THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

The Honorable Lawton McIntosh

Case No. 2019-000905

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse .....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992.....Respondents.

RECORD ON APPEAL

RECEIVED
JUN 16 2020
SC Court of Appeals

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STATE OF SOUTH CAROLINA	)	IN THE PRO...TE COURT
	)	
COUNTY OF: ALLENDALE	)	RECUSAL AND REQUEST FOR APPOINTMENT OF SPECIAL PROBATE COURT JUDGE
	)	
IN THE MATTER OF:	)	
G. H. KEARSE	)	CASE NUMBER: 2013-ES-03-00063
(Decedent)	)	

I hereby recuse myself in the above estate and request the appointment of a Special Probate Court Judge.

Explanation (Optional): SANDY SHIRLEY IS MY CLERK IN THE ALLENDALE PROBATE COURT AND SHE HIS THE WIFE OF THE P.R. OF THE ESTATE JOHN MORGAN KEARSE.

☐ I recuse myself from said case in its entirety.

☒ I recuse myself from a portion of said case:

☐ Administration

☒ Litigation

Describe the litigation: PETITION FOR INSTRUCTIONS / MOTION TO DISMISS

Pursuant SCPC 82-1-303(e), venue for subsequent matters, including appeals, will remain with the county where that proceeding or file commenced.

List all Party(ies) and/or Attorney(s) involved:

Name of Party/Attorney: JOHN MORGAN KEARSE P.R. / ESQUIRE
Address: P.O. BOX 521
ALLENDALE, SC 29810

Name of Party/Attorney: SEE ATTCHED SHEET
Address:

Name of Party/Attorney:
Address:

D. KEITH SMITH, Probate Court Judge

DATE: JUNE 6 , 2016

-00635

FORM #SCCARecusal (1/2014)
62-1-303

1. JOHN MORGAN KEARSE P.R.

P.O. BOX S21

ALLENDALE, SC

2. STEPHEN M. SLOTCHIVER (ATTORNEY FOR ELIZABETH K. KEARSE)

44 STATE STREET

CHARLESTON, SC 29401

3. DANIEL A. SPEIGHTS (ATTORNEY FOR JULIA K. SHARP)

100 OAK STREET

HAMPTON, SC 29924

4. GORDON KEARSE

P.O. BOX 221

FAIRFAX, SC 29827

S. RACHAEL K. BEST

S0SS LAKESHORE DRIVE

COLUMBIA, SC 29206

6. JOSEPH W. KEARSE

6620 MERRILL RD.

COLUMBIA, SC 29209

-00636

The Supreme Court of South Carolina

ORDER

I find that the Honoreble D. Keith Smith, Judge of Probate for Allendale County, is disqualified from any further hearings with regards to litigation In the Matter of G. H. Kearse (Case No. 2013-ES-03-00063) and therefore is unable to sit as judge of probate in this matter only.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Sheila Odom, Judge of Probate for Hampton County, be, and hereby is, appointed es special probate court judge to sit in the above matter. As such special probate court judge, the Honorable Sheila Odom shall have all the powers and duties appertaining to a probate court judge for Allendale County for the handling of the above matter only. Upon issuance of the final order regarding the litigation in the above referenced case, it will be transferred back to Allendale County where the Honorable D. Keith Smith will handle all other matters involving the Estate.

COSTA M. PLEICONES, CHIEF JUSTICE

BY: Rosalyn W. Frierson

Rosalyn W. Frierson, Director
South Carolina Court Administration

June 16, 2016
Columbia, South Carolina

-00638

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ALLENDALE) CASE NUMBER: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 02/27 20 17

The Decedent, G.H. Kearse, died testate on June 10, 2013, survived by six children: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph"); and John Morgan Kearse ("Morgan"). The Petitioner (Morgan) was appointed Personal Representative of the Estate and in that capacity subsequently retained Kenneth B. Wingate, Esq. as his counsel.

On April 8, 2016, the Petitioner filed a Summons and Petition for Instructions asking the Court to interpret the Decedent's Will. Two of the Respondents, Beth and Julie, filed responsive pleadings through their counsel, Stephen M. Slotchiver, Esq. and Daniel A. Speights, Esq., respectively. The other three Respondents (Gordon, Rachael, and Joseph) (the "Pro Se Respondents") did not retain counsel, although two (Gordon and Joseph) served Responses to the

Petition. The file reflects that all of the Pro Se Respondents have been served with all pleadings and notices of hearing.

On June 16, 2016, the Supreme Court of South Carolina issued an Order appointing the undersigned as a Special Probate Judge for Allendale County. Since that time, the parties have litigated the Petition for Instructions in this Court. Following limited discovery, Mr. Slotchiver filed a Motion for Summary Judgment on the Petition for Instructions and a Petition for Removal of the Personal Representative, and Mr. Wingate filed a Motion to Dismiss the Petition for Instructions.

The Court scheduled a motions hearing on Mr. Slotchiver's Motion for Summary Judgment and Mr. Wingate's Motion to Dismiss for February 2, 2017. Notice of the hearing was duly served on all parties. The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "The parties have reached a global settlement in this matter, including the siblings who are pro se parties" [Letter from Wingate to Court at 5:09 p.m.]. Mr. Wingate further advised the Court that, "Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present" [*Id.*]. Finally, Mr. Wingate advised the Court that, "Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate" [*Id.*].

The Court called the matter for hearing as scheduled on February 2, 2017. Present were Messrs. Wingate, Slotchiver and Speights, and two of the parties, Beth and Julie. The Petitioner nor any of the Pro Se Respondents appeared, although they had notice of the hearing. Prior to the hearing, neither Mr. Slotchiver nor Mr. Speights had any notice that the Petitioner would attempt to

withdraw his consent to the settlement. [Tr. 15].

Before Mr. Speights read the settlement agreement into the record, Mr. Wingate advised the Court that, he did not have any document from the pro se litigants consenting to the settlement [Tr. at 5]. Mr. Wingate then took what he described as a "unilateral step" and submitted Petitioner's resignation as Personal Representative "irrevocably" [Tr. at 6]. Mr. Wingate informed the Court that as a result of this action, "all of his [the Petitioner's] authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do, for this estate" [Tr. at 7].

Finally, Mr. Wingate told the Court and the parties that the Petitioner's "position will be that he does not consent to the settlement" [Tr. at 7]. Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows:

> I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be - my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent.

[Tr. at 7].

Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record [Tr. at 11-13]. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. Mr. Wingate did not object to the introduction of any of the exhibits.

Mr. Speights then asked the Court to recognize the settlement. Mr. Slotchiver joined in Mr.

Speights' argument and pointed out that the two Pro Se Respondents (Rachael and Joseph), who had not delivered their consents, are not required to take any action under the Term Sheet. In any event, the record clearly shows, and the Court finds, that Rachael and Joseph advised the Petitioner that they agreed to the settlement before Mr. Wingate represented to the Court that a settlement had been reached, but they chose not to attend the hearing and dispute the settlement.

Following the presentations of counsel, the Court reviewed the Term Sheet and all of the exhibits submitted into evidence. At that point, the Court entered into the record the Final Term Sheet of Agreement as a family agreement and stated that an Order would be entered into the record and accepted on the terms as it is on the face of the agreement itself [Tr. 21]. This Order memorializes the rulings made from the Bench.

IN ACCORDANCE WITH THE FOREGOING, IT IS ORDERED AS FOLLOWS::

(1) The settlement set forth in the Term Sheet is approved.

(2) All parties shall comply with the Term Sheet.

(3) The Petition for Instructions is dismissed with prejudice.

(4) The Court accepts Petitioner's resignation as the Personal Representative. Effective February 2, 2017, Petitioner's authority is terminated. The Petitioner has no power to take any action. Petitioner will not issue any checks. The Petitioner shall not alter or destroy any estate assets or any documents or electronically stored information relating to the estate (including, but not limited to, any financial records, letters, emails, and social media messages).

(5) The Petitioner shall file with the Court an updated accounting within ten days of the date of this Order.

(6) Morgan shall pay Julie's legal fees and expenses incurred in connection with the

defense of his Petition for Instructions within seven (7) days of the date of this Order.

(7) Morgan shall pay Beth's legal fees and expenses within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(8) Morgan shall reimburse the Estate for all legal fees and expenses paid to Mr. Wingate, and shall be responsible to pay any outstanding legal fees and expenses owed, but not yet paid, to Mr. Wingate, within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(9) The Court will contact Algernon Gibson Solomons, Jr., Esq. and determine if he will agree to serve as the Special Administrator. In the event that Mr. Solomons declines to serve, the Court will appoint a neutral non-family member to serve as the Special Administrator.

(10) Immediately upon appointment of the Special Administrator, the Petitioner and his counsel shall turn over all estate assets (other than real estate) and all estate documents and electronically stored information to the Special Administrator. In the event that any such assets, documents, or electronically stored information are not in the possession of the Petitioner or his counsel, Petitioner shall immediately provide to the Court, with a copy to the Special Administrator and all parties, an itemized list of such assets, documents, or electronically stored information and the precise location and custodian of each such item.

IT IS SO ORDERED.

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina
February 27, 2017

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF HAMPTON)

Re: Estate of George H. Kearse
Case No: 2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Order this 3rd day of March, 2017, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

Kenneth B. Wingate, Esquire
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
PO Box 12129
Columbia, South Carolina 29211

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

J. Morgan Kearse, Esquire
Kearse Law Firm, LLC
Post Office Box 521
184 Barnwell Highway
Allendale, SC 29810

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Gordon Kearse
Post Office Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
3rd day of March, 2017

Tammy W Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3-3-2019

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)
IN THE MATTER OF:)
G. H. Kearse)
(Decedent))

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

CASE NUMBER: 2013-ES-03-00063

I, J. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 2017

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: J. Morgan Kearse
Print Name: J. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearselawallendale.com

ORDER

With the appointment of Harley Ruff, Ruff & Ruff, LLC as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of J. Morgan Kearse shall be terminated.

Executed this 20th day of March, 2017.

, Probate Court Judge

PROBATE COURT
HAMPTON COUNTY SC
FILED
DATE 2/2/17
TIME 11:43 AM

FORM #335ES (1/2014)
62-3-610

County of Hampton

file please

"Striving for Excellence"

Probate Court
Telephone: (803) 914-2173
Fax: (803) 914-2183

Sheila B. Odom
Probate Judge

March 20, 2017

VIA US MAIL AND EMAIL (dspeights@speightsrunyan.com
Mr. Daniel S. Speights
Attorney At Law
Speights & Runyan
P. O. Box 685
Hampton, S. C. 29924

Re: Estate of G. H. Kearse
Case No.:2016es250114

Dear Mr. Speights:

This letter is to inform you Mr. Harley Ruff of Ruff & Ruff, LLC Beaufort, S. C. has graciously accepted to serve as the Special Administrator in the above matter. This Court did reach out to both Mr. A. G. Solomons, Jr. and Mr. Kevin Brown who both respectfully declined to serve in the capacity of Special Administrator.

This Court will notify the other counsel of record of this appointment, copy attached. The Pro Se parties are being notified ordinary first class mail.

In addition to the Order appointing Mr. Ruff Special Administrator, this Court will photocopy the record and provide it ordinary first class mail to Mr. Ruff.

Sincerely,

Judge of Probate

SBO/

Enclosure

RECEIVED
MAR 22 2017

MAR 23 2017

cc: Kenneth B. Wingate, Esquire (via email)
J. Morgan Kearse, Esquire (via email)
Stephen M. Slotchiver, Esquire (via email)
The Honorable Keith Smith, Allendale Probate Court
Gordon Kearse
Joseph W. Kearse
Rachael K. Best

STATE OF SOUTH CAROLINA)
)
COUNTY OF: HAMPTON)
)
IN THE MATTER OF:)
GEORGE HAROLD KEARSE)
(Decedent))

IN TI PROBATE COURT

ORDER FOR HEARING

CASE NUMBER: 2016ES250114

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: AUGUST 17TH, 2017

TIME: 2:00PM

PLACE: THE HAMPTON COUNTY COURT HOUSE - FAMILY COURT ROOM

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this 12th day of June, 2017.

SHEILA B. ODOM, Probate Court Judge

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence.*

FORM #131ES (1/2014)
62-1-401, general

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ALLENDALE) CASE NUMBER: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

A TRUE COPY
Shella B. Odom Probate Judge
Hampton County SC
Date 09/18 20 17

Petitioner originally instituted this action by filing a Petition for Instructions asking this Court to interpret the last Will and Testament of Decedent, G.H. Kearse, who died testate on June 10, 2013. Respondents are the Kearse Family Education Trust ("Trust") and all of the decedent's children, individually and as Trustees, to wit: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph") and John Morgan Kearse ("Morgan").

Respondents, Beth and Julie, by their respective counsel, Stephen M. Slotchiver and Daniel A. Speights, filed Responses to the Petition. Respondents, Gordon, Rachael, and Morgan, did not file Responses to the Petition. Respondents, Gordon, Rachael, and Joseph ("*Pro Se* Respondents"), nor Morgan (individually) are represented by counsel.

This matter is now before the Court on a Motion to Alter or Amend or, in the Alternative, for a New Hearing ("Motion"). The Motion was filed on or about March 16, 2017, by "Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney," Sweeny Wingate & Barrow P.A. ("S.W.B") (Kenneth B. Wingate and Matthew J. Myers). Petitioner seeks an order altering or amending this Court's February 27, 2017 Order ("Order"). No Respondent has filed a Joinder in the Motion.

Petitioner also filed a separate Notice of Motion and Motion to Dismiss Petition for Instructions, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Costs dated July 27, 2017. Although Petitioner attempted to argue this Motion (July 27. 2017), Mr. Slotchiver, on behalf of his client, objected that it was not properly before this Court, and the Court sustained the objection and denied the Motion.

By way of background, the Court scheduled a February 2, 2017 hearing to resolve several outstanding motions. The day before the hearing, Petitioner's counsel (Mr. Wingate) advised the Court that the parties had reached a global settlement which would be read into the record at the hearing. The following day, Petitioner, as the Personal Representative, appeared at the hearing through Mr. Wingate. Respondents, Beth and Julie, appeared and were represented by their respective counsel, Messrs. Slotchiver and Speights. Respondents, Gordon, Rachael, Joseph, and Morgan, did not appear individually or through counsel.

Following the hearing, the Court executed and filed the Order which Petitioner now challenges. The Order enforces an agreement ("Term Sheet" or "Settlement Agreement") entered into by all of the parties the day before the February 2, 2017 hearing. Petitioner particularly challenges the following provisions of the Settlement Agreement (Term Sheet):

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your [Mr. Wingate's] legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

[*Id.*]. In exchange for these considerations, Julie also agreed not to object to Morgan retaining the previously paid $25,000 P.R. commission, and to Morgan using their father's law office rent free so long as he complies with certain conditions set forth therein.

No Respondent, including Morgan, has joined in the present Motion or filed any pleading seeking such relief or otherwise challenging any provision of the Order. Additionally, no party (including Petitioner), has objected to this Court's Order dated March 20, 2017 appointing Harley Ruff as Successor Personal Representative.

In his present Motion, Petitioner asserts that "the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code." [Motion at 10]. Petitioner is mistaken. Messrs. Slotchiver and Speights introduced documentary evidence into the record at the February 2, 2017 hearing, including the Settlement Agreement (Term Sheet) and multiple emails to the Court and among counsel reflecting, among other things, that the parties had entered into the Settlement Agreement. Petitioner did not object to the introduction of any of this evidence.

Nevertheless, the Court has carefully reviewed Petitioner's request to reconsider its order in light of the record made before the Court at the hearing on February 2, 2017. Importantly, Petitioner

does not contest, nor seek to alter or amend, this Court's essential findings of fact, including the following findings which are particularly relevant to his current Motion:

- "The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "The parties have reached a global settlement in this matter, including the siblings who are pro se parties" |Letter from Wingate to Court at 5:09 p.m.|." |Order at 2 (emphasis added)|.

- "Mr. Wingate further advised the Court that, 'Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present.'" |Order at 2 (emphasis added)|.

- "Finally, Mr. Wingate advised the Court that, 'Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate.'" |Order at 2 (emphasis added)|.

- "Mr. Wingate then took what he described as a 'unilateral step' and submitted Petitioner's resignation as Personal Representative 'irrevocably.'" |Order at 3 (emphasis added)|.

- "Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows: I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be – my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent." |Order at 3 (emphasis added)|.

- "Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record |Tr. at 11-13|. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. Mr. Wingate did not object to the introduction of any of the exhibits." |Order at 3 (emphasis added)|.

- "Mr. Speights then asked the Court to recognize the settlement," and "Mr. Slotchiver joined in" the request. |Order at 3|.

A full hearing was held on Petitioner's present Motion on August 17, 2017. Petitioner and his counsel (Mr. Myers) appeared, and Mr. Myers fully argued the Motion. Respondents, Beth and Julie, were present and again represented by their counsel, Messrs. Slotchiver and Speights,

respectively, both of whom fully argued their positions. In addition, Respondents, Rachael and Joseph, were present in the courtroom. Respondent, Gordon, was not present.

During his argument, Mr. Myers referred to the Affidavit of J. Morgan Kearse ("**Affidavit**") attached to the Motion. Messrs. Slotchiver and Speights timely objected to the Affidavit unless and until they had an opportunity to cross-examine the Affiant, who was present in the courtroom. The Court permitted Mr. Myers to continue and deferred ruling on that issue until after it fully heard the arguments of counsel. It is unnecessary to rule on the objection given the Court's decision as set forth below.

Following full argument, the Court advised the parties that for several independent reasons, the Motion does not set forth any basis for the Court to alter or amend its prior Order or to set this matter down for an evidentiary hearing. This Order memorializes those rulings.

First, and primarily, prior to the hearing, Mr. Wingate had an opportunity on behalf of his client to object to the presentation of the Settlement Agreement, or ask for a continuance. Mr. Wingate did neither. There is no correspondence, email, or telephone call from Mr. Wingate on behalf of his client seeking more time to present any argument why the Settlement Agreement should not be taken into consideration and received into this Court's record as it was presented many different ways that the parties were all in agreement.

Second, no testimony or evidence of any kind was offered by Mr. Wingate at the February 2, 2017 hearing, or by any of the *Pro Se* parties. Furthermore, there has been nothing filed with the Court from the *Pro Se* parties (or Morgan individually) from the date of that hearing to the current date.

Third, Mr. Wingate offered emphatically into the Court record on that day the resignation of

Mr. Kearse as the Personal Representative. While the Court heard from and considered all of Petitioner's arguments, the reality is that Petitioner is not the Personal Representative.

For those primary reasons alone, the Motion should be denied. Petitioner informed the Court that the Settlement Agreement was made and was going to be presented and read into record on February 2, 2017. That is exactly what happened. Petitioner did not object and chose to offer no evidence or even an argument against the enforcement of an agreement the parties entered into the day before.

Petitioner suggests that his Affidavit supports his position. In fact, the Affidavit supports this Court's findings as set forth in its Order. Specifically, Petitioner admits that he and the *Pro Se* siblings agreed to the settlement which the Court approved [Affidavit ¶10].[1] During oral argument, Mr. Myers also acknowledged this fact when he asserted that although the parties had entered into an agreement, Petitioner "backed out" at the February hearing. Again, it is uncontradicted that the parties entered into an agreement.

Furthermore, assuming everything in the Affidavit is true, which Beth and Julie dispute, every factual assertion in the Affidavit was known to the Petitioner at the February 2, 2017 hearing. Petitioner is not entitled to a second bite of the apple.

Finally, Petitioner asserts in one sentence at the end of his Motion that, "To the extent that

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[1]While it is unnecessary to decide this issue, the Affidavit suggests that at some point in the evening before the February hearing, Petitioner – a fiduciary for all of the Respondents – circulated a separate agreement to the *Pro Se* Defendants (but not to Beth or Julie), seeking their agreement to support his fee requests. Petitioner asked the *Pro Se* Defendants to execute this "private agreement" not only as Respondents, but separately as Trustees of the Trust [Affidavit, Exhibit A]. According to the Affidavit, at some point after one of the *Pro Se* Defendants (Gordon) allegedly refused to sign, Petitioner decided to "withdraw" from the Settlement Agreement. For the reasons set forth above, Petitioner was not entitled to do that.

the Court does not alter or amend its Order dated February 27, 2017, as requested in this Motion, Petitioner requests a new hearing so that the parties may for the first time introduce evidence regarding the issues encompassed by the Order." [Motion at 10]. The request is not well-founded for two reasons. First, the central facts relevant to whether or not Petitioner may have a second day in Court are undisputed. Second, and more importantly, as briefly explained above, Petitioner appeared through counsel at the prior hearing and had every opportunity to introduce evidence. Petitioner chose not to request a continuance or produce any evidence.

For the foregoing reasons, Petitioner's Motion filed on or about March 16, 2017 is hereby denied.

IT IS SO ORDERED.

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina
September 15, 2017
~~August ____, 2017~~

ELECTRONICALLY FILED - 2018 Feb 07 12:05 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,

Petitioner,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov., 5, 1992,

Respondents,

OF WHICH

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,

Appellant,

Elizabeth Kearse Gooding and Julia Kearse Sharp,

Appellees.

ORDER

Appellant has appealed two Orders issued by Judge Sheila B. Odom, as Special Probate Judge for the Allendale County Probate Court. The matter is before this Court on Appellees' Motion to Appoint a Mediator.

ELECTRONICALLY FILED - 2018 Feb 07 12:05 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

The Court conducted a full hearing on the Motion at the Jasper County Courthouse on January 29, 2018, at which time all parties to the appeal appeared, to wit: Appellant, J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, appeared personally and through his counsel, Matthew J. Myers; and Appellees, Elizabeth Kearse Gooding and Julia Kearse Sharp, appeared through their counsel, Stephen M. Slotchiver and Daniel A. Speights, respectively. In addition, Respondents, Rachael Kearse Best and Joseph Weber Kearse, who are not parties to the appeal, and who are not represented by counsel, attended the hearing.

Prior to the hearing, the Court informed the parties that it has a long-standing rule in which it generally does not hear cases where attorneys that appear in front of this Court on a regular basis are Plaintiffs or Defendants unless all parties consent. Counsel for the three parties to this appeal advised the Court in writing that they had no objection to the Court hearing the Motion to Mediate, which they confirmed on the record at the beginning of the hearing. In addition, during the hearing, J. Morgan Kearse, Rachael Kearse, and Joseph Weber Kearse, advised the Court that they had no objection to the Court deciding the Motion.

All parties to this appeal agree that this Court should appoint a Mediator. Appellees requested that the Court choose the mediator. Appellant requested that the Court select a Mediator from this Circuit who has an expertise in Probate matters.

Having considered the parties' positions, the Court concludes that no particular expertise in Probate matters is required. The Court believes that it should appoint someone who is experienced in mediating disputes which are particularly difficult to resolve. Consequently, the Court has chosen a Mediator whom it has appointed before and who has demonstrated the ability to bring parties together and resolve contentious litigation. In this instance, the Court also

ELECTRONICALLY FILED - 2018 Feb 07 12:05 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

believes that it may be preferable to choose a mediator who does not practice in the Fourteenth Circuit.

The Court appoints attorney John H. Tiller to mediate all issues in this appeal from the Probate Court and any other disputes arising out of this matter, at a location in the Fourteenth Circuit designated by Mr. Tiller. As consented by the parties at the hearing, Mr. Tiller's fees will be paid by the Estate. Absent an extension granted by this Court, the Mediator shall complete the mediation and report back to the Court no later than April 30, 2018.

Although there are only three parties to this appeal, the Court encourages all named parties to the underlying dispute to attend and actively participate in the mediation in an effort to resolve any and all issues arising out of this Estate.

In the event that the parties do not resolve all their differences which are subject to the present appeal, the time for Appellees Gooding and Sharp to file their responsive briefs shall be extended until April 30, 2018, or until thirty days after the Mediator declares an impasse, whichever is later.[1]

IT IS SO ORDERED.

HONORABLE PERRY M. BUCKNER
Chief Administrative Judge
Fourteenth Judicial Circuit

February _____, 2018

Walterboro, South Carolina

[1] Subsequent to the hearing, counsel for the parties to the appeal advised the Court that they have consented to this last proviso.

