statute are clear, the court must apply those terms according to their literal meaning.” Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733, 739 (Ct. App. 2005) (internal quotation marks omitted). The terms of S.C. Code Ann. § 15-61-25 are clear: the statute applies to any “petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). Accordingly, it applies equally to partition actions brought in the probate court and those brought in the circuit court.

- V. Emma seems to concede that she never presented any evidence that the Estate has any claims to pay or expenses related to administration.

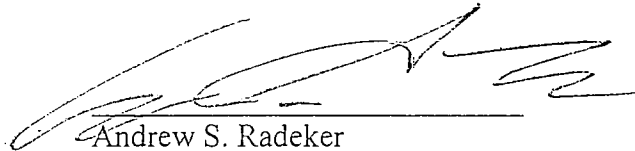
Emma does not argue in her return that Clyde is wrong to point out that Emma never presented to the lower court any evidence that the Estate has any claims or expenses to pay. In the absence of evidence that such claims or expenses exist, it would be proper for the lower court to offset any judgment against Clyde in the Estate's favor by taking into account that Clyde is entitled to a distribution of half of all the Estate's assets.

- VI. Emma attempts to downplay the importance of this case to avoid rehearing *en banc*.

As discussed in Clyde's petition, it appears that the opinion issued in this case is at odds with existing precedent, both of this Court and our Supreme Court, in several respects. Furthermore, as the Court noted in its opinion, no appellate case in this state before the instant one has addressed S.C. Code Ann. § 15-61-25, nor has any South Carolina case directly discussed USDA benefits and the statute of limitations in this context. The importance of uniformity of this Court's decisions with regard to existing precedent and the novel questions presented by this case warrants an *en banc* rehearing. Simply by making the conclusory statements that "the Court of Appeals did not, however, stray from precedent" and that "[t]he Court's decision is consistent with precedent," Emma cannot make those statements true. *How* is the opinion in this case supposedly consistent with precedent? Emma does not tell us. Clyde respectfully submits that is because she cannot.

WHEREFORE Appellant/Respondent prays for an Order granting his petition for rehearing or rehearing *en banc* in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew S. Radeker", is written over a horizontal line.

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

March 26, 2013

The South Carolina Court of Appeals

In re: Estate of Atn Burns Livingston, Emma Lou
Livingston Martin, as Personal Representative of the
Estate of Atn Burns Livingston, and Emma Lou
Livingston Martin, Respondents/Appellants,

v.

Clyde B. Livingston, Miller Communications, Inc.,
Citibank South Dakota, N.A., Branch Banking and Trust
Company of South Carolina, and American First Federal,
Inc.,

Of whom Clyde B. Livingston is Appellant/Respondent.

Appellate Case No. 2010-179986

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr.

J.

U. Ke

J.

James E. ...

J.

cc:

Richard B. Ness

Andrew Sims Radeker

FILED
12 June 2013



The South Carolina Court of Appeals

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 12, 2013

Mr. Andrew Sims Radeker
PO Box 50143
Columbia SC 29250

Re: Est. of Livingston v. Livingston, Clyde
Appellate Case No. 2010-179986

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Richard B. Ness

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

FINAL APPELLANT'S BRIEF OF APPELLANT/RESPONDENT

RECEIVED

APR 17 2012

SC Court of Appeals

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

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STATEMENT OF ISSUES

- I. Did the Master err in concluding that the benefits the USDA paid directly to Appellant/Respondent were estate property when they were the product of a contract between the USDA and Appellant/Respondent, not the estate?
- II. Did the Master err in concluding that the statute of limitations did not bar Respondents/Appellants' claim altogether, where the only evidence was that, more than three years before the action was brought, Respondents/Appellants were aware of the only act Appellant/Respondent did that underlies the claim?

STATEMENT OF THE CASE

This case, filed on May 30, 2006, is primarily a partition action by Respondents/Appellants Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns Livingston and Emma Lou Livingston Martin (hereinafter, collectively, "Emma") against Appellant/Respondent Clyde B. Livingston (hereinafter "Clyde") and others, but it includes a number of non-partition claims as well. (R. pp. 28-53.) Clyde and Emma are brother and sister and are the sole and equal devisees of Atn Burns Livingston, while the other parties are named because of judgment liens they have or may claim against Clyde. (R. pp. 13, 16, 29-33.)

The case was filed in the Orangeburg County Probate Court and was removed ~~to the Court of Common Pleas by order of Probate Judge Pandora Jones-Glover~~ filed April 12, 2007. (R. pp. 18-20.) The case was referred on August 19, 2008, to the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, by the consent of all non-defaulting parties. (R. pp. 22-27.)

Because "this action presents numerous issues in which the various parties have varying degrees of interest and involvement[.]" the Master trifurcated the action, providing for separate trials of "1) the non-partition and non-lien issues between [Emma] and [Clyde] (i.e., the issues between [Emma] and [Clyde] other than issues in which the Court must decide whether a lien exists upon the real property subject of this action and claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action), 2) the issues in this action that concern the validity, priority, extent, and amount of the alleged liens (or other disputed property interests), and 3) the issues as to the disposition of the real

property in this action or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25.” (R. pp. 4-5, 6-8.) This appeal arises from the Master’s decision following the bench trial he held on March 24, 2010, of the non-partition and non-lien claims between Emma and Clyde. (R. p. 12.)

The claims in this action that fell into the appropriate category to be tried at this time were Emma’s claim for recovery on two notes given by Clyde and Emma’s claim that Clyde had misappropriated estate property by receiving \$29,902.00 in United States Department of Agriculture subsidy payments as a farm operator with regard to the real property subject of this action. Before the commencement of the trial, Emma withdrew the claims on the notes. (R. p. 13, p. 122 ln. 16-21.) The Master then heard Clyde’s previously served and filed motion for summary judgment on Emma’s remaining claim against him concerning the USDA payments, but the Master deferred ruling on that motion until after hearing the evidence at trial. (R. pp. 13, 16-17, 70-90, p. 122 ln. 1, 4-9, p. 126 ln. 18-25, p. 127 ln. 1 through p. 137 ln. 10.)

The claim of alleged misappropriation of USDA payments was the sole subject of the trial. (R. p. 13.) Emma testified and introduced USDA records and a summary of the benefit amounts paid as exhibits, then rested her case. (R. p. 137 ln. 12 through p. 158 ln. 14.) Clyde moved for an involuntary nonsuit on the grounds that the USDA payments were not property of the estate and that the statute of limitations in S.C. Code Ann. § 15-3-530 would bar the claim in any event. (R. p. 14, p. 158 ln. 15 through p. 161 ln. 4.) The Master deferred ruling on this motion and requested that Clyde present his case. (R. p. 14, p. 161 ln. 5.) Clyde testified, and

Emma was again called as a reply witness. (R. p. 161 ln. 10 through p. 169 ln. 24.) Counsel and the Master discussed some of the issues, and the Master requested that counsel for both Emma and Clyde submit proposed orders. (R. p. 170 ln. 6 through p. 184 ln. 5)

In an order filed November 17, 2010, the Master granted Clyde's motions for summary judgment and involuntary nonsuit in part and denied them in part. (R. pp. 16-17.) The Master concluded that the USDA payments were part of the Estate of Atn Burns Livingston and found Clyde liable for receiving them; however, he limited Emma's recovery to \$11,690.00. (R. pp. 15, 16.) The Master concluded that "[t]he statute of limitations limits the plaintiff's recovery, on behalf of the estate, to the ~~USDA payments that were made within three years before this action was~~ commenced[.]" noting that "[f]rom 2003 forward, [Clyde] was paid \$23,380.00 in farm subsidy benefits. Accordingly, the recoverable portion of [Emma]'s claim concerns this \$23,380.00." (R. p. 15). The Master also concluded that, since Clyde is the devisee entitled to one half of the estate, Emma's recovery had to be further reduced by half because of the impact of S.C. Code Ann. § 62-3-619, the executor de son tort statute, which "provides that recovery by an estate is limited by the principle that the tortfeasor is entitled to an offset for the amount her is or was supposed to receive from the estate of the property that has come into his possession." (R. pp. 15-16.) The Master denied Emma's request for prejudgment interest because she did not plead that prejudgment interest should be awarded. (R. p. 16.)

The Master ordered Clyde to pay \$11,690.00 to the Estate of Atn Burns Livingston within 30 days of his counsel's receipt of a clocked copy of the order,

ruling that, if Clyde did not do so, the order would constitute a judgment against him and in favor of the estate in the amount of \$11,690.00. (R. p. 17.) The Master made no ruling as to the nature of the cause of action that was tried or whether it was legal or equitable. (R. pp. 12-17.) Clyde served his notice of appeal of the Master's order on December 8, 2010.

STATEMENT OF FACTS

This action concerns rural land in the vicinity of the town of North, South Carolina, that was owned by Atn Burns Livingston, who died in 1999 and was the father of Emma and Clyde. (R. p. 13.) After Atn Livingston died, Emma and Clyde were appointed as the co-personal representatives of his estate. (R. p. 13.)

In the year 2000, Clyde applied for farm operator status for the land subject of this case with the United States Department of Agriculture and was from then until 2008 paid \$29,902.00 in USDA subsidy payments as a farm operator. (R. p. 13.) Clyde signed the application to the USDA individually, as the farmer applicant. (R. p. 13, p. 146 ln. 21-25, p. 147 ln. 1-3, pp. 203, 208, 213, 217, 223, 226.) On behalf of the estate, he also signed that document in an attempt to say that the estate was the owner of the land. (R. p. 13, p. 146 ln. 21-25, p. 147 ln. 1-3, p. 203.)

The probate court removed Clyde as co-personal representative of the estate, on the grounds that he and Emma could not cooperate as co-personal representatives, on January 18, 2002. (R. pp. 13-14.) From then until the present day, Emma has been the sole personal representative of the estate of Atn Burns Livingston. (R. p. 14.)

Emma testified that in April of 2002 – after she had become the sole personal representative of the estate – she received a letter from the USDA about Clyde being a farm operator with regard to the land at issue and “that was the first [she] knew about it that farm service agency type payments [were] involved at all.” (R. p. 14, p. 140 ln. 9-12, 16-19.) She testified that she “asked around in the community what that could possibly mean” and then contacted the USDA and inquired with that agency about Clyde’s status as a farm operator of the land. (R. p. 14, p. 140 ln. 24 through p. 141 ln. 1-5.) According to her testimony, that was when the USDA’s Orangeburg Farm Services Agency office informed her that Clyde was and had been receiving the farm subsidy payments. (R. p. 14, p. 141 ln. 4-7.) Emma testified that she got “some copies and things from them at that time.” (R. p. 141 ln. 7-8.)

In connection with being the personal representative of the estate, Emma was represented by attorney Cliff Moore of the law firm of Ellis Lawhorne & Sims, P.A., at the time she said she discovered Clyde had been receiving farm subsidy payments. (R. p. 14, p. 141 ln. 9-11, p. 153 ln. 15-17.) She brought the information about Clyde receiving the USDA payments to her lawyer’s attention and talked with her lawyer about “how should that be handled and how should we proceed.” (R. p. 14, p. 141 ln. 9-13.) Her attorney began a dialogue about the payments with the lawyer who represented Clyde at the time. (R. p. 141 ln. 13-24.) Despite the fact that in April of 2002 Emma knew about Clyde receiving the USDA payments and even engaged an attorney to address the situation, she did not bring suit (this action) on the claim concerning the USDA payments until May 30, 2006, over four years later. (R. pp. 14. 28-37, p. 22 ln. 9-12, 16-19, 24, 25, p. 141 ln. 1-24.)

On behalf of the estate, Emma applied for farm subsidy payments in 2008 and has received them since. (R. p. 14, p. 157 ln. 4-5.) No evidence was offered to the effect that she was prevented from making that application at any time. (R. p. 137 ln. 11 through p. 158 ln. 14.)

Clyde testified that he and Emma had agreed that he would rent the land from her on the same terms as the previous tenant had rented the land from the decedent. (R. p. 14, p. 161 ln. 13-24, p. 163 ln. 8-12, 19-25, p. 165 ln. 6-8.) He testified that the decedent's tenant had been a farm operator of the land and had collected the USDA farm subsidy benefits himself. (R. p. 14, p. 168 ln. 4-11.)

All the testimony and USDA documents admitted at the trial were to the effect that the USDA paid Clyde the farm subsidy payments because he had a contract with the USDA under which the USDA was obligated to make the payments to him by virtue of Clyde's status as a producer/farm operator. (R. p. 137 ln. 11 through p. 158 ln. 14, p. 161 ln. 10 through p. 168 ln. 12, p. 168 ln. 24 through p. 169 ln. 24, pp. 203-229.) The estate had no contract with the USDA until 2008, and it was not a party to the USDA's contract with Clyde. (R. p. 14, p. 157 ln. 4-5.) As Clyde testified on cross-examination, the USDA payments "were not estate funds. They were paid to a farm operator. Me." (R. p. 165 ln. 22-23.)

STANDARD OF REVIEW

"This Court reviews all questions of law *de novo*." Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803, 807 (Ct. App. 2009); accord Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010) ("appellate court may decide questions of law with no particular deference to the trial court"). It is the standard for review of the

trial court's factual findings, not its legal conclusions, that depends on whether the underlying action is at law or in equity. Fesmire, 683 S.E.2d at 807.

"In an action at law tried without a jury, the trial judge's findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence." Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). Accordingly, in an appeal from the results of a bench trial of an action at law, an appellate court can correct errors of law but "will not disturb the trial court's findings of fact unless no evidence reasonably supports the findings." Branche Builders, Inc. v. Coggins, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009). In an appeal from a judge's decision in an equitable action, the appellate court is free to find the facts according to its own view of the preponderance of evidence. Zimmerman v. Marsh, 365 S.C. 383, 618 S.E.2d 898, 900 (2005); Johnson v. Arbabi, 355 S.C. 64, 584 S.E.2d 113, 115 (2003); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); SunTrust v. Bryant, 392 S.C. 264, 267, 708 S.E.2d 821, 822-23 (Ct. App. 2011).

"An action for damages for conversion is an action at law." Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986). An action for breach of fiduciary duty is usually one at law; however, depending on what relief is sought, a cause of action for breach of fiduciary duty may be legal or equitable. Verenes, 387 S.C. at 17.

"After the plaintiff in an action tried by the court without a jury has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the

ground that upon the facts and the law the plaintiff has shown no right to relief.” Rule 41(b), SCRPC (subsection entitled “Involuntary Dismissal; Non-Suit; Effect Thereof”). A motion under this Rule, usually called a motion for an involuntary nonsuit, is the proper motion for a defendant to make to challenge the sufficiency of the plaintiff’s evidence at the close of the plaintiff’s case in an action tried without a jury. Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 516 S.E.2d 665, 671 n. 3 (Ct. App. 1999); Cynthia Barrier Castengera, Directed Verdict v. Involuntary Nonsuit: Are You Making the Right Motion? Vol. 9, No. 3 S.C. Lawyer 22 (S.C. Bar 1997). Though similar to and often confused with a directed verdict motion, a motion for an involuntary nonsuit differs from a directed verdict motion because “[u]nder Rule 41 in a nonjury trial, the trial judge may clearly dismiss the action even though the plaintiff may have established a *prima facie* case.” Johnson v. J.P. Stevens & Co., Inc., 308 S.C. 116, 118, 417 S.E.2d 527 529 (1992); accord Hinton, 516 S.E.2d at 671 n. 3 (noting appellant’s confusion of involuntary nonsuit motion with motion for directed verdict; “directed verdict motions under Rule 50, SCRPC, are only appropriate in jury trials”); Castengera, supra at 22-24.

Though there is not much case law concerning the appellate standard of review for motions under Rule 41(b), it appears that the appellate court applies the same standard as does the trial court, much the same as with review of decisions on motions for a directed verdict, J.N.O.V., or summary judgment. See Johnson, 308 S.C. at 118 (Supreme Court seeming to apply same analysis as trial court, without discussion of standard); Ex parte USAA: Smith v. Moore, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005) (“[b]ecause a dismissal [under Rule 41(b)] has the same

effect as summary judgment, the standard for summary judgment applies”). Because the trial court’s analysis of a motion under either of these Rules involves some weighing of evidence and because this Court may take its own view of the evidence in an appeal from an equity case, it appears that the general appellate standard for equity matters applies in the context of a motion under Rules 41(b) in an equity case. See Johnson, 308 S.C. at 118; Castengera, supra at 24 (discussing the analysis used in Johnson, noting “[i]t, therefore, appears the standard of review in an action in equity does not depend on the motion being made”).

ARGUMENT

I. The USDA benefits were the product of a contract obligating the USDA to pay them to Clyde, not to the estate, and the Master erred in concluding they were estate property.

Clyde received benefits from the USDA because of an agreement he had with that agency as a farm operator. (R. pp. 13, 14, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The USDA paid him those benefits because of what he was obligated to do and not do as a farm operator, not because of any action or inaction he took as co-personal representative of his father’s estate. (R. p. 13, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The estate was not the farm operator. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) As they were the product of a contract between the USDA and Clyde, not the estate, the Master erred in concluding the payments were property of the estate. (R. pp. 13, 14,

15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.)

Ordinarily, the only parties who have any rights under a contract are the promisor and the promisee. See Professional Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985). Clyde's contract with the USDA was not a third-party contract for the benefit of the estate; thus, this general principle applies here. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.); cf. id. The USDA's obligation to pay Clyde money was based solely on its contract with him as a farm operator, not on the basis of who owned the land. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The estate was not a party to that contract and had no interest in the payments. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.)

In any event, the estate did not own the land; Clyde and Emma did. Unlike personal property, which devolves first to an estate's personal representative, "[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last will[,] if the person dies testate, or his heirs if he dies intestate. S.C. Code Ann. § 62-3-101. Discussing this rule in a case involving intestacy, our Supreme Court has stated the following:

By the common law, and under the statutes in most of the states, the title to real property vests in the heir or heirs immediately on the death of the intestate, subject in most jurisdictions, as in South Carolina, to the exercise of such special powers as may be conferred upon the administrator by statute, such as the right to

sell for payment of debts. A different rule prevails with reference to personal property. Title to real estate cannot remain in abeyance; it must be vested in someone. When, therefore, a person seized of real estate dies intestate, the title to such estate vests at once in his heirs, if he leaves any.

Carter v. Wroten, 187 S.C. 432, 198 S.E. 13, 15 (1938) (internal citations omitted).

An estate cannot hold legal title to land. Taylor v. Jennings, 233 S.C. 600, 607, 106 S.E.2d 391, 395-96 (1958); Fischer v. Bennett, 202 S.C. 534, 25 S.E.2d 746, 748 (1943); Carter, 198 S.E. at 16.

At the time Clyde signed the USDA "Lease Statement," he was thus an owner of the land as a cotenant with his sister. (R. p. 13.) It is well settled in South Carolina that each cotenant in property has the right to the possession of the whole of the land.

E.g., Horne v. Cox, 237 S.C. 41, 44, 115 S.E.2d 513, 515 (1960); Watson v. Little, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953); Knotts v. Joiner, 217 S.C. 99, 102, 59 S.E.2d 850, 851 (1950); Wells v. Coursey, 197 S.C. 483, 15 S.E.2d 752, 755 (1941).

The use of the property by one of the cotenants is entirely consistent with the existence of the cotenancy and a recognition of the rights of the other cotenants.

Horne, 237 S.C. at 44. Absent ouster, a cotenant does not owe his fellow cotenants

anything for his use of the property, since using the land is something he has every right to do. See Parker v. Shecut, 359 S.C. 143, 597 S.E.2d 793, 797 (2004); Horne,

237 S.C. at 44; Watson, 224 S.C. at 364; Knotts, 217 S.C. at 102; Wells, 15 S.E.2d at

755. Further, our Supreme Court has addressed the question of whether those who inherit real property are immediately entitled to the land's rents and profits, and the Court noted that rights to rents and profits pass to heirs or devisees along with the land at the moment the decedent dies. Burkhalter v. Townsend, 160 S.C. 134, 158

S.E. 221, 223 (1931). While Emma's apparent position that a right to USDA benefits is a profit of land ownership is incorrect, even if this contention was correct, that right would not have belonged to the estate. (R. p. 130 ln. 8-15, p. 158 ln. 25, p. 159 ln. 1-3, p. 165 ln. 22-23); id. As an owner of the land he inherited from his father, Clyde had every right to farm it and to collect USDA payments as a farm operator. The only thing shown by his statement to the USDA that the estate owned the land was that Clyde, a layman, did not understand that he became an owner of the land when his father died, by operation of law. (R. pp. 13, 203.) As a matter of law, the USDA payments did not belong to the estate.

Clyde had no duty to secure a farm operator contract for the estate. As co-personal representative, ~~Clyde's fiduciary duty, along with Emma's, was "to settle~~ and distribute the estate of the decedent in accordance with the terms of a probated and effective will and [the Probate] [C]ode, as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. § 62-3-703(a). This does not mean Clyde had a duty to refrain from farming his own land and collecting USDA payments as a farm operator.

As a matter of law, the USDA payments were not part of the estate; thus, Clyde breached no fiduciary duty and converted nothing when he accepted those payments. The Master erred in denying in part Clyde's motion for an involuntary nonsuit on this basis and erred in finding that Clyde acted unlawfully (it is unclear whether the Master decided that Clyde's act constituted conversion or a breach of fiduciary duty).

II. The Master erred in concluding that the statute of limitations did not bar Emma's claim altogether, where the only evidence was that Emma was aware more than three years before the action was brought of the only act Clyde did that underlies her claim.

Emma's own testimony shows that she was actually aware in 2002, four years before this action was brought, that Clyde was receiving the USDA benefits as the designated farm operator of the land. (R. p. 14, p. 140 ln. 9-12, 16-19, p. 141 ln. 4-7.) While the Master's order does not clarify whether he found that Clyde's contracting to receive the benefits was a conversion, a breach of fiduciary duty, or both, the three-year statute of limitations bars Emma's claim altogether, regardless of which of these labels is placed on it. See Verenes, 387 S.C. at 17 (breach of fiduciary duty); Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009) ("[c]onversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights"); S.C. Code Ann. § 15-3-530.

Under the discovery rule, the statute of limitations period begins to run when "a person discovers or should have known through reasonable diligence that a potential claim might exist." Watters v. Terminix Service, Inc., 376 S.C. 632, 635, 658 S.E.2d 110, 111 (Ct. App. 2008); accord S.C. Code Ann. § 15-3-535. "The date on which discovery of the cause of action should have been made is an objective, rather than a subjective, question." Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327, 336 (Ct. App. 2001). "The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another

party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.” Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816, 818 (2005). Further, “when there is no conflicting evidence or only one reasonable inference can be drawn from the evidence the determination” of when the statute of limitations period begins “becomes a matter of law” to be determined by the court. Turner v. Milliman, 381 S.C. 101, 110, 671 S.E.2d 636, 641 (Ct. App. 2009).

The statute of limitations period begins to run when “a person discovers *or* should have known through reasonable diligence that a potential claim might exist.” Watters, 376 S.C. at 635. Here, the Court does not need to decide when Emma should have discovered sufficient facts to put her on notice of Clyde’s farm operator contract with the USDA, since it is beyond dispute that Emma became aware that the USDA was making the payments to Clyde in 2002; she herself testified that is when she learned of it. (R. p. 14, p. 140, ln. 9-12, 16-19, p. 141 ln. 4-7.) Furthermore, she was aware that the situation was one she believed she needed to take legal action about, as she promptly involved her attorney and brought the matter to this attention. (R. p. 141 ln. 9-13.) Nevertheless, she did not bring this suit until four years later. (R. pp. 14, 28-37.) At that point, the three-year statute of limitations period had run. See S.C. Code Ann. § 15-3-530; Watters, 376 S.C. at 635.

Since the statute of limitations had run, the Master erred in applying the statute of limitations to allow recovery based on the amount of payments Clyde received within three years before the action was brought. (R. p. 15.) Assuming for the sake of argument that Clyde committed a legal wrong by contracting to receive

the USDA benefits, the relevant point in time for the statute of limitations analysis is not when each instance of damage occurred; rather, it is when Emma knew or should have known of the alleged injury-causing wrongful act – Clyde contracting with the USDA to get the benefits himself. (R. p. 15); Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 596 S.E.2d 42, 46 (2004) (“A cause of action accrues at the moment when the plaintiff has the legal right to sue on it. The law presumes at least nominal damages at that point. The fact that substantial damages did not occur until later is immaterial to determining when the action accrued or arose.”); Brown v. Pearson, 326 S.C. 409, 418, 483 S.E.2d 477, 482 (Ct. App. 1997) (“proper focus is on the date of discovery of the injury[,]” not exact nature of wrong); Dillon County Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc., 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985) (“statute begins to run from the date the injury resulting from the wrongful conduct either is discovered or may be discovered by the exercise of reasonable diligence”). If Emma “did not appreciate the full extent of the damage until later[,]” that “is immaterial” to the statute of limitations analysis. (R. p. 143 ln. 6-15.) Dillon County Sch. Dist. No. Two, 286 S.C. at 215. This is not a case of a continuing or repeated tort such as a “continuing nuisance”; if Clyde did any wrongful act, he did it in 2000 when he entered into the contract with the USDA, and Emma discovered that in 2002. (R. p. 15); see Hedgepath, 348 S.C. at 337 (discussing continuing nuisances and statute of limitations). The Master reasoned in his order that Clyde was liable to the estate because he “occupied dual roles when he entered into the agreement with the USDA” and thus “breached his duty to the estate as co-personal representative.” (R. p. 15.) This is the only supposedly wrongful act

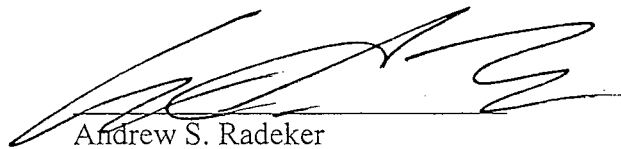
that Clyde did, and Emma discovered that he did it more than three years before she brought this case. (R. pp. 14, 15.)

Even if Emma had had a claim against Clyde, the statute of limitations would have barred it completely. The Master should have granted Clyde's motion for a nonsuit or ruled in his favor on the merits of this issue.

CONCLUSION

The USDA payments were not estate property, and Emma knew more than three years before she brought this case that Clyde had been getting them. Emma was not entitled to any relief, and the Court should reverse the Master and so hold.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

April 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

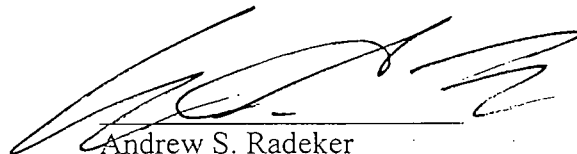
Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

CERTIFICATE OF COUNSEL

I certify that the foregoing brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29230
(803) 779-2211
Attorney for Appellant/Respondent

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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Honorable O. Davie Burgdorf, Master-in-Equity, Presiding

Case No. 2007-CP-38-826

In Re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns
Livingston and Emma Lou Livingston Martin, ... Respondents—Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
Banking and Trust Company of South Carolina; and American First Federal, Inc.,
Defendants, of whom Clyde B. Livingston is Appellant—Respondent.

FINAL RESPONDENT'S BRIEF

Richard B. Ness
NESS & JETT, LLC
P.O. Box 909

Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- 1: Are heirs-at-law of an open Estate properly considered "co-tenants"?
- 2: Should §15-3-530 bar recovery for the discrete and recurring annual compensable activity described herein, if the activity began outside the three-year limit found within §15-3-530?

STATEMENT OF THE CASE

Atn B. Livingston died October 25, 1999. His Will, dated January 28, 1983, and duly probated divides his entire estate evenly, in fee simple, between his children, Appellant/Respondent Clyde B. Livingston ("Livingston") and Respondent/Appellant Emma Livingston Martin ("Martin"), both of whom survived their father. Within his Will, Atn B. Livingston appointed his two children to serve as Co-Executors of his Estate. By Order of the Orangeburg Probate Court, the siblings, Clyde Livingston and Emma Lou Livingston Martin, were appointed Co-Personal Representatives on December 10, 1999. (R. p. 231).

The Estate consists primarily of real estate. The property at issue in this matter consists of a 269 acre tract in Orangeburg County, TMS #0061-00-01-010. The parcel has an appraised value of \$400,000.00. (R. pp. 236-241). A final accounting for the estate assets was filed with the Probate Court on December 27, 2004. (R. pp. 242-246)

Livingston has several monetary judgments against him, individually, of record with the Orangeburg County Clerk of Court. These are documented within the Summons and Complaint. (R. pp. 28-37). Further, pursuant to the lower court's Order in this matter, the Estate of Atn Burns Livingston will also have a judgment against Livingston for the amount of the USDA payments inequitably obtained by Livingston since 2003, tempered by the operation of S.C. Code of Laws Ann. §62-3-619 (Executor de son tort). This means the Order, if not satisfied within 30 days, converts to a judgment against Livingston in the amount of \$11,690.00 in favor of the Estate of Atn Burns Livingston.¹

¹ This Order has not been satisfied, and the Personal Representative of the Estate, Martin, had appealed the Order, specifically the application of the Executor de son tort statute.

Livingston was removed as personal representative, by Probate Court Order on January 18, 2002 for dereliction of duty. (R. pp. 234-235).

In the year 2000, without the consent of Martin, individually or as co-Personal Representative, Livingston applied for farm operator status with the United States Department of Agriculture (hereafter USDA). Filing as such enabled him individually to receive certain USDA subsidies, as farm operator. There was no oral agreement, nor any written memorialization of any agreement between the heirs and co-Personal Representatives for Livingston to receive these subsidies. (R. p. 139, line 9 – p.140, line 23; R. p. 142, line 16 – p. 145, line 19; R. p. 152, line 20 – p. 153, line 11; R. p. 161, line 13 – R. p. 168, line 2).

Livingston is trained as an accountant, and is familiar with the USDA subsidy process. Livingston had special knowledge of the process of obtaining subsidies, and testified that the Estate could have benefited directly from the farm subsidy program described herein, had the Estate filed to receive these funds. (R. p. 164, line 2 – p. 167, line 25).

From 2003 until 2008, Livingston, individually, was paid \$29,902.00 in USDA subsidy payments. The land associated with this farm operator status is the land subject to this action.

In April of 2002, Martin received notice from the USDA that Livingston had been receiving certain USDA subsidies as farm operator for the land subject to this action. This was the first notice Martin, either individually or as Personal Representative, had received of this arrangement. This notice came in the form of a letter from the USDA, which then prompted Martin and counsel for the Estate to begin probing Livingston's

activity, both as personal representative of the Estate and individually. (R. p. 140, line 4 – p. 142, line 3).

Seeking to generate some liquidity with which to close the Estate, Martin, as personal representative, sought permission from the Probate Court to thin timber on the real property subject to this action. Livingston objected to this request, and instead sought immediate distribution of the Estate assets. (R. p. 232).

As the Estate was held open because of this unnecessary delay, Martin, individually, placed \$19,675.26 of her own personal funds into the Estate in exchange for a Note, secured by the real estate, which is the subject of this action. (R. pp. 248-255).

Martin brought an action to compel Livingston to reimburse the Estate for those USDA subsidies on May 30, 2006. Within this same action, Martin sought a Court Order, pursuant to S.C. Code Ann. §62-3-911, to allow Martin, as personal representative, to sell by partition the real estate which is the subject of this action, to aide in the administration of the Estate, since Livingston would not cooperate. (R. pp. 28 – 37). Following this filing, on behalf of the Estate, Martin, as personal representative, applied for the USDA farm subsidies. The Estate has since been receiving the portion of those subsidies to which the Estate is entitled without Livingston's consent. (R. p. 149, line 18 – p. 150, line 23).

Livingston appeals from the application of the Statute of Limitation in this action, asserting that the Estate may not recover any portion of these subsidy payments, since Martin had notice of the original execution of the contract in April, 2002, over three years before filing in probate court on behalf of the Estate. Livingston asserts that this

knowledge, pursuant to the Discovery Rule, bars the Estate from recovery entirely, including the three years preceding the institution of this action.

Livingston, opposing the partition brought by Martin, filed his Amended Notice of Interest to Purchase per S.C. Code Ann. §15-61-25 on January 21, 2009. On January 26, 2009, Martin, individually and as Personal Representative, filed her Motion to deny Livingston the sole right to purchase the Estate real property pursuant to statute, on grounds of inequity and unconstitutionality. On February 11, 2009 the Court heard this Motion, and issued its Order denying Martin the relief sought, and finding that Livingston may purchase the real property from the Estate pursuant to S.C. Code Ann. §15-61-25. (R. pp. 1-8).

Livingston filed his Motion for Summary Judgment on the issue of the USDA subsidies on March 13, 2010. Upon hearing this Motion, the lower Court found that Livingston breached his duty to the Estate as co-personal representative in pocketing the USDA subsidies and failing to apply them to the Estate. Further, the Court found the USDA subsidies were properly payable to the Estate. The Court found that the S.C. Code Ann. §15-3-530 limited recovery to those USDA payments that had been received by Livingston three years prior to the filing of this action, namely 2003. The recoverable amount received improperly is \$23,380.00, according to this Order.

The Court then found that Livingston is only required to reimburse the Estate in the amount of \$11,690.00, holding he is entitled to a one-half offset in the total amount, pursuant to the Executor de son tort Statute. (R. pp. 9-11).

Martin filed her Motion for Reconsideration as to the issues addressed within the June 3, 2009 Order of Special Referee Burgdorf on June 18, 2009. The Court issued its

Order November 16, 2010, reiterating that S.C. Code Ann. §15-61-25 is applicable to this probate matter and that the statute does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (R. pp. 9-11).

The Master-in-Equity's approach to this matter creates a hierarchy of heirs-at-law of the Estate of Atn.B. Livingston unanticipated by the Will. Livingston goes first, the Estate goes second, and Martin, in all aspects, takes only what is left. This hierarchy favors Livingston not only over the Estate, but over Martin, as Livingston is allowed to receive his one-half distribution before expenses, while Martin's half is paid to an indebted Estate rather than the other heir. Even if the Estate can distribute all assets now with no deduction for expenses, the result will be three-fourths to Livingston and one-fourth to Martin, whose one-half will then be re-halved. This inequity is not anticipated by the probate code or common law, and this Court cannot permit this injustice against Martin, who both as heir-at-law and personal representative, is penalized for her dutiful service as personal representative of the Estate of her father.

STATEMENT OF JURISDICTION AND APPLICABLE LAW

This action was filed by Martin in both her individual capacity as an heir-at-law of Atn B. Livingston, and as personal representative of the Estate of Atn B. Livingston. The Complaint, filed in probate court, seeks only equitable remedies, namely partition, reimbursement of Estate funds improperly retained by Livingston, and a settling and closing of the Estate. (R. pp. 28-37).

This matter was filed within the Orangeburg County Probate Court, as Atn Burns Livingston resided in Orangeburg County at the time of his death. Atn Burns Livingston died testate, and the Will was filed for informal probate on December 10, 1999. (R. pp.

28-37). The Complaint alleges that the partition is necessary in aid of assets, to provide liquidity needed to settle the Estate.

The Probate Court has subject matter jurisdiction to hear this matter. "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Majors v. S.C. Sec. Comm'n*, 373 S.C. 153, 159, 644 S.E.2d 710, 713, *rehearing denied May 23, 2007; Cert. denied October 15, 2007; cited affirmatively in Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009). The South Carolina Probate Code grants the probate court exclusive jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, and determination of heirs and successors of decedents and estate or protected persons. *See S.C. Code Ann. §62-1-302(a)(1)*. This grant of jurisdiction is limited by S.C. Code Ann. §62-1-302(d), which requires certain causes of action to be removed from probate court to circuit court. By Order of Probate Judge Pandora Jones Glover, this case was removed to the circuit court pursuant to this statute. Section 62-1-302, S.C. Code of Laws, thus requires removal to circuit court, but does not strip the applicability of the probate code to the subject matter at issue.

The Probate Court is a constitutional court, and its jurisdiction in matters testamentary and of administration are vested as the General Assembly may provide, consistent with Article V, §12 of the South Carolina Constitution. *See S.C. Constitution, Article V, Section 12; Davis v. Davis*, 214 S.C. 247, 52 S.E.2d 192 (1949). Therefore the extent of the probate court's jurisdiction is defined exclusively by our legislature. *See Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.C.2d 897, 900 (1989). The subject matter herein, partition of Estate real estate and an equitable action for reimbursement of

improperly retained Estate assets, fall squarely within the definition of “claims” which must be brought in probate court. *See* S.C. Code Ann. §62-1-302(a)(1); S.C. Code Ann. §62-1-201(4); *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408, 412-414 (2011). Apart from these “claims” arising incident to the partition, §62-3-620, S.C. Code Ann. (Executor de son tort) particularly describes Livingston’s improper receipt of USDA subsidies as tortious conduct particularly appropriate to probate court, as Livingston improperly assumed the role of executor despite having been formally stripped of his authority as personal representative for dereliction of duty. *See Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011); *Vaughn v. Lanford*, 81 S.C. 282, 62 S.E. 316 (1908); *Haley v. Thomas*, 30 S.C. 270, 276, 9 S.E. 110, 112 (1889).

Thus, pursuant to the South Carolina Constitution, South Carolina Code of Laws, and case law, Martin, as personal representative and as heir-at-law, was required to bring this exclusively equitable action in probate court, and the matter was properly removed pursuant to S.C. Code Ann. §62-1-302(d) to circuit court. Therefore, while the circuit court has subject matter jurisdiction to hear this case, this equitable matter continues to be singularly governed by the probate code. *See Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009).

STANDARD OF REVIEW

This is a purely equitable action for partition of real estate held by an estate and reimbursement to an Estate for improperly received funds. *See Laughon v. O’Bratis*, 360 S.C. 502, 602 S.E.2d 108 (Ct. App. 2004), rehearing denied September 22, 2004, certiorari denied February 15, 2006. “When reviewing an equitable action, this Court may find facts in accordance with its own view of the preponderance of the evidence.”

Doe v. Clark, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995); *Anderson v. Anderson*, 299 S.C. 110, 113, 382 S.E.2d 897, 899 (1989). "This broad scope of review does not require the appellate court to ignore the fact that the master was in a better position to assess the credibility of witnesses and assign weight to their testimony." *Tiger, Inc., v. Fisher Argo, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989); *Dorchester County Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 452, 477 S.E.2d 476, 480 (Ct.App. 1996).

RESPONSIVE ARGUMENTS

Heirs-at-law of an open Estate are Not Properly Identified By the Term of Art "Co-tenants"

Livingston asserts that he and Martin, as heirs-at-law, are cotenants, and are entitled to utilize the assets of the open Estate of Atn B. Livingston without regard to the administration of the open Estate or one another. Livingston further claims that he and Martin entered into an oral agreement for Livingston to rent the entire 269-acre farm and position himself to receive the USDA subsidies, as well as maintain the land, as required by the USDA program. (R. p. 162, line 21 – p. 163, line 25; R. p. 166, line 5 – p. 167, line 25). Martin denies the existence of such an agreement. (R. p. 139, line 2 – p. 22, line 23). There is no evidence of any such rental payments being received by the Estate, or such payments being made by Livingston in the record. (R. pp. 242 – 246). There has been no Deed of Distribution in this Estate.

Martin and Livingston, individually, do not hold title to the subject real estate. In this situation, §62-3-711, South Carolina Code, provides, the "personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." S. C. Code Ann. §62-3-711(A). This means that Martin, in her capacity as personal

representative, holds title to the real estate, in trust for the heirs-at-law, including Livingston.

Martin occupies a dual role in this case, and is indeed named as a party to this action in these two capacities. She is both an heir-at-law and the duly appointed personal representative of the Estate. As personal representative, she is charged with the responsibility to administer the Estate, pay just debts, and distribute property according to the Will. *See S.C. Code Ann. §62-3-101, et seq.* Both Martin and Livingston, as heirs of the estate, do have an interest in the subject real estate, subject to the divestiture that may become necessary during the sound administration. *See S.C. Code Ann. §62-3-101.*

Prior to the issuance of a deed of distribution from the Estate, the parameters of their interests are indefinable. Without first completing the administration of the Estate, it is unknown what portion of the real estate within the Estate will actually be formally distributed to either heir. While title to the property is not “up in the air,” it is currently held by Martin, as Personal Representative, in trust for the beneficiaries of the Estate, pursuant to S.C. Code Ann. §62-3-711(A), subject to divestiture. Livingston and Martin have not yet taken title by deed or operation of law. They are not co-tenants, in the traditional sense, but are rather co-tenants, subject to operation of the Probate Code and sound administration of the Estate.

South Carolina does allow co-tenants, subject to the operation of the Probate Code, to execute family agreements for the use of property not yet deeded out from an open Estate. Section 62-3-912, S.C. Code of Laws Ann., describes this procedure: “Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled

under the will of the decedent...in any way that they provide in a written contract executed by all who are affected by its provisions.”

Livingston asserts and he and Martin entered into an oral agreement to allow Livingston to rent Martin’s interest as co-tenant, or to receive USDA farm subsidy payments including any portion due and owing to Martin. It is unclear what the terms of the alleged oral agreement may have been. The absurdity of Livingston’s position that he and Martin agreed orally to allow Livingston to receive approximately \$23,380.00 in USDA payments is clearly demonstrated by the fact the Estate had to borrow \$19,675.26 from Martin to operate when the Estate could have been receiving the USDA payments for liquidity. The Estate, to its detriment, suffered financially because of Livingston’s actions with the USDA subsidy payments.

Livingston also opposed the cutting of timber to generate funds for administration purposes while receiving the USDA funds to the detriment of the administration of the Estate.

Neither party alleges that the heirs-at-law executed a written agreement. Absent such a written agreement, Livingston and Martin continue to be bound by their mutual obligations as co-tenants, subject to the operation of the probate code.

A co-tenant in possession of the common premises, or any portion of them, who has excluded the other cotenant, is accountable to them for the rental value of their interests for the period of exclusion. In some instances, a cotenant in possession of the property, claiming adversely to his or her cotenants, may be charged either on the basis of rent received or rental value, whichever is greater. *See 20 Am. Jur. 2d Cotenancy and Joint Ownership §49 (2011).*

In this case, Livingston improperly excluded Martin, and the Estate of Atn B. Livingston from their portion of the USDA subsidy payments. His unilateral activity, and indeed his improper activity, generated funds for Livingston personally, without notice to or consent of Martin, individually or as personal representative.

The Appellate Court, sitting as a Court of equity must require Livingston to reimburse the Estate with these funds, subject to the applicable Statute of Limitation, "purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." See *Ackerman v. Heard*, 287 S.C. 626, 628-29, 340 S.E.2d 560, 562 (Ct.App.1986), cited affirmatively in *Laughon v. O'Bratis*, 360 S.C. 520, 526-528, 602 S.E.2d 108, 112 (Ct. App. 2004), rehearing denied September 22, 2004, certiorari denied February 15, 2006.

Section 15-3-530 Does Not Bar Recovery for the Discrete and Recurring Annual Compensable Activity

Livingston asserts Martin, as personal representative, is barred from bringing any claim for recovery based on the annual USDA subsidy application, which was originally filed in April of 2000. Martin testified she was alerted to the USDA subsidy arrangement with Livingston in April 2002. (R. p. 140, line 4 – R. p.141, line 24).

From April, 2000 until Order of the lower court, Livingston annually renewed his application as farm operator in order to continue receiving USDA subsidies, as farm operator. (R. pp. 203-230). Livingston received payments on an irregular annual basis, with payments coming no less than once a year since 2000, and not exceeding more than three payments a year. (R. pp. 203-230). Livingston applied for these payments in the

name of the Estate, in his own name individually, and as recently as 2005, as Personal Representative of the Estate. (R. pp. 203-230). Livingston was removed as Personal Representative of the Estate by court order in 2002. (R. pp. 234-235). At no point did Livingston contribute these funds to the open Estate, or disclose their receipt to Martin, Personal Representative. (R. p 165, line 22 – p. 166, line 5).

Regardless of the original filing for subsidies, Livingston was required to annually represent himself to the USDA as the proper party to receive the subsidies. This continuing representation does not effect a complete bar, as each new application and renewal gives rise to a new cause of action and Martin, as personal representative, is entitled to recover for each discrete instance which occurred within the statutory period. This concept is clearly delineated in South Carolina case law on continuing tort or continuing nuisance. *See Silvester v. Spring Valley Country Club*, 344 S.C. 280, 543 S.E.2d 563, (Ct.App. 2001), *rehearing denied April 9, 2001; cert. denied October 25, 2001; Cutchin v. South Carolina Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 389 S.E.2d 646 (1990); *McCurley v. South Carolina State Highway Dep't*, 256 S.C. 332, 182 S.E.2d 299 (1971).

Each annual representation to the USDA that Livingston was authorized by the Estate of Atn B. Livingston, or even the personal representative collecting for the Estate is a discrete compensable event to which the Estate of Atn B. Livingston is entitled to recovery.

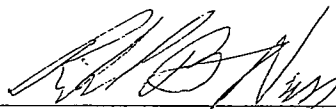
CONCLUSIONS

The Master-in-Equity correctly ruled on the matters from which Livingston now appeals. Livingston's singular goal in the administration of his father's Estate has been

to avoid having his portion of the gross Estate reduced in anyway by the necessary costs of Estate administration.

The actions of Livingston, as borne out by the record, have financially harmed the Estate. Not only has Livingston opposed the sale of timber and efforts by the Estate to generate liquidity, his actions in diverting the USDA payments have financially stripped the Estate. Further, his efforts to assert his individual right to "purchase" the Estate real estate are expected to be offset by exercise of the Executor de son tort statute, in which case he would only be required to pay the Estate one-half of the value of the real estate, namely his sister's one-half portion. All costs and expenses of administration would thereby be borne in their entirety by Martin, as punishment for dutifully serving as personal representative of the Estate. This Court must not allow this inequity in this uniquely probate matter.

This Court should rule against Livingston on these matters; and reverse the Master-in-Equity on the aspects appealed by Martin.



Richard B. Ness
NESS & JETT, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

April 16, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, Richard B. Ness, attorney for the Respondent in the appeal of *In re: Estate of Atn Burns Livingston, Emma Lou Martin Livingston Martin as Personal Representative, et al.*, v. *Clyde B. Livingston, et al.*, Docket Number: 2007-CP-38-826, Case Tracking Number: 201079986, do hereby certify the foregoing Final Respondent's Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

April 16, 2012

[Signature]

Richard B. Ness
Ness & Jett, LLC
P.O. Box 909

Bamberg, South Carolina

Bamberg, South Carolina 29003

Phone: (803) 245-5178

Fax: (803) 245-5384

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

FINAL REPLY BRIEF OF APPELLANT/RESPONDENT

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

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STATEMENT OF ISSUES

- I. Is the argument advanced by Respondents/Appellants grounded in an incorrect legal theory?
- II. Have Respondents/Appellants assumed facts in their arguments without evidence to support them?
- III. Does Respondents/Appellants' argument misconstrue the effect of cases and statutes?
- IV. Does Respondents/Appellants' "continuing tort" argument ignore key facts?

ARGUMENT

I. Emma's argument is founded on incorrect legal assumptions.

As discussed in Appellant/Respondent (hereinafter "Clyde")'s brief, Clyde received benefits from the USDA because of an agreement he had with that agency as a farm operator. (R. pp. 13, 14, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The USDA paid him those benefits because of what he was obligated to do and not do as a farm operator. (R. p. 13, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The right to receive USDA payments is not an incident of land ownership.

~~Nevertheless, Respondents/Appellants (hereinafter "Emma") fail to recognize~~
 this. Emma's entire argument is grounded in the incorrect notions that the right to USDA benefits was somehow an incident of title to the land and that the Estate somehow owned the land. (Initial Respondent's Brief of Respondents/Appellants pp. 9-13.) Both of these contentions are wrong as a matter of law. S.C. Code Ann. § 62-3-101 ("[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last will"); Taylor v. Jennings, 233 S.C. 600, 607, 106 S.E.2d 391, 395-96 (1958); Fischer v. Bennett, 202 S.C. 534, 25 S.E.2d 746, 748 (1943); Carter v. Wroten, 187 S.C. 432, 198 S.E. 13, 15 (1938); see Professional Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985) (ordinarily, only parties with rights under a contract are promisor and promisee). Accordingly, Emma's argument fails as a matter of law.

II. Emma's brief makes claims of fact that are unsupported by the record.

Emma states in her brief that Clyde applied for USDA payments "in the name of the Estate" and as personal representative of the Estate of Atn B. Livingston. Initial Respondent's Brief of Respondents/Appellants p. 13.) That is simply not correct. It is not shown by the record, because it is not true. Clyde, the farm operator under his agreement with the USDA, always applied for and received USDA payments as an individual. (R. pp. 13, 14, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.)

Emma argues in her brief that "the Estate had to borrow \$19,675.26 from Martin to operate[.]" (Initial Respondent's Brief of Respondents/Appellants p. 11.)

Not only was no evidence to support this contention presented to the Master, the validity of Emma's purported note (at interest) and mortgage from herself (as personal representative) to herself (individually) is quite contested and is an issue to be tried at a later hearing in this case. (R. pp. 4-5, 6-8, 30-31, 45-46, 47.) It is an issue concerning the validity, priority, and extent of an alleged lien. (R. pp. 4-5, 6-8, 30-31, 45-46, 47.) Moreover, this statement demonstrates that Emma's argument is based on a misperception of what an estate is. An estate does not "operate" like a business; it is just a vehicle for distributing property a dead person owned when he died. See S.C. Code Ann. § 62-3-101. The job of the personal representative is just "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and [the Probate] [C]ode, as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. § 62-3-703(a).

Emma also states the following:

The Master-in-Equity's approach to this matter creates a hierarchy of heirs-at-law of the Estate of Atn B. Livingston unanticipated by the Will. Livingston goes first, the Estate goes second, and Martin, in all aspects, takes only what is left. This hierarchy favors Livingston not only over the Estate, but over Martin, as Livingston is allowed to receive his one-half distribution before expenses, while Martin's half is paid to an indebted Estate rather than the other heir. Even if the Estate can distribute all assets now with no deduction for expenses, the result will be three-fourths to Livingston and one-fourth to Martin, whose one-half will then be re-halved. This inequity is not anticipated by the probate code or common law, and this Court cannot permit this injustice against Martin, who both as heir-at-law and personal representative, is penalized for her dutiful service as personal representative of the Estate of her father.

(Initial Respondent's Brief of Respondents/Appellants p. 6.)

What does Emma base this on? There is nothing in any order issued in this case that tends to do any of these things. Judge Burgdorf's order did not alter the inheritance shares of the devisees of Atn Livingston. (R. pp. 12-17.) In trying to paint a picture that calls for this Court to intervene on Emma's behalf, Emma has described a situation that does not exist.

III. Cases and statutes are cited in Emma's brief for things other than what they say.

Emma contends that S.C. Code Ann. § 62-3-711(a) "means that [she], in her capacity as personal representative, holds title to the real estate[.]" (Initial Respondent's Brief of Respondents/Appellants p. 10.) This ignores the plain language of S.C. Code Ann. § 62-3-101, which states that "[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last

will” and ignores the long-standing law of this state that title to realty passes at death. Taylor, 233 S.C. at 607; Fischer, 25 S.E.2d at 748; Carter, 198 S.E. at 15. Real property is not “property of the estate” described in S.C. Code Ann. § 62-3-711(a). In fact, that Code section itself distinguishes between real and personal property; subsections (b) and (c) describe limits on the power of a personal representative to act with regard to realty. S.C. Code Ann. § 62-3-711(b) & (c).

Emma states that she and Clyde are not cotenants in the traditional sense of the land they inherited from their father. (Initial Respondent’s Brief of Respondents/Appellants pp. 10-11.) This is wrong. “Cotenancy” is any “tenancy with two or more owners who have unity of possession.” Black’s Law Dictionary (2d pocket ed.) 698. ~~“Examples are a joint tenancy and a tenancy in common.”~~ Id.

Devisees who inherit real property are tenants in common, a type of cotenancy.” See State v. Singley, 392 S.C. 270, 275-76, 709 S.E.2d 603, 606 (2011); Watson v. Little, 224 S.C. 359, 364-65, 79 S.E.2d 384, 387 (1953).

Emma seems to be arguing that S.C. Code Ann. § 62-3-912 states that the only way that devisees who inherit real property may lawfully use it while the decedent’s estate is open is pursuant to a written agreement. (Initial Respondent’s Brief of Respondents/Appellants p. 11.) This is also wrong. That statute, in pertinent part, provides that “competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions.” S.C. Code Ann. § 62-3-912. This is not a statute concerned with *use* of property, as Emma argues (Initial

Respondent's Brief of Respondents/Appellants p. 10); rather, it provides a mechanism whereby heirs or devisees may alter the amount of what they inherit. S.C. Code Ann. § 62-3-912. To use the land he inherited as a farm operator, Clyde was not required to enter into a written agreement with Emma under a statute governing alteration of inheritance shares. Id.

Emma argues that this Court must require Clyde to "reimburse" the Estate of Atn Livingston for payments the USDA made to Clyde as a farm operator. (Initial Respondent's Brief of Respondents/Appellants p. 12.) Emma cites Ackerman v. Heard, 287 S.C. 626, 628-29, 340 S.E.2d 560, 562 (Ct. App. 1986), and Laughon v. O'Braitis, 360 S.C. 520, 526-28, 602 S.E.2d 108, 112 (Ct. App. 2004), for the proposition that this is required "purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another." (Initial Respondent's Brief of Respondents/Appellants p. 12.) Clyde is not sure why Emma is citing Ackerman and Laughon, since they concern the partition rule that a cotenant who makes an improvement to real property is entitled to compensation for value added to the property by the improvement. Laughon, 602 S.E.2d at 112; Ackerman, 287 S.C. at 628-29. In fact, the whole passage from Ackerman that is quoted in Laughon reads as follows:

The general rule is that a joint tenant who, at his own expense, places permanent improvements upon the common property is entitled in a partition suit to compensation for the improvements whether his cotenants assented thereto or not. Compensation is allowed not as a matter of legal right but purely from the desire of a court of equity to do justice and to prevent the one tenant from becoming enriched at the expense of another. In the absence of consent, which we did not have in the case before us, the amount of

compensation is estimated by and *limited to* the amount by which the value of the common property has been enhanced.

Id. (emphasis in original). This hardly stands for the proposition that this Court is obligated to require Clyde to turn over to the estate money that was never part of the estate to begin with. Clyde could not have “improperly excluded [Emma], and the Estate of Atn B. Livingston from their portion of the USDA subsidy payments” that the USDA was obligated to pay to Clyde, an individual farm operator. (Initial Respondent’s Brief of Respondents/Appellants p. 12.)

IV. Emma’s “continuing tort” argument ignores key facts.

Under the principles of tort law, “[t]he key inquiry is what duty, if any, is owed by the tort-feasor[.]” Andrade v. Johnson, 356 S.C. 238, 588 S.E.2d 588, 592 (2003). “It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tort-feasor.” Id. “The elements of a cause of action in tort are, briefly: (1) duty; (2) breach of that duty; (3) proximate causation; and (4) injury.” Shipes v. Piggly Wiggly St. Andrews, Inc. 269 S.C. 479, 482-83, 238 S.E.2d 167, 168 (1977). “Generally, ‘duty’ is the obligation to conform to a particular standard of conduct toward another.” Id. at 483.

