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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
The Honorable R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2022-000369

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001 ……Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
And L. Cliff Redd, ……Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
And L. Cliff Redd are……Petitioners.

REPLY to RESPONDENT'S RETURN
TO MOTION IN OPPOSITION TO DISMISSAL AND FOR SUBSTITUTION

This will be short. The Estate of Herbert Anderson, Jr. (the "Estate") has respectfully requested to be substituted as a party in place of any settling petitioner pursuant to Rule 265(c) SCACR, and/or to be joined as a party to this appeal. Indeed, the Estate is a necessary party to this appeal of a joint and indivisible judgment, and it should have been included as a party to the appeal from the outset. Respondent argues that "the case is moot." The case is not moot. The judgment on appeal—which is inseverably "in favor of [Respondent]"—is still very much alive, as Respondent admits

in its Return. Respondent concedes that Respondent "is pursuing the Estate because it has assets to pay the judgment." This is an acknowledgment by Respondent that the judgment is not satisfied, and the appeal of that judgment is therefore **not moot**.[1] In fact, to dismiss this appeal at this "final-hour" stage would compromise judicial economy and efficiency — challenges to the order in probate court are pending and will likely become the subject of future appeal, as will the contribution actions that will surely ensue if Petitioners have indeed settled a joint judgment without consent of the Estate.[2]

Respondent scoffs that the Estate has not cited "any cases" to support its requests. *Actually*, the Estate cited quite a few cases in its Motion to Join,[3] and the Respondent seems to be forgetting that "cases" are not the only source of law. The following Rules support the Estate's position:

- **Rules 19(a) and 21, SCRCP**, and the cases construing these rules to permit joinder at the appellate level, including before the Supreme Court, particularly as to necessary parties.
- **Rule 25(e), SCRCP**, permitting substitution of parties "at any stage" including "by the appellate court."

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[1] Notably, Respondent has not filed a satisfaction of judgment with the circuit court. Indeed, Respondent is in a bit of a pickle in that regard because Respondent cannot satisfy a joint judgment without snuffing out its efforts to collect upon it in probate court. In other words, if the judgment is marked "satisfied," then there is nothing for Respondent to collect.

[2] The Estate believes that the email attached by Respondent in its filing dated December 28, 2023, from Petitioners' attorney Wilson (email dated December 21, 2023), is outdated and does not accurately reflect the true status of any purported "settlement" between Respondent and *both* Petitioners.

[3] The Estate incorporates herein its arguments from its Motions filed December 4, 2023 and December 18, 2023, including its citations to cases, rules, and law in support of its position.

- **Rule 265(c), SCACR**, permitting substitution "by motion to the appellate court."

In sum, the purpose of the Estate's motions is to respectfully request that this Court would exercise its discretion and permit the Estate to become a party to this ongoing appeal. The Estate respectfully asks that this Court would substitute it for any settling Petitioner(s) and proceed with oral argument, as scheduled, on January 10, 2024.

Respectfully submitted,

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