ELECTRONICALLY FILED - 2018 Feb 07 12:05 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244



Allendale Common Pleas

Case Caption: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al

Case Number: 2017CP0300244

Type: Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP-0300244

J MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE G.H. KEARSE
PLAINTIFF(S)

WILLIAM GORDON KEARSE, ET AL
DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

PROBATE COURT APPEAL IS DISMISSED BASED ON MR. KEARSE'S RESIGNATION AS PERSONAL REPRESENTATIVE AS EVIDENCED BY PROBATE COURT ORDER FILED MARCH 23, 2017. PERSONAL REPRESENTATIVE DID NOT APPEAL THAT ORDER AND IS NOT SUBJECT FOR A MOTION FOR RECONSIDERATION. PROBATE COURT JUDGMENT IS AFFIRMED. MR. HEWITT TO PREPARE FORMAL ORDER.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

ELECTRONICALLY FILED - 2018 Oct 29 10:12 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

Circuit Court Judge	2155 Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

000030

ELECTRONICALLY FILED - 2018 Oct 29 10:12 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

ELECTRONICALLY FILED - 2018 Oct 29 10:12 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

Allendale Common Pleas

Case Caption: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al

Case Number: 2017CP0300244

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-03-00244
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Appellant, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/AID Nov. 05, 1992, Respondents.	)	**ORDER**

This order follows a Form 4 entered October 29, 2018.

*

This is an appeal from probate court. The Court heard arguments October 8, 2018.

Attorney Matthew Myers appeared at the hearing for the Appellant. Attorney Daniel Speights appeared for Respondent Julia Sharp. Attorneys Steve Slotchiver and Blake Hewitt appeared for Respondent Elizabeth Gooding. No other parties participated or appeared.

The Court took the matter under advisement at the hearing and has been provided with the Appellant's briefs, the joint brief of Respondents Gooding and Sharp, as well as the parties' joint "record on appeal." The Court entered the Form 4 after reviewing all filings and arguments.

As explained in the Form 4 and below, the appeal is dismissed. An unappealed order appoints someone other than Appellant to the office of Personal Representative. For that reason, Appellant's attempt to take this appeal "as Personal Representative" is a nullity.

The case's material facts are not disputed. G.H. Kearse died in 2013. Item VI of his will directed his children to build a house on the family farm copied after a historic home in Virginia.

In 1992, however, Mr. Kearse had established the Kearse Family Educational Trust and placed the family farm into the Trust. Mr. Kearse's children are the trustees.

Morgan Kearse, the Appellant in these proceedings, commenced this lawsuit in April of 2016 by filing a "petition for instructions." At that time, Morgan was the estate's personal representative. He named himself and his five siblings as defendants, and he sought an order requiring the home's construction.

Two of Morgan's siblings—Respondents Sharp and Gooding—opposed the suit. None of the other siblings formally participated in the litigation.

The probate court was scheduled to hear several motions in February of 2017, but the day before the hearing, Morgan's lawyer sent the court a letter explaining the parties had reached a "global settlement." The letter said Julia's lawyer would read the agreement into the record at the hearing. The letter explained some, but not all, of the settlement's terms.

At the hearing, however, Morgan's lawyer said Morgan was "irrevocably" resigning as personal representative and that Morgan did not consent to the settlement.

Julia's lawyer then read into the record the "term sheet" constituting the parties' agreement and presented exhibits regarding the agreement the parties had reached the day before.

At the conclusion of the hearing the probate court accepted the settlement as well as Morgan's resignation as personal representative. This ruling was memorialized in a formal

ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

order filed February 27, 2017.

On March 16, 2017, Morgan filed a motion to alter or amend the probate court's decision. He captioned this motion as being made "in his capacity personal representative" even though he had previously told the probate court he was "irrevocably" resigning.

Four days later, on March 20, 2017, the probate court appointed Harley Ruff as successor personal representative.

The probate court heard Morgan's motion to reconsider and denied the motion in a written order filed September 18, 2017. Morgan initiated this appeal October 18, 2018.

***

Respondents Sharp and Gooding contend this appeal is a nullity because Morgan is not the personal representative and can therefore not purport to appeal the probate court's decision as personal representative. The Court agrees.

Morgan's notice of appeal referenced two orders: the February 27, 2017 order enforcing the parties' settlement and the September 15, 2017 order denying Morgan's motion for reconsideration. Both of those orders were also attached to the notice of appeal.

The notice of appeal does not mention the March 20, 2017 order appointing Harley Ruff as personal representative. That order is accordingly the law of the case. See, e.g. *McCain v. Brightharp*, 399 S.C. 240, 251, 730 S.E.2d 916, 921-922 (Ct. App. 2012).

In his reply brief, Morgan argues that he "retracted" his resignation by filing a motion to alter or amend the probate court's decision. The Court disagrees. The motion to reconsider did not mention Morgan's resignation—a resignation his lawyer said was irrevocable.

Morgan also argues the order, when properly construed, recognizes he is still personal

ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

representative. Here as well, the Court respectfully disagrees. The order explains Harley Ruff has been appointed personal representative and that with Ruff's appointment, Morgan's resignation "is hereby effective." The Court believes the proper interpretation of the order is that it recognized Morgan retained the limited authority to deliver and transfer the estate's assets to Ruff. That authority would not include initiating an appeal as personal representative.

****

The Court expresses no opinion on the arguments concerning whether the probate court erred in enforcing the settlement as well as the Respondents' additional arguments for affirming the probate court's judgment. As this order explains, the appeal is dismissed because an unappealed order recognizes the Appellant is not the personal representative. He therefore lacks standing to initiate this appeal as personal representative.

Judge R. Lawton McIntosh

December_____, 2018

ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

ELECTRONICALLY FILED - 2018 Dec 13 11:36 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

Allendale Common Pleas

Case Caption: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al

Case Number: 2017CP0300244

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP-0300244

J. MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE G.H. KEARSE
PLAINTIFF(S)

WILLIAM GORDON KEARSE, ET AL
DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

MOTION FOR RECONSIDERATION IS DENIED. MR. HEWITT TO PREPARE A FORMAL ORDER CONSISTENT WITH HIS ARGUMENT AND SUBMISSIONS AT THE HEARING.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

2155
Judge Code

Date

Circuit Court Judge

SCRCP Form 4C (02/2017)

ELECTRONICALLY FILED - 2019 Apr 08 11:01 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

ELECTRONICALLY FILED - 2019 Apr 08 11:01 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2019 Apr 08 11:01 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244



Allendale Common Pleas

Case Caption: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al

Case Number: 2017CP0300244

Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	IN THE COURT OF COMMON PLEAS Case No. 2017-CP-03-00244
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Appellant, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/AID Nov. 05, 1992, Respondents.	**ORDER**

This order follows a Form 4 entered April 8, 2019.

The case is before the Court pursuant to a motion to alter or amend. The Court heard the motion April 4, 2019 in Jasper. All parties consented to a hearing in Jasper rather than Allendale.

Attorney Matthew Myers appeared at the hearing for the Appellant. Attorney Daniel Speights appeared for Respondent Julia Sharp. Attorney Blake Hewitt appeared for Respondent Elizabeth Gooding.

Briefly, and as background, this is an appeal from probate court. The Court issued a formal order in December of 2018 dismissing the appeal.

The Respondents advocated for that disposition. They argued the Appellant cannot properly appeal this case as personal representative for his late father's estate because he is not the personal representative, having resigned that office in probate court. This Court agreed. The December 2018 order dismissing the appeal was based on that reasoning.

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

Appellant subsequently filed a motion asking the Court to alter or amend its order dismissing the appeal. He argues there are several reasons why he remains personal representative and has standing to litigate this appeal. Alternatively, he argues the appeal should proceed through ratification, joinder, or substituting the appropriate real party in interest.

Respondents oppose these arguments and gave reasons for their opposition at the hearing.

After considering the Appellant's written motion, the arguments at the hearing, and the previous filings, the Court adheres to its prior decision and respectfully denies the motion. The reasons for this decision are detailed below.

*

Some parts of this case are contested, but the general background is not. G.H. Kearse had a large farm in Allendale County. In 1992 he transferred that farm to an irrevocable trust. (R.p.44, Article I).

When Mr. Kearse died in 2013 his will said he wanted a large house built on the farm and that the house was to be modeled after a historic colonial home in Virginia. (R.p.38, Item VI). The farm, however, was not a part of Mr. Kearse's estate. As noted above, it had already been transferred to an irrevocable trust. The Appellant and his siblings are the trustees. (R.pp.56-57).

Three years after Mr. Kearse died, Appellant filed this lawsuit. (R.p.30). He filed the suit in his capacity as personal representative. He named himself (in his individual capacity) and his siblings as defendants. He later amended the suit to name himself and his siblings in their individual capacities as well as in their capacities as trustees. (R.p.73).

The suit sought a court order directing the estate to build the house on the trust's land. (R.p.78). The suit asked the court to authorize the use of trust assets to help fund the construction, if necessary. (R.p.76, ¶18).

Respondents Sharp and Gooding opposed the suit. Their chief defense was that the estate had no right to build a house on land that was not a part of the estate. (R.p.80, ¶8 & p.85, ¶8).

Several motions were set to be heard in probate court in February of 2017. Shortly before the hearing, however, the parties reached an agreement resolving the case. (R.p.257) (letter from Appellant's counsel). The parties dispute whether that agreement is binding. The probate court enforced the agreement, but again, the parties dispute whether the agreement is enforceable.

The basics of the disputed agreement were that the Appellant would personally pay the Respondents' legal fees, that he would personally pay his own legal fees, and that he could ask the estate to reimburse some of those fees if a majority of his siblings agreed. (R.pp.198-199).

The Appellant initiated this appeal after the probate court enforced the disputed agreement.

The Court believes its decision to dismiss this appeal was correct. The Appellant claims to be taking this appeal in his capacity as personal representative. The Court dismissed this appeal because the Appellant is not the personal representative.

The record reflects the Appellant resigned that office in probate court. The Appellant did not attend the February 2017 hearing in probate court, but at that hearing, his lawyer told the probate court he was submitting his resignation "irrevocably." (R.p.173, lines 23-24). The Appellant's lawyer also said the Appellant "has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for your honor to appoint a successor fiduciary[.]" (R.p.174, lines 4-9).

At that same hearing, the probate court specifically ruled that the court had no choice other than to accept Appellant's resignation. (R.p.187, line 2 - p.188, line 6). If Appellant disagreed with that decision, ordinary rules of error preservation would require him to immediately object. Nobody objected after the probate court announced its ruling. (R.pp.188-189).

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

The Appellant moved for reconsideration in probate court after the court accepted his resignation and enforced the settlement agreement. That motion for reconsideration did not argue that the probate court erred in accepting Appellant's resignation as personal representative. There, the arguments were that the alleged settlement agreement was not binding, that its terms were not properly before the probate court, and that Appellant wanted a new hearing. (R.pp.123-133).

The probate court conducted a hearing on the Appellant's motion for reconsideration. There as well, nobody argued that the probate court erred in accepting Appellant's resignation as personal representative. (R.pp.222-231) (the hearing transcript).

The probate court appointed Harley Ruff as successor personal representative in March of 2017. (R.p.13). This was five months before the hearing on the Appellant's motion for reconsideration. Nobody at that hearing argued the order appointing Harley Ruff was invalid.

Both of the Respondents specifically mentioned at that hearing that the Appellant was not the personal representative. (R.p.225) (transcript p.14, lines 13-17) and (R.p.228) (transcript p.24, lines 16-19). The probate court specifically noted nobody had objected to the order appointing Ruff and that the Appellant was not the personal representative. (R.pp.17 & 20). The court's prior order "terminated" the Appellant's authority as of February 2, 2017. (R.p.10, ¶4). Nobody challenged these things.

The Appellant's brief in this Court frames the issues as including whether he was validly removed as personal representative and whether the probate court erred in accepting his resignation. His brief also claims he remains personal representative and that the probate court's February 2017 order accepting his resignation is void. These arguments were never made to the probate court. Ordinary rules of error preservation provide that they cannot be made on appeal.

Nobody could reasonably deny the Appellant would have standing to appeal the probate court's order in his individual capacity. The alleged settlement directly affects him individually as it calls for him to personally pay everyone's legal fees. The estate is not affected unless the Appellant asks the estate to reimburse him for some of those fees. See (R.pp.10-11, ¶¶6-8).

Still, the documents in the record explain that the Appellant is not appealing in his individual capacity. His brief to this Court specified that he was appealing in his capacity as personal representative. (Brief of Appellant, p.20). His counsel only represents him in his capacity as personal representative; they do not represent him individually. (R.p.7 & p.171, lines 20-21). As noted above, the Appellant is not the personal representative. He resigned that office and did not argue to the probate court that the court erred in accepting his resignation.

**

The Court expresses no opinion on new arguments raised in the Appellant's motion to alter or amend. Arguments that could have been raised before a judgment may not be raised for the first time in a motion to alter or amend. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). As to any other arguments not specifically addressed, the Court believes its decision is controlled by the Appellant's past insistence that he is appealing as the personal representative and by the fact that he is not the personal representative.

The motion for reconsideration is respectfully denied.

_____
Judge R. Lawton McIntosh

_____, 2019
_____, South Carolina

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

ELECTRONICALLY FILED - 2019 May 14 9:29 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

Allendale Common Pleas

Case Caption: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al

Case Number: 2017CP0300244

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)	
)	
J. Morgan Kearse, Personal Representative)	SUMMONS
of the Estate of G. H. Kearse,)	
Petitioner,)	
)	
vs.)	
)	
William Gordon Kearse, Elizabeth Kearse)	
Gooding, Julia Kearse Sharp, Rachael)	
Kearse Best, Joseph Weber Kearse, and)	
John Morgan Kearse)	
Respondents.)	

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16 APR -8 AM 11:25
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, of which a copy is herewith served upon you and to serve a copy of your Answer on the subscriber at his office, Post Office Box 521, Allendale, South Carolina, 29810, within thirty (30) days of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action may obtain judgment by default against you for the relief demanded in the Petition.

J. Morgan Kearse
Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934

Allendale, South Carolina

Dated: April 8, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
J. Morgan Kearse, Personal Representative)
of the Estate of G. H. Kearse,)
Petitioner,)
)
vs.)
)
William Gordon Kearse, Elizabeth Kearse)
Gooding, Julia Kearse Sharp, Rachael)
Kearse Best, Joseph Weber Kearse, and)
John Morgan Kearse)
Respondents.)

IN THE PROBATE COURT
CASE NUMBER: 2013-ES-03-00063

PETITION FOR INSTRUCTIONS

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ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Petitioner, J. Morgan Kearse, Petitions this Court for Instructions in regards to certain matters of the Estate based on the following:

1) The Decedent, G. H. Kearse, died testate June 10, 2013.

2) The will of the Decedent named all six of his children as Personal Representatives of his Estate.

3) The Decedent's will was entered into probate with the Application For Informal Probate of Will and Appointment on October 21, 2013.

4) The Deecdent's will dated May 16, 2011, is attached hereto as Exhibit A and is incorporated by referenee herein.

5) The Decedent named all six of his children as Personal Representatives of his Estate, and the Petitioner was appointed Personal Representative (PR) of the Estate on October 22, 2013, with the five named Personal Representatives having executed and filed their Renunciation of Right to Administration, their Nomination of the Petitioner to serve as PR, and their Waiver of Bond on behalf of the Petitioner as PR of the Estate.

6) The Decedent's will instructs the building of a home on land of the Decedent, and such construction is in dispute between the Petitioner and certain siblings.

7) In 1992, the Decedent did create the Kearse Family Education Trust, for the purposes of preserving the family farm and providing financial assistance to his biological heirs for educational assistance and named his six children as Trustees.

8) The Decedent's Trust Agreement dated November 5, 1992, is attached hereto as Exhibit B and is incorporated by reference herein.

9) The Petitioner has indicated that he will not close the Estate of the Decedent until the dispute in building the home has been resolved and seeks the Court's assistance in resolving this matter.

10) Certain Trustees have informed their siblings that they have obtained legal counsel, have requested the Petitioner step down as PR of the Estate, and that the Estate be closed without consideration given to the construction of the home. Certain Trustees have also expressed deliberate opposition that a house ever be built.

11) The Decedent's will states the following:

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust Property, and do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may \also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted." I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

12) Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust.

13) The Petitioner asserts that *all monies* referenced by the Decedent in his will includes money held by the PR in bank accounts, certificate of deposits, money market accounts, stocks, bonds, gold and silver. Currently, this amount totals $689,214.78 from the following assets: $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver.

14) The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house and furthermore, that the Decedent intended that these funds be used for such purposes and that only unused Estate funds remaining after the construction of the home be held in reserve to pay future ad valorem taxes on trust real estate. The Petitioner asserts that to interpret the language of the will otherwise would result in directing all of the Decedent's liquid assets, approximately $700,000, to be held in reserve and make them unusable for any purpose other than the payment of property taxes on the trust estate property.

15) The Petitioner asserts that it was not the Decedent's intent to hold in reserve such a large sum as the entirety of his liquid assets and restrict their use to the payment of property taxes. The Decedent's will does stipulate in Article V that a fund be *maintained and designated as the ad valorem fund to protect the place from taxes* but does not designate an amount to be held in reserve.

16) The Petitioner asserts that the annual property taxes on the real estate owned by the Trust and the Estate are approximately $8,000 to $10,000 and that the Decedent instructed that this be paid from trust income. The Decedent's will states in Item V, *I would like the income from the Trust to be used first to pay the taxes and then to educate the young people in the family.* Article IV of the Trust states *there should always be enough land open in order that the rent from it will pay the taxes.*

17) The Petitioner asserts that the guidelines, restrictions, and powers set out in the Trust ensures both the availability and accumulation of funds from income generated by the Trust property sufficient enough to pay current property taxes while setting aside an ample amount for the ad valorem fund.

18) The Petitioner further asserts that the Estate and Trust are integrally related and, should the construction of the home encounter a shortage of funds, that certain Trust funds be considered and apportioned to complete the construction. This position is clearly supported by Article XIV (10) which empowers the Trustees *to make ordinary or extraordinary repairs or alteration in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.*

19) In addition, Article II of the Trust states that *the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporation owns and that the trustee may expend income, provided there is no invasion of the corpus;* thus provisions or conditions were contemplated by the Decedent in which Trustees are permitted to use Trust income for a variety of expenditures.

20) The facts listed below further support the assertion that sufficient Estate and Trust assets exist to construct the home, maintain trust property, pay current and future property taxes on Trust property, fund the ad valorem account, and assist in the educational needs of the known beneficiaries. They are as follows:

21) The Petitioner asserts that a substantial stand of timber is on the land, some of which is at the stage for thinning and clear cutting. According to Article II of the Trust, *subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and /or oil and minerals mined and the endowment account, and ten (10) percent of net trust income* and *shall be added to the principal. Such assets together with any other property, real or personal, cash or choses in action that may be invested and reinvested... shall be held, administered, and distributed by the Trustee as hereinafter set forth.* The Petitioner contends that improvements and construction on Trust property are the types of endeavors and expenditures that constitute investing in the lands of the Trust and clearly within the bounds and expectations of the Trust. Rough estimates have valued the current timber at or around $1,000,000.

22) In addition, the Petitioner asserts that the principal becomes an asset for the investment by the Trustees. Such principal will increase from proceeds received by the Trust from the sale of timber and non-corpus real estate (See exhibit C) as well as money transfer from the interest bearing income account to the principal due to the ten-year rule as set out in Article VIII (1).

23) Article VII states that the trustee: *may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in is sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepted accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiary's education.*

24) Article VIII directs the Trustee to set up an *Interest Bearing Income Account* to manage the Adjusted Net Income generated by the Trust that is to be used to assist in funding the education of Trust beneficiaries who are in need of financial assistance. Article VI states that trust income *will consist solely of annual land rents from agriculture, payments under government farm programs, and payments for hunting rights.* However, these funds, once deposited, are only available for ten years after deposit for the purpose of providing financial educational assistance.

25) Article VIII (1) states that: *If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid ten(10) year period, it shall be added to the principal and shall be undistributed thereafter, except as part of the termination of the trust.* Because of the *10-year rule* set out in Article VIII (1) of the Trust, a substantial amount of trust income directed to the Interest Bearing Income Account to be used for educational purposes will ultimately roll over into the principal of the trust.

26) Annual farm expenses: farm maintenance and operational costs in 2015 were approximately $6000.00. Attributed to these expenses was a one-time tractor repair of $2,534.57. Therefore, presumptively these expenses in future years should not exceed $6000.00. As stated previously, property taxes for 2015 were approximately $8000.00 to $10,000.

27) Annual farm income: the hunting rights and the agricultural lease in 2016 resulted in the Trust receiving $60,976.25. The Petitioner has negotiated with the lessees of the agricultural rights and is expected to increase the lease by $5 per acre, which will increase the annual lease from $32,750 to approximately $38,208.00 beginning in 2017. The hunting and agricultural leases in 2017 are anticipated to generate $66,434.25.

28) Currently, two grandchildren (Mary Katherine and Andrew) are receiving financial assistance from the Trust. Mary Katherine is scheduled to complete her studies May 2016, leaving Andrew as the sole beneficiary in the Trust. Andrew did receive $24,800 in 2015. The Petitioner does not anticipate Andrew's monetary requirements to change significantly in the coming years. Andrew has approximately two years of undergraduate studies remaining, and upon his completion there are no other grandchildren of the Decedent who might qualify for educational assistance. There is one grandchild who is younger than Andrew; however, it is presumed that she does not qualify for educational assistance based on need. This grandchild is the youngest grandchild of the Decedent, and currently no grandchildren or great grandchildren are expected to be born. Currently, the Decedent has no great grandchildren.

29) The decedent directs in Item VI of his will that all of his *monies* be used to build the home which currently includes approximately $118,867.27 in the Estate checking account;

$200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver. The Estate also holds various types of real estate holdings that were conservatively reported on the Inventory and Appraisement valued at $675,758 and, if sold, generates substantial liquidity to be used in the construction of the home.

Whereas the Petitioner prays this Court review these matters and provide instructions to the Personal Representative stating the construction of the home is a major requirement of the Decedent's will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will.

Executed this 8th day of April, 2016

J. Morgan Kearse, PR/Petitioner
Post Office Box 521
Allendale, South Carolina 29810
(803) 584-2934
morgan@kearselawallendale.com

EXHIBIT A

LAST WILL AND TESTAMENT
OF
G. H. KEARSE

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE

FILED FOR RECORD
16 APR 11 AM 11:57
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

I, G. H. KEARSE, of the County and State aforesaid, being of sound and disposing mind, memory, and understanding, and desiring to make such disposition of my worldly estate as I deem best, **DO HEREBY MAKE, PUBLISH, AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT**, hereby revoking any and all former Wills and Codicils whatever by me made.

ITEM I

I direct the payment by Personal Representative of all my just debts and funeral expenses as soon after my decease as may be practicable.

ITEM II

It is my wish and desire my body be cremated, and I direct my Personal Representative to make arrangements and do so timely. I direct two of my children to accompany my remains to the crematorium, inspect the oven for cleanliness, observe my remains being placed in the oven, await the completing of the process, observe the removal of my ashes, observe the processing of the ashes, and return home with my ashes. It is my will and desire that my ashes be divided into three equal parts with one part being placed in the ground on the vault of my mother; that the second part be scattered around the fig tree in the field on the Kearse Place where my grandparent's home once stood, and the third part buried on the grave of General T. J. Jackson in Lexington, Virginia.

(L.S)

Bridget Woods

Olivia M. Kirkland

ITEM III

I give, devise, and bequeath to my beloved son, **John Morgan Kearse**, the use and contents of the office for the duration of his practice, including, but not limited to, furniture, typewriters, computers, books and contents for so long as he practices law. In the event his practice is terminated for any reason, it is my will and desire that another member of my family, with priority in degree of kinship, to use as **J. Morgan Kearse** has used the personal property, with the same restrictions as applied to the successor of **J. Morgan Kearse**.

ITEM IV

In the event my beloved son, **John Morgan Kearse** quits practicing law, it is my wish the property I have bequeathed to him for the term of his practice in **Item III** be used by successive members of the family in the practice of law or other endeavor, and that the members of the **Kearse Educational Trust** honor my wish regarding the contents being used in an office without cost to the user, as I have instructed **John Morgan Kearse** and set out in the Trust Deed which is recorded in the office of the Clerk of Court for Allendale County in Deed Book 177 at page 127 on October 5, 2005. It is my intention that I not convey any descendant a remainder interest or any vested interest that would allow them to liquidate or partition my estate.