Emma argues that each annual renewal of Clyde’s farm operator status constituted an instance of tortious activity by Clyde. (Initial Respondent’s Brief of Respondents/Appellants pp. 13-14.) Emma contended at the hearing that the USDA payments were estate property because of Clyde’s status as co-personal representative when he entered into his agreement with the USDA. (R. p. 176 ln. 20 through p. 177 ln. 19.) Emma argued that, by entering into the farm operator agreement to receive

the USDA subsidy payments, Clyde breached his fiduciary duty as personal representative of the estate. (R. p. 176 ln. 20 through p. 177 ln. 19.) Likewise, the Master concluded that “[w]hen [Clyde] entered into his agreement with the USDA, he breached his duty to the estate as co-personal representative” because Clyde “occupied dual roles” when he made that agreement. (R. p. 15.) The sole basis for the Master’s decision on liability was his (incorrect) conclusion that Clyde breached his duty as personal representative. (R. p. 15.)

As Emma repeatedly notes, Clyde “was removed as Personal Representative of the Estate by court order in 2002.” (Initial Respondent’s Brief of Respondents/Appellants p. 13.) Accordingly, at no time during the three years preceding this filing of this action did Clyde have any duty to the estate or Emma; he

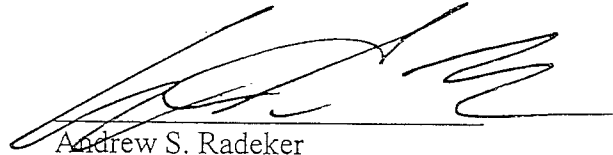
was not a personal representative of the estate. Clyde did *not* “occup[y] dual roles” when he submitted renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007. (R. p. 15.) Those things could not have constituted a breach of Clyde’s fiduciary duty, since at those times he did not have any fiduciary status.

Clyde cannot have committed a “continuing tort” in the absence of any duty.

CONCLUSION

The arguments in Emma’s brief do not change the fact that the USDA payments were not estate property. They do not change the fact that Emma knew more than three years before she brought this case that Clyde had been receiving the payments. Emma was not entitled to any relief, and the Court should reverse the Master and so hold.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

April 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
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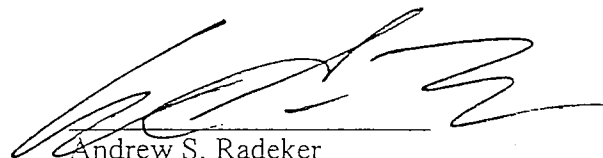
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South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

CERTIFICATE OF COUNSEL

I certify that the foregoing brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

April 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable O. Davie Burgdorf, Master-in-Equity, Presiding

Case No. 2007-CP-38-826

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Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns
Livingston and Emma Lou Livingston Martin, ... Respondents—Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
Banking and Trust Company of South Carolina; and American First Federal, Inc.,
Defendants, of whom Clyde B. Livingston is Appellant—Respondent.

FINAL BRIEF OF RESPONDENTS-APPELLANTS

Richard B. Ness
NESS & JETT, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

April 16, 2012

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STATEMENT OF ISSUES ON APPEAL

- 1: Did the trial court err in failing to apply the South Carolina Probate Code to a partition action removed from Probate to Circuit Court?
- 2: Did the trial court err in allowing an heir-at-law of an open estate to utilize the provisions of §15-61-25, South Carolina Code of Laws, to "buy out" other interests in the estate real estate held in trust by the duly appointed Personal Representative during the administration of the estate?
- 3: Did the trial court err in treating heirs-at-law of an open estate as "joint tenants" or "tenants in common" during the administration of the estate and applying S. C. Code §15-61-25 to the sale of estate lands?
- 4: Did the trial court err in construing S. C. Code Ann. §62-3-619, South Carolina Code of Laws (Executor de son tort Statute), to authorize an heir/Personal Representative to retain improperly withheld Estate monies in an amount equal to his share of the gross Estate (one-half, in this instance) rather than reimbursing the Estate the total amount of those wrongfully obtained funds, so that liquid assets may be available for the sound administration of the Estate?

STATEMENT OF THE CASE

Atn B. Livingston died October 25, 1999. His Will, dated January 28, 1983, and duly probated leaves his entire estate evenly, in fee simple, between his children, Appellant/Respondent Clyde B. Livingston ("Livingston") and Respondent/Appellant Emma Livingston Martin ("Martin"), both of whom survived their father. Within his Will, Atn B. Livingston appointed his two children to serve as Co-Executors of his Estate. By Order of the Orangeburg Probate Court, the siblings, Clyde Livingston and Emma Lou Livingston Martin, were appointed Co-Personal Representatives on December 10, 1999. (R. p. 231).

Emma Lou Livingston Martin, individually and as Personal Representative is Respondent-Appellant, and hereafter is referred to as "Martin." Clyde Livingston, is Appellant-Respondent herein, and hereafter is referred to as "Livingston."

The Estate consists primarily of real estate. The property at issue in this matter consists of a 269 acre tract in Orangeburg County, TMS #0061-00-01-010. The parcel has an appraised value of \$400,000.00. (R. pp. 236-241).

Livingston has several monetary judgments of record against him, individually. These are of record with the Orangeburg County Clerk of Court, and are documented within the Summons and Complaint. (R. pp. 28-37).

Livingston was removed as Personal Representative, by Probate Court Order on January 18, 2002 for dereliction of duty. (R. pp. 234-235).

In the year 2000, without the consent of Martin, individually or as co-Personal Representative, Livingston applied for farm operator status with the United States Department of Agriculture (hereafter USDA). From 2003 until 2008, Livingston,

individually, was paid \$29,902.00 in USDA subsidy payments. The land associated with this farm operator status was the land subject to this action.

In April of 2002, Martin received notice from the USDA that Livingston had been receiving certain USDA subsidies as farm operator for the land subject to this action.

Seeking to generate some liquidity with which to close the Estate, Martin, as Personal Representative, sought permission from the Probate Court to thin timber on the real property subject to this action. Livingston objected to this request, and instead sought immediate distribution of the Estate assets. (R. p. 232).

Martin brought an action to compel Livingston to reimburse the Estate for those USDA subsidies on May 30, 2006. Within this same action, Martin sought a Court Order, pursuant to S.C. Code Ann. §62-3-911, to allow Martin, as Personal Representative, to sell by partition the real estate which is the subject of this action, to aide in the administration of the Estate, since Livingston would not cooperate with the thinning of the timber. (R. pp. 28-37). Following this filing, on behalf of the Estate, the Martin, as Personal Representative, applied for the USDA farm subsidies. The Estate has been receiving such payments since 2008.

Livingston filed his Amended Notice of Interest to Purchase per S.C. Code Ann. §15-61-25 on January 21, 2009. On January 26, 2009, Martin, individually and as Personal Representative, filed her Motion to deny Livingston any right to purchase the real property being the subject matter of this action, on grounds of inequity and unconstitutionality. On February 11, 2009 the Court heard this Motion, and issued its Order denying Martin the relief sought, and finding that Livingston may purchase the real

property from the Estate pursuant to S.C. Code Ann. §15-61-25. (R. pp. 1-8). From this Order, Martin appeals.

Livingston filed his Motion for Summary Judgment on the issue of the USDA subsidies on March 13, 2010. Upon hearing this Motion, the lower Court found that Livingston breached his duty to the Estate as Co-Personal Representative in pocketing the USDA subsidies and failing to apply them to the Estate. Further, the Court found the USDA subsidies were properly payable to the Estate. The Court found that the S.C. Code Ann. §15-3-530 limited recovery to those USDA payments that had been received by Livingston three years prior to the filing of this action, namely 2003. The recoverable amount received improperly is \$23,380.00.

~~The Court then found that Livingston is only required to reimburse the Estate in~~
the amount of \$11,690.00, holding he is entitled to a one-half offset in the total amount, pursuant to the Executor de son tort Statute. (R. pp. 9-11). From this portion of the Order, Martin appeals.

Martin filed her Motion for Reconsideration as to the issues addressed within the June 3, 2009 Order of Special Referee Burgdorf on June 18, 2009. The Court issued its Order November 16, 2010, reiterating that S.C. Code Ann. §15-61-25 is applicable to this probate matter and that the statute does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (R. pp. 9-11). From this Order, Martin appeals.

STANDARD OF REVIEW

“A partition action is an equitable action, heard by a judge alone and, as such, this Court on review may find facts in accordance with its view of the preponderance of the evidence.” *Ackerman v. Heard*, 287 S.C. 626, 340 S.E.2d 560 (Ct.App. 1986), cited affirmatively in *Anderson v. Anderson*, 299 S.C. 110, 113, 382 S.E.2d 897, 899 (1989).

ARGUMENTS

I. THE TRIAL COURT ERRED IN FAILING TO APPLY THE SOUTH CAROLINA PROBATE CODE TO THIS ACTION, AND PREVENTING THE ADMINISTRATION OF THE PROBATE ESTATE.

A. The South Carolina Probate Code Applies in this Case

This action originated in Probate Court, to recover the USDA payments improperly made to Clyde B. Livingston individually and to partition the real estate included within the estate. The case was removed to Circuit Court upon Martin’s Motion for removal, pursuant to §62-1-302(d). (R. pp. 18-21).

In an action removed to Circuit Court pursuant to S.C. Code Ann. §62-1-302, which remains an action governed by the Probate Code, the Probate Code continues to apply. *See Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992)(rehearing denied).

Section 15-61-50, S.C. Code of Laws, states: “The Court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in

interest, by the sale of the property and the division of the proceeds according to the rights of the parties.”

This statute provides the Circuit Court with jurisdiction to hear a partition action, requires that the division of partition sale proceeds be distributed according to the rights of the parties. However, under the terms of the Will, and the South Carolina Probate Code, the rights of each party as heirs-at-law of decedent’s estate are tempered by the superseding necessity of soundly administering the Estate of Atm B. Livingston. It is the express purpose of the Probate Code to expedite the settling of decedent’s assets, and to promote efficiency in making distributions. *See S. C. Code Ann. §62-1-102*. To that end, a Personal Representative is additionally tasked with a particular order of priority, within which she must attend to the expenses and claims presented in the administration of the Estate. *See S. C. Code Ann. §62-3-805*.

The Master-in-Equity has erred in applying S.C. Code §15-61-25 for partition of estate lands during the administration of the estate. In this action, the trial court granted Livingston the right of first refusal under S.C. Code §15-61-25, whereby he may “buy-out” whatever interest his sister may obtain in the real estate held by the Estate at its closing. The trial court’s Order disregards the effects of this action on the administration of the Estate. (R. pp. 1-8). This is prohibitively inefficient in practice, and patently inequitable in effect.

This conflict between the sound administration of the Probate Estate under the Probate Code, and the partition of the real property held by the estate by statute must be resolved in favor of the Estate’s administration. Under the Probate Code, partition sales

must be conducted in accordance with S.C. Code Ann. §62-3-1301, et seq., exclusively.

Any other procedure for partition is inapplicable to this matter.

B. The Personal Representative has Statutory Authority and Duty to Administer the Estate, including Selling Real Property

Section 62-3-711, South Carolina Code, describes the powers of a Personal Representative. In general, "Until termination of his appointment... a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." S. C. Code Ann. §62-3-711(A).

This Section contains an exception, which states that a Personal Representative may not sell real property of the estate except as authorized pursuant to S.C. Code §62-3-1301, et seq. *See S. C. Code §62-3-711(B)*. Further, subsection (C) states: "If the will of a decedent devises real property to a personal representative or authorizes a personal representative to sell real property, (...), then subject to Section 62-3-713, the personal representative, acting in trust for the benefit of the creditors and others interested in the estate, may execute a deed in favor of a purchaser for value, who takes title to the real property in accordance with the provisions of Section 62-3-910(B)." *See S. C. Code §62-3-711(C)*.

The Will of Atn B. Livingston does not authorize the Personal Representative to sell real property. However, Decedent left the property to Martin and Livingston, in equal, undivided shares. (R. p. 247). Therefore, Martin, as Personal Representative, under subsection (C) is authorized to sell the real property at issue, in accordance with the provisions of Section 62-3-910(B), South Carolina Code. Martin concedes that she must

obtain a Court Order to sell the real estate, and must comply with S. C. Code Ann. §62-3-1301, et seq., as well. Further, Martin, as Personal Representative, has followed the required path in her effort to sell the property in Order to administer the Estate.

Section 62-3-910(B) authorizes a Personal Representative to sell real property to a purchaser for value, who in turn receives a deed from the Personal Representative, taking title to the real property free of rights of any heirs or devisees or other interested person in the estate and incurs no personal liability to the estate or to any heir or devisee or other interested person in the estate. *See §62-3-910(B), South Carolina Code.*

These Code Sections describe the authority with which a Personal Representative may sell Estate real property. Explicitly, the power to sell, mortgage, or lease real property of the estate is expressly enumerated in §62-3-715(21), South Carolina Code.

In this action, Martin, as Personal Representative, attempted to comply with §62-3-1301, et seq., in filing a petition for sale and partition of the real estate in the Probate Court. Her pleadings reflect this intent. (R. pp. 28-37). Martin, as Personal Representative, had statutory authority, pursuant to the multiple code sections cited above, to seek Court approval for the partition sale of real estate, for the just and effective administration of the Estate.

Currently, the Estate owes Personal Representative fees, attorney fees, administrative expenses, and property taxes, in addition to a 2006 Note and Mortgage in the amount of \$19,675.26, secured by the subject real estate. This Note was necessary to obtain some liquidity to pay just debts and administration expenses of the Estate. (R. p. 174, line 1- p. 175, line 14).

Martin, as Personal Representative, has full authority and a legal duty to administer the Estate, pursuant to the South Carolina Probate Code. The Court erred in allowing Livingston to use S.C. Code Ann. §15-61-25, to thwart Martin, as Personal Representative, in the exercise of her duties. The Estate owes just debts in an amount exceeding \$20,000. This amount will continue to grow until the Estate can be closed, and the assets therein distributed according to the Will of Atn B. Livingston.

II. THE TRIAL COURT ERRED IN APPLYING S. C. CODE §15-61-25 TO THIS PARTITION OF PROBATE ESTATE LANDS.

A. The South Carolina Legislature Explicitly Rejected the Application of Section 15-61-25 in the Probate Setting

During the 2005-2006 Legislative Session (Session 116), the Senate introduced a bill, identified as S0925. This bill contained two Sections. The first Section contained the text which eventually became S.C. Code §15-61-25 (Rat #0322 of 2006, Act #0302 of 2006). The second proposed portion was to amend §62-3-911, Code of Laws of South Carolina. This amendment mirrors S. C. Code Ann. §15-61-25, and would give one or more heirs or devisees the right of first refusal to purchase the subject property before its judicial partition.

On April 27, 2006, the Senate Amended S0925 removing all proposed language amending §62-3-911, Code of Laws of South Carolina. The South Carolina legislature expressly considered an amendment to the Probate Code to allow heirs and devisees to exercise a right of first refusal to purchase estate property prior to judicial partition. Upon the recommendation of the Committee on Judiciary (JUD0925.002), the Legislature did not pass this portion of S0925.

The legislative history clearly shows the legislature intended S.C. Code §15-61-25 to be limited in application to only non-probate situations. A partition action brought by a Personal Representative pursuant to §62-3-911, Code of Laws of South Carolina, is governed exclusively by the rules and regulations described within the Probate Code. The legislature considered amending §62-3-911, Code of Laws of South Carolina, to allow the application of a right of first refusal in the probate partition situation, and specifically declined this application. Extending the application of S.C. Code §15-61-25 to this instance violates the clear legislative intent of the South Carolina Legislature. The Master-in-Equity erred in extending this statute into the realm of a probate partition, where the Legislature specifically declined to do so.

B. Section 15-61-25 Does Not Apply to Property Held by An Estate

Section 15-61-25 only applies to property owned by “joint tenants or tenants in common.” Prior to the closing of the Estate of Atn B. Livingston, and the issuance of a Deed of Distribution, Martin and Livingston are neither joint tenants nor tenants in common. Each party is an heir-at-law and beneficiary of the Estate of Atn B. Livingston, subject to the divestiture that may become necessary during the sound administration. *See S.C. Code Ann. §62-3-101.* Without first completing the administration of the Estate, it is unknown what portion of the real estate within the Estate will actually be formally distributed to either heir. While title to the property is not “up in the air,” it is currently held by Martin, as Personal Representative, in trust for the beneficiaries of the Estate, pursuant to S.C. Code Ann. §62-3-711(A), subject to divestiture.

Livingston and Martin are not “joint tenants or tenants in common” for purposes of §15-61-25, and therefore the right of first refusal provisions contained therein are inapplicable to this case.

C. Section 15-61-25 is Inequitable as Applied in this Case

Martin, as Personal Representative, asserts that S.C. Code Ann. §15-61-25, as applied in this matter, violates the Constitutional and equitable rights of Martin, as an heir of the Estate of Atn B. Livingston, and as a Personal Representative.

Livingston asserts that he is entitled to purchase Martin’s one-half undivided interest in the subject property, pursuant to the statutory guidelines of S. C. Code §15-61-25. ~~As Livingston contends he is already vested with his own one-half undivided~~ interest, he posits that he need only compensate the Estate for the value of the remaining one-half interest. (R. p. 100, line 25 – p. 102, line 22). According to Livingston, the Estate should handle all administrative expenses, including just debts, attorney fees, and compensation for the Personal Representative, pursuant to S.C. Code §62-3-719, from the proceeds of the partition sale.

This arrangement would leave Livingston with possession of his own one-half undivided interest, Martin’s one-half undivided interest, and the right to inherit one-half of the remaining assets of the Estate after the closing of the Estate. Martin, who has dutifully served as Personal Representative, and brought the partition action to fulfill that obligation, will end up losing possession of her one-half undivided interest to the buy-out, will be denied the equal opportunity to buy-out Livingston’s portion, and will be charged as Personal Representative with the responsibility to use the remaining estate

assets to settle the estate, including paying medical expenses, administrative fees, and just debts. Martin, as Heir-at-Law, will be penalized for attempting to settle the Estate pursuant to the South Carolina Probate Code, and for acting as Personal Representative of the Estate.

This scenario was explicitly rejected by the South Carolina Legislature while drafting Section 15-61-25, S.C. Code of Laws. *See April 27, 2006, Committee on Judiciary Notes and Amendments, Session 116, 2005-2006, S0925 (Rat #0322, Act #0302 of 2006)*. As applied, Livingston is able to essentially deprive the Estate of Atn B. Livingston of the majority of its assets, in contravention to the terms of the Will. Following the proposed buy-out, the Estate will need to be settled with the remaining liquid assets; and at the closing of the Estate, Martin, as Heir-at-Law will receive a significantly smaller percentage of her father's Estate than required by the Will.

The inequity inherent to this application is obvious and severe. Pursuant to the South Carolina Probate Code, Martin, as Personal Representative, is the only party authorized to seek partition of the property. In fulfilling this statutory requirement, Martin, as heir-at-law and Personal Representative, is then forbidden the right of first refusal described within S.C. Code Ann. §15-61-25.

Livingston would receive a windfall should the Court allow S.C. Code Ann. §15-61-25 to apply to this distinctly Probate matter. This windfall is inequitable, and would penalize Martin for properly serving as Personal Representative. As Personal Representative, charged with the duty to administer the estate, and being the only party with the ability to bring a Petition for Sale in Aid of Assets, Martin as heir-at-law is systematically and unjustly denied the rights available to other non-Personal

Representative heirs of the open estate. Not only is Martin denied access to the “buy-out” provisions of S.C. Code Ann. §15-61-25, but she also forced to carry the entire burden of administering the estate, while Livingston takes his share without consideration for the expenses associated with administering an estate, including attorney’s fees, appraisals, court fees, and just debts.

**III. THE TRIAL COURT ERRED IN PERMITTING DEFENDANT
LIVINGSTON TO RETAIN ONE-HALF OF HIS IMPROPERLY WITHHELD
SUBSIDIES WITHOUT REGARD TO EXPENSES OF ESTATE
ADMINISTRATION.**

The November 17, 2010 Order of the Master-in-Equity states that Livingston is entitled to retain one-half the value of his debt to the estate for the improper withholding of Estate assets in the form of USDA subsidies, pursuant to S.C. Code Ann. §62-3-619, also known as the “Executor de son tort” statute. This ruling allows Livingston to retain one-half the gross value of the Estate receivables. Pursuant to the ruling, the other half must be returned to the Estate, and may then be utilized to pay the just debts of the Estate, including medical bills, taxes, administration fees, and payment on the outstanding Note and Mortgage. Under this ruling, post-closing, Martin, as heir-at-Law, would be entitled to only this diminished amount. Martin, as heir-at-Law, would shoulder the entire burden of administering the Estate, and her portion would be reduced the full measure.

“Executor de son tort” is a legal concept by which persons wrongfully holding estate property are called upon to account for and restore the property to the duly appointed personal representatives, withholding from repayment only so much as is owed to the holder as an estate creditor and such sums as should have been paid by the personal representative but were paid by the holder for the benefit of the estate. *See S.C. Code.*

§§62-3-619 and 62-3-620. The law provides that the Court “shall require of him a discovery and account” of the estate property in his possession, and “shall proceed to decree against him for the value of the estate and effects” he has taken, wasted or lost. *See S.C. Code §62-3-620. See also Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011).

Nowhere does the South Carolina Probate Code provide for such person, if an heir or devisee, to withhold his “share” (be it half or otherwise) from his obliged repayment. Indeed, an estate with debts exceeding assets would consume in its administration all sums repaid by an “executor de son tort.” Thus, the Master-in-Equity was simply wrong in concluding Livingston would have received half the USDA subsidies. The Estate was entitled to all of those payments, and Livingston’s “half” share of the Estate would be half of the funds remaining, if any, after the administration was complete.

Under the Master-in-Equity’s ruling, Livingston would receive a windfall for his improper conduct. This inequity is not anticipated by the Probate Code, and should not be allowed.

IV. THE TRIAL COURT ERRED IN CONCLUDING THAT JUDGMENTS OF AN HEIR-AT-LAW AFFECT THE ABILITY OF A PERSONAL REPRESENTATIVE OF AN OPEN ESTATE TO CONVEY GOOD TITLE TO REAL ESTATE

Livingston has several valid judgments of record against him in Orangeburg County. This fact does not affect the ability of the Estate of Atn B. Livingston to convey good and clean title to a purchaser for value.

Section 62-3-101, S.C. Code Ann., states: “Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will, . . . , subject to the

purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative under §§62-3-709, 62-3-710, 62-3-711.” Sections 62-3-709 through 711, S.C. Code Ann., require the Personal Representative to take possession or control of decedent’s property as necessary for the sound administration of the estate, including the ability to sell real property with Court approval, as described above.

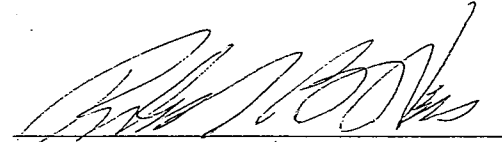
At a motions hearing on this issue, certain representatives of Livingston’s individual creditors advanced the argument that any judgment recorded in Orangeburg County has already attached to Livingston’s interest in the Estate, and therefore the Estate cannot convey good and clean title to any purchaser for value. (R. p. 106, line 5 – p. 109, line 17).

The Master-in-Equity accepted this argument, yet failed to incorporate this into his Order. Instead, the Order states: “The Court does have the ability to pass title to the real property in this action free and clear of liens, even if the purchase price paid for the property is less than the amount of the debts secured by those liens. A judgment lien against a party to a partition action is transferred to that party’s share of the sale proceeds if a sale is ordered.” (citations omitted). (R. pp. 1-8).

This statement is therefore the law of the case. Livingston cannot rely on any arguments in contravention of this conclusion.

CONCLUSIONS

For the reasons stated above, Martin asserts this Court should reverse the Orders of Special Referee O. Davie Burgdorf.



Richard B. Ness
NESS & JETT, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

April 16, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, Richard B. Ness, attorney for the Respondent in the appeal of *In re: Estate of Atn Burns Livingston, Emma Lou Martin Livingston Martin as Personal Representative, et al.*, v. *Clyde B. Livingston, et al.*, Docket Number: 2007-CP-38-826, Case Tracking Number: 201079986, do hereby certify the foregoing Final Brief of Respondents-Appellants complies with Rule 211(b), SCACR.

Respectfully submitted,

April 16, 2012

Bamberg, South Carolina


Richard B. Ness
Ness & Jett, LLC
P.O. Box 909
Bamberg, South Carolina 2900
Phone: (803) 245-5178
Fax: (803) 245-5384

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin, Respondents/Appellants,

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is Appellant/Respondent.

FINAL RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

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STATEMENT OF ISSUES

- I. Does S.C. Code Ann. § 15-61-25 apply to all partition actions, including this one?
- II. Did Respondents/Appellants prove that the General Assembly had no legitimate basis for enacting S.C. Code Ann. § 15-61-25?
- III. Do Respondents/Appellants argue on the basis of "facts" never presented to the trial court?
- IV. Do Respondents/Appellants misapprehend the Master-in-Equity's ruling?
- V. Are Respondents/Appellants' arguments grounded in misconceptions of the law?

STATEMENT OF THE CASE

This case, filed on May 30, 2006, is primarily a partition action by Respondents/Appellants Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns Livingston and Emma Lou Livingston Martin (hereinafter, collectively, "Emma") against Appellant/Respondent Clyde B. Livingston (hereinafter "Clyde") and others, but it includes a number of non-partition claims as well. (R. pp. 28-53.) Clyde and Emma are brother and sister and are the sole and equal devisees of Atn Burns Livingston, while the other parties are named because of judgment liens they have or may claim against Clyde. (R. pp. 13, 16, 29-33.)

The case was filed in the Orangeburg County Probate Court and was removed to the Court of Common Pleas by order of Probate Judge Pandora Jones-Glover filed April 12, 2007. (R. pp. 18-20.) The case was referred on August 19, 2008, to the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, by the consent of all non-defaulting parties. (R. pp. 22-27.)

On January 21, 2009, pursuant to S.C. Code Ann. § 15-61-25, Clyde served notice of his interest in purchasing the property subject of this case. (R. p. 256.) Two days later, Emma served a motion "for an Order denying the Defendant, Clyde B. Livingston, of any right to purchase the real property being the subject matter of this action pursuant to the rights granted to a 'non-petitioning joint tenant' by S.C. Code .Ann. §15-61-25[.]" (R. p. 59.) This motion was heard on February 11, 2009. (R. pp. p. 93 ln. 1 through p. 118 ln. 7.)

Through a written order filed June 8, 2009¹, the Master denied Emma's motion and ruled upon several other matters, including Clyde's motion for a scheduling order. (R. pp. 1-8.) Because "this action presents numerous issues in which the various parties have varying degrees of interest and involvement[.]" the Master trifurcated the action, providing for separate trials of "1) the non-partition and non-lien issues between [Emma] and [Clyde] (i.e., the issues between [Emma] and [Clyde] other than issues in which the Court must decide whether a lien exists upon the real property subject of this action and claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action), 2) the issues in this action that concern the validity, priority, extent, and amount of the alleged liens (or other disputed property interests), and 3) the issues as to the disposition of the real property in this action or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25." (R. pp. 4-5, 6-8.) Emma served a motion to reconsider the ruling on her motion to deny Clyde his rights under S.C. Code Ann. § 15-61-25. (R. pp. 65-69.) This appeal arises from the denial of Emma's motion and the Master's denial of the motion to reconsider, as well as his decision following the bench trial he held on March 24, 2010, of the non-partition and non-lien claims between Emma and Clyde. (R. pp. 9-12.)

The claims in this action that fell into the appropriate category to be tried on March 24, 2010, were Emma's claim for recovery on two notes given by Clyde and Emma's claim that Clyde had misappropriated estate property by receiving \$29,902.00 in United States Department of Agriculture subsidy payments as a farm

¹ The clerk of court's office incorrectly clock-stamped the order with the date July 8, 2009, which seems to have been just a simple mistake in setting the clock-stamp machine. (R. p. 1.)

operator with regard to the real property subject of this action. Before the commencement of the trial, Emma withdrew the claims on the notes. (R. p. 13, p. 122 ln. 16-21.) The Master then heard Clyde's previously served and filed motion for summary judgment on Emma's remaining claim against him concerning the USDA payments, but the Master deferred ruling on that motion until after hearing the evidence at trial. (R. pp. 13, 16-17, 70-90, p. 122 ln. 1, 4-9, p. 126 ln. 18-25, p. 127 ln. 1 through p. 137 ln. 10.)

The claim of alleged misappropriation of USDA payments was the sole subject of the trial. (R. p. 13.) Emma testified and introduced USDA records and a summary of the benefit amounts paid as exhibits, then rested her case. (R. p. 137 ln. 12 through p. 158 ln. 14.) Clyde moved for an involuntary nonsuit on the grounds that the USDA payments were not property of the estate and that the statute of limitations in S.C. Code Ann. § 15-3-530 would bar the claim in any event. (R. p. 14, p. 158 ln. 15 through p. 161 ln. 4.) The Master deferred ruling on this motion and requested that Clyde present his case. (R. p. 14, p. 161 ln. 5.) Clyde testified, and Emma was again called as a reply witness. (R. p. 161 ln. 10 through p. 169 ln. 24.) Counsel and the Master discussed some of the issues, and the Master requested that counsel for both Emma and Clyde submit proposed orders. (R. p. 170 ln. 6 through p. 184 ln. 5.)

In an order filed November 17, 2010, the Master granted Clyde's motions for summary judgment and involuntary nonsuit in part and denied them in part. (R. pp. 16-17.) The Master concluded that the USDA payments were part of the Estate of Ath Burns Livingston and found Clyde liable for receiving them; however, he limited

Emma's recovery to \$11,690.00. (R. pp. 15, 16.) The Master concluded that "[t]he statute of limitations limits the plaintiff's recovery, on behalf of the estate, to the USDA payments that were made within three years before this action was commenced[.]" noting that "[f]rom 2003 forward, [Clyde] was paid \$23,380.00 in farm subsidy benefits. Accordingly, the recoverable portion of [Emma]'s claim concerns this \$23,380.00." (R. p. 15.) The Master also concluded that, since Clyde is the devisee entitled to one half of the estate, Emma's recovery had to be further reduced by half because of the impact of S.C. Code Ann. § 62-3-619, the executor de son tort statute, which "provides that recovery by an estate is limited by the principle that the tortfeasor is entitled to an offset for the amount he is or was supposed to receive from the estate of the property that has come into his possession." (R. pp. 15-16.) The Master denied Emma's request for prejudgment interest because she did not plead that prejudgment interest should be awarded. (R. p. 16.)

The Master ordered Clyde to pay \$11,690.00 to the Estate of Atn Burns Livingston within 30 days of his counsel's receipt of a clocked copy of the order, ruling that, if Clyde did not do so, the order would constitute a judgment against him and in favor of the estate in the amount of \$11,690.00. (R. p. 17.) The Master made no ruling as to the nature of the cause of action that was tried or whether it was legal or equitable. (R. pp. 12-17.) Clyde served his notice of appeal of the Master's order on December 8, 2010. Emma served her own notice of appeal on December 13, 2010.

STATEMENT OF FACTS

This action concerns rural land in the vicinity of the town of North, South Carolina, that was owned by Atn Burns Livingston, who died in 1999 and was the father of Emma and Clyde. (R. p. 13.) After Atn Livingston died, Emma and Clyde were appointed as the co-personal representatives of his estate. (R. p. 13.) Emma and Clyde are the sole devisees of their father and, thus, the only two owners of the land at issue in this case. (R. p. 16.)

In the year 2000, Clyde applied for farm operator status for the land subject of this case with the United States Department of Agriculture and was from then until 2008 paid \$29,902.00 in USDA subsidy payments as a farm operator. (R. p. 13.) Clyde signed the application to the USDA individually, as the farmer applicant. (R. p. 13, p. 146 ln. 21-5, p. 147 ln. 1-3, pp. 203, 208, 213, 217, 223, 226.)

The probate court removed Clyde as co-personal representative of the estate, on the grounds that he and Emma could not cooperate as co-personal representatives, on January 18, 2002. (R. pp. 13-14.) From then until the present day, Emma has been the sole personal representative of the estate of Atn Burns Livingston. (R. p. 14.)

Emma testified that in April of 2002 – after she had become the sole personal representative of the estate – she received a letter from the USDA about Clyde being a farm operator with regard to the land at issue and “that was the first [she] knew about it that farm service agency type payments [were] involved at all.” (R. p. 14, p. 140 ln. 9-12, 16-19.) She testified that she “asked around in the community what that could possibly mean” and then contacted the USDA and inquired with that agency

about Clyde's status as a farm operator of the land. (R. p. 14, p. 140 ln. 24 through p. 141 ln. 1-5.) According to her testimony, that was when the USDA's Orangeburg Farm Services Agency office informed her that Clyde was and had been receiving the farm subsidy payments. (R. p. 14, p. 141 ln. 4-7.) Emma testified that she got "some copies and things from them at that time." (R. p. 141 ln. 7-8.)

In connection with being the personal representative of the estate, Emma was represented by attorney Cliff Moore of the law firm of Ellis Lawhorne & Sims, P.A., at the time she said she discovered Clyde had been receiving farm subsidy payments.

(R. p. 14, p. 141 ln. 9-11, p. 153 ln. 15-17.) She brought the information about Clyde receiving the USDA payments to her lawyer's attention and talked with her lawyer about "how should that be handled and how should we proceed." (R. p. 14, p. 141 ln.

9-13.) Her attorney began a dialogue about the payments with the lawyer who represented Clyde at the time. (R. p. 141 ln. 13-24.) Despite the fact that in April of

2002 Emma knew about Clyde receiving the USDA payments and even engaged an

attorney to address the situation, she did not bring suit (this action) on the claim concerning the USDA payments until May 30, 2006, over four years later. (R. pp. 14, 28-37, p. 140 ln. 9-12, 16-19, 24, 25, p. 141 ln. 1-24.)

On behalf of the estate, Emma applied for farm subsidy payments in 2008 and has received them since. (R. p. 14, p. 157 ln. 4-5.) No evidence was offered to the effect that she was prevented from making that application at any time. (R. p. 137 ln. 11 through p. 158 ln. 14.)

Clyde testified that he and Emma had agreed that he would rent the land from her on the same terms as the previous tenant had rented the land from the decedent.

(R. p. 14, p. 161 ln. 13-24, p. 163 ln. 8-12, 19-25, p. 165 ln. 6-8.) He testified that the decedent's tenant had been a farm operator of the land and had collected the USDA farm subsidy benefits himself. (R. p. 14, p. 168 ln. 4-11.)

All the testimony and USDA documents admitted at the trial were to the effect that the USDA paid Clyde the farm subsidy payments because he had a contract with the USDA under which the USDA was obligated to make the payments to him by virtue of Clyde's status as a producer/farm operator. (R. p. 137 ln. 11 through p. 158 ln. 14, p. 161 ln. 10 through p. 168 ln. 12, p. 168 ln. 24 through p. 169 ln. 24, pp. 203-29.) The estate had no contract with the USDA until 2008, and it was not a party to the USDA's contract with Clyde. (R. p. 14, p. 157 ln. 4-5.) As Clyde testified on cross-examination, the USDA payments "were not estate funds. They were paid to a farm operator. Me." (R. p. 165 ln. 22-23.)

STANDARD OF REVIEW

"This Court reviews all questions of law *de novo*." Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803, 807 (Ct. App. 2009); accord Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010) ("appellate court may decide questions of law with no particular deference to the trial court"). It is the standard for review of the trial court's factual findings, not its legal conclusions, that depends on whether the underlying action is at law or in equity. Fesmire, 683 S.E.2d at 807. "Statutory interpretation is a question of law subject to de novo review." Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010). "The determination of legislative intent is a matter of law." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 543 S.E.2d 538, 540 (2001).

Depending on the type of classification made by the statute, different levels of scrutiny are applied to assess whether a statute violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. Clark v. Jeter, 486 U.S. 456, 461, 108 S.Ct. 1910, 1914 (1988). Courts apply strict scrutiny to statutes that make distinctions based upon race or national origin or that involve fundamental rights. Id. Courts apply a level of intermediate scrutiny to statutes that treat people differently on the basis of illegitimacy or gender. Id.; Moore v. Moore, 376 S.C. 467, 482-83, 657 S.E.2d 743, 751 (2008). All other classifications are analyzed under the rational basis test; under which “the Equal Protection Clause is satisfied if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. Those attacking the validity of legislation under the rational basis test of the Equal Protection Clause have the burden to negate every conceivable basis which might support it.” Boiter v. S.C. Dept. of Transp., 393 S.C. 123, 712 S.E.2d 401, 404 (2011) (quotation marks and quotation-related punctuation omitted). Our State Supreme Court has noted that it “affords great deference to a legislative classification and will uphold a classification if it is not plainly arbitrary and there is any reasonable hypothesis to support it.” Id. (quotation marks omitted).

“In an action at law tried without a jury, the trial judge’s findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence.” Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). Accordingly, in an appeal from the results of a

bench trial of an action at law, an appellate court can correct errors of law but “will not disturb the trial court’s findings of fact unless no evidence reasonably supports the findings.” Branche Builders, Inc. v. Coggins, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009). In an appeal from a judge’s decision in an equitable action, the appellate court is free to find the facts according to its own view of the preponderance of evidence. Zimmerman v. Marsh, 365 S.C. 383, 618 S.E.2d 898, 900 (2005); Johnson v. Arbabi, 355 S.C. 64, 584 S.E.2d 113, 115 (2003); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); SunTrust v. Bryant, 392 S.C. 264, 267, 708 S.E.2d 821, 822-23 (Ct. App. 2011).

“An action for damages for conversion is an action at law.” Blackwell v. Blackwell, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct. App. 1986). An action for breach of fiduciary duty is usually one at law; however, depending on what relief is sought, a cause of action for breach of fiduciary duty may be legal or equitable. Verenes, 387 S.C. at 17.

Summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. E.g., Shelton v. LS&K, Inc., 374 S.C. 294, 297, 648 S.E.2d 307 (Ct. App. 2007). In reviewing the record, the Court views all the properly cognizable evidence in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 67-68, 580 S.E.2d 433 (2003); Shelton, 374 S.C. at 297. Where the nonmoving party bears the burden of proof on a claim in the case, it must provide the Court with evidence showing that there is a genuine issue of material fact with regard to each of the elements of its claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650

S.E.2d 68 (2007). Rule 56, SCRC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” *Id.* at 357 (internal quotation marks omitted, ellipsis in original). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

Though there is not much case law concerning the appellate standard of review on appeal from the grant of a motion for involuntary nonsuit, it appears that the appellate court applies the same standard as does the trial court, much the same as with review of decisions on motions for a directed verdict, J.N.O.V., or summary judgment. See Johnson v. J.P. Stevens & Co., Inc., 308 S.C. 116, 118, 417 S.E.2d 527 529 (1992) (Supreme Court seeming to apply same analysis as trial court, without discussion of standard); Ex parte USAA: Smith v. Moore, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005) (“[b]ecause a dismissal [under Rule 41(b)] has the same effect as summary judgment, the standard for summary judgment applies”).

ARGUMENT

- I. By its plain language, S.C. Code Ann. § 15-61-25 applies to all partition actions, including this one.

Emma argues in her brief that S.C. Code Ann. § 15-61-25 does not apply to this case because this is a partition action brought under S.C. Code Ann. § 62-3-911. (Initial Respondent’s Brief of Respondents/Appellants pp. 5-13.) This argument is against the plain language of the statute.

The words of S.C. Code Ann. § 15-61-25 make it applicable to “a petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). No distinction is made between petitions for partition brought pursuant to the Probate Code and those brought otherwise. Id. In fact, the statute specifically states that “[f]or the purposes of this section, ‘joint tenants and tenants in common’ include heirs and devisees.” Id. As discussed in Clyde’s Appellant’s Brief and Reply Brief, heirs and devisees fall into this category in any event. S.C. Code Ann. § 62-3-101 (“[u]pon the death of a person, his real property devolves to the persons to whom it is devised by his last will”); Taylor v. Jennings, 233 S.C. 600, 607, 106 S.E.2d 391, 395-96 (1958); Fischer v. Bennett, 202 S.C. 534, 25 S.E.2d 746, 748 (1943); Carter v. Wroten, 187 S.C. 432, 198 S.E. 13, 15 (1938). Emma’s contention that she owns the land as the personal representative of the Estate of Atn Livingston is just incorrect. Id.; (Initial Respondent’s Brief of Respondents/Appellants p. 10.) The statute unambiguously says it applies to “a petition for partition of property owned by joint tenants or tenants in common[,]” including property of heirs and devisees. S.C. Code Ann. § 15-61-25(A).

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. If a statute’s language is plain, unambiguous, and conveys a clear meaning[,], the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100, 105 (2003) (internal citation and quotation marks omitted). “In construing a statute, a court cannot read into the statute something not within the manifest intention of the legislature as gathered from the statute itself.”

State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001) (internal quotation marks omitted). “The first question of statutory interpretation is whether the statute’s meaning is clear on its face.” Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733, 738 (Ct. App. 2005) (internal quotation marks omitted). If so, “a court’s inquiry is at an end.” Rosmer v. Pfizer Incorp., 263 F.3d 110, 117 (4th Cir. 2001). “When the terms of a statute are clear, the court must apply those terms according to their literal meaning.” Eagle Container, 622 S.E.2d at 739 (internal quotation marks omitted). Only “[w]here the language of a statute is doubtful or uncertain in meaning” can a court look outside the words of the statute. Timmons v. S.C. Tricentennial Commn., 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970).

The terms of S.C. Code Ann. § 15-61-25 are clear: the statute applies to any “petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). Black’s Law Dictionary defines “petition” as “1. A formal written request presented to a court or other official body. 2. In some states, a lawsuit’s first pleading; complaint.” Black’s Law Dictionary 526 (2d. pocket ed. 2001). Just the use of this word alone obviates any argument about whether S.C. Code Ann. § 15-61-25 applies to a partition action brought pursuant to S.C. Code Ann. § 62-3-911, as the latter statute specifically uses the word “petition” to describe the initial pleading in an action brought under it. S.C. Code Ann. § 62-3-911.

When a person dies, his real property devolves to those to whom it is devised by his last will. S.C. Code Ann. § 62-3-101; Taylor, 233 S.C. at 607; Fischer, 25 S.E.2d at 748; Carter, 198 S.E. at 15. Devisees who inherit real property, like Clyde and Emma, are tenants in common. See State v. Singley, 392 S.C. 270, 275-76, 709

S.E.2d 603, 606 (2011); Watson v. Little, 224 S.C. 359, 364-65, 79 S.E.2d 384, 387 (1953). Emma brought the instant suit seeking partition and is thus the petitioner, so Clyde, a devisee of Atn Burns Livingston, is a “nonpetitioning joint tenant[] or tenant[] in common” who may invoke the buyout process under S.C. Code Ann. § 15-61-25. (R. pp. 28-37.)

“Courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” Denny’s, Inc. v. Cake, 364 F.3d 521, 530 (4th Cir. 2004). If the General Assembly meant to exempt partition actions under the Probate Code from the application of this statute, it would have been a simple matter for the statute simply to say so. The General Assembly chose not to make that distinction. (R. p. 101 ln. 18-23.) The Court need look no further than the language of S.C. Code Ann. § 15-61-25 to determine that Clyde has rights under that statute.

In light of the unambiguous language of the statute, the legislative history of S.C. Code Ann. § 15-61-25 is irrelevant; however, it does not support Emma’s argument. (Initial Respondent’s Brief of Respondents/Appellants pp. 9-10.) Most likely, the General Assembly did away with the proposed change to S.C. Code Ann. § 62-3-911 because it was superfluous in light of S.C. Code Ann. § 15-61-25’s applicability to all partition actions. The General Assembly did not need to change S.C. Code Ann. § 62-3-911 to make S.C. Code Ann. § 15-61-25 applicable to partition actions brought under the Probate Code.

By its plain terms, S.C. Code Ann. § 15-61-25 is applicable to this action.

II. The General Assembly did not violate the Equal Protection Clause by enacting S.C. Code Ann. § 15-61-25.

Emma argues that the application of S.C. Code Ann. § 15-61-25 to this case “violates [her] Constitutional and equitable rights[.]” (Initial Appellant’s Brief of Respondents/Appellants p. 11.) While it appears from her brief that Emma may have abandoned her Equal Protection challenge to S.C. Code Ann. § 15-61-25 by not advancing any authority for it in her brief, this brief will address it out of an abundance of caution. (Initial Appellant’s Brief of Respondents/Appellants pp. 5-16.)

“If a statutory provision ‘does not involve a suspect classification or a fundamental right, . . . the question under equal protection analysis is whether the legislation is rationally related to a legitimate state purpose.’” Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320, 323 (2003) (quoting Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001)) (ellipsis in original). The burden is on the party who challenges the validity of a statute under the rational basis test of the Equal Protection Clause to negate every conceivable legitimate basis for the statute. Boiter, 712 S.E.2d at 404.

Parties to partition actions do not have a fundamental right to purchase the property subject of the action. See, e.g., Zimmerman, 365 S.C. 383, (generally discussing when a court may order partition by sale). Indeed, the only *right* to purchase the property subject of a partition action is that created by S.C. Code Ann. § 15-61-25, which did not exist before its adoption in 2006.

Neither does S.C. Code Ann. § 15-61-25 involve a suspect class. (R. p. 2, p. 102 ln. 11-14, p. 195 ln. 3-10.) The distinction made between people in the statute who fall within the category of joint tenants or tenants in common is one of whether

the person is petitioning the Court for partition or is a non-petitioning party to a partition action. S.C. Code Ann. § 15-61-25; (R. p. 195 ln. 7-10.) The fact that a statute treats people differently based on the roles they occupy as parties to a case does not mean the statute violates the Equal Protection clause. See Moore, 376 S.C. at 482 (upholding statutory classification based on different procedural roles held by parties); Taylor v. Medenica, 331 S.C. 575, 577-79, 503 S.E.2d 458, 459-60 (1998) (upholding provision in South Carolina Unfair Trade Practices Act that allows successful party prosecuting a claim under that Act to recover attorneys fees, but not allowing the same to a party successful at defending such a claim); Bradley v. Hullander, 277 S.C. 327, 330, 287 S.E.2d 140, 141 (1982). (noting that statutory allowance of attorney's fees to successful plaintiffs but not successful defendants does not violate Equal Protection clause); cf. Mitchell v. Owens, 304 S.C. 23, 24-25, 402 S.E.2d 888, 889 (1991) (upholding statute providing for protection of spouses omitted in will).

Accordingly, this Court applies the rational basis test, just as the trial court did, under which Emma could only prevail on her Equal Protection challenge by negating every conceivable rational basis for the enactment of S.C. Code Ann. § 15-61-25. Boiter, 712 S.E.2d at 404; see Clark, 486 U.S. at 461; City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985); (R. pp. 2-3, p. 102 ln. 14-17, p. 195 ln. 14 through p. 196 ln. 1-4.) Emma did not carry that burden. Emma herself argued to the trial court that "[t]he reason they [the General Assembly] passed it [S.C. Code Ann. § 15-61-25] was because of heir property type issues as you well know where maybe a developer would buy a one-fiftieth interest in property and then he

would have it sold at public auction.” (R. p. 190 ln. 2-6.) Protection of defendants in those partition actions was a legitimate purpose for the General Assembly to enact this statute. It is immaterial that it also applies to situations other than developer-heir partition actions. There is no requirement under the rational basis test that a statute be narrowly tailored. See, e.g., Boiter, 712 S.E.2d at 404.

Emma spends much of her brief arguing that application of S.C. Code Ann. § 15-61-25 to this case is inequitable. It is not; if Clyde ultimately purchases the property pursuant to the statutory process, there will still be a trial held about what is to be done with the proceeds of that sale. (R. pp. 5, 8.) But even if the Court were to agree with Emma that the application of the statute is inequitable, that would not mean the statute is invalid or inapplicable to this case, as “equity cannot prevail over a positive legislative enactment.” Wigfall, 354 S.C. at 108. “The fact that the classification results in some inequity does not render it in violation of the Constitution.” Boiter, 712 S.E.2d at 404 (internal quotation marks omitted).

III. Emma argues in her brief on the basis of unproven “facts” that were never presented to the trial court.

Emma contends that “[t]he Estate owes just debts in an amount exceeding \$20,000.00.” (Initial Appellants’ Brief of Respondents/Appellants p. 9.) No evidence tending to support this was ever adduced to the trial court. Indeed, the portion of the record Emma cites in support of this purported fact is just a summary by counsel to the Master of their positions, discussing that Emma’s claim to be owed money on a purported note and mortgage from herself (as personal representative) to herself (individually) is very much contested and is an issue to be tried at a later hearing in this case. (R. p. 174 ln. 1 through p. 175 ln. 14.) Statements of counsel are

not evidence. Trivelas v. S.C. Dept. of Transportation, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); Higgins v. MUSC, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997); Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986).

The Master never decided that any such “estate expenses” existed, and Emma never presented any evidence that they did. (R. pp. 1-17, 91-202.) As discussed above and in Clyde’s Appellant’s brief and reply brief, such evidence would have been irrelevant anyway. Regardless of the irrelevance of an argument premised on the existence of these supposed estate expenses, Emma’s claims of fact based on purported evidence that does not appear in the record cannot be considered on appeal.

Spreeuw v. Barker, 385 S.C. 45, 682 S.E.2d 843, 854 (Ct. App. 2009).

IV. Emma misapprehends the Master-in-Equity’s ruling.

Emma argues that the Master’s ruling permitted Clyde “to use S.C. Code Ann. §15-61-25, to thwart [Emma], as Personal Representative, in the exercise of her duties.” (Initial Appellants’ Brief of Respondents/Appellants p. 9.) She argues that she “will be penalized for attempting to settle the Estate pursuant to the South Carolina Probate Code, and for acting as Personal Representative of the Estate.” (Initial Appellants’ Brief of Respondents/Appellants p. 12.) She argues that the Master’s rulings mean that all estate expenses (assuming some are ultimately found to exist) will be borne by Emma from her share of the proceeds of the sale of the property. (Initial Appellants’ Brief of Respondents/Appellants p. 13.)

This is not what any Order issued in this case decided. (R. pp. 1-17.) In fact, the Master specifically provided that what is to be done with the proceeds of a sale to Clyde pursuant to S.C. Code Ann. § 15-61-25 is to be decided at a later trial to be held on the issue of the disposition of those proceeds. (R. pp. 5, 8.) Also, it is difficult to see how sale of the property subject of this case would penalize Emma, who sought it in the first place. (R. pp. 30-31, 33.)

V. Emma's arguments are based in misconceptions of law.

Emma argues that the USDA payments are "estate receivables." (Initial Appellants' Brief of Respondents/Appellants p. 13.) As discussed in Clyde's Appellant's brief and reply brief, they are not. (Initial Appellant's Brief of Appellant/Respondent pp. 11-14.) Clyde received benefits from the USDA because of an agreement he had with that agency as a farm operator. (R. pp. 13, 14, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The USDA paid him those benefits because of what he was obligated to do and not do as a farm operator, not because of any action or inaction he took as co-personal representative of his father's estate. (R. p. 13, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) The estate was not the farm operator. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.)

The USDA's obligation to pay Clyde money was based solely on its contract with him as a farm operator, not on the basis of who owned the land. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3,

p. 165 ln. 22-23, pp. 203-29.) The estate was not a party to that contract and had no interest in the payments. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.) Ordinarily, the only parties who have any rights under a contract are the promisor and the promisee. See Professional Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985). Clyde's contract with the USDA was not a third-party contract for the benefit of the estate; thus, this general principle applies here. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29); cf. id.

As they were the product of a contract between the USDA and Clyde, not the estate, the Master erred in concluding the payments were property of the estate, as argued in Clyde's Appellant's brief. (R. pp. 13, 14, 15, p. 127 ln. 20-25, p. 128 ln. 12-14, p. 134 ln. 21-25, p. 140 ln. 9-12, p. 159 ln. 1-3, p. 165 ln. 22-23, pp. 203-29.)

As discussed above and at length in Clyde's Appellant's brief, the estate did not own the land; Clyde and Emma did. It is well settled in South Carolina that each cotenant in property has the right to the possession of the whole of the land. E.g., Horne v. Cox, 237 S.C. 41, 44, 115 S.E.2d 513, 515 (1960); Watson v. Little, 224 S.C. 359, 364, 79 S.E.2d 384, 387 (1953); Knotts v. Joiner, 217 S.C. 99, 102, 59 S.E.2d 850, 851 (1950); Wells v. Coursey, 197 S.C. 483, 15 S.E.2d 752, 755 (1941). The use of the property by one of the cotenants is entirely consistent with the existence of the cotenancy and a recognition of the rights of the other cotenants. Horne, 237 S.C. at 44. Absent ouster, a cotenant does not owe his fellow cotenants anything for his use of the property, since using the land is something he has every

right to do. See Parker v. Shecut, 359 S.C. 143, 597 S.E.2d 793, 797 (2004); Home, 237 S.C. at 44; Watson, 224 S.C. at 364; Knotts, 217 S.C. at 102; Wells, 15 S.E.2d at 755. Our Supreme Court has addressed the question of whether those who inherit real property are immediately entitled to the land's rents and profits, and the Court noted that rights to rents and profits pass to heirs or devisees along with the land at the moment the decedent dies. Burkhalter v. Townsend, 160 S.C. 134, 158 S.E. 221, 223 (1931). While Emma's apparent position that a right to USDA benefits are profits of land ownership is incorrect, even if this contention was correct, that right would not have belonged to the estate. (R. p. 130 ln. 8-15, p. 158 ln. 25, p. 159 ln. 1-3, p. 165 ln. 22-23); id. As an owner of the land he inherited from his father, Clyde had every right to farm it and to collect USDA payments as a farm operator. As a matter of law, the USDA payments did not belong to the estate.

Clyde had no duty to secure a farm operator contract for the estate. As co-personal representative, Clyde's fiduciary duty, along with Emma's, was "to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and [the Probate] [C]ode, as expeditiously and efficiently as is consistent with the best interests of the estate." S.C. Code Ann. § 62-3-703(a). This does not mean Clyde had a duty to refrain from farming his own land and collecting USDA payments as a farm operator.

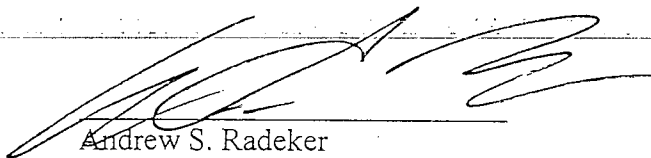
As a matter of law, the USDA payments were not part of the estate; thus, Clyde breached no fiduciary duty and converted nothing when he accepted those payments. Certainly, the estate is not entitled to recover *more* of something that it

was not entitled to get to begin with, and the Master did not err in granting in part Clyde's motions for summary judgment and involuntary nonsuit.