ITEM V

I wish to explain the reason for the forming of the Kearse Education Trust and the drawing of my will in support of it. I wish to see the property owned by the Kearse's, for so long, remain in the Kearse family. And secondly that it be handled to benefit those in the family that otherwise would not receive an education. It is my opinion that an education is very important in a person's life. The more education you receive the better opportunity you will have to perfect their chosen field. I would like the income from the Trust be used first to pay the taxes and then to educate the young people of the family. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

(L.S.

Bridget Woods

Alice M. Kirkland

It is my intent that only blood descendants of my family be allowed to receive any benefit for educational purposes, excluding all other persons. It should be conservatively administered and a fund maintained designated as the ad valorem tax fund to protect the place from taxes. During the 1928-1929 depression the cost of the taxes to the property owner resulted in homeowners losing their businesses, homes, and farms and it can happen again.

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust property, and I do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted". I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tomado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

(L.S.)

Bridget Wood

Olive M. Kirkland

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

ITEM VII

I give, devise, and bequeath all the rest, residue, and remainder of my property, both real and personal, of which I may die seized or possessed or to which I may be entitled to at the time of my decease, to the **Kearse Educational Trust**, to be perpetuated and enlarged for the benefit of my descendants first, and then to other children who may be in need of aid for an education, in whatever amount the Trustees deem appropriate short of jeopardizing the Corpus, if so determined by the **Kearse Educational Trust** Board members, absolutely and forever, in fee simple. (See the **Kearse Educational Trust.**)

ITEM VIII

I give, devise, and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the **Kearse Educational Trust** to be held in reserve by the Trustees of the said Trust to pay future ad valorem taxes on the real estate after all monies have been exhausted from the Trust, that is rent or proceeds from timber. It is my will and desire that an annual inventory of liquid assets be made and, if entrusted to an individual's care, a surety bond be provided, and that there be no lending or use of the money, except as the Board of the Trust approves. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

ITEM IX

I hereby nominate and appoint my beloved six (6) children, **W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Anne Kearse Sharp, Rachael Kearse Best, J. Morgan Kearse, and Joseph Kearse** as Trustees and Personal Representatives of this My Last Will and testament, and I hereby direct that the Trustees and Personal Representatives be allowed to serve without posting any surety or sureties on her official bond.

(L.S.)

Bridget Wood

Alice M. Kirkland

Should any devisee, legatee, beneficiary, or trustee of this Will or of the trust agreement contest the validity of this Will or any provision thereof or attempt to prevent any provision from being carried out in accordance with its terms in legal proceedings or otherwise, then any interest provided for such beneficiary and his or her descendents is revoked and such beneficiary shall be deemed to have predeceased me for all purposes under this Will.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal to this My Last Will and Testament, at Allendale, South Carolina, this 16th day of May, in the Year of Our Lord Two Thousand Eleven.

G. H. Kearse (L.S.)

SIGNED, SEALED, PUBLISHED, AND DECLARED by the said **G. H. KEARSE**, as and for his Last Will and Testament, in the presence of us, who in his presence, at his request and in the presence of one another, all present together, have hereunto subscribed our names as witnesses.

Bridget Woods **Address** Allendale, SC

Alice M. Kirkland **Address** Allendale, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

PROOF OF WILL

WE, G. H. KEARSE, Bridget Woods **AND** Alice M. Kirkland the Testator and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as his Last Will and Testament on the 16th day of

May, 2011, and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the Testator, signed the Will as witnesses and to the best of their knowledge, the Testator was at that time Eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(L.S.)
G. H. KEARSE

Bridget Woods

Alice M. Kirkland

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY G. H. KEARSE, the Testator, and subscribed and sworn to before me by Bridget Woods and Alice M. Kirkland, the witnesses, this 16th day of May, 2011.

Elaine S Ferguson
Notary Public for South Carolina
My Commission Expires: 1/15/2019

EXHIBIT B

COPY

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ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

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South Carolina law governs .....

THE KEARSE FAMILY EDUCATION TRUST

This agreement for the establishment of the Kearse Family Educational Trust is made this 5th day of NOVEMBER, 1992, between George H. Kearse, as Settlor, and the undersigned Trustees who are all of the children of the Settlor. All of the Trustees are hereinafter referred to, in the aggregate, as the "Trustee."

ARTICLE I.

Trust purpose. The purpose of the Trust is to maintain ownership of the family farm which as been conveyed to the Trustees, and to make good use of the income, rents, timber, minerals, and any other assets for educational purposes of the descendants of George H. Kearse who may need financial assistance in acquiring the best education available.

Definition of home place. Home place is synonymous with family farm. The homeplace was originally one hundred fifty (150) acres bought by the Settlor's grandfather, William Henry Kearse, in 1865 and enlarged by eighty (80) acres in 1933 by the Settlor's father, William Gordon Kearse. The Settlor has enlarged the home place to One Thousand Five Hundred (1500) acres, more or less. The home place acquired by the Settlor's grandfather and father has never been mortgaged or a lien placed upon it.

For the purpose of "Trust purpose", the home place is considered to be every acquired tract contiguous to the original home place or added to acquired property which is contiguous to the whole. That is to say, the land adjoined to the home place or any land acquired which is contiguous to land which is contiguous to the home place. The purpose being as stated in the paragraph "Trust purpose." The land must be preserved, however, the home place under this concept may be enlarged and the trust allowed to deal in real estate by acquiring contiguous tracts and by buying and selling noncontiguous tracts. If the transaction can be accomplished without creating debt.

ARTICLE II.

The trust estate. The Settlor has paid over, assigned, endorsed, granted, conveyed, transferred, and delivered, and by this agreement does hereby pay over, assign, endorse, grant, convey, transfer, and deliver unto the Trustee all of the issued and outstanding stock of SEH, Inc. and Elysium Field, Inc. Thus the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporations own. Subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and/or oil and minerals mined and the endowment account, and 10% of net trust income which as described below, shall be added to principal. Such assets, together with any other property, real or personal, cash or choses in action that may be received or which has been received or designated to be received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the Trust Estate") shall be held, administered and distributed by the Trustee as hereinafter set forth. The Trustee may add

additional property to the Trust Estate by purchase or by the acceptance of donative transfers, provided there is no lien on the property purchased or accepted. The Trustee may expend income, provided there is no invasion of the corpus or interest bearing income account. The trustee may not take title to any property unless such property is free and clear of liens and encumbrances.

ARTICLE III.

The beneficiaries. "Beneficiaries" as used herein shall be limited to all of the descendants of George H. Kearse who are alive during the administration of this Trust. The age of a Trust Beneficiary shall not be a consideration, it being the Settlor's desire that the benefit of income distributions from the Trust be available to Trust Beneficiaries of any age. In making distributions of income to trust beneficiaries, the Trustee may take into account such income and other financial resources of any beneficiary of this trust as is known to the Trustee.

No heir has the right or vested interest in or to any anticipated payment for education or otherwise, and if the funds are available from any other source, the heir has a duty to take advantage of the other sources and the trustees should refuse the heirs assistance.

ARTICLE IV.

Prohibited activities of the trustee. The Trustee is specifically forbidden from engaging in any business, especially farming, except that tree farming is permitted. There should always be enough land open in order that the rent from it will pay the taxes. The Trustee may not borrow for any purpose and may not grant security interests in any trust property, real or personal. The Trustee may not distribute the corpus of the trust except on termination thereof. The Trustee may not guarantee or endorse any other obligation. Except as provided in Article IX, paragraph (6) in regard to homesites, the Trustee may not sell, mortgage, dispose of or incumber the land or any shares of any close corporation (where a majority of the shares are held by the trustee) that shall own land. The Trustee may not advance money to support membership of a beneficiary in a sorority or fraternity only the necessities of education.

ARTICLE V.

General powers over trust income. Commencing with the execution of the Trust, the Trustee in its sole and absolute discretion, may pay to or apply for the benefit of the beneficiaries of this Trust, for the purposes herein described, such of the net income of this Trust in convenient installments, and such income, in the sole and absolute discretion of the Trustee, may be paid in such shares and proportions as the Trustee shall determine. ~~In exercising the discretion herein provided, the Trustee may take into account such income~~ and other financial resources of any beneficiary of this trust that is known to the Trustee.

The beneficiaries must be encouraged to help themselves or carry as much of the financial burden as is reasonably possible as determined by the Trustees.

ARTICLE VI.

Production of income from land. Income to the trust from real property will consist solely of annual land rents from agriculture, payments under government farm programs and payments for hunting rights.

ARTICLE VII.

Distribution of trust income. The Trustee shall distribute the net income of the Trust as follows:

(1) **In general.** During the term of this Trust, the Trustee, in its sole discretion, may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in its sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepting accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiarys' education in such public or private elementary schools, middle schools, high schools, technical schools, training classes, colleges, university undergraduate schools, post-graduate, and professional schools as the Trustee, in its sole discretion shall determine, in accordance with the following paragraphs of this Article.

(2) **Distribution considerations.** The Trustee shall take into consideration to the extent the Trustee deems advisable any other income or resources of the Trust Beneficiaries known to the Trustee. The Settlor does not desire that a Trust Beneficiary be required to impoverish himself or herself in order to qualify for distributions of income hereunder, but does desire that priorities for the distribution of income be based, at least in part, upon the lack of or insufficiency of the resources available to Trust Beneficiaries, but this sentence is precatory and not mandatory. The Settlor also requests but does not require that in making decisions about distributions of income to Trust Beneficiaries, the Trustee take into account (i) the cost of the educational institution that the Trust Beneficiary wishes to attend, as compared with other educational institutions of quality that the Trustee, in its sole discretion, deems comparable, (ii) the ability (in the opinion of the Trustee) of the Trust Beneficiary to absorb such education and (iii) the usefulness (in the opinion of the Trustee) to the Trust Beneficiary in achieving gainful employment of the educational program that the Trust Beneficiary desires to undertake. The Trustee shall not be required to consider the equalization of income among any Trust Beneficiaries for any reason, including but not limited to the generation membership of Trust Beneficiaries.

~~(3)~~ **~~Definition of education costs.~~** ~~In making distributions of income for~~ purposes of education, the Trustee may include the following costs as costs of education:

i. School expenses (tuition, books, laboratory fees, and school supplies);

ii. Board (room and board, to the extent of the costs actually charged by the school). More specifically, the Trustee for purposes of room and board, may only distribute as income to or for the benefit of the Beneficiary the amount the school attended by the Beneficiary charges for room, board, and food.)

iii. Public transportation (commuting to and from school), but only if the Beneficiary does not have an automobile. If a Beneficiary does have an automobile, the Trustee may not distribute income to such Beneficiary for such transportation.

(4) **Advance payments.** The Trustee may anticipate a Trust Beneficiary's prospective attendance at an educational institution by making advance payments (on behalf of a specific Beneficiary) to such institution provided that such funds are returned to the Trustee, with a reasonable amount of interest, if such Beneficiary does not attend such institution. Such advance payments shall not be deemed to violate the 10 year rule described below.

(5) **Taxes.** In making distributions of income to or for the benefit of the Beneficiaries, the Trustee shall include such additional income as will permit the Beneficiary to pay all taxes of whatever kind may be imposed upon the beneficiary (at the highest marginal rate applicable to a beneficiary) by reason of such trust distribution. If the income of the trust is included in the gross income of any person, the Trustees may distribute to such person the amount equal to the income tax on such included income.

ARTICLE VIII.

Management of trust income. In managing the income and the corpus of the trust, the Trustee shall establish a special account called the Interest Bearing Income Account. All Adjusted Net Income shall be added to and become part of the Interest Bearing Income Account.

(1) **10 year rule.** Each addition deposit of income to the Interest Bearing Income Account shall be available for ten years after deposit to such account as a supplement to Adjusted Net Income and may be distributable in any of such 10 succeeding future years as if a part of Adjusted Net Income for such year. If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid 10 year period, it shall be added to principal and shall be undistributable thereafter, except as part of the termination of the trust. Income credited to the Interest Bearing Income Account shall be expended on a "first in, first out" basis. Interest earned by the interest Bearing Income Account shall be deemed added to the Interest Bearing Income Account on the date it is received and shall be subject to the 10 Year Rule hereinabove described.

(2) **Annual contribution to principal.** Ten Percent of Net Income (that portion of Net Income subtracted from the Net Income to calculate Adjusted Net Income) shall be added to and become a part of the principal and shall not be subject to distribution in future years as part of the Adjusted Net Income.

ARTICLE IX.

Homesites. Notwithstanding any other provision of the trust relating to the management of property or the disposition of income therefrom:

(1) **Available homesites.** There are six possible homesites available on real property owned by the corporations, the shares of stock of which were originally transferred to the Trustee, such homesites being identified on Schedule B attached hereto and made a part hereof. The Trustee shall permit any child or grandchild of the George H. Kearse (but not more remote descendants of his) to construct a personal residence, weekend or vacation retreat upon any one of such homesites, subject to the following conditions set forth in the succeeding paragraphs of this Article.

(2) **Trustee to retain ownership.** All rights of ownership (title, easements, etc.) shall remain in the Trustee, but upon the completion of the construction as provided herein, such child or grandchild shall have the right to occupy the improvements, until this trust is terminated or such right is terminated as herein provided. The right of occupancy of such child or grandchild may be transferred, devised or inherited to the children of such child or grandchild, and further transferred, devised or pass by intestacy to the descendants of such descendants, conditioned upon the continual personal use and occupancy thereof by such descendants and in default thereof, the right of occupancy shall be forfeited, in the discretion of the trustee, and the trustee may reclaim possession as provided below.

(3) **Construction costs.** All construction costs shall be paid for by the child or grandchild who constructs such improvements.

(4) **Liens.** The Trustee is prohibited from executing any mortgage or other lien on such property.

(5) **No rent to be charged.** No descendant of the Settlor who shall occupy a residence constructed upon a homesite described in Schedule B shall be required to pay rent for the use and occupancy of the homesite during such occupancy, nor shall any descendant's surviving spouse or children under the age of 21 be required to pay any such rent. The descendant who improves the homesite will be responsible for the ad valorem taxes.

(6) **Trustee possession.** When a residence constructed upon a homesite is no longer occupied by the child or grandchild who constructed it, or by such child or grandchild's spouse or any child or grandchild under age 21 descendant thereof, and in the Trustee's sole opinion, it is more likely than not that such residence will not be occupied in

the future by any such persons, then the Trustee shall offer the use thereof to descendants of George H. Kearse, with priority being based on closeness in degrees of relationship to him and there shall be no disqualification by reason of any person with priority having the occupancy of some other homesite held by the Trustees. If no eligible person accepts, then the Trustee may sell or lease the homesite, in the Trustee's discretion.

(7) **Homesite insurance.** Notwithstanding any provision in paragraphs (1) through (6) of this Article, any descendant of the Settlor who occupies a residence located on a homesite (or the spouse or children under 21 of such descendant) shall furnish the Trustee at least annually (and more frequently if the Trustee requests) with reliable evidence (as determined by the Trustee) that the residence is fully insured and there are adequate policies of insurance in force covering fire and other casualty to the improvements and that all real property taxes, assessments and other costs of the use of the premises have been paid. In addition, the Trustee shall have the usual and customary rights of a lessor, including a right of inspection of the premises at reasonable times. If the Trustee determines that the residence is not properly insured or maintained or the taxes and assessments and other costs have not be timely paid, then the Trustee may require that the premises be vacated immediately and in that event, paragraph (6) above shall be deemed operative.

(8) **Written agreements on homesites.** As a condition precedent to a descendant of the Settlor constructing a residence on a homesite described in Schedule B, the Trustee may require that such descendant execute a written agreement containing the conditions herein described and such other reasonable terms and conditions as the Trustee in its sole discretion may require.

ARTICLE X.

Trustee succession. Any Trustee or Co-Trustee at any time serving may appoint his or her own successor by filing a written designation of successor or successors with all other then serving trustees and the Beneficiaries. The instrument of succession may be effective immediately or its effectiveness may be deferred for a stated period of time or it may be dependent upon future stated contingencies. The instrument may also name a series of successors so that if a successor with a higher priority cannot serve, one with the next highest priority shall serve. Multiple successors may be named to serve concurrently. The instrument of succession may be amended or revoked at any time by the trustee who signed it if the trustee is serving as trustee at the time of such amendment or revocation. An instrument amending or revoking an instrument of succession must be delivered to all other then serving trustees and the Beneficiaries. If any named trustee shall for any reason fail to continue to serve and at such time shall have made no valid instrument of succession, the remaining trustee or trustees may fill the vacancy, or may continue to serve without filling the vacancy. The Trustee or Trustees may also appoint additional co-trustees to serve concurrently with incumbent trustees. Any Trustee or Co-Trustee may resign at any time without the approval of any court of competent jurisdiction, by delivering a written resignation to all remaining Trustees and all Beneficiaries who are sui juris.

ARTICLE XI.

Power to amend. The Trustee shall have power to amend this Trust Agreement at any time, to further carry out the original intent expressed herein where (i) the provisions of this agreement are inadequate to do so or (ii) applicable laws or regulations adopted after the execution of this agreement would prevent the carrying out of the purposes of this agreement unless the agreement is amended. Notwithstanding any provision herein to the contrary, no amendment may change the provisions of this Trust regarding distribution of the Principal of the Trust. No amendment shall be made that would grant to any Trustee a general power of appointment over Trust assets.

ARTICLE XII.

Termination of all trusts. Upon the day prior to the expiration of the longest period under applicable law (including applicable perpetuities statutes) that the vesting of interest created under this trust may be deferred:

a. without violating such applicable law, and

b. without loss of the Settlor's federal Generation Skipping Transfer Tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended,

each of the Settlor's then living issue, per stirpes, shall have the right to withdraw the stirpital share to which such beneficiary shall be entitled and such right shall continue for a period of 90 days following notification to such beneficiary by the Trustees.

(i) If a beneficiary shall exercise such right, then the trustees shall distribute to which such beneficiary such beneficiary's stirpital share, in cash or in kind, and thereafter neither such beneficiary nor any of the present nor future issue of such beneficiary shall be beneficiaries of this Trust.

(ii) If a beneficiary shall not exercise such right, then such beneficiary and such beneficiary's present and future issue shall remain or become beneficiaries of this Trust and such beneficiary's stirpital share shall remain in trust and the term of the trust for such share shall begin again for the period of time described above for the initial term of the trust, beginning the last date of such initial term, except that the measuring lives shall be all of the Settlor's then living issue.

ARTICLE XIII.

Definition of trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall

be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIV.

Trustee powers. The Trustee or Trustees named or described herein and the successors thereto (hereinafter called the Trustee) in the capacity of a fiduciary is authorized in its discretion with respect to any property, real or personal, at any time held under any provision of this Trust and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rules of law, except as otherwise specifically prohibited by other Articles of this Trust Agreement:

1. **Retaining property.** To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property, regardless of any lack of diversification, risk or nonproductivity, as long as the Trustee reasonably deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. **Investing.** To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. **Registration of securities.** To hold any securities or other property in the Trustee's own name as Trustee, in the Trustee's own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

4. **Cash.** To keep for reasonable periods of time all or any portion of the Trust Estate in cash and uninvested, without liability for and loss in income by reason thereof.

5. **Stock rights.** To sell or exercise stock subscription or conversion rights.

6. **Voting stock.** To refrain from voting or to vote shares of stock owned by

the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

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

8. **Leasing.** To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

9. **Developing.** To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

10. **Repairing.** To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings. The sell-off of a lot or several lots will not be considered subdividing and is prohibited.

11. **Collecting.** To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

12. **Insuring.** To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

13. **Dual positions.** In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with the Trustee in the Trustee's separate, or any fiduciary capacity.

14. **Compromising and settling.** To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

15. **Agents, etc.** To employ and compensate agents, accountants, investments

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

16. **Principal and income allocations.** To determine irrespective of statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal notwithstanding any determination by the courts or by any custom or statute; and whether or not to establish depreciation reserves; however, the discretion granted herein is not absolute, but rather is subject to the standard of reasonableness and good faith to all beneficiaries, impartiality between income and remainder beneficiaries, and may only be exercised in a fiduciary capacity.

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

18. **Payments.** To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value.

19. **In general.** In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in such individual's own right, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee may deem necessary or proper to carry out the purposes of this Trust.

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

21. **Lending.** To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executor or administrator and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

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

23. **Division/consolidation of trusts.** For tax, administrative or investment purposes to divide any trust established hereunder, based upon the fair market values of the trust property at the time of division, into two or more separate trusts, the dispositive provisions of which shall be identical to those applicable to the trust prior to any such division, and to consolidate any trust established hereunder with any other trust (whether or not created by the Settlor) having substantially identical provisions for the same beneficiary or beneficiaries, if such consolidation, in the opinion of the Trustee, is consistent with my intent and does not defeat or impair a beneficial interest. Without limiting the generality of the foregoing, the Trustee may divide any trust into separate trusts consisting of (i) portions that would, and would not, respectively, be included in the gross estate of the Settlor's spouse or another beneficiary for federal estate tax purposes if such beneficiary died immediately prior to the division or (i) portions that for federal generation-skipping transfer tax purposes either have inclusion ratios of zero or one, or different transferors.

ARTICLE XV.

Retention of share for beneficiary under twenty-one. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years, then such share shall immediately vest in such beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of such share as the Trustee deems necessary to provide for the proper support, medical care, and education of such beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of such beneficiary or such beneficiary's parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. Such beneficiary's share shall be paid over and distributed to such beneficiary upon attaining age Twenty-one (21), or if such child shall sooner die, to such beneficiary's executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions had with respect to the trusts created herein generally.

ARTICLE XVI.

Facility of payments. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid

out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the care, support and education of such beneficiary; (4) by the Trustee using such amounts directly for such beneficiary's care, support and education.

ARTICLE XVII.

Definition of relationships. For the purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall not be considered a child of such adopting parent and neither such adopted child nor such adopted child's issue shall be considered as issue of the adopting parent or parents nor of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. The term "per stirpes" as applied to the issue of a person entitled to receive a trust distribution herein shall mean that the trust distribution shall be divided into as many equal shares as there are surviving heirs of such person in the nearest degree of kinship and deceased heirs of such person in the same degree who left issue who survive such person. Each such living heir shall be entitled to receive one equal share and the living lineal descendants of each such deceased heir shall take the share that their deceased ancestor would have taken had such deceased ancestor survived such person. This definition of "per stirpes" is intended to describe "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XVIII.

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

ARTICLE XIX.

South Carolina law governs. This Trust Agreement and the Trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

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

WITNESSES:

As to George H. Kearse

By _____ (SEAL)
George H. Kearse, Settlor

As to W. Gordan Kearse

By _____ (SEAL)
W. Gordan Kearse, Trustee

As to J. Morgan Kearse

By _____ (SEAL)
J. Morgan Kearse, Trustee

As to Joseph W. Kearse

By _____ (SEAL)
Joseph W. Kearse, Trustee

As to Elizabeth K. Gooding

By _____ (SEAL)
Elizabeth K. Gooding, Trustee

As to Julia K. Sharp

By _____ (SEAL)
Julia K. Sharp, Trustee

As to Rachael K. Harper

By _____ (SEAL)
Rachael K. Harper, Trustee

PROBATE FOR SETTLOR

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Settlor, George H. Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

SWORN TO before me this

5th day of November, 1992

_____ (L.S.)
Notary Public for South Carolina
My commission expires: 10-23-94

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, W. Gordan Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this

5th day of November, 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, J. Morgan Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, Joseph W. Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Winifred Faulcon Kearse
Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, Elizabeth K. Gooding, seal and as her act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Angelia D. Burke
Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

SCHEDULE "B"

Under Trust Agreement Dated November 5, 1992

HOMESITE #1

HOMESITE #2

APPROVED:

By _____ (SEAL)
George H. Kearse, Settlor

By _____ (SEAL)
W. Gordan Kearse, Trustee

By _____ (SEAL)
J. Morgan Kearse, Trustee

By _____ (SEAL)
Joseph W. Kearse, Trustee

By _____ (SEAL)
Elizabeth K. Gooding, Trustee

By _____ (SEAL)
Julia K. Sharp, Trustee

By _____ (SEAL)
Rachael K. Harper, Trustee

EXHIBIT "C"

PROPERTY TITLED IN NAME OF
G.H. KEARSE

FILED FOR RECORD
16 APR -8 AM 11:25
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Allendale County TAX MAP No.	DESCRIPTION	TAX ASSESSOR'S FMV
019-00-00-048	vacant lot (Martin)	3,000
105-02-06-023	warehouse on Barnwell Highway	6,900
105-02-06-018	old garage on Barnwell Highway	$ 3,500
105-11-01-045	lot-John's Subdivision	$ 5,300
105-11-01-037	lot-John's Subdivision	$ 5,300
105-11-01-027	lot-John's Subdivision	$ 4,300
105-11-01-035	lot-John's Subdivision	$ 5,500
105-11-01-010	lot-John's Subdivision	$ 3,700
105-11-01-073	lot-John's Subdivision	$ 5,300
120-00-00-034	Williams house (next to Jack Morris)	$21,200
123-07-02-020	2 lots Fairfax	$ 3,400
123-06-10-006	5 acres - Todd	$ 4,918
122-00-00-026	13.28 – Bowers Place	$ 6,640
	Sub-Total	**$76,958**
	TITLED IN NAME OF W.G. KEARSE, ESTATE	
123-07-05-035	2 lots in Fairfax, W.G. Kearse, Estate	$ 2,500

Beaufort County R700 027 000 0026 0000 4/5 interest in Blackbeard Island, 25 acres	$582,200
Hendry County, Florida 1324229-5000000 950, 1 lot	3,500
1324229-05000000 1080, 1 lot	3,500
1324229-05000000 1070, 1 lot	7,100
Total	$675,758

file Kearse (pleading)

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF ALLENDALE	)	CASE NO.: 2013-ES-03-00063
	)	
J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,	)	
	)	**RESPONDENT, ELIZABETH**
Petitioner,	)	**KEARSE GOODING'S ANSWERS TO**
	)	**PETITION FOR INSTRUCTIONS**
Vs.	)	
	)	
WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE and JOHN MORGAN KEARSE,	)	
	)	
Respondents.	)	
	)	

The Respondent, Elizabeth Kearse Gooding, hereby Answers the Petition for Instructions filed by J. Morgan Kearse on behalf of Petitioner, J. Morgan Kearse, filed with this Probate Court on April 8, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demands strict proof thereof.

2. Respondent admits the allegations set forth in Paragraph 1.

3. Respondent admits the allegations set forth in Paragraph 2.

4. Respondent admits the allegations set forth in Paragraph 3.

5. Respondent admits the allegations set forth in Paragraph 4.

6. Respondent admits the allegations set forth in Paragraph 5.

7. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a

house be built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

8. Respondent admits the allegations set forth in Paragraph 7.

9. Respondent admits the allegations set forth in Paragraph 8.

10. Respondent admits the allegations set forth in Paragraph 9.

11. As to the allegations set forth in Paragraph 10, Respondent admits that she and some of her siblings have obtained legal counsel, she and some of her siblings have requested the Petitioner to step down as Personal Representative of the Estate, and that she and some of her siblings believe the Estate should be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

12. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

13. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

14. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust...".

15. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

16. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

17. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

18. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

19. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

20. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations set forth are denied and Respondent demands strict proof thereof.

21. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

23. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

24. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

25. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

27. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

30. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Petition for Instruction, Respondent, ELIZABETH KEARSE GOODING, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (4) to grant any

and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

Stephen M. Slotchiver, Esquire
S.C. Bar No.: 65477
44 State Street
Charleston, SC 29401
(843) 577-6531 Phone
(843) 577-0261 Fax
ATTORNEY FOR RESPONDENT, ELIZABETH KEARSE GOODING

Charleston, South Carolina
May 5, 2016

file - Kearse (pleadings binder)

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,	
Petitioner,	
vs.	MOTION TO DISMISS
William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse,	
Respondents.	

TO: The Parties above-named and their counsel

You will please take notice that Respondent, Julia Kearse Sharp, by and through her undersigned attorney, will move before the Court ten (10) days from the filing of this motion, or as soon thereafter as she may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) on the ground that Petitioner failed to join the Trustee of the Kearse Family Educational Trust (the "Kearse Trust"), an Indispensable Party to this proceeding. The following allegations set forth in the Petition for Instructions support the Motion:

1. Prior to his death on June 10, 2013, G. H Kearse ("Decedent") created the Kearse Trust.

2. Thereafter Decedent executed a Will which attempts to amend the Kearse Trust.

3. In this action, Petitioner seeks to affect the Kearse Trust under the terms of a Will.

4. The Kearse Trustees are made individual parties to this proceeding, but not in their fiduciary capacity as trustees.

5. The Court, without proper joinder of the Kearse Trust, lacks jurisdiction to direct action by the Trustees of the Kearse Trust, amend the Kearse Trust or bind the Kearse Trust.

6. The Kearse Trust, through its Trustees, are Indispensable Parties to this action.

For the reasons set forth above, Respondent Sharp respectfully moves this Court to dismiss the Complaint in its entirety. This motion is based on the South Carolina Probate Code, the South Carolina Rules of Civil Procedure, the entire record herein, applicable statutory and case law, and such additional memoranda as shall be presented to the Court prior to the hearing in this matter. Because this Motion benefits all beneficiaries of the Estate, Respondent Sharp is entitled to payment by Petitioner of her attorneys' fees and cost of filing this Motion.

Daniel A. Speights (SC Bar #5027)
SPEIGHTS & RUNYAN
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina 29924
803-943-4444
dspeights@speightsrunyan.com

By: Daniel A. Speights
DANIEL A. SPEIGHTS

ATTORNEYS FOR RESPONDENT,
JULIA KEARSE SHARP

Hampton, South Carolina

May 9, 2016

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF HAMPTON)

Re: Estate of George H. Kearse
2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Motion to Dismiss this 9th day of May, 2016, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

J. Morgan Kearse
Kearse Law Firm
PO Box 521
Allendale, SC 29810-0521

Clerk of Court
Allendale County Probate Court
292 Barnwell Highway
Allendale, SC 29810

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
9th day of May, 2016
Pamela W. Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/3/2019

Joseph Weber Kearse
6620 Merrill Rd
Columbia, SC 29209
May 17, 2016

Hon. Keith Smith, Probate Judge
Allendale County Probate Court
P.O. Box 603
Allendale, SC 29810

Re: John Morgan Kearse, Personal Representative, of the Estate of G. H. Kearse, Petitioner, vs. Joseph Weber Kearse, et al, Respondents

Dear Judge Smith,

Please accept this as my answer to the Petition filed in the above-entitled action. As a Respondent in this case I have two positions I would like to confirm:

1. I support the exploration of building of a house as described in my father's will as long as this project is plausible and financially feasible.
2. I advocate that the estate be closed as quickly as possible without jeopardizing the execution of individual items of the will.

Thank you for protecting my interest in this matter.

Sincerely,

Joseph Weber Kearse

Joseph Weber Kearse

FILED FOR RECORD
16 MAY 23 PM 1:16
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

-00596

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	
	)	
vs.	)	
	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992, Respondents.	)	SUMMONS

FILED FOR RECORD
16 JUN -3 PM 1:16
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Petition For Instructions in this action, of which a copy is herewith served upon you and to serve a copy of your Answer on the subscriber at his office, Post Office Box 521, Allendale, South Carolina, 29810, within thirty (30) days of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action may obtain judgment by default against you for the relief demanded in the Petition.

-00599

KEARSE LAW FIRM

J. Morgan Kearse
Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934

Allendale, South Carolina

Dated: June 3, 2016

-00300

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)	
)	
J. Morgan Kearse, Personal Representative)	PETITION FOR INSTRUCTIONS
of the Estate of G. H. Kearse,)	(Amended)
Petitioner,)	
)	
vs.)	
)	
The Kearse Family Education Trust,)	
William Gordon Kearse,)	
Elizabeth Kearse Gooding,)	
Julia Kearse Sharp,)	
Rachael Kearse Best,)	
Joseph Weber Kearse, and)	
John Morgan Kearse, of which all are)	
named individually and as Trustees of the)	
Kearse Family Education Trust under)	
Agreement dated November 5, 1992,)	
Respondents.)	
)	

FILED FOR RECORD
16 JUN -3 PM 1:16
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Pursuant to RULE 15(a), of the *South Carolina Rules of Civil Procedure*, the above named Petitioner, J. Morgan Kearse, amends the original Petition as of right without leave of Court, and Petitions this Court for Instructions in regards to certain matters of the Estate based on the following:

1) The Decedent, G. H. Kearse, died testate June 10, 2013.

2) The will of the Decedent named all six of his children as Personal Representatives of his Estate.

3) The Decedent's will was entered into probate with the Application For Informal Probate of Will and Appointment on October 21, 2013.

4) The Decedent's will dated May 16, 2011, is attached hereto as Exhibit A and is incorporated by reference herein.

-00001

5) The Decedent named all six of his children as Personal Representatives of his Estate, and the Petitioner was appointed Personal Representative (PR) of the Estate on October 22, 2013, with the five named Personal Representatives having executed and filed their Renunciation of Right to Administration, their Nomination of the Petitioner to serve as PR, and their Waiver of Bond on behalf of the Petitioner as PR of the Estate.

6) The Decedent's will instructs the building of a home on land of the Decedent, and such construction is in dispute between the Petitioner and certain siblings.

7) In 1992, the Decedent did create the Kearse Family Education Trust, for the purposes of preserving the family farm and providing financial assistance to his biological heirs for educational assistance and named his six children as Trustees.

8) The Decedent's Trust Agreement dated November 5, 1992, is attached hereto as Exhibit B and is incorporated by reference herein.

9) The Petitioner has indicated that he will not close the Estate of the Decedent until the dispute in building the home has been resolved and seeks the Court's assistance in resolving this matter.

10) Certain Trustees have informed their siblings that they have obtained legal counsel, have requested the Petitioner step down as PR of the Estate, and that the Estate be closed without consideration given to the construction of the home. Certain Trustees have also expressed deliberate opposition that a house ever be built.

11) The Decedent's will states the following:

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust Property, and do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may \also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted." I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

12) Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust.

13) The Petitioner asserts that *all monies* referenced by the Decedent in his will includes money held by the PR in bank accounts, certificate of deposits, money market accounts, stocks, bonds, gold and silver. Currently, this amount totals $689,214.78 from the following assets: $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver.

14) The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house and furthermore, that the Decedent intended that these funds be used for such purposes and that only unused Estate funds remaining after the construction of the home be held in reserve to pay future ad valorem taxes on trust real estate. The Petitioner asserts that to interpret the language of the will otherwise would result in directing all of the Decedent's liquid assets, approximately $700,000, to be held in reserve and make them unusable for any purpose other than the payment of property taxes on the trust estate property.

15) The Petitioner asserts that it was not the Decedent's intent to hold in reserve such a large sum as the entirety of his liquid assets and restrict their use to the payment of property taxes. The Decedent's will does stipulate in Article V that a fund be *maintained and designated as the ad valorem fund to protect the place from taxes* but does not designate an amount to be held in reserve.

16) The Petitioner asserts that the annual property taxes on the real estate owned by the Trust and the Estate are approximately $8,000 to $10,000 and that the Decedent instructed that this be paid from trust income. The Decedent's will states in Item V, *I would like the income from the Trust to be used first to pay the taxes and then to educate the young people in the family.* Article

-00363

IV of the Trust states *there should always be enough land open in order that the rent from it will pay the taxes.*

17) The Petitioner asserts that the guidelines, restrictions, and powers set out in the Trust ensures both the availability and accumulation of funds from income generated by the Trust property sufficient enough to pay current property taxes while setting aside an ample amount for the ad valorem fund.

18) The Petitioner further asserts that the Estate and Trust are integrally related and, should the construction of the home encounter a shortage of funds, that certain Trust funds be considered and apportioned to complete the construction. This position is clearly supported by Article XIV (10) which empowers the Trustees *to make ordinary or extraordinary repairs or alteration in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.*

19) In addition, Article II of the Trust states that *the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporation owns and that the trustee may expend income, provided there is no invasion of the corpus;* thus provisions or conditions were contemplated by the Decedent in which Trustees are permitted to use Trust income for a variety of expenditures.

20) The facts listed below further support the assertion that sufficient Estate and Trust assets exist to construct the home, maintain trust property, pay current and future property taxes on Trust property, fund the ad valorem account, and assist in the educational needs of the known beneficiaries. They are as follows:

21) The Petitioner asserts that a substantial stand of timber is on the land, some of which is at the stage for thinning and clear cutting. According to Article II of the Trust, *subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and /or oil and minerals mined and the endowment account, and ten (10) percent of net trust income* and *shall be added to the principal. Such assets together with any other property, real or personal, cash or choses in action that may be invested and reinvested... shall be held, administered, and distributed by the Trustee as hereinafter set forth.* The Petitioner contends that improvements and construction on Trust property are the types of endeavors and expenditures that constitute investing in the lands of the Trust and clearly within the bounds and expectations of the Trust. Rough estimates have valued the current timber at or around $1,000,000.

22) In addition, the Petitioner asserts that the principal becomes an asset for the investment by the Trustees. Such principal will increase from proceeds received by the Trust from the sale

of timber and non-corpus real estate (See exhibit C) as well as money transfer from the interest bearing income account to the principal due to the ten-year rule as set out in Article VIII (1).

23) Article VII states that the trustee: *may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in is sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepted accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiary's education.*

24) Article VIII directs the Trustee to set up an *Interest Bearing Income Account* to manage the Adjusted Net Income generated by the Trust that is to be used to assist in funding the education of Trust beneficiaries who are in need of financial assistance. Article VI states that trust income *will consist solely of annual land rents from agriculture, payments under government farm programs, and payments for hunting rights.* However, these funds, once deposited, are only available for ten years after deposit for the purpose of providing financial educational assistance.

25) Article VIII (1) states that: *If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid ten(10) year period, it shall be added to the principal and shall be undistributed thereafter, except as part of the termination of the trust.* Because of the *10-year rule* set out in Article VIII (1) of the Trust, a substantial amount of trust income directed to the Interest Bearing Income Account to be used for educational purposes will ultimately roll over into the principal of the trust.

26) Annual farm expenses: farm maintenance and operational costs in 2015 were approximately $6000.00. Attributed to these expenses was a one-time tractor repair of $2,534.57. Therefore, presumptively these expenses in future years should not exceed $6000.00. As stated previously, property taxes for 2015 were approximately $8000.00 to $10,000.

27) Annual farm income: the hunting rights and the agricultural lease in 2016 resulted in the Trust receiving $60,976.25. The Petitioner has negotiated with the lessees of the agricultural rights and is expected to increase the lease by $5 per acre, which will increase the annual lease from $32,750 to approximately $38,208.00 beginning in 2017. The hunting and agricultural leases in 2017 are anticipated to generate $66,434.25.

28) Currently, two grandchildren (Mary Katherine and Andrew) are receiving financial assistance from the Trust. Mary Katherine is scheduled to complete her studies May 2016, leaving Andrew as the sole beneficiary in the Trust. Andrew did receive $24,800 in 2015. The Petitioner does not anticipate Andrew's monetary requirements to change significantly in the

-00605

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coming years. Andrew has approximately two years of undergraduate studies remaining, and upon his completion there are no other grandchildren of the Decedent who might qualify for educational assistance. There is one grandchild who is younger than Andrew; however, it is presumed that she does not qualify for educational assistance based on need. This grandchild is the youngest grandchild of the Decedent, and currently no grandchildren or great grandchildren are expected to be born. Currently, the Decedent has no great grandchildren.

29) The decedent directs in Item VI of his will that all of his *monies* be used to build the home which currently includes approximately $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver. The Estate also holds various types of real estate holdings that were conservatively reported on the Inventory and Appraisement valued at $675,758 and, if sold, generates substantial liquidity to be used in the construction of the home.

Whereas the Petitioner prays this Court review these matters and provide instructions to the Personal Representative stating the construction of the home is a major requirement of the Decedent's will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will.

Executed this 3rd day of June, 2016

J. Morgan Kearse, PR/Petitioner
Kearse Law Firm, LLC
Post Office Box 521
Allendale, South Carolina 29810
(803) 584-2934
morgan@kearselawallendale.com

-00606

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE, Petitioner, vs. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992, Respondents.	)	IN THE PROBATE COURT CASE NO.: 2013-ES-03-00063 **RESPONDENT, ELIZABETH KEARSE GOODING'S ANSWERS TO AMENDED PETITION FOR INSTRUCTIONS**

FILED FOR RECORD
16 JUL -6 AM 10:46
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The Respondent, Elizabeth Kearse Gooding, hereby Answers the Amended Petition for Instructions filed by J. Morgan Kearse with this Probate Court on June 3, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demanda strict proof thereof.

2. Respondent denies that the Personal Representative has authority to bring this action and name a Trust as a Respondent wherein he is a Co-Trustee of the Trust. It is a clear conflict of interest.

3. Respondent admits the allegations set forth in Paragraph 1.

4. Respondent admits the allegations set forth in Paragraph 2.

5. Respondent admits the allegations set forth in Paragraph 3.

6. Respondent admits the allegations set forth in Paragraph 4.

7. Respondent admits the allegations set forth in Paragraph 5.

-00641

8. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a house be built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

9. Respondent admits the allegations set forth in Paragraph 7.

10. Respondent admits the allegations set forth in Paragraph 8.

11. Respondent admits the allegations set forth in Paragraph 9.

12. As to the allegations set forth in Paragraph 10, Respondent admits that she and some of her siblings have obtained legal counsel, she and some of her siblings have requested the Petitioner to step down as Personal Representative of the Estate, and that she and some of her siblings believe the Estate should be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

13. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

14. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

15. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my

-00642

000097

possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust...".

16. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

17. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

18. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

19. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

20. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

21. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations set forth are denied and Respondent demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

23. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

-00643

24. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

25. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

27. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

30. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

31. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Amended Petition for Instruction, Respondent, ELIZABETH KEARSE GOODING, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond

the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) directing that it is a conflict of interest for the Personal Representative to bring an action and name a Trust as a Respondent for which the Personal Representative is also a Trustee of the Trust; (4) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (5) to grant any and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

Stephen M. Slotchiver, Esquire
S.C. Bar No.: 65477
44 State Street
Charleston, SC 29401
Telephone: (843) 577-6531
Facsimile: (843) 577-0261
Bmail: steve@slotchiverlaw.com
ATTORNEY FOR RESPONDENT, ELIZABETH KEARSE GOODING

Charleston, South Carolina
June 29, 2016

-00645

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

RESPONDENT, JULIA KEARSE SHARP'S ANSWERS TO AMENDED PETITION FOR INSTRUCTIONS

FILED FOR RECORD
16 JUL 11 AM 3:01
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The Respondent, Julia Kearse Sharp, hereby Answers the Amended Petition for Instructions filed by J. Morgan Kearse with this Probate Court on June 3, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demands strict proof thereof.

2. Respondent denies that the Personal Representative has authority to bring this action and name a Trust as a Respondent wherein he is a Co-Trustee of the Trust. It is a clear conflict of interest.

3. Respondent admits the allegations set forth in Paragraph I.

4. Respondent admits the allegations set forth in Paragraph 2.

-00647

5. Respondent admits the allegations set forth in Paragraph 3.

6. Respondent admits the allegations set forth in Paragraph 4.

7. Respondent admits the allegations set forth in Paragraph 5.

8. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a house he built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

9. Respondent admits the allegations set forth in Paragraph 7.

10. Respondent admits the allegations set forth in Paragraph 8.

11. Respondent admits the allegations set forth in Paragraph 9.

12. As to the allegations set forth in Paragraph 10, Respondent admits that certain Trustees have obtained legal counsel and have requested the Petitioner to step down as Personal Representative of the Estate and that the Estate be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

13. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

14. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

15. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his

-00618

Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust. .. ".

16. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

17. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

18. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

19. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

20. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

21. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations

-00849

set forth are denied and Respondent demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

23. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

24. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

25. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

27. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

-00650

000104

30. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

31. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Amended Petition for Instruction, Respondent, JULIA KEARSE SHARP, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) directing that it is a conflict of interest for the Personal Representative to bring an action and name a Trust as a Respondent for which the Personal Representative is also a Trustee of the Trust; (4) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (5) to grant any and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Daniel A. Speights (SC Bar #5027)
SPEIGHTS & RUNYAN
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina 29924
803-943-4444
dspeights@speightsrunyan.com

By: _____
DANIEL A. SPEIGHTS

ATTORNEYS FOR RESPONDENT,
JULIA KEARSE SHARP

Hampton, South Carolina
July 5, 2016

-00651

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF HAMPTON)

Re: Estate of George H. Kearse
2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Respondent, Julia Kearse Sharp's Answers to Amended Petition for Instructions this ___ day of July, 2016, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

J. Morgan Kearse
Kearse Law Firm
PO Box 521
Allendale, SC 29810-0521

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

April Murdaugh, Deputy Probate Clerk
Hampton County Courthouse
1 Courthouse Square Elm Street
PO Box 601
Hampton, SC 29924

Clerk of Court
Allendale County Probate Court
292 Barnwell Highway
Allendale, SC 29810

Rosemarie Lightsey
~~RHONDA L. BOWERS~~
Rosemarie Lightsey

SWORN TO before me this
5th day of July, 2016

(L.S.)
Notary Public for South Carolina
My Commission Expires: 6/5/2025

-00652

STATE OF SOUTH CAROLINA,	)	IN THE PROBATE COURT
COUNTY OF ALLENDALE	)	
ELIZABETH KEARSE GOODING Petitioner,	)	SUMMONS
vs.	)	CASE NO. 2013-ES-03-00063
JOHN MORGAN KEARSE, WILLIAM GORDON KEARSE, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, and JOSEPH WEBER KEARSE Respondent(s).	)	

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Charleston, South Carolina

Dated: December 6, 2016

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: ALLENDALE)

IN THE MATTER OF:
ESTATE OF G. H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent)
ELIZABETH KEARSE GOODIN(

Petitioner(s)

*PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

vs.
JOHN MORGAN KEARSE,WILLIAM GORDON KEARSE, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, AND JOSEPH WEBER KEARSE
Respondent(s)

I request an Order for the removal of JOHN MORGAN KEARSE, Personal Representative in the estate, because (check all that apply):

☐ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment. Additional Information:

☐ The Personal Representative disregarded a Court order. Additional Information:

☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional Information:

☒ The Personal Representative has mismanaged the estate. Additional Information: SEE ATTACHED AFFIDAVIT

☒ The Personal Representative failed to perform a required duty. Additional Information: SEE ATTACHED AFFIDAVIT

☒ Removal is in the best interests of the estate because: SEE ATTACHED AFFIDAVIT

(Attach additional sheets if necessary)

Executed this day of DECEMBER, 2016.

Signature: Elizabeth Kearse Gooding
Print Name: ELIZABETH KEARSE GOODING
Address: P. O BOX 222
ALLENDALE, SC 29810
Telephone (Work):
(Home):
(Cell):
Email: ELIZABETHGOODING@BELLSOUTH.NET
Relationship to Decedent/Estate: DAUGHTER

Attorney: STEPHEN M. SLOTCHIVER
Address: 44 STATE STREET
CHARLESTON, SC 29401
Telephone: 843-577-8531
Email: STEVE@SLOTCHIVERLAW.COM

***NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

FORM #331ES (1/2014)
62-3-611

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

AFFIDAVIT OF
ELIZABETH K. GOODING

Elizabeth Kearse Gooding, being first duly sworn, deposes and says:

1. I am an heir or party of interest in the estate of G.H. Kearse, who is my father, and who died on June 10, 2013. His probate estate (2013-ES-03-00063) is filed in Allendale County, SC.

2. On September 24, 2013, Morgan Kearse (my brother), and I met with attorney Tom Bryant in Orangeburg. The purpose of this meeting was to seek advice from Tom, a respected estate lawyer, in proceeding with the administration of our father's estate. We had provided to Tom ahead of the meeting copies of the Will and general list of property. Tom shared his view that the provision of the Will regarding the building of Gunston Hall could not be accomplished. He conveyed his reasoning and there was no indication that Morgan was not in agreement.

3. My father's Will named all children (me and my five siblings) to be the personal representatives of his estate. We all agreed that it would be more convenient to allow one person to act in that capacity. We all agreed to allow my brother, Morgan Kearse, to act as personal representative. We all renounced our right to serve in favor of Morgan, and he was appointed on October 23, 2013.

4. Sometime after Morgan was appointed as personal representative, he went into my father's house at the farm and removed much of his personal belongings. Many things were put in an unlocked barn outside. This was done without the knowledge or consent of the heirs. My sister, Julia Sharp, just happened to be out at the farm

#1 EKG

one day and looked in the barn and saw some of my father's personal things. I believe it is impossible to know now exactly what was removed.