CONCLUSION

The Master correctly ruled that S.C. Code Ann. § 15-61-25 is valid and applies to this partition action. As the Master should not have ruled that Clyde misappropriated any USDA payments from the Estate, Emma certainly is not entitled to a reversal on the grounds that the Estate was entitled to recover *more* from Clyde on that claim. Emma was not entitled to any relief, and the Court should reverse the Master and so hold.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211

Attorney for Appellant/Respondent

April 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston-Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

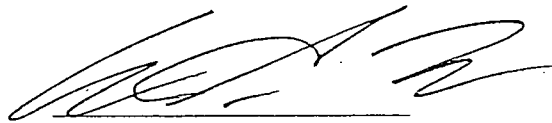
Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

CERTIFICATE OF COUNSEL

I certify that the foregoing brief complies with Rule 211(b), SCACR.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

April 16, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable O. Davie Burgdorf, Master-in-Equity, Presiding

Case No. 2907-CP-38-326

In Re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns
Livingston and Emma Lou Livingston Martin, ... Respondents--Appellants,

v.

Clyde B. Livingston, Miller Communications, Inc., Citibank South Dakota, N.A., Branch
Banking and Trust Company of South Carolina, and American First Federal, Inc.,
Defendants, of whom Clyde B. Livingston is Appellant--Respondent.

FINAL REPLY BRIEF OF RESPONDENTS-APPELLANTS

Richard B. Ness
NESS & JETT, LLC
P.O. Box 909

Barnberg, South Carolina 29093
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

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STATEMENT OF ISSUES

- 1: Does §62-3-101 require a completed administration of the Estate of Atn. B. Livingston prior to any devolution of real property to the heirs of Atn. B. Livingston?

RESPONSIVE ARGUMENTS

A. Section 6-3-101, S.C. Code of Laws, Requires A Personal Representative to Administer an Estate Prior to Distributing Any Real Property to the Heirs of a Decedent

Section 6-3-101, S.C. Code of Laws, requires Emma Martin (Martin) to administer the Estate of Atn. B. Livingston fully and competently prior to distributing any real property to the heirs of Atn. B. Livingston.

Martin occupies a dual role in this case. She is both an heir-at-law and the duly appointed personal representative of the Estate. As personal representative, she is charged with the responsibility to administer the Estate, pay just debts, and distribute property according to the Will. *See S.C. Code Ann. §62-3-101, et seq.* Martin and her brother

Clyde Livingston (Livingston), as the sole heirs of the estate, have an interest in the real estate currently held by the Estate, subject to the divestiture that may become necessary during the sound administration of the Estate. *See S.C. Code Ann. §62-3-101.*

The administration of the Estate takes precedence over the distribution of Estate assets to both Martin and Livingston. Neither party may claim ownership of any portion of the Estate without first considering the necessity of producing liquidity to pay creditor claims, pay personal representative fees, pay taxes, and pay maintenance fees necessary

for the care of the real estate currently held within the Estate. The South Carolina Probate Code, S.C. Code Ann. §62-3-101, et seq., imposes these obligations on a personal representative and their sound execution is a fiduciary duty. These statutorily imposed obligations and duties are not optional.

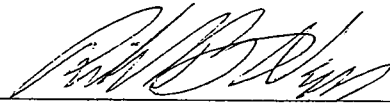
Prior to the issuance of a deed of distribution from the Estate, the parameters of the individual interests of Martin and Livingston are indefinable. Without first completing the administration of the Estate, it is unknown what portion of the Estate will

actually be available to be formally distributed to either party. Prior to administration, neither party can determine what their portion of their father's Estate will encompass, nor can they sell, mortgage, or otherwise convey any interest other than one subject to divestiture by the administration of the Estate. Even in the complete absence of an estate administration, "successors take subject to all charges incident to administration, including the claims of creditors and subject to the rights of others resulting from abatement, retainer, advancement, and ademption." S.C. Code of Laws, §62-3-901. If this were not the case, there would be no need for a statute on the order of abatement. *See S.C. Code, §62-3-902.*

Title to the real estate is currently held by Martin, as personal representative, in trust for the beneficiaries of the Estate, pursuant to S.C. Code Ann. §62-3-711(A); subject to divestiture. Livingston and Martin have not yet taken title by deed or operation of law. Each heir will take ½ of the Estate remaining after Martin completes her fiduciary duty as personal representative and closes the Estate.

CONCLUSIONS

This Court should reverse the Master-in-Equity on the aspects appealed by Martin.



Richard B. Ness
NESS & JETT, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Telephone (803) 245-5178

ATTORNEY FOR RESPONDENTS--
APPELLANTS

April 16, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

I, Richard B. Ness, attorney for the Respondent in the appeal of *In re:*

Estate of Atn Burns Livingston, Emma Lou Martin Livingston Martin as Personal

Representative, et al., v. Clyde B. Livingston, et al., Docket Number: 2007-CP-38-826,

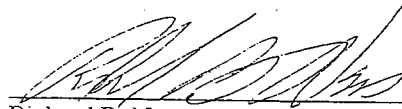
Case Tracking Number: 201079986, do hereby certify the foregoing Final Reply Brief of

Respondents-Appellants complies with Rule 211(b), SCACR.

April 16, 2012

Bamberg, South Carolina

Respectfully submitted,



Richard B. Ness

Ness & Jett, LLC

P.O. Box 909

Bamberg, South Carolina 29003

Phone: (803) 245-5178

Fax: (803) 245-5384

STATE OF SOUTH CAROLINA)

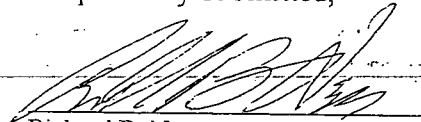
COUNTY OF BAMBERG)

I, Richard B. Ness, attorney for the Respondent in the appeal of *In re: Estate of Atn Burns Livingston, Emma Lou Martin Livingston Martin as Personal Representative, et al., v. Clyde B. Livingston, et al.*, Docket Number: 2007-CP-38-826, Case Tracking Number: 201079986, do hereby certify the foregoing FINAL REPLY BRIEF OF RESPONDENT'S APPELLANTS complies with the August 13, 2007, Order of the Supreme Court, Re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

April 16, 2012

Bamberg, South Carolina

Respectfully submitted,



Richard B. Ness
Ness & Jett, LLC
P.O. Box 909
Bamberg, South Carolina 29003
Phone: (803) 245-5178
Fax: (803) 245-5384

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

RECORD ON APPEAL

Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent

Richard B. Ness
Ness & Jett, LLC
Post Office Box 909
Bamberg, South Carolina 29003
(803) 245-5178
Attorney for Respondents/Appellants

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STATE OF SOUTH CAROLINA
 COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
 LIVINGSTON.

Emma Lou Livingston Martin as
 Personal Representative of the Estate of
 Atn Burns Livingston and Emma Lou
 Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
 Communications, Inc.; Citibank South
 Dakota, N.A.; Branch Banking and Trust
 Company of South Carolina; and
 American First Federal, Inc.,

Defendants.

ATTEST: TRUE COPY

Wingie B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

ORDER

FILED FOR RECORD
 IN THE COURT OF COMMON PLEAS
 ORANGEBURG COUNTY, SOUTH CAROLINA
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JUL 8 2 58 PM '09

This matter comes before me upon motions in the above-captioned action that were heard on February 11, 2009. Harold P. Threlkeld, Esquire, and Richard B. Ness, Esquire, attended the hearing as counsel for the Plaintiff. Andrew S. Radeker, Esquire, attended the hearing as counsel for Defendant Clyde B. Livingston. M. Baron Stanton, Esquire, attended the hearing as counsel for Defendant American First Federal, Inc., and Christopher B. Staubes, III, Esquire, attended as counsel for Branch Banking and Trust Company of South Carolina (hereinafter "BB&T"). Also present were the Plaintiff, her husband Mr. Thompson Martin, and a woman who was not identified at the hearing.

The Court heard a number of motions at the hearing. The Plaintiff moved for the Court to adjudge that Defendant Livingston does not possess a right to purchase the property subject of this action pursuant to S.C. Code Ann. § 15-61-25 or, alternatively, that the Court should deny

Defendant Livingston the right to purchase under that statute. The Plaintiff's primary argument on this motion is that this action was brought pursuant to S.C. Code Ann. § 62-3-911 and that S.C. Code Ann. § 15-61-25 is applicable only to partition actions brought pursuant to Chapter 61 of Title 15 of the South Carolina Code of Laws. The Plaintiff's secondary argument is that judgments against Defendant Livingston will make it impractical for him to exercise his right to purchase the property. The Plaintiff also argued that S.C. Code Ann. § 15-61-25 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, since it treats the parties to whom it applies differently based upon whether they are plaintiffs or defendants.

The Court must rule against these arguments. The statute at issue, S.C. Code Ann. § 15-61-25, provides that it is "applicable to all petitions for partition" filed after May 25, 2006. This action was filed on May 30, 2006. While a partition action brought pursuant to S.C. Code Ann. § 62-3-911 is somewhat different from partition actions that are commenced in the Court of Common Pleas, both are still partition actions. Accordingly, S.C. Code Ann. § 15-61-25 is applicable to this action. Further, any impracticality involved in Defendant Livingston's exercise of his rights under this statute does not bear upon whether he has such rights. Finally, the Court holds that S.C. Code Ann. § 15-61-25 does not violate the Equal Protection Clause. Plaintiffs in partition actions are not members of a suspect class, such as a class determined on the basis of race or gender, and the Court therefore applies the deferential standard of rational basis review in determining whether S.C. Code Ann. § 15-61-25 violates the Equal Protection Clause. See City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440 (1985). Under the rational basis standard, the Plaintiff, as the party seeking a determination that the statute violates the Equal Protection Clause, would have to demonstrate that the distinction drawn between partition

plaintiffs and defendants in S.C. Code Ann. § 15-61-25 bears no rational relationship to a legitimate state interest. See id. ("general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest"). While S.C. Code Ann. § 15-61-25 does treat plaintiffs and defendants differently, the Plaintiff did not demonstrate that the statute bears no rational relationship to a legitimate purpose on the part of the South Carolina General Assembly in enacting it.

Before the hearing, Defendant Livingston had made a written motion to amend both his answer and counterclaim and his reply to the cross-claim of Defendant American First Federal. All counsel present at the hearing noted that they did not oppose this motion. At the hearing, the Plaintiff also asked for leave to amend her complaint, and all counsel present also noted that they had no opposition to that motion. Accordingly, both the Plaintiff's and Defendant Livingston's motions to amend are granted, and they are given leave to amend their pleadings, as is further discussed below.

Counsel at the hearing discussed the effect of judgments against Defendant Livingston on the relief that the Court can order in the final disposition of this action. Counsel for Defendant American First Federal, in particular, stated his client's position that any sale of the realty subject of this action would have to at a minimum produce enough proceeds to satisfy all judgment liens against Defendant Livingston. Defendant Livingston's counsel noted his position that the lien of a judgment creditor cannot trump Defendant Livingston's rights that derive from him being a party to this partition proceeding.

The Court hereby notes that a judgment creditor's rights as against a party to a partition action cannot trump that party's right to partition or that party's rights under S.C. Code Ann. § 15-61-25; thus, the Court does have the ability to pass title to the real property in this action free

and clear of liens, even if the purchase price paid for the property is less than the amount of the debts secured by those liens. A judgment lien against a party to a partition action is transferred to that party's share of the sales proceeds if a sale is ordered. In Ex parte Johnson, the South Carolina Supreme Court observed that a line of South Carolina cases "conclusively show that upon the sale of land under a partition proceeding, any prior lien against the undivided interest of any cotenant is transferred to the share of the proceeds of such tenant, as of its original lien[.]" 147 S.C. 259, 288, 145 S.E. 113 (1928). Tenants in common always have the right to partition, and the lien rights of a judgment creditor in real estate, which are in derogation of the common law, cannot overcome the parties' partition rights. See id. at 286, 290 (lien rights of judgment creditor in realty of debtor did not exist at common law; tenants in common have right to partition of land at any time they desire); Thompson v. Brunson, 283 S.C. 221, 321 S.E.2d 622 (Ct. App. 1984) ("partition is compellable among co-tenants as a matter of right, and is not suspended by an interest in . . . the property" (citations and internal quotation marks omitted)). Our Rules of Civil Procedure show that the law stated in Ex parte Johnson in 1928 is still the law today: Rule 71(d)(4), SCRCP, provides that "[a] lien against the undivided interest of a tenant in common is subordinate to the right of cotenants to compel partition; and when partition is made, the lien is transferred to the portion assigned to the debtor in severalty, or to his share of proceeds from the sale of the property."

Turning to Defendant Livingston's motion for a scheduling order, the Court agrees that this action presents numerous issues in which the various parties have varying degrees of interest and involvement. The Court also agrees that the issues in this action can be separated into three distinct groups: 1) the non-partition and non-lien issues between the Plaintiff and Defendant Livingston (i.e., the issues between the Plaintiff and Defendant Livingston other than issues in

which the Court must decide whether a lien exists upon the real property subject of this action and claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action), 2) the issues in this action that concern the validity, priority, extent, and amount of the alleged liens (or other disputed property interests), and 3) the issues as to the disposition of the real property in this action or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25. Further, S.C. Code Ann. § 15-61-25 virtually requires a schedule and contains a number of deadlines for the procedural steps in that statute. For the sake of judicial efficiency the Court hereby orders and adopts the schedule given below in this action.

It is therefore ORDERED as follows:

1. The Court hereby denies the Plaintiff's motion for the Court to adjudge that Defendant Livingston does not possess a right to purchase the property subject of this action pursuant to S.C. Code Ann. § 15-61-25 or, alternatively, for the Court to deny Defendant Livingston the right to purchase under that statute.
2. The Plaintiff's motion to amend her complaint is hereby granted. The Plaintiff may serve an amended complaint in the manner prescribed by Rule 5(b), SCRPC, within 30 days of the receipt of a filed copy of this Order by counsel for the Plaintiff. All defendants shall have 30 days from the date of service of the amended complaint to plead responsively thereto.
3. Defendant Livingston's motion to amend is hereby granted. If the Plaintiff amends her complaint as aforesaid, Defendant Livingston's amendment shall be made by serving an answer and counterclaim in response to the Plaintiff's amended complaint and by serving a reply to Defendant American First

Federal's answer and cross-claim to the Plaintiff's amended complaint. If the Plaintiff does not amend her complaint as aforesaid, Defendant Livingston shall serve his amended answer and counterclaim and amended reply to the cross-claim of Defendant American First Federal within 45 days of the receipt of a filed copy of this Order by counsel for Defendant Livingston. All parties against whom claims are asserted in Defendant Livingston's amended pleadings shall have 30 days from the date of service of those amended pleadings to plead responsively thereto.

4. The Court has the ability to pass title to the real property in this action free and clear of liens, even if the purchase price paid for the property is less than the

amount of the debts secured by liens against the property of a party to this partition action.

5. Trial upon the non-partition and non-lien claims (and defenses thereto) between the Plaintiff and Defendant Livingston (i.e., the claims between the Plaintiff and Defendant Livingston other than claims in which the Court must decide whether a lien exists upon the real property subject of this action and

claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action) shall be had on

1:30pm - Sept. 30, 2009

6. Trial upon the claims (and defenses thereto) in this action that concern the validity, priority, extent, and amount of the alleged liens (or other disputed property interests) in the real property subject of this action shall be had on

1:30pm - October 14, 2009

7. Pursuant to S.C. Code Ann. § 15-61-25(B), the Plaintiff and Defendant Livingston shall submit to the Court either a joint statement of agreement as to the value of the property subject of this action or the names of proposed appraisers on or before 1:30 pm - November 18, 2009
8. If the names of proposed appraisers are submitted to the Court, the Court shall appoint an appraiser or appraisers in accordance with S.C. Code Ann. § 15-61-25(B). Any such appointed appraiser shall make his report in writing to the Court on or before 30 days after his appointment. The Court has discretion to extend this deadline upon a proper showing. All parties shall be provided with a copy of the appraiser's report at the time it is submitted.
9. The Plaintiff and Defendant Livingston shall have 10 days from receipt by their counsel of a copy of the appraiser's report to serve a written notice of objection to the appraiser's report in accordance with S.C. Code Ann. § 15-61-25(C).
10. If such an objection is served and filed, the Court shall hold an evidentiary hearing limited to the proposed valuation of the property per S.C. Code Ann. § 15-61-25(C).
11. After the valuation of the property is completed, either by the agreement of the Plaintiff and Defendant Livingston pursuant to S.C. Code Ann. § 15-61-25(B) or by Order of the Court pursuant to S.C. Code Ann. § 15-61-25(C), the price of the property per the valuation by agreement or by Order of the Court shall be paid into the Court within 45 days of the filing of the valuation agreement or Order in accordance with S.C. Code Ann. § 15-61-25(D).

12. Trial as to the disposition of the real property at issue or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25 shall be had on a date to be set by the Court as soon as is practical after the payment into Court of the funds pursuant to S.C. Code Ann. § 15-61-25(D) or the expiration of the time to do so.

13. Other: _____

Any of the foregoing may be changed by the Court for good cause.

And IT IS SO ORDERED.


O. Davie Burgdorf

The Honorable O. Davie Burgdorf
Master-in-Equity for Orangeburg County

Orangeburg, South Carolina

June 3, 2009

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.

Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

ATTEST: TRUE COP.

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY S

ORDER

2010 NOV 17 A 10:26
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WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG CO

This matter comes before me upon the Plaintiff's motion to reconsider with regard to this Court's previous ruling in the above-captioned action that S.C. Code Ann. § 15-61-25 is applicable to this action and that that statute does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. After hearing the arguments of counsel and reviewing the law and the record, the Court concludes that it did not misapprehend any material issue of fact or law with regard to its previous ruling; thus, the motion to reconsider is denied.

In addition, it is necessary to revise the previous schedule in this action, as a number of continuances were granted at the request of Plaintiff's counsel due to unanticipated circumstances beyond the control of the parties, counsel, or the Court.

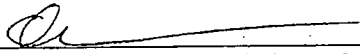
It is therefore ORDERED as follows:

1. The Plaintiff's motion to reconsider is hereby denied.
2. Trial upon the claims (and defenses thereto) in this action that concern the validity, priority, extent, and amount of the alleged liens (or other disputed property interests) in the real property subject of this action shall be had on December 7, 2010, at 3:00 p.m.
3. Pursuant to S.C. Code Ann. § 15-61-25(B), the Plaintiff and Defendant Livingston shall submit to the Court either a joint statement of agreement as to the value of the property subject of this action or the names of proposed appraisers on or before 30 days after their counsel's receipt of the written Order deciding the matters subject of the December 7, 2010, hearing.
4. If the names of proposed appraisers are submitted to the Court, the Court shall appoint an appraiser or appraisers in accordance with S.C. Code Ann. § 15-61-25(B). Any such appointed appraiser shall make his report in writing to the Court on or before 30 days after his appointment. The Court has discretion to extend this deadline upon a proper showing. All parties shall be provided with a copy of the appraiser's report at the time it is submitted.
5. The Plaintiff and Defendant Livingston shall have 10 days from receipt by their counsel of a copy of the appraiser's report to serve a written notice of objection to the appraiser's report in accordance with S.C. Code Ann. § 15-61-25(C).
6. If such an objection is served and filed, the Court shall hold an evidentiary hearing limited to the proposed valuation of the property per S.C. Code Ann. § 15-61-25(C).

7. After the valuation of the property is completed, either by the agreement of the Plaintiff and Defendant Livingston pursuant to S.C. Code Ann. § 15-61-25(B) or by Order of the Court pursuant to S.C. Code Ann. § 15-61-25(C), the price of the property per the valuation by agreement or by Order of the Court shall be paid into the Court within 45 days of the filing of the valuation agreement or Order in accordance with S.C. Code Ann. § 15-61-25(D).
8. Trial as to the disposition of the real property at issue or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25 shall be had on a date to be set by the Court as soon as is practical after the payment into Court of the funds pursuant to S.C. Code Ann. § 15-61-25(D) or the expiration of the time to do so.

Any of the foregoing may be changed by the Court for good cause.

And IT IS SO ORDERED.


 The Honorable O. Davie Burgdorf
 Master-in-Equity for Orangeburg County

Orangeburg, South Carolina

November 16
~~September~~ _____, 2010

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.

Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

ATTEST: TRUE COPY

Winnia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

ORDER

2010 NOV 17 A 10 26
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WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

This matter came before me on March 24, 2010, at the trial in the above-captioned action of the non-partition and non-lien claims between the Plaintiff and Defendant Clyde B. Livingston (i.e., the claims between the Plaintiff and Defendant Livingston other than claims in which the Court must decide whether a lien exists upon the real property subject of this action and claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action). The Court also heard Defendant Livingston's motion for summary judgment as to the Plaintiff's claims that fell into this category. Also heard on March 24, 2010, were the Plaintiff's motion to reconsider a previous Order of this Court and revisions necessary to the previous schedule put in place by the Court, both of which are addressed in a separate Order from this one.

The claims in this action that fell into the appropriate category to be tried at this time were the Plaintiff's claim for recovery on two notes given by Defendant Livingston and the Plaintiff's claim that Defendant Livingston had misappropriated estate property by receiving USDA subsidy payments as a farm operator with regard to the real property subject of this action. Before the commencement of the trial, the Plaintiff withdrew the claims on the notes. The remaining claim concerning USDA payments was the subject of Defendant Livingston's summary judgment motion, which the Court heard but upon which it deferred ruling, and was the subject of the testimony and evidence presented.

FINDINGS OF FACT

This action concerns rural land in the vicinity of the town of North, South Carolina, that was owned by Atn Burns Livingston, who died in 1999 and was the father of the Plaintiff and of Defendant Livingston. After Atn Livingston died, the Plaintiff and Defendant Livingston were appointed as the co-personal representatives of his estate.

The record and testimony presented indicate that in the year 2000 Defendant Livingston applied for farm operator status with the United States Department of Agriculture and was from then until 2008 paid \$29,902.00 in USDA subsidy payments. From 2003 forward, Defendant Livingston was paid \$23,380.00 in farm subsidy benefits. The land associated with Defendant Livingston's farm operator status was the land subject of this action. Defendant Livingston signed the application to the USDA individually, as the farmer applicant, and on behalf of the estate, signing that the estate was the owner of the land.

On January 18, 2002, the probate court removed Defendant Livingston as co-personal representative of the estate, on the grounds that he and the Plaintiff could not cooperate as co-

personal representatives. From then until the present day, the Plaintiff has been the sole personal representative of the estate of Atn Burns Livingston.

The Plaintiff testified that in April of 2002 she received a letter from the USDA about Defendant Livingston being a farm operator with regard to the land at issue. She testified that she then began inquiring with the USDA about Defendant Livingston's status as a farm operator of the land at issue. The USDA's Orangeburg Farm Services Agency office informed her that Defendant Livingston was and had been receiving the farm subsidy payments.

The Plaintiff was represented at that time. Though she brought this information to her attorney's attention, she did not bring suit (this action) on the claim concerning the USDA payments until May 30, 2006.

On behalf of the estate, the Plaintiff applied for farm subsidy payments in 2008 and has received them since.

At the close of the Plaintiff's presentation of evidence, Defendant Livingston moved for a directed verdict or involuntary nonsuit as to the Plaintiff's claim, on the grounds that a) the applicable statute of limitations, S.C. Code Ann. § 15-3-530, barred the plaintiff's claim because the Plaintiff knew since at least late 2002 that Defendant Livingston had been receiving the farm subsidy payments and this action was not brought until more than three years later and b) the USDA payments, a product of a contractual relationship in which the USDA was obligated to pay them to Defendant Livingston, were not the property of the estate. The Court deferred ruling on this motion and requested that Defendant Livingston present his case.

Defendant Livingston testified that he and the Plaintiff had agreed that he would rent the land from her on the same terms as the previous tenant had rented the land from the decedent. He testified that the decedent's tenant had been a farm operator of the land and had collected the

USDA farm subsidy benefits himself. The Plaintiff was recalled as a reply witness and testified that she had no knowledge of any such agreement between herself and Defendant Livingston.

CONCLUSIONS OF LAW

While the Court is aware of Defendant Livingston's argument that the farm subsidy payments were not estate property because they were the product of an agreement between Defendant Livingston and the USDA under which the USDA was obligated to pay them to Defendant Livingston, the Court disagrees. The Estate of Atn Burns Livingston could have applied for USDA farm operator status with regard to the land at issue in 2000, when Defendant Livingston did. When Defendant Livingston entered into his agreement with the USDA, he breached his duty to the estate as co-personal representative. Accordingly, Defendant Livingston occupied dual roles when he entered into the agreement with the USDA, the farm subsidy payments that Defendant Livingston received were estate property, and the Plaintiff does have standing to sue to recover the payments from Defendant Livingston.

There are, however, two important limitations on the Plaintiff's claim: the statute of limitations, S.C. Code Ann. § 15-3-530, and the executor de son tort statute, S.C. Code Ann. § 62-3-619.

 The statute of limitations limits the plaintiff's recovery, on behalf of the estate, to the USDA payments that were made within three years before this action was commenced. This action was commenced in 2006. From 2003 forward, Defendant Livingston was paid \$23,380.00 in farm subsidy benefits. Accordingly, the recoverable portion of the Plaintiff's claim concerns this \$23,380.00.

This amount is further limited by S.C. Code Ann. § 62-3-619, which provides as follows:

Any person who shall obtain, receive, and have any goods or debts of any decedent or a release or other discharge of any debt or duty

that belonged to the decedent upon any fraud or without such valuable consideration as shall amount to the value of the same goods or debts or near thereabouts (except it be in or toward satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the decedent at the time of his decease) shall be charged and chargeable as executor of his own wrong, so far as such goods and debts coming to his hands or whereof he is released or discharged by such administrator will satisfy, *deducting, nevertheless, to and for himself allowance of all just, due, and principal debts upon good consideration without fraud owing to him by the decedent at the time of his decease and all other payments made by him which lawful personal representatives may and ought to have and pay by the laws and statutes of this State.*

(emphasis added).

The executor de son tort statute provides that any recovery by an estate is limited by the principle that the tortfeasor is entitled to an offset for the amount he is or was supposed to receive from the estate of the property that has come into his possession. Here, it is shown by the record and is undisputed that the Plaintiff and Defendant Livingston are the sole and equal devisees of Atn Burns Livingston. Accordingly, half of the farm subsidy payments would have gone to Defendant Livingston in any event, and, so, the Plaintiff's recovery is limited to half of the amount of recovery that is not time-barred. Therefore, the Plaintiff's recovery is limited to

10/5 \$11,690.00.

The Plaintiff asked that the Court award her prejudgment interest on her claim. The Plaintiff is not entitled to prejudgment interest. Prejudgment interest must be specifically pled in order to be recovered. Dixie Bell, Inc. v. Redd, 376 S.C. 361, 368-69, 656 S.E.2d 765, 768-69 (Ct. App. 2007). A review of the Plaintiff's Complaint reveals that the Plaintiff did not plead that prejudgment interest should be awarded.

It is therefore hereby ORDERED that Defendant Livingston's motions for summary judgment, directed verdict, and involuntary nonsuit are granted as to the Plaintiff's claim to

recover farm subsidy payments made before 2003 and denied as to the Plaintiff's claim to recover such payments made after 2003, and it is hereby ORDERED that Defendant Livingston shall pay the amount of \$11,690.00 to the Estate of Atn Burns Livingston within 30 days of his counsel's receipt of a clocked copy of this Order, and, if Defendant Livingston does not do so, this order shall constitute a judgment against him and in favor of the Estate of Atn Burns Livingston in the amount of \$11,690.00.

And IT IS SO ORDERED.



The Honorable O. Davie Burgdorf
Master-in-Equity for Orangeburg County

Orangeburg, South Carolina

November 16

, 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

PROBATE COURT

IN THE MATTER OF: ATN BURNS LIVINGSTON
 CASE NO.: 1999-ES-38-00632

ATTEST A TRUE COPY

Veronica Tucker
 Judge of Probate, Orangeburg
 County, South Carolina

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston, Miller Communications, Inc.; Citibank South Dakota, N.A., Branch Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

ORDER REMOVING CASE TO COURT OF COMMON PLEAS

JUDGE:

Honorable Pandora Jones Glover
 Probate Judge, Orangeburg, South Carolina

DATE OF HEARING:

February 20, 2007

ATTORNEYS FOR PLAINTIFF:

Richard B. Ness, Esquire
 Ness, Jett & Tanner, LLC

Harold P. Threlkeld, Esquire

ATTORNEY FOR DEFENDANT,
 CLYDE B. LIVINGSTON:

Andrew S. Radaker, Esquire
 Law Offices of James C. Harrison, Jr., P.A.

ATTORNEY FOR DEFENDANT,
 AMERICAN FIRST FEDERAL, INC.:

M. Barry Stanton, Esquire

THIS MATTER came before the court on the Plaintiff's Motion to remove the causes of action pending in the Plaintiff's Complaint against the Defendants dated May 24, 2006 and filed May 30, 2006 and all counterclaims and cross-claims asserted in response thereto to the Court of Common Pleas for Orangeburg County, South Carolina pursuant to the provisions of S.C. Code Ann. § 62-1-302(d) (Cum. Supp.).

The Defendant, Clyde B. Livingston, through counsel filed Memorandum in Opposition to Plaintiff's Motion for Removal on the grounds that:

1. The Motion for Removal was not timely made; and,
2. All causes of action alleged are not removable pursuant to the applicable statutory provision.

Appearing before me were the Plaintiff through her counsel, Richard B. Ness, Jr., Esquire and Harold P. Threlkeld, Esquire and the Defendant, Clyde B. Livingston, represented by his attorney, Andrew S. Radaker, Esquire and American First Federal, Inc. represented by its attorney, M. Barron Stanton, Esquire.

~~From the file in this matter, together with arguments of counsel, I make the following findings, conclusions and judgments:~~

I. FINDINGS

- 1.1 The Plaintiff's Summons and Complaint was filed on May 30, 2006;
- 1.2 The Defendant, Clyde B. Livingston, was served with the Summons and Complaint on July 5, 2006;
- 1.3 Plaintiff filed Motion for Removal on or about July 31, 2006;
- 1.4 ~~The Defendant, Clyde B. Livingston, served his Answer and Counterclaim on or about August 31, 2006;~~
- 1.5 On October 2, 2006, Defendant, Clyde B. Livingston, filed a Petition in the United States Bankruptcy Court under Chapter 13 of the United States Bankruptcy Code;
- 1.6 On November 10, 2006, Plaintiff served a Reply to Counterclaim of Defendant, Clyde B. Livingston;
- 1.7 It was indicated to the court by counsel that the bankruptcy proceeding by the Defendant, Clyde B. Livingston, was dismissed in January of 2007, but there was no evidence any party to this action was ever served with notice of the dismissal;
- 1.8 Plaintiff served Notice of Motion for Removal on February 2, 2007.

II. CONCLUSIONS

2.1 Pursuant to S.C. Code Ann. § 62-1-302(d) (Cum. Supp.) "... any action or proceeding filed in the Probate Court ...on motion of a party, or by the court on its own motion, made not later than 10 days following the date on which all responsive pleadings must be filed, must (emphasis added) be removed to the Circuit Court...";

2.2 Rule 6(d), South Carolina Rules of Civil Procedure, provides that "a written motion... and notice of the hearing thereof, shall be served not later than 10 days before the time specified for the hearing...";

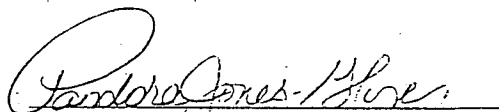
2.3 Plaintiff's Motion was duly served on the Defendant, Clyde B. Livingston, more than 10 days before the hearing;

2.4 Also, Plaintiff served Motion within 10 days after Plaintiff discovered the bankruptcy action against the Defendant, Clyde B. Livingston, had been dismissed.

III. JUDGMENT

ORDERED THAT pursuant to the provisions of S.C. Code Ann. § 62-1-302(d) (Cum. Supp.), the four causes of action alleged in the Plaintiff's Complaint and all cross-claims and counterclaims thereto are hereby removed from the Probate Court of Orangeburg County, South Carolina to the Court of Common Pleas for Orangeburg, South Carolina and shall be adjudicated and disposed of by that court.

IT IS SO ORDERED this 12 day of ^{April}~~March~~, 2007.



Pandora Jones Glover

Judge of Probate Court

Orangeburg County, South Carolina

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NO:1999ES3800632
COUNTY OF ORANGEBURG	)	
	)	
IN THE MATTER OF: Atn Burns Livingston)	)	
	)	
	)	
	)	CERTIFICATE OF MAILING
	)	
	)	
	)	

This Order was entered on the 12th day of April, 2007, in which a copy
was mailed first class this 16th day of April, 2007 as follows:

Andrew S. Radaker, Esquire

Attorney At Law
Post Office Box 50143
Columbia, South Carolina 29260

M. Baron Stanton, Esquire
Stanton Law Offices, P.A.
Post Office Box 245
Columbia, South Carolina 29202

Harold P. Threlkeld, Esquire
Post Office Box 1385
Anderson, South Carolina 29622

Richard Ness, Esquire
Ness, Jett & Tanner L.L.C.
Attorneys At Law
Post Office Box 909
Bamberg, South Carolina 29003



Veronica Tucker, Litigation Supervisor
Orangeburg County Probate Court

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.

CONSENT ORDER OF REFERENCE

Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

This matter comes before me upon the motion of the Plaintiff in the above-captioned action, to which motion Defendants Clyde B. Livingston, Citibank South Dakota, N.A., Branch Banking and Trust Company of South Carolina, and American First Federal, Inc. consent, that this action be referred to the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, pursuant to Rule 53, SCRCP. Defendant Miller Communications, Inc. is in default of the complaint in this action.

It is therefore hereby ORDERED that the Plaintiff's motion for an Order of Reference is granted, and this action is hereby referred to the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, with said Master-in-Equity having all the power and authority of a circuit judge pursuant to Rule 53(c), SCRCP, the Master-in-Equity's power and authority to

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[Signature]
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

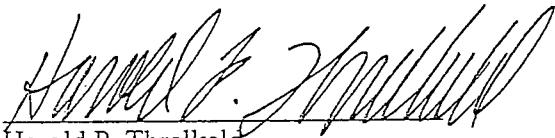
include, but not be limited to, to take testimony in the action, to make findings of fact and conclusions of law, to dispose of any and all issues and enter a final judgment in the case, to order the public or private sale of the property subject of this action, to hear and dispose of any and all motions in the case, and to hear any issues and make any orders after judgment, including, but not limited to, motions or proceedings to alter or amend the judgment and motions pursuant to Rule 60, SCRCF, and with any appeal being to the Court of Appeals or Supreme Court as provided by law.

And IT IS SO ORDERED.



The Honorable Diane S. Goodstein
Chief Admin. Judge for the First Judicial Circuit

WE SO MOVE AND CONSENT:

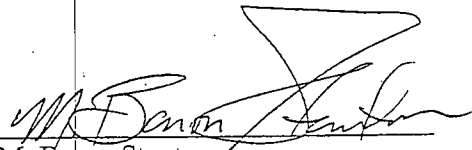


Harold P. Threlkeld
P.O. Box 1385
Anderson, SC 29622-1385
(864) 226-1305
(864) 226-1685 (facsimile)

Richard B. Ness
NESS & JETT, LLC
P.O. Box 909
Bamberg, SC 29003

ATTORNEYS FOR PLAINTIFF

I CONSENT:



M. Baron Stanton
STANTON LAW OFFICES, P.A.
P.O. Box 245
Columbia, SC 29202
(803) 929-1484
(803) 929-0534 (facsimile)

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Raderker 7/11/08
e-mail*

ATTORNEY FOR DEFENDANT AMERICAN FIRST FEDERAL, INC.

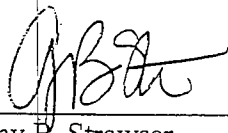
I CONSENT:



Chris B. Staubes, III
CLAWSON & STAUBES, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492-8144
(843) 577-2026
(843) 722-2867 (facsimile)

ATTORNEY FOR DEFENDANT BRANCH BANKING AND TRUST COMPANY
OF SOUTH CAROLINA

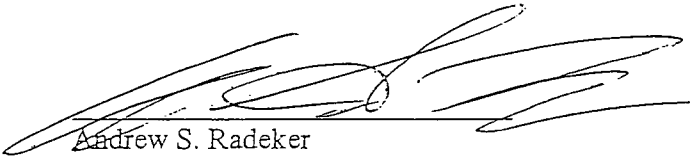
I CONSENT:



Amy B. Strawser
BERNHARDT & STRAWSER, PA
5821 Fairview Rd., Ste. 100
Charlotte, NC 28209
(704) 335-0444
(704) 335-0551 (facsimile)

ATTORNEY FOR DEFENDANT CITIBANK SOUTH DAKOTA, N.A.

I CONSENT:



Andrew S. Radeker
JAMES C. HARRISON, JR., P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drewradeker@mindspring.com (email)

ATTORNEY FOR DEFENDANT
CLYDE B. LIVINGSTON

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

PROBATE COURT

IN THE MATTER OF: ATN BURNS LIVINGSTON
CASE NO.: 1999-ES-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and
Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

SUMMONS

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at 213 East Calhoun Street, P. O. Box 1385, Anderson, South Carolina, 29622-1385, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

Dated at Anderson, South Carolina and Bamberg, South Carolina on the 24
day of May, 2006.

Harold P. Threlkeld
Harold P. Threlkeld

P. O. Box 1385

Anderson, SC 29622-1385

Telephone: 864.226.1305

Facsimile: 864.226.1685

Richard B. Ness
Richard B. Ness

Ness, Jett & Tanner

P. O. Box 909

Bamberg, SC 29003

Attorneys for Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

PROBATE COURT
JUL 20 2006 PM 12:06

IN THE MATTER OF: Atn Burns Livingston

vs. S.C.

CASE NO.: 1999-FS-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and
Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston, Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

COMPLAINT

Plaintiffs allege:

BACKGROUND ALLEGATIONS

1. This court has jurisdiction of the parties to and subject matter of this action.
2. On October 2, 1999, Atn Burns Livingston (the "Decedent") died testate while residing in the County of Orangeburg, State of South Carolina.
3. On or about December 10, 1999, the Decedent's Will was admitted to informal probate and the Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston, were appointed Personal Representatives of the estate of the Decedent and commenced administration upon the assets of the Decedent's estate.

4. The Co-Personal Representatives were unable to function together and by Order of the court dated January 18, 2002 the Defendant, Clyde B. Livingston, was removed as Personal Representative.

5. The probate estate of the Decedent included cash, notes/accounts receivable, insurance benefits, personal belongings and household furnishings and real property including a large farm in Orangeburg, South Carolina and a house in Hendersonville, North Carolina.

6. The Decedent, Clyde B. Livingston, was at the time of the Decedent's death indebted to the Decedent in an amount in excess of Forty thousand dollars (\$40,000.00).

7. In addition, the Plaintiff Personal Representative has incurred obligations and indebtedness to defray final expenses and administrative costs to complete administration of the estate.

8. The sole remaining asset of the estate is the farm located in Orangeburg County.

9. To complete administration of the estate and make proper distribution of the assets to the Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston, requires the sale of a portion of the farm and partition of the remainder to the parties according to their interests.

10. To complete administration of the estate, it is necessary for this court to authorize the sale of so much of the farm as may be necessary to pay the debts and administrative expenses of the estate, and to partition the farm according to the interest of the Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston.

FOR A FIRST CAUSE OF ACTION

11. The preceding allegations are made part hereof by this reference.

12. The Decedent's estate is indebted to the Plaintiff, Emma Lou Livingston Martin, for loans made by her to the estate to defray costs and administrative expenses and for compensation to Personal Representative for services rendered in the amount of Nineteen thousand six hundred seventy-five and 26/100 (\$19,675.26) dollars, which sum is evidenced by a promissory note of the Personal Representative to the Plaintiff, Emma Lou Livingston Martin, dated March 31st, 2006 in the amount of Nineteen thousand six hundred seventy-five and 26/100 (\$19,675.26) dollars with interest at the rate of seven and three-fourths percent (7.75%) per annum from March 31, 2006.

13. Payment of the foregoing Note is secured by a mortgage on the farm dated March 31, 2006 and recorded in the Office of Register of Deeds for Orangeburg County, South Carolina on May 3, 2006 in Mortgage Book 1701 at page 212.

14. The holder of the note has demanded payment from the estate, but the estate lacks liquid funds in which to pay the note.

15. To pay the note, the estate will need to sell a sufficient amount of the property to satisfy the amount due on the note.

16. The Plaintiffs are entitled to an Order determining the amount due on the note and ordering the sale of so much of the real property owned by the estate as is necessary to pay the amount due on the note.

FOR A SECOND CAUSE OF ACTION

17. The Decedent, Clyde B. Livingston, was indebted to the Decedent at Decedent's death in the amount of approximately Forty thousand dollars (\$40,000.00) and since the date of Decedent's death, the Defendant, Clyde B. Livingston, has received and appropriated to his own use assets of the Decedent's estate, including USDA payments, accounts receivable and personal belongings having a value of approximately Twenty-five thousand dollars (\$25,000.00) for a total amount of approximately Sixty-five thousand dollars (\$65,000.00).

18. To equalize the Plaintiff, Emma Lou Livingston Martin, with the Defendant, Clyde B. Livingston, the court must allocate to Emma Lou Livingston Martin a sufficient amount of the real property to equate the Plaintiff, Emma Lou Livingston Martin, with the assets heretofore realized by the Defendant, Clyde B. Livingston.

19. The Plaintiff, Emma Lou Livingston Martin, is entitled to an Order of this court allocating to her so much of the real property owned by the Decedent's estate as will amount to a value that will equate to the assets heretofore realized by the Decedent.

FOR A THIRD CAUSE OF ACTION

20. The preceding allegations are made part hereof by this reference.

21. The Decedent, Aln Burns Livingston, died on or about October 25, 1999, leaving in full force and effect his Last Will and Testament devising all of his property in equal shares to his daughter, the Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston.

22. At the time of his death, the Decedent was seized and possessed of fee simple title to the real property described in Exhibit "1" annexed hereto and incorporated herein by this reference.

23. This court has jurisdiction of the real property described in Exhibit "1" annexed hereto and incorporated herein by this reference.

24. The Plaintiff, Emma Lou Livingston Martin, demands that her interest in the real property described in Exhibit "1" remaining after payment of debts and allocations as provided in the First and Second Causes of Action hereinbefore between the Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston, pursuant to the provisions of S. C. Code Ann. § 62-3-911.

25. Unless this court partitions the property among the parties, the Plaintiff, Emma Lou Livingston Martin, will be unable to realize any benefit from or use her interest in said real property.

26. ~~The Plaintiffs are entitled to an Order of this court partitioning the real~~ property described in Exhibit "1" remaining after payment of administrative expenses and allotment set forth in the First and Second Causes of Action between the Plaintiff, Emma Lou Livingston, and the Defendant, Clyde B. Livingston, according to the provisions of S.C. Code Ann. § 62-3-911.

27. The Defendant, Miller Communications, Inc., is joined as a party defendant to this action because it holds a judgment against the Defendant, Clyde B. Livingston, dated January 13th, 2005 and filed in the Office of the Clerk of Court for Orangeburg County, South Carolina in Judgment Roll No. 2005-865, the lien of which, if any, encumbers the undivided interest of the Defendant, Clyde B. Livingston, subject to any obligations of Clyde B. Livingston to the estate, but does not constitute a lien on the remainder interest of the property.

28. The Defendant, Citibank South Carolina, N.A., is joined as a party defendant to this action because it holds a judgment against the Defendant, Clyde B. Livingston, dated March 31st, 2004 and filed in the Office of the Clerk of Court for Orangeburg County, South Carolina in Judgment Roll No. 2004-412, the lien of which, if any, encumbers the undivided interest of the Defendant, Clyde B. Livingston, subject to any obligations of Clyde B. Livingston to the estate, but does not constitute a lien on the remainder interest of the property.

29. The Defendant, Branch Banking and Trust Company of South Carolina, is joined as a party defendant to this action because it holds a judgment against the Defendant, Clyde B. Livingston, dated April 13th, 2004 and filed in the Office of the Clerk of Court for Orangeburg County, South Carolina in Judgment Roll No. 2004-470, the lien of which, if any, encumbers the undivided interest of the Defendant, Clyde B. Livingston,

subject to any obligations of Clyde B. Livingston to the estate, but does not constitute a lien on the remainder interest of the property.

30. The Defendant, American First Federal, Inc., is joined as a party defendant to this action because it holds a judgment against the Defendant, Clyde B. Livingston, dated April 11th, 2005 and filed in the Office of the Clerk of Court for Orangeburg County, South Carolina in Judgment Roll No. 2004-1083, the lien of which, if any, encumbers the undivided interest of the Defendant, Clyde B. Livingston, subject to any obligations of Clyde B. Livingston to the estate, but does not constitute a lien on the remainder interest of the property.

FOR A FOURTH CAUSE OF ACTION

31. The preceding allegations are made part hereof by this reference.

32. Plaintiffs are entitled to a reasonable amount of attorney's fees, court costs and expenses of partition, and surveying costs incurred in the prosecution of this action and the partitions as required in the First, Second and Third Causes of Action therein.

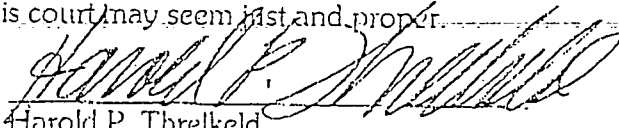
WHEREFORE, Plaintiffs pray that:

1. Sale of real property to pay debts owed to the Plaintiff and expenses and attorney's fees incurred in prosecuting this action;

2. Allot to the Plaintiff, Emma Lou Livingston Martin, real property to equalize her with the Defendant, Clyde B. Livingston;

3. Partition the residue among the parties according to their interests;

4. For other and further relief as to this court may seem just and proper.


Harold P. Threlkeld

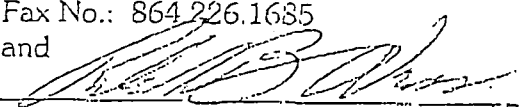
P. O. Box 1385

Anderson, SC 29622-1385

Telephone No.: 864.226.1305

Fax No.: 864.226.1685

and


Richard B. Ness

Ness, Jett & Tanner

P. O. Box 909

Bamberg, SC 29003

Attorneys for Plaintiffs

Anderson/Bamberg, SC
May 24, 2006

EXHIBIT "1"**Estate of Atn Burns Livingston Real Property Descriptions**

Parcel 1: All that certain parcel or tract of land situate, lying and being in School District No. 34, Elizabeth Township, Orangeburg County, South Carolina, containing forty four (44) acres, more or less, and bounded as follows: on the North by land of Erskine McFarland Livingston, Langdon Aseem Livingston, and Atn Burns Livingston, from which it is separated by a road known as Orangeburg-Edgefield Highway; on the East by estate lands of Mrs. Killie Greer and estate lands of F. A. Wolfe; on the South by estate lands of F. L. Wilt, and J. H. Woodbury; and on the West by lands of Herman Festus Livingston. The said land is a portion of the land left by Lawrence A. Livingston at his death, he having willed the above described tract of land to his widow, E. Lucia Livingston, for her life, and after her death, unto his two daughters, Eppie Lucia Livingston, and Selma Alexander Livingston, now Selma Livingston DeLay. The said E. Lucia Livingston dies on July 22, 1945, and the aforesaid forty four (44) acres of land is now owned absolutely by Eppie Livingston Ogburn (formerly Eppie Lucia Livingston) and the said Selma Alexander Livingston.

This being the same property that Selma Livingston DeLay conveyed her portion to Atn B. Livingston by virtue of that certain deed dated July 24, 1945 and recorded on August 13, 1945 in Deed Book 135 at page 209.

Parcel 2: All that certain tract of land in Elizabeth Township, School District No. 64, Orangeburg County, South Carolina, containing thirty six (36) acres, more or less, and bounded on the North by lands of B.K. Robinson; on the East by O.S. Livingston; on the South by the old Orangeburg-Edgefield public road; and on the West by lands of H.F. Livingston. Being the same tract of land conveyed to me, the said Erskine M. Livingston, by W.Z. Dantzler by deed dated November 16, 1937, and recorded in the office of the Clerk of Court of Orangeburg County in Deed Book 107, at page 191.

This being the same property conveyed to Atn B. Livingston from Erskine M. Livingston by virtue of that certain deed dated December 16, 1948, and recorded on December 29, 1948, in Deed Book 156 at page 9.

Parcel 3: All that certain tract of land in Elizabeth Township, School District No. 34, Orangeburg County, South Carolina, containing twenty (20) acres, more or less, and bounded on the North by the old Orangeburg-Edgefield Public Road; on the East by lands of H. F. Livingston; on the South by lands of J. H. Woodbury; and on the West by lands of T. W. Livingston. Being the same tract of land conveyed to me, the said Erskine M. Livingston, by C. R. Williams, Collector of Delinquent Taxes, by deed dated April 17, 1936, and appearing of record in the office of said Clerk of Court in Deed Book 86 at page 220.

This being the same property conveyed to Atn B. Livingston by deed of Erskine M. Livingston dated December 16, 1948, and recorded on December 29, 1948, in Deed Book 156 at page 9.

Parcel 4: All that certain tract of land, containing seventy-four and four-tenths (74.4) acres, more or less, known as a part of the Kittie Grier place in Elizabeth Township, School District No. 34 and 64, in Orangeburg County, on the old Orangeburg-Edgefield Public Road, about one mile Northwest from the town of North, and bounded on the North by lands of Atn B. Livingston; on the East by lands of Kittie A. Grier; on the South by lands of Wolfe; and on the West by lands of Atn B. Livingston. Said tract of land is particularly shown and delineated on a plat prepared by William H. Clerk, Surveyor, on the fifth day of October 1946, which is recorded in Plat Book _____ at page _____ in the office of the Clerk of Court for Orangeburg County. Being the Western portion of a certain tract of land containing one hundred seventy nine (179) acres, more or less, allotted to me, the said Kittie A. Grier in the division of the estate lands of my deceased father, Jacob A. Wolfe, and represented as Tract D on the division plat prepared by Fred H. Gramling, Surveyor, dated March 12, 1898. Any discrepancy between the Western boundary line of said 179 acre tract as shown on this plat and the Western boundary line of the tract hereby conveyed, as shown on the plat herein above referred to, is accounted for by an exchange of small corners in about 1898 between myself and Lawrence A. Livingston, the former owner of the adjoining land on the West for the purpose of adjusting the line to our mutual advantage. I now own no land adjoining the tract hereby conveyed, except the remaining portion of the 179 acre tract which is East of the tract hereby conveyed.

This being the same tract conveyed to Atn B. Livingston by Kittie A. Grier by virtue of that certain deed dated October 29, 1946 and recorded November 2, 1946 in Deed Book 142 at page 320.

Parcel 5: All that certain tract of land containing ninety-three (93) acres more or less, in Elizabeth Township, School District No. 64, Orangeburg County, South Carolina, and bounded on the North by lands of the Estate of Willie Senn and the estate of B.K. Robinson; on the East by lands of the Estate of Willie Senn and by lands of Mrs. Kittie Grier; on the South by the old Orangeburg-Edgefield Public Road; and on the West by lands of the estate of F.L. Witt and by lands of the estate of B. K. Robinson. Being the same land devised by the will of Lawrence A. Livingston, deceased to E. Lucia Livingston for her lifetime, and after her death to Langdon A. Livingston, Atn B. Livingston and Erskine M. Livingston, the said E. Lucia Livingston having since died and the interest of the said Erskine M. Livingston having been conveyed to the said Langdon A. Livingston by his deed dated January 2, 1946, not yet recorded.

Undivided one-third interest being inherited by Atn B. Livingston from his father, Lawrence A. Livingston, and an undivided two-thirds interest therein being conveyed unto Atn B. Livingston by deed of Langdon Livingston dated May 16, 1946 and recorded August 26, 1946 in Deed Book 140 at page 256.

Parcel 6. All that certain piece, parcel or tract of land situate, lying and being in Elizabeth Township, Orangeburg County, State of South Carolina, containing thirty six (36) acres, more or less, and bounded as follows: on the North by lands of B. K. Robinson; on the East by L. A. Livingston; on the South by the old Orangeburg-Edgefield Public Road; on the West by lands of H. F. Livingston. Being the same piece, parcel or tract of land that was conveyed to me by Bessie W. Livingston by her deed dated October 13, 1950 and recorded in the office of the Clerk of Court in Deed Book 165 at page 145.

This being the same tract conveyed to Atn B. Livingston by J. Ausburne Witt, by virtue of that certain deed dated January 7, 1953 and recorded on January 9, 1953 in Deed Book 177 at page 148.

Parcel 7. All that certain tract of land, containing twenty-two (22) acres, more or less, known as part of the Lawrence A. Livingston Estate, in Elizabeth Township, School District No. 6 in Orangeburg County, South Carolina, on the old Orangeburg-Edgefield Road, about a mile Northwest of the Town of North; and bounded on the North by the old Orangeburg-Edgefield Road; on the East by lands now or formerly of Kiltie Grier and estate of F. A. Wolfe; on the South by lands now or formerly of F. L. Witt and J. H. Woodbury; and on the West by lands of Atn B. Livingston.

This is the same tract conveyed to Atn B. Livingston by Eppie Livingston Ogburn by virtue of that certain deed dated April 5, 1955 and recorded February 23, 1956 in Deed Book 200 at page 519.

LESS AND EXCEPTING:

Parcel 1. All that certain piece, parcel or tract of land, situate, lying and being in Elizabeth Township, School District No. 34, Orangeburg County, South Carolina, containing twenty (20) acres, more or less, and bounded, now or formerly, as follows: on the North by the old Orangeburg-Edgefield Public Road; on the East by lands of H. F. Livingston; on the South by lands of J.R. Woodbury; and on the West by lands of T. W. Livingston. Being one of the tracts of land conveyed to Atn B. Livingston by deed of Erskine M. Livingston dated December 16, 1948, and recorded in the office of the Clerk of Court for Orangeburg County, S.C. in Deed Book 156 at Page 9.

Being the same parcel conveyed to Erskine M. Livingston by Atn B. Livingston by virtue of that certain deed dated June 17, 1961 and recorded on June 17, 1961 in Deed Book 240 at page 189.

AND LESS AND EXCEPTING:

Parcel 2. All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being near the town of North, County of Orangeburg, State of South Carolina, and being more particularly shown and delineated on a plat prepared for J. Cecil Moore, Jr., and Debra R. Moore by Donald J. Smith, Jr., Inc., approved by Donald J. Smith, Jr., RLS, dated December 17, 1990, and recorded in the office of the RMC for

Orangeburg County in plat Book 69S at page 768, and being bounded and measured as follows: Northeast by property now or formerly of A. Livingston, measuring thereon three hundred and thirty-three and ninety-one hundredths (333.91) feet; Southeast by property now or formerly of A. Livingston, measuring thereon a total distance of eight hundred twenty-five and fifty-five hundredths (825.55) feet; Southwest by a sixty-six (66) foot right of way measuring thereon three hundred forty-seven and thirty-eight (347.38) feet; and Northwest by property now or formerly of A. Livingston, measuring thereon Eight hundred twenty-three and fourteen hundredths (823.14) feet; all measurements being more or less.

This being the same property conveyed to J. Cecil Moore, Jr. and Debra R. Moore by virtue of that certain deed dated January 4, 1991, and recorded on January 7, 1991 in Deed Book 566 at page 69.