5. Months passed and nothing happened. I began to question my brother regularly, by phone calls and emails, about progress on the estate. I prepared a complete inventory of all real estate owned by my father and provided it to my brother. Shortly after this, he was able to file an Inventory on Feb. 18, 2014. There were a couple of Supplemental Inventories with property that had been overlooked (bonds and coins), but nothing else was accomplished toward administering the estate.

6. In January or February of 2015, I was in constant contact with Morgan, in an attempt to move the administration of the estate along. I was provided access to the estate bank account with the intention of assisting Morgan in preparing the Accounting. As I went through the bank statements I was shocked at what I found. Morgan was paying most of the farm expenses (the farm is owned by the Kearse Family Education Trust and is not part of the estate) out of the estate bank account. There were many expenses that were unverifiable, such as gas bills to "Tiger Express," "Mixson Oil," and some that were marked "reimburse" to J.Morgan Kearse. But the most shocking was a $2500 check (check #182), to "J. Morgan Kearse." When I asked what this was for, Morgan told me that he had sold a trailer he personally owned to the estate. He also wrote a $9150 check to Neeley Heating and A/C Co. in March 2014, for a new hvac in his office (the office building is also not owned by the estate). This check was written on an account which has not been reported on any of the filed Accountings with the Court.

#2 EKH

7. I prepared the financial information to provide to the accountant for the 2014 estate income tax returns. During the preparation of those returns the accountant advised that the estate should not be paying the expenses of the farm. We agreed that the Trust would reimburse the estate and that the Trust needed to pay its own expenses going forward. This was clearly conveyed to Morgan by both the accountant, Sharon Bramlett and myself.

8. In November 2015, I once again was provided access to the estate bank statements. I discovered that Morgan had written a $25,000 check from th estate to himself, designated as an attorney fee, and a separate check from the estate to himself for $1,200 for beds and bedding he stated he had "sold to the Trust" (not to the estate). He had also continued to write many checks from the estate to pay for expenses incurred on the farm, as well as pay for his office grounds maintenance from the estate account (both of these properties are not owned by the estate).

9. Throughout this time, since meeting with Tom Bryant in Orangeburg in Sept. 2013, I had no indication that Morgan believed that there was any realistic possibility that the estate could build the house my father referred to in his Will. I asked Morgan to prepare a Proposal for Distribution so that we could understand how he proposed the estate assets would be distributed. He told me many times he would, but never did.

10. I called a meeting of my siblings, the Trustees of the Kearse Family Education Trust on Feb. 6, 2016. I had shared my findings from the bank statements with everyone prior to the meeting. Rachael Best, one of my sisters and also a Trustee of the Kearse Family Education Trust, voiced her position that she wanted the estate to

#3 EKH

build the house. I tried to explain why it was not possible or feasible but it made no difference to Rachael. Morgan did not indicate a desire to build or not to build the house.

11. On March 29, 2016, my sister, Julia Sharp, and I asked Morgan to resign as personal representative. After two and a half years he still had done nothing to administer the estate. He had failed to inventory important and valuable estate property, particularly the contents of safes belonging to the decedent, which were in his possession and control. He had failed and refused to return the property removed from the decedent's home. We felt that he was wasting and misappropriating funds and refused to stop. He refused to resign. He did, however, file a first accounting two days later. It is, however, neither accurate nor complete. To this date, there is important financial information concerning at least one bank account that is not disclosed on any estate forms.

12. I personally made repeated requests of Morgan to prepare and produce a Proposal for Distribution, hoping that this would provide the information to the heirs as to Morgan's intentions regarding the proper distribution of the estate assets. He would not comply and refused to reveal to me what his intentions were regarding the distribution of assets. Instead, at the second meeting of the Trustees, on April 9, 2016, Rachael Best produced the "Petition for Instructions," which she stated had been prepared by Morgan and herself, and approved by attorney Ken Wingate. This "Petition," which was initiated without consultation with any of the heirs, except Rachael Best, is essentially a Rule to Show Cause why the Trustees of the Kearse Family Education Trust and the heirs of the G.H. Kearse estate should not

#4 EKH

be forced to ignore specific provisions of the Will and to invade assets of the Trust for purposes not provided by law or the Trust. Morgan, as personal representative, has taken an adversarial position in conflict with the preservation of the estate assets.

13. The personal representative is also a Trustee of the Kearse Family Education Trust, and has breached his fiduciary duty as a Trustee by prosecuting an action against the interests of the Trust. The personal representative has clearly disregarded a serious and obvious conflict of interest in pursuing an action against the Kearse Family Education Trust.

14. In the discovery that followed this lawsuit, we have learned that Morgan obtained my father's power of attorney while he was in the hospital, 20 days before he died, and that he used that power of attorney to direct that the bank add my sister , Rachael Best, on to my father's bank accounts as joint owner with right of survivorship, and not as tenants in common. This was done three days before my father died and was an unauthorized act under the power of attorney. Neither I ,nor any of my siblings, were aware of these actions. I would never have renounced my right to serve as personal representative had I known this at the time.

15. I have personally done everything I know to do to assist my brother as personal representative of this estate. I have collected and prepared much of the necessary financial information for tax returns and inventories. I have discussed with Morgan my legal opinion regarding the administration of the estate. I solicited outside legal advice, which I shared with him, and I also urged him to do the same if he was uncertain about the legal issues and proper course of action in administering the

#5 EXH

estate. He refused to indicate a formal, legal position until April 9, 2016, when he served the heirs with the legal proceedings, which is effectively a Rule to Show Cause why the heirs should not be forced to rob the Trust and build a house on land that the estate does not own.

16. Morgan admitted in his deposition that he has done nothing to determine the legal basis for complying with my father's directions to build the house he mentions in his Will. He admitted he has done nothing to determine the cost of such a project. In three years he has done nothing to move this estate forward but has now filed a lawsuit against the heirs asking that the estate be forced to build a house on land the estate does not own, and from money which the Decedent specifically bequeathed to the Kearse Educational Trust. And he has paid the legal fees for this frivolous cause from estate funds.

17. The personal representative has paid outside legal counsel to date $12,235 (and possibly more), from estate funds to prosecute this action against the interests of the estate and heirs and which cause of action has no legal or practical merit. I believe it is urgent that the Court intervenes immediately to stop the personal representative from wasting the assets of the estate.

18. I believe that the Court should not only remove Morgan as the personal representative of the estate, but also require that he: (1) reimburse the estate for all legal fees incurred; (2) reimburse all beneficiaries for all legal fees incurred in defending the meritless action he; (3) be required to forego and return any personal representative commission for which he may claim to be entitled (and/or previously received).

#6 EUJ

Elizabeth K. Gooding

Sworn to before me

this 7th day of December, 2016.

Notary Public for South Carolina

My Commission Expires: 1/16/2024

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF ALLENDALE

CASE NO.: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the Estate of G. H. Kearse,
Petitioner,

-vs-

The KEARSE EDUCATIONAL TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1999
Respondents.

RESPONDENT, ELIZABETH KEARSE GOODING'S MOTION FOR SUMMARY JUDGEMENT

FILED FOR RECORD
16 DEC -7 PM 4:40

TO: KENNETH B. WINGATE, ATTORNEY FOR THE PETITIONER:

YOU WILL PLEASE TAKE NOTICE that Elizabeth Kearse Gooding, by and through her undersigned attorney, will move before this Honorable Court:

For an Order granting the Respondents summary judgment in that there are no genuine issues as to any material fact in this case, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This Respondent, therefore, asserts that she is entitled to judgment in this action as a matter of law.

This motion for summary judgment is based on the following grounds:

1. The Petitioner, J. Morgan Kearse, has requested this Court to make a finding that the construction of the house (referred to in Decedent's Will as "Gunston Hall") is a "major requirement" and also an "integral requirement" of the Decedent's Will, and directing him to proceed with the construction of the house. He also asserts that there are sufficient funds to build this house and

requests the Court to make such a finding. The requested relief cannot be granted as a matter of law for the following reasons:

A. The property upon which the Decedent's Will directs the building of the house is owned by a corporation that is solely and undisputably owned by the Kearse Family Education Trust. The Trust is not a part of the Decedent's estate. The Decedent had no legal control over the Trust property and was without authority to direct the building of a house on land owned by the Trust.

B. The Kearse Family Education Trust is a separate legal entity that has no legal connection or obligation to the Decedent's estate. The Petitioner's request to have the Court order the Trust to bear any costs of the estate is inappropriate, without any legal authority, and a breach of his fiduciary duties to both the estate and the Trust.

C. The Decedent's Last Will and Testament clearly directs all estate moneys, gold and silver coins, bonds, and real estate to be paid to the Kearse Family Education Trust. There are no funds earmarked for building the house.

D. Petitioner testified that he has made no determination as to the cost to build this structure, nor has he engaged the services of a professional to advise him as to the anticipated cost to build such a structure (even though he states definitively in the Petition for Instruction that the Estate has sufficient funds to build a structure similar in structure to the Gunston House).

This motion is further based on the South Carolina Rules of Civil Procedure, the pleadings, the laws of the State of South Carolina, and upon such other and further grounds as may be presented to the Court.

Respectfully submitted,

12/6/16

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA
16 DEC 13 PM 1:01

DATE: Monday, December 19th, 2016

TIME: 2:00 P.M.

PLACE: Hampton County Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2)

Executed this 9th day of December, 2016.

Signature: /Kenneth B. Wingate/
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF:)
) PROOF OF DELIVERY
IN THE MATTER OF:)
) CASE NUMBER: 2013-ES-03-00063
_____)
(Decedent)

FILED FOR RECORD
HAMPTON COUNTY PROBATE COURT
SOUTH CAROLINA
2016 DEC 13 PM 1:01

On the 9th day of December, 2016, I mailed or delivered the following document(s):

Notice of Hearing for Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2)

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☒ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachel K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Shella Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 9th day of December, 2016

Dawn R. Kingsley
Notary Public for South Carolina
My Commission Expires: 9/24/25

Signature: Hilary A. Ingrum
Print Name: Hilary A. Ingrum
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: hai@swblaw.com
Relationship to Decedent/Estate: Assistant to Kenneth B. Wingate

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	) IN THE PROBATE COURT))	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	) Case No.: 2013-ES-03-00063)))))))))))))	MOTION TO DISMISS PETITION FOR INSTRUCTIONS PURSUANT TO SCRCP RULE 41(a)(2)

FILED FOR RECORD
16 DEC 13 PM 12:58
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WALKER KEARSE, INDIVIDUALLY; AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by his undersigned attorney will move before the Special Judge of the Allendale County Courthouse at the Hampton County Courthouse at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order voluntarily dismissing the Petitioner's Petition for Instructions pursuant to the South Carolina Rules of Civil Procedure Rule 41(a)(2), on the grounds that the purpose for which the Petition was filed is no longer feasible, and the Petitioner wishes to voluntarily dismiss the action and file the necessary documents to close the Estate of G.H. Kearse expeditiously in

accordance with the South Carolina Probate Code. The basis for this Motion may be supplemented by a memorandum of law in support of the motion. Prior to filing this Motion, the movant's counsel has attempted in good faith to resolve the matter contained in the Motion, and further consultation will serve no useful purpose.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

/s Kenneth B. Wingate

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PETITIONER

Columbia, South Carolina

December 8, 2016

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing Motion to Dismiss Pursuant to SCRCP Rule 41(a)(2) in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Rachael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206



Hilary A. Ingrum

Columbia, South Carolina
December 8, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING (AMENDED)

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
16 DEC 20 AM 9:26
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

DATE: Thursday, February 2, 2017

TIME: 11:00 A.M.

PLACE: Hampton County Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2) and Motion for Summary Judgment

Executed this 16 day of December, 2016.

Signature: /Kenneth B Wingate
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: ALLENDALE)
) PROOF OF DELIVERY
IN THE MATTER OF:)
ESTATE OF G. H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent))

On the 16 day of December, 2016, I mailed or delivered the following document(s):

Amended Notice of Hearing for Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2) and Motion for Summary Judgment

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

FILED FOR RECORD
16 DEC 20 AM 9:26
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☒ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachel K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 16th day of December, 2016

Notary Public for South Carolina
My Commission Expires: 8/31/26

Signature:
Print Name: Hilary A. Ingrum
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: hai@swblaw.com
Relationship to Decedent/Estate: Assistant to Kenneth B. Wingate

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT

COUNTY OF ALLENDALE)

Elizabeth Kearse Gooding,)

Petitioner,)

v.)

J. Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, The Kearse Family Education Trust, William Gordon Kearse, Julia Kearse Sharp, Rachael Kearse Best, and Joseph Weber Kearse, J. Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,)

Respondents.)

IN THE MATTER OF: ESTATE OF G.H. KEARSE)

COPY

Case No.: 2013-ES-03-00063

FILED FOR RECORD
17 JAN 17 AM 10:01
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

ANSWER TO PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

The Respondent, John Morgan Kearse, individually and as personal representative hereby answers the Petition for Removal of Personal Representative (the "Petition") as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each and every allegation of the Petitioner's Petition not specifically admitted herein is denied.

2. Paragraph alleging Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment is unchecked, therefore no response is required.

3. Paragraph alleging the Personal Representative has disregarded a Court order is unchecked, therefore no response is required.

4. Paragraph alleging the Personal Representative has become incapable of carrying out his/her assigned duties is unchecked, therefore no response is required.

5. Respondent denies the allegation that the Personal Representative has mismanaged the estate.

6. Respondent denies the allegation that the Personal Representative has failed to perform a required duty.

7. Respondent denies the allegation that removal is in the best interests of the estate.

WHEREFORE, Respondent prays that this court dismiss the Petition for Removal of Personal Representative and grant such other relief as the court deems just and proper.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR RESPONDENT JOHN MORGAN KEARSE

Columbia, South Carolina

January 12, 2017

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing ANSWER TO PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Rachael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206

Hilary A. Ingrum

Columbia, South Carolina

January 12, 2017

STATE OF SOUTH CAROLINA	)	
COUNTY OF ALLENDALE	)	Case # 2013-ES-03-00063
IN RE: Estate of G. H. Kearse, decedent	)	
	)	
Elizabeth Kearse Gooding, Petitioner,	)	
-vs-	)	
William Gordon Kearse, Julia Kearse Sharp,)		Motion for Restraining Order
Rachael Kearse Best, John Morgan Kearse,)		
Joseph Weber Kearse,	)	
Respondents.	)	

The Petitioner, Elizabeth K. Gooding, by and through her undersigned attorney, will move before this Court within 10 days hereof, or as soon thereafter as this matter may be heard, for an Order restraining the Personal Representative from acting on behalf of this Estate, and specifically from issuing checks from the Estate bank account, until the Petition for Removal is heard and adjudicated by this Court.

The grounds for this motion are as follows:

1. On December 7, 2016, the Petitioner filed with this Court a Summons and Petition for Removal of the Personal Representative, John Morgan Kearse. This Summons and Petition were served on the attorney for the Personal Representative on December 8, 2016.

2. S.C. Code Ann. § 62-3-611 (1976), clearly states, in part: "Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate.

3. The Petitioner has verified that the Personal Representative has continued to issue checks on the Estate account since receiving notice of the removal Petition, in violation of S.C. Code § 62-3-611 (1976). Specifically, the Personal Representative continues to advance payments to his attorney for an action which Petitioner maintains is without merit and for which this Court has scheduled a hearing on Summary Judgment for February 2, 2017.

4. Since the filing of the Petition for Removal, the Petitioner has learned of other, additional acts of misappropriation of Estate funds and negligence on the part of the Personal Representative, which occurred prior to the filing of the Petition but were not known by Petitioner at the time of filing the Petition.

5. A Restraining Order prohibiting the Petitioner from acting on behalf of the Estate, and specifically from spending Estate moneys, is necessary to protect the Estate from further harm.

This Motion is further based on the South Carolina Rules of Civil Procedure, the pleadings, the laws of the state of South Carolina, and upon such other and further grounds and evidence as may be presented to the Court.

Respectfully submitted,

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

CHARLESTON, SC

JANUARY 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Slotchiver & Slotchiver, LLP, attorney for Petitioner, do hereby certify that I have served a copy of the foregoing MOTION FOR RESTRAINING ORDER in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

William Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse
6620 Merrill Road
Columbia, SC 29209

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Daniel A. Speights, Esquire
Speights & Runyan
2015 Boundary Street, Suite 239
Beaufort, SC 29902

Kenneth B. Wingate, Esquire
Sweeny Wingate & Barrow
P.O. Box 12129
Columbia, SC 29211

JoAnne M. Jennings

Charleston, South Carolina
January 20, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF: Allendale)
)
IN THE MATTER OF:)
The Estate of George G. H. Kearse)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2013-ES-03-00063

DATE: Tuesday, February 2, 2017

TIME: 10:45 AM

PLACE: Hampton county Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion for Restraining Order

Executed this 20 day of Janurey, 2017.

Signature: _____

Print Name: Stephen M. Slotchiver

Address: 44 State Street
Charleston, SC 29401

Telephone (Work): 843-577-6531

(Home): _____

(Cell): _____

E-mail: steve@slotchiverlaw.com

Relationship to Decedent/Estate: attorney for Decedent's daughter

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence.*

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

PROBATE COURT
Hampton County, SC
Filed 11:35am
Date 02/01/2017

J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse,
Petitioner,

-vs-

William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, John Morgan Kearse, Joseph Weber Kearse, all of which are named Individually and as Trustees of the Kearse Family Educational Trust under and Agreement dated November 5, 1992.
Respondents.

PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

BACKGROUND/STATEMENT OF FACTS

In November 1992, the Decedent, G. H. Kearse, established the Kearse Family Educational Trust, which the Petitioner attached to his Petition as "Exhibit B." Under the terms of this Trust, the Decedent stated in Article II:

> "**The trust estate.** The Settlor has paid over, assigned, endorsed, granted, conveyed transferred and delivered, and by this agreement does hereby pay over, assign, endorse, grant, convey, transfer, and deliver unto the Trustee all of the issued and outstanding stock of SEH, Inc. and Elysium Field, Inc. Thus the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporations own."

It is undisputed that, between the years 1982-1992, the Decedent conveyed all of his interest in the real estate known to be the Kearse Family farm, to the two corporations, SEH, Inc., and Elysium Fields, Inc. In 1992, the Decedent had his accountant prepare and file a U.S. Gift Tax Return, acknowledging the transfer of all of the corporate stock to the Kearse Family Educational Trust, as recited in the Trust

Agreement. (See tax return as Exhibit to Petitioner's deposition at pages 000167 and 00168, as well as pages 000164 and 000165).

The Decedent, G.H. Kearse, died testate June 10, 2013. The Last Will and Testament of the Decedent named all six of his children as personal representatives. Five of the Decedent's six children waived their right to serve in favor of John Morgan Kearse, who was then appointed as personal representative of the Estate on October 22, 2013, which was the same date the Will was admitted to probate and filed with the Probate Court.

The controversy among the parties arose from Item VI of the Decedent's Last Will and Testament, in which he directs the children to build a specifically described house, copied after an historic home in Virginia, known as "Gunston Hall," and directs that it be built on a specific parcel of land, which has been indisputably owned by the Kearse Family Educational Trust, since 1992 (approximately 25 years).

The Respondent, Elizabeth K. Gooding, maintains that Item VI of the Decedent's Will cannot be carried out because: 1) the Decedent did not own, nor did he have a right to control, the land upon which this house was directed to be built; and 2) even if the estate did own the land (which it does not), the Estate lacks sufficient funds to build the structure.

On April 8, 2016, the personal representative, John Morgan Kearse, filed with the Probate Court this action entitled "Petition for Instructions." All six children, including the Petitioner himself, were named as Respondents in this action. In

response to a Motion to Dismiss for failure to name an indispensible party, an Amended Summons and Petition was filed on June 3, 2016, which simply added the clause in the case caption naming the Respondents both individually and as Trustees of the Kearse Family Educational Trust.

The Respondent, Elizabeth K. Gooding, has moved for summary judgment, maintaining that there is no genuine issue of any material fact in this matter, and that she believes that the Respondents are entitled to judgment against the Petitioner as a matter of law.

STANDARD OF REVIEW

In deciding a Rule 56 motion, the Court must view the facts and inferences there-from in the light most favorable to the nonmoving part. Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thomas v. Waters, 445 S.E.2d 659 (S.C. Ct. App. 1994). Another formulation of the same standard is that summary judgment is only appropriate when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. Williams v. Chesterfield Lumber Co., 267 S.E.2d 708(1976). Further, in ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Jernigan v. King, 440 S.E. 379 (S.C. Ct. App. 1993).

Summary judgment is not a trial of the merits, but a determination that there is no factual issue to present to the trier of the fact and that the case may be decided as a matter of law. Spencer v. Miller, 259 S.C. 453, 192 S.E. 2d 863 (1972). Moreover, the Court does not try disputed issues on a motion for summary judgment; it simply decides whether one exists. Hammond v. Scott, 268 S.C. 137, 232 S.E. 2d 336 (1977). Consequently, summary judgment should not be granted even where the facts are undisputed, if the uncontested facts support different inferences. Koester v. Carolina Rental Ctr. 313 S.C. 490, 443 S.E. 2d 392 (1994); Dowling v. Home Buyers Warranty Corp., 303 S.C. 295, 400 S.E. 2d 143 (1991).

ARGUMENT

I. VIEWING THE EVIDENCE AND ALL REASONABLE INFERENCES IN THE LIGHT MOST FAVORABLE TO THE PETITIONER, THE COURT MUST GRANT SUMMARY JUDGEMENT AGAINST PETITIONER, AS THE UNDISPUTED EVIDENCE REJECTS EVERY MATERIAL ASSERTION OF THE PETITION.

First, it is important to note that this Petition does not seek true instruction from the Court. The first two pages of this Petition for Instruction sets forth the circumstances under which the Petitioner was appointed personal representative of this Estate. Beginning on page 3, paragraph 12, the Petition states "Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust." Thereafter, every paragraph that is not a verbatim recital from the Will or Trust, begins with "The Petitioner asserts..." The Petition is a rambling, discombobulating string of assertions that attempts to impose

provisions of the decedent's Will as mandates on the Trust in order to construct a rationale supporting the building of the house on land owned by the Trust.

There is not one paragraph of the Petition that alleges any question as to the interpretation or construction of either the Decedent's Will or the Irrevocable Educational Trust that the Decedent established in 1992, for which Petitioner, purportedly, seeks the Court's guidance. The Petitioner "asserts" that "the language is clear and unambiguous," ¶12); he states exactly what moneys are available for this directive (¶13); that the Estate has sufficient funds to build the house (¶14); that he knows the "Decedent's intent," (¶15); that the Estate and Trust are "integrally related" and the Trust must help build the house (¶18); and even states in ¶18 that his position is "clearly supported" by the language.

In the final paragraph, the Petitioner "prays" for "instructions" ...

> "stating the home is a major requirement of the Decedent's Will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will."

This Respondent submits that this Petition is, in fact and substance, a Rule to Show Cause why the named Respondents should not be ordered to comply with the Petitioner's erroneous and unsupported interpretation of the Decedent's Last Will and Testament and Kearse Family Educational Trust Agreement.

A. THE KEARSE FAMILY EDUCATIONAL TRUST IS A SEPARATE LEGAL ENTITY THAT HAS NO LEGAL CONNECTION OR OBLIGATION TO THE DECEDENT'S ESTATE.

All of the property that is known as the Kearse Farm was transferred by the Decedent into two corporations, SEH, Inc., and Elysium Fields, Inc. between the years 1982-1992. The Petitioner admitted that the Decedent would not have any right of control over the farm property if the stock of the corporations had been transferred to the Kearse Family Educational Trust. See Deposition of John Morgan Kearse, dated September 7, 2016, p. 58, lines 8-20.

There is indisputable evidence that all of the corporate stock of SEH, Inc., and Elysium Fields, Inc., was transferred to the Kearse Educational Trust 21 years before the Decedent's death. The following provides overwhelming verification of that fact:

1. The Trust Agreement clearly states that the Decedent transferred all of the stock of the two corporations to the Trust. See Trust Agreement (attached to Petition as Exhibit B), Art. II. When asked to read this provision of the Trust, the Petitioner admitted that the Trust owned all of the corporate stock of these corporations. See deposition of John Morgan Kearse, dated September 7, 2016, p. 61, line 12 through p. 64, line 4.

2. Letter from William P. Edenfield, CPA, to G. H. Kearse, dated August 25, 1994, enclosing a copy of the Decedent's 1992 Federal Gift tax Return, showing that the Decedent transferred the corporate stock to the Kearse Family Educational Trust in 1992. See deposition of John Morgan Kearse, dated September 7, 2016, Defendant's Exhibit #1, page 167-170.

3. Letter from Alex Weatherly, Jr. (Moses, Koon, & Brackett), to Sharon Bramlett (decedent's accountant), dated April 16, 2002, showing that the Kearse Family Educational Trust owned the two corporations. Id. at 166.

4. An email from Elizabeth Gooding to Sharon Bramlett, dated Sept. 11, 2013, stating that the Trust owns all of the real estate through the corporations and that, in recognition of that fact, the personal representative (Petitioner, J. Morgan Kearse), had deposited the farm rent for that year in the Trust account. Id. at 400-401.

5. Letter from the Petitioner, J. Morgan Kearse, to Thomas B. Bryant, III, dated Dec. 31, 2013, which included a copy of a note, handwritten by the Decedent, indicating that the decedent had transferred all of the stock of the corporations to the Trust in 1992. See deposition of John Morgan Kearse, dated Sept. 7, 2016, Defendant's Exhibit #4.

6. Letter from Tom Bryant to the Petitioner dated Jan., 8, 2014, advising the Petitioner that the real estate held in the corporations, which were owned by the Trust, were not to be considered in the estate. Id. at p. 442-443.

7. The Petitioner filed fiduciary income tax returns (Form 1041), for the Estate for the tax years 2013, 2014, and 2015, and testified that he reported no ownership interest in any corporations on those returns. Id. at p. 48, lines 1-11.

It is significant to note that all of the cited evidence above was produced by the Petitioner at his deposition, with the exception of #5, a copy of which Petitioner provided to the Respondent, Elizabeth K. Gooding, in 2013. In other words, all of the evidence to support the conclusion that the Decedent had no ownership or control of the Trust lands, was in the prior possession and control of the Petitioner at the time of the filing of the Petition for Instruction.

Based upon the foregoing, the Petitioner's claim that the Estate and Trust are "integrally related" bears no truth in fact or law. Nowhere has the Petitioner postulated even a theory as to how this might be true. Since 1992, the Kearse Family Educational Trust has existed as a separate legal entity. Since 1992, the Kearse Family Educational Trust has owned the land where Decedent expressed under Item VI of his Will his (the Decedent's) "wish and desire" for the Estate to build the house. The Decedent was without legal authority to direct his personal representative to build a house on land he did not own.

Clearly, the undisputed evidence rejects every material assertion of the Petition that the Estate has a right to compel the Trust to participate in the building of a house on Trust land. Furthermore, the undisputed evidence rejects every material assertion of the Petition that the Estate has any right to build a house on Trust land, which it does not own. For these reasons, the Court must grant summary judgment to the Respondents in this matter.

The Respondent, Elizabeth K. Gooding, believes that the Decedent's instructions in Item VI of the Will to build the house cannot be fulfilled as a matter of law based upon the foregoing discussion. However, because the Petition also addresses the cost of building the house, a brief discussion of that issue follows.

B. THE PETITIONER HAS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT THE ESTATE HAS SUFFICIENT FUNDS TO CONSTRUCT THE HOUSE.

Item VI of the Will says only this regarding the funding of the house:

"I have some money that should be enough to complete it."

The personal representative has not located any money specifically earmarked by the decedent for building the house. According to the Inventory, the Decedent had approximately $566,000 in cash or cash equivalent, and approximately $159,000 in gold and silver coins. Miscellaneous real estate in the estate was valued at approximately $675,000.

The Will clearly states in Item VIII, " I give, devise, and bequeath any monies in banks, bonds, or any cash in my possession, included but not limited to gold and

silver coins, to the Kearse Educational Trust..." Also, in Item VII, " I give, devise, and bequeath all the rest, residue, and remainder of my property both real and personal, of which I may be entitled to at the time of my decease, to the Kearse Educational Trust..."

The Decedent specifically directed that cash, gold coins, and any and all real estate to pass to the Trust. Without money specifically designated for the building of the house, the personal representative is without authority to direct that other specific provisions of the decedent's Will be disregarded. If the personal representative uses funds of the estate for building a house he would indisputably be violating Item VII and Item VIII of the Decedent's Will.

More importantly, the Petitioner does not know how much money would be required for the Estate to build a copy of the historic home known as "Gunston Hall," (for which the Decedent indicates under his Will that there should be an addition to provide space for a kitchen large enough that it can also be used as a sitting room, as well as that the house should be raised by two to three feet to allow the basement to be more useful) even though his Petition unequivocally states "The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house..." ¶14 of Petition.

Petitioner testified that he did not know how many square feet were in Gunston Hall. (See deposition of John Morgan Kearse, dated Sept. 7, 2016, p. 74, lines 20-21.) Also, he does not know how many bedrooms are in the house. (Id. at p. 85, lines 3-5). Petitioner testified that the only persons he had talked to about the cost

of building the house is his attorney (**Id.** at p. 75, lines 1-4), and his sister, Rachael Best (**Id.** at p. 75, lines 8-12).

Petitioner admitted that he does not know what it will take to build the house and that he has not personally talked to an architect or anyone else. (**Id.** at p. 75, line 15 through p. 76, line 11).

Petitioner admitted that he had no estimates for building the house and he did not know whether it could be built for a million dollars or for 3 million dollars. (Id. page 77, lines 5-22.) Later, he testified that the estate could build a house if it cost a million dollars but not 2 million dollars. (**Id.** p.79, line 3 through p. 80, line 15).

Petitioner testified that he could not even "speculate" on what the price of building the structure might be. (**Id.** p. 83, lines 8-12). He also testified that he had no idea what the taxes, insurance, and maintenance on such a structure would be or whether the Trust could afford to maintain it. (**Id**, p. 87, lines 13-19).

The Petitioner represented to the court in his Petition for Instruction that the Estate has sufficient funds to build the house described in Decedent's Will. This is not true. Even if the Petitioner had millions of dollars available within the Estate, he cannot represent to the Court that there are sufficient funds because he admitted he does not know how much such a structure would cost, and admitted that he had not consulted with any contractors, engineers, or and/architects. (**Id.** p. 75, line 1 through p. 77, line 7).

Significantly, Petitioner acknowledged that he and the Respondent, Elizabeth Gooding, consulted with attorney Tom Bryant of Orangeburg on Sept. 24, 2013, at which time Mr. Bryant advised that he believed that building the house was not possible. (Id. p. 170, lines 6-25). And Petitioner admitted that after over the three 3 years since meeting with Mr. Bryant, he had done nothing to determine what the costs of building the house might be. (Id. p. 171, lines 2-16). Although Petitioner stated in his Petition that the Estate had sufficient monies to build the house, he testified that, "I am speculating on what it is going to cost until I have some kind of idea of what we are looking at. That is not my---area of expertise, building a home, or even speculating on a price." (Id. p. 83, lines 8-12).

CONCLUSION

The Respondent, Elizabeth K. Gooding, respectfully submits to this Court that, based on the pleadings, deposition, exhibits, and admissions in this case, there is no genuine issue of material fact. The plain, palpable, and indisputable facts, upon which reasonable minds cannot differ, are:

1. **The Decedent did not own the real estate on which Decedent requested the building of the house described in his Will. Even if the decedent had left earmarked funds for this purpose, the Petitioner is without authority to compel such an action on land owned by another.**

2. **There are no specific funds earmarked by Decedent for the building of the house and, therefore, there is no funding to fulfill this directive;**

3. **The Petitioner made assertions, totally unsupported, that the estate has sufficient funds to build the house. The Petitioner has failed to offer any facts to support this position.**

Because the undisputed evidence in this case clearly rejects every material conclusion of the Petition, Respondent, Elizabeth K. Gooding, respectfully submits that there is no factual issue to be determined by the court and that the Respondents are entitled to judgment as a matter of law.

Slotchiver & Slotchiver, LLP

1/31/17

Stephen M. Slotchiver
Attorney for Respondent, Elizabeth K. Gooding
44 State Street
Charleston, SC 29401

STATE OF SOUTH CAROLINA)
)
COUNTY OF Allendale)
)
IN THE MATTER OF:)
G. H. Kearse)
(Decedent))

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

CASE NUMBER: 2013-ES-03-00063

I, J. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 20 17

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: J. Morgan Kearse
Print Name: J. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearselawallendale.com

ORDER

With the appointment of _____ as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of _____ _____ shall be terminated.

Executed this _____ day of _____, 20____.

_____
, Probate Court Judge

PROBATE COURT
HAMPTON COUNTY SC
FILED
DATE 2/2/17
TIME 11:43 AM

FORM #335ES (1/2014)
62-3-610

STATE OF SOUTH CAROLINA)
COUNTY OF: ALLENDALE)
IN THE MATTER OF:)
ESTATE OF G. H. KEARSE)
(Decedent))

COPY

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2013-ES-03-00063

On the 2 day of February, 2017, I mailed or delivered the following document(s):

Statement of Resignation

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☒ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP, Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachael K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 2 day of February, 2017

Notary Public for South Carolina
My Commission Expires: 2/19/23

Signature: /s/ Kenneth B. Wingate
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney

DATE 2/2/17
TIME 11:00:50 AM

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

0000146

COPY

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)	IN THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	)	Case No.: 2013-ES-03-00063 NOTICE OF MOTION AND MOTION TO ALTER OR AMEND OR, IN THE ALTERNATE, FOR A NEW HEARING

FILED FOR RECORD
17 MAR 20 PM 3:48

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WEBER KEARSE, INDIVIDUALLY; AND EACH ALSO FOR OR AS THE CO-TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney, will move immediately before the Court, and does hereby move, for an order altering or amending Order in this matter dated February 27, 2017 or, in the alternative, for an evidentiary hearing of the issues encompassed by that Order. Notice of the entry of the Order and the Order itself were received by Petitioner on March 6, 2017.

This motion is filed pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and may be further supplemented by one or more Affidavits, the Pleadings, citations to relevant authority, a Memorandum of Law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

BACKGROUND

G.H. Kearse ("Decedent") died on June 10, 2013, survived by six children, all of whom are named as Respondents in this matter, and the Decedent's spouse. The Decedent's probated will named all six children as co-personal representatives, five of whom renounced their right to serve and nominated Morgan Kearse to serve as the sole personal representative, which appointment was accepted by the Court.

Article VI of the Decedent's will directs his six children to use his "monies" to build a house on land owned by the Kearse Family Education Trust ("Trust"), which was itself established by the Decedent and is named as a respondent along with the six children in their capacities as co-trustees of the Trust. Morgan Kearse and two of his siblings believed this directive should be followed, and three siblings did not. Further, one sibling from each group threatened to sue Morgan Kearse whether or not he followed the directive to build the house. Accordingly, Morgan Kearse, as personal representative, exercised his statutory right to request guidance from the Court by filing a Petition for Instructions.

Julia Kearse Gooding filed an Answer to the Petition for Instruction and a subsequent Motion for Summary Judgement, each requesting the Court rule that the house may not be built. Following an indication that the siblings originally in favor of building the house would now consent to the house not being built, Morgan Kearse subsequently filed a Motion to Dismiss his own Petition for Instruction. Just before this filing, Ms. Gooding also filed a Petition for Removal of Personal Representative, and in the following month filed a Motion for Restraining Order (of the Personal Representative).

The Court scheduled a hearing for February 2, 2017 on the Motion to Dismiss the Petition for Instruction, Motion for Summary Judgement, and Motion for Restraining Order. Prior to the

hearing, legal counsel for the represented parties worked on a possible settlement to resolve all pending estate controversies, and even informed the Court that it believed a settlement had been reached by letter dated February 1, 2017. However, this statement proved to be inaccurate for the reasons stated in the Affidavit of Morgan Kearse and incorporated herein as Exhibit 1.

On the evening of February 1, 2017, Morgan Kearse informed his undersigned counsel that he would not officially enter into the settlement (titled "Final Term Sheet") on the basis that Gordon Kearse had withdrawn his consent to allow the estate to pay certain legal fees otherwise payable by Morgan Kearse under item 4 of the "Final Term Sheet." (Transcript, p. 7, l. 18-25). For Morgan Kearse, Gordon Kearse's consent had been a material term of the Final Term Sheet, without which he was no longer willing to submit the same for approval by the Court. In addition, Rachael Kearse Best and Joseph Weber Kearse, two of the pro se respondents, never signed the Final Term Sheet, nor did they attend the hearing (Transcript, p. 13, l. 18-25 & p. 14, l. 3-13).

In lieu of a hearing, a non-evidentiary discussion was conducted by the Court and legal counsel (Transcript, p.18, l. 21-25 & p. 19., l. 1-7). The Court acknowledged that the parties were no longer in agreement with the proposed settlement and appeared ready to simply to enter the Final Term Sheet into the record as information (Transcript, p. 20, l. 18-25 & p. 21, l. 1-6). However, although not understood by the undersigned counsel at the time, the Court apparently went on to imply that the proponents of the Final Term Sheet may present it by way of a proposed order for approval by the Court as a formal settlement (Transcript, p. 21, l. 14-22).

Ultimately, counsel for Julia Kearse Sharp did submit a proposed order that was signed by the Court on February 27, 2017, served on the parties by letter dated March 3, 2017, and received by the Petitioner on March 6, 2017. This Motion follows.

ARGUMENT

I. The Parties Did Not Reach a Binding Settlement.

As discussed above and in the attached Affidavit of Morgan Kearse, there was no assent by Morgan Kearse, Rachael Kearse Best, and Joseph Weber Kearse to the Final Term Sheet because a material set of additional terms was not incorporated into the Final Term Sheet. That fact alone is dispositive of the matter at hand. However, even if the additional material terms could be somehow disregarded, the required procedures for reaching an estate settlement were not followed.

There are at most three possible ways to consummate a binding estate settlement. The parties in the present matter did not satisfy any of the three. First, S.C. Code Ann. § 62-3-912 (emphasis added) provides as follows:

> 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, 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. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

In this case, Section 62-3-912 is implicated because the Final Term Sheet affected the parties' "interests, shares, or amounts to which they are entitled under the will of the decedent," in that it would name a Special Administrator (§ 1), pay from the estate a personal representative fee (§ 2), allow the estate to pay legal fees (§ 4), allow for the rent free use of estate property (§ 5), and agree to sell estate property (§ 6). However, Section 62-3-912 is not satisfied because the Final Term Sheet was obviously not "executed by all who are affected by its provisions.". Id. In fact, it was executed by less than half of the persons affected by its provisions considering the Trust is a

separate legal person and it may only operate by unanimous vote of its co-trustees according to the Trust terms.

The proposed order offered by counsel for Julia Kearse Sharp attempts to skirt this fatal flaw by suggesting (1) that the pro se parties are not required to execute a settlement based on the Final Term Sheet and (2) that they otherwise did so simply by advising Morgan Kearse's legal counsel that they agreed to it.[1] (Order p. 4). However, Section 62-3-912 expressly requires the execution of a settlement (not merely an alleged oral affirmation to counsel for another party) by all who are affected by the settlement's terms.

Moreover, the "pro se" argument also ignores the fact that the Trust did not execute the settlement, which is ironic considering the opposition to the Petition for Instruction is premised on the argument that Decedent's direction to build a house on Trust property cannot be enforced without Trust consent. To date, the Trust has no more consented to the Final Term Sheet than it has consented to a house being built on Trust property.

Next, S.C. Code Ann. § 62-3-1102 (emphasis added) provides as follows:

> The procedure for securing court approval of a compromise is as follows:
>
> (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
>
> (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

[1] These alleged statements would be inadmissible hearsay had they been actually offered as evidence, which they were not.

(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

As discussed previously, however, in this case the Final Term Sheet was not executed by all competent persons. Moreover, there was no application to the Court regarding the settlement, no notice to interested persons regarding the same, and no evidentiary finding that the terms were just and reasonable. As such, the Final Term Sheet also failed to satisfy Section 62-3-1102 for multiple independent reasons.

Finally, Rule 43(k), SCRCP, provides as follows:

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

Although Rule 43, SCRCP is titled "Conduct of Trial," our State Supreme Court has held that it applies to settlement agreements generally, even outside of the trial context. Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 458 S.E.2d 533 (1995). As explained by the Supreme Court, "the application of Rule 43(k) will increase the certainty of settlement agreements by avoiding disputes ....[T]he purpose of rules such as Rule 43(k) is: '[T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character.'" Id. at 494–95, 458 S.E.2d 533, 535 (quoting 83 C.J.S. Stipulations § 4 (1953).

That said, it appears that Rule 43(k), SCRCP does not apply to this matter for two reasons. First, it applies to agreements "between counsel," whereas the present matter involves the rights of three additional pro se parties, plus a Trust that does not have its own legal counsel. In addition, the South Carolina Probate Code already provides two statutes regarding estate settlements, one for private agreements and the other for court ordered settlements as discussed previously. Presumably, therefore, the legal maxim of lex specialis derogat legi generali would apply. That is, where two laws govern the same factual situation, a law governing a specific subject matter (estate settlements) overrides a law which only governs general matters (litigation settlements generally).

However, the Final Term Sheet also fails to satisfy Rule 43(k), SCRCP even if it could apply to the present matter. It was neither "signed by counsel," "signed by the parties," or otherwise "made in open court." Only the latter point may require some clarification. Here, though the alleged agreement may have arguably been "made" by counsel outside of court (based on Morgan Kearse's understanding of additional promises affecting the ultimate terms of the alleged agreement), the alleged agreement was not "made" by counsel "in open court" as plainly required by Rule 43(k), SCRCP.

In other words, having an agreement "made" for purposes of Rule 43(k), SCRCP is more than merely stating the words of a purported agreement on the record; it is an affirmative acknowledgment to be bound by the agreement "in open court." See Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006) (emphasis added) ("Because the purported agreement the parties reached following mediation was neither entered into the court's record nor acknowledged in open court and placed upon the record, Rule 43(k), SCRCP, plainly provides that the agreement is unenforceable."). As defined in Black's Law Dictionary (10th ed. 2014), "acknowledge" means:

1. To recognize (something) as being factual or valid <acknowledge the federal court's jurisdiction>. 2. To show that one accepts responsibility for <acknowledge paternity of the child>. 3. To make known the receipt of <acknowledged the plaintiff's letter>. 4. To confirm as genuine before an authorized officer <acknowledged before a notary public>. 5. (Of a notary public or other officer) to certify as genuine <the notary acknowledged the signature as genuine>.

In the present case, however, Morgan Kearse's counsel unequivocally disavowed the settlement in open court (Transcript, p. 7, l. 23-25). Therefore, the Final Term Sheet was neither "acknowledged" nor "made" in open Court. Ultimately, "[u]ntil a party is bound, [he] is entitled to withdraw [his] assent." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that a settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial).

In summary, whether one analyzes the Final Term Sheet under Section 62-3-912, Section 62-3-1102, or Rule 43(k), SCRCP, there is only one conclusion that can be drawn; the proposed settlement agreement is not and may not be legally binding under South Carolina law. Accordingly, Morgan Kearse asks the Court to amend its order to reflect that no binding settlement was reached by the parties to this matter and otherwise strikes the terms of the Final Term Sheet.

II. The Particulars of the Final Term Sheet Were Not Otherwise Before the Court.

Since the parties to this matter failed to execute a binding settlement under South Carolina law, the next question is whether the Court could have otherwise entered an order that incorporated the Final Term Sheet without a binding settlement. The answer again must be no.

The only matters properly before the Court, pursuant to the Notices of Hearing, were the Motion to Dismiss the Petition for Instruction, Motion for Summary Judgement, and Motion for Restraining Order. Therefore, at most, the Court could have (1) ruled that the Decedent's directive to build a house on Trust property could not be honored without the Trust's consent, (2) dismissed

the Petition for Instruction, and (3) directed Morgan Kearse to cease acting as personal representative. Though the Court may also have been prevented from reaching those conclusions to the extent that the hearing was non-evidentiary (Transcript, p.18, l. 21-25 & p. 19., l. 1-7), Morgan Kearse would take no exception to an order limited to the foregoing three conclusions.

Similarly, Morgan Kearse remains willing to resign as personal representative, and would not contest any order that accepted his resignation, even if the resignation was not properly before the Court and did not follow the procedure of S.C. Code Ann. § 62-3-610(b). Further, Morgan Kearse would not contest an order appointing Algernon Gibson Solomons, Jr., Esq. as Special Administrator, even if the appointment was not properly before the Court and did not follow the procedure of S.C. Code Ann. § 62-3-614.[2]

In contrast, not before the Court in any form that could be ruled on, and which ruling Morgan Kearse does hereby contest, were the questions of Morgan Kearse's personal representative fee and the allocation of legal fees and costs in this matter (see §§ 2-4 of the Final Term Sheet, as incorporated into the February 27, 2017 Order). Moreover, no evidence was introduced regarding these issues. Finally, it may also be noted that, despite the lack of evidence, the Court's approval of the Final Term Sheet conflicts, at least in part, with various default provisions of the South Carolina Probate Code. See S.C. Code Ann. § 62-3-720 (the estate pays the personal representative's legal fees and costs); S.C. Code Ann. § 62-1-111 (the beneficiaries pay their own legal fees and costs); and S.C. Code Ann. § 62-3-719 (the personal representative receiving a fee equal to 5% of all personal probate property, real estate sales proceeds, and income).

[2] Note that the Court appeared to state that it would require the procedure to be followed (Transcript, p. 21, l. 7-13), but evidently changed its mind by virtue of the terms of its February 27, 2017 Order.

In summary, the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code. Accordingly, Morgan Kearse asks the Court to amend its order, at a minimum, to strike sections 2, 3, and 4 of the Final Term Sheet, if not striking the Final Term Sheet and February 27, 2017 Order in their entirety.

III. New Hearing.

To the extent that the Court does not alter or amend its Order dated February 27, 2017, as requested in this Motion, Petitioner requests a new hearing so that the parties may for the first time introduce evidence regarding the issues encompassed by the Order.

CONCLUSION

Based on the foregoing, the Petitioner Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, respectfully requests that the Court alter or amend its Order dated February 28, 2017 regarding the conclusions of law and fact raised in the foregoing Motion or, in the alternative, for an evidentiary hearing of the matters encompassed by the Order.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PETITIONER

Columbia, South Carolina
March 16, 2017

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF ALLENDALE	)	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,	)	Case No.: 2013-ES-03-00063
Petitioner,	)	
v.	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,	)	AFFIDAVIT OF J. MORGAN KEARSE
Respondents.	)	

FILED FOR RECORD
17 MAR 20 PM 3:48
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

PERSONALLY APPEARED BEFORE ME, the undersigned, J. Morgan Kearse, who after being duly sworn, deposes and says:

1. I was nominated by my five siblings to serve as personal representative of the Estate of our father, G.H. Kearse, and was appointed by the Allendale County Probate Court to serve in that capacity.

2. The last will and testament of G.H. Kearse contained a directive to use his probate property to build a house on real estate owned by a trust that was previously established by G.H. Kearse.

3. Some of my siblings were in favor of building the home and some were not. Further, one sibling from each side threatened to sue me whether I took action to follow G.H. Kearse's directive to build the house or not.

4. Therefore, upon the advice of my independent legal counsel, I filed a Petition for Instruction so that the Court could resolve the contentious issue regarding the house.

5. Eventually, my siblings in favor of building the house agreed to relent on that issue (so that no house would be built) and the primary question remaining was the payment of legal fees for me, as personal representative, and for my sisters Julia Kearse Sharp ("Ms. Sharp") and Elizabeth Kearse Gooding ("Ms. Gooding").

6. My counsel has advised me that my legal fees should be paid by the Estate and that Ms. Sharp and Ms. Gooding should pay their own fees unless the court determines it would be

EXHIBIT
1
tabbies
000157

equitable to have their fees also paid by the Estate. However, Ms. Sharp has remained adamant that I should pay her legal fees.

7. Ultimately, a "Final Term Sheet" was offered by Ms. Sharp or Ms. Gooding that provided I would, in fact, pay her legal fees, but that my fees, as personal representative, and Ms. Gooding's fees could be paid from the Estate if a majority of the six siblings agreed, but if not then I would also have to pay the additional fees.

8. In response to the Final Term Sheet, I canvassed my siblings and was assured by William Gordon Kearse, Rachael Kearse Best, and Joseph Weber Kearse that they would support the Estate's payment of my fees, as personal representative, and the fees of Ms. Gooding.