TMS No.: 061-00-01-010

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

SUMMONS FOR
AMENDED ANSWER, CROSS-CLAIM,
AND COUNTERCLAIM OF
DEFENDANT CLYDE B. LIVINGSTON

TO DEFENDANT MILLER COMMUNICATIONS, INC.:

YOU ARE HEREBY SUMMONED and required to answer the Amended Answer, Counterclaim, and Crossclaim of Defendant Clyde B. Livingston in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Answer, Counterclaim, and Crossclaim of Defendant Clyde B. Livingston upon the subscriber, at his office, P.O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Amended Answer, Counterclaim, and Crossclaim of Defendant Clyde B. Livingston in the time aforesaid, a judgment by default will be rendered against you for the relief demanded therein.

Respectfully submitted;



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drewradeker@mindspring.com (email)

ATTORNEY FOR DEFENDANT
CLYDE B. LIVINGSTON

Columbia, South Carolina

July 23, 2009

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

AMENDED ANSWER, CROSS-CLAIM,
AND COUNTERCLAIM

OF

DEFENDANT CLYDE B. LIVINGSTON

Defendant Clyde B. Livingston, answering the allegations of the Plaintiff's Complaint and by way of counterclaim in the above-captioned action, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Complaint, Defendant Livingston admits this Court has personal jurisdiction of himself and of the Plaintiff; as to the allegations

that the Court has personal jurisdiction of the other parties to this action, Defendant Livingston admits the same insofar as they accurately state the content of the public record and, otherwise, does not possess sufficient knowledge or information to form a belief as to the truth or falsity thereof and therefore denies the same; and, as to the allegation that this Court has jurisdiction of the subject matter of this action, Defendant Livingston answers that Court's subject matter jurisdiction is as provided by law.

3. Answering the allegations of paragraphs 2, 3, and 4 of the Complaint, Defendant Livingston admits the same.

4. Answering the allegations of paragraph 5 of the Complaint, Defendant Livingston admits the allegations that decedent's estate included cash, insurance benefits, personal belongings, and household furnishings, and Defendant Livingston denies the remaining allegations of the paragraph.

5. Answering the allegations of paragraphs 6, 7, 8, 9, and 10 of the Complaint, Defendant Livingston denies the same.

6. Answering the allegations of paragraph 12 of the Complaint, Defendant Livingston denies the same.

7. Answering the allegations of paragraph 13 of the Complaint, Defendant Livingston admits the same insofar as it accurately states what documents have been recorded in the land records of Orangeburg County, and Defendant Livingston denies the remaining allegations of the paragraph. Defendant Livingston further denies the Plaintiff had the power to mortgage Defendant Livingston's interest in the property alleged in the paragraph.

8. Answering the allegations of paragraph 14 of the Complaint, Defendant Livingston does not possess sufficient knowledge or information to form a belief as to the truth

or falsity of the allegation that the Plaintiff has demanded any payment from the estate and therefore denies the same, and Defendant Livingston admits the estate lacks liquid funds, except to the extent that funds in the hands of the Plaintiff or a third party or parties are liquid funds of the estate.

9. Answering the allegations of paragraphs 15, 16, and 17 of the Complaint, Defendant Livingston denies the same.

10. Answering the allegations of paragraphs 18 and 19 of the Complaint, Defendant Livingston denies the same. Defendant Livingston has not appropriated any assets to which the estate or the Plaintiff is entitled.

11. Answering the allegations of paragraphs 21 and 22 of the Complaint, Defendant Livingston admits the same.

12. Answering the allegations of paragraph 23 of the Complaint, Defendant Livingston answers that Court's jurisdiction is as provided by law and denies any allegations of the paragraph that are inconsistent therewith.

13. Answering the allegations of paragraph 24 of the Complaint, Defendant Livingston admits the Plaintiff demands what she demands, denies the Plaintiff is entitled to what she demands, and denies the remaining allegations of the paragraph.

14. Answering the allegations of paragraphs 25 and 26 of the Complaint, Defendant Livingston denies the same.

15. Answering the allegations of paragraphs 27, 28, 29, and 30 of the Complaint, Defendant Livingston denies he has any obligation to the estate and, as to the remaining allegations, admits the same insofar as they accurately state the content of the public record, subject to the defenses of Defendant Livingston in this action, and Defendant Livingston further

notes and alleges that the judgment of record in favor of Miller Communications, Inc. is void for lack of personal jurisdiction over Defendant Livingston in the action in which that judgment was rendered.

16. Answering the allegations of paragraph 32 of the Complaint, Defendant Livingston denies the same.

FOR A SECOND DEFENSE

17. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

18. If the allegations of Defendant Livingston's indebtednesses to the estate were true; which he denies, claims seeking relief due to such indebtednesses would be barred by applicable statutes of limitation, including, but not necessarily limited to, the following:

- a. S.C. Code Ann. § 15-3-520 (2005); and
- b. S.C. Code Ann. § 15-3-530 (2005).

FOR A THIRD DEFENSE

19. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

20. Defendant Livingston satisfied his debts to the decedent by payment during the decedent's life.

FOR A FOURTH DEFENSE

21. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

22. Defendant Livingston's indebtedness to the decedent during his life was satisfied by the decedent's forgiveness or waiver of such indebtedness, to the extent such was not already satisfied by payment.

FOR A FIFTH DEFENSE

23. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

24. If the allegations of Defendant Livingston's indebtednesses to the estate were true, which he denies, the Plaintiff would have delayed for several years in asserting a claim with regard thereto.

25. Such delay would have been unreasonable, as the Plaintiff would have been aware of the existence of such a claim or claims for several years prior to the institution of this action.

26. Such delay would have been to the prejudice of Defendant Livingston, particularly including, but not necessarily limited to, in one or more of the following particulars, to wit:

- a. Such indebtedness having accrued any applicable interest during the delay;
- b. Defendant Livingston's ability to pay such claims having greatly diminished; and
- c. Witnesses as to the partial payment or forgiveness of the indebtedness being now unavailable or having forgotten the events at issue.

FOR A SIXTH DEFENSE

27. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

28. If the allegations of Defendant Livingston's indebtednesses to the estate were true, which he denies, the Plaintiff and estate would be estopped to attempt collection of the

same, as the decedent represented to Defendant Livingston that his debts to the decedent were satisfied and Defendant Livingston reasonably relied thereon, which would be to his prejudice were the decedent's representation inaccurate.

FOR A SEVENTH DEFENSE

29. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

30. Defendant Livingston does not consent to this action, as would be required for a court to partition the particular real property described in the Complaint.

31. This action fails to meet the requirements of Rule 71(d)(2), SCRCP.

FOR AN EIGHTH DEFENSE

32. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

33. The Complaint fails to state facts sufficient to constitute a cause or causes of action, including, but not limited to, in the following particulars, to wit:

- a. The Complaint fails to meet the requirements of Rule 8, SCRCP; and
- b. In a partition action, a court could not award credit to the Plaintiff for expenses that did not enhance the value of the subject property.

FOR A NINTH DEFENSE AND AS COUNTERCLAIM

34. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

35. The decedent's will does not grant the estate's personal representative the power to make a conveyance of an interest in real property the decedent owned in life.

36. Accordingly, the estate's personal representative has no such power.

37. The purported mortgage alleged in paragraph 13 of the Complaint is and always has been void as to Defendant Livingston's interest in the property the purported mortgage asserts it encumbers.

38. Defendant Livingston is entitled to an Order declaring that the purported mortgage does not encumber his interest in the property the purported mortgage asserts it encumbers.

FOR A TENTH DEFENSE AND AS COUNTERCLAIM

39. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

40. While Defendant Livingston maintains that the Plaintiff did not have the power to encumber his interest in real property as alleged in paragraph 13 of the Complaint, even if the Plaintiff had such power, such encumbrance would have been a conflict-of-interest transaction.

41. Defendant Livingston, to the extent such is applicable, is entitled to an Order declaring that the purported mortgage; if the Court finds the same to be an actual mortgage, is voidable by Defendant Livingston.

FOR AN ELEVENTH DEFENSE AND AS COUNTERCLAIM

42. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

43. Upon information and belief, the Plaintiff appropriated to her own personal use funds of the estate, including, but not necessarily limited to, funds she used to pay attorneys' fees for services that were not rendered to advise or assist the Plaintiff in her duties of administration of the estate and do not constitute services rendered to the estate.

44. The Plaintiff is obligated to return and the Court should Order her to return to the estate the value, as of the date of their disposition, of the funds so appropriated as well as the value of any and all income or gain she has received by virtue of the appropriation.

45. The Court should inquire into the disposition by the Plaintiff of estate funds and should Order the Plaintiff (or a special administrator at the expense of the Plaintiff) to account for such funds in a manner sufficient for the Court to determine for each of the Plaintiff's distributions of estate funds whether such disposition was within the lawful exercise of the Plaintiff's powers as personal representative.

FOR A TWELFTH DEFENSE AND AS COUNTERCLAIM

46. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

47. The Plaintiff, as personal representative of the decedent's estate, did not have the authority to bind the estate to the purported note she alleges in paragraph 12 of the Complaint.

48. Accordingly, Defendant Livingston is entitled to an Order declaring any obligation of the estate to repay the Plaintiff money pursuant to the purported note or any other purported loan by the Plaintiff, personally, to the Plaintiff, as personal representative of the estate, or otherwise to the estate to be voidable by Defendant Livingston.

FOR A THIRTEENTH DEFENSE AND AS COUNTERCLAIM

49. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

50. The USDA payments alleged in paragraph 17 of the Complaint were never part of the decedent's estate.

51. It is clear from the Complaint that the Plaintiff claims such USDA payments were part of the decedent's estate.

52. A justiciable controversy exists as to whether such USDA payments were ever part of the decedent's estate.

53. Defendant Livingston is entitled to an Order declaring that such USDA payments were never part of the decedent's estate.

FOR A FOURTEENTH DEFENSE AND AS COUNTERCLAIM

54. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

55. Upon information and belief, the Plaintiff claims Defendant Livingston owes the estate rent for his use of a portion of the real property owned by the decedent during his life.

56. Defendant Livingston does not owe the estate any rent.

57. A justiciable controversy exists as to whether Defendant Livingston owes the estate any rent.

58. Defendant Livingston is entitled to an Order declaring that he does not owe the estate any rent.

FOR A FIFTEENTH DEFENSE AND AS COUNTERCLAIM

59. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

60. As personal representative of the Estate of Atn Burns Livingston, the Plaintiff owes and has owed Defendant Livingston a fiduciary duty.

61. This duty includes a duty to complete the administration of the estate expeditiously.

62. The Plaintiff has breached this duty. The Plaintiff has not expeditiously completed the administration of the estate.

63. Despite the ability to do so, the Plaintiff did not issue a deed of distribution to the real property at issue at any time prior to the judgments obtained by the judgment creditor defendants in this action being rendered.

64. If such a deed of distribution had been issued, Defendant Livingston could have sold his interest in the real property subject of this action and obtained funds to pay the debts subject of the said judgments at or before the time that the judgments were rendered. This would have prevented the accrual of judgment interest on the said judgments.

65. This breach of duty has proximately caused damages to Defendant Livingston, including, but not necessarily limited to, the accrual of interest on the said judgments.

66. The Court should render against the Plaintiff an award to Defendant Livingston of the amount of interest on the judgment debts that has accrued since those judgments were rendered.

FOR A SIXTEENTH DEFENSE AND AS COUNTERCLAIM

67. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

68. The Plaintiff should be required to indemnify Defendant Livingston for any loss that is occasioned in this action as a result of the accrual of interest on the said judgments.

FOR A SEVENTEENTH DEFENSE

69. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

70. The Plaintiff previously instituted a proceeding in the Probate Court seeking to have Defendant Livingston removed as co-personal representative of the Estate of Atn Burns Livingston.

71. In that proceeding, the Plaintiff claimed that Defendant Livingston should be removed as co-personal representative of the Estate of Atn Burns Livingston due to alleged mismanagement of the estate and alleged misuse of estate assets during his tenure as co-personal representative.

72. The Plaintiff was successful in that proceeding in having the Probate Court remove Defendant Livingston as co-personal representative of the estate.

73. Any and all of the Plaintiff's claims with regard to any purported mismanagement of the estate, usurpation or conversion of estate assets, or any conduct with regard to any claimed acts of Defendant Livingston during the time her was co-personal representative of the estate could have been litigated in the prior Probate Court proceeding.

74. The Plaintiff's claims with regard to any purported mismanagement of the estate, usurpation or conversion of estate assets, or any conduct with regard to any claimed acts of Defendant Livingston during the time her was co-personal representative of the estate is barred by res judicata or collateral estoppel.

FOR AN EIGHTEENTH DEFENSE AND AS CROSS-CLAIM

75. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

76. As is shown by the copy of the transcript of judgment attached as Exhibit A hereto, no personal jurisdiction over Defendant Livingston was ever obtained in the action that

produced the judgment of record claimed by Defendant Miller Communications, Inc. that is subject of this action.

77. Defendant Livingston has never resided at 1144 Calhoun Drive in Orangeburg, South Carolina.

78. No delivery of any process to a person other than Defendant Livingston at that address could constitute service of process.

79. Service of process is necessary to personal jurisdiction.

80. The judgment of record claimed by Defendant Miller Communications, Inc. that is subject of this action is void for lack of personal jurisdiction, and Defendant Livingston is entitled to an Order so declaring.

WHEREFORE, Defendant Livingston prays for the Court to:

- (a) Deny the relief sought by the Plaintiff;
- (b) Dismiss the causes of action attempted to be asserted in the Complaint;
- (c) Issue an Order declaring that the purported mortgage alleged by the Plaintiff in paragraph 13 of the Complaint does not encumber Defendant Livingston's interest in the property the purported mortgage asserts it encumbers;
- (d) Alternatively, issue an Order declaring that the purported mortgage, if the Court finds the same to be an actual mortgage, is voidable by Defendant Livingston;
- (e) Inquire into the disposition by the Plaintiff of estate funds and Order the Plaintiff (or a special administrator at the expense of the Plaintiff) to account for such funds in a manner sufficient for the Court to determine for each of the Plaintiff's distributions of estate funds whether such disposition was within the lawful exercise of the Plaintiff's powers as personal representative;

(f) Order the Plaintiff to return to the estate the value, as of the date of their disposition, of funds she has appropriated to her own use, as well as the value of any and all income or gain she has received by virtue of the appropriation;

(g) Award Defendant Livingston actual and punitive damages against the Plaintiff;

(h) Issue an Order declaring any obligation of the estate to repay the Plaintiff money pursuant to the purported note alleged in paragraph 12 of the Complaint or any other purported loan by the Plaintiff, personally, to the Plaintiff, as personal representative of the estate, or otherwise to the estate to be voidable by Defendant Livingston;

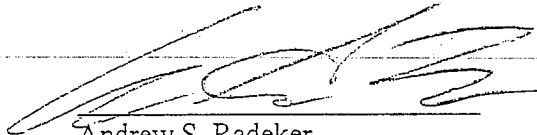
(i) Issue an Order declaring that the USDA payments alleged in paragraph 17 of the Complaint were never part of the decedent's estate;

(j) Issue an Order declaring that Defendant Livingston does not owe the estate any rent;

(k) Issue an Order declaring that judgment of record claimed by Defendant Miller Communications, Inc. that is subject of this action is void for lack of personal jurisdiction; and

(l) Grant such other and further relief as the court deems just and proper.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drewradeker@mindspring.com (email)

ATTORNEY FOR DEFENDANT
CLYDE B. LIVINGSTON

Columbia, South Carolina

July 23, 2009

2005

JR011# 20050865

919

Transcript of Judgment

Case Number 04001201

Names of Parties against whom
Judgments have been obtained

Attorney

CLYDE LIVINGSTON DBA ORIGINAL RAPID
1144 CALHOUN DR., ORANGEBURG, SC 29115

Defendant

Names of Parties in whose favor Judgments
Have been obtained

Attorney

MILLER COMMUNICATIONS INC.
PO BOX 1269, SUMTER, SC 29151

Plaintiff

Summons served upon defendant by leaving a copy of the same with E. LIVINGSTON at
1144 JOHN C. CALHOUN DR., ORANGEBURG, SC in Orangeburg County, on the September 10, 2004

DAMAGES AND COSTS

Amount of Judgment \$ 1899.45

Amount Brought Forward \$ 1979.45

Service of Summons \$

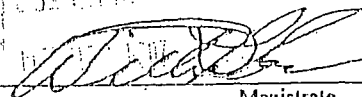
Magistrate \$ 80.00

Amount Forward \$ 1979.45

Total Amount Costs
and Disbursements \$

Filed on the 13 January 2005

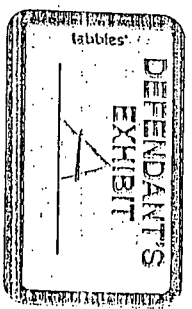
I certify that the foregoing is a correct transcript from the Docket of Judgments kept in my office.


Magistrate

7/27/05

-53-

Thursday, June 01, 2006 (2).max



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 07-CP-38-826

In re: Estate of Atn Burns Livingston,)
)
 Emma Lou Livingston Martin as Personal)
 Representative of the Estate of Atn Burns)
 Livingston and Emma Lou Livingston)
 Martin,)
)
 Plaintiff,)

vs.)

Clyde B. Livingston; Miller)
 Communications, Inc.; Citibank South)
 Dakota, N.A.; Branch Banking and Trust)
 Company of South Carolina; and)
 American First Federal, Inc.,)
)
 Defendants.)

**PLAINTIFF'S FIRST AMENDED REPLY/
 ANSWER TO AMENDED ANSWER,
 CROSSCLAIM AND COUNTERCLAIMS
 OF THE DEFENDANT, CLYDE B.
 LIVINGSTON**

Plaintiff, Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns Livingston, and Emma Lou Livingston Martin (hereinafter collectively referred to as "Martin"), through counsel, hereby answers/replies to Amended Answer, Crossclaim and Counterclaims of Defendant, Clyde B. Livingston ("Livingston") and alleges as follows:

FOR A FIRST DEFENSE

1. Martin specifically reiterates, realleges and reasserts herein all of the allegations and claims set forth in the Complaint, and specifically denies any and all allegations contained in the Livingston Answer, Crossclaim and Counterclaims in any way inconsistent therewith and demands strict proof thereof.
2. Martin denies each and every allegation contained in the Livingston Answer, Crossclaim and Counterclaim which are not hereinafter specifically admitted and demands strict proof thereof.
3. Martin expressly denies each and every allegation of paragraphs 1-33 of the First through Eighth Defenses and demands strict proof thereof.

4. Martin denies each and every allegation of paragraphs 34, 35, 36, 37 and 38 of the Ninth Defense and Counterclaim and demands strict proof thereof.

5. Martin denies each and every allegation of paragraphs 39, 40 and 41 of the Tenth Defense and Counterclaim and demands strict proof thereof.

6. Martin denies each and every allegation of paragraphs 42, 43, 44 and 45 of the Eleventh Defense and Counterclaim and demands strict proof thereof.

7. Martin denies each and every allegation of paragraphs 46, 47 and 48 of the Twelfth Defense and Counterclaim and demands strict proof thereof.

8. Martin denies each and every allegation of paragraphs 49, 50, 51, 52 and 53 of the Thirteen Defense and Counterclaim and demands strict proof thereof.

9. Martin denies each and every allegation of paragraphs 54, 55, 56, 57 and 58 of the Fourteenth Defense and Counterclaim and demands strict proof thereof.

10. Martin denies each and every allegation of paragraphs 59, 60, 61, 62, 63, 64, 65 and 66 of the Fifteenth Defense and Counterclaim and demands strict proof thereof.

11. Martin denies each and every allegation of paragraphs 67 and 68 of the Sixteenth Defense and Counterclaim and demands strict proof thereof.

12. Martin denies each and every allegation of paragraphs 69, 70, 71, 72, 73 and 74 of the Seventeenth Defense and Counterclaim and demands strict proof thereof.

13. Martin lacks sufficient knowledge and information with which to form an opinion or belief concerning the allegations of paragraphs 75, 76, 77, 78, 79 and 80 of the Eighteenth Defense and Crossclaim, therefore, denies the same.

FOR A SECOND DEFENSE

14. Martin adopts and realleges each and every allegation set forth above, and not inconsistent herewith as if fully and completely repeated herein.

15. That the claim of the Defendant Livingston may be time barred by applicable statute of limitations, the same is hereby raised as an affirmative defense to the counterclaims of the Defendant Livingston.

FOR A THIRD DEFENSE

16. Martin adopts and realleges each and every allegation set forth above, and not inconsistent herewith as if fully and completely repeated herein.

17. That the claims of Defendant Livingston may be barred by the Doctrine of Waiver, Estoppel and/or Laches and the same are hereby raised as affirmative defenses to the claims raised by the Defendant Livingston against the Plaintiff Martin.

FOR A FOURTH DEFENSE

18. Martin adopts and realleges each and every allegation set forth above, and not inconsistent herewith as if fully and completely repeated herein.

19. That the counterclaims of the Defendant Livingston fail to state facts sufficient to constitute a cause of action against Martin.

FOR A FIFTH DEFENSE

20. Martin adopts and realleges each and every allegation set forth above, and not inconsistent herewith as if fully and completely repeated herein.

21. That the claims of the Defendant Livingston may be barred by the Doctrine of Spoliation of Evidence, Plaintiff Martin pleads as an affirmative defense to the claims set forth by the Defendant Livingston in his counterclaims.

FOR A SIXTH DEFENSE

22. Martin adopts and realleges each and every allegation set forth above, and not inconsistent herewith as if fully and completely repeated herein.

23. Martin pleads as an affirmative defense to the counterclaims of the Defendant Livingston the defense of unjust enrichment.

FOR A SEVENTH DEFENSE

24. Martin adopts and realleges each and every allegation set forth above and not inconsistent herewith as if fully and completely repeated herein.

25. Martin pleads as an affirmative defense to the counterclaims of the Defendant Livingston the defense of unclean hands.

FOR AN EIGHTH DEFENSE

26. Martin adopts and realleges each and every allegation set forth above and not inconsistent herewith as if fully and completely repeated herein.

27. Martin pleads as an affirmative defense to the counterclaims of the Defendant Livingston the defense of restitution.

FOR A NINTH DEFENSE

28. Martin adopts and realleges each and every allegation set forth above and not inconsistent herewith as if fully and completely repeated herein.

29. Martin pleads as an affirmative defense to the counterclaims of the Defendant Livingston, the defense of offset.

FOR A TENTH DEFENSE

30. Martin adopts and realleges each and every allegation set forth above and not inconsistent herewith as if fully and completely repeated herein.

31. In respect to the Fifteenth Defense and By Way of Counterclaim, Martin would show that every attempt by her as Personal Representative to complete the administration of the estate was either prevented or interfered with by Livingston.

FOR AN ELEVENTH DEFENSE

32. Martin adopts and realleges each and every allegation set forth above and not inconsistent herewith as if fully and completely repeated herein.

33. S.C. Code Ann. §62-1-302(a) vests in the Probate Court exclusive original jurisdiction over all subject matter related to estates of decedents, except to the extent issues are removed to the Circuit Court pursuant to the provisions of S.C. Code Ann. §62-1-302(d).

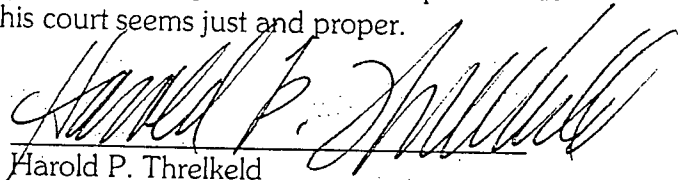
34. The matters removed to the Circuit Court pursuant to the Removal Order.

35. Pursuant to S.C. Code Ann. §62-1-302(e), subject matter jurisdiction of all matters not removed is retained by the Probate Court.

36. Pursuant to Rule 12(b)(1), South Carolina Rules of Civil Procedure, Plaintiff is entitled to an Order dismissing all counterclaims of Livingston that do not relate to issues raised in the Plaintiff's Complaint.

37. The Plaintiff is entitled to an Order of this Court dismissing all Answers, Counterclaims and Crossclaims that do not relate to the subject matter of the allegations of the Plaintiff's Complaint, including but not limited to the Eleventh Defense and Counterclaim, the Fifteenth Defense and Counterclaim, the Sixteenth Defense and Counterclaim, and the Seventeenth Defense and Counterclaim.

WHEREFORE, having fully replied/answered the counterclaims and crossclaims of the Defendant Livingston, the Plaintiff prays that the same be dismissed with costs, further reiterates her claim for judgment against the Defendant Livingston in the Complaint with costs, and for such other and further relief as to this court seems just and proper.



Harold P. Threlkeld

P. O. Box 1385

Anderson, SC 29622-1385

Telephone No.: 864.226.1305

Fax No.: 864.226.1685

and

Richard B. Ness

Ness, Jett & Tanner

P. O. Box 909

Bamberg, SC 29003

Attorneys for Plaintiffs

Anderson/Bamberg, SC
August 12, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 IN THE COURT OF COMMON PLEAS
 C.A. NO.: 07-CP-38-826

IN THE MATTER OF: ATN BURNS LIVINGSTON

PROBATE COURT CASE NO.: 1999-ES-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston, Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

MOTIONS OF PLAINTIFFS

NOTICE IS HEREBY GIVEN that the Plaintiffs, by and through counsel, will move before the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, South Carolina at 1:30 p.m. on February 11th, 2009 pursuant to S.C. Code Ann. §62-3-911 (1990; as amended) for an Order denying the Defendant, Clyde B. Livingston, of any right to purchase the real property being the subject matter of this action pursuant to the rights granted to a "non-petitioning joint tenant" by S.C. Code Ann. §15-61-25 (2006) on the grounds:

1. The Defendant, Clyde B. Livingston, is not a joint tenant in the subject real property and this action is brought by the Personal Representative to partition the real property for purposes of distribution from the decedent's estate pursuant to S.C. Code Ann. §62-3-911 (1990);

2. S.C. Code Ann. §15-61-25 is intended to protect a non-petitioning joint tenant who wishes to retain the subject property for personal use and not to sell to a third party; and,

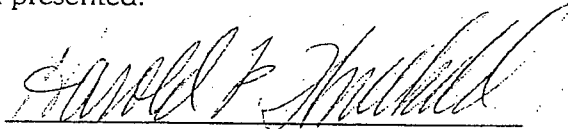
3. Defendant, Clyde B. Livingston, has multiple judgments, is unable to purchase the subject property for its fair market value and filed the Notice of Election solely for purposes of delay.

NOTICE IS HEREBY GIVEN that the Plaintiffs will further move, that if the court allows the application of S.C. Code Ann. §15-61-25 to this proceeding, that in the alternative that the Defendant, Clyde B. Livingston, not be allowed to purchase the subject real property pursuant to S.C. Code Ann. §15-61-25 for a price that is less than the amount the Plaintiff would pay for the subject property, on the grounds that it would be inequitable to permit an equal beneficiary of an estate to purchase an asset of the estate for a price that is less than another equal beneficiary would pay for that asset.

NOTICE IS HEREBY FURTHER GIVEN that the Plaintiffs will further move, that if the court allows the application of S.C. Code Ann. §15-61-25 to this proceeding, that in the alternative the Plaintiffs be granted leave to amend the Plaintiffs' pleadings to assert either a claim or a defense that S.C. Code Ann. §15-61-25 is unconstitutional and unenforceable on the grounds that the Plaintiff, Emma Lou Livingston Martin, is entitled to equal treatment under the law and yet is treated different and unequally by S.C. Code Ann. §15-61-25.

NOTICE IS HEREBY FURTHER GIVEN that the Plaintiffs, by and through counsel, will move before the court at the same time and place for an Order determining that because of the pending judgments against the Defendant, Clyde B. Livingston, the subject property cannot be fairly and equitably apportioned in kind, and that the Personal Representative be directed to sell the property and distribute the proceeds of sale pursuant to further Order of this court.

These motions are based upon the pleadings, affidavits and such memoranda as have been filed or may be subsequently filed and presented.



Harold P. Threlkeld

P. O. Box 1385

Anderson, SC 29622-1385

Telephone No.: 864.226.1305

Fax No.: 864.226.1685

and

Richard B. Ness

Ness, Jett & Tanner, LLC

P. O. Box 909

Bamberg, SC 29003

Attorneys for Plaintiffs

Anderson, South Carolina

Date: January 23, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 C.A. NO.: 07-CP-38-826

IN THE MATTER OF: ATN BURNS LIVINGSTON
 PROBATE COURT CASE NO.: 1999-ES-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and Emma Lou Livingston Martin,
 Plaintiff

vs.

Clyde B. Livingston, Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

AFFIDAVIT

PERSONALLY APPEARED before me Emma Lou Livingston Martin, who on oath states:

1. The decedent, Atn Burns Livingston ("Decedent"), died testate while residing in the County of Orangeburg, State of South Carolina, on October 2nd, 1999, survived by his sole heirs at law and distributees, his two children, to-wit: Emma Lou Livingston Martin and Clyde B. Livingston;
2. The Decedent left in full force and effect his Last-Will and Testament, dated January 28th, 1983 ("Decedent's Will");
3. The Decedent's Will devised the rest and residue of the Decedent's estate to his two children, Clyde B. Livingston and Emma L. Martin, in equal shares;
4. On December 10th, 1999, Decedent's Will was admitted to informal probate and the Decedent's children, Clyde B. Livingston and Emma L. Martin, were appointed Co-Personal Representatives;
5. By Order of the Probate Court dated January 18th, 2002, the Defendant, Clyde B. Livingston, was removed as Co-Personal Representative and the Plaintiff, Emma Lou Livingston Martin, is duly engaged in the discharge of the duties of the office of Personal Representative;

6. The sole assets of the Decedent's estate are:

- 1) approximately 270 acres of land in Orangeburg County described in the Complaint; and,
- 2) disputed claims against the Defendant, Clyde B. Livingston;

7. The Decedent's estate is indebted to the Plaintiff, Emma Lou Livingston Martin, for loans made to the estate to defray the cost of administrative expenses heretofore incurred in the amount of approximately \$20,000.00 and the Decedent's estate is indebted to attorneys for the estate for services rendered to date;

8. The Affiant is informed and believes that any judgment realized against the Defendant, Clyde B. Livingston, will be uncollectible because of pre-existing judgments;

9. In order to settle the Decedent's estate, it is necessary to sell the real property described in Exhibit "1" to the Petition and to use the proceeds of sale realized therefrom to pay estate liabilities and expenses, including attorneys' fees;

10. The Plaintiff, Emma Lou Livingston Martin, and the Defendant, Clyde B. Livingston, the beneficiaries of the Decedent's Will, have been unable to agree on sale of the subject real property, therefore, to settle the estate it is necessary for the court to direct the Personal Representative to sell the property and to pay the expenses of the Decedent's estate pursuant to the provisions of Rule 71(d)(1), South Carolina Rules of Civil Procedure;

11. The Affiant is informed and believes it would be in the best interest of the estate and the beneficiaries thereof for the Affiant to list the property for sale with a realtor for a period of not less than six months at a price to be determined by the Affiant and approved by the court, and if the property does not sell within a period no greater than six months that Affiant be granted leave to petition the court for public sale by further Order of this court.

Emma Lou Livingston Martin
 Emma Lou Livingston Martin

SWORN to before me this
12 day of January, 2009,

Harold R. Shumaker
 Notary Public for South Carolina

My Commission Expires: 7/23/15

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF ORANGEBURG) CASE NO.: 07-CP-38-826

IN THE MATTER OF: ATN BURNS LIVINGSTON
 CASE NO.: 1999-ES-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and
 Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
 Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, secretary of Harold P. Threlkeld, do hereby certify that I have served counsel of record hereinafter named with the foregoing document(s) by mailing a copy of the same by United States mail, postage prepaid, to the following addresses:

Pleadings: Motions of Plaintiffs and Affidavit of Emma Lou Livingston Martin

Counsel Served: Andrew S. Radeker, Esquire
 James C. Harrison, Jr., P.A.
 P. O. Box 50143
 Columbia, SC 29260

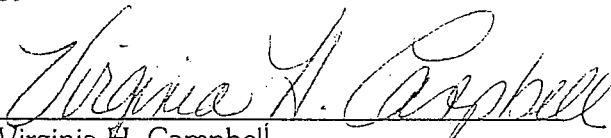
Chris B. Staubes, III, Esquire
 Clawson & Staubes, LLC
 126 Seven Farms Drive, Suite 200
 Charleston, SC 29492

M. Baron Stanton, Esquire
 Stanton Law Offices, P.A.
 P. O. Box 245
 Columbia, SC 29202

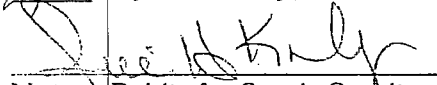
Amy B. Strawser, Esquire
Bernhardt & Strawser, P.A.
5821 Fairview Road
Suite 550
Charlotte, NC 28209

Dated Mailed:

January 23rd, 2009


Virginia H. Campbell

SWORN to before me this
23rd day of January, 2009.


Notary Public for South Carolina

My Commission Expires: 05/19/2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 07-CP-38-826

In re: Estate of Atn Burns Livingston,)
)
 Emma Lou Livingston Martin as Personal)
 Representative of the Estate of Atn Burns)
 Livingston and Emma Lou Livingston)
 Martin,)
)
 Plaintiff,)

vs.)

MOTION TO RECONSIDER AND/OR
 TO ALTER OR AMEND JUDGMENT

Clyde B. Livingston; Miller)
 Communications, Inc.; Citibank South)
 Dakota, N.A.; Branch Banking and Trust)
 Company of South Carolina; and)
 American First Federal, Inc.,)
)
 Defendants.)

TO: Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, South
 Carolina, P. O. Box 9000, Orangeburg, South Carolina, 29116

Andrew S. Radeker, Esquire, P. O. Box 50143, Columbia, South Carolina 29250,
 Attorney for Defendant, Clyde B. Livingston

M. Baron Stanton, Esquire, Stanton Law Offices, P.A., P. O. Box 245, Columbia,
 South Carolina 29202, Attorney for Defendant, American First Federal, Inc.

Chris B. Staubes, III, Esquire, Clawson & Staubes, LLC, 126 Seven Farms Drive,
 Suite 200, Charleston, South Carolina 29492, Attorney for Defendant, Branch
 Banking and Trust Company of South Carolina

Amy B. Strawser, Esquire, Bernhardt & Strawser, P.A., 5821 Fairview Road, Suite
 550, Charlotte, North Carolina 28209, Attorney for Defendant, Citibank South
 Dakota, N.A.

I. MOTION

PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorneys, hereby move the Court pursuant to Rules 52(b) and 59(e), South Carolina Rules of Civil Procedure, for an Order altering or amending its judgment rendered in that certain Order issued by the Court on June 3, 2009, filed with the Clerk of Court on June 8, 2009, and received by attorney for Plaintiff on June 10, 2009 because the Court erred in its findings, conclusions, holdings and rulings in the particulars set forth in paragraph II hereinafter.

II. SPECIFICATION OF ERRORS

The Court erred in its findings, conclusions, holdings and rulings in the following particulars:

2.1 The Court erred in finding, holding, concluding and ruling that S.C. Code Ann. §15-61-25 is applicable to partition actions brought by a personal representative against heirs or devisees of an estate pursuant to S.C. Code Ann. §62-3-911; the error being, S.C. Code Ann. §62-3-911 contemplates partition solely for the purpose of distribution from a decedent's estate for purposes of distribution to the heirs and devisees.

2.2 The Court erred by finding, holding, concluding and ruling that S.C. Code Ann. §15-61-25 does not violate the equal protection clause of either the South Carolina Constitution or the United States Constitution; the error being, no issue was before the Court relating to constitutionality, but the parties stipulated the Plaintiff could amend its Complaint to raise the issue of constitutionality and the Plaintiff has 30 days from date of such Order in which to amend her Complaint to raise that issue before the Court.

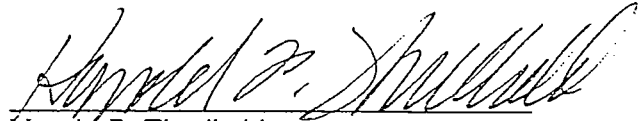
2.3 The Court erred in failing to find, hold and conclude that the Estate of Atn Burns Livingston is vested with a lien on the real property being the subject matter of this action that is superior to the rights and claims of all heirs, devisees and creditors for the amount of all debts of the deceased person and administrative expenses of the estate; the error being, the Personal Representative is clearly vested with such lien and rights pursuant to the provisions of S.C. Code Ann. §62-3-101 and Rule 71(d)(1), South Carolina Rules of Civil Procedure.

2.4 The Court erred in failing to find, hold and conclude that the Personal Representative of the Estate of Atn Burns Livingston is vested with the unrestricted power to divest title to real estate from all devisees, their heirs and assigns and lien creditors for any legitimate administrative purposes, including payment of debts of the decedent and administrative expenses.

2.5 The Court erred by failing to find, hold and conclude that any right of a non-petitioning tenant in common to purchase real property from an estate pursuant to the

provisions of S.C. Code Ann. §15-61-25 (2006) would require the non-petitioning tenant in common to deposit a ratable share of all unpaid debts of the decedent and administrative expenses; the error being, failure to so require denies the Personal Representative of a vested power and right and transfers liabilities of the estate to the Personal Representative individually.

The foregoing motions are based upon the pleadings, affidavits and such other memoranda as have been filed or may be subsequently filed and presented.



Harold P. Threlkeld
P. O. Box 1385
Anderson, SC 29622-1385
Telephone No.: 864.226.1305
Fax No.: 864.226.1685

and
Richard B. Ness
Ness, Jett & Tanner, LLC
P. O. Box 909
Bamberg, SC 29003

Attorneys for Plaintiffs

Anderson, South Carolina
Date: June 18, 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 07-CP-38-826

In re: Estate of Atn Burns Livingston,)
)
 Emma Lou Livingston Martin as Personal)
 Representative of the Estate of Atn Burns)
 Livingston and Emma Lou Livingston)
 Martin,)

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

Clyde B. Livingston; Miller)
 Communications, Inc.; Citibank South)
 Dakota, N.A.; Branch Banking and Trust)
 Company of South Carolina; and)
 American First Federal, Inc.,)

Defendants.)

I, the undersigned, secretary of Harold P. Threlkeld, do hereby certify that I have served counsel of record hereinafter named with the foregoing document(s) by mailing a copy of the same by United States mail, postage prepaid, to the following addresses:

Pleadings: Motion to Reconsider and/or to Alter or Amend Judgment

Parties Served: Honorable O. Davie Burgdorf
 Master-in-Equity for Orangeburg County
 P. O. Box 9000
 Orangeburg, South Carolina, 29116

Andrew S. Radeker, Esquire
 P. O. Box 50143
 Columbia, South Carolina 29250,

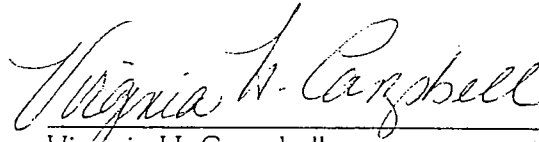
M. Baron Stanton, Esquire
 Stanton Law Offices, P.A.
 P. O. Box 245
 Columbia, South Carolina 29202

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, South Carolina 29492

Amy B. Strawser, Esquire
Bernhardt & Strawser, P.A.
5821 Fairview Road, Suite 550
Charlotte, North Carolina 28209

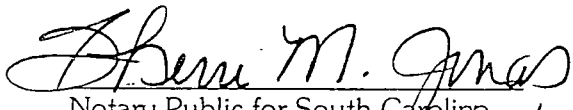
Dated Mailed:

June 18th, 2009



Virginia H. Campbell

SWORN to before me this
18th day of June, 2009.



Notary Public for South Carolina
My Commission Expires: 5/19/2013

STATE OF SOUTH CAROLINA
 COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
 LIVINGSTON.

Emma Lou Livingston Martin as
 Personal Representative of the Estate of
 Atn Burns Livingston and Emma Lou
 Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
 Communications, Inc.; Citibank South
 Dakota, N.A.; Branch Banking and Trust
 Company of South Carolina; and
 American First Federal, Inc.,

Defendants.

MOTION FOR PARTIAL
 SUMMARY JUDGMENT

TO: HAROLD P. THRELKELD, ESQ., AND RICHARD B. NESS, ESQ., ATTORNEYS
 FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant Clyde B. Livingston hereby
 moves pursuant to Rule 56, SCRPC, and all other applicable law for summary judgment on the
 Plaintiff's claims of indebtedness and conversion against Defendant Livingston in the above-
 captioned action, as more fully discussed below. The grounds for this motion are as follows:

1. Upon motion, summary judgment "shall be rendered forthwith if the pleadings,
 depositions, answers to interrogatories, and admissions on file, together with the
 affidavits, if any, show that there is no genuine issue as to any material fact and that the
 moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC.

2. Rule 56, SCRCRCP, permits the entry of a partial summary judgment.
3. In her complaint in this action, the Plaintiff claims the Defendant Livingston "was indebted to the Decedent at Decedent's death in the amount of approximately Forty thousand dollars (\$40,000.00) and since the date of Decedent's death, the Defendant Clyde B. Livingston, has received and appropriated to his own use assets of the Decedent's estate, including USDA payments, accounts receivable and personal belongings having a value approximately Twenty-five thousand dollars (\$25,000.00) for a total amount of approximately Sixty-five thousand dollars (\$65,000.00)."
4. The Plaintiff claims this \$40,000.00 indebtedness by virtue of the underlying debts with which the notes and mortgages attached hereto as Exhibits A, B, C, and D. A letter from Plaintiff's counsel, attached as Exhibit E, clarifies that these notes and mortgages are the basis for the Plaintiff's indebtedness claim.
5. Defendant Livingston has pled that, even if he did owe this indebtedness as claimed by the Plaintiff, these claims would be barred by applicable statutes of limitation, including S.C. Code Ann. § 15-3-520 and S.C. Code Ann. § 15-3-530.
6. The statute of limitations for "an action upon a bond or other contract in writing secured by a mortgage of real property" runs 20 years from the date of the maturity of the debt. S.C. Code Ann. § 15-3-520; see Suttles v. Wood, 280 S.C. 272, 274, 312 S.E.2d 574 (Ct. App. 1984).
7. Exhibit A hereto is a copy of a note, payable "on demand," from Defendant Livingston to Atn B. Livingston (the decedent) and Charlotte V. Livingston that was executed on May 15, 1979.

8. Exhibit B hereto is a mortgage, also dated May 15, 1979, to Atn B. Livingston and Charlotte V. Livingston, given by Defendant Livingston to secure the note debt subject of Exhibit A.
9. "[T]he law is well settled that a promissory note payable on demand, with or without interest, is due immediately, and that the statute of limitations runs in favor of the maker from the date of the execution of the instrument." Coleman v. Page's Estate, 202 S.C. 486, 488-89, 25 S.E.2d 559 (1943).
10. Even if the debt had not been paid, the statute of limitations would have run on it on May 15, 1999, which was 20 years after the execution of the demand note.
11. Exhibit C hereto is a copy of another note, this one from Defendant Livingston to A. B. Livingston (this is the decedent) for \$24,500.00, dated March 27, 1981, and payable one year after its execution.
12. This note was secured by a mortgage, Exhibit D hereto, also executed on March 27, 1981.
13. "The running of any statute of limitations on a cause of action belonging to a decedent which had not been barred as of the date of his death is suspended during the eight months following the decedent's death but resumes thereafter unless otherwise tolled." S.C. Code Ann. § 62-3-109 (2009).
14. The decedent died on October 2, 1999.
15. Accordingly, even if the debt subject of the 1981 note had not been paid, the statute of limitations on that debt would have run on November 27, 2002, which was 20 years and eight months after the note's due date.

16. As shown by the Plaintiff's complaint and by a letter from her former attorney, attached hereto as Exhibit F, the Plaintiff was made the sole personal representative of the decedent's estate on January 18, 2002, more than 10 months before the statute of limitations ran on the 1981 note claim.
17. This action seeking, *inter alia*, collection of these note debts was filed on May 30, 2006.
18. The statute of limitations on both these note claims had run before the commencement of this action.
19. The Plaintiff's claim with regard to conversion of USDA benefits must also fail, both because of the statute of limitations and because the USDA benefits at issue did not belong to the estate or to the Plaintiff individually.
20. The Plaintiff's responses to Defendant Livingston's second set of requests to produce show that Defendant Livingston applied for and received a farm number from the United States Department of Agriculture in the year 2000 and began receiving USDA benefits per his contractual agreement with the USDA.
21. Neither the estate nor the Plaintiff individually was a party to this agreement.
22. In order to have standing to bring a conversion claim, a plaintiff must have ownership of the property (which can include money) at issue. See Moore v. Weinberg, 383 S.C. 583, 681 S.E.2d 875, 878 (2009).
23. Even if Defendant Livingston had obtained benefits from the USDA through some unlawful means (which he certainly does not concede), the USDA might have an action against him, but the Plaintiff would not. See id.; Prof. Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985) (generally, only contract's promisor and promisee have legal interest vested by contract). The Plaintiff has not adduced, and

cannot adduce, any evidence that the USDA payments ever belonged to the estate. The Plaintiff lacks standing to bring this claim. See Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. Natural Resources, 345 S.C. 594, 601, 550 S.E.2d 287 (2001) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130 (1992), for elements of standing, among them that *the plaintiff* must have suffered an injury in fact to a protected legal right).

24. In addition, since Defendant Livingston has been receiving these benefits since the year 2000 and this action was commenced in 2006, the three-year statute of limitations in S.C. Code Ann. § 15-3-530 would bar this claim.

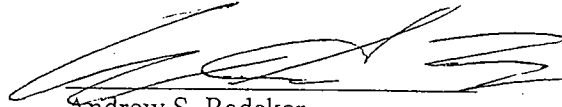
25. The Plaintiff cannot make the factual showing supportive of each element of the USDA benefits conversion claim that is required to avoid summary judgment. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007).

26. The record in this action shows that there is no genuine issue as to any material fact as to the aforesaid claims in this action and that Defendant Livingston is entitled to judgment in his favor as to such claims.

27. This Motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRPC, there is no duty of consultation prior to this motion, as this is a motion for summary judgment.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANT
CLYDE B. LIVINGSTON

Columbia, South Carolina
March 13, 2010

\$10,000.00

MAY 15, 1979

S.O.1

5/15/99

P.O. Dec'd 10/25/99

For value received I, Clyde B. Livingston,

promise to pay to Atn B. Livingston and Charlotte V. Livingston,

or order, the sum of Ten thousand and no/100 (\$10,000.00) ----- Dollars,
on demand,

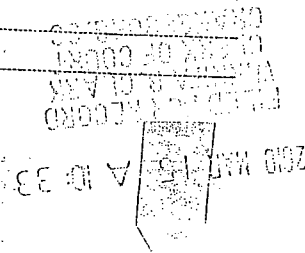
with interest thereon from _____ date _____ at the rate of nine (9%)

per cent. per annum, to be computed and paid at maturity
until paid in full; all interest not paid when due to bear interest at same rate as principal.

AND I hereby agree that if at any time any portion of said principal or interest shall be past due and unpaid, the whole amount evidenced by this Note shall, at the option of the holder thereof, become immediately due and said holder shall have the right to institute any proceedings upon this Note and any collaterals given to secure the same for the purpose of collecting said principal and interest, with cost and expense, or of protecting any security connected herewith.

AND I further agree hereby that if any part of the money due herein be not paid when due, or if this Note be placed in the hands of an attorney for collection, or if this debt or any part thereof, be collected by an attorney or legal proceedings of any kind, an attorney's fee of reasonable
besides all costs and expenses incident upon such collection, shall be added to the amount due upon this Note, and be collectible as a part thereof.

Witness:

John J. Walrod
*Robert C. Stymienski**Clyde B. Livingston*

City of South Carolina,
County of ORANGEBURG,

MORTGAGE OF REAL ESTATE

A. L. ROBERTS & SON, PRINTERS, ADWELLVILLE, S. C.

TO ALL WHOM THESE PRESENTS MAY CONCERN: CORRECTION

I, CLYDE B. LIVINGSTON,

of the County and State aforesaid

SEND GREETINGS:

WHEREAS, I, or we, the said Clyde B. Livingston,

in and by my certain Note, Bond or Obligation

bearing date the same day as the date of these Presents, stand firmly held and bound unto

ATN B. LIVINGSTON AND CHARLOTTE V. LIVINGSTON,

of the County and State aforesaid, in the penal sum of
Ten thousand and no/100 (\$10,000.00)-----

DOLLARS

~~with interest thereon at the full and just sum of~~

Slide
\$ 4.00

with interest thereon from date at the rate of 9 per cent. per annum, payable annually, upon the whole amount of principal and interest remaining unpaid until the whole indebtedness is fully paid and satisfied,

together with ten per cent. Attorney's fees in case of suit or other proceedings to collect the same (which is hereby secured by this mortgage), as in and by the said Note or Bond, and Conditions thereof, reference being thereunto had, will more fully appear.

NOW KNOW ALL MEN, that I, or we, the said Clyde B. Livingston

in consideration of the said debt and sum of money aforesaid; and for the better securing the payment thereof to the said Attn B. Livingston and Charlotte V. Livingston,

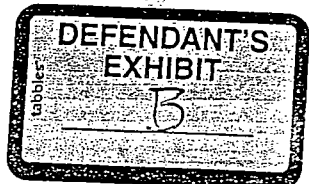
according to Conditions of the said Note or Bond, and also in consideration of the further sum of THREE DOLLARS, to me, the said Clyde B. Livingston,

in hand, well and truly paid by the said Attn B. Livingston and Charlotte V. Livingston,

stand before these sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents DO GRANT, bargain, sell and release unto the said Attn B. Livingston and Charlotte V. Livingston, their heirs and assigns, the following described real estate, to wit:

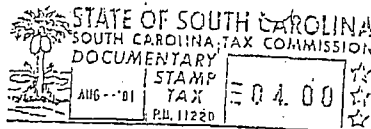
All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the City of Orangeburg, County of Orangeburg, State of South Carolina, being designated as Lots No. 171, 172, 173, 174 and one-half of 175 on a plat of Scoville Subdivision made by H. M. Mims, C. E., dated April 22, 1946, of record in the office of the Clerk of Court for Orangeburg County in Plat Book 7 at Page 162, together bounding and measuring as follows: SOUTHEAST by a thirty-foot road (North Brookside), measuring thereon Two hundred thirty-nine and two-tenths (239.2') feet, more or less; SOUTHWEST by the remaining one-half of Lot No. 175, property now or formerly of Episcopal Church, measuring thereon One hundred fifty-five (155') feet, more or less; NORTHWEST by part of Lot No. 222 and by Lots No. 223, 224, 225 and 226 on said plat, measuring thereon Two hundred twenty-five (225') feet, more or less; and NORTHEAST by Lot No. 170 on said plat, measuring thereon Eighty-one and six-tenths (81.6') feet, more or less; being more fully shown on the plat hereinabove referred to.

Being the same property conveyed to Clyde B. Livingston by deed of John L. Bowen dated October 10, 1978, and recorded October 23, 1978, in said Clerk's office in Deed Book 448 at Page 93.



BCC 468 PAGE 398

BCC 468 PAGE 398



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

TO HAVE AND TO HOLD, all and singular the said premises unto the said

Atn B. Livingston & Charlotte V. Livingston, their Heirs and Assigns forever.

And I, or we, do hereby bind my self, my Heirs, Executors and Administrators, to warrant and

forever defend all and singular the premises unto the said Atn B. Livingston & Charlotte V. Livingston,

their Heirs and Assigns, from and against my self and my Heirs, Executors, Administrators and Assigns, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

PROVIDED, ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these Presents, that if I, or we, the said Clyde B. Livingston

do and shall well and truly pay, or cause to be paid unto the said Atn B. Livingston & Charlotte V. Livingston

the said debt, or sum of money aforesaid, with interest thereon, if any shall be due, according to the true intent and meaning of the said Note or Bond, and Conditions thereunder written, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise to remain in full force and virtue. AND IT IS AGREED, by and between the said parties, that I, or we, the said mortgagor, shall hold and enjoy the said Premises until default of payment or breach of the conditions hereof shall be made.

And the mortgagor shall and will pay all taxes or assessments, State, County or Municipal, as levied, assessed or charged against the property hereby mortgaged, as soon as the same shall become due and payable, or upon failure so to do, all such taxes, assessments, costs or penalties may be paid by the mortgagee, and same shall be secured by this mortgage, and the failure of the mortgagor to pay the same when due shall be a breach of the condition of this mortgage, and the Note or Bond which it secures.

AND IT IS AGREED, that should legal or foreclosure proceedings be begun for the collection of any indebtedness hereby secured, the said mortgagee, his Heirs, Executors, Administrators, or Assigns, shall have the right to have a Receiver appointed to take charge of and collect the rents and profits of the within described premises, with the usual powers and duties of Receivers, and the expenses thereof shall be secured by this mortgage, and such rents and profits are hereby pledged as additional security to said indebtedness.

AND IT IS AGREED, by and between the said parties, that the said Mortgagor, his Heirs, Executors, Administrators, or Assigns shall and will forthwith insure the house and buildings on the said lot, in an amount satisfactory to the mortgagee, and keep the same insured from loss or damage by fire, and assign the Policy of Insurance to the said Mortgagee, his Executors, Administrators, or Assigns; and in case he or they shall at any time neglect or fail so to do, then the said Mortgagee, his Executors, Administrators, or Assigns, may cause the same to be insured in his own name, and reimburse himself for the premium and expense of such insurance under the mortgage.

WITNESS my Hand and Seal this 15th day of May in the year of our Lord one thousand nine hundred and seventy-nine and in the two hundred and fourth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Clyde B. Livingston (L. S.)

(L. S.)

The State of South Carolina,
County of ORANGEBURG.

Personally appeared before me,
and made oath that saw the within named, Clyde B. Livingston,
sign, seal and as his Act and deed, deliver the within written Deed, and that with

Sworn to before me, this

witnessed the execution thereof.

15th day of May A. D. 1999
(Seal) *[Signature]*
Notary Public, S. C.

My commission expires: 10-18-92

Robin C. Stojanowski

The State of South Carolina,
County of ORANGEBURG.

RENUNCIATION OF DOWER

Notary Public, S. C., do hereby certify

I,
unto all whom it may concern, that Mrs. Nancy B. Livingston,
the wife of the within named, Clyde B. Livingston,
did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread, or fear of any person or persons, whomsoever, renounce,
release, and forever relinquish unto the within named, Atn B. Livingston and Charlottè V.
Livingston, their

heirs and assigns, all her interest and estate, and also her right and claim of Dower, of, in or to all and singular the
premises within mentioned and released.

GIVEN under my hand and seal, this

15th day of May

Attest: *[Signature]*

(Seal) *[Signature]*
Notary Public, S. C.

Nancy B. Livingston

My commission expires: 10-18-92

BKG 468 PAGE 400

BKG 468 PAGE 400

Interest pd thru 5-15-1981

Signed: Attn B. Livingston

P.O. Box 53
North, S.C. 29112

The State of South Carolina

County of ORANGEBURG.

CLYDE B. LIVINGSTON

TO

B & B ATN B. LIVINGSTON AND

CHARLOTTE V. LIVINGSTON

MORTGAGE REAL ESTATE

Received in office

this 21st day

of May A. D. 1982

and recorded in Book 468 PAGE 397

A. L. Bunnell & Son, Printers, Greenville, S. C.

CLERK OF COURT
ORANGEBURG COUNTY, S. C.

730 MAR 15 A 10:33

FILED FOR RECORD
VIRGINIA D. CLARK
CLERK OF COURT
ORANGE COUNTY, S.C.

\$ 24,500.00 Orangeburg, S. C., March 27, 1981
 For value received, one year after date I
 promise to pay to the order of A. B. Livingston
 the sum of Twenty-four thousand five hundred and no/100 Dollars,

Negotiable and Payable at
 ANY BANK IN ORANGEBURG, S. C.

With interest thereon from date at the rate of 16 per cent per annum, payable annually upon the whole amount of principal and interest remaining unpaid until the whole indebtedness has been fully paid and satisfied, and in case of suit or other proceedings to collect the same, a reasonable amount as attorney's fee. The makers, endorsers, and guarantors severally waive presentment for payment, demand, protest and notice of protest of non-payment of this note, and notice of non-payment or default.



copy
 1/1/81
 Dalk
 CAROLINA

The State of South Carolina,
County of ORANGEBURG

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

Clyde B. Livingston
of the County and State aforesaid

SEND GREETINGS:

WHEREAS, I, or we, the said

Clyde B. Livingston

in and by my certain Note, Bond or Obligation

bearing date the same day as the date of these Presents, stand firmly held and bound unto

A. B. Livingston

, of the County and State aforesaid, in the sum of

DOLLARS

Twenty-four thousand five hundred and no/100-----
conditioned for the payment of the full and just sum of

payable under the terms and conditions of, that certain note which this
mortgage secure of even date hereof

~~with interest thereon from date at the rate of ----- percent per annum, payable annually, upon the~~
~~----- and interest remaining unpaid until the whole debt is fully paid and satisfied.~~

together with ten per cent. Attorney's fees in case of suit or other proceedings to collect the same (which is hereby secured by this mortgage), as in and by the said Note or Bond, and Conditions thereof, reference being thereunto had, will more fully appear.

NOW KNOW ALL MEN, that I, or we, the said Clyde B. Livingston

in consideration of the said debt and sum of money aforesaid; and for the better securing the payment thereof to the said

A. B. Livingston

according to Conditions of the said Note or Bond, and also in consideration of the further sum of THREE DOLLARS, to me, the said

Clyde B. Livingston

in hand, well and truly paid by the said

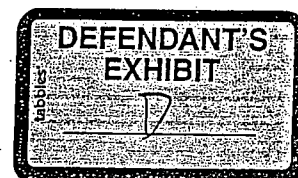
A. B. Livingston

at and before the sealing and delivery of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents DO GRANT, bargain, sell and release unto the said

A. B. Livingston:

Description of property set forth on schedule A attached hereto
and made a part hereof.

ATTEST: TRUE COPY
CLERK OF COURT
ORANGE COUNTY, SOUTH CAROLINA
-82-



Schedule A attached hereto and made a part of the certain mortgage from Clyde B. Livingston to A. B. Livingston, dated March 27, 1981.

LOT NO. 1: All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the City of Orangeburg, School District No. 5, County of Orangeburg, State of South Carolina, fronting on Amelia Street, and bounded and measuring as follows: On the Northeast by property of Clyde B. Livingston, measuring thereon one hundred fifty-nine feet, three inches (159' 3"); on the Southeast by Amelia Street, measuring thereon sixty-eight (68) feet; on the Southwest by property now or formerly of Cherry, measuring thereon one hundred fifty-six feet, ten inches (156' 10"); on the Northwest by property now or formerly of Williamson and by a portion of property now or formerly of the Estate of Martha H. Fogle, measuring thereon sixty-one (61) feet. ALSO

LOT NO. 2: All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the City of Orangeburg, School District No. 5, County of Orangeburg, State of South Carolina, fronting on Sunnyside Street, and bounded and measuring as follows: On the North by property now or formerly of T. M. Raysor, measuring thereon one hundred ninety-eight feet, six inches (198' 6"); on the East by property now or formerly of the Estate of Martha H. Fogle, measuring thereon sixty-eight (68) feet; on the South by property now or formerly of G. W. Garvin, measuring thereon two hundred twelve feet, six inches (212' 6"); and on the West by Sunnyside Street, measuring thereon seventy-two feet, ten inches (72' 10"). ALSO

The above lots being more fully shown and delineated on a plat of property of G. E. Fogle, prepared by Edward Hawes, Jr., CE, dated June 19, 1915, and recorded in the office of the Clerk of Court for Orangeburg County in Plat Book 2, at page 146.

LOT NO. 3: All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the City of Orangeburg, School District No. 5, County of Orangeburg, State of South Carolina, said lot adjoining the rear of the above described lots, and being bounded and measuring as follows: On the Northeast by property of Clyde B. Livingston, measuring thereon one hundred ninety-five (195) feet; on the Southeast by property of Clyde B. Livingston, measuring thereon fourteen and seventy-hundredths (14.70) feet; on the Southwest by property of the Estate of G. E. Fogle, measuring thereon twelve (12) feet; on the South by property of Estate of G. E. Fogle, measuring thereon ten (10) feet; on the Southwest by lot now or formerly of Williamson and lot of the Estate of G. E. Fogle, measuring thereon one hundred eighty-one and fifty-hundredths (181.50) feet. Said lot being more fully shown on a plat of property of Martha H. Fogle, prepared by Edward Hawes, RCE, dated June 19, 1934. ALSO

The above property having been conveyed to Clyde B. Livingston by J. C. Nicholson, Jr. by deed recorded in the office of the Clerk of Court for Orangeburg County on July 11, 1979, in Deed Book 454, at page 435 (1/2 interest), and by deed of J. C. Nicholson, Jr. dated August 6, 1980, and recorded in the aforesaid office in Deed Book 463, at page 681 (remaining 1/2 interest).

LOT NO. 4: All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being on Amelia Street, in the City and County of Orangeburg, State of South Carolina, and more clearly shown on a Plat of Maude H. Langston, dated September 27, 1950, by Edward Hawes, R.C.C. and bounded and measuring as follows: On the South by East Amelia Street, measuring thereon eighty (80) feet; on the Southwest by Estate lands of Martha H. Fogle, measuring thereon two hundred twenty feet, nine inches (220' 9"); on the Northwest by lands of H. L. Smoak, measuring thereon seventy-one (71) feet; and on the Northeast by Lawyers Building, Inc., measuring thereon two hundred ten, seven inches (210' 7"). Being the same property conveyed to Clyde B. Livingston by Harris A. Marshall, Jr. by deed dated December 3, 1976, and recorded in the office of the Clerk of Court for Orangeburg County in Deed Book 430, at page 1011.

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

TO HAVE AND TO HOLD, all and singular the said premises unto the said A. B. Livingston,

his

Heirs and Assigns forever.

And I, or we, do hereby bind my self, my Heirs, Executors and Administrators, to warrant and forever defend all and singular the premises unto the said A. B. Livingston, his

Heirs and Assigns, from and against my self, my Heirs, Executors, Administrators and Assigns, and all other persons whomsoever lawfully claiming, or to claim the same or any part thereof.

PROVIDED, ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these Presents, that if I, or we, the said Clyde B. Livingston

do and shall well and truly pay, or cause to be paid unto the said A. B. Livingston

the said debt, or sum of money aforesaid, with interest thereon, if any shall be due, according to the true intent and meaning of the said Note or Bond, and Conditions thereunder written, then this deed of bargain and sale shall cease, determine, and be utterly null and void; otherwise to remain in full force and virtue. AND IT IS AGREED, by and between the said parties, that I, or we, the said mortgagor, shall hold and enjoy the said Premises until default of payment or breach of the conditions hereof shall be made.

And the mortgagor shall and will pay all taxes or assessments, State, County or Municipal, as levied, assessed or charged against the property hereby mortgaged, as soon as the same shall become due and payable, or upon failure so to do, all such taxes, assessments, costs or penalties may be paid by the mortgagee, and same shall be secured by this mortgage, and the failure of the mortgagor to pay the same when due shall be a breach of the condition of this mortgage, and the Note or Bond which it secures.

AND IT IS AGREED, that should legal or foreclosure proceedings be begun for the collection of any indebtedness hereby secured, the said mortgagee, his Heirs, Executors, Administrators, or Assigns, shall have the right to have a Receiver appointed to take charge of and collect the rents and profits of the within described premises, with the usual powers and duties of Receivers, and the expenses thereof shall be secured by this mortgage, and such rents and profits are hereby pledged as additional security to said indebtedness.

AND IT IS AGREED, by and between the said parties, that the said Mortgagor, his Heirs, Executors, Administrators, or Assigns shall and will forthwith insure the house and buildings on the said lot, in an amount satisfactory to the mortgagee, and keep the same insured from loss or damage by fire, and assign the Policy of Insurance to the said Mortgagee, his Executors, Administrators, or Assigns; and in case he or they shall at any time neglect or fail so to do, then the said Mortgagee, his Executors, Administrators, or Assigns, may cause the same to be insured in his own name, and reimburse himself for the premium and expense of such insurance under the mortgage.

WITNESS his Hand and Seal this 27th day of March in the year of our Lord one thousand nine hundred and eighty-one and in the two hundred and fifty year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Clyde B. Livingston (L. S.)

Manly J. Sullivan (L. S.)

The State of South Carolina,
County of

Personally appeared before me, Judith Q. Smith

and made oath that she saw the within named Clyde B. Livingston
sign, seal and as his Act and deed, deliver the within written Deed, and that deponent with
Nancy T. Faulling witnessed the execution thereof.
Sworn to before me, this 27th

day of March A. D. 1981

(Seal) Nancy T. Faulling
Notary Public, S.C.

My commission expires: 5-9-88

Judith Q. Smith

The State of South Carolina,
County of ORANGEBURG

RENUNCIATION OF DOWER

I,

Notary Public, S. C., do hereby certify

unto all whom it may concern, that Mrs. Nancy B. Livingston

the wife of the within named Clyde B. Livingston

did this day appear before me, and upon being privately and separately examined by me, did declare that she does
freely, voluntarily, and without any compulsion, dread, or fear of any person or persons, whomsoever, renounce,
release, and forever relinquish unto the within named A. B. Livingston, his

heirs and assigns, all her interest and estate, and also her right and claim of Dower, of, in, or to all and singular the
premises within mentioned and released.

GIVEN under my hand and seal, this

27th

day of March

Anno Domini 1981.

(Seal) Thompson Martin
Notary Public, S. C.

My commission expires:

Nancy B. Livingston

The State of South Carolina

County of ORANGEBURG

Clyde B. Livingston

TO

A. B. Livingston

MORTGAGE REAL ESTATE

Received in office

this _____ day

of _____ A. D. 19____

and recorded in Book _____ Page _____

Clerk of Court,

Law Offices

HAROLD P. THRELKELD213 East Calhoun Street
Anderson, SC 29621

January 6, 2010

Mailing Address:
P.O. Box 1385
Anderson, SC 29622-1385Telephone: (864) 226-1305
Facsimile: (864) 226-1685
E-mail: hptatty@bellsouth.net

VIA EMAIL AND REGULAR MAIL

Honorable O. Davie Burgdorf
Master-in-Equity & Special Circuit
Court Judge for Orangeburg County
Equity Court of Orangeburg County
P. O. Drawer 9000
Orangeburg, SC 29116

Re: Case No.: 2007-CP-38-826
In the Matter of Atn Burns Livingston
Ex parte: Emma Lou Livingston Martin as Personal Representative of Estate of
Atn Burns Livingston and Emma Lou Livingston Martin, Plaintiff
v.
Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.;
Branch Banking and Trust Company of South Carolina; and American First
Federal Bank, Inc., Defendants -

Dear Judge Burgdorf:

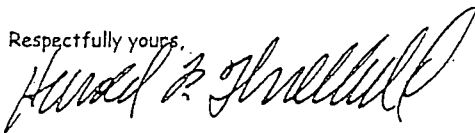
This is to confirm with the court and to notify all parties that hearing has been scheduled in the above-captioned matter for Wednesday, March 17th, 2010 at 1:30 p.m.

It is my understanding that matters to be considered at the hearing will be:

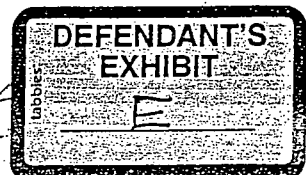
- 1) Plaintiff's Motion for Reconsideration of the Order issued by the court in this matter;
- 2) Plaintiff's claim for debt to the estate based on notes and mortgages of Mr. Livingston to the decedent;
- 3) Estate's claim for reimbursement of USDA subsidy payments received by Defendant, Clyde B. Livingston.

Unless there is a conflict or someone disagrees with the matters to be considered at the hearing, it will be assumed that the scheduled hearing date is suitable to all parties and that the matters stated above will be the sole matters to be considered by the court at the hearing.

Respectfully yours,


Harold P. Threlkeld
HPT/jc

cc: Andrew S. Radeker, Esquire (via email)
Chris B. Staubes, III, Esquire (via email)
M. Barron Stanton, Esquire (via email)
Amy B. Strawser, Esquire (via email)
Richard B. Ness, Esquire (via email)
Creel Court Reporting (via email)
Ms. Emma Livingston Martin (via email and regular mail)



ELLIS, LAWHORNE & SIMS, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

MATTHEW B. HILL
DIRECT DIAL (803) 212-4980
MHILL@ELLISFIRM.COM

1330 LADY STREET, FOURTH FLOOR
POST OFFICE BOX 2285 (29202)
COLUMBIA, SOUTH CAROLINA 29201
WWW.ELLISFIRM.COM

TELEPHONE (803) 254-4190
FACSIMILE (803) 779-4749

January 24, 2002

VIA U.S. MAIL

Mrs. Emma L. Martin
108 Monaco Circle
Clemson, South Carolina 29631

Re: Estate of Atn Burns Livingston
Our File No.: 125-70587

JRS:
Please file
125-70587
Thank you!

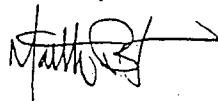
Dear Mrs. Martin:

I have enclosed a copy of the Order that was signed by Judge Ross-Bennett in connection with the probate of your father's estate. As was decided in last week's hearing, and as is delineated in the attached Order, your brother has been held in contempt of court and has been order to surrender all documentation and property of the Estate. Furthermore, Judge Ross-Bennett ordered that Clyde be removed as Personal Representative.

As a result of Judge Ross-Bennett's decision, you are now the sole Personal Representative in this matter, and you are no longer required to consult with Clyde when making decisions concerning the probate of your father's estate. As evidenced in the Order, we must file an Inventory and Appraisement on or before March 18, 2002. Once that has been filed, we are required to file the Initial Accounting on or before April 18, 2002. Julie Overstreet is a paralegal in our offices who is currently working with me to assemble these documents.

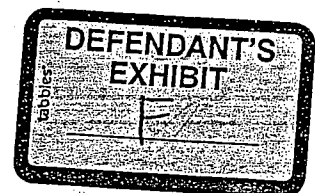
I ask that you keep me apprised of any documents or information that is necessary in assembling the Inventory and Appraisement and the Accounting. Please feel free to call me if you have any questions.

Sincerely,



Matthew B. Hill

Enclosure



STATE OF SOUTH CAROLINA
 COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
 LIVINGSTON.

Emma Lou Livingston Martin as
 Personal Representative of the Estate of
 Atn Burns Livingston and Emma Lou
 Livingston Martin,

Plaintiff,

vs.

Clyde B. Livingston; Miller
 Communications, Inc.; Citibank South
 Dakota, N.A.; Branch Banking and Trust
 Company of South Carolina; and
 American First Federal, Inc.,

Defendants.

CERTIFICATE OF SERVICE

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A.,
 Attorney for Defendant Clyde B. Livingston, do hereby certify and say that I have, on this the
 13th day of March, 2010, served the foregoing motion in the above-captioned action by
 depositing the same in the United States Mail, first class, postage prepaid, with the return address
 clearly noted, addressed as follows:

Harold P. Threlkeld, Esq.
 P.O. Box 1385
 Anderson, SC 29622-1385

Richard B. Ness, Esq.
 Ness Jett & Tanner, LLC
 P.O. Box 909
 Bamberg, SC 29003

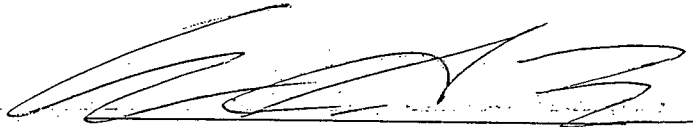
ATTEST: TRUE COPY

SOUTH CAROLINA

M. Baron Stanton, Esq.
Stanton Law Offices, P.A.
P.O. Box 245
Columbia, SC 29202

Chris B. Staubes, III, Esq.
Kristen N. Voyer, Esq.
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492-8144

Amy B. Strawser
Bernhardt & Strawser, P.A.
5821 Fairview Rd., Ste. 100
Charlotte, NC 28209



Andrew S. Radeker

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

C/A No. 07-CP-38-826

In Re:)

ESTATE OF ATN BURNS)
LIVINGSTON)

COPY

Emma Lou Livingston Martin)
as Personal Representative)
of the Estate of Atn Burns)
Livingston and Emma Lou)
Livingston Martin,)

Plaintiff)

vs.)

Clyde B. Livingston, Miller)
Communications, Inc.,)
Citibank South Dakota, N.A.;)
Branch Banking and Trust)
Company of South Carolina;)
and American First Federal,)
Inc.,)
-----)

HEARING

Wednesday, February 11, 2009

1:40 p.m. - 2:18 p.m.

The hearing before the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, was taken at 190 Gibson Street, Orangeburg, South Carolina on the 11th day of February, 2009 before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina.

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1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

APPEARANCES:

Harold P. Threlkeld, Esquire
Post Office Box 1385
Anderson, South Carolina 29622-1385

Richard B. Ness, Esquire
Ness & Jett, LLC
Post Office Box 909
Bamberg, South Carolina 29003
Attorneys for the Plaintiff

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
923 Calhoun Street
Columbia, South Carolina 29201
Attorney for the Defendant Clyde B. Livingston

M. Baron Stanton, Esquire
Stanton Law Offices, P.A.
Post Office Box 245
Columbia, South Carolina 29202
Attorney for the Defendant American First Federal,
Inc.

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive
Suite 200
Charleston, South Carolina 29492-8144
Attorney for the Defendant Branch Banking and
Trust Company of South Carolina

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EXHIBITS

(No exhibits were marked)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Rules of Civil Procedure.

MARTIN VS. LIVINGSTON ET AL.

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1 MR. NESS: Your Honor I represent the estate of Atn
2 Livingston and my specific client is Emma Lou
3 Livingston Martin who is the personal
4 representative. This case originated in
5 Probate Court. It was, a partition action was
6 filed in Probate Court under section 62-3-911
7 which is essentially a Probate Court type
8 partition case. The reason we sought a
9 partition in this case was that the heir Clyde
10 Livingston, he's one of two heirs in this
11 estate, has judgments against him and there's
12 a piece of real estate involved in this case
13 that if it's distributed out and they become
14 joint tenants, then the judgment is going to
15 attach, it's going to tie down the other heir,
16 Mrs. Martin, with issues that she shouldn't
17 have to deal with in an individual capacity.
18 So we brought this case in Probate Court. It
19 was removed to Circuit Court by court order of
20 the probate judge. And we had a trial
21 scheduled for today but then the defendant
22 Clyde Livingston filed initially a notice of
23 interest to purchase the property and then he
24 filed an amended notice of interest to purchase
25 the property. At that point we then filed a

MARTIN VS. LIVINGSTON ET AL.

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1 motion for the Court to determine certain
2 issues at this motions hearing, a status
3 conference type hearing, to see where we go in
4 this case because if this is a case where the
5 defendant is allowed to purchase the property,
6 then we've got to have some discovery. It's
7 got to be an appraiser appointed of course. I
8 think you've looked at the statute by
9 valuations. And none of that's been disclosed
10 by Mr. Livingston that he has an appraiser,
11 there that there's any value to this property,
12 that he, a specific value that he puts on it.
13 So we ask the Court to hear this motion. And
14 the first basis of our motion is that the,
15 Clyde Livingston in this case is not a joint
16 tenant, that he is essentially an heir to the
17 estate. And under 62-3-911 it permits the
18 personal representative which is Emma
19 Livingston Martin who has filed this action to
20 bring the case. The statute actually allows
21 the personal representative to bring a case
22 like this to petition the Court prior to
23 closing the estate to make partition. After
24 notice to heirs the Court should partition the
25 property in kind if it can be fairly and

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1 equitably partitioned. If not subject to fair
2 partition in kind, then the Court shall direct
3 the personal representative to sell the
4 property. It doesn't necessarily say the Court
5 shall sell the property. The personal
6 representative can sell it because in the
7 Probate Code real estate until it's deeded out
8 of the estate is still subject to divestiture
9 for Probate Court reasons. And we contend that
10 this statute gives the Probate Court the right
11 to direct that the property be sold just like
12 it has jurisdiction on other issues, creditors,
13 you know, sale and aid of assets, those sorts
14 of things, it allows it to do here. The
15 statute 15-61-25 we believe envisions a
16 situation where you have property that actual
17 co-tenants on the property where it's already
18 been either deeded out of an estate and two
19 people own it or whether it's just simply heir
20 property that never had a probated type estate
21 and you have people that are joint tenants and
22 they ask the Court to be allowed just to sell
23 the property. We don't think that in this case
24 that the defendant Clyde Livingston has the
25 right under the Probate Code to be able to

MARTIN VS. LIVINGSTON ET AL.

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1 purchase an interest in it. The second reason
2 is that 15-61-25 is intended to protect a
3 non-petitioning joint tenant who wishes to
4 retain the property for personal use and not to
5 sell necessarily to a third party. You know,
6 with the judgments that I don't think anybody
7 disputes that there are judgments in effect
8 that are against Clyde Livingston, I think
9 we're going to have to get to a stretch to
10 figure out how Clyde Livingston could purchase
11 this property because if he were able to
12 purchase it, then immediately he's got issues
13 with creditors. Now, I don't know what kind of
14 arrangements can be worked out, what kind of
15 negotiations can take place with that. But to
16 me it borders on at least at this point on the
17 absurd to think that Clyde Livingston can buy
18 the property when he's encumbered by a number
19 of judgments which will automatically attach
20 once the property is deeded to him or he buys
21 it at court sale or personal representative
22 sale if that's what the Court were to require.
23 So we just don't think that is a practical way
24 of handling this case because it doesn't make
25 any sense that Clyde Livingston can buy it. If

MARTIN VS. LIVINGSTON ET AL.

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1 the judgment creditors weren't there would be
2 a whole different position. But the whole
3 reason for the initiation of this action was
4 because of his, the judgment creditors and the
5 personal representative not wanting to have to
6 deal with the judgment creditors nor deed it to
7 turns out the personal representative and the
8 other heir owners, one and the same people but
9 they wear different hats in this case. And
10 Emma Lou Livingston Martin doesn't want to have
11 to deal with creditors on her own. If she
12 wanted to do that, she would have just deeded
13 the property out and then they would be joint
14 tenants and we would have an issue about a
15 regular type partition under Title 15. So we
16 ask the Court to give us a ruling on that
17 because I think it's a ruling that, number one,
18 but it's also guidance to us as to how you try
19 this case because if the Court rules that the
20 Title 15 doesn't apply, then the notice of
21 intent to purchase that's been filed by
22 Mr. Livingston goes by the wayside. The issues
23 of the appraisal at least at this point go by
24 the wayside. The issues of the joint tenancy
25 go by the wayside because the, at this point

MARTIN VS. LIVINGSTON ET AL.

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1 the personal representative is the person in
2 control of the real estate subject to, you
3 know, Court permission on real estate issues.
4 But she's asking the Court to be allowed to
5 sell the property where, or petition it in kind
6 whichever the Court may decide to do where
7 whatever interests that she as an heir were to
8 get out of the property would not be encumbered
9 by judgments with Clyde Livingston. Then
10 whatever Clyde Livingston gets either by way of
11 his sale proceeds or his partitioned in kind
12 property then he and his business interests
13 will have to take care of that problem. We can
14 avoid that by the Court ruling that only the
15 Probate Code applies here and that the personal
16 representative has the authority, you know, to
17 bring this action and to sell the property
18 under 62-3-911. That's basically our position
19 today. But before we can come in here and try
20 this case before your Honor we've got to have
21 those issues resolved because if the Court
22 rules that the Title 15 applies and the notice
23 of intent to purchase is at least a, something
24 that has to be dealt with, then we need to see
25 the appraisals, we need to go by Title 15 and

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1 follow its guidelines to the extent that we
2 can. In the event the Court rules that Title
3 15 does apply, we would then probably ask leave
4 of the Court to allow us to amend our pleadings
5 to contest the constitutionality of 15-61-25
6 because that statute the way I read it only
7 allows a defendant in a case to be able to
8 purchase the property, not the plaintiff being
9 able to purchase the property. And I don't
10 know that that's going to meet all of the equal
11 protection and other constitutional guidelines.

12 And that hasn't been challenged at this point.
13 But we don't want to go there if the Court
14 determines that Title 62 under the Probate Code
15 is what applies. I think that's our position
16 subject to anything Mr. Threlkeld may want to
17 add to that. Your Honor, the only other issue
18 that I would bring to the Court's attention and
19 it's set forth in our motion is that with the
20 judgments pending against Clyde Livingston the
21 property cannot be fairly and equitably
22 apportioned in kind because Clyde Livingston's
23 part is going to be dealt with with creditors
24 and the other heir Ms. Martin is going to be
25 hopefully free and clear. That's the whole

MARTIN VS. LIVINGSTON ET AL.

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1 purpose of this when the property does come out
2 of the estate. So we think that certainly a
3 partition should be allowed in this case but
4 that's down the road as we go. We just wanted
5 to present all those issues to the Court and
6 let the Court give us some rulings and guidance
7 on where we need to go in this case.

8 THE COURT: Okay. Before we get to you, Mr. Radeker,
9 I just wanted to clarify a couple of things.
10 When it was sent from Probate Court up here,
11 how was it done? I don't have documentation in
12 front of me.

13 MR. NESS: It was done by probate court order.

14 THE COURT: Do you have a copy of that order?

15 MR. NESS: Yes, sir.

16 THE COURT: I would just like to look at it. Has
17 there been a separate order of reference done
18 too?

19 MR. NESS: Once it went to the Circuit Court, there
20 was an order of reference to refer this case to
21 you.

22 THE COURT: Okay.

23 MR. RADEKER: By consent. Yeah.

24 THE COURT: Okay. Mr. Radeker?

25 MR. RADEKER: Thank you, your Honor. I'll note that

MARTIN VS. LIVINGSTON ET AL.

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1 under the statute 15-61-25, new partition
2 statute this is how a lot of people have been
3 referring to it, Clyde Livingston is a joint
4 tenant under that stamp. It doesn't strictly
5 refer to, say people who own something in a
6 joint tenancy rights of survivorship say. It
7 just refers to anyone who has an interest in
8 the land other than a lien on it like someone
9 who has an interest in the fee. And Clyde
10 Livingston falls within that category. So he's
11 one of the people who has a right under the
12 statute and can invoke it. I note this too as
13 to any impracticality with regard to the rights
14 under the statute due to the judgments. We can
15 and certainly hope to work that out. But it
16 doesn't really have any effect on whether
17 Mr. Livingston has rights under that statute or
18 not. The statute doesn't distinguish between
19 actions for partition that are brought under
20 the Probate Code or in any other way. In fact,
21 it says that it applies, at its foot it says
22 that it applies to all actions for partition
23 that are brought after May 25th 2006. This
24 action was filed May 30th of that year. So it
25 applies to this case. I understand that

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1 they're not arguing today the issue of whether
2 the statute is constitutional under the equal
3 protection clause. We certainly, you know,
4 wouldn't object if they want to amend their
5 pleadings to challenge, as they were saying
6 earlier to challenge the constitutionality of
7 it. We won't object to that amendment. We
8 can't agree with the issue. But we wouldn't
9 object to an amendment if they want to
10 challenge it. And we just note that it doesn't
11 violate the equal protection clause. There's
12 no suspect class involved here. It doesn't
13 discriminate on the basis of race or gender or
14 anything like that. They would have to show
15 that this statute doesn't serve a legitimate
16 purpose for the legislature to enact it in
17 order to get it struck down on that basis. And
18 so we note that this motion by the plaintiff
19 should be denied, that Mr. Livingston has a
20 right under this statute. He's invoked the
21 statutory procedure and sent in the notice he
22 was required to send in to do that. Thank you.
23 MR. STANTON: Just our position on the whole thing,
24 your Honor.
25 THE COURT: Yes, sir.

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1 out and how it affects the lien holders who do
2 plead that the lien has attached to this
3 property. And we wouldn't there to be any way
4 that this now would transfer without the lien
5 through any type of, if you do rule with them
6 which we're not sure if that's where the
7 Court's going or not, but, you know, any type
8 of assigns type rights to now get this out of
9 the judgment creditors' realm. We don't want
10 that to happen. So that's the only reason
11 we're here just to kind of monitor to make
12 sure. Thank you.

13 THE COURT: All right?

14 MR. NESS: Your Honor, in response to several of
15 those arguments, 62-3-911, and I'll hand it up
16 to the Court, I only have one copy and I'll
17 hand it up to you. But it says when two or
18 more heirs are entitled to a distribution of
19 undivided interest in personal or real
20 property, the personal representative may
21 petition the Court prior to closing the estate
22 to make partition. And it goes on after proper
23 notice and that the Court, if it determines
24 that the Court shall partition the property in
25 kind if it can be fairly and equitably

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18

1 partitioned in kind. If not, subject to fair
2 and equitable partition in kind. This is where
3 the distinction. There's a big distinction
4 between the Probate Code and Title 15 on these
5 types of partition. It says here the Court
6 shall direct the personal representative to
7 sell the property and distribute the proceeds.
8 It doesn't say that this becomes a public sale
9 on the courthouse steps or in a third floor
10 courtroom for a partition sale... I think that's
11 a huge distinction. And if the legislature had
12 wanted to make these partitions the same type
13 partition, you know, with the same exact rules,
14 they would have put something in 15-61-25 that
15 says that. One other issue I just want to
16 respond to, and Mr. Radeker referred to it
17 early on, is that he said there was something
18 about a mortgage and he would deal with that
19 later or he would talk about it later. But
20 this estate had some fairly substantial medical
21 bill debts and other things that the personal
22 representative had to deal with. Didn't have
23 the cash assets available. So the personal
24 representative under the I think the authority
25 has put a mortgage on the property, used money

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19

1 from that to actually pay some of those estate
2 debts. So we believe that the, you know, that
3 has been used for that. Now, that's got to be
4 paid back at some point and that's an
5 administration expense that's subject to
6 language that Mr. Stanton was referring to. I
7 think this, you know, it devolves to the heirs
8 subject to what the personal representatives
9 had to do in this case and subject to the
10 Probate Code giving authority for the personal
11 representative to ask for a partition of the
12 property. So it's not like it's been deeded
13 out and Title 15 absolutely totally controls.
14 You've got two Probate Court issues that really
15 step in to this matter that make it subject to
16 language. I can get you the title of that, I
17 mean, the number of that statute that talks
18 about the subject to language. But real estate
19 may devolve to the heirs. But it really is
20 subject to other things happening first. And
21 in this case the personal representative has
22 the authority to ask for the partition and the
23 personal representative had the authority to
24 borrow money on the real estate to pay other
25 estate debts. And those are two issues that

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1 this Court will have to at least take into
2 account. And I'll hand up 62-3-911. It spells
3 that out I think.

4 THE COURT: Okay. Well, anything further?

5 MR. THRELKELD: Judge, I just wanted to address one
6 thing. There was a statement that this Court
7 didn't have the power to order the property
8 sold free of judgment liens in this action. My
9 understanding is the Court does have the power
10 to sell real estate free of liens. It does it
11 all the time when there are second mortgages
12 and when there are judgments and stuff like
13 that. It simply sells property free of liens.
14 So therefore it seems to me that there's no
15 question but this Court has the power to sell
16 the property free of the liens and to the
17 extent that half the proceeds or a portion of
18 the proceeds derived from that one-half then
19 the creditors would have that.

20 THE COURT: Well, sir, I'll address that immediately.
21 But technically Mr. Stanton is correct. I mean
22 the liens that they have are so superior to
23 anything else and any sale. And as he said the
24 property devolves immediately to the heir. And
25 whatever attaches according to the common law

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1 as well as maybe the statutory too says that
2 any liens that are against the, any judgment
3 liens that are against the heirs are
4 immediately attached to that property. And
5 there is no real way of selling the property
6 free and clear of those liens unless there's
7 some bond place or something out of the
8 ordinary done. There's no way that I'm aware
9 of possible that that can be done. When you
10 mention something about judgments and second
11 mortgages, that's in the context of a
12 foreclosure agreement where the liens are
13 generally subordinate to the liens, to the
14 ownership interest. And of course even when we
15 have a superior lien, the property is sold
16 subject to that lien and has to be, cannot be
17 sold and have that lien not attached to that
18 property. So that should answer your concern
19 there. And my main concern, and that's why I
20 asked about the orders of reference, is to
21 determine exactly where I stand in the matter
22 as to where I come in to do this. In other
23 words, when it was transferred from the Probate
24 Court, does this become a Circuit Court
25 partition. And my feeling is that it does

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1 don't have any problem with him amending the
2 pleadings.

3 MR. STAUBES: We're talking about limited to the
4 constitutionality; right?

5 MR. NESS: Yes.

6 MR. STAUBES: Okay.

7 THE COURT: That's great.

8 MR. NESS: And that's I think all we need to have on
9 the record.

10 THE COURT: Yeah.

11 MR. RADEKER: I would just note our position as to
12 one thing which I really think is kind of
13 probably getting beyond the more narrow issues
14 because Mr. Stanton brought this up, beyond the
15 narrow issue that was in the plaintiff's
16 motion. But we note that it's our position
17 that any fact that a judgment may be upon
18 property or attached to Mr. Livingston's
19 interests can't trump his rights under the
20 statute. I just wanted to make clear for the
21 record that that was our position. I know
22 we're kind of, all been doing this for a while.
23 But I just wanted to let the record reflect
24 that that was where we stand on that.

25 THE COURT: Okay.

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1 MR. NESS: I think the issue of the ability of
2 Mr. Livingston to go forward is going to have
3 to be an issue because it sold, whoever is
4 going to buy it is going to have to get good
5 title to it.

6 THE COURT: Well, that's what I was saying. Do we
7 need to go off the record really to --

8 MR. NESS: Yes, sir.

9 THE COURT: Is that in the form of a motion? That's
10 not the --

11 MR. NESS: No. That's just really I was just
12 discussing with the Court. But that's part of
13 this status conference is to see --

14 THE COURT: Right. That's what I'm saying. Does
15 that need to be on the record?

16 MR. NESS: No, sir. It doesn't.

17 THE COURT: So are we through with all the motions
18 that actually had to be made today then? To
19 amend the motion, the motion to --

20 MR. RADEKER: We also had a motion to amend. I
21 don't know whether anyone here opposes that.

22 THE COURT: What is that?

23 MR. RADEKER: To amend two things. And I'll catch,
24 I'll catch them up on this. We had a motion to
25 amend as well and it may be that everybody just

1 consents to it. I just haven't had a chance
2 because counsel just got here to talk about
3 that. And there are a lot of lawyers involved
4 in this case so getting everybody on the same
5 page has not been easy. But we made a motion
6 to amend our answer and counterclaim. And one
7 of the things we seek to do with that is just
8 to assert a cross-claim against one of the
9 judgment creditor defendants that are in
10 default. They never actually served Mr.

11 Livingston. So the judgment's void. Basically
12 just to assert a cross-claim that, you know,
13 their judgment is void, they don't really have
14 judgment, they can't get paid anything out of
15 whatever happens. And another to amend our
16 reply to American First Federal who is Barry
17 Stanton's client's cross-claim to add a

18 defense, it's laches based on some conduct
19 that, not to say that they were evil or
20 anything but that has occurred since the
21 initiation of this case. So it wasn't
22 available necessarily at the time when we had
23 originally pled. And it may be that everybody
24 consents to that. I really don't know what
25 counsel's positions are.

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1 MR. STANTON: Thank you, your Honor. Barry Stanton
2 again. If he just, you know, we don't agree
3 with the substance of the defense. But usually
4 I'm wasting time to object to an amendment
5 unless we're getting ready to try this case
6 right away and there's some issues regarding
7 laches that I need to know about. I haven't
8 looked at the scheduling order but assuming
9 that we are at least a few weeks down the road
10 then I don't mind him putting that in there.

THE COURT: Any other objections?

12 MR. STAUBES: Chris Staubes for BB&T. As long as
13 he's not making any claims that are going to
14 effect my client directly, I don't have --

15 MR. STANTON: If I might add I also consent to and
16 endorse his motion as to, the other one is
17 Miller? You're changing your cross-claim,
18 making a cross-claim against, is that Miller
19 Communications?

20 MR. RADEKER: That's correct. That's part of what
21 we're seeking.

22 MR. STANTON: That one's A okay.

23 THE COURT: Okay.

24 MR. NESS: Your Honor, as to his motions to amend, we
25 don't have any position on that. Wd don't

1 object to it. What we would like before we go
2 off the record is I guess the termination, I
3 think I'm hearing your ruling is that we're
4 saying that the Probate Code, neither one of
5 the statutes that we're dealing with, the
6 partition or the subject to statute dealing
7 with the liens and whatnot, do they not apply
8 or would you like us to give permission to us
9 to brief that issue?

10 THE COURT: Well, that might not be a bad idea, I
11 mean, before we go any further. Because like
12 I say, I mean, at first impression, you're
13 referring to his ability to divide out? That's
14 the main thing?

15 MR. NESS: Yes, sir. Because you made the comment
16 that since it's in circuit court, then Title 15
17 --

18 THE COURT: Right.

19 MR. NESS: -- in your opinion probably applies. And
20 we would like to be able to brief that and to
21 whether the, how those, whether the personal
22 representative by being a plaintiff in this
23 action can still utilize the Probate Code to
24 try to sell that, you know.

25 THE COURT: In other words, am I sitting in lieu of

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1 the probate judge?

2 MR. NESS: In essence. Yes, sir.

3 THE COURT: And that was my question too. It's a
4 matter of personal --

5 MR. NESS: We'd like to be able to at least brief
6 that. I know we argued it. But if the Court
7 would like some, let us do some more additional
8 research on that since that's --

9 THE COURT: As long as it's, I know you don't want to
10 delay. So I mean as long as we can keep it
11 within a reasonable time frame, I'm more than

12 happy to entertain.

13 MR. NESS: Ten days two weeks will be fine with us.

14 THE COURT: That would be great. The sooner the
15 better so we can --

16 MR. NESS: Yes, sir.

17 THE COURT: -- put that issue aside.

18 MR. NESS: Yes, sir.

19 THE COURT: That is an issue with me at least.

20 MR. NESS: Okay.

21 THE COURT: I feel like there's some problem with
22 that.

23 MR. RADEKER: We have no objection to that as long
24 as we've got an opportunity to respond of
25 course. And we certainly, you know, if

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1 everybody wants to go out and get that heard.

2 THE COURT: Okay. Well, having that said, is there
3 anything else on the record we need to put?

4 MR. NESS: No, sir.

5 MR. RADEKER: No, sir.

6 (There being no further questions, the hearing
7 concluded at 2:18 p.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

COURT OF COMMON PLEAS
C/A No. 07-CP-38-826

In Re:)

ESTATE OF ATN BURNS)
LIVINGSTON,)

Emma Lou Livingston Martin)
as Personal Representative)
of the Estate of Atn Burns)
Livingston and Emma Lou)
Livingston Martin,)

Plaintiff,)

v.)

Clyde B. Livingston; Miller)
Communications, Inc.,)
Citibank-South Dakota, N.A.,)
Branch Banking and Trust)
Company of South Carolina;)
and American First Federal,)
Inc.,)

Defendants.)

COPY

HEARING

Wednesday, March 24, 2010

1:30 p.m. - 3:34 p.m.

The hearing before the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, was taken at 190 Gibson Street, Orangeburg, South Carolina on the 24th day of March, 2010 before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina.

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APPEARANCES:

Richard B. Ness, Esquire
Ness & Jett, LLC
Post Office Box 909
Bamberg, South Carolina 29003
Attorneys for the Plaintiff

Andrew S. Radeker, Esquire
Harrison & Radeker, P.A.
923 Calhoun Street
Columbia, South Carolina 29201
Attorney for the Defendant Clyde B. Livingston

M. Baron Stanton, Esquire
Stanton Law Offices, P.A.
Post Office Box 245
Columbia, South Carolina 29202
Attorney for the Defendant American First Federal,
Inc.

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EXHIBITS

(Retained by the Court)

Plaintiff's Exhibit Number One	25
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STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Rules of Civil Procedure.

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 THE COURT: Exactly what are we doing today?

2 MR. RADEKER: Well, we've got a couple of motions.

3 There's the motion to reconsider certain
4 aspects of the last order that Your Honor
5 rendered that the plaintiff made. We made a
6 motion for summary judgment as to the
7 plaintiff's claims which would be the subject
8 of what will probably be a fairly short trial
9 today if that motion is not granted. So that's
10 what we've got is, I'll do it in reverse order
11 is to say a trial on the claim that Clyde

12 Livingston has appropriated USDA benefits
13 belonging to the estate and the claims for
14 notes, that he owes money on notes. Is that
15 right?

16 MR. NESS: Your Honor, the one on the notes which
17 involve notes that are about twenty-some odd
18 years old, we'll withdraw that claim. We don't
19 intend to proceed on it. On the notes and
20 mortgage issue, it's part of our case but we
21 withdraw that and don't intend to proceed. So
22 as I see what we are going to proceed on is the
23 motion to reconsider your prior order and then
24 a sort of a mini trial on one aspect of the
25 summons and complaint. And that would be the

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 USDA benefit issue that we need to put up some
2 testimony on. And I guess the summary judgment
3 motion mostly goes away if I withdraw the -

4 MR. RADEKER: All that would be left is as to the
5 USDA claims. I mean, I think we could, you
6 know, because I think that the evidence would
7 show pretty clearly, I think we could agree
8 that Clyde Livingston received US, the farm
9 number received USDA benefits. You know, and
10 this was the land that he was designated to
11 farm from 2000 up through, through last year.

12 MR. NESS: 2008.

13 MR. RADEKER: 2008. So the rest of it might just be
14 the question of law as to whether that's -

15 MR. NESS: Pretty much I think it is. If they
16 stipulate that he got the money and he's
17 received it, I mean, we need to show you some
18 documents, I think. And I don't know if we
19 need any testimony about them. They're
20 government documents we have obtained from the
21 Farm Service Agency or whatever his former name
22 was, that show that payments were made and to
23 whom they were made to, how they were, the
24 representations that were made to the
25 government by one of the two PRs at that time.

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IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 Judge, by way of background, Mr. Ant Livingston
2 died in, I think 1999. And he had a will that
3 nominated his two children as sole heirs and as
4 personal representative of the estate. In 2002
5 Clyde Livingston was removed as personal
6 representative for various issues by the
7 Probate Court leaving my client, Ms., the
8 daughter as the personal representative. And
9 our position on the government benefits is that
10 based on the documents there's a, what is a
11 tract of land in near North on Highway 321
12 that's farmland, may be some timber land too.
13 But that's really the heir, I mean, the sole
14 asset of the estate generally. And that's what
15 this issue is about, the USDA payments based on
16 that land. Those payments, I don't think
17 there's any disagreement that there was an
18 application made by Clyde Livingston as
19 personal representative to be the farmer on the
20 property. And Clyde Livingston as PR signed
21 the initial document. The checks were made
22 payable to Clyde Livingston. And he placed
23 each and every check through 2008, from 2000 to
24 2008 to use of his own benefit. He did not
25 place it in any estate benefits. My client,

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 the co-PR, didn't know about any of those
2 actions until several years later after she
3 became PR and started taking over the issues
4 and investigating things that have been going
5 on for four or five years at that point.
6 That's what that case is about. We take the
7 position that those moneys have to be paid back
8 into the estate. You know, the land was under
9 the auspices of the personal representative in
10 the Probate Court. We're got a fiduciary duty
11 issue with Mr. Livingston signing the paper
12 work and then pocketing the money when the
13 estate was, you know, gathering and putting
14 assets together as is required. And, you know,
15 I think what we're seeking today is a court
16 order requiring Mr. Livingston to place the
17 total amount of money, \$33,000 plus interest
18 back, it's \$35,000 plus interest which over a
19 period of time the way we figure it is sixteen
20 or seventeen thousand dollars back into the
21 estate account because a big part of this case
22 is not trying today is trying to sell land to
23 come up with assets, money to pay for things
24 that have been going on with the estate now for
25 close to ten years. And so that's what our

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1 case is going to be about. I don't know how
2 much more you want me to go into now. Do you
3 want me to call my client on that issue or do
4 you want to hear the reconsideration argument
5 on the order which has nothing to do with this
6 little mini trial first?

7 THE COURT: Mr. Radeker?

8 MR. RADEKER: I mean, I think, you know, we take
9 issue with some of the things factually but I
10 think the documents will show that, that Mr.
11 Ness said. And, you know, I wouldn't have any

12 objection to if his documents are the ones that
13 you all produced to me in response to the
14 second set of requests to produce which I think
15 was all the USDA documents that you had I
16 wouldn't have any problem with those coming
17 into evidence or anything. Your Honor, it's at
18 the Court's pleasure. It doesn't matter to me

19 whether we hear the motion to reconsider,
20 whether we just hear a motion for summary
21 judgment on the USDA claim and then if there's
22 anything left go into a trial or just, you
23 know, whichever way the Court would like to
24 handle it. I think we're kind of already
25 talking about the USDA claim.

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1 THE COURT: Yeah. I was getting ready to say go ahead
2 and --

3 MR. RADEKER: So it might be better to maybe hear the
4 motion on that.

5 THE COURT: Right. Do that.

6 MR. RADEKER: Then if that's denied we'll go have a
7 little trial.

8 THE COURT: Since we're already into that.

9 MR. RADEKER: Here's the basis of our motion, your
10 Honor. The stuff that's in the record and we
11 filed the plaintiff's responses to our second

12 set of requests to produce which, and they
13 produced I believe it's all of the documents
14 that they have, I wouldn't have any reason to
15 doubt that it's all the documents they have
16 that concern the USDA payment claim. I would
17 note this, that the claim that those are estate
18 property failed for two reasons. One, if you
19 take a look at, there's something called a
20 lease statement in here, Clyde Livingston
21 applied for these payments not as PR of the
22 estate but on his own and got a farm number on
23 his own as an individual. And he had a
24 contract with the United States Department of
25 Agriculture. And, you know, there's nothing in

IN RE: ESTATE OF ANT BURNS LIVINGSTON

10

1 the record to the contrary about that. That's
2 all that's shown from the record. While we
3 certainly would not concede that Mr. Livingston
4 had done anything improper with regard to that
5 application, getting a farm number and
6 receiving those benefits, if he had then any
7 claim against him would be the United States
8 Department of Agriculture's claim against him
9 and not the plaintiff's claim against him. I
10 mean, these benefits, they're not an
11 appurtenance to the land or incident of land
12 ownership. They're the result of a contract
13 Clyde Livingston had with the United States
14 Government. So the plaintiff wouldn't have any
15 standing to say whether Mr. Livingston has
16 breached that contract or say fraudulently
17 induced it or anything like that because
18 ~~they're not a party to that contract.~~ You
19 know, he had interest in the land. He
20 certainly had the ability to go get a farm
21 number and get payments. So it failed for
22 reason number one is they're not estate
23 property and they couldn't have been estate
24 property. They were always Clyde Livingston's
25 property. And if there was any problem with

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1 that arrangement then that's a problem that
2 Clyde Livingston had with the U.S. Government,
3 not that he had with Emma Martin or the estate
4 of Atn Burns Livingston. And I note this too,
5 it would also be barred by the statute of
6 limitations just like the no claims would. He
7 had been receiving the benefits since the year
8 2000. So the three-year statute of limitations
9 would be applicable to what's essentially what
10 I can gather from the complaint is a conversion
11 claim and that had a three-year statute of
12 limitations with it so that would have run out
13 in 2003. And even if it had been told during
14 the time that they were both personal
15 representatives, it would have run out in 2005.
16 So before this action was brought which was
17 brought on May 30th 2006. So I would note
18 that, you know, I think summary judgment is
19 proper on either one of those bases because
20 they're both present. I think that the Court
21 would have to grant it. And that's what I've
22 got on the summary judgment motion.

23 MR. NESS: Your Honor, in response to that, the
24 document Mr. Radeker is referring to and the
25 lease statement document I'm going to, I'll

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1 hand it up to the Court, and the document, the
2 owner certification is signed by if you read
3 the writing is EST estate of A.B. Livingston,
4 PR, C.B. Livingston. And then at that time
5 there were two personal representatives, co-
6 personal representatives appointed by the
7 Court. And I think Mr. Radeker is off base on
8 his argument because the payments were made,
9 would have been made and were made to Mr.
10 Livingston. But they would have been made to
11 the estate. And the estate owned the land.

12 There's no question. That's what generally
13 this whole lawsuit is about. And this is just
14 one segment of it. And the estate would have
15 collected all of these moneys. And, you know,
16 it's not an issue of law. It's an issue of
17 fact, I believe. And we may need some
18 testimony. We certainly need some documents
19 besides that to show you. In May of 2000 the
20 first payment was made. And there was another
21 payment in 2000. There was a couple in 2001,
22 one in 2002 which is when Mr. Livingston was
23 removed as PR and Ms. Martin was appointed.
24 Well, she was co-PR. She was just left as a
25 sole personal representative. And she didn't

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1 know about the payments would be her testimony
2 at that point. Clyde Livingston never told her
3 about the application, about any of this. And
4 the statute of limitations argument fails
5 because of, one, the discovery rule. I mean,
6 you can't be expected to bring a lawsuit when
7 you don't know that something's going on. And
8 the appointment documents from the PR, from the
9 Court show the PR is a co-personal
10 representative which I take the position that
11 both personal representatives have to
12 administer the estate, not one of them signing
13 a contract with whomever to get these benefits.
14 And just one person signed that.
15 Ms. Livingston, Ms. Martin's testimony would be
16 that she didn't find out until, two thousand,
17 probably three or four that this was even
18 happening. And by the time she was able to get
19 all of the documents and information, a number
20 of months had passed. But even if the Court
21 were to find the statute of limitations is a
22 valid issue here, it would only be a valid
23 issue from the time this lawsuit was filed
24 in 2006 back three years which puts you in
25 2003. So the only payments that it possibly

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1 would have, the statute could have run on would
2 be the ones in 2000, 2001 and 2002 because she,
3 the case was brought. This case has been
4 pending now, you know, since 2006. It's almost
5 a four-year-old case. And it's bounced around
6 in the Circuit Court. But you can look at the
7 date that the summons and complaint was filed.
8 And I think the worst case scenario we would be
9 talking about 2003 payments. The first one was
10 made in August of 2003, up through 2008 which
11 is a substantial amount of money. But I think

12 this is an issue of fact, not one of law that
13 Mr. Radeker seems to want the Court to rule on.
14 The rule of law issue is certainly the statute
15 hadn't run as to these 2003 payments to date.
16 And the, the discovery rule protects it on the
17 rest of it. There are a number of cases. I'll
18 be glad to brief this if the Court wishes me to
19 brief it. And I think one came out in the last
20 week or two on the discovery rule that the
21 statute of limitations doesn't start running
22 until you knew or should have known something's
23 going on. Well, if you've got a co-personal
24 representative who's acting outside of his
25 authority, not accounting for it to the Probate

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15

1 Court because he's not putting it in the
2 estate, nobody in the Court knows it, the other
3 co-PR doesn't know it, then the discovery rule
4 wouldn't have started until she finds out some
5 three years or so later. You also have I think
6 a doctrine in the law equitable estoppel, and
7 I think that Mr. Livingston should be estopped
8 from making this argument because the acts are
9 solely his acts. And he's even just told the
10 Court that the contract was between him and the
11 government. But yet the paper I handed you
12 shows he's signing off as the estate on it.
13 And the estate should have collected these
14 moneys. The co-PRs could have signed it but
15 Livingston, Mr. Livingston's wearing two hats
16 in this situation. If he was farming it he's
17 collecting the money and putting it in his
18 pocket. But the farmland is owned in a
19 subject, it's owned by the individuals.
20 Certainly this lady would have an interest in
21 it. But primarily I think that all of the
22 assets have to be gathered by statute by the
23 personal representatives and placed in the
24 account. That was sort of a money making issue
25 for this estate that would have had a lot more

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1 money. We might not even be here today if this
2 money had been taken the estate to pay
3 administration expenses, attorney fees, et
4 cetera, as the estate went forward. So I think
5 a summary judgment should be denied, as a
6 partial summary judgment kind of issue. But if
7 you grant partial summary judgment then I
8 should be able to go forward at minimum from
9 2003 to 2008.

10 MR. RADEKER: If I could just -- I'm sorry. I
11 didn't mean to interrupt you.

12 MR. NESS: No. I'm finished with that argument.

13 MR. RADEKER: If I could just speak briefly to that
14 because the plaintiffs raised some affirmative
15 defense type stuff on the statute of
16 limitations but there's nothing in the record
17 that would support that. There isn't anything
18 here showing why it is that a reasonable person
19 in Ms. Martin's position couldn't have
20 discovered that Clyde Livingston had gotten a
21 farm number. And I also note this. If you
22 look at this lease statement, it's the operator
23 who gets paid the subsidies from the USDA.
24 Clyde Livingston did not sign an operator's
25 signature as PR for the estate. He just signed

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1 as himself. You know, if he was confused about
2 ownership of the estate, that's, I mean,
3 whether the estate owns it or he's got an
4 interest and can just apply directly for it,
5 you know, then I mean, he's not a lawyer, you
6 know. So I'd note that. You know, the
7 plaintiff hasn't served anything showing why
8 she couldn't reasonably have found out about
9 this at a much earlier time. You know, I note
10 this. If he did something wrong he had been
11 doing it since the year 2000. So the statute
12 of limitations, you know, it's not like, you
13 know, it's a new tort or something every year.
14 I mean, if he did something wrong he did it
15 back in 2000. He did it on April 19th 2000
16 when he signed this lease statement. I don't
17 think he did anything wrong. But if he did
18 that's when it happened. And that's when a
19 cause of action would have accrued. Or a few
20 days after that when someone could have found
21 out about it. And there isn't anything in the
22 record that would support the defense of
23 equitable estoppel or anything like that. And
24 that would be, that's an affirmative defense to
25 the statute of limitations defense. So we just

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1 note if summary judgment is proper, you know,
2 the money was paid to Mr. Livingston by the
3 government pursuant to a contract he had with
4 the government. There isn't anything here that
5 shows that Mr. Livingston did anything to
6 prevent the PR from applying for a farm number
7 or Ms. Martin from applying for a farm number
8 on her own. If either one of those things
9 would have happened they would have found out
10 that Clyde Livingston had a farm number. And
11 they could have done that at any point. So I

12 just note that you know, the discovery rule
13 argument there really isn't anything there to
14 support that. Thank you.