9. This assurance was a necessary condition to any willingness I would otherwise have to accept the Final Term Sheet, and so I therefore sent a document to my three siblings, on February 1, 2017, for them to sign and confirm their assurance regarding the payment of fees (attached as Exhibit A). Each also told me they would sign the attached document.

10. Based on these assurances, on February 1, 2017, I also informed my counsel that I was willing to assent to the Final Term Sheet, even though I did not believe I should pay Ms. Sharp's fees, in the spirit of resolving this matter for my siblings' mutual best interest.

11. Because I fully expected the attached document to be signed by my three siblings, my counsel therefore informed the Court that a settlement had been reached.

12. Unfortunately, upon following up with my brother, William Gordon Kearse, on the evening of February 1, 2017, he informed me that he would not be signing the document after all.

13. Upon his own initiative, he then called Ms. Gooding and she angrily told William Gordon Kearse that he was not to sign my attached document.

14. Without the assurance of my fees, as personal representative, and Ms. Gooding's fees being paid by the Estate, I immediately informed my counsel that I did not consent to the Final Term Sheet, and he informed the Court the following day at the hearing.

15. In addition, I informed Rachael Kearse Best and Joseph Weber Kearse about what had transpired with William Gordon Kearse. In response, they also decided not to consent to the Final Term Sheet and did not go to the hearing.

FURTHER AFFIANT SAYETH NOT.

J. Morgan Kearse

SWORN TO and subscribed before me
this 15th day of March, 2017

Notary Public for South Carolina
My Commission Expires: 3/12/2025

Whereby the Parties, as Pro Se Respondents in this matter and as Trustees of the Kearse Family Education Trust, have reviewed the terms of the Settlement Agreement and hereby acknowledge and consent to such terms, and in addition, consent to, and upon his appointment by the Probate Court, hereby instruct the Special Administrator of the Estate of G.H. Kearse to make payment from said Estate funds for attorney fees on behalf of Elizabeth Kearse Gooding and to Sweeny, Wingate, and Barrow on behalf of J. Morgan Kearse as Personal Representative.

In witness whereof this 1st day of February, 2017.

_____

Rachael Kearse Best, Respondent

_____

William Gordon Kearse, Respondent

_____

Joseph Weber Kearse, Respondent

KEARSE FAMILY EDUCATION TRUST
DATED NOVEMBER 5, 1992

_____

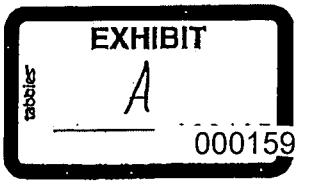
Rachael Kearse Best, Trustee

_____

William Gordon Kearse, Trustee

_____

Joseph Weber Kearse, Trustee



STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	IN THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	)))))))))))))	Case No.: 2013-ES-03-00063 NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR INSTRUCTION, CONFIRM RESIGNATION OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SPECIAL ADMINISTRATOR, AND DIRECT PAYMENT OF LEGAL FEES AND COSTS

FILED FOR RECORD
17 AUG -2 AM 11:04
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WEBER KEARSE, INDIVIDUALLY; AND EACH ALSO FOR OR AS THE CO-TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney, will move immediately before the Court, and does hereby move, for an order dismissing Petitioner's Petition for Instruction, confirming Petitioner's resignation as Personal Representative and the appointment of Harley Ruff, Esq. as Special Administrator, and directing payment of legal fees and costs.

This motion is made pursuant to Rule 41(a)(2), SCRCP and S.C. Code Ann. §§ 62-3-610(b), -614 & -720, and may be further supplemented by one or more Affidavits, the Pleadings, citations to relevant authority, a Memorandum of Law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

BACKGROUND

The relevant procedural and factual background was previously provided in Petitioner's Motion to Alter or Amend or, in the Alternate, for a New Hearing filed March 20, 2017, and is therefore incorporated herein by reference rather than restating the same. However, it may be added that this companion motion is made simply to ensure that all pending controversies regarding this Estate are properly before the Court for resolution.

ARGUMENT

I. Dismissing Petition for Instruction.

Pursuant to Rule 41(a)(2), SCRCP, upon the Petitioner's request, the Court may dismiss the pending Petition for Instruction "upon such terms and conditions as the court deems proper." The only Respondents formally responding to the Petition for Instruction have been Elizabeth Kearse Gooding, by way of an Answer and Motion for Summary Judgement, and Julia Kearse Sharp, by way of a Motion to Dismiss. Each of these filings requests a dismissal of the Petition. In addition, the Respondent who previously threatened legal action if Petitioner did not file the Petition for Instruction has chosen to relent on that position. Accordingly, there being no current opposition to dismissal of the Petition for Instruction, Petitioner respectfully requests that the Court dismiss the same.

II. Confirming Resignation of Petitioner and Appointment of Special Administrator.

S.C. Code Ann. § 62-3-610(b) (emphasis added) provides that "[a] personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is

effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. When the resignation is effective, the personal representative's attorney of record shall be relieved of any further duties to the court."

In the present case, Petitioner executed and filed his resignation on February 2, 2017, the same day as the last hearing in this matter. Therefore, there was neither twenty days' notice as required by S.C. Code Ann. § 62-3-610(b). Moreover, no person submitted an application or petition for appointment of a successor representative as required by S.C. Code Ann. § 62-3-610(b). Accordingly, so that the statute may be satisfied, this Motion is submitted both as a renewed resignation of Petitioner as Personal Representative (with 20 days' notice) as well as an application for Harley D. Ruff, Esq. to serve as Special Administrator.

As to the latter, S.C. Code Ann. § 62-3-614 provides that "[a] special administrator may be appointed: (1) informally by the court on the application of an interested person when necessary: .... (c) to take appropriate actions involving estate assets ...." In the present case, it is necessary for a special administrator to take appropriate actions regarding the Estate's assets, Harley D. Ruff, Esq. is able and willing to carry out that responsibility, it is believed that the Respondents are unanimous in their approval of Harley D. Ruff, Esq. to serve as Special Administrator, and this motion may be considered an application of an interested person.

Accordingly, the Petitioner respectfully requests that the Court formally accept Petitioner's resignation as Personal Representative and appoint Harley D. Ruff, Esq. as Special Administrator of the Estate, confirming the prior actions of each in accordance with the de facto transfer of fiduciary responsibility as need be.

III. Payment of Legal Fees and Costs.

As stated previously, the Court may dismiss the Petition for Instruction, "upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. Petitioner therefore strongly urges the Court to exercise its authority to deem it proper that Petitioner's legal fees and costs as Personal Representative, through final determination of this Court's order regarding the same, be paid by the Estate, and that Petitioner also has no obligation to individually pay the legal fees and costs of the Respondents with regard to Petitioner's Petition for Instruction.

By way of background, the purported settlement sought to be enforced by Respondents Elizabeth Kearse Gooding and Julie Kearse Sharp (as incorporated in the Court's Order dated February 27, 2017) would force Petitioner to pay their legal fees and costs, as well as his own as the Personal Representative. In addition to there being no actual settlement on this issue as discussed in the Petitioner's previously filed motion, the purported allocation of legal fees and costs is wholly inconsistent with South Carolina law, the facts of this matter, and fairness.

To begin with, Petitioner's legal fees and costs should be paid by the Estate. "If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred." S.C. Code Ann. § 62-3-720. See also S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."); S.C. Code Ann. § 62-1-301(a)(1) (giving the probate court broad jurisdiction over estate matters); S.C. Code Ann. § 62-7-201(a)(1) (giving the probate court broad jurisdiction over trustees, including an action to "instruct trustees").

In the present case, the Decedent expressed a clear intention, through his will, that his children use his probate property to build a house on property Decedent transferred to a trust created by Decedent and that Decedent placed under the control of his same children as co-trustees. As such, there is no question as to Decedent's intent, only as to whether his children were legally obligated to follow his wishes. Moreover, Petitioner faced the threat of an estate lawsuit from one of his siblings regardless of whether he followed Decedent's directive or not. Therefore, Petitioner filed a good faith Petition for Instruction to determine if Decedent's stated intentions should be followed, and has a right to have his legal fees related to the same covered by the Estate. Id.

In direct contrast with Petitioner's legal fees and costs, the Respondents have no general right to recover their private legal fees and costs from the Estate or any other party unless "the court, as justice and equity may require, may award [their] costs and expenses, including reasonable attorney's fees ... to be paid by another party or from the estate that is the subject of the controversy." S.C. Code Ann. § 62-1-111. While this is a relatively new statute for which there are no published judicial opinions to date, it should be obvious that Petitioner should not be required to pay Respondents' legal fees and costs when the Petition for Instruction was presented in good faith.

Petitioner leaves it to the Court's discretion whether the Estate may also be required to pay some or all of the Respondents' legal fees and costs in this matter, but would not oppose payment of the same if it would resolve the fee allocation issue without need of further litigation and appeals, which would harm the Estate and the familial relationships of the interested parties. However, Petitioner reiterates that his request is merely that the Estate pay his legal fees and costs through final determination of this Court's order regarding the same, and that Petitioner have no obligation to individually pay the legal fees and costs of the Respondents with regard to Petitioner's Petition for Instruction

IV. Miscellaneous.

Respondent Elizabeth Kearse Gooding's Motion for Restraining Order against Petitioner has become moot with Harley D. Ruff, Esq. assuming the responsibilities of Special Administrator, and will remain moot if his appointment is hereby confirmed.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays for the Court to issue an Order that provides the following relief:

A. Vacating its Order in this matter dated February 27, 2017;

B. Accepting the resignation of Petitioner as Personal Representative and directing the Estate to pay Petitioner's legal fees and costs through the final determination of the Court's order regarding the same;

C. Appointing Harley D. Ruff, Esq. as Special Administrator of the Estate;

D. Dismissing the Petition for Instruction in this matter and ruling that Petitioner has no obligation to pay the Respondent's legal fees and costs regarding the same;

E. Such other relief as the Court may deem just and proper.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PETITIONER

Columbia, South Carolina

July 27, 2017

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR INSTRUCTION, CONFIRM RESIGNATION OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SPECIAL ADMINISTRATOR, AND DIRECT PAYMENT OF LEGAL FEES AND COSTS in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

The Honorable Sheila Odom
Hampton County Probate Court
Post Office Box 601
Hampton, SC 29924
Presiding Special Judge of this matter

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Racbael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206

Dawn R. Kingsley
Dawn R. Kingsley

Columbia, South Carolina
July 27 2017

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OFALLENDALE)
) NOTICE OF HEARING
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent))

FILED FOR RECORD
17 AUG -2 AM 11:04
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

DATE: August 17, 2017

TIME: 2pm

PLACE: Hampton County Courthouse, 1 Courthouse Square, Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Alter or Amend or, in the Alternate, for a New Hearing
Such other related matters as may be properly before the Court

Executed this 28 day of July, 2017.

Signature: [signature]
Print Name: Matthew J. Myers
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: mjm@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
ESTATE OF G. H. KEARSE)
(Decedent))

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2013-ES-03-00063

On the 28 day of July, 2017, I mailed or delivered the following document(s):

Notice of Hearing

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

FILED FOR RECORD
17 AUG -2 AM 11:06
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP, Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209
Rachael K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924
Harley D. Ruff, Esquire proposed Special Administrator	17 Professional Village Cir., Beaufort, SC 29907

SWORN to before me this 28th day of July, 2017

Notary Public for South Carolina
My Commission Expires: 3/3/2027

Signature:
Print Name: Matthew J. Myers
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: mjm@swblaw.com
Relationship to Decedent/Estate: Attorney for Personal Rep.

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse,
Petitioner,

-vs-

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, John Morgan Kearse, Joseph Weber Kearse, all of which are named Individually and as Trustees of the Kearse Family Educational Trust under and Agreement dated November 5, 1992.
Respondents.

RESPONDENT ELIZABETH GOODING'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO DISMISS THE PETITION FOR INSTRUCTIONS AND FOR OTHER RELIEF DATED JULY 27, 2017

BACKGROUND/STATEMENT OF FACTS

By Order of this Court dated February 27, 2017, this Court confirmed a settlement agreement between the parties in this matter, which dismissed the Petitioner's Petition for Instruction with prejudice, confirmed the resignation of John Morgan Kearse as personal representative, authorized the Court to appoint a special administrator, and directed the payment of legal fees and costs by the Petitioner, John Morgan Kearse.

On March 16, 2017, the Petitioner filed a "Notice of Motion and Motion to Alter or Amend or, in the Alternate, for a New Hearing of the Order of the Honorable Sheila B. Odom dated February 27, 2017..." The grounds of Petitioner's Motion were based entirely on the issue of the validity and enforceability of the parties' settlement agreement. The Court scheduled the Petitioner's Motion to be heard for August 17, 2017, at 2:00 PM.

On July 27, 2017, the Petitioner filed this "Notice of Motion and Motion to Dismiss the Petition for Instruction, Confirm the Resignation of the Personal Representative and Appointment of the Special Administrator, and Direct Payment of Legal Fees and Costs." Simply put, this Motion requests that this Court: 1) dismiss the Petition for Instruction; 2) confirm the resignation of John Morgan Kearse as personal representative of the estate; 3) confirm the appointment of Harley Ruff, Esq., as special administrator; and 4) to direct that Mr. Wingate, Petitioner's attorney, be awarded legal fees and costs from the estate for representing Morgan Kearse as personal representative.

This Motion was transmitted to the parties and attorneys on July 28, 2017, along with a "Notice of Hearing," which includes wording ("such other related matters as may be properly before the Court") to suggest that the Petitioner expects the Court to hear this Motion on August 17, 2017.

The Respondent, Elizabeth K. Gooding, submits to this Court that there is only one Motion properly before this Court, that is the Motion to Alter or Amend, or, in the Alternate, a New Trial, which was filed with the Court on March 16, 2017. The Motion filed on July 27, 2017, should be dismissed.

ARGUMENT

I. THE MOTION IS OUT OF ORDER AND MUST BE DISMISSED BECAUSE THE COURT HAS RULED ON ALL MATTERS ADDRESSED IN PETITIONER'S MOTION.

The Court's Order dated Feb. 27, 2017, made a final ruling on the issues raised by Petitioner's present Motion. This present Motion does not purport to request a rehearing of the subject issues. The Motion is presented as if the Petitioner is unaware that the Court has previously ruled on these matters. In fact, it is the Petitioner's attorney, Mr. Wingate,

who personally delivered to the Court at the hearing on Feb. 2, 2017, the written resignation of the Petitioner, Morgan Kearse, stating that the resignation was a "unilateral" act and "irrevocable." Following that action, the Court issued an Order dated March 20, 2017, accepting John Morgan Kearse's resignation and appointing the special administrator, Mr. Harley Ruff. No party appealed this Order and it is the law of the case and unappealable.

The Court's Order of Feb. 27, 2017, is also the law of this case. Unless and until that Order is altered, amended, or vacated, the Court's ruling is final. The Petitioner's Motion dated July 27, 2017 must be dismissed.

II. THE MOTION, EVEN IF RELEVANT, IS NOT TIMELY AND MUST BE DISMISSED.

Post-trial motions are strictly governed by the South Carolina Rules of Civil Procedure. Rule 59 specifically states that any such motion to amend or for new trial must be made **not later than 10 days of the filing or receipt of the Court's Order.** The Motion dated July 27, 2017 was filed five (5) months after the Court's Order of Feb. 27, 2017. It is referenced as a "companion motion," however it sets out totally new and different grounds and raises issues never raised at the hearing on Feb. 2, 2017.

The Petitioner waived his right to assert matters he did not properly raise in his timely filed Motion to Amend, Alter, or, in the Alternate, a New Trial.

III. IN THE EVENT THAT THE COURT SHOULD RULE TO VACATE THE FEB. 27, 2017 ORDER, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO REMOVE THE PERSONAL REPRESENTATIVE SHOULD BE HEARD BEFORE ANY OTHER MOTIONS.

Respondent, Elizabeth K. Gooding, filed a Motion for Summary Judgment and a Motion to Remove the Personal Representative on Dec. 7, 2016. These motions were scheduled to be heard on Feb. 2, 2017, when the settlement agreement was announced, making these motions moot. The Motion to Dismiss filed by the Petitioner on Dec. 13, 2017, was after the Motion for Summary Judgment filed by Respondent Gooding.

If the Court should vacate the Feb. 27, 2017 Order, the Petitioner should not be allowed to be heard on the present Motion or any other motion, until Respondent is heard on her previously filed Motions.

IV. THE PETITIONER DOES NOT HAVE AN ABSOLUTE RIGHT TO HAVE HIS ATTORNEY FEES AND COSTS PAID FROM THE ESTATE.

On Dec. 7, 2017, the Respondent filed a Petition to Remove the Petitioner as Personal Representative of the estate. She alleged that the Petition for Instruction was a frivolous action, had no merit, and was brought by Petitioner without regard to the good of the estate or heirs. She specifically requested that he be prevented from further use of estate funds for this and that he be required to reimburse the estate for sums paid to that attorney. She simultaneously filed a Motion for Summary Judgment based on the same grounds and later filed a Motion for Restraining Order preventing further payments of estate funds by him.

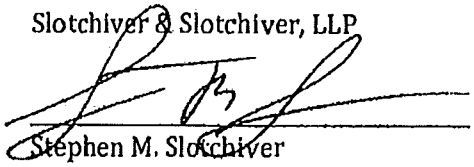
Petitioner has repeatedly referred to S.C. Code, Ann. §62-3-720, as authority for payment of his attorney fees and costs. This statute expressly provides for payment of attorney fees by the estate if the personal representative prosecutes in "good faith." Petitioner is well aware of the Respondent's long-standing objection to the payment of these fees and the basis of that objection.

The Order of Feb. 27, 2017, provides that the Petitioner shall personally pay all attorney fees and costs. That is the law of the case until and unless the Order of Feb. 27 is vacated. If the Court rules to vacate the Order, the previously filed Motions of Respondent Gooding (Motion for Summary Judgment and Motion to Remove Petitioner) should be scheduled to address the contested issue of attorney fees and costs. This issue cannot be addressed without affording the Respondent the right to be heard.

CONCLUSION

Based on the foregoing argument, the Respondent, Elizabeth K. Gooding, respectfully submits to this Court that the Motion filed by the Petitioner on July 27, 2017, should be dismissed. Further, if the Court should vacate its Order or grant a new trial, the Respondent would respectfully request that the previously filed Motion for Summary Judgment and Petition for Removal be given priority over later filed motions and scheduled for hearing at the Court's earliest convenience.

Slotchiver & Slotchiver, LLP



Stephen M. Slotchiver
Attorney for Respondent, Elizabeth K. Gooding
44 State Street
Charleston, SC 29401

15 day of August, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

J. Morgan Kearse, Personal Representative
of the Estate of G. H. Kearse,
Petitioner,

-vs.-

The Kearse Family Education Trust,
William Gordon Kearse, Elizabeth Kearse
Gooding, Julia Kearse Sharp,
Rachael Kearse Best, John Morgan Kearse,
Joseph Weber Kearse, all of which are named
Individually and as Trustees of the Kearse
Family Educational Trust under and
Agreement dated November 5, 1992.
Respondents.

RESPONDENT, GOODING'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO ALTER OR AMEND OR, IN THE ALTERNATE, FOR A NEW TRIAL DATED MARCH 16, 2017

BACKGROUND/STATEMENT OF FACTS

The Decedent, G.H. Kearse, died testate June 10, 2013. The Last Will and Testament of the Decedent named all six of his children as personal representatives. Five of the Decedent's six children waived their right to serve in favor of John Morgan Kearse, who was then appointed as personal representative of the Estate on October 22, 2013.

The controversy among the parties arose from Item VI of the Decedent's Last Will and Testament, in which he directs the children to build a specifically described house, copied after an historic home in Virginia, known as "Gunston Hall," and directs that it be built on a specific parcel of land, which has been indisputably owned by the Kearse Family Educational Trust, since 1992 (approximately 25 years).

On April 8, 2016, the personal representative, John Morgan Kearse, filed with the Probate Court this action entitled "Petition for Instructions." All six children, including the Petitioner himself, were named as Respondents in this action. In response to a Motion to Dismiss for failure to name an indispensible party, an Amended Summons and Petition was filed on June 3, 2016, which simply added the clause in the case caption naming the Respondents both individually and as Trustees of the Kearse Family Educational Trust.

The Court scheduled pretrial motions in this matter to be heard on February 2, 2017. All parties and attorneys were properly served with notice of this hearing. The day before the scheduled hearing, the parties reached a settlement of the issues. Petitioner's attorney, Mr. Wingate advised the Court of this settlement on February 1, 2017.

By Order of this Court dated February 27, 2017, this Court confirmed the settlement agreement between the parties in this matter, which among other things, dismissed the Petitioner's Petition for Instruction with prejudice, confirmed the resignation of Morgan Kearse as personal representative, authorized the Court to appoint a special administrator, and directed the payment of all parties legal fees (including the Estate legal fees) and costs by the Petitioner, Morgan Kearse.

On March 16, 2017, the Petitioner filed a "Notice of Motion and Motion to Alter or Amend or, in the Alternate, for a New Hearing of the Order of the Honorable Sheila B. Odom dated February 27, 2017..." The grounds of Petitioner's Motion were based entirely on the issue of the validity and enforceability of the parties' settlement agreement, and filed pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. Attached to the Notice

of Motion is an Affidavit of John Morgan Kearse and also a page marked "Exhibit A." The Court scheduled the Petitioner's Motion to be heard for August 17, 2017, at 2:00 PM.

STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. The purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr.Co., Inc. v. Boll Corp.*, 336 S.C. 1, 4, 518 S.E. 2d56,58 (Ct. App. 1999); see also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9,21,602 S.E. 2d 772, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, Rule 59(e) of the South Carolina Rules of Civil Procedure governs a motion for reconsideration. Federal case law is also instructive on this issue, as the comments to South Carolina Rule 59 state "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ...court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." See 389 *Orange St. Partners v. Arnold,* 179 F.3d 656, 665 (9th Cir. 1999); *McColl v. Williams,* 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. *National Ecological Foundation v. Alexander,* 496 F3d 466, 477 (6th Cir. 2007).

ARGUMENT

I. PETITIONER HAS NOT IDENTIFIED A BASIS UNDER RULE 59 FOR AMENDING THE ORDER.

In South Carolina, a Motion to Alter or Amend, or for reconsideration, as it is often called, pursuant to Rule 59, SCRCP, is appropriate in two basic situations. First, "a party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dept of Transp.*, 361 S.C. 9,24, 602 S.E. 2d 772,780 (2004). Second, "a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

The Petitioner's Motion does not identify any misunderstandings by the Court, and fails to identify any arguments he believes were raised, but not ruled upon. None of the arguments made by Petitioner in support of his Motion were ever made at the hearing on February 2, 2017. A party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E. 2d 436,437 (Ct. App. 1995); see also *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340,468 S.E. 2d 633 (1996).

The Petitioner chose not to attend the court hearing on Feb. 2, 2017, though he was properly notified. The Court had scheduled this hearing for the express purpose of hearing the Respondent's Motion for Summary Judgment and Motion to Remove the Petitioner as Personal Representative, as well as the Petitioner's subsequent Motion to Dismiss the Petition for Instruction. As the Court's records will reflect, the Petitioner's attorney advised the Court on Feb. 1, 2017, by telephone and in writing that a settlement had

been reached. Mr. Speights, attorney for Respondent Sharp, read the settlement agreement into the record. Mr. Wingate did not refute the terms of the settlement represented as the agreement reached between the parties, nor did he request a continuance of the hearing until such time as the Petitioner could be present to make any explanations to the Court.

The Petitioner now argues that the parties had not reached a binding settlement agreement. The Petitioner's attorney did not raise this argument to the Court on February 2, 2017, and has waived his right to now assert this argument. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E. 2d 436,437 (Ct. App. 1995); *McGee v. Bruce Hosp. Sys.* 321 S.C. 340,468 S.E. 2d 633 (1996). This Respondent submits that the Court should not allow argument on matters not raised in the Feb. 2, 2017, hearing; however, Petitioner has raised these arguments in his written Motion and the Respondent offers this limited response.