15 MR. NESS: Your Honor, just one other issue. This
16 motion for partial summary judgment, it was
17 filed, I don't have a clocked copy of it but I
18 suspect it was filed on Monday of last week.

19 And the certificate of service was sent, says
20 it was sent on March 13th which is a Friday if
21 I remember correctly. This case has been going
22 on for four years. And we moved for summary
23 judgment here just before the Court trial today
24 on this issue. And I also submit to you it's
25 too little too late to bring it up now, that

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1 this is an issue of fact that the testimony
2 ought to bear out. And I would ask that the
3 Court let me go forward and call my client as
4 a witness and let her explain the discovery
5 rule issues. Those are fact issues that I
6 think the Court needs to hear and needs to rule
7 on.

8 THE COURT: Okay. Very good.

9 MR. NESS: Proceed?

10 THE COURT: Please proceed.

11 MR. NESS: I'll call Emma Martin.

12 EMMA MARTIN, having been duly sworn, testifies as
13 follows:

14 MS. MARTIN - EXAMINATION BY MR. NESS:

15 Q: Ms. Martin, would you state your full name for
16 the record?

17 A: Emma Lou Livingston Martin.

18 Q: And you are, as of today we're here today you
19 are a personal representative of the estate of
20 Atn Martin, Atn Livingston, your father?

21 A: Yes.

22 Q: When did your father pass away?

23 A: October 1999.

24 Q: And there was a will involved; is that correct?

25 A: That's correct.

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1 Q: And the estate was left to you and your brother
2 Clyde?

3 A: Yes.

4 Q: Were you both appointed as co-personal
5 representatives?

6 A: Yes, we were.

7 Q: Do you know about when that occurred?

8 A: I can get that out. That was --

9 Q: You're welcomed to refer to your notes that you
10 have there.

11 A: Okay. Let's see. We were both appointed
12 December 10th 1999.

13 Q: Okay. And did you operate it as co-PRs at that
14 point?

15 A: Yes, we did.

16 Q: When was Clyde Livingston removed by the
17 Probate Court as personal representative?

18 A: Let's see. On January 18th 2002.

19 Q: Okay. And that order is of record; is that
20 correct?

21 A: That's correct.

22 Q: In Probate Court?

23 A: Right.

24 Q: All right.

25 A: That's the date that I became the sole personal

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1 representative.

2 Q: All right. Between the date you were appointed
3 and the date you became sole personal
4 representative what knowledge if any did you
5 have regarding the farm service agency or ASCS
6 U.S. Department of Agriculture payments?

7 A: I had no knowledge that those moneys were being
8 paid for that farm.

9 Q: Did Clyde never told you about that?

10 A: No. He did not. We were looking for a renter.
11 He said he was going to find someone to rent

12 the property. And as I asked him about it
13 going forward it was like I haven't been able
14 to find anybody. And that went on for a while.
15 And then finally it was like I can't find
16 anybody, don't bother me about it, I don't have
17 time to mess with it. And that's where that
18 was left.

19 Q: Were you told or did you know at that point
20 that beginning in 2000 that Clyde Livingston
21 had anything to do with farming of that land
22 that was, belonged with the estate?

23 A: Could you repeat? Did I know about him --

24 Q: You were looking for a farmer to rent. You
25 just testified.

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1 A: Right. Yes. Yes. We were in the process.

2 Q: And you weren't aware of anybody finding one?

3 A: That's correct.

4 Q: When did you become aware that Clyde was
5 actually doing some sort of farm work on this
6 family farm?

7 A: Well, I never did really become aware that he
8 was doing actually farm work because I don't
9 think that was the case. I did receive from,
10 a letter from the USDA in, I think I got the
11 letter somewhere late April of 2002 that it

12 showed Clyde as the operator of the farm. It
13 didn't say anything about moneys being paid.
14 It said he was the operator and that my daddy
15 was the owner of the property.

16 Q: And that was the first you knew about it that
17 farm service agency type payments being
18 involved at all?

19 A: Right. Right. It had never been mentioned
20 that that farm with us having it in the estate
21 that it would be eligible for any type of
22 subsidy type payment. That rent was our option
23 to find someone to rent it.

24 Q: And did you then begin inquiring into what was
25 going on with the farm service agency?

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1 A: Yes, I did. Once I received the USDA letter I
2 asked around in the community what that
3 possibly could mean. And, you know, I got
4 different answers and stuff. And then I called
5 the farm agency here in Orangeburg. And they
6 said yes that Clyde had come in and that he was
7 receiving payments. And I got some, you know,
8 some copies and things from them at that time.
9 And about along in there the same time I called
10 my attorney for the estate Cliff Ellis, Cliff
11 Moore who was with Ellis Lawhorne and advised

12 him as to what was going on and how should that
13 be handled and how should we proceed. And --

14 Q: As a result of that conversation how did you
15 all proceed?

16 A: Cliff was handling it through the estate. He
17 was, it was to be settled or resolved or the
18 money come back into the estate through
19 settlement of the estate and how, you know, the
20 estate would be distributed. And there were,
21 you know, Clyde's attorney knew this. I mean,
22 there was letters or conversations going on
23 back and forth between the two lawyers of how
24 they were handling it.

25 Q: And after that time did you then get a, at some

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1 point get a full copy of a file from the farm
2 service agency that you have with you today?

3 A: Yes, I did.

4 Q: All right.

5 MR. NESS: And if I could I'm going to show you what
6 I'm going to submit collectively, your Honor,
7 as long as there's no objection the records
8 from the farm service agency.

9 MR. RADEKER: As long as they're all records from
10 the farm service agency I have no problem with
11 those coming in. No objection.

12 MR. NESS: To my knowledge they are. And Your
13 Honor, the one I handed up to you would be part
14 of that record as well.

15 THE COURT: Oh. I can put that back with the group?

16 MR. NESS: Ms. Martin, is this a copy of what you
17 obtained over a period of time or at least
18 collectively from the farm service agency?

19 A: Yes, it is.

20 Q: And the farm service agency provided these to
21 you from their file; is that correct?

22 A: That's correct.

23 MR. NESS: Okay. Your Honor, I would offer this as
24 Exhibit One.

25 MR. RADEKER: No objection.

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1 (Plaintiff's Exhibit Number One was marked for
2 identification purposes.)

3 Q: Ms. Martin, you have a copy, an identical copy
4 of that in front of you.

5 A: Yes.

6 Q: Would you look at the documents and have you
7 gone through these documents or have you and
8 your husband gone through these documents
9 together and come up with the amounts that were
10 received by Clyde Livingston according to the
11 documentation?

12 A: Yes. I have it.

13 Q: All right. And have you also I guess done the
14 mathematics and added them up?

15 A: Yes. We've done that.

16 Q: And have you also figured up what we'll call
17 simple interest at a percentage rate?

18 A: Yes.

19 Q: What percentage rate did you use?

20 A: We used 8.75 percent simple interest.

21 Q: And you went and have added those numbers up.
22 Well, what is the total of the payments that
23 were made, not counting interest, but the total
24 of the payments from 2002 to 2008?

25 A: \$35,120.

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1 Q: All right. Any of those moneys ever been
2 deposited in or paid over to the estate of Atn
3 Livingston?

4 A: No, they have not.

5 Q: And have you ever had any personal discussion
6 about this with Clyde Livingston?

7 A: With the attorneys and it was brought up in a
8 hearing. And I have, I guess earlier, let's
9 see, yes. I have mentioned it to Clyde.

10 Q: That's what I'm speaking of.

11 A: Okay.

12 Q: You yourself with Clyde, what discussions did
13 you all have about it?

14 A: Just that, you know, it belongs to the estate.
15 Turn the money over to the estate and, you
16 know, and it was like, well the attorneys are
17 handling it. And that was what was being done.
18 I mean, it was being talked, you know, about

19 the settlement between the attorneys of how to
20 divide it.

21 Q: And as of 2006 I think you had at that point
22 switched over to Mr. Thrailkill who is my co-
23 counsel in this case now as an attorney; is
24 that correct?

25 A: That's correct?

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1 Q: And maybe before that but certainly in 2006.

2 A: Right. Yes.

3 Q: Was this issue placed into the lawsuit because
4 things had not been resolved at that point?

5 A: That's correct.

6 Q: And as we sit here today have they been
7 resolved in any way?

8 A: No.

9 Q: All right. Now, are you asking the Court to
10 require Mr. Livingston to pay these moneys back
11 into the estate?

12 A: Yes.

13 Q: All right. And why do you believe the estate's
14 entitled to them?

15 A: Because the estate has expenses that needs to
16 be paid. The land has not been distributed out
17 of the estate. Seems like that would be the
18 right and proper thing to do in administering
19 the estate.

20 Q: Are there any assets in the estate now other
21 than the land and I guess some obligations?

22 A: I don't think anything significant. I guess
23 there are. The land does have some woods on
24 it.

25 Q: Timber?

1 A: Timber.

2 Q: Would that, but at this point that's part of
3 the land?

4 A: Right. Part of the land. So the land is the
5 asset.

6 Q: And to your understanding was the reason this
7 money was paid by the government through the
8 farm service agency was because of the
9 ownership of the land by the estate?

10 A: I'm sorry.

11 Q: ~~What I'm asking you is has the government paid~~
12 these moneys to Mr. Livingston because he
13 agreed as a personal representative to get into
14 this agreement, didn't he? That's that first
15 document signed right here.

16 MR. RADEKER: I object to that on the basis it calls
17 for a legal conclusion and speculation about
18 his state-of-mind.

19 Q: Well, Your Honor, let me ask it this way.

20 THE COURT: Okay.

21 Q: Ms. Martin, whose signature is that as operator
22 on this piece of paper which is the top exhibit
23 on Exhibit Number One?

24 A: It's Clyde's signature.

25 Q: All right. And who signed it as the owner's

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1 signature?

2 A: Clyde did as personal representative of the
3 estate.

4 Q: Okay. And did Clyde Livingston individually
5 own that property at that point in time in I
6 guess 2000?

7 A: No. He did not.

8 Q: But you were not asked or told about the fact
9 that this document was being signed and this
10 undertaking actually had been put in effect
11 with the government, were you?

12 A: That's correct. I had no knowledge.

13 Q: And that's what this lawsuit is about or at
14 least partially what this lawsuit is about?

15 A: Yes.

16 Q: All right. Now, in looking at your
17 compilation, the -- let me show you this other
18 document. Mr. Radeker had it.

19 MR. RADEKER: We note this. I mean, it appears that
20 they've compiled a summary. I mean, obviously
21 I haven't had time to check it or anything.
22 We're not consenting to the accuracy of the
23 figures. I don't have a problem with it being
24 admitted basically as a demonstrative exhibit.

25 MR. NESS: And she will testify about --

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1 MR. RADEKER: I don't know whether the figures are
2 accurate. I can't say that I'm okay with it on
3 the basis that they are. I just, I don't have
4 any problem with it coming in as a
5 demonstrative exhibit. I mean, they're just
6 using it to show what they're trying to say.

7 Q: What I'm showing you is a document that
8 prepared with your involvement in preparing it?

9 A: That's correct.

10 Q: Okay. And that's the one I asked you about a
11 minute ago about the payments being made and
12 the interest and that sort of thing; is that
13 correct?

14 A: That's correct.

15 Q: Okay.

16 MR. NESS: And with Mr. Radeker's I guess qualified
17 agreement that it comes into evidence, Your
18 Honor, I offer it as Number Two.

19 MR. RADEKER: No objection on the basis we just
20 stated.

21 (Plaintiff's Exhibit Number Two was marked for
22 identification purposes.)

23 Q: And Ms. Martin, to go over this document very
24 briefly but to make sure that the Court
25 understands what's involved here.

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(Off the Record)

Q: You've got the check number which is the information you obtained from the government office; is that correct?

A: That is correct.

Q: And the amount that was received on an annual basis or maybe a couple of years actually got two payments. And what did those amount received add up to? I think I asked you that but I want to make sure it's in the record.

A: \$35,120.

Q: And that runs from May 16th 2000 through October 21st 2008?

A: That's correct.

Q: And I see on the entry on there for March 24th 2010 which is just --

A: No. Wait a minute. That's just --

Q: That would be the interest. Okay. I'll ask you. So you haven't received anything for 2009 and 2010 or you have?

A: We filed with the estate. The estate receives the payments for 2009 and 2010.

Q: So as personal representative you have received those moneys and placed them into an estate account?

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1 A: That's correct.

2 Q: And did the, any problem in getting that
3 switched over to the estate?

4 A: It was very time-consuming and we had to jump
5 through a lot of hoops to get that to happen as
6 far as just bringing it all together. It was,
7 I don't know why with the farm service agency.
8 I mean, they were polite and they were somewhat
9 helpful. But it was a very orderly, I guess
10 you would say pain-stakingly let's make sure
11 that everything's done correctly type process.

12 Q: But the government didn't I guess give you any
13 difficulty because the estate was asking to
14 receive the money?

15 A: Oh, no. No. No. No. No. No. That part was
16 easy. That part was easy.

17 Q: The other issue is probably just the government
18 being the government?

19 A: Right. Right.

20 Q: The, but the moneys for '08, '09 and 2010 had
21 been received payable to the estate of Ant
22 Livingston?

23 A: That's correct.

24 Q: Okay. Now, back to these other moneys that
25 were received from your investigation by Clyde

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1 Livingston. Have you also calculated on this
2 sheet what you believe to be the simple
3 interest starting in 2000? And then I guess
4 you were adding it up on an annual basis?

5 A: Yes.

6 Q: What is the interest based on your calculations
7 for the whole period of time?

8 A: The interest is \$17,550.06.

9 Q: All right. Now --

10 A: That's through March 24th of this year.

11 Q: Okay. Now the last number that is dated March

12 24th, that's the interest from October 21st
13 2008 through today's date which is the day
14 we're here in this trial; is that correct?

15 A: Yes.

16 Q: And the total of the amount received by Clyde
17 Livingston plus what you believe now to be an
18 interest since the estate hasn't had the money
19 is what?

20 A: \$52,670.06.

21 Q: Okay. And you are asking the Court to do what
22 with its ruling here today as far as that money
23 goes?

24 A: I would like for the Court to order that
25 \$52,670 to be paid to the estate so it could be

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1 used in the estate for expenses.

2 Q: And if you had knowledge that the payments were
3 being received by Clyde Livingston early on and
4 even after you got involved and they were
5 received by Clyde Livingston, what steps would
6 you have taken at that point, or what position
7 would you have taken regarding those payments
8 and who would be entitled to them?

9 A: I've always taken the position that money
10 belonged to the estate and that they would be
11 disbursed, you know, if we didn't need to spend
12 the money that half would be disbursed to Clyde
13 and half would be disbursed to me if the estate
14 didn't need the money.

15 Q: Ask any questions Mr. Radeker has for you or
16 Mr. Stanton.

17 EXAMINATION BY MR. RADEKER:

18 Q: Ms. Martin, I've seen you before.

19 A: Yes.

20 Q: I haven't really had a chance to talk to you a
21 whole lot. I don't think I'm going to be too
22 long. You say you didn't ask Clyde about any
23 USDA payments on the farm; is that right?

24 A: When are you talking about?

25 Q: So that -- during the time that you all were

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1 co-personal representatives you never talked to
2 him about that?

3 A: No. I did not know that, in our position I
4 thought that people who actually farmed the
5 land that those were the people who obtained
6 subsidies. I didn't realize that you could do
7 nothing but minimum maintenance and receive
8 those payments.

9 Q: Well, in fact you agreed that Clyde would rent
10 the farm from the estate; isn't that right?

11 A: No. That's not correct.

12 Q: So, well, let me, and I just, I don't know
13 who's talking back there but I just note they
14 ought not to be doing that. But I'll say this
15 to you too. You had a lawyer in 2002, Cliff
16 Moore as you told us?

17 A: That's correct.

18 Q: Your husband who's here with us today, he's a
19 certified public accountant; isn't he?

20 A: That's right. Just like Clyde.

21 Q: And you have worked in accounting in fact
22 yourself, haven't you?

23 A: I've worked in accounting for a couple of years
24 after I graduated from college.

25 Q: And in fact you've got a farm around Cope;

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1 isn't that right?

2 A: We rent that, we rent the farm. And we signed
3 a lease agreement that gives Mr. Whisenhut the
4 right to obtain the subsidies.

5 Q: In your work in accounting you've done farmers
6 tax returns before?

7 A: No depth. No, basically no.

8 Q: So you never saw that on those tax returns
9 there would be tax reporting concerning the
10 USDA payments?

11 A: No. I did not. Not, I didn't have enough
12 knowledge to do a farm return really.

13 Q: And you say it was when you got involved with
14 Mr. Thrailkill that it was then that you went
15 and tried to, you know, get any USDA payments;
16 is that right?

17 A: That is when we applied for the estate because,
18 you know, we got, I just got frustrated and
19 tired of waiting on the thing to be settled.
20 And so I went, we went and applied.

21 Q: Back when you had Cliff Moore, you knew about
22 it, you knew Clyde had been receiving the USDA
23 --

24 A: I said that. I said that already.

25 Q: All right. Thank you very much. That's all

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1 I've got.

2 MR. STANTON: I don't have any questions.

3 RE-EXAMINATION BY MR. NESS:

4 Q: Yes, a couple of questions. Ms. Martin, based
5 on the last question Mr. Radeker asked you, you
6 began applying in about what point in time to
7 get these benefits straight, straight by
8 getting them into the, payable to the estate?

9 A: To the estate? 2008 is the first year that the
10 estate, and I don't remember whether, I think
11 we went, it was 2008 when we, when I signed the

12 papers. I do have probably a copy of that
13 somewhere.

14 Q: That's what I understood. The time frame is
15 what I was looking for.

16 A: Okay. We, I think we were communicating with
17 them in 2007. There was a, there was a
18 backlog, something about putting you on a, it's
19 like a waiting list to actually make the
20 application. But you're okayed, like you're
21 basically okay. They're not going to tell you
22 no you missed a deadline or something to that
23 effect. I'm not totally certain about those
24 dates. It just, I couldn't give you an exact
25 date.

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1 MR. RADEKER: Again, I just note that Mr. Thompson
2 Martinez for the second time pointed out to his
3 wife what she ought to be doing to answer the
4 question. So I'd just like for the record to
5 reflect that.

6 THE COURT: I couldn't see him.

7 MR. RADEKER: So, he leaned forward and said, oh,
8 you've got it there?

9 A: He just told me I had a piece of paper. That's
10 all.

11 MR. RADEKER: He's not on the stand. She's
12 testifying. He's not allowed to help her.

13 MR. NESS: Your Honor, she's going to refer to her
14 notes if she can find it if that's all right
15 with the Court.

16 THE COURT: I'm sorry?

17 MR. NESS: She's going to refer to her notes and
18 papers so she can continue --

19 THE COURT: Sure.

20 MR. NESS: -- and conclude my answer.

21 THE COURT: Sure.

22 MR. RADEKER: I would just like to take a look at
23 whatever she's looking at before she does that.

24 MR. NESS: Sure.

25 A: Can I get something from this other folder back

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1 here?

2 Q: Can I talk with you?

3 A: Can I have that folder?

4 A: Well, according to the form I actually filled
5 out the contract in September of 2008. And I
6 can't recall the exact date that we first
7 started talking about the application for the
8 contract.

9 Q: Okay. But that's something that the
10 discussions about the payments had been going
11 on for two or three years at that point in
12 time, had they not?

13 A: Oh, yes. Yes. I mean, you mean for the estate
14 to receive them or just the --

15 Q: Well, the discussions between as far as you're
16 aware your lawyers and Clyde Livingston's
17 lawyer?

18 A: Right. Right. Yes. They're been going on
19 back as far as Cliff Moore in 2002.

20 Q: Has Clyde Livingston ever offered to turn over
21 these proceeds to the estate?

22 A: No. He has not. He's refused.

23 Q: All right. Has anybody farmed this property
24 since you have been personal representative and
25 sole personal representative in 2002?

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1 A: Not to my knowledge.

2 Q: Has Clyde Livingston gone out there and farmed
3 this land the acreage that's owned by Atn
4 Livingston's estate since he got to be PR that
5 you are aware of?

6 A: No.

7 Q: Thank you.

8 MR. RADEKER: I don't have anything further for
9 Ms. Martin.

10 MR. NESS: That's all I have, your Honor.

11 ~~MR. RADEKER: I don't know if they're going to offer~~
12 anything else. Is that your case?

13 MR. NESS: Your Honor, we have nothing else on this
14 issue.

15 MR. RADEKER: Your Honor, we move at this time for a
16 directed verdict. I guess it would be a
17 voluntary non-suit here because it's before the

18 ~~Master-in-Equity.~~ Ms. Martin testified that
19 she knew in late 2002 that Clyde Livingston had
20 been receiving USDA benefits and had a farm
21 number on this property. This action was filed
22 May 30th 2006. That's more than three years
23 from the time that she was aware of it. This
24 claim would be barred by the statute of
25 limitations. I know, as we said before, it's

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1 not the estate's money anyway. It's Clyde
2 Livingston's money pursuant to his agreement
3 with the United States Government. She doesn't
4 get to wear the USDA's hat to come walk in
5 here. But the undisputed testimony was she had
6 a lawyer back in 2002, knew about the payments
7 and didn't bring this action until 2006 and
8 didn't sign this application until 2008. So we
9 know that's barred by the statute of
10 limitations and ask that the Court just dismiss
11 the plaintiff's claim on that basis. Thank
12 you.

13 MR. NESS: Your Honor, as I said in my opening
14 statement, even if the Court would decide there
15 was a statute of limitations issue here, it
16 would for the date of the lawsuit back three
17 years it was 2003. Just because you didn't do
18 something at the very beginning and of course
19 while Clyde Livingston was the personal
20 representative and he's the only one knew about
21 it. I mean, she wouldn't have known about it
22 in 2000, 2001 at all. And so you've got an
23 equitable tolling issue right there he's the
24 one doing it and he's the PR, he's the
25 fiduciary to the estate. And so those years

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1 don't, I don't think those years go off by any
2 statute of limitations when the sole person
3 that knows about it is the guy that's the
4 defendant in this case. But even if it did, if
5 she found out about it in 2003, let's say she
6 didn't know about it until 2003 and she, and
7 wasn't even asking for the years before that,
8 she would have a cause of action beginning in
9 2003 that she filed in 2006 and would carry on
10 through 2008. So, you know, I think the motion
11 for involuntary non-suit on this issue should
12 be denied. You've got the discovery rule.
13 You've got a tolling issue I think based on
14 their argument and the testimony that's been
15 here today that she wouldn't have known about
16 it until she became the sole personal
17 representative and she said took a while to get
18 her feet on the ground so to speak with that.
19 So I think it's clear that the action can go
20 forward and we'll see what Mr. Livingston says
21 on his side of the case if anything. But I
22 still think it's a factual issue and I think
23 we've proven our case at worst from 2003
24 through 2008.
25 MR. RADEKER: I just note this. Even if you take

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1 when she said she found out about it, it's the
2 date from, the statute of limitations would
3 run, this action was filed more than three
4 years from that date. So thank you.

5 THE COURT: I want to hear what your side has to say.

6 MR. RADEKER: All right. Thank you, your Honor. We
7 just very briefly call Mr. Livingston to the
8 stand.

9 THE COURT: Okay.

10 CLYDE LIVINGSTON, having been duly sworn, deposes and
11 testifies as follows:

12 MR. CLYDE LIVINGSTON - EXAMINATION BY MR. RADEKER:

13 Q: Clyde, did you have an agreement with your
14 sister Ms. Martin when you all with were both
15 serving as personal representatives of this
16 estate concerning a collection of USDA subsidy
17 payments?

18 A: I had an agreement with her to rent the farm.

19 Q: All right. And I think that might be about --

20 A: Let me see.

21 Q: Okay.

22 A: The agreement I had with her was the same
23 agreement that the previous tenant had with my
24 father. And one of the things we had to do was
25 go back and collect back rent which I did

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1 collect and which I did split with you.

2 MS. MARTIN: We collected it together most of it.

3 MR. NESS: He's on the stand.

4 MS. MARTIN: Okay.

5 Q: And so that might be all I've got unless you
6 would like to say anything else. I don't
7 really have anything else for you. Thank you,
8 sir.

9 EXAMINATION BY MR. NESS:

10 Q: Okay. Mr. Livingston, you collected, in your
11 testimony just now you collected what money?

12 Are you talking about from a previous farmer?

13 A: The previous tenant.

14 Q: The previous tenant?

15 A: When Pa was alive.

16 Q: And you say that was for the years before your
17 father's death?

18 A: Right.

19 Q: And that money you split with your sister?

20 A: That's correct.

21 Q: Okay. And but yet when you started, when you
22 signed this document with the FSA for whatever
23 you were doing with the property, you didn't
24 discuss that with Emma then at all, did you?

25 A: Discuss what with her?

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1 Q: That you were signing paper work with FSA so
2 you could get the benefits?

3 A: I don't recall discussing it with her. No.

4 Q: Well, what is different about you getting the
5 benefits after your father's death versus you
6 getting benefits that you collected before your
7 father's death that you split with your sister?

8 A: The difference is the conversation I had with
9 her was that since we didn't find somebody to
10 rent it that I would take over the role of the
11 previous renter and handle it the same way it

12 had been handled before. Now I admit to being
13 behind in back rent. And that was talked about
14 with the previous attorneys, some two or three
15 attorneys before you. And I think if you go
16 back and check the file there was, you know,
17 correspondence between the lawyers. We don't
18 dispute owing rent to the estate.

19 Q: You're calling rent something different than
20 these FSA payments?

21 A: The amount being paid by the previous tenant
22 who was renting it.

23 Q: But that's not the same amounts that the FSA
24 was paying you?

25 A: Obviously not.

1 Q: So Mr. Livingston, with this first document
2 that you signed --

3 MR. NESS: Your Honor, if I might hold Exhibit One
4 please.

5 Q: The cover sheet right here on Exhibit One.
6 Your sister's name is not on that piece of
7 paper in any capacity, is it?

8 A: No, sir.

9 Q: And yours is in it, on it in two capacities,
10 yourself individually and then yourself as
11 personal representatives?

12 A: That's correct.

13 Q: And you had no sole authority to sign that
14 contract or whatever that document is on behalf
15 of the estate -

16 MR. RADEKER: Objection. That blatantly calls for a
17 legal conclusion.

18 MR. NESS: This is cross-examination.

19 MR. RADEKER: Yeah, it is. And it calls for a legal
20 conclusion. And it's an objectionable
21 question. The fact that it's cross-examination
22 doesn't mean he can't ask him for legal
23 conclusions.

24 THE COURT: Maybe you need to rephrase your question.

25 MR. NESS: Your Honor, I wasn't asking for a legal

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1 conclusion. Let me ask it this way.

2 Q: Mr. Livingston, you had no agreement with your
3 sister that you were going to sign that
4 document as PR of the estate alone and that she
5 wasn't going to get to sign it, did you?

6 A: The only agreement I had with her was that I
7 was going to rent the farm the way the
8 preceding renter had.

9 Q: Well, you acknowledge you were PR when that
10 document was signed. You were personal
11 representative; right?

12 A: Absolutely.

13 Q: And do you agree that you had a fiduciary duty
14 to the estate of Ant Livingston to collect any
15 monies that needed to be collected?

16 A: I had agreed with the other PR that I would pay
17 rent.

18 Q: Have you got any Court order that authorizes
19 you not to put these monies in the estate from
20 a Probate Court? You were talking about prior
21 issues.

22 A: These were not estate funds. They were paid to
23 a farm operator. Me.

24 Q: The estate could have been the farm operator,
25 couldn't it?

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1 MR. RADEKER: Objection. Calls for a legal
2 conclusion.

3 A: Yes. But the other PR and I did not reach that
4 agreement.

5 Q: You didn't talk to her about it, did you?

6 A: We talked. And if you would like to we can
7 continue this and we can bring in some
8 witnesses that talked to her on my behalf.

9 Q: Today is the court trial on this issue, Mr.
10 Livingston. The estate could have signed those

11 ~~papers but yet you signed it as individually on~~
12 yourself so you could collect the money and the
13 estate wouldn't get it, didn't you?

14 A: I continued the same agreement with myself as
15 a farmer that my father had before. The same
16 amount of money is entitled to go to the
17 estate.

18 Q: ~~If the estate had signed that document to~~
19 collect it as it's doing today in '09 and 2010,
20 the moneys would have gone in the estate, not
21 into Clyde Livingston's pocket; isn't that
22 right?

23 A: If she had not agreed that I was going to rent
24 it, yes.

25 Q: Now, you're renting it and you grew what crops?

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1 Corn?

2 A: We had some game bird plots.

3 Q: So you didn't grow anything on it?

4 A: Trees.

5 Q: And maybe weeds?

6 A: And we grew some coastal bluegrass.

7 Q: But not as a farmer. That's what was there,
8 isn't it? You didn't farm the land, did you,
9 is what I'm really asking you.

10 A: I did the same farming that was done before I
11 took it over.

12 Q: But in the vein of a farmer, putting a tract
13 out there and planting some crop, you didn't do
14 that any of these years we're talking about,
15 did you?

16 A: I did the same thing that was done the years
17 before I took it over.

18 Q: Mr. Livingston, you could have and should have
19 signed those documents as personal
20 representative and put those moneys in the
21 estate along your sister signing them but you
22 didn't let her, did you?

23 A: No. I asked her if it was all right with her
24 if I took it over and rented it the way it had
25 been done before. And she said yes.

1 Q: Thank you. No further questions of this
2 witness.

3 RE-EXAMINATION BY MR. RADEKER:

4 Q: Just very brief redirect. Clyde, the renter
5 preceding you, that renter collected USDA
6 payments on that farm; isn't that right?

7 A: That's correct.

8 Q: And those payments, they weren't in the same
9 amount as the rent that your father collected
10 from that renter, were they?

11 A: No.

12 Q: Thank you very much.

13 MR. NESS: No further questions for Mr. Livingston.

14 MR. STANTON: I don't have any. Thank you.

15 MR. RADEKER: I don't have any.

16 THE COURT: Do we have any other witnesses?

17 MR. RADEKER: No, your Honor. The withdrawal of the
18 claims as to the notes has kind of shortened us
19 up a little bit for us.

20 MR. NESS: Your Honor, I do have a reply witness for
21 a very short couple of questions if I might.

22 THE COURT: Sure.

23 MS. EMMA MARTIN - EXAMINATION BY MR. NESS:

24 Q: You're still under oath now; okay?

25 A: Okay.

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1 Q: You heard Mr. Livingston testify about some
2 agreement he made with you that he could sign
3 this paper work and collect the money.

4 A: Yes.

5 Q: Did you have an agreement with Clyde
6 Livingston?

7 A: No. I did not. I never have. And my answer
8 is the same as it was in the pine tree hearing.
9 I have no knowledge of any kind of agreement
10 that Clyde said we had. It never came up.
11 There was no agreement.

12 Q: And he didn't discuss this issue about these
13 FSA payments in the year 2000 with you about
14 him doing it?

15 A: No, he did not.

16 Q: Until you became PR and started looking into
17 the FSA type documents did you have any
18 knowledge of this situation?

19 A: No.

20 Q: Okay. Thank you.

21 MR. RADEKER: I don't think any redirect. It would
22 be cumulative to what I asked her.

23 MR. NESS: Nothing further, your Honor.

24 MR. RADEKER: Nothing further from us, your Honor.

25 THE COURT: Okay.

1 MR. NESS: Your Honor, that concludes the testimony
2 on this issue. I still have got the motion to
3 reconsider whenever you want to hear that. I
4 don't know if you want us to make some type of
5 argument based on this short hearing.

6 THE COURT: Well, would you like to make an arguments
7 on this? Or would you like to do proposed
8 orders?

9 MR. RADEKER: I mean, certainly if it pleases your
10 Honor I'm happy to do it. I mean, I think that
11 if, it might be in the interest of saving time,
12 you know, unless there's something further and
13 I don't want to reply to something that they've
14 got to say. But, you know, I basically just
15 say my argument to this would be the same as it
16 was at the summary judgment motion on the legal
17 basis and, you know, when I made a motion for
18 an involuntary non-suit that it would be barred
19 by the statute of limitations and, you know,
20 the payments weren't property of the estate in
21 any event. So but I mean I'm happy to listen
22 to whatever Mr. Ness has to say about it.

23 THE COURT: All right.

24 MR. NESS: Your Honor, I made my argument in sort of
25 in opening statement. And I don't want to

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1 belabor the saying the same thing again. I
2 certainly trust you to remember what we said an
3 hour ago and you've heard the testimony.
4 You've got the exhibits and I think you know
5 the issues. I don't have any further argument
6 in view of Mr. Radeker not having any either.

7 MR. STANTON: I have one question if we're about to
8 move beyond the USDA issue with regard to the
9 withdrawal of the plaintiff's claim on the
10 notes. I hope I'm clear on it. Was one or
11 more of those notes the subject of a mortgage

12 that's mentioned in the pleadings as well? In
13 other words, if you withdraw the claim on the
14 notes, then any mention of that mortgage is,
15 it's tied to the notes?

16 MR. NESS: That's correct.

17 MR. STANTON: That's right?

18 MR. NESS: We're withdrawing that issue.

19 MR. RADEKER: I think they're talking about the
20 mortgage that was executed under the ...

21 MR. STANTON: And I apologize because some of this
22 stuff has gotten transferred around in my head.
23 And that's really my inquiry is, there was
24 mention of one mortgage I think as Mr. Radeker
25 said that there was some issues about that was

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1 a mortgage in favor of Ms. Martin that was
2 executed by the state I guess. And I just was
3 confused as to whether underlying notes for
4 that mortgage were the ones we're talking about
5 here.

6 MR. NESS: Your Honor, just to make sure there's
7 clarification on the record, the, what we are
8 withdrawing is there was a note in 1979, May
9 15, 1979. And a mortgage was signed by Clyde
10 Livingston on the same date in 1979. That one
11 we're withdrawing to issues of that mortgage

12 and note. And then there was another note
13 dated March 27, 1981 with a mortgage dated
14 March 27, 1981 involved with it. And we're
15 withdrawing that note and mortgage issue from
16 any further testimony. But we are not
17 withdrawing whatever claim Ms. Martin has to
18 recoup moneys she's had to bring out of her
19 pocket to handle the estate and the issues,
20 some of the legal issues and whatnot, estate
21 expenses where I think she signed. I wasn't
22 involved in it so I think I'm speaking
23 correctly is that she signed a mortgage of the
24 estate property to, and a note to herself on
25 the estate property. We're not withdrawing any

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1 issue on that. That's still alive and an
2 active claim so to speak where she's asking for
3 the estate to reimburse her for moneys that
4 she's expended and spent. And that's part of
5 what the rest of this case is about as well.
6 So I just want to make sure. Is that cleared
7 up, Mr. Stanton?

8 MR. STANTON: It does. And I appreciate that. I
9 just was trying to make sure I was following
10 everything. So we're not going into that
11 mortgage today?

12 MR. RADEKER: That was my understanding.

13 MR. STANTON: That's fine. Thank you.

14 MR. NESS: That is not an issue before the Court
15 today.

16 THE COURT: Okay. A couple of things. Number one is
17 the idea of the expenses that the estate has as
18 of now. In other words how much is involved
19 in, how much expenses are we talking about?

20 MR. RADEKER: Well, looking at the, and I got out
21 the summons and complaint kind of in
22 anticipation of maybe clearing up what we were
23 just talking about a second ago. So I happen
24 to have it in front of me.

25 THE COURT: Uh-huh (affirmative response).

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1 MR. RADEKER: There is a claim in the summons and
2 complaint under the heading first cause of
3 action. It's like paragraphs 12 and 13 really
4 talk about it. Really paragraph 12 is the one.
5 And it says, it alleges the estate's indebted
6 to Emily Livingston Martin individually for
7 loans made by her to the estate to defray costs
8 and administrative expenses and for
9 compensation to personal representative for
10 services rendered in the amount of \$19,675.26.

11 ~~And it said that there is a note from her as PR~~

12 to her as an individual that evidences that and
13 that there is a mortgage on the land that
14 secures the payment of that note. So I mean
15 that's what's in the summons and complaint
16 about it. I mean, if there's other stuff about
17 there maybe Mr. Ness can tell us about that.

18 ~~MR. NESS: Your Honor, that was as of 2006. So~~

19 certainly there are going to be expenses and
20 various things since 2006 because this has been
21 a right hard fought case. So there will be
22 other expenses on top of that. But as of that
23 time I think that was an accurate number
24 because she had to loan the estate money for
25 the estate to keep going because they did have

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1 debates over other assets in Probate Court.
2 There are some previous orders and different
3 things that are down there that aren't still,
4 those are resolved by court order I think. But
5 the issues before the Court today in this
6 lawsuit, let me say it that way, remain as
7 she's asking for the property to be sold so
8 that the assets can come into the estate to
9 help defray expenses of this. Otherwise she's
10 essentially paying for it out of her pocket.
11 And that's why the issue with these farm

12 benefits with Mr. Livingston is such an
13 important issue to the estate. And we contend
14 that he should be required to pay them back in.
15 THE COURT: Okay. And going back to the issue of
16 the, as was brought up about the previous
17 operator basically Mr. Livingston taking the
18 place of the previous operator and making,
19 basically taking over the same responsibilities
20 as well as the same benefits from that
21 separating it from the estate, if I'm making
22 myself clear. In other words keeping it as two
23 separate entities. In other words, his hat as
24 a farmer versus his hat as a PR. What comments
25 do you have on that?

1 MR. NESS: Well, the comment I have on that is the
2 hat of a PR is the same hat that Mr. Livingston
3 had at that time. And those funds we think are
4 estate assets. I mean to properly do the
5 fiduciary duties, you know, if you're going to
6 rent land to the individual who's not the PR,
7 not wearing the PR hat, Mr. Livingston, then he
8 just admitted he hasn't paid anything in to the
9 estate. I mean, it's --

10 THE COURT: Yeah. I have no problem with the rent.
11 I mean, that doesn't give me a bit of a problem
12 at all whatsoever as far as what, you know, if
13 John Doe out there had rented it he obviously
14 would have been indebted to the estate. But
15 John Doe would also have been able to get the
16 government payments for himself and not the
17 estate. So I guess my question is where does
18 fiduciary duty, where does that come in if it
19 comes in.

20 MR. NESS: I think it comes in in that the fiduciary
21 duty by example is what Mr. Martin is doing
22 now. She's collected the last couple of years
23 and put it into the estate as you've testified.
24 When you're a fiduciary you're supposed to do
25 what's in the best interest of the estate. And

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1 if the estate could receive assets as a result
2 of this thing which they are doing now, we
3 contend they should have been able to do it
4 when Clyde Livingston signed these papers. I
5 mean, to look at the estate's benefit, not at
6 Clyde Livingston's benefit, the estate could
7 have gotten these funds way back. They would
8 have been in the account, the estate probably
9 wouldn't have had to borrow any money from an
10 individual to do it. So he put his personal
11 interests way ahead of the estate interests

12 and, you know, he essentially put the money in
13 his pocket. And the estate could have received
14 that money. That's the fiduciary duty. He
15 just said, you know, disregard the estate.

16 THE COURT: In other words, you're just saying
17 basically he breached his fiduciary duty by
18 doing so, by doing what he did?

19 MR. NESS: That's part of it. Yes, sir.

20 THE COURT: Now, as far as being entitled to half the
21 estate, how does that fit in?

22 MR. NESS: Well, it's the difference in this
23 because, you know, if we, if you seek a, that's
24 what we're asking the Court to make him pay
25 these monies back in to the estate. If the

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1 Court just gives us a judgment of X thousand
2 dollars here today, the judgment goes against
3 Clyde Livingston individually, we're way down
4 the line and it's not going to help the estate
5 one bit. But the moneys that are paid into the
6 estate, you know, Mr. Livingston's a
7 beneficiary of that estate.

8 THE COURT: Right. That's what I was going to add.

9 MR. NESS: I mean, he may get some of that money back
10 at some point.

11 THE COURT: Well, that's where I'm coming from.

12 MR. NESS: He may. And I don't know what the
13 expenses are.

14 THE COURT: Right. And that's why I asked about the
15 expenses. I mean, how much are we really
16 talking about here?

17 MR. NESS: He's a beneficiary of the estate.

18 There's no question about that. But he also

19 was a personal representative. And that's
20 where a judgment against him individually now
21 was not what we seek. We seek him to be
22 required to pay these moneys back in. If the
23 Court had gave us an order to that effect, you
24 know, whenever the property's sold maybe
25 there's some way you offset those things. I

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1 would have to do, you know, some mental
2 exercises on calculations. And if he hadn't
3 paid it back in by that time. But that's how
4 we seek a court order so we can quit having to
5 operate basically on debt to do what her
6 fiduciary duty is now.

7 THE COURT: Yeah. What I'm thinking of is in terms
8 of offset. In other words, what he is due out
9 of the estate versus the total amount that, the
10 \$52,000 whatever it is.

11 MR. NESS: Well, you know, it may turn out that way,
12 your Honor. I don't want to concede that it
13 would be an offset because, you know, depending
14 on the rulings that your Honor may make in this
15 case the, if the real estate gets sold down the
16 road by court order and Mr. Livingston makes a
17 bid for it, then, you know, he's trying to
18 think it through, but there's a way he's going
19 to say I'm entitled to half the land anyway.
20 I don't have to pay my half in.

21 THE COURT: Right.

22 MR. NESS: So he ends up paying only on the other
23 half which may or may not meet expenses.
24 That's one reason we have filed a motion to
25 reconsider, we were going to here today. I

1 don't know where this will end up financially
2 but it's sort of been a boondoggle the way it's
3 all turned out I think. But we're asking the
4 Court's assistance in it requiring him to pay
5 it in. If he doesn't pay it in, then either
6 it's a contempt issue or it's an offset issue
7 down the road. I mean, it didn't serve with
8 bond. So that wasn't something that the estate
9 could look for. He just should have done what
10 was right to begin with is our position, your
11 Honor. And to end as PR like she's doing now.

12 Does that answer your question? I'm not trying
13 to -

14 THE COURT: Yeah. Pretty much so.

15 MR. NESS: I want to make sure I understand what
16 you're asking.

17 THE COURT: Pretty much so it does.

18 MR. NESS: Okay.

19 THE COURT: Like I say, it's a concern of mine that,
20 it may be a technicality but it is a
21 significant technicality here. And from a
22 practical issue it's also that too because of
23 the offset that he, since he is not only the PR
24 or was the PR but also the beneficiary of half
25 the proceeds that, and of course other issue is

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1 the relationship with like Mr. Radeker pointed
2 out earlier about the, basically the operator
3 of the farm having a separate contract with the
4 government. And as long as that was, he was
5 the true operator and legally the operator,
6 then that issue bothers me too because of the,
7 I mean, having had a farm myself at one point
8 and done had to deal with that sort of thing I
9 understand that I would not be entitled to get
10 those big benefits, my renter would get it. So
11 that gives me some concern too.

12 MR. NESS: That's why I brought up the equitable
13 argument too, your Honor, because it just isn't
14 right that he unknown to her got the benefits.
15 You know, if they signed both of themselves up
16 to it I don't want to necessarily concede they
17 would have been entitled to the benefits
18 outside of the estate. But we probably
19 wouldn't be here today because she would have
20 gotten part of it --

21 THE COURT: Right.

22 MR. NESS: -- and then nobody, wouldn't be anybody to
23 fuss because there's no, other than her claim,
24 you know, into the, against the estate, there's
25 not really any estate debts that are

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1 outstanding. But, you know, attorney's fees,
2 and all that stuff's got priority under the
3 Probate Code to be paid first. And there's
4 just nothing to pay it. But it's just one of
5 those things that Mr. Livingston just didn't
6 tell her, did it, he got the money. And we
7 contend that it ought to be put back in the
8 estate.

9 MR. RADEKER: I would say this to speak to that. I
10 mean, obviously we don't concede that there
11 should be anything ordered against Mr.
12 Livingston. But kind of as in the alternative
13 I guess you would say if the Court were to, you
14 know, render a judgment against him on the
15 basis that, you know, of getting the USDA
16 subsidies that it be limited in two ways is one
17 that you take the amount of the subsidies that
18 you find that he had unlawfully appropriated,
19 which again I would agree disagree with, but if
20 you were to find that, divided by half because
21 he would be entitled to receive half of the
22 estate assets. And the executor de son tort
23 statutes, that's what I was just looking for
24 and couldn't find, say that, that if someone
25 does come into possession unlawfully of estate

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1 assets, that they're an executor de son tort
2 and their liability is diminished by whatever
3 it is that they were supposed to receive out of
4 the assets.

5 THE COURT: Right.

6 MR. RADEKER: I would note this too. If the Court
7 were to rule against us on this issue that
8 another limitation that the Court would have to
9 put on this would be to look back three years
10 from the date of the lawsuit and that nothing
11 that came before that, you know, that he could
12 be ordered to pay that. I don't think he could
13 be ordered to pay that. I think what they're
14 asking for really is a judgment against him
15 that if you get a judgment against him it would
16 be for those years, three years back from the
17 date of the lawsuit. And that that amount be
18 halved because, you know, that's really all
19 that the law would support if you were to find
20 against us on this issue. And again, we
21 maintain it wasn't estate property period. And
22 if he did breach any fiduciary duty, he did it
23 back to 2000. But I go with my earlier --

24 THE COURT: That was going to be my next question as
25 far as the length of time.

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1230 Richland Street / Columbia, SC 29201

(803) 252-3445 / (800) 822-0896

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IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 questions but as far as the mechanics of how we
2 deal with this thing I definitely want to take
3 it under consideration. And probably ask you
4 both to do brief, not briefs but brief orders,
5 not any 20-page tome to have to wade through.

6 MR. RADEKER: Underlining the word right now.

7 THE COURT: But something that will give me, hitting
8 those points that I've brought up, addressing
9 those points because that's what concerns me
10 the most is the issue of his interest, the
11 ~~issue of the fiduciary versus the farmer issue,~~
12 whether you can split that, whether it can be,
13 whether he can wear those two hats being that
14 close. That concerns me tremendously.

15 MR. NESS: What kind of time frame, your Honor, on
16 that?

17 THE COURT: What do you need?

18 MR. NESS: I would say 30 days.

19 MR. RADEKER: That would be fine. I think that's
20 plenty of time to get that done.

21 THE COURT: All right. Sounds good to me. Okay.
22 Well, let's move on to the next thing. We
23 ready?

24 MR. NESS: Your Honor, you issued an order on June
25 3rd. And we filed a motion of reconsideration,

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 asking for reconsideration of that order. That
2 order essentially requires the general
3 partition statute to be followed, the civil
4 partition statute as opposed to the probate
5 code partition statute. And we're taking
6 exception to that for a couple of reasons.
7 One, I think your ruling essentially says that
8 once you get into this Court, Court of Common
9 Pleas, that the general partition statute
10 applies and as well as the part from 2006 that
11 was added by the legislature that allows a
12 defendant landowner to ask for appraisals and
13 then the right to buy the property. We
14 contended that the probate code statute did
15 apply. And that part of what we were asking
16 for here was to allow the sale but also the,
17 have the issues before the Court to not include
18 the statute that the legislature enacted four
19 days after this action was filed. I looked at
20 it the other day and saw it in Mr. Radeker's
21 brief, and looked at the dates in his brief on
22 the summary judgment issue and realized that
23 this, that the statute was passed in May of,
24 May 26, 2006 which we didn't know was being
25 filed. And then this action was filed on May

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1 30th of 2006. So I think that the time frame,
2 you know, we're in, within the time frame that
3 statute potentially could apply if the Court so
4 requires it. But my argument today, and it
5 sort of dove-tailed to what Mr. Stanton said in
6 that the title to property devolves to the
7 heirs at the moment of death subject to, and
8 that part I agree. I don't know if the rest of
9 us are going to agree on other things. But the
10 Probate Code we agree that that's what's
11 required. But it's subject to the 62-3-101

12 which is the devolution of the estate where it
13 says a personal representative can sell
14 property to properly administer the estate.
15 And your order grants the right to sell
16 property. But it then hampers us, it allows
17 Mr. Livingston to get an appraiser and puts us
18 under that new statute from 2006. But the

19 reason that, one of the reasons I ask the Court
20 to reconsider this is we believe that the Court
21 erred because if we, while we're in Circuit
22 Court if we had stayed in Probate Court
23 essentially you would have a sale in aid of
24 assets type issue. And that's what our first
25 cause of action is if there is not enough

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 assets in the estate we need to sell this
2 property. So it sort of was a sale in aid of
3 assets issue. But the way the statutes within
4 the Probate Code go is that the, you have the
5 real property devolved to the persons whom it's
6 devised to, and then it gives subject to the
7 purpose of satisfying claims and other things,
8 it lists several statutes. There's another
9 statute within the Probate Code that says that
10 a personal representative may not sell real
11 estate without Court approval. That's section
12 62-3-711(b). But the Probate Code does
13 authorize a personal representative to sell
14 property with Court approval pursuant to
15 section 62-3-711(b) and to sell pursuant to 62-
16 3-1301 which is the sale and aid of assets
17 statute. The point I'm making by going through
18 the statutes is that if you sell them under
19 section 1301 of the Probate Code, the sale and
20 aid of assets, the Court there pursuant to
21 62-3-1309 may order the property to be sold in
22 a couple of ways. And the ruling you have so
23 far in this case that we're asking you to
24 reconsider would preclude or it does preclude
25 generally us selling the property under the

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1 ways that are allowed under the Probate Code.
2 Now, a regular partition aside from the statute
3 that allowed Mr. Livingston to bid, you know,
4 you have a partition in kind, partition by
5 allotment or a partition by public sale. We've
6 had several cases like that over the years.
7 And I think, your Honor, there have been some
8 rulings that probably from your office as well
9 that said that you can't have a partition by,
10 and sell it be private sale. Not, at least not
11 by common law and not by statute as far as
12 regular partitions in Circuit Court. But
13 partition under Section 1309 of the Probate
14 Code said the Court may order the personal
15 representative to sell at private sale or to
16 sell it a at a convenient sales date at public
17 auction. Now generally it says that the Court
18 can tailor public auction kind of thing like it
19 wants I think. But it gives a remedy that
20 private sale issue that if you rule it this
21 comes under the old partition statute as well
22 as the new one that allows an heir to purchase
23 it. You take away the Probate Code involvement
24 and this case essentially involved an estate
25 that's selling an in aid of assets. So we

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 submit to the Court that you should reconsider
2 and bring it under not requiring that Section
3 25, that new statute saying it does not apply
4 and that you order a partition sale and you do
5 it certainly validly by section 62-3-1309
6 which, where it says that the Court may order
7 the personal representative to sell property at
8 private sale or proceed to sell the same upon
9 such terms and conditions as the Court may
10 impose or proceed to sell the same upon some
11 subsequent convenient sales date after proper
12 advertisement which gets back to the general
13 partition way. So we submit that the Court
14 should allow the sale under that type of
15 procedure and not apply Section 25. We are
16 adding additional expenses in the appraisals
17 and all those sorts of things. And we also as
18 a second basis, and we mentioned this last
19 time, I'm not sure that Section 25 is
20 constitutional because it does allow, in this
21 instance, for example it allows Mr. Livingston
22 to buy it but it doesn't allow Ms. Martin to
23 buy it if she wanted to. And the purpose of
24 that statute while it had some basis when it
25 was passed I think, but it shouldn't apply to

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1 counterclaimed. We need to reply and assert
2 the unconstitutionality of this. It's not
3 asserted. I think we agreed on it before that
4 we could do it. But I don't know what time
5 frame it was and I want to make sure that I can
6 do that.

7 MR. RADEKER: Looking at this in the previous order,
8 you know, what I think what it had come up
9 before the Court as is a motion of plaintiffs
10 to amend their complaint to address that issue.
11 The previous order gave them 30 days from

12 receipt of the file copy of the order by
13 counsel of the plaintiff to do that. That
14 didn't happen. It didn't speak to their reply.
15 I mean, I think the Court's order kind of takes
16 care of the decision on that. If they want to
17 put something in the reply, I mean, basically
18 ~~just to further preserve their position on~~
19 that, I mean, I don't have a problem with them,
20 you know, amending the reply. I mean, there
21 have been a few amended replies. I mean,
22 obviously we got notice on what their position
23 on the issue is. If they want to amend their
24 reply to say -

25 MR. NESS: I think it's a housekeeping matter and I

IN RE: ESTATE OF ANT BURNS LIVINGSTON

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1 would like to do it.

2 MR. RADEKER: -- constitutional and here's why --

3 MR. NESS: We didn't amend it but we filed a motion
4 to reconsider. And I thought that tolled
5 issues with the --

6 MR. RADEKER: And it may have. I haven't really
7 thought about that until just now. So --

8 MR. NESS: Okay. As long as I'm protected on that
9 we're going to get something filed, amended on
10 the reply.

11 THE COURT: Okay. Okay. Well, basically then going
12 back to the initial, asking for the
13 reconsideration, I'll have to deny the
14 reconsideration at this point and based on here
15 again the applicability of the 25-15, whatever
16 it is both Probate and to Circuit partition
17 actions. And of course another issue too is
18 the fact that there's nothing in the order of
19 reference that limits this thing to following
20 Probate Court rules. Now, had there been that
21 that would have made a difference from the very
22 beginning. In other words, that I was to
23 follow Probate Court rules as opposed to
24 Circuit Court rules. And I think that's
25 something that we never did get to that issue

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1 before. But that would have made it a lot
2 simpler from my standpoint to have it in there,
3 that something to that effect. But it's not so
4 therefore I've got to follow Circuit Court
5 rules as opposed to Probate Court rules. Just
6 as a matter, it's kind of an aside rather than
7 any kind of edict or ruling. But I think
8 that's something that probably should have been
9 considered way, way, way back at the original
10 stage. But it's too late at this point. Okay.
11 Is there anything else further that we need to

12 go into today?

13 MR. RADEKER: I don't think so.

14 THE COURT: Who's going to prepare me the order about
15 the scheduling now? Who's going to do that?

16 MR. RADEKER: I can do it. I mean, I can basically
17 just kind of use what's set out here in this
18 order because I've already got it in Word on my
19 computer. So that might be just the easiest
20 thing to do is --

21 THE COURT: Just use the same date as --

22 MR. RADEKER: -- just to do that. Shorten it up a
23 whole lot and say motion to reconsider denied.
24 No new, you know, Court didn't misapprehend any
25 issues of fact or law. And we've got to do a

Lease Statement

FARM 1774

Operator Certification

This is to certify that the following landowners have rented me the land listed below for the 2000 crop year, and that the owners receive no benefits from the PFC crops and land uses. The payment shares reflected on the Production Flexibility Contract are true and correct. I have full authorization from each owner to participate in the PFC as indicated on the contract.

I also understand that no changes will be made to the farm's current constitution for the 2000 crop year (more tracts added or taken from the farm) once PFC payments have been issued to the farm.

I understand that if it is determined that I have erroneously represented any fact affecting an AMTA program determination, made according to AMTA program provisions, I shall not be entitled to PFC payments and must refund all PFC payments received plus interest with respect to the farm and crop.

Operator's Signature

Date

Owner Certification

This is to certify that I have rented to the producer listed above my land listed below for the 2000 crop year, and that I, as owner, receive no benefits from the PFC crops and land uses. The payment shares reflected on the Production Flexibility Contract are true and correct. I have permitted the producer full authorization to participate in the PFC as indicated on the contract.

Owner's Signature

Tracts and/or Acres

Ed of A.B. J. to
P.R.C.B. J.

4842

Approved _____

Disapproved _____

Reason Disapproved: _____

PLAINTIFF'S
EXHIBIT

1

tabbies

aim 0143

05/16/2000 10:00 0035365827

USDAFSA

PAGE 03/05
ORANGEBURG, SC 29116-0018

Date 05-16-2000

Time 07:43

Statement Type B Original

Program 2000 Production Flexibility Contract
Application Prod. Adj./Prod. Flex.

Phone 803-534-2400

PAGE 1

Name: CLYDE B LIVINGSTON
P O DRAWER 1744
ORANGEBURG, SC 29116

RETAIN FOR TAX PURPOSES

Producer ID 240 80 2646 3

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction X213700212	481.00		PRODUCTION FLEXIBILITY CONTRACT WHEAT
Farm 1774 Transaction X213700213	1,897.00		PRODUCTION FLEXIBILITY CONTRACT UP COT
Farm 1774 Transaction X213700214	173.00		PRODUCTION FLEXIBILITY CONTRACT CORN
Farm 1774 Transaction X213700215	8.00		PRODUCTION FLEXIBILITY CONTRACT SORGHUM
	2,559.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASEN/	RECVBL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JYPMT	Claim		
05-16-2000	24183863			2,559.00	CLYDE B LIVINGSTON
				2,559.00	Total Disbursements
				2,559.00	Total Program Payment Earned

JEFF WALKER GW File

ELM 0140

02-05-2008

02-05-2008 Market Loss Assistance
Application Number 1774

02-05-2008

PAGE 1

Name:

CLYDE B LIVINGSTON

PO BOX 1774

ORANGEBURG, SC 29116-1774

DETAILS FOR THE PURPOSES

Printer ID: 02-05-2008

Disbursement Statement

Goodman, Phyllis Ann

My dear, we know this has been a hard year for many of you. We are here to help but we know this payment is no substitute for a strong farm economy. We are doing all we can to provide the tools you need to prosper. The tools we've given to the world's most abundant food supply deserve nothing less.

Transaction Information

Reference Number(s)

Form	Transaction	Amount	STAT	Payment Description
Form 1774	Transaction X324906233	521.00		MARKET LOSS ASSISTANCE WHEN
Form 1774	Transaction X324906234	2,048.00		MARKET LOSS ASSISTANCE UPLIFT BOTTOM
Form 1774	Transaction X324906235	185.00		MARKET LOSS ASSISTANCE DOWN
Form 1774	Transaction X324906236	5.00		MARKET LOSS ASSISTANCE SMOOTH
		2,759.00		Total Payments (Transactions)

Disbursement Information

Date	ACH	ASST	RECEIV
02-05-2008	020508	020508	020508

RECEIV
Claim

Amount
2,759.00
2,759.00

Payee Name/PO Box/Address

CLYDE B LIVINGSTON

Total Disbursements

2,759.00

Total Program Payment Earned

L. LIVINGSTON ON FILE

8LM 0139

05/12/2002 10:00

8035365827

USDAFSA

PAGE 05/05

Date 05-16-2001

Time 13:20

Program 2001 Production Flexibility Contract

Phone 803-534-2487

Statement Type B Original

Application Prod. Adj./Prod. Flex.

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID 248 80 2646 S

Disbursement Statement.

Transaction InformationReference Number(s)

Farm	Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm	1774	Transaction	WB13600218	388.00	PRODUCTION FLEXIBILITY CONTRACT WHEAT
Farm	1774	Transaction	WB13600219	1,551.00	PRODUCTION FLEXIBILITY CONTRACT UP COT
Farm	1774	Transaction	WB13600220	140.00	PRODUCTION FLEXIBILITY CONTRACT CORN
Farm	1774	Transaction	WB13600221	7.00	PRODUCTION FLEXIBILITY CONTRACT SORGHUM
				2,086.00	Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVDL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JFYMI	Claim		
05-16-2001	24183024			2,086.00	CLYDE B LIVINGSTON
				2,086.00	Total Disbursements
				2,086.00	Total Program Payment Earned

* Eft Withdrawn On File *

ELM 0142

05/17/2002 10:08 8035365827

USDAFSA

PAGE 04/05

ORANGEBURG, SC 29116-0018

Date 08-30-2001

Program 2001 Market Loss Assistance

Page 0049

Application Market Loss

Phone 803-534-2409

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID 248 80 2646 S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	Payment Description
Farm 1774 Transaction WB24300975	442.00	MARKET LOSS ASSISTANCE WHEAT
Farm 1774 Transaction WB24300976	1,727.00	MARKET LOSS ASSISTANCE UPLAND COTTON
Farm 1774 Transaction WB24300977	159.00	MARKET LOSS ASSISTANCE CORN
Farm 1774 Transaction WB24300978	8.00	MARKET LOSS ASSISTANCE SORGHUM
	2,336.00	Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVBL/	Amount	Payee Name/DOC Debt Repaid
Date	Check	JPYNT	Claim		
8-30-2001	24485389			2,336.00	CLYDE B LIVINGSTON
				2,336.00	Total Disbursements
				2,336.00	Total Program Payment Earned

shown as
8-30-2000

on #3 Interim

✓

* 84 WORK ON FILE *

ELM 014

This form is available electronically.

PREPARED DATE: 04/18/2003

CCC-509
(08-30-02)U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

11. PROGRAM YEAR 2002

DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT

12A. COUNTY OFFICE NAME AND ADDRESS (Include Zip Code)
ORANGEBURG COUNTY FSA OFFICE

ORANGEBURG

SC 29116-0018

NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

12B. COUNTY OFFICE TELEPHONE NUMBER (Include Area Code)
(803)534-2409

13. STATE CODE 45 14. COUNTY CODE 075 15. FARM NUMBER 1774

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of Criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001, 15 USC 714a, and 31 USC 3729, may be applicable to the information provided.

THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodity identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix, entitled Appendix to Form CCC-509, Direct and Counter-Cyclical Program Contract. By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions, and certify to the accuracy of the information set out on this form.

6 Commodity	7 Base Acres	8 Maximum Payment Acres 85% of Base	9 Payment Yield		6 Commodity	7 Base Acres	8 Maximum Payment Acres 85% of Base	9 Payment Yield	
			A Direct	B Counter-Cyclical				A Direct	B Counter-Cyclical
WHEAT	34.3	29.2	26	26	UPCN	47.9	40.7	636	636
CORN	10.3	8.6	59	59	SORGH	0.7	0.6	35	35
SOYBN	13.5	11.5	13	13					

10. Owner or Producer's Name and Address (Including Zip Code)

 GUYDE B LIVINGSTON
 PO BOX 1744
 ORANGEBURG SC 29116-1744

11. Commodity 12. Payment Share

WHEAT 1.0000 UPCN 1.0000

CORN 1.0000 SORGH 1.0000

SOYBN 1.0000

Identification Number

13A. If ALL Direct and Counter-Cyclical Payments are refused, check below.

14. Advance Payment Selections (for all commodities):

A. Advance Direct Payments: 00/0000 (Month requested for receipt of Direct Payment)

 B. Advance Counter-Cyclical Payments:
 - First Partial Payment YES NO ☒ ☐
 - Second Partial Payment YES NO ☒ ☐

13B. Producer's Initials

13C. Date Initialed (MM-00-YYYY)

15A. SIGNATURE OF OWNER OR PRODUCER

15B. DATE (MM-00-YYYY)

4/18/03

ELM 0144

C-509 (08-30-02) Page 2

16. FARM YEAR 2002

17. STATE CODE 45

18. COUNTY CODE 075

19. FARM NUMBER 1774

CONTINUATION OF OWNERS OR PRODUCERS CROP INFORMATION (From Page 1)

10. Owner or Producer's Name and Address (Including Zip Code)

A. B. LIVINGSTON

PO BOX 53

NORTH

SC 29112-0053

11. Commodity

12. Payment Share

13. Commodity

14. Payment Share

***** Shares for all crops are zero *****

Identification Number: 

15. ALL Direct and Counter-Cyclical Payments are refused, check below

16. Advance Payment Selections (for all commodities)

A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment.)

B. Advance Counter-Cyclical Payments

- First Partial Payment

YES

NO

- Second Partial Payment

YES

NO

13B. Producer's Initials

13C. Date Initialed (MM-DD-YYYY)

15A. SIGNATURE OF OWNER OR PRODUCER

"Default"

15B. DATE (MM-DD-YYYY)

FOR FSA USE ONLY

16A. SIGNATURE OF CCC REPRESENTATIVE

T. Michael Britcher

16B. DATE (MM-DD-YYYY)

8/14/03

17. REMARKS

Received None AR

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-04, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-4410 or call: (202) 720-5845 (voice and TDD). USDA is an equal opportunity provider and employer.

ELM 0145

356

06/25/2003 09:53 8035365827

USDAFSA

PAGE 02/02

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0019

Date 09-07-2002

Program 2002 Production Flexibility Contract
Application Prod. Adj./Prod. Flex.

Phone 803-534-2409

Date 09/15

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

OBTAIN FOR TAX PURPOSES

Producer ID 248 80 2646 S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
atn 1774 Transaction Y921901377	377.00		PRODUCTION FLEXIBILITY CONTRACT-WHEAT
atn 1774 Transaction Y921901378	1,481.00		PRODUCTION FLEXIBILITY CONTRACT UP COT
atn 1774 Transaction Y921901379	136.00		PRODUCTION FLEXIBILITY CONTRACT CORN
atn 1774 Transaction Y921901380	7.00		PRODUCTION FLEXIBILITY CONTRACT SORGHUM
	2,001.00		Total Payments (Transactions)

Disbursement Information

ASSN/	REC'DBL/	Amount	Payee Name/CCC Acct Ref'd
ACH		2,001.00	CLYDE B LIVINGSTON
Check	Claim	2,001.00	Total Disbursements
		2,001.00	Total Program Payment Earned

0073

* EFT WORKED ON FILE - ALSO COPY MAILED TO MAIL FILE
8/9/02

ORANGEBURG, SC 29116-0018

Phone 803-534-2409

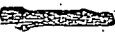
Statement of
Fertilization
08-21-2003
08-08-54
Statement Type: Original

Program 2002 Direct/Counter Program
Application Direct/Counter Program

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID  5

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction UC23300002	48.00		DIRECT PAYMENT WHEAT
Farm 1774 Transaction UC23300003	243.00		DIRECT PAYMENT UPLAND COTTON
Farm 1774 Transaction UC23300004	19.00		DIRECT PAYMENT CORN
Farm 1774 Transaction UC23300005	66.00		DIRECT PAYMENT SOYBEANS
	376.00		Total Payments (Transactions)

Disbursement Information

Sub	ACH/	ASGN/	RECUBL/	Amount	Payee Name/CCE Debt Recd
Id	Check	JPYMT	Claim		
08-21-2003	35288225			369.00	CLYDE B LIVINGSTON
				369.00	Total Disbursements
				369.00	Total Program Payment Earned

* Eft waived on file

ELM 0147

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 09-24-2003
Time 10:02

Program 2002 Direct/Counter Program
Application Direct/Counter Program

Phone 803-534-2409

Statement Type B Original

PAGE 1

Name: CLYDE B. LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID ~~XXXXXXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774	3,554.00		COUNTER CYCLICAL PAYMENT UPLAND COTTON
Transaction WC26700092	3,554.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/Check	AGNY/DPYNT	RECVBL/Claim	Amount	Payee Name/CCC Debt Repaid
09-24-2003	35288277			3,554.00	CLYDE B LIVINGSTON
				3,554.00	Total Disbursements
				3,554.00	Total Program Payment Earned

ELM 0146

This form is available electronically.

PREPARED DATE: 04/18/2003

CCC-509 U.S. DEPARTMENT OF AGRICULTURE
(06-30-02) Commodity Credit Corporation

DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT

1. PROGRAM YEAR 2003

2A. COUNTY OFFICE NAME AND ADDRESS (Include Zip Code)
ORANGEBURG COUNTY FSA OFFICE

ORANGEBURG SC 29116-0018

NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

2B. COUNTY OFFICE TELEPHONE NUMBER (Include Area Code)
(803) 534-2409

3. STATE CODE 45 4. COUNTY CODE 075 5. FARM NUMBER 1774

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 851, 1001, 15 USC 714m, and 31 USC 3729, may be applicable to the information provided.

THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix, entitled "Appendix to Form CCC-509, Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers will acknowledge receipt of the CCC-509 Appendix, and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions, and certify to the accuracy of the information set out on this form.

Commodity	Base Acres	Maximum Payment	Payment Yield	Commodity	Base Acres	Maximum Payment	Payment Yield
WHEAT	34.3	28.25	28	UPCN	1.0	1.0000	1.0000
CORN	102.3	18.8	59	SORGH	10.7	1.0000	1.0000
SOYBN	42.5	11.5	13				

10. Owner or Producer's Name and Address (Including Zip Code)

CLYDE B. LIVINGSTON
PO BOX 1744
ORANGEBURG SC 29116-1744

Identification Number: 0000000000

11. Commodity Payment Share 12. Commodity Payment Share

WHEAT	1.0000	UPCN	1.0000
CORN	1.0000	SORGH	1.0000
SOYBN	1.0000		

13A. If ALL Direct and Counter-Cyclical Payments are refused, check below:

14. Advance Payment Selections (for all commodities)

A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment)
B. Advance Counter-Cyclical Payments:
- First Partial Payment YES NO
- Second Partial Payment YES NO

13B. Producer's Initials

13C. Date Initialed (MM-00-YYYY)

15A. SIGNATURE OF OWNER OR PRODUCER

15B. DATE (MM-00-YYYY)

4/18/03

EUM 0118

CCC-509(08-30-02) Page 2

1. PROGRAM YEAR 2003 2. STATE CODE 45 3. COUNTY CODE 075 4. FARM NUMBER 1774

CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)

10. Owner or Producer's Name and Address (Including Zip Code)	11. Commodity	12. Payment Share	11. Commodity	12. Payment Share
A.B. LIVINGSTON PO BOX 53 NORTH SC 29112-0053	***** Shares for all crops are zero *****			
Identification Number: 				

13A. If ALL Direct and Counter-Cyclical Payments are refused, check below.

13B. Producer's Initials 13C. Date Initialed (MM-00-YYYY)

14. Advance Payment Selections (for all commodities):

A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment)

B. Advance Counter-Cyclical Payments:

	YES	NO	X
- First Partial Payment			X
- Second Partial Payment			X

15A. SIGNATURE OF OWNER OR PRODUCER *Deft*

15B. DATE (MM-00-YYYY)

FOR FSA USE ONLY

16A. SIGNATURE OF CCC REPRESENTATIVE *Haye Cullen*

16B. DATE (MM-00-YYYY) 8/20/03

17. REMARKS

Received from 8/1/03

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, and age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5564 (voice or TDD). USDA is an equal opportunity provider and employer.

ELM 0149

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date: 10-28-2003

Program 2003 Direct/Counter Program

Phone 803-534-2407

Time: 10:25

Application Direct/Counter Program

Statement Type: B-Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID: ~~XXXXXXXXXX~~ S

Disbursement Statement

Comment Information

This payment is subject to the average Adjusted Gross Income (AGI) limit. Failure to comply with the average AGI limit, including certification of compliance, will result in ineligibility for this payment.

Transaction Information

Reference Number(s)	Amount	Stat	Payment Description
arm 1774 Transaction Y830100427	425.00		DIRECT PAYMENT WHEAT
Farm 1774 Transaction Y830100428	1,727.00		DIRECT PAYMENT UPLAND COTTON
Farm 1774 Transaction Y830100429	145.00		DIRECT PAYMENT CORN
arm 1774 Transaction Y830100430	7.00		DIRECT PAYMENT SORGHUM
arm 1774 Transaction Y830100431	66.00		DIRECT PAYMENT SOYBEANS
	2,370.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVBL/	Amount	Payer Name/CCC Debt Repaid
Date	Check	JPYRT	Claim		
10-28-2003	35289517			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

* Eft Waiver OK file *

ELM 0157

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 10-27-2004

Program 2003 Direct/Counter Program

Phone 803-534-2409

Time 11:06

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID ~~XXXXXXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774			
Transaction Y630100092	1,017.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
	1,017.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/Check	ASGN/PRYM	RECVBL/Claim	Amount	Payer Name/CCC Debt Repaid
10-27-2004	35289732			1,017.00	CLYDE B LIVINGSTON
				1,017.00	Total Disbursements
				1,017.00	Total Program Payment Earned

Elm 0150

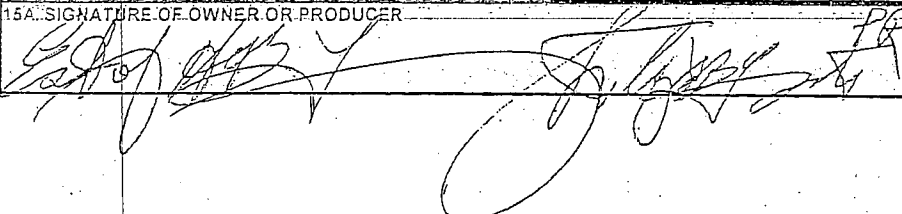
CCC-509

Page 1 of 2

CCC-509 (10-06-04)				U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation				1. PROGRAM YEAR 2005											
DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT								2A. COUNTY FSA OFFICE NAME AND ADDRESS (Including Zip Code) ORANGEBURG COUNTY FARM SERVICE AGENCY PO BOX 18 ORANGEBURG, SC 29116-0018											
NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.								2B. COUNTY OFFICE TELEPHONE NUMBER (Including Area Code) (803)534-2409 FAX (803)536-5827											
3. STATE CODE 45				4. COUNTY CODE 075		5. FARM NUMBER 1774													
The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 285, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. RETURN THE COMPLETED FORM TO THE FSA COUNTY OFFICE.																			
THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix (07-22-04), entitled "Appendix to form CCC-509 (07-22-04), Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix (07-22-04), and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions; and certify to the accuracy of the information set out on this form.																			
6. Commodity		7. Base Acres		8. Maximum Payment Acres 85% of Base		9. Payment Yield		6. Commodity		7. Base Acres		8. Maximum Payment Acres 85% of Base		9. Payment Yield					
						A. Direct		B. Counter-Cyclical						A. Direct		B. Counter-Cyclical			
Wheat		34.3		29.2		28		28		Upland Cotton		47.9		40.7		636		636	
Corn		10.3		8.8		59		59		Grain Sorghum		0.7		0.6		35		35	
Soybeans		13.5		11.5		13		13											
10. Owner or Producer's Name and Address (Including Zip Code) CLYDE B LIVINGSTON PO BOX 1744 ORANGEBURG, SC 29116-1744										11. Commodity		12. Payment Share		11. Commodity		12. Payment Share			
										Wheat		100 %		Upland Cotton		100 %			
										Corn		100 %		Grain Sorghum		100 %			
										Soybeans		100 %							
13A. If ALL Direct and Counter-Cyclical Payments are refused check below: ☐										14. Advance Payment Selections (for all commodities): A. Advance Direct Payments <u>June 2005</u> (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒									
13B. Producer's Initials				13C. Date Initialed (MM-DD-YYYY)															
15A. SIGNATURE OF OWNER OR PRODUCER										15B. Date (MM-DD-YYYY) 6/11/05									
16A. SIGNATURE OF CCC REPRESENTATIVE										16B. Date (MM-DD-YYYY) 6/21/05									
17. REMARKS																			

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2500 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

ELM 0152

1. PROGRAM YEAR 2005		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774	
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)							
10. Owner or Producer's Name and Address(Including Zip Code) A B LIVINGSTON PO BOX 53 NORTH, SC 29112-0053 Identification Number: 				11. Commodity	12. Payment Share	11. Commodity	12. Payment Share
				Wheat	0 %	Upland Cotton	0 %
				Com	0 %	Grain Sorghum	0 %
				Soybeans	0 %		
13A. If ALL Direct and Counter-Cyclical Payments are refused check below: ☐				14. Advance Payment Selections(for all commodities): A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒			
13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)					
15A. SIGNATURE OF OWNER OR PRODUCER 				15B. Date(MM-DD-YYYY) 6/1/05			

ELM 0153

Orangeburg
 Charleston, SC
 Agriculture

Orangeburg County, SC

ORANGEBURG COUNTY, SC 29116-0018

Phone 803-534-2409

06-23-2005
 06-23-2005

Program 2005 Direct/Counter Program
 Application Direct/Counter Program

Statement Type: B Original

PAGE 1

Name: CLYDE B LIVINGSTON
 PO BOX 1744
 ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y717400014	213.00		DIRECT PAYMENT - WHEAT
Farm 1774 Transaction Y717400015	863.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774 Transaction Y717400016	73.00		DIRECT PAYMENT - CORN
Farm 1774 Transaction Y717400017	4.00		DIRECT PAYMENT - SORGHUM
Farm 1774 Transaction Y717400018	33.00		DIRECT PAYMENT - SOYBEANS
	1,186.00		Total Payments (Transactions)

Disbursement Information

Date	ACH/Check	ASGN/JFYHT	RECVBL/Claim	Amount	Payee Name/CCC Debt Repaid
06-23-2005	32057491			1,186.00	CLYDE B LIVINGSTON
				1,186.00	Total Disbursements
				1,186.00	Total Program Payment Earned

* Eft waived on file *

ELM 0157

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 10-19-2005
Time 12:01

Program 2005 Direct/Counter Program
Application Direct/Counter Program

Phone 803-534-2409

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y829200394	212.00		DIRECT PAYMENT - WHEAT
Farm 1774 Transaction Y829200395	864.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774 Transaction Y829200396	72.00		DIRECT PAYMENT - CORN
Farm 1774 Transaction Y829200397	3.00		DIRECT PAYMENT - SORGHUM
Farm 1774 Transaction Y829200398	33.00		DIRECT PAYMENT - SOYBEANS
	1,184.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVDL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JPYMT	Claim		
10-19-2005	32057979			1,184.00	CLYDE B LIVINGSTON
				1,184.00	Total Disbursements
				1,184.00	Total Program Payment Earned

ELM 0156

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

File 07-12-2006

Program 2005 Direct/Counter Program

Phone 803-534-2409

Time 08:19

Application Direct/Counter Program

Statement Type 8 Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX ~~555~~ S

Disbursement Statement

Transaction Information

Reference Number	Amount	STAT	Payment Description
Farm: 1774 Transaction WA26100094	3,554.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
Farm: 1774 Transaction WA26100095	6.00		COUNTER CYCLICAL PAYMENT - SORGHUM
	3,560.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/ Check	ASGN/ JPYMT	RECVBL/ Claim	Amount	Payee Name/CCC Debt Repaid
-18-2006	42342714			3,560.00	CLYDE B LIVINGSTON
				3,560.00	Total Disbursements
				3,560.00	Total Program Payment Earned

ELM 0155

U. S. State
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 10-05-2006

Program 2005 Direct/Counter Program

Phone 803-534-2409

Time 08:40

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-~~5~~5

Disbursement Statement

Transaction Information

Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm 1774	Y527800145	182.00		COUNTER CYCLICAL PAYMENT - CORN
		182.00		Total Payments (Transactions)

Disbursement Information

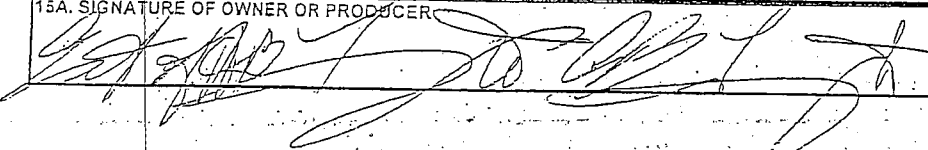
Issue	ACH/	ASGN/	RECVBL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JPYHT	Claim		
10-05-2006	42342914			182.00	CLYDE B LIVINGSTON
				182.00	Total Disbursements
				182.00	Total Program Payment Earned

ELM 0154

CCC-509 (04/14/06)		U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation																																													
DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT		1. PROGRAM YEAR 2006																																													
NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.		2A. COUNTY FSA OFFICE NAME AND ADDRESS (Including Zip Code) ORANGEBURG COUNTY FARM SERVICE AGENCY PO BOX 18 ORANGEBURG, SC 29116-0018																																													
The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. RETURN THE COMPLETED FORM TO THE FSA COUNTY OFFICE.		2B. COUNTY OFFICE TELEPHONE NUMBER (Including Area Code) (803)534-2409 FAX (803)536-5827																																													
THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix (02-08-06), entitled "Appendix to form CCC-509 (02-08-06), Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix (02-08-06); and agree to abide by the provisions contained therein; and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions; and certify to the accuracy of the information set out on this form.		3. STATE CODE 4. COUNTY CODE 5. FARM NUMBER 45 075 1774																																													
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> </tr> <tr> <th>A. Direct</th> <th>B. Counter-Cyclical</th> <th>A. Direct</th> <th>B. Counter-Cyclical</th> </tr> </thead> <tbody> <tr> <td>Wheat</td> <td>34.3</td> <td>29.2</td> <td>28</td> <td>28</td> <td>Upland Cotton</td> <td>47.9</td> <td>40.7</td> <td>636</td> <td>636</td> </tr> <tr> <td>Corn</td> <td>10.3</td> <td>8.8</td> <td>59</td> <td>59</td> <td>Grain Sorghum</td> <td>0.7</td> <td>0.6</td> <td>35</td> <td>35</td> </tr> <tr> <td>Soybeans</td> <td>13.5</td> <td>11.5</td> <td>13</td> <td>13</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>				6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		A. Direct	B. Counter-Cyclical	A. Direct	B. Counter-Cyclical	Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636	Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35	Soybeans	13.5	11.5	13	13					
6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield				6. Commodity	7. Base Acres				8. Maximum Payment Acres 85% of Base	9. Payment Yield																																		
			A. Direct	B. Counter-Cyclical	A. Direct	B. Counter-Cyclical																																									
Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636																																						
Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35																																						
Soybeans	13.5	11.5	13	13																																											
10. Owner or Producer's Name and Address (Including Zip Code) CLYDE B LIVINGSTON PO BOX 1744 ORANGEBURG, SC 29116-1744																																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>11. Commodity</th> <th>12. Payment Share</th> <th>11. Commodity</th> <th>12. Payment Share</th> </tr> </thead> <tbody> <tr> <td>Wheat</td> <td>100 %</td> <td>Upland Cotton</td> <td>100 %</td> </tr> <tr> <td>Corn</td> <td>100 %</td> <td>Grain Sorghum</td> <td>100 %</td> </tr> <tr> <td>Soybeans</td> <td>100 %</td> <td></td> <td></td> </tr> </tbody> </table>				11. Commodity	12. Payment Share	11. Commodity	12. Payment Share	Wheat	100 %	Upland Cotton	100 %	Corn	100 %	Grain Sorghum	100 %	Soybeans	100 %																														
11. Commodity	12. Payment Share	11. Commodity	12. Payment Share																																												
Wheat	100 %	Upland Cotton	100 %																																												
Corn	100 %	Grain Sorghum	100 %																																												
Soybeans	100 %																																														
13A. Refused Payment Information: ☐ All Direct Payments are Refused ☐ All Counter-Cyclical Payments are Refused		14. Advance Payment Selections (for all commodities): A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒																																													
13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)																																													
15A. SIGNATURE OF OWNER OR PRODUCER		15B. Date (MM-DD-YYYY) 9/26/06																																													
16A. SIGNATURE OF CCC REPRESENTATIVE		16B. Date (MM-DD-YYYY) 9/29/06																																													
17. REMARKS																																															

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ELM 0158

1. PROGRAM YEAR 2006		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774	
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)							
10. Owner or Producer's Name and Address (Including Zip Code) A B LIVINGSTON PO BOX 53 NORTH, SC 29112-0053 Identification Number: 		11. Commodity		12. Payment Share		11. Commodity	
		Wheat		0%		Upland Cotton	
		Corn		0%		Grain Sorghum	
		Soybeans		0%			
13A. Refused Payment Information:		14. Advance Payment Selections (for all commodities):					
☐ All Direct Payments are Refused		A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.)					
☐ All Counter-Cyclical Payments are Refused		B. Advance Counter-Cyclical Payments:					
		-First Partial Payment Yes ☐ No ☒					
13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)		-Second Partial Payment Yes ☐ No ☒			
15A. SIGNATURE OF OWNER OR PRODUCER 						15B. Date (MM-DD-YYYY) 9/26/06	

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 10-19-2006

Program 2006 Direct/Counter Program

Phone 803-534-2407

Time 08:27

Application Direct/Counter Program

Statement Type B-Original

PAGE 1

Name:

CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX S

Disbursement Statement

Transaction Information

Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm 1774	Transaction Y829200365	425.00		DIRECT PAYMENT - WHEAT
Farm 1774	Transaction Y829200366	1,727.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774	Transaction Y829200367	145.00		DIRECT PAYMENT - CORN
Farm 1774	Transaction Y829200368	77.00		DIRECT PAYMENT - SORGHUM
Farm 1774	Transaction Y829200369	66.00		DIRECT PAYMENT - SOYBEANS
		2,370.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/Check	ASGN/JFYHT	RECVDL/Claim	Amount	Payee Name/CCC Debt Repaid
10-19-2006	42343211			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

ELM 0161

CCC-509 (12/11/06)	U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT	1. PROGRAM YEAR 2007																																												
NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.		2A. COUNTY FSA OFFICE NAME AND ADDRESS (Including Zip Code) ORANGEBURG COUNTY FARM SERVICE AGENCY PO BOX 18 ORANGEBURG, SC 29116-0018																																												
		2B. COUNTY OFFICE TELEPHONE NUMBER (Including Area Code) (803)534-2409 FAX (803)536-5827																																												
		3. STATE CODE 4. COUNTY CODE 5. FARM NUMBER 45 075 1774																																												
The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. RETURN THE COMPLETED FORM TO THE FSA COUNTY OFFICE.																																														
THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix (11-08-06), entitled "Appendix to form CCC-509 (11-08-06), Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix (11-08-06), and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions; and certify to the accuracy of the information set out on this form.																																														
<table border="1" style="width: 100%; border-collapse: collapse; font-size: 0.8em;"> <thead> <tr> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> </tr> <tr> <th>A. Direct</th> <th>B. Counter-Cyclical</th> <th>A. Direct</th> <th>B. Counter-Cyclical</th> </tr> </thead> <tbody> <tr> <td>Wheat</td> <td>34.3</td> <td>29.2</td> <td>28</td> <td>28</td> <td>Upland Cotton</td> <td>47.9</td> <td>40.7</td> <td>636</td> <td>636</td> </tr> <tr> <td>Corn</td> <td>10.3</td> <td>8.8</td> <td>59</td> <td>59</td> <td>Grain Sorghum</td> <td>0.7</td> <td>0.6</td> <td>35</td> <td>35</td> </tr> <tr> <td>Soybeans</td> <td>13.5</td> <td>11.5</td> <td>13</td> <td>13</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		A. Direct	B. Counter-Cyclical	A. Direct	B. Counter-Cyclical	Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636	Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35	Soybeans	13.5	11.5	13	13					
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17. REMARKS On Register so enroll after 9/30/07 deadline																																														

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Western Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Elm 0162

CCC-509

Page 2 of 2

1. PROGRAM YEAR 2007		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774	
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)							
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				Corn	0 %	Grain Sorghum	0 %
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13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)					
15A. SIGNATURE OF OWNER OR PRODUCER Cash Rent Certification						15B. Date (MM-DD-YYYY) 9-7-2007	

ELM 0163

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 09-24-2007
Time 09:09
Statement Type B Original

Program 2006 Direct/Counter Program
Application Direct/Counter Program

Phone 803-534-2409

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX 5

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774			
Transaction Y826700086	3,554.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
	3,554.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/Check	ASGN/JPYMT	RECVBL/Claim	Amount	Payee Name/CCC Debt Repaid
09-24-2007	44614197			3,554.00	CLYDE B LIVINGSTON
				3,554.00	Total Disbursements
				3,554.00	Total Program Payment Earned

ELM 0140

Department of
Agriculture

ORANGEBURG, SC 29116-0018

Date 10-23-2007

Program 2007 Direct/Counter Program

Phone 803-534-2409

me 12:41

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-~~XXXXXXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y729600360	425.00		DIRECT PAYMENT - WHEAT
Farm 1774 Transaction Y729600361	1,727.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774 Transaction Y729600362	145.00		DIRECT PAYMENT - CORN
Farm 1774 Transaction Y729600363	7.00		DIRECT PAYMENT - SORGHUM
Farm 1774 Transaction Y729600364	66.00		DIRECT PAYMENT - SOYBEANS
	2,370.00		Total Payments (Transactions)

Disbursement Information

Date	ACH/ Check	ASGN/ JPYMT	RECVEL/ Claim	Amount	Payer Name/CCC Debt Repaid
10-23-2007	44614365			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

Elm 0164

Date	Check Number	Amount received	Cumulative Amount
-16-00	24183803	2,559.00	
-5-00	24184318	2,758.00	5,317
-16-01	24185024	2,086.00	7,403
-31-01	24185389	2,336.00	9,739
-7-02	32947170	2,001.00	11,740
-21-03	35288225	369.00	12,109
-24-03	35288279	3,454.00	15,663
-28-03	35288517	2,370.00	18,033
-27-04	35289733	1,017.00	19,050
-23-05	32057491	1,186.00	20,236
-19-05	32057979	1,184.00	21,420
-18-06	42342714	3,560.00	24,980
-5-06	42342914	182.00	25,162
-19-06	42343211	2,370.00	27,532
-24-07	44614197	3,554.00	31,086
-27-07	44614365	2,370.00	33,456

PLAINTIFF'S
EXHIBIT

2

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

PROBATE COURT

IN THE MATTER OF ATN BURNS LIVINGSTON

CASE NUMBER 99ES3800632

FIDUCIARY LETTERS

- ☒ PERSONAL REPRESENTATIVE S
☐ GUARDIANSHIP
☐ CONSERVATORSHIP
☐ TRUSTEESHIP
☐ _____

On the 10TH day of DECEMBER, 19 99

CLYDE B. LIVINGSTON AND EMMA L. MARTIN

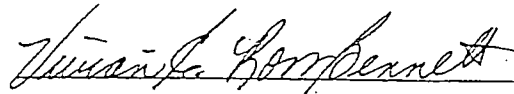
was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above fiduciary(ies) to do and to perform all acts which may be authorized by law: -

RESTRICTIONS:

THE CONCURRENCE OF BOTH PERSONAL REPRESENTATIVES
IS REQUIRED ON ALL ACTS CONNECTED WITH THE ADMINISTRATION
AND DISTRIBUTION OF THE ESTATE.

Executed this 10TH day of DECEMBER, 19 99



, Probate Court Judge

ATTEST A TRUE COPY

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF ORANGEBURG) CASE NUMBER 1999-ES-38-00632

[Signature]
 Judge of Probate, Orangeburg
 County, South Carolina

IN THE MATTER OF THE ESTATE)
 OF ATN BURNS LIVINGSTON) ORDER

This matter is before me on October 28, 2003 on the Personal Representative's Motion to be allowed to thin timber on real property to which the decedent held title on the date of his death for purposes of preserving the timber and generating income to pay expenses of the estate. Present at the hearing were W. Cliff Moore, III, attorney for the Personal Representative, Emma Martin, the Personal Representative, Eugene L. Ott with his client, Clyde Burns Livingston.

At the hearing, the Personal Representative presented a testimony indicating that it was necessary to generate income to pay obligations of the estate including, but not limited to, attorneys fees, Personal Representative fee, and a hospital bill. Mr. Livingston objected to the request suggesting that the expenses incurred by the Personal Representative were unnecessary and that the removal of timber would have a negative effect on the marketability of the property from which the timber was thinned. After considering all the evidence in this matter and discussing the issues in detail with counsel, I determined that it was prudent for the Personal Representative to propose distribution of the assets of the estate and to hold my ruling on her motion to sell assets of the estate in abeyance until such time as the Proposal for Distribution is before the Court and Mr. Livingston has responded to the Proposal for Distribution.

Based on the arguments of counsel and the record before this Court, I find, and conclude, that my findings and ruling on the Personal Representative's motion to sell assets of the estate should be held in abeyance until such time that a Proposal for Distribution is filed and Mr. Livingston has an opportunity to respond to the Proposal for Distribution.

AND IT IS SO ORDERED.

[Signature: Vivian E. Ross-Bennett]
 Vivian Ross-Bennett
 Probate Judge

Orangeburg, South Carolina
November 17, 2003

ATTEST: A TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG*Kian Lech Miller*
Judge of Probate, Orangeburg
County, South Carolina PROBATE COURT

IN THE MATTER OF ATN BURNS LIVINGSTON

CASE NUMBER 1999ES3800632

TERMINATION OF APPOINTMENT

The appointment of Clyde B. Livingston, Personal Representative(s) for the above estate is hereby terminated for the following reason(s):

- ☐ Satisfactory Completion of the Assigned Duties
- ☐ Death
- ☐ Disability
- ☐ Voluntary Resignation
- ☒ Removal
- ☐ Change of Testacy Status
- ☐ Special Administrator
- ☐ Other (specify): _____

Executed: November 25, 2003.

Vivian E. Ross-Bennett
VIVIAN E. ROSS-BENNETT, Probate Court Judge

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
 COUNTY OF ORANGEBURG) CASE NUMBER 1999-ES-38-00632

IN THE MATTER OF THE ESTATE)
 OF ATN BURNS LIVINGSTON) ORDER
)

This matter is before me on a Summons to Show Cause issued by this Court requiring the appearance of the Personal Representatives of the Estate of Atm Livingston, Emma L. Martin and Clyde B. Livingston at 9:30 a.m. on January 16, 2002. This Court's Summons to Show Cause required the Personal Representatives to show cause as to why the Inventory and Appraisement and the Closing Documents had not been filed, and to further show cause as to why the Personal Representatives should not be held in contempt of this Court and removed as Personal Representatives for dereliction of duty. The hearing on January 16, 2002 was ordered earlier and continued based on a request from the Personal Representative Clyde B. Livingston who cited health reasons as the basis for the continuance.

Present at the hearing on January 16, 2002 were the Personal Representative Emma L. Martin and her counsel, W. Cliff Moore, III and Matthew B. Hill. Eugene Ott appeared as counsel for Clyde B. Livingston, but Clyde B. Livingston did not attend the hearing. Mr. Ott explained that Mr. Livingston was out of town and that he was confused as to the date of the actual hearing.

Based on the arguments of counsel and the record before this court, I find and conclude as follows:

1. Clyde B. Livingston is in contempt of this Court for failing to appear as Ordered, for failing to cooperate with the Court, and for ignoring Orders of this Court. As punishment for that contempt, Clyde B. Livingston should be removed as Personal Representative.
2. Emma L. Martin claims that Clyde B. Livingston has not provided her with information that is within his custody and control of Clyde B. Livingston and that Mrs. Martin needs to perform her duties as Personal Representative of the Estate. Emma

L. Martin's efforts to perform her responsibilities as Personal Representative have been hampered by poor communication between Clyde B. Livingston and Emma L. Martin.

3. Emma L. Martin is willing to continue as Personal Representative and has engaged legal counsel to assist with the probate of this Estate.

IT IS THEREFORE ORDERED THAT:

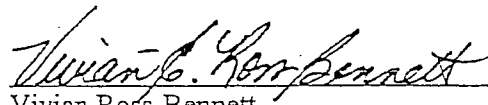
1. Clyde B. Livingston is in contempt of this Court and, as punishment therefore, is removed as Personal Representative. Mr. Livingston is hereby Ordered to return any letters or documentation issued by this Court that are evidence of his appointment as Personal Representative.

2. Clyde B. Livingston shall surrender immediately to Emma L. Martin all documentation and property of the Estate.

3. The Personal Representative Emma L. Martin shall file an Inventory and Appraisal with this Court on or before March 18, 2002.

4. The Personal Representative Emma L. Martin shall file the Initial Accounting with this Court on or before April 18, 2002.

AND IT IS SO ORDERED.


Vivian Ross-Bennett
Probate Judge

Orangeburg, South Carolina

January 18, 2002

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

PROBATE COURT

IN THE MATTER OF THE ESTATE OF ATN BURNS LIVINGSTON
CASE NUMBER 1999ES3800632

INVENTORY AND APPRAISEMENT

☒ ORIGINAL

☐ SUPPLEMENTAL # _____

Personal Representative: Emma Lou Livingston Martin

Was there a will? ☒ YES ☐ NO

Decedent's Social Sec. No.: 247-22-5208

Decedent's Date of Death: October 25, 1999

Domicile at Death: Orangeburg, South Carolina
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisement of all real and personal property of this estate so far as the undersigned is informed; that she has estimated and appraised all listed property at its fair market value, according to the best of her knowledge and ability.

Signature: Emma L. Martin

Name: Emma Lou Livingston Martin

Address: 108 Monaco Circle

Clemson, South Carolina 29631

Telephone (H): 864-653-5919

SWORN to before me this 15th
day of March, 2002.

Matthew B. Hill (L.S.)
Notary Public for South Carolina
My Commission Expires: Dec 2011

Attorney: W. Cliff Moore, III
Matthew B. Hill

Address: Post Office Box 2285
Columbia, South Carolina 29202

Telephone: (803) 254-4190

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any assets, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisement shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

Schedule	Out of State	In-State
Schedule A - Real Estate	\$29,500.00	\$400,369.00
Schedule B - Stocks and Bonds	\$0.00	\$0.00
Schedule C - Mortgages, Notes and Cash	\$0.00	\$50,383.00
Schedule D - Part 1 - Insurance Payable to Estate	\$0.00	\$4,166.00
Schedule D - Part 2 - Insurance Payable to Beneficiary	\$0.00	\$16,647.11
Schedule E - Jointly Owned Property	\$0.00	\$0.00
Schedule F - Other Miscellaneous	\$0.00	\$5,150.00
Schedule G - Transfers during Life	\$0.00	\$0.00
Schedule H - Powers of Appointment	\$0.00	\$0.00
Schedule I - Annuities	\$0.00	\$0.00
TOTAL GROSS WORTH	\$29,500.00	\$486,715.11
ENCUMBRANCES	\$0.00	\$0.00
TOTAL NET VALUE	\$29,500.00	486,715.11

SCHEDULE A - Real Estate

Description	Tax Assessor's Fair Market Value for Year of Decedent's Death	Apprsd. Value	Appraised Value of Decedent's Interest
1. 50% Interest: Henderson County, NC TMS # 01-07355	59,000.00		\$29,500.00
2. 269 Acres Orangeburg County, SC TMS # 0061-00-01-010.000	233,900.00		400,000.00

3. 1/2 Interest in 1 acre
School House Lot
Orangeburg County, SC
TMS # N/A

369.00

369.00

TOTAL SCHEDULE A

\$429,869.00

SCHEDULE B - Stocks and Bonds

DescriptionFace ValueAppraised
Value

None

TOTAL SCHEDULE B

\$ 0.00

SCHEDULE C - Mortgages, Notes and Cash

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1.	Note Receivable From Clyde Burns Livingston On \$10,000.00 Mortgage	\$10,000.00
2.	Note receivable From Clyde Burns Livingston On \$24,500.00 Mortgage	\$24,500.00
3.	First Citizens Checking Account No. 082525799109	20,423.00
4.	Rent Due on Farm from Roy Lucas (paid to Clyde Burns Livingston for 1998-1999)	5,460.00
TOTAL SCHEDULE C		\$60,383.00

SCHEDULE D - Insurance

Part 1 - Life Insurance Payable to the Estate

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1.	Department of Veterans Affairs Policy No. V 504 29 88	\$1,000.00
2.	Department of Veterans Affairs Policy No. V 504 29 89	1,680.00

3. Monumental Life Insurance P

FORM #350PC (1/91)

Page 3 of 6

Policy No. 007003814H 1,486.00
 TOTAL PART 1 \$4,166.00

Part 2 - Life Insurance Payable to Beneficiaries

<u>Item No.</u>	<u>Description</u>	<u>Beneficiary</u>	<u>Value</u>
1.	Department of Veterans Affairs Policy No. V 516 64 73	Emma L. Martin & Clyde Livingston	\$5,000.00
2.	Monumental Life Insurance Co. Policy No. 007001744 H	Emma L. Martin & Clyde Livingston	2,647.11
3.	Sun America/Anchor National Policy No. 1782662 A	Emma L. Martin & Clyde B. Livingston	1,000.00
4.	Aegon Home Security Employee Group Policy No. 11, Certificate No. 6303	Emma L. Martin & Clyde B. Livingston	8,000.00
TOTAL PART 2			\$16,647.11

SCHEDULE E - Jointly Owned Property (with right of survivorship)

<u>Description</u>	<u>Joint Owner(s)</u>	<u>Percentage Includable</u>	<u>Appraised Value of Decedent's Interest</u>
None			
TOTAL SCHEDULE E			\$ 0.00

SCHEDULE F - Miscellaneous Personal Property

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
1.	Miscellaneous Personal Property & Household Good (Including Contents of Tool Sheds in North, SC and contents of Lock box in Orangeburg, SC)	\$3,500.00
2.	Collectibles (Coins and Silver Dollars)	500.00
3.	1988 Oldsmobile VIN 1G3CW51C1J4308905	1,000.00
4.	2 Plots Pen Branch Cemetery	150.00
TOTAL SCHEDULE F		\$5,150.00

SCHEDULE G - Transfers During Decedent's Life

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
None		
TOTAL SCHEDULE G		\$ 0.00

SCHEDULE H - Powers of Appointment

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
None		
TOTAL SCHEDULE H		\$ 0.00

SCHEDULE I - Annuities

<u>Item No.</u>	<u>Description</u>	<u>Value</u>
None		
TOTAL SCHEDULE I		\$ 0.00

ENCUMBRANCES

<u>Item No.</u>	<u>Schedule & Item Number Encumbered Thereby</u>	<u>Description</u>	<u>Amount</u>
TOTAL ENCUMBRANCES			\$ 0.00

MANIFESTLY NON-TAXABLE

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this County, such estate is not reportable to the South Carolina Tax Commission.

Orangeburg County Probate Court Judge

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF ORANGEBURG

IN THE MATTER OF ATN BURNS LIVINGSTON

CASE NUMBER 1999-ES-38-00632

ACCOUNTING

☒

FINAL

☐

INTERIM # _____

The undersigned Personal Representative(s) submits this accounting, which covers the period from October 25, 1999 through December 22, 2004.

The documentation on the reverse side of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance	\$	0.00
Plus: Receipts	\$	25,692.91
Subtotal	\$	25,692.91
Less: Disbursements	\$	25,692.91
Ending Balance	\$	0.00

The Personal Representative declares that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representative(s).

SWORN to before me this 22nd day of

December, 2004

Virginia H. Caspell
Notary Public for South Carolina

My Commission Expires: 8/8/11

Signature: Emma Lou Livingston Martin

Name: Emma Lou Livingston Martin

Address: 108 Monaco Circle

Clemson, SC 29631

Telephone(O): _____

(H): 864.653.5919

Signature: _____

Name: _____

Address: _____

Telephone(O): _____

(H): _____

RECEIPTS (assets received into estate)		DISBURSEMENTS (assets disbursed/paid out from estate)	
First Citizens Acct. #082525799109	\$ 20,423.39	First Citizens - safety deposit box fees	\$ 50.00
Insurance Proceeds - Veteran's Affairs, Policy #V 504 29 88	\$ 1,242.60	G. Carson - house rent	\$ 600.00
Insurance Proceeds - Veteran's Affairs, Policy #V 5042989	\$ 2,010.55	SCE&G - utilities	\$ 31.60
Life Insurance Proceeds - Monumental Life Policy #007003814H	\$ 1,486.00	G. Carson - house rent	\$ 200.00
		McAlbany Funeral Home - funeral bill	\$ 5,622.20
Interest - First Citizens Bank	\$ 13.37	Orangeburg Co. Treasurer	\$ 569.36
Interest - First Citizens Bank	\$ 97.52	Federal withholding taxes	\$ 3.93
Interest - First Citizens Bank	\$ 67.32	Wachovia bank service charges	\$ 180.06
Interest - First Citizens Bank	\$ 3.98	First Citizens Bank - research charges	\$ 110.00
Alken Electric Co-op - dividend	\$ 57.94	Hendersonville Water & Sewer	\$ 28.05
		Terry F. Lyda Tax Collector - mountain house taxes	\$ 336.30
Interest - Wachovia Bank	\$ 18.12	Duke Power Co. - utilities	\$ 38.52
		Orangeburg Co. Probate Court - probate fees	\$ 503.70
Alken Electric Co-op - dividend	\$ 272.12	SCE&G - utilities	\$ 68.93
		AmeriGas - utilities	\$ 23.88
		TDS Telecom - utilities	\$ 241.26
		Hendersonville Water & Sewer	\$ 46.75
		Duke Power Co. - utilities	\$ 137.32
		NC Farm Bureau Mut. Ins. - ins. prem.	\$ 137.00
		Orangeburg Co. Treasurer - taxes	\$ 604.57
		Terry F. Lyda Tax Collector - mtn. house taxes	\$ 356.75
		NC Farm Bureau Mut. Insurance - ins. premiums	\$ 137.00
		Duke Power Co. - utilities	\$ 192.04
		Orangeburg Co. Treasurer - taxes	\$ 683.10
		Hendersonville Water & Sewer	\$ 66.75
		Terry F. Lyda - Tax Collector - mtn house taxes	\$ 362.90
		US Postmaster - postage	\$ 7.80
		Wachovia Bank - check cost	\$ 14.50

Emma Martin - reimbursement for legal fees	\$	704.45
Nancy Livingston - PO Box rental	\$	22.00
Farm Bureau Mut. Ins. - ins. prem.	\$	137.00
Hendersonville Water & Sewer	\$	26.75
Duke Power Co. - utilities	\$	21.03
Duke Power Co. - utilities	\$	14.75
Duke Power Co. - utilities	\$	45.00
Hendersonville Water & Sewer	\$	37.40
Terry F. Lyde, Tax Collector - property taxes	\$	348.10
Orangeburg Co. Treasurer - property taxes	\$	618.64
Duke Power Co. - utilities	\$	42.94
Hendersonville Water & Sewer	\$	28.05
Duke Power Co. - utilities	\$	46.23
Hendersonville Water & Sewer	\$	18.70
US Postmaster - PO Box rental	\$	24.00
Thompson Martin - reimbursement for insurance prem. on mtn. house	\$	327.00
Duke Power Co. - utilities	\$	30.00
Hendersonville Water & Sewer	\$	18.70
First Citizens - safety deposit box fees	\$	50.00
Ellis, Lawhorne & Sims, PA - legal fees	\$	3,084.82
Urso Co., Inc. - appraisal fee	\$	2,000.00
Forester-Salley, Pritchard & Assoc.	\$	450.00
UPS Store - postage	\$	8.00
UPS Store - postage	\$	9.00
Hendersonville Water & Sewer	\$	18.70
Duke Power Co. - utilities	\$	30.38
UPS Store - postage	\$	10.64
UPS Store - postage	\$	4.00
Orangeburg Co. Health Dept. - vital records	\$	21.00
UPS Store - postage	\$	5.00
Hendersonville Water & Sewer	\$	28.05
Duke Power Co. - utilities	\$	27.02
UPS Store - postage	\$	3.21

Duke Power Co. - utilities	\$	44.53
Hendersonville Water & Sewer	\$	18.70
State Farm Insurance - ins. premiums	\$	334.00
Duke Power Co. - utilities	\$	44.75
US Postmaster - postage	\$	12.00
Hendersonville Water & Sewer	\$	37.40
First Citizens - safety deposit box fee	\$	60.00
Mail Boxes, Etc. - postage	\$	24.10
Orangeburg Co. Probate Court - fees	\$	216.85
Ellis, Lawhorne & Sims, PA - legal fees	\$	5,136.34
Duke Power Company - utilities	\$	29.85
Hendersonville Water & Sewer	\$	10.56
Duke Power Co. - utilities	\$	46.02
	\$	25.00
Regional Medical Center - med. exp.	\$	37.98

0

\$

25,692.91

\$

~~12,710.75~~

25,692.91

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF ORANGEBURG

IN THE MATTER OF ATN BURNS LIVINGSTON

CASE NUMBER 1999-ES-38-00632

PROPOSAL FOR DISTRIBUTION

Personal Representative(s): Emma Lou Livingston Martin

Name and Address of Distributee	Amount or Item
To: Clyde B. Livingston	
(1) notes receivable from Clyde B. Livingston to Decedent	\$ 10,000.00
	24,500.00
(2) note receivable from Clyde B. Livingston to Decedent	
(3) accounts receivable of estate from Clyde B. Livingston for rent and USDA payments due estate and received by Clyde B. Livingston	19,710.00
(4) personal belongings in possession of Clyde B. Livingston	3,000.00
(5) 45% interest in 269.4 acres I	180,000.00
TOTAL	\$ 237,210.00
To: Emma Lou Livingston Martin	
(1) cemetery lots - Pen Branch Cemetery	\$ 150.00
(2) accounts receivable of estate from Emma Lou Martin for rent due estate from Roy Lucas received by Emma Lou Martin	2,730.00
(3) school house lot	369.00
(4) coin collection	500.00
(5) personal belongings in truck trailer & cousin's shed	1,500.00
(6) estate's 50% interest in Henderson County, NC property	29,500.00
*(7) 55% interest in 269.4 acres	220,000.00
TOTAL	\$254,749.00
GRAND TOTAL	\$491,959.00

*The 55% interest is subject to hospital claim and reimbursement for expenses of administration of the estate.
 Executed this 22nd day of December, 2004.

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

Signature: Emma Lou Livingston Martin

Name: Emma Lou Livingston Martin

Address: 108 Monaco Circle

Clemson, SC 29631

Telephone (O): _____

(H): 864.653.5919

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF ORANGEBURG.)

LAST WILL AND TESTAMENT
 OF
 ATN B. LIVINGSTON

I, Atn B. Livingston, a resident of and domiciled in the State of and County aforesaid, 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.

ITEM I I give, devise and bequeath all of my property of every kind and description wherever situate and whether acquired before or after the execution of this Will, absolutely in fee simple to my children, Clyde B. Livingston and Emma L. Martin, share and share alike, 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.

ITEM II I hereby nominate, constitute and appoint as ~~CO-EXECUTORS of this my Last Will and Testament Clyde B.~~

Livingston and Emma L. Martin and direct that they shall serve without bond.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 28th day of January, 1983.

(SEAL) Atn B. Livingston

The foregoing Will consisting of one typewritten page, was this 28th day of January, 1983, signed, sealed, published and declared by the said Testator as and for his Last Will and Testament in the presence of us, who at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Samuel T. Reid Jr. of Orangeburg S.C.
Patricia B. Bippin of Orangeburg, S.C.
Dora R. Duff of Orangeburg, S.C.

155 PAGE 280

176
177

M-BK:01701 PG:0212

HAROLD P. THRELKELD

ATTORNEY AT LAW

P.O. BOX 1385

ANDERSON, SC 29622-1385

PHONE (864) 226-1305

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN: Estate of Atn Burns
 Livingston (hereinafter referred to as "Mortgagor") SEND GREETING:

Whereas, the said Mortgagor in and by that certain note in writing, of even date with these presents, is well and truly indebted to Emma Livingston Martin (hereinafter referred to as "Mortgagee"), in the full and just sum of Nineteen thousand six hundred seventy-five and 26/100 (\$19,675.26) Dollars to be paid according to the terms of said note, with interest thereon from date at the rate of seven and one-half (7.5%) percent per annum, to be computed and quarterly until paid in full; all interest not paid when due to bear interest at the same rate as principal; and if any portion of principal or interest be at any time past due and unpaid, then the whole amount evidenced by said note to become immediately due, at the option of the holder hereof, who may sue thereon and foreclose this mortgage; said note further providing for an attorney's fee of a reasonable amount besides all costs and expense of collection, to be added to the amount due on the said note and to be collectible as a part thereof; if the same be placed in the hands of an attorney for collection, or if said debt, or any part thereof, be collected by an attorney, or by legal proceedings of any kind (all of which is secured under this mortgage); as in and by the said note, reference being thereunto had, will more fully appear.

1 FILED May 03, 2006 10:13:23 am
 BOOK 01701
 PAGE 0212 TRSU 0219
 INSTRUMENT # 2005002655

FILED
 ORANGEBURG
 COUNTY
 GAIL LANEY
 REGISTER
 OF DEEDS

[Signature]
 Signature

M-BK:01701 PG:0213

NOW KNOW ALL MEN, That the said Mortgagor, in consideration of the said debt and sum of money aforesaid, and for the better securing the payment thereof to the said Mortgagee according to the terms of said note, and also in consideration of the further sum of Three Dollars, to the said Mortgagor in hand well and truly paid by the said Mortgagee at and before the signing of these Presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said Mortgagee, her heirs and assigns forever:

See attached Exhibit 1 for legal description

Mortgagee's mailing address: 1302 Kimberly Road, Anderson,
South Carolina 29621

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

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the said Mortgagee, her Heirs and Assigns forever. And Mortgagor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said Premises unto the said Mortgagee, her heirs and assigns, from and against Mortgagor and Mortgagor's successors and assigns and every person whomsoever lawfully claiming or to claim the same or any part thereof.

The Mortgagor does hereby covenant and agree to procure and maintain insurance in the amount of not less than the maximum insurable value of improvements thereon, against all loss or damage by fire, in some insurance company acceptable to the mortgagee herein, upon all buildings now or hereafter existing upon said real estate, and to assign such insurance to the mortgagee as additional security, and in default thereof said mortgagee may procure and maintain such insurance and add the expense thereof to the face of the mortgage debt as a part of the principal and the same shall bear interest at the same rate and in the same manner as the balance of the mortgage debt and the lien of the mortgage shall be extended to include and secure the same. In case said mortgagor

shall fail to procure and maintaining (either or both) said insurance as aforesaid, the whole debt secured hereby shall, at the option of the mortgagee, become immediately due and payable, and this without regard to whether or not said mortgagee shall have procured or maintained such insurance as above permitted.

Mortgagor does hereby covenant and agree to pay promptly when due all taxes and assessments that may be levied or assessed against said real estate, and also all judgments or other charges, liens or encumbrances that may be recovered against the same or that may become a lien thereon, and in default thereof said mortgagee shall have the same rights and options as above provided in case of insurance.

And if at any time any part of said debt, or interest thereon, be past due and unpaid, Mortgagor hereby assigns the rents and profits of the above described premises to the said mortgagee, or her Heirs, Executors, Administrators or Assigns and agree that any Judge of the Circuit Court of said State, may, at chambers or otherwise, appoint a receiver, with authority to take possession of said premises and collect said rents and profits, applying the net proceeds thereof (after paying costs of collection) upon said debt, interest, cost of expense; without liability to account for anything more than the rents and profits actually collected.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of the parties of these Presents, that if the said mortgagor, do and shall well and truly pay or cause to be paid unto the said mortgagee the debt or sum of money aforesaid, with interest thereon, if any be due, according to the true intent and meaning of said note, then this deed of bargain and sale shall cease, determine, and be utterly null and void, otherwise to remain in full force and virtue.

AND IT IS AGREED by and between the said parties that said mortgagor is to hold and enjoy the said Premises until default of payment shall be made.

WITNESS my hand and seal this 21st day of April, 2006.

SIGNED, SEALED AND DELIVERED ESTATE OF ATN BURNS LIVINGSTON
IN THE PRESENCE OF:

Virginia A. [Signature]
Robert E. [Signature]

BY: *Emma Livingston Martin* (SEAL)
Emma Livingston Martin
Personal Representative

M-BK:01701 PG:0215

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Mortgagor sign, seal and as Mortgagor's act and deed deliver the within written mortgage, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 21st
day of April, 2006

Virginia H. Carter (SEAL)
Notary Public for South Carolina
My Commission Expires 8/8/11

EXHIBIT "I"

Estate of Atn Burns Livingston Real Property Descriptions

Parcel 1: All that certain parcel or tract of land situate, lying and being in School District No. 34, Elizabeth Township, Orangeburg County, South Carolina, containing forty four (44) acres, more or less, and bounded as follows: on the North by land of Erskine McFarland Livingston, Langdon Aseem Livingston, and Atn Burns Livingston, from which it is separated by a road known as Orangeburg-Edgefield Highway; on the East by estate lands of Mrs. Kittie Greer and estate lands of F. A. Wolfe; on the South by estate lands of F. L. Witt, and J. H. Woodbury; and on the West by lands of Herman Festus Livingston. The said land is a portion of the land left by Lawrence A. Livingston at his death, he having willed the above described tract of land to his widow, E. Lucia Livingston, for her life, and after her death, unto his two daughters, Eppie Lucia Livingston, and Selma Alexander Livingston, now Selma Livingston DeHay. The said E. Lucia Livingston dies on July 22, 1945, and the aforesaid forty four (44) acres of land is now owned absolutely by Eppie Livingston Ogburn (formerly Eppie Lucia Livingston) and the said Selma Alexander Livingston.

This being the same property that Selma Livingston DeHay conveyed her portion to Atn B. Livingston by virtue of that certain deed dated July 24, 1945 and recorded on August 13, 1945 in Deed Book 135 at page 209.

Parcel 2: All that certain tract of land in Elizabeth Township, School District No. 64, Orangeburg County, South Carolina, containing thirty six (36) acres, more or less, and bounded on the North by lands of B.K. Robinson; on the East by O.S. Livingston; on the South by the old Orangeburg-Edgefield public road; and on the West by lands of H.F. Livingston. Being the same tract of land conveyed to me, the said Erskine M. Livingston, by W.Z. Dantzler by deed dated November 16, 1937, and recorded in the office of the Clerk of Court of Orangeburg County in Deed Book 107, at page 191.

This being the same property conveyed to Atn B. Livingston from Erskine M. Livingston by virtue of that certain deed dated December 16, 1948, and recorded on December 29, 1948, in Deed Book 156 at page 9.

Parcel 3: All that certain tract of land in Elizabeth Township, School District No. 34, Orangeburg County, South Carolina, containing twenty (20) acres, more or less, and bounded on the North by the old Orangeburg-Edgefield Public Road; on the East by lands of H. F. Livingston; on the South by lands of J. H. Woodbury; and on the West by lands of T. W. Livingston. Being the same tract of land conveyed to me, the said Erskine M. Livingston, by C. R. Williams, Collector of Delinquent Taxes, by deed dated April 17, 1936, and appearing of record in the office of said Clerk of Court in Deed Book 86 at page 220.

This being the same property conveyed to Attn. B. Livingston by deed of Erskine M. Livingston dated December 16, 1948, and recorded on December 29, 1948, in Deed Book 156 at page 9.

Parcel 4: All that certain tract of land, containing seventy-four and four-tenths (74.4) acres, more or less, known as a part of the Kittie Grier place in Elizabeth Township, School District No. 34 and 64, in Orangeburg County, on the old Orangeburg-Edgefield Public Road, about one mile Northwest from the town of North, and bounded on the North by lands of Attn B. Livingston; on the East by lands of Kittie A. Grier; on the South by lands of Wolfe; and on the West by lands of Attn B. Livingston. Said tract of land is particularly shown and delineated on a plat prepared by William H. Clerk, Surveyor, on the fifth day of October 1946, which is recorded in Plat Book _____ at page _____ in the office of the Clerk of Court for Orangeburg County. Being the Western portion of a certain tract of land containing one hundred seventy nine (179) acres, more or less, allotted to me, the said Kittie A. Grier in the division of the estate lands of my deceased father, Jacob A. Wolfe, and represented as Tract D on the division plat prepared by Fred H. Gramling, Surveyor, dated March 12, 1898. Any discrepancy between the Western boundary line of said 179 acre tract as shown on this plat and the Western boundary line of the tract hereby conveyed, as shown on the plat herein above referred to, is accounted for by an exchange of small corners in about 1898 between myself and Lawrence A. Livingston, the former owner of the adjoining land on the West for the purpose of adjusting the line to our mutual advantage. I now own no land adjoining the tract hereby conveyed, except the remaining portion of the 179 acre tract which is East of the tract hereby conveyed.

~~This being the same tract conveyed to Attn. B. Livingston by Kittie A. Grier by virtue of that certain deed dated October 29, 1946 and recorded November 2, 1946 in Deed Book 142 at page 320.~~

Parcel 5. All that certain tract of land containing ninety-three (93) acres more or less, in Elizabeth Township, School District No. 64, Orangeburg County, South Carolina, and bounded on the North by lands of the Estate of Willie Senn and the estate of B.K. Robinson; on the East by lands of the Estate of Willie Senn and by lands of Mrs. Kittie Grier; on the South by the old Orangeburg-Edgefield Public Road; and on the West by lands of the estate of F.L. Witt and by lands of the estate of B. K. Robinson. Being the same land devised by the will of Lawrence A. Livingston, deceased to E. Lucia Livingston for her lifetime, and after her death to Langdon A. Livingston, Attn B. Livingston and Erskine M. Livingston, the said E. Lucia Livingston having since died and the interest of the said Erskine M. Livingston having been conveyed to the said Langdon A. Livingston by his deed dated January 2, 1946, not yet recorded.

Undivided one-third interest being inherited by Attn B. Livingston from his father, Lawrence A. Livingston, and an undivided two-thirds interest therein being conveyed unto Attn B. Livingston by deed of Langdon Livingston dated May 16, 1946 and recorded August 26, 1946 in Deed Book 140 at page 256.

Parcel 6. All that certain piece, parcel or tract of land situate, lying and being in Elizabeth Township, Orangeburg County, State of South Carolina, containing thirty six (36) acres, more or less, and bounded as follows: on the North by lands of B. K. Robinson; on the East by L. A. Livingston; on the South by the old Orangeburg-Edgefield Public Road; on the West by lands of H. F. Livingston. Being the same piece, parcel or tract of land that was conveyed to me by Bessie W. Livingston by her deed dated October 13, 1950 and recorded in the office of the Clerk of Court in Deed Book 165 at page 145.

This being the same tract conveyed to Atn B. Livingston by J. Ausburne Witt, by virtue of that certain deed dated January 7, 1953 and recorded on January 9, 1953 in Deed Book 177 at page 148.

Parcel 7. All that certain tract of land, containing twenty-two (22) acres, more or less, known as part of the Lawrence A. Livingston Estate, in Elizabeth Township, School District No. 6 in Orangeburg County, South Carolina, on the old Orangeburg-Edgefield Road, about a mile Northwest of the Town of North; and bounded on the North by the old Orangeburg-Edgefield Road; on the East by lands now or formerly of Kittie Grier and estate of F. A. Wolfe, on the South by lands now or formerly of F. L. Witt and J. H. Woodbury; and on the West by lands of Atn B. Livingston.

This is the same tract conveyed to Atn B. Livingston by Eppie Livingston Ogburn by virtue of that certain deed dated April 5, 1955 and recorded February 23, 1956 in Deed Book 200 at page 519.

LESS AND EXCEPTING:

Parcel 1. All that certain piece, parcel or tract of land, situate, lying and being in Elizabeth Township, School District No. 34, Orangeburg County, South Carolina, containing twenty (20) acres, more or less, and bounded, now or formerly, as follows: on the North by the old Orangeburg-Edgefield Public Road; on the East by lands of H. F. Livingston; on the South by lands of J.R. Woodbury; and on the West by lands of T. W. Livingston. Being one of the tracts if land conveyed to Atn B. Livingston by deed of Erskine M. Livingston dated December 16, 1948, and recorded in the office of the Clerk of Court for Orangeburg County, S.C. in Deed Book 156 at Page 9.

Being the same parcel conveyed to Erskine M. Livingston by Atn B. Livingston by virtue of that certain deed dated June 17, 1961 and recorded on June 17, 1961 in Deed Book 240 at page 189.

AND LESS AND EXCEPTING:

Parcel 2. All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being near the town of North, County of Orangeburg, State of South Carolina, and being more particularly shown and delineated on a plat prepared for J. Cecil Moore, Jr., and Debra R. Moore by Donald J. Smith, Jr., Inc., approved by Donald J. Smith, Jr., RLS, dated December 17, 1990, and recorded in the office of the RMC for

Orangeburg County in plat Book 69S at page 768, and being bounded and measured as follows: Northeast by property now or formerly of A. Livingston, measuring thereon three hundred and thirty-three and ninety-one hundredths (333.91) feet; Southeast by property now or formerly of A. Livingston, measuring thereon a total distance of eight hundred twenty-five and fifty-five hundredths (825.55) feet; Southwest by a sixty-six (66) foot right of way measuring thereon three hundred forty-seven and thirty-eight (347.38) feet; and Northwest by property now or formerly of A. Livingston, measuring thereon Eight hundred twenty-three and fourteen hundredths (823.14) feet; all measurements being more or less.

This being the same property conveyed to J. Cecil Moore, Jr. and Debra R. Moore by virtue of that certain deed dated January 4, 1991, and recorded on January 7, 1991 in Deed Book 566 at page 69.

TMS No.: 061-00-01-010

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS

CASE NO. 07-CP-38-826

In re:

ESTATE OF ATN BURNS
LIVINGSTON.Emma Lou Livingston Martin as
Personal Representative of the Estate of
Atn Burns Livingston and Emma Lou
Livingston Martin,

Plaintiff,

vs.

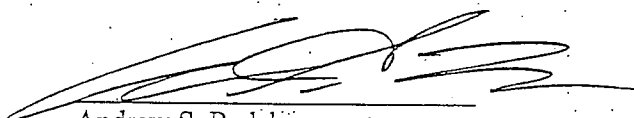
Clyde B. Livingston; Miller
Communications, Inc.; Citibank South
Dakota, N.A.; Branch Banking and Trust
Company of South Carolina; and
American First Federal, Inc.,

Defendants.

COPY
AMENDED NOTICE OF INTEREST
TO PURCHASE PER
S.C. CODE ANN § 15-61-25

YOU WILL PLEASE TAKE NOTICE that Defendant Clyde B. Livingston hereby
notifies the Court that he is interested in purchasing the property subject of the above-captioned
action.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drewradeker@mancospring.com (email)
ATTORNEY FOR DEFENDANT
CLYDE B. LIVINGSTON

Columbia, South Carolina

January 21, 2009

Wynya B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF ORANGEBURG) CASE NO.: 07-CP-38-826

IN THE MATTER OF: ATN BURNS LIVINGSTON
 CASE NO.: 1999-ES-38-00632

Ex Parte:

Emma Lou Livingston Martin as Personal Representative of the Estate of Atn Burns and
 Emma Lou Livingston Martin,

Plaintiff

vs.

Clyde B. Livingston; Miller Communications, Inc.; Citibank South Dakota, N.A.; Branch
 Banking and Trust Company of South Carolina; and American First Federal, Inc.,

Defendants.

**PLAINTIFF'S RESPONSES TO SECOND SET OF REQUESTS TO PRODUCE
 OF THE DEFENDANT, CLYDE B. LIVINGSTON**

TO: Andrew S. Radeker, Esquire, Harrison & Radeker, P.A., P. O. Box 50143, Columbia,
 SC 29250, Attorneys for Defendant, Clyde B. Livingston

NOW COMES the Plaintiff, responding to Second Set of Requests to Produce
 propounded by the Defendant, Clyde B. Livingston, pursuant to Rule 34, South Carolina
 Rules of Civil Procedure as follows:

1. All documents and statements identified in answer to Defendant Livingston's
 Second Set of Interrogatories to Plaintiff.

ANSWER: Schedule of farm subsidies received by Clyde B. Livingston, designated
 Document ELM #0137 and 0164;

2. A copy of each order or other document the Plaintiff claims gave her any
 authority to encumber the property subject to this action.

ANSWER: No order or other document other than statutory authority was relied on
 to encumber property.

3. A copy of each order or other document the Plaintiff claims gave her any
 authority to loan any money to the Estate of Atn Burns Livingston.

ANSWER: No order or other document other than statutory authority was relied on to loan the estate money.

4. A copy of each document that supports any defense of the Plaintiff to any of Defendant Livingston's counterclaims.

ANSWER: See answer to Request No. 1.

5. All evidence that shows the receipt of any money or other consideration for hunting rights to the property subject of this action.

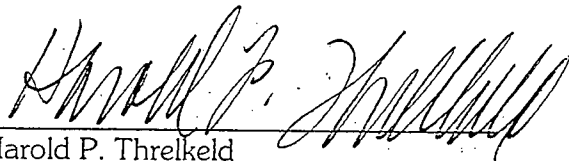
ANSWER: See answer to Request No. 1.

6. A copy of all documents that the Plaintiff has submitted to the USDA (including any agency or office thereof) with regard to the real property at issue in this action.

ANSWER: See answer to Request No. 1.

7. A copy of all documents that the Plaintiff has received from the USDA (including any agency or office thereof) with regard to the real property at issue in this action.

ANSWER: See answer to Request No. 1.



Harold P. Threlkeld
and Richard B. Ness
P. O. Box 1385
Anderson, SC 29622-1385
Telephone No.: 864.226.1305
Fax No.: 864.226.1685
Attorneys for Plaintiff

Anderson, South Carolina
Date: September 8, 2009

2006 FARM SUBSIDIES

ENVIRONMENTAL WORKING GROUP

108,569,957

Clyde B. Livingston received payments totaling \$27,532 from 1995 through 2006

Clyde B. Livingston: Summary | Programs | Programs by year | Farm Location(s) |

NEW 2007 Direct Payment Subsidy Overview

NEW Press Release

[2008 Farm Subsidy Database Update](#)
[2008 Summary](#)
[2008 News Release](#)
[EWG's Policy Analysis Database](#)


- [Full Disclosure: Who really benefits from federal farm subsidies](#)
- [What's in the new Farm Bill 2007 Database?](#)
- [New Farm Bill Web Site Generates Media Storm](#)

[Congressional District Ranking](#)

Related Content

[Farms Receiving Government](#)
[Payments](#)
[Speech: Farm Policy For The Rest of](#)
[Us](#)
[Related News Coverage](#)

Year	Conservation Subsidies	Disaster Subsidies	Commodity Subsidies	Total USDA Subsidies 1995-2006
1995	\$0	\$0	\$0	\$0
1996	\$0	\$0	\$0	\$0
1997	\$0	\$0	\$0	\$0
1998	\$0	\$0	\$0	\$0
1999	\$0	\$0	\$0	\$0
2000	\$0	\$0	\$5,317	\$5,317
2001	\$0	\$0	\$4,422	\$4,422
2002	\$0	\$0	\$2,001	\$2,001
2003	\$0	\$0	\$6,293	\$6,293
2004	\$0	\$0	\$1,017	\$1,017
2005	\$0	\$0	\$2,370	\$2,370
2006	\$0	\$0	\$6,112	\$6,112
Total	\$0	\$0	\$27,532	\$27,532

Crop Summary for Clyde B. Livingston

Crop	Payments 1995-2006
Cotton Subsidies	\$22,248
Wheat Subsidies	\$3,532
Corn Subsidies	\$1,422
Soybean Subsidies	\$264
Sorghum Subsidies	\$66

ELM0137

2007 DIRECT PAYMENTS

ENVIRONMENTAL WORKING GROUP

108,571,131

NEW 2007 Direct Payment Subsidy Overview NEW Press Release

[2008 Farm Subsidy Database Update](#)

[2008 Summary](#)

[2008 News Release](#)

[EWG's Policy Analysis Database](#)

READ MULCH

Updates, commentary,
& your feedback

NEW

- [Full Disclosure: Who really benefits from federal farm subsidies](#)
- [What's in the new Farm Bill 2007 Database?](#)
- [New Farm Bill Web Site Generates Media Storm](#)

[Congressional District Ranking](#)

Related Content

[Farms Receiving Government](#)

[Payments](#)

[Speech: Farm Policy For The Rest of](#)

[Us](#)

[Related News Coverage](#)

Clyde B Livingston received Direct Payments totaling \$2,370 in 2007

Direct Payments by Crop, 2007

Direct Payment Crop	Direct Payments 2007
Direct Payment - Upland Cotton	\$1,727
Direct Payment - Wheat	\$425
Direct Payment - Corn	\$145
Direct Payment - Soybeans	\$66
Direct Payment - Sorghum	\$7
Total Direct Payments	\$2,370

Farm Location Information for Recipient, 1995-2006

Subsidy Information for Recipient, 1995-2006

ELM 6138

Date 09-05-2008

Program 2000 Market Loss Assistance

Phone 833-524-2400

Time 13:25

Application Market Loss

Statement Type 1 Original

PAGE 1

Name:

CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID 249 00 2646 2

Disbursement Statement

Comment Information

At USDA, we know this has been a hard year for many of you. We are here to help, but we know this payment is no substitute for a strong farm economy. We are doing all we can to provide the funds you need to prosper. The folks who've given us the world's most abundant food supply deserve nothing less.

Transaction Information

Reference Number	TX	Transaction	Amount	STAT	Payment Description
Farm	1774	Transaction X324500633	521.00		MARKET LOSS ASSISTANCE WHEAT
Farm	1774	Transaction X324500634	2,042.00		MARKET LOSS ASSISTANCE UPLAND COTTON
Farm	1774	Transaction X324500635	188.00		MARKET LOSS ASSISTANCE CORN
Farm	1774	Transaction X324700636	8.00		MARKET LOSS ASSISTANCE SORGHUM
			2,758.00		Total Payments (Transactions)

Disbursement Information

Date	ACH/Check	ASGN/JVNT	RECVBL/CLM	Amount	Payee Name/DOC Dely Retain
09-05-2008	24184318			2,758.00	CLYDE B LIVINGSTON
				2,758.00	Total Disbursements
				2,758.00	Total Program Payment Earned

off balance on file

CLM 0139

408

USDA/FS

PAGE 03/05

ORANGEBURG, SC 29116-0018

Date 05-16-2000

Time 07:43

Statement Type B Original

Program 2000 Production Flexibility Contract
Application Prod. Adj./Prod. Flex.

Phone 803-534-2409

PAGE 1

Name: CLYDE B LIVINGSTON
P O DRAWER 1744
ORANGEBURG, SC 29116

RETAIN FOR TAX PURPOSES

Producer ID 248 80 2646 S

Disbursement Statement

Transaction InformationReference Number(s)

Reference Number(s)	Transaction	Amount	Payment Description
Farm 1774	Transaction X213700212	481.00	PRODUCTION FLEXIBILITY CONTRACT WHEAT
Farm 1774	Transaction X213700213	1,897.00	PRODUCTION FLEXIBILITY CONTRACT UP COT
Farm 1774	Transaction X213700214	173.00	PRODUCTION FLEXIBILITY CONTRACT CORN
Farm 1774	Transaction X213700215	8.00	PRODUCTION FLEXIBILITY CONTRACT SORGHUM
		2,559.00	Total Payments (Transactions)

Disbursement Information

Issue	ACH/	AGEN/	RECVDL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JYPNT	Claim		
05-16-2000	24183863			2,559.00	CLYDE B LIVINGSTON
				2,559.00	Total Disbursements
				2,559.00	Total Program Payment Earned

EFT WALKER ON FILE

ELM 014C

Date 08-31-2001

Time 10:49

Statement Type B Original

Program 2001 Market Loss Assistance
Application Market Loss

Phone 803-534-2409

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID 248 BQ 2646 S

Disbursement Statement

Transaction Information

Reference Number(s)

Farm	Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm	1774	Transaction WB24300975	442.00		MARKET LOSS ASSISTANCE WHEAT
Farm	1774	Transaction WB24300976	1,727.00		MARKET LOSS ASSISTANCE UPLAND COTTON
Farm	1774	Transaction WB24300977	159.00		MARKET LOSS ASSISTANCE CORN
Farm	1774	Transaction WB24300978	8.00		MARKET LOSS ASSISTANCE SORGHUM
			2,336.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH	ASGN	RECVBL	Amount	Payee Name/CCC Debt Repaid
Date	Check	JRYMT	Clide	2,336.00	CLYDE B LIVINGSTON
08-31-2001	24185389			2,336.00	Total Disbursements
				2,336.00	Total Program Payment Earned

Shown as
8-30-2000

071 #3 Interim

ET Waink on file

ELM 014

410

USDA/PSA

PAGE 05/05

Date 05-16-2001

Time 13:20

Statement Type B Original

Program 2001 Production Flexibility Contract
Application Prod. Adj./Prod. Flex.

Phone 803-534-2407

PAGE

Name:

CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID 248 80 2646 S

Disbursement Statement

Transaction Information

Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm 1774	Transaction WB13600218	388.00		PRODUCTION FLEXIBILITY CONTRACT WHEAT
Farm 1774	Transaction WB13600219	1,551.00		PRODUCTION FLEXIBILITY CONTRACT UP COT
Farm 1774	Transaction WB13600220	140.00		PRODUCTION FLEXIBILITY CONTRACT CORN
Farm 1774	Transaction WB13600221	7.00		PRODUCTION FLEXIBILITY CONTRACT SORGHUM
		2,086.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVR/	Amount	Payee Name/CCC Debt Repaid
Date	Check	UFYMT	Claim		
05-16-2001	24183024			2,086.00	CLYDE B LIVINGSTON
				2,086.00	Total Disbursements
				2,086.00	Total Program Payment Earned

Eft Working on Silo *

ELM 0142

Lease Statement

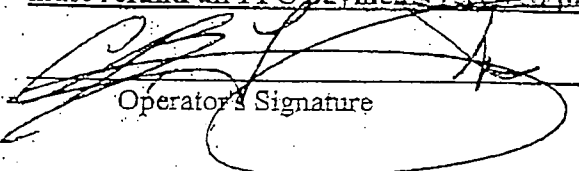
FARM 1774

Operator Certification

This is to certify that the following landowners have rented me the land listed below for the 2000 crop year, and that the owners receive no benefits from the PFC crops and land uses. The payment shares reflected on the Production Flexibility Contract are true and correct. I have full authorization from each owner to participate in the PFC as indicated on the contract.

I also understand that no changes will be made to the farm's current constitution for the 2000 crop year (more tracts added or taken from the farm) once PFC payments have been issued to the farm.

I understand that if it is determined that I have erroneously represented any fact affecting an AMTA program determination, made according to AMTA program provisions, I shall not be entitled to PFC payments and must refund all PFC payments received plus interest with respect to the farm and crop.

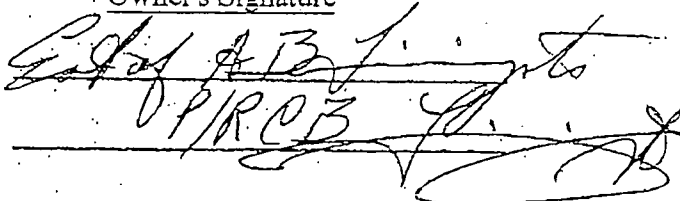

Operator's Signature4/19/0
Date

Owner Certification

This is to certify that I have rented to the producer listed above my land listed below for the 2000 crop year, and that I, as owner, receive no benefits from the PFC crops and land uses. The payment shares reflected on the Production Flexibility Contract are true and correct. I have permitted the producer full authorization to participate in the PFC as indicated on the contract.

Owner's Signature

Tracts and/or Acres


E. J. A. B. J. Jr.
P/R C/B4842

Approved _____ Disapproved _____

Reason Disapproved: _____

ELM 0143

This form is available electronically.

PREPARED DATE: 04/18/2003

CCC-509
(05-30-02)U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT

NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

1. PROGRAM YEAR 2002

2A. COUNTY OFFICE NAME AND ADDRESS (Include Zip Code)
ORANGEBURG COUNTY FSA OFFICE

ORANGEBURG SC 29116-0018

2B. COUNTY OFFICE TELEPHONE NUMBER (Include Area Code)
(803) 534-2409

3. STATE CODE 45 14. COUNTY CODE 075 15. FARM NUMBER 1774

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix, entitled "Appendix to Form CCC-509, Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix, and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions, and certify to the accuracy of the information set out on this form.

6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield A. Direct B. Counter-Cyclical	6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield A. Direct B. Counter-Cyclical
WHEAT	34.3	29.2	28 28	UPCN	47.9	40.7	636 636
CORN	10.3	8.8	59 59	SORGH	0.7	0.6	35 35
SOYBN	13.5	11.5	13 13				

10. Owner or Producer's Name and Address (Including Zip Code)	11. Commodity	12. Payment Share	11. Commodity	12. Payment Share
CLYDE B LIVINGSTON PO BOX 1744 ORANGEBURG SC 29116-1744	WHEAT	1.0000	UPCN	1.0000
	CORN	1.0000	SORGH	1.0000
	SOYBN	1.0000		

3A. If ALL Direct and Counter-Cyclical Payments are refused, check below:

14. Advance Payment Selections (for all commodities):

A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment.)

B. Advance Counter-Cyclical Payments:
- First Partial Payment YES NO X
- Second Partial Payment YES NO X

3B. Producer's Initials

13C. Date Initialed
(MM-DD-YYYY)

5A. SIGNATURE OF OWNER OR PRODUCER

15B. DATE (MM-DD-YYYY)

4/18/03

ELM C144

508 (08-30-02) Page 2

PROGRAM YEAR 2002

13. STATE CODE 45

14. COUNTY CODE 075

15. FARM NUMBER 1774

CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)

110. Owner or Producer's Name and Address (Including Zip Code)

A. B. LIVINGSTON
PO BOX 53
NORTH

SC 29112-0053

Identification Number: ~~0000000000~~

11. Commodity 12. Payment Share 11. Commodity 12. Payment Share

***** Shares for all crops are zero *****

12A. If All Direct and Counter-Cyclical Payments are refused, check below

14. Advance Payment Selections (for all commodities):

A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment.)

B. Advance Counter-Cyclical Payments:
- First Partial Payment YES NO ☒
- Second Partial Payment YES NO ☒

13B. Producer's Initials

13C. Date Initialed
(MM-DD-YYYY)

15A. SIGNATURE OF OWNER OR PRODUCER

"Default"

15B. DATE (MM-DD-YYYY)

FOR FSA USE ONLY

16A. SIGNATURE OF CCC REPRESENTATIVE

T Michael Pritcher

16B. DATE (MM-DD-YYYY)

8/12/03

17. REMARKS

Received from AR

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-7410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

ELM 0145

414
United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29114-0018

Date 09-24-2003
Time 10:02
Statement Type B Original

Program 2002 Direct/Counter Program
Application Direct/Counter Program

Phone 803-534-2409

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID [REDACTED] S

Disbursement Statement

Transaction Information

Reference Number(s)

arm 1774

Transaction UC26700092

Amount

3,554.00

3,554.00

STAT

Payment Description

COUNTER CYCLICAL PAYMENT UPLAND COTTON

Total Payments (Transactions)

Disbursement Information

Issue ACH/

ASGN/

RECVBL/

Date Check

JPYHT

Claim

Amount

3,554.00

3,554.00

3,554.00

Payee Name/CCC Debt Repaid

CLYDE B LIVINGSTON

Total Disbursements

Total Program Payment Earned

ELM 0146

Department of
Agriculture

ORANGEBURG, SC 29116-0018

415

Form 10-1-1001

Program 2002 Direct/Counter Program

Phone 803-534-2409

Form

Application Direct/Counter Program

Form 10-1-1001

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIR FOR TAX PURPOSES

Producer ID ~~XXXXXXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction UC23300002	48.00		DIRECT PAYMENT WHEAT
Farm 1774 Transaction UC23300003	245.00		DIRECT PAYMENT UPLAND COTTON
Farm 1774 Transaction UC23300004	9.00		DIRECT PAYMENT CORN
Farm 1774 Transaction UC23300005	66.00		DIRECT PAYMENT SOYBEANS
	369.00		Total Payments (Transactions)

Disbursement Information

J	ACH/	ASGN/	RECURL/	Amount	Payee Name/CCR Debt Repaid
L	Check	JPYHT	Claim		
02-21-2003	35288225			369.00	CLYDE B LIVINGSTON
				369.00	Total Disbursements
				369.00	Total Program Payment Earned

* 2/2/03 Warrick On File

ELM 01/4/03

(This form is available electronically.)

PREPARED DATE: 04/18/2003

CCC-509
(08-30-02)U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation

DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT

1. PROGRAM YEAR 2003

2A. COUNTY OFFICE NAME AND ADDRESS (Include Zip Code)
ORANGEBURG COUNTY FSA OFFICE

ORANGEBURG

SC 29116-0018

2B. COUNTY OFFICE TELEPHONE NUMBER (Include Area Code)
(803)534-24093. STATE CODE
454. COUNTY CODE
0755. FARM NUMBER
1774

NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.

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6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield	
			A. Direct	B. Counter-Cyclical				A. Direct	B. Counter-Cyclical
WHEAT	34.3	29.2	28	28	URCH	47.9	40.7	636	636
CORN	10.3	8.8	59	59	SORGH	0.7	0.6	35	35
SOYBN	13.5	11.5	13	13					

10. Owner or Producer's Name and Address (Including Zip Code)

CLYDE B. LIVINGSTON
PO BOX 1744
ORANGEBURG SC 29116-1744Identification Number: ~~0000~~

11. Commodity Payment Share 12. Commodity Payment Share

WHEAT	1.0000	URCH	1.0000
CORN	1.0000	SORGH	1.0000
SOYBN	1.0000		

13A. If ALL Direct and Counter-Cyclical Payments are refused, check below:

14. Advance Payment Selections (for all commodities)

A. Advance Direct Payments: 00/0000 (Month requested for receipt of Direct Payment.)

B. Advance Counter-Cyclical Payments:

- First Partial Payment
- Second Partial PaymentYES ☐ NO ☒
YES ☐ NO ☒

13B. Producer's Initials

13C. Date Initialed
(MM-DD-YYYY)

15A. SIGNATURE OF OWNER OR PRODUCER

15B. DATE (MM-DD-YYYY)

4/18/03

CUR 0148

1. PROGRAM YEAR 2003 13. STATE CODE 45 14. COUNTY CODE 075 15. FARM NUMBER 1774

CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)

10. Owner or Producer's Name and Address (Including Zip Code)	11. Commodity	12. Payment Share	11. Commodity	12. Payment Share
A. B. LIVINGSTON PO. BOX 53 NORTH SC 29112-0053				
***** Shares for all crops are zero *****				
Identification Number: ~~1234~~				

13A. If ALL Direct and Counter-Cyclical Payments are refused, check below.	14. Advance Payment Selections (for all commodities):
	A. Advance Direct Payments 00/0000 (Month requested for receipt of Direct Payment.)
13B. Producer's Initials	B. Advance Counter-Cyclical Payments:
13C. Date Initialed (MM-00-YYYY)	- First Partial Payment YES ☐ NO ☒
	- Second Partial Payment YES ☐ NO ☒

15A. SIGNATURE OF OWNER OR PRODUCER	15B. DATE (MM-00-YYYY)
<i>Default</i>	
FOR FSA USE ONLY	

16A. SIGNATURE OF CCC REPRESENTATIVE	16B. DATE (MM-00-YYYY)
<i>Haye Cullen</i>	8/12/03

17. REMARKS

Received base 8/12/03

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-U, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5764 (voice or TDD). USDA is an equal opportunity provider and employer.

ELM 0149

Date 10-27-2004
Time 11:03
Statement Type B Original

Program 2003 Direct/Counter Program
Application Direct/Counter Program

Phone 803-534-2409

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID ~~XXXXXXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y630100092	1,017.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
	1,017.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/Check	ASGN/JPYMT	RECVBL/Claim	Amount	Payer Name/CCC Debt Repaid
10-27-2004	35289733			1,017.00	CLYDE B LIVINGSTON
				1,017.00	Total Disbursements
				1,017.00	Total Program Payment Earned

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0019

419

Date 10-28-2003

Program 2003 Direct/Counter Program

Phone 803-534-2409

Time 10:25

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID [REDACTED] S

Disbursement Statement

Comment Information

This payment is subject to the average Adjusted Gross Income (AGI) limit. Failure to comply with the average AGI limit, including certification of compliance, will result in ineligibility for this payment.

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y830100427	425.00		DIRECT PAYMENT WHEAT
Farm 1774 Transaction Y830100428	1,727.00		DIRECT PAYMENT UPLAND COTTON
Farm 1774 Transaction Y830100429	145.00		DIRECT PAYMENT CORN
Farm 1774 Transaction Y830100430	7.00		DIRECT PAYMENT SORGHUM
Farm 1774 Transaction Y830100431	66.00		DIRECT PAYMENT SOYBEANS
	2,370.00		Total Payments (Transactions)

Disbursement Information

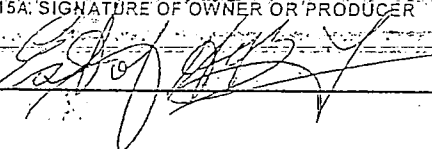
Issue Date	ACH/Check	ASGN/JPYNT	REC'DBL/Claim	Amount	Payee Name/CCC Debt Repaid
10-28-2003	35289517			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

* Eft Waiver on file *

ELM 0151

CCC-509 (10-06-04)				U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation																																															
DIRECT AND COUNTER-CYCLICAL PROGRAM CONTRACT				1. PROGRAM YEAR 2005																																															
				2A. COUNTY FSA OFFICE NAME AND ADDRESS (Including Zip Code) ORANGEBURG COUNTY FARM SERVICE AGENCY PO BOX 18 ORANGEBURG, SC 29116-0018																																															
				2B. COUNTY OFFICE TELEPHONE NUMBER (Including Area Code) (803)534-2409 FAX (803)536-5827																																															
NOTE: The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources; gathering and maintaining the data needed, and completing and reviewing the collection of information.				3. STATE CODE 4. COUNTY CODE 5. FARM NUMBER 45 075 1774																																															
The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. RETURN THE COMPLETED FORM TO THE FSA COUNTY OFFICE.																																																			
THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix (07-22-04), entitled "Appendix to form CCC-509 (07-22-04), Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix (07-22-04), and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions; and certify to the accuracy of the information set out on this form.																																																			
<table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> <th rowspan="2">6. Commodity</th> <th rowspan="2">7. Base Acres</th> <th rowspan="2">8. Maximum Payment Acres 85% of Base</th> <th colspan="2">9. Payment Yield</th> </tr> <tr> <th>A. Direct</th> <th>B. Counter-Cyclical</th> <th>A. Direct</th> <th>B. Counter-Cyclical</th> </tr> <tr> <td>Wheat</td> <td>34.3</td> <td>29.2</td> <td>28</td> <td>28</td> <td>Upland Cotton</td> <td>47.9</td> <td>40.7</td> <td>636</td> <td>636</td> </tr> <tr> <td>Corn</td> <td>10.3</td> <td>8.8</td> <td>59</td> <td>59</td> <td>Grain Sorghum</td> <td>0.7</td> <td>0.6</td> <td>35</td> <td>35</td> </tr> <tr> <td>Soybeans</td> <td>13.5</td> <td>11.5</td> <td>13</td> <td>13</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>								6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		A. Direct	B. Counter-Cyclical	A. Direct	B. Counter-Cyclical	Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636	Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35	Soybeans	13.5	11.5	13	13					
6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base				9. Payment Yield																																								
			A. Direct	B. Counter-Cyclical				A. Direct	B. Counter-Cyclical																																										
Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636																																										
Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35																																										
Soybeans	13.5	11.5	13	13																																															
10. Owner or Producer's Name and Address (Including Zip Code) CLYDE B LIVINGSTON PO BOX 1744 ORANGEBURG, SC 29116-1744					<table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>11. Commodity</th> <th>12. Payment Share</th> <th>11. Commodity</th> <th>12. Payment Share</th> </tr> <tr> <td>Wheat</td> <td>100 %</td> <td>Upland Cotton</td> <td>100 %</td> </tr> <tr> <td>Corn</td> <td>100 %</td> <td>Grain Sorghum</td> <td>100 %</td> </tr> <tr> <td>Soybeans</td> <td>100 %</td> <td></td> <td></td> </tr> </table>			11. Commodity	12. Payment Share	11. Commodity	12. Payment Share	Wheat	100 %	Upland Cotton	100 %	Corn	100 %	Grain Sorghum	100 %	Soybeans	100 %																														
11. Commodity	12. Payment Share	11. Commodity	12. Payment Share																																																
Wheat	100 %	Upland Cotton	100 %																																																
Corn	100 %	Grain Sorghum	100 %																																																
Soybeans	100 %																																																		
Identification Number:					14. Advance Payment Selections (for all commodities): A. Advance Direct Payments <u>June 2005</u> (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒																																														
13A. If ALL Direct and Counter-Cyclical Payments are refused check below: ☐		13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)		15A. SIGNATURE OF OWNER OR PRODUCER 		15B. Date (MM-DD-YYYY) 6/11/05																																											
16A. SIGNATURE OF CCC REPRESENTATIVE 					FOR FSA USE ONLY			16B. Date (MM-DD-YYYY) 6/22/05																																											
17. REMARKS																																																			

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

1. PROGRAM YEAR 2005		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774	
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)							
10. Owner or Producer's Name and Address(Including Zip Code) A B LIVINGSTON PO BOX 53 NORTH, SC 29112-0053 Identification Number: ~~6835~~				11. Commodity		12. Payment Share	
				Wheat		0 %	
				Corn		0 %	
				Soybeans		0 %	
13A. If ALL Direct and Counter-Cyclical Payments are refused check below: ☐				14. Advance Payment Selections(for all commodities): A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒			
13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)					
15A. SIGNATURE OF OWNER OR PRODUCER 				15B. Date(MM-DD-YYYY) 6/1/05			

ELM 0153

422

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 10-05-2004

Program 2005 Direct/Counter Program

Phone 803-534-2409

Time 08:40

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-~~456~~ 8

Disbursement Statement

Transaction InformationReference Number(s)

Farm 1774

Transaction Y527800145

Amount

STAT

Payment Description

182.00

COUNTER CYCLICAL PAYMENT - CORN

182.00

Total Payments (Transactions)

Disbursement Information

Issue ACH/

ASGN/

RECVBL/

Date Check

JPYNT

Claim

Amount

Payee Name/CDE Debt Repaid

10-05-2004 42342914

182.00

CLYDE B LIVINGSTON

182.00

Total Disbursements

182.00

Total Program Payment Earned

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

09-18-2006

Program 2005 Direct/Counter Program

Phone 503-534-2409

Time 08:17

Application Direct/Counter Program

Statement Type 8 Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX ~~9~~ 9

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction UA26100094	3,554.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
Farm 1774 Transaction UA26100095	3.00		COUNTER CYCLICAL PAYMENT - SORGHUM
	3,560.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASSN/	RECVBL/	Amount	Payee Name/CCC Debt Repaid
	Check	JPYMT	Claim		
09-18-2006	42342714			3,560.00	CLYDE B LIVINGSTON
				3,560.00	Total Disbursements
				3,560.00	Total Program Payment Earned

United States
Department of
Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0015

Date 10-19-2005

Program 2005 Direct/Counter Program

Phone 803-534-2409

Time 12:01

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAI	Payment Description
Farm 1774 Transaction Y829200374	212.00		DIRECT PAYMENT - WHEAT
Farm 1774 Transaction Y829200385	864.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774 Transaction Y829200396	72.00		DIRECT PAYMENT - CORN
Farm 1774 Transaction Y829200397	3.00		DIRECT PAYMENT - SORGHUM
Farm 1774 Transaction Y829200398	33.00		DIRECT PAYMENT - SOYBEANS
	1,184.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVBL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JPYMT	Claim		
10-19-2005	32057979			1,184.00	CLYDE B LIVINGSTON
				1,184.00	Total Disbursements
				1,184.00	Total Program Payment Earned

Date 01-23-2005

Program 2005 Direct/Counter Program

Phone 803-534-2409

Page 00134

Application Direct/Counter Program

Statement Type 3 Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANSEBURG, SC 29116-1744

REMAIN FOR THE PURPOSES

Producer ID XXX-XX-XXXX 9

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
Farm 1774 Transaction Y717400014	213.00		DIRECT PAYMENT - WHEAT
Farm 1774 Transaction Y717400015	263.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774 Transaction Y717400016	73.00		DIRECT PAYMENT - CORN
Farm 1774 Transaction Y717400017	4.00		DIRECT PAYMENT - SOYBEANS
Farm 1774 Transaction Y717400018	33.00		DIRECT PAYMENT - SOYBEANS
	1,186.00		Total Payments (Transactions)

Program Information

Issue Date	ACH/Check	ASGN/JPYMT	REC'D/L/Claim	Amount	Payee Name/CCC Debt Repaid
06-23-2005	32057491			1,186.00	CLYDE B LIVINGSTON
				1,186.00	Total Disbursements
				1,186.00	Total Program Payment Earned

* Eff Waiver on file * -279-

9/17/01 5/1



1. PROGRAM YEAR 2006		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774	
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)							
10. Owner or Producer's Name and Address(Including Zip Code) A B LIVINGSTON PO BOX 53 NORTH, SC 29112-0053 Identification Number: 12A. Refused Payment Information: ☐ All Direct Payments are Refused ☐ All Counter-Cyclical Payments are Refused				11. Commodity		12. Payment Share	
				Wheat		0 %	
				Corn		0 %	
				Soybeans		0 %	
13A. Producer's Initials 13C. Date Initialed (MM-DD-YYYY)				14. Advance Payment Selections (for all commodities): A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒			
				15B. Date (MM-DD-YYYY) 9/26/06			
15A. SIGNATURE OF OWNER OR PRODUCER 							

428

UNITED STATES
Department of
Agriculture

FARM SERVICE AGENCY

ORANGEBURG COUNTY FSA OFFICE
ORANGEBURG, SC 29116-0018

Date 09-24-2007

Program 2006 Direct/Counter Program

Phone 803-534-2409

Time 09:09

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX S

Disbursement Statement

Transaction InformationReference Number(s)

Farm	Transaction	Amount	STAT	Payment Description
1774	Y826700086	3,554.00		COUNTER CYCLICAL PAYMENT - UPLAND COTTON
		3,554.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/ Date	ASGN/ JPYHT	RECVBL/ Claim	Amount	Payee Name/CCC Debt Repaid
09-24-2007	44614197			3,554.00	CLYDE B LIVINGSTON
				3,554.00	Total Disbursements
				3,554.00	Total Program Payment Earned

United States

Department of

Agriculture

Farm Service Agency

ORANGEBURG COUNTY FSA OFFICE

ORANGEBURG, SC 29116-0018

429

10-19-2006

Program 2006 Direct/Counter Program

Phone 803-534-2407

10-19-2006

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name:

CLYDE B LIVINGSTON

PO BOX 1744

ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-XX-XXXX, S

Disbursement Statement

Transaction Information

Reference Number(s)

Reference Number(s)	Transaction	Amount	STAT	Payment Description
Farm 1774	Transaction Y829200365	425.00		DIRECT PAYMENT - WHEAT
Farm 1774	Transaction Y829200366	1,722.00		DIRECT PAYMENT - UPLAND COTTON
Farm 1774	Transaction Y829200367	145.00		DIRECT PAYMENT - CORN
Farm 1774	Transaction Y829200368	7.00		DIRECT PAYMENT - SORGHUM
Farm 1774	Transaction Y829200369	66.00		DIRECT PAYMENT - SOYBEANS
		2,370.00		Total Payments (Transactions)

Disbursement Information

Issue	ACH/	ASGN/	RECVBL/	Amount	Payee Name/CCC Debt Repaid
Date	Check	JPYMT	Claim		
10-19-2006	42343211			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

Sum 0161

CCC-509

CCC-509
(12/11/06)U.S. DEPARTMENT OF AGRICULTURE
Commodity Credit CorporationDIRECT AND COUNTER-CYCLICAL
PROGRAM CONTRACT

NOTE:

The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

1. PROGRAM YEAR

2007

2A. COUNTY FSA OFFICE NAME AND ADDRESS
(Including Zip Code)

ORANGEBURG COUNTY FARM SERVICE AGENCY
PO BOX 18
ORANGEBURG, SC 29116-0018

2B. COUNTY OFFICE TELEPHONE NUMBER
(Including Area Code)

(803)534-2409

FAX (803)536-5827

3. STATE CODE 4. COUNTY CODE 5. FARM NUMBER

45

075

1774

The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002, (Pub. L. 107-171). The information will be used to determine eligibility for program benefits. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in denial of program benefits. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001, 15 USC 714m; and 31 USC 3729, may be applicable to the information provided. RETURN THE COMPLETED FORM TO THE FSA COUNTY OFFICE.

THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers on the farm identified above for the commodities identified in Item 6. The terms and conditions of the direct and counter-cyclical program contract are contained in the CCC-509 Appendix (11-08-06), entitled "Appendix to form CCC-509 (11-08-06), Direct and Counter-Cyclical Program Contract." By signing this contract, the undersigned producers on the farm identified in Item 5 are participating in the Direct and Counter-Cyclical Program for the commodities identified in Item 6. By signing this contract, producers: (1) acknowledge receipt of the CCC-509 Appendix (11-08-06), and agree to abide by the terms contained therein, and (2) agree to comply with the regulations governing the applicable program and payment eligibility and limitation provisions; and certify to the accuracy of the information set out on this form.

6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield		6. Commodity	7. Base Acres	8. Maximum Payment Acres 85% of Base	9. Payment Yield	
			A. Direct	B. Counter-Cyclical				A. Direct	B. Counter-Cyclical
Wheat	34.3	29.2	28	28	Upland Cotton	47.9	40.7	636	636
Corn	10.3	8.8	59	59	Grain Sorghum	0.7	0.6	35	35
Soybeans	13.5	11.5	13	13					

10. Owner or Producer's Name and Address (Including Zip Code)

CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

11. Commodity	12. Payment Share	11. Commodity	12. Payment Share
Wheat	100 %	Upland Cotton	100 %
Corn	100 %	Grain Sorghum	100 %
Soybeans	100 %		

Identification Number: ~~0000~~

13A. Refused Payment Information:

- ☐ All Direct Payments are Refused
- ☐ All Counter-Cyclical Payments are Refused

13B. Producer's Initials

13C. Date Initialed
(MM-DD-YYYY)

14. Advance Payment Selections (for all commodities):

A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.)

B. Advance Counter-Cyclical Payments:

-First Partial Payment Yes ☐ No ☒-Second Partial Payment Yes ☐ No ☐

15A. SIGNATURE OF OWNER OR PRODUCER

15B. Date (MM-DD-YYYY)

9/7/07

16A. SIGNATURE OF CCC REPRESENTATIVE

16B. Date (MM-DD-YYYY)

9-19-2007

17. REMARKS

On Request to enroll after 9/30/07 deadline

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Western Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

1. PROGRAM YEAR 2007		3. STATE CODE 45		4. COUNTY CODE 075		5. FARM NUMBER 1774					
CONTINUATION OF OWNERS OR PRODUCER'S CROP INFORMATION (From Page 1)											
10. Owner or Producer's Name and Address(Including Zip Code) A B LIVINGSTON PO BOX 53 NORTH, SC 29112-0053 Identification Number: 				11. Commodity		12. Payment Share					
				Wheat		0 %		Upland Cotton		0 %	
				Corn		0 %		Grain Sorghum		0 %	
				Soybeans		0 %					
13A. Refused Payment Information:				14. Advance Payment Selections (for all commodities):							
☐ All Direct Payments are Refused ☐ All Counter-Cyclical Payments are Refused				A. Advance Direct Payments _____ (Month requested for receipt of Direct Payment.) B. Advance Counter-Cyclical Payments: -First Partial Payment Yes ☐ No ☒ -Second Partial Payment Yes ☐ No ☒							
13B. Producer's Initials		13C. Date Initialed (MM-DD-YYYY)									
15A. SIGNATURE OF OWNER OR PRODUCER Cash Rent Certification						15B. Date (MM-DD-YYYY) 9-7-2007					

E417 0163

432

Department of
Agriculture

ORANGEBURG, SC 29116-0018

Date 10-23-2007

Program 2007 Direct/Counter Program

Phone 803-534-2409

Time 12:41

Application Direct/Counter Program

Statement Type B Original

PAGE 1

Name: CLYDE B LIVINGSTON
PO BOX 1744
ORANGEBURG, SC 29116-1744

RETAIN FOR TAX PURPOSES

Producer ID XXX-~~XXXXXX~~ S

Disbursement Statement

Transaction Information

Reference Number(s)	Amount	STAT	Payment Description
arm 1774 Transaction Y729600360	425.00		DIRECT PAYMENT - WHEAT
arm 1774 Transaction Y729600361	1,727.00		DIRECT PAYMENT - UPLAND COTTON
arm 1774 Transaction Y729600362	145.00		DIRECT PAYMENT - CORN
arm 1774 Transaction Y729600363	7.00		DIRECT PAYMENT - SORGHUM
arm 1774 Transaction Y729600364	66.00		DIRECT PAYMENT - SOYBEANS
	2,370.00		Total Payments (Transactions)

Disbursement Information

Issue Date	ACH/ Check	ASGN/ JPYMT	RECVBL/ Claim	Amount	Payee Name/CCC Debt Repaid
10-23-2007	44614365			2,370.00	CLYDE B LIVINGSTON
				2,370.00	Total Disbursements
				2,370.00	Total Program Payment Earned

Elm 01/64

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Court of Appeals Case Tracking No. 201079986
Trial Court Case No. 2007-CP-38-826

In re: Estate of Atm Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atm Burns Livingston and
Emma Lou Livingston Martin,.....Respondents/Appellants,

v.

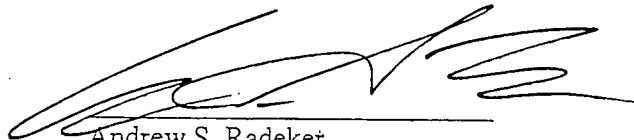
Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Appellant/Respondent.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be
included by any of the parties and not any other material.

Respectfully submitted,



Andrew S. Radeker
Harrison & Radeker, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
Attorney for Appellant/Respondent