II. The Settlement Agreement is Binding on All Parties.

The Petitioner should not be allowed to argue that the settlement agreement is not binding because this issue was never raised in the hearing on Feb. 2, 2017. The Motion filed by the Petitioner is ten pages in length, not including an affidavit of the Petitioner and a document marked "Exhibit A," and having signature lines for three of the named parties (siblings: Rachael, Gordon, and Joseph), though the writing contains no signatures. Clearly, the Petitioner is attempting to argue these never-before-argued matters in a written "Motion" before the Court. The affidavit of John Morgan Kearse is an attempt to offer testimony of new issues never presented and/or argued in the hearing of Feb. 2, 2017. None of this evidence should be allowed.

Had the Petitioner intended to refute the settlement agreement, he had the opportunity to present evidence at the hearing on Feb. 2, 2017. He did not appear and do so. Petitioner's attorney acknowledged that the Petitioner told him that he would agree to the terms of the settlement agreement and, based on that information, Mr. Wingate advised the Court by letter that the parties would present the agreement to the Court on Feb. 2, 2017. (See Transcript of hearing of Feb. 2, 2017, p.5, lines4-10)

Petitioner attempts to argue that the settlement agreement cannot be binding because it does not comply with S.C. Code §62-3-912, and also §62-3-1102. Those sections have no application to this situation. Those sections govern private agreements between parties (including trusts) to an estate to alter the interest of the parties. In the present case, the settlement agreement arises from a settlement of a legal action commenced by the Petitioner against the respondents, and does not alter the interests of any parties under the Decedent's Will.

The Petitioner also argues that the settlement is not binding because it was not signed by all of the parties. The settlement agreement was signed by three of the named Respondents, who were named individually and as Trustees of the Kearse Family Educational Trust. The parties, therefore, also represent the Trust. Even though Rachael Kearse Best and Joseph Kearse did not enter a responsive pleading to the Amended Petition and are in default, they both still received proper notice of the Hearing and chose not to appear. The Petitioner did not personally appear but was represented by his attorney, Mr. Wingate, who acknowledged that, based upon his client's word, he advised the Court one day prior to the hearing that the Petitioner, Rachael Kearse Best, and Joseph Kearse all

agreed to the settlement. (Transcript of hearing of Feb. 2, 2017, p.5, lines 4-10). It is also notable that neither Rachael Kearse Best nor Joseph Kearse has filed any motion to amend the Order of Feb. 27, 2017.

To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record. *Buckley v. Shealy*, 370 S.C. 317,322, 635 S.E. 2d 76,78 (2006); *Galloway v. Regis Corp.*, 325 S.C. 541,481 S.E. 2d 714 (Ct. App. 1997), *Kumar v. Third Generation, Inc.*, 324 S.C. 284,485 S.E. 2d 626 (Ct. App. 1995). This requirement is provided by Rule 43 (k) of the South Carolina Rules of Civil Procedure.

Clearly, this settlement agreement was entered into the court's record after Petitioner's attorney advised the Court that the Petitioner had consented to this agreement. It is a long-standing and well-settled rule that an attorney may settle litigation on behalf of his client and that the client is bound by his attorney's settlement actions. *Crowley v. Harvey & Battey, P. A.*, 327 S.C. 68, 488 S.E. 2d 334 (1997); *Shelton v. Bressant*, 312 S.C. 183, 439 S.E. 2d 833 (1993); *Poore v. Poore*, 105 S.C. 206, 89 S.E. 569 (1915); *Arnold v. Yarborough*, 281 S.C. 570, 572, 316 S.E. 2d 416, 417 (Ct. App. 1984).

Contrary to Petitioner's assertion, Mr. Wingate, his attorney, did not unequivocally disavow the settlement in open court. Mr. Wingate stated, "I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be--my client would be bound to that. That very well may be what you decide..." (Transcript, p. 7, l. 18-22). Clearly, Mr. Wingate understood

that the Court was within its authority to accept his representation to the Court that his client had agreed to the terms of the settlement.

As repeatedly stated herein, the Respondent maintains that the Petitioner should not be allowed to argue any of these matters not raised at the Feb. 2, 2017 hearing. However, it is interesting to note that the Petitioner admits, as his reason for attempting to withdraw his consent, that he had unsuccessfully attempted to secure a separate, secret agreement with three of his siblings which would have effectively nullified an essential term of the settlement agreement in his favor.

Paragraph 4 of the settlement agreement states:

> "Morgan shall be responsible for the payment of your [meaning Mr. Wingate's] legal fees and Beth's legal fees. Morgan may seek to have the estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth , Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority."

The obvious intent of this term is to allow John Morgan Kearse the opportunity in the future to make a request for the estate to contribute to these fees and for the others to discuss and vote as a group on this matter. Otherwise, it would make no sense to make this a part of the settlement. The agreement could simply say that the estate would pay these legal costs, if that is what the parties agreed on.

Instead, the Petitioner attempted to get a secret, side agreement--written assurance from his siblings (with the exception of Elizabeth Kearse Gooding and Julie Kearse Sharp) to direct the estate to pay those legal fees. He did so secretly from Elizabeth Kearse Gooding and Julie Kearse Sharp because if they knew, they would realize that paragraph 4 of the settlement agreement was meaningless. In other words, he was attempting to withhold

crucial information from Elizabeth Kearse Gooding, Julie Kearse Sharp, and their attorneys (possibly his own attorney)which materially altered the consequences of their agreement. Fortunately, brother Gordon Kearse, a pro se respondent, refused to comply and the Petitioner's plot was foiled.

At that point, Respondent submits that the Petitioner had already agreed to the terms of the settlement. This secret, side agreement he was attempting to broker was not a part of the agreement put forth by the parties' attorneys and agreed upon by all.

CONCLUSION

The Respondent, Elizabeth Kearse Gooding, submits to this Court that the Petitioner has failed to present any grounds to alter or amend its Order of February 27, 2017, or for a new trial. There is no newly discovered evidence, nor are there any issues raised by Petitioner that were raised at the hearing and not decided by the Court. There is no misunderstanding or error of law to be corrected. For these reasons, Respondent, Elizabeth Kearse Gooding, respectfully requests that the Petitioner's Motion be dismissed.

Slotchiver & Slotchiver, LLP

Stephen M. Slotchiver
Attorney for Respondent, Elizabeth Kearse Gooding
44 State Street
Charleston, SC 29401

16 day of August, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE PROBATE COURT

COPY

CASE NO.: 2013-ES-03-00063

file - Kearse (pleadings)

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,

Petitioner,

vs.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,

Respondents.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

SECTION I: Hearing Information

Nature of Motion: Motion for Protective Order – J. Morgan Kearse

Estimated Time Needed: 15 mins Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒Written motion attached

☐Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

/ Clinton J. Wingate 9/9/16

Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ 0

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

PROBATE COURT
Hampton County, SC
Filed 2:16 pm
Date 09/12/16

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents(s).	)))))))))))))	Case No.: 2013-ES-03-00063 MOTION FOR PROTECTIVE ORDER AS TO THE DEPOSITION OF J. MORGAN KEARSE

COPY

Pursuant to Rules 26(c) and 30(j)(3), SCRCP, the undersigned counsel for J. Morgan Kearse moves for a protective order to preserve any objections made during his deposition on September 7, 2016, on the grounds of attorney-client or work product privileges and any directions given to him not to testify about such matters. Mr. Kearse preserves any other objections made on his behalf during the deposition, although a motion on this ground is not required.

The transcript of the deposition is not yet available, as the deposition will be continued in the future, but undersigned counsel will file it in support of this motion when it is available, and after Mr. Kearse has had the opportunity to read, note any changes, and sign the transcript. Counsel for Mr. Kearse will file a memorandum with the deposition transcript identifying those parts of the deposition in which objections were made consistent with this motion.

Therefore, Mr. Kearse requests that this Court issue a protective order preserving his objections, and barring further questioning by counsel for Respondents about such matters.

Undersigned counsel certifies that consultation with opposing counsel pursuant to Rule 11, SCRCP, would serve no useful purpose.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PETITIONER

Columbia, South Carolina
September 9, 2016

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs, do hereby certify that I have served a copy of the foregoing MOTION FOR PROTECTIVE ORDER AS TO THE DEPOSITION OF MORGAN J. KEARSE in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Hilary A. Ingrum

Columbia, South Carolina
September 9, 2016

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF ALLENDALE	)	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,	)	Case No.: 2013-ES-03-00063
Petitioner,	)	
v.	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,	)	NOTICE OF INTENTION TO APPEAL
Respondents.	)	

FILED FOR RECORD
2017 SEP 27 AM 11:41
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, SC

Pursuant to S.C. Code Ann. § 62-1-308(a) & 62-1-303(e), the undersigned Petitioner hereby provides notice that he intends to appeal and does appeal the orders dated February 27, 2017 and September 15, 2017, respectively, issued by Judge Sheila B. Odom, as Special Probate Judge for the Allendale County Probate Court. The February 27, 2017 order was received by Petitioner on March 6, 2017, and Petitioner filed a Motion to Alter or Amend or, in the Alternate, for a New Hearing of the same on March 16, 2017. The September 15, 2017 order denying Petitioner's said motion was ultimately received by Petitioner on September 19, 2017. A copy of both orders are attached.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
Attorneys for Petitioner

Columbia, South Carolina
September 27, 2017

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

FILED FOR RECORD
2017 SEP 27 AM 11:41
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 09/18 20 17

Petitioner originally instituted this action by filing a Petition for Instructions asking this Court to interpret the last Will and Testament of Decedent, G.H. Kearse, who died testate on June 10, 2013. Respondents are the Kearse Family Education Trust ("Trust") and all of the decedent's children, individnally and as Trustees, to wit: William Gordon Kearse ("**Gordon**"); Elizabeth Kearse Gooding ("**Beth**"); Julia Kearse Sharp ("**Julie**"); Rachael Kearse Best ("**Rachael**"); Joseph Weber Kearse ("**Joseph**") and John Morgan Kearse ("**Morgan**").

Respondents, Beth and Julie, by their respective counsel, Stephen M. Slotchiver and Daniel A. Speights, filed Responses to the Petition. Respondents, Gordon, Rachael, and Morgan, did not file Responses to the Petition. Respondents, Gordon, Rachael, and Joseph ("*Pro Se* Respondents"), nor Morgan (individually) are represented by counsel.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

FILED FOR RECORD
2017 SEP 27 AM 11:48
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 02/27 20 17

The Decedent, G.H. Kearse, died testate on June 10, 2013, survived by six children: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph"); and John Morgan Kearse ("Morgan"). The Petitioner (Morgan) was appointed Personal Representative of the Estate and in that capacity subsequently retained Kenneth B. Wingate, Esq. as his counsel.

On April 8, 2016, the Petitioner filed a Summons and Petition for Instructions asking the Court to interpret the Decedent's Will. Two of the Respondents, Beth and Julie, filed responsive pleadings through their counsel, Stephen M. Slotchiver, Esq. and Daniel A. Speights, Esq., respectively. The other three Respondents (Gordon, Rachael, and Joseph) (the "Pro Se Respondents") did not retain counsel, although two (Gordon and Joseph) served Responses to the

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

AFFIDAVIT OF SERVICE BY MAIL

Re: Estate of George H. Kearse
Case No: 2013-ES-03-00063

FILED FOR RECORD
2017 SEP 27 AM 11:42
ELAINE SABBEN
CLERK OF COURT
ALLENDALE COUNTY, S.C.

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Order this 3rd day of March, 2017, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

Kenneth B. Wingate, Esquire
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
PO Box 12129
Columbia, South Carolina 29211

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

J. Morgan Kearse, Esquire
Kearse Law Firm, LLC
Post Office Box 521
184 Barnwell Highway
Allendale, SC 29810

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Gordon Kearse
Post Office Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
3rd day of March, 2017

Tammy W Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3-3-2019

ELECTRONICALLY FILED - 2017 Nov 03 10:54 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992..... Respondents.

STATEMENT OF ISSUES ON APPEAL

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
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(803) 256-2233
Attorneys for Appellant

ELECTRONICALLY FILED - 2017 Nov 03 10:54 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

STATEMENT OF ISSUES ON APPEAL

I. Did the probate court err in denying the appellant's motion to alter or amend or amend?

II. Did the probate court err in ruling that a binding settlement agreement had been reached between appellant, respondents, three other individuals, and all of them as co-trustees?

III. Did the probate court err in otherwise ordering the payment of appellant's and respondents' attorney fees pursuant to the invalid settlement agreement?

IV. Did the probate court err in accepting appellant's resignation of personal representative and appointment of a successor personal representative without meeting the requirements of S.C. Code Ann. § 62-3-610(b) and S.C. Code Ann. § 62-3-614?

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

Columbia, South Carolina
November 1, 2017

ELECTRONICALLY FILED - 2017 Nov 03 10:58 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

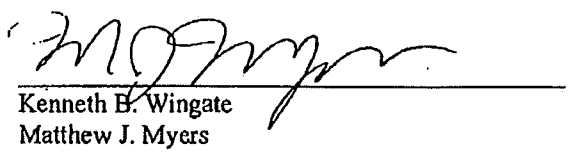
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992..... Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Statement of Issues on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2017, addressed to Daniel A. Speights, Esquire, Speights & Runyan, Post Office Box 685, Hampton, SC 29924; Stephen M. Slotchiver, Esquire, Slotchiver & Slotchiver LLP, 44 State Street, Charleston, SC 29401; Gordon Kearse, P.O. Box 22, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
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Attorneys for Appellant

Columbia, South Carolina
November 1, 2017

ELECTRONICALLY FILED - 2017 Dec 01 2:26 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

BRIEF OF APPELLANT

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
Attorneys for Appellant

ELECTRONICALLY FILED - 2017 Dec 01 2:26 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

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ELECTRONICALLY FILED - 2017 Dec 01 2:26 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

STATEMENT OF ISSUES ON APPEAL

I. Did the probate court err in denying the appellant's motion to alter or amend or amend?

II. Did the probate court err in ruling that a binding settlement agreement had been reached between appellant, respondents, three other individuals, and all of them as co-trustees?

III. Did the probate court err in otherwise ordering the payment of appellant's and respondents' attorney fees pursuant to the invalid settlement agreement?

IV. Did the probate court err in accepting appellant's resignation of personal representative and appointment of a successor personal representative without meeting the requirements of S.C. Code Ann. § 62-3-610(b) and S.C. Code Ann. § 62-3-614?

STATEMENT OF THE CASE

This Appeal originates with a dispute between six siblings after the death of their father. The two central questions are whether a binding settlement agreement was reached with regard to the Estate and whether the initial Personal Representative has been validly removed and replaced by a special administrator.

G.H. Kearse ("Decedent") died on June 10, 2013 as a resident of Allendale County. Decedent was survived by six children, all of whom are named as Respondents in this matter, and the Decedent's spouse. The Decedent's probated will named all six children as co-personal representatives, five of whom renounced their right to serve and nominated Morgan Kearse to serve as the sole personal representative, which appointment was accepted by the Allendale County Probate Court ("Court"). Petition for Instruction, Exh. A; Affidavit of Morgan Kearse ¶ 1. [1]

Article VI of Decedent's will directs his six children to use his "monies" to build a house on land owned by the Kearse Family Education Trust ("Trust"), which was itself established by the Decedent and is named as a respondent along with the six children in their capacities as co-trustees

[1] The Affidavit of Appellant and its Exhibit were properly before the Court under Rule 6(d), SCRCP, as part of Appellant's Motion to Alter or Amend or, in the Alternate, for a New Hearing. Respondents had the opportunity to submit opposing affidavits, but chose not to. Id.

ELECTRONICALLY FILED - 2017 Dec 01 2:26 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

of the Trust. Petition for Instruction, Exh. A & B. Morgan Kearse and two of his siblings believed this directive should be followed, and three siblings did not. Affidavit of Morgan Kearse ¶ 3. Further, one sibling from each group threatened to sue Morgan Kearse whether or not he followed the directive to build the house. Id. Accordingly, Morgan Kearse, as Personal Representative, exercised his statutory right to request guidance from the Court by filing a Petition for Instructions.[2]

Elizabeth Gooding filed an Answer to the Petition for Instruction and Motion for Summary Judgement, and Julie Sharp filed a Motion to Dismiss. Each requested the Court to rule that the house may not be built. Answer to Petition for Instruction; Motion to Dismiss; Motion for Summary Judgment. Following an indication that the siblings originally in favor of building the house would now consent to the house not being built, Morgan Kearse subsequently filed a Motion to Dismiss his own Petition for Instruction. Affidavit of Morgan Kearse ¶ 5.

The Honorable Judge Sheila B. Odom was appointed as Special Probate Judge of Allendale County for litigation involving the Estate. The Court scheduled a hearing for February 2, 2017 on Morgan Kearse' Motion to Dismiss the Petition for Instruction and Elizabeth Gooding's Motion for Summary Judgement. Order dated February 27, 2017, p. 2.

Just two days prior to the hearing, at 9:01 pm, counsel for Julia Sharp emailed a document entitled "Final Term Sheet" to counsel for Morgan Kearse and counsel for Elizabeth Gooding. Transcript of February 2, 2017 Hearing, Exh. 1. Item 4 of the Final Term Sheet provided that Morgan Kearse would be personally responsible for the legal fees of Julia Sharp and Elizabeth

[2] See S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."). See also S.C. Code Ann. § 62-1-301(a)(1) (giving the probate court broad jurisdiction over estate matters); S.C. Code Ann. § 62-7-201(a)(1) (giving the probate court broad jurisdiction over trustees, including an action to "instruct trustees").

ELECTRONICALLY FILED - 2017 Dec 01 2:26 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

Gooding as well as his own legal fees as Personal Representative;[3] provided, however, that the Estate may pay for the legal fees of Elizabeth Gooding and Morgan Kearse unless opposed a majority of the siblings not including Morgan Kearse. Id.

Because of the large potential personal liability under Item 4 of the Final Term Sheet, Morgan Kearse prepared his own supplemental agreement that would have (1) confirmed approval of the Final Term Sheet by the pro se Respondents and (2) confirmed that a majority of his siblings did not opposed the Estate's payment of his legal fees and those of Elizabeth Gooding. Affidavit of Morgan Kearse, Exh. A. Appellant discussed this supplement with the pro se Respondents on the eve of the hearing and understood that each agreed to the same. Affidavit of Morgan Kearse ¶¶ 8 & 9. Based on their approval of the supplement, Appellant instructed his counsel that he and the pro se Respondents consented to the Final Term Sheet, which Appellant's counsel then relayed to the Court and counsel for Respondent Julia Sharp and Beth Gooding. Id. at ¶¶ 10 & 11. At no time did Appellant or his counsel represent that either had authority to bind the pro se Respondents.

Unfortunately, however, Respondent Gordon Kearse subsequently refused to sign Morgan Kearse's supplement prior to the hearing, and Appellant informed his counsel that there was in fact no agreement regarding the Final Term Sheet. Id. at ¶¶ 12 & 14. For Morgan Kearse, the supplement was a material term of the Final Term Sheet, without which he was no longer willing to submit the same for approval by the Court. Id. at ¶ 9. Due to the last minute nature of these developments, Appellant's counsel first informed the Court of the non-agreement by Appellants, Rachael Best, Joseph Kearse at the hearing. Id. at ¶ 14.

Morgan Kearse's counsel's declaration of the non-agreement was unequivocal: "As we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number

[3] In derogation of the rule that the estate pays the personal representative's legal fees and costs incurred in good faith. S.C. Code Ann. § 62-3-720.

one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and cannot present it to you." Transcript of February 2, 2017 Hearing, p. 5, l. 14-20. And specifically as to Morgan Kearse, "his position will be that he does not consent to the settlement." Transcript of February 2, 2017 Hearing, p. 7, l. 14-16. "His position, however, is what I have said. Number one, he resigns. Number two, he does not consent." Transcript of February 2, 2017 Hearing, p. 7, l. 23-25.

Ultimately, the Final Term Sheet was signed by only three of the six siblings – Julia Sharp, Elizabeth Gooding, and Gordon Kearse – and no other persons. Transcript of February 2, 2017 Hearing, Exh. 3, 4 & 5. Furthermore, Racheal Best and Joseph Kearse did not attend hearing to otherwise express approval of the Final Term Sheet at the hearing, Order filed February 27, 2017, p. 2, and Morgan Kearse's counsel plainly disavowed Morgan Kearse's consent to the Final Term Sheet at the hearing. Transcript of February 2, 2017 Hearing, p. 7, l. 23-25. Finally, at no point did any person purport to approve the Final Term Sheet on behalf of the Trust which was a party to the underlying litigation as well as a part of the Final Term Sheet. Transcript of February 2, 2017 Hearing, Exh. 1, ¶ 6; Order filed February 27, 2017.

For its part, the Court acknowledged that the siblings were no longer in agreement with the proposed settlement and appeared ready to simply to enter the Final Term Sheet into the record as information. Transcript, p. 20, l. 18-25 & p. 21, l. 1-6. However, although not understood by Morgan Kearse's counsel at the time, the Court apparently intended to state that the Final Term Sheet would be approved by the Court as a formal settlement upon submission of an order to that effect from Julia Sharp or Elizabeth Gooding. Transcript, p. 21, l. 14-22.

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Ultimately, Elizabeth Sharp did submit a proposed order incorporating the Final Term Sheet that was signed by the Court on February 27, 2017, served by letter dated March 3, 2017, and received by Morgan Kearse on March 6, 2017. In response, Morgan Kearse served a Motion to Alter or Amend or, in the Alternate, for a New Hearing on March 16, 2017. On July 27, 2017, Morgan Kearse also served a motion to resolve open issues that would result if the Order dated February 27, 2017 was vacated. This was titled as a Motion to Dismiss Petition for Instruction, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Cost. Elizabeth Gooding served a Memorandum in Opposition to Morgan Kearse's latter motion on August 15, 2017 and his former motion on August 16, 2017.

On August 17, 2017, the Court held a hearing on Morgan Kearse's Motion to Alter or Amend or, in the Alternate, for a New Hearing. The Court denied the motion, thus upholding its prior Order dated February 27, 2017. Order filed September 18, 2017, p. 7. The Court also declined to hear Morgan Kearse's subsequent motion to resolve open Estate matters in the even the Order dated February 27, 2017 was vacated. Transcript of August 17, 2017 Hearing, pp. 10-11.

Julia Sharp subsequently provided the Court with a proposed Order, which the Court executed and filed on September 18, 2017, and which was received by Morgan Kearse on September 19, 2017. On September 27, 2017, Morgan Kearse filed his Notice of Intention to Appeal both the Order dated February 27, 2017 and Order filed September 18, 2017. This appeal follows.

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LEGAL ARGUMENT

I. The Parties Did Not Reach a Binding Settlement.

As a threshold matter, there was never a meeting of the minds as to the essential terms of the Final Term Sheet because Morgan Kearse's stated assent was based on his supplemental terms that he understood were accepted by those persons necessary to prevent him from having to pay legal fees for Elizabeth Gooding and for himself as Personal Representative. Affidavit of Morgan Kearse, Exh. A. Furthermore, there has never been any evidence that Rachael Best, Joseph Kearse, or the Trust that any assented to the Final Term Sheet.[4] These fact alone are dispositive of the matter at hand. See, e.g., Reed v. Associated Investments of Edisto Island, Inc., 339 S.C. 148, 154, 528 S.E.2d 94, 97 (Ct. App. 2000) (holding that there must be agreement as to all material terms for a settlement to be binding).

Nevertheless, even if a preliminary agreement had been reached, there are only two possible ways to consummate a binding estate settlement under South Carolina law. The parties in the present matter did not satisfy either, nor did they satisfy the procedure for effecting a binding settlement in a non-estate matter.

First, S.C. Code Ann. § 62-3-912 (emphasis added) provides as follows:

> 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, 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. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

[4] The pre-hearing statements from Morgan Kearse that he believed there was an agreement by his siblings is not evidence or testimony and would have otherwise constituted inadmissible hearsay.

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In this case, Section 62-3-912 is implicated because the Final Term Sheet affected the parties' "interests, shares, or amounts to which they are entitled under the will of the decedent," in that it would name a Special Administrator, Transcript of February 2, 2017 Hearing, Exh. 1, ¶ 1, pay from the estate a personal representative fee, Id. at ¶ 2, allow the estate to pay legal fees, Id. at ¶ 4, allow for the rent free use of estate property, Id. at ¶ 5, and agree to sell estate property, Id. at ¶ 6.

However, Section 62-3-912 is not satisfied because the Final Term Sheet was not "executed by all who are affected by its provisions." S.C. Code Ann. § 62-3-912. Rather, it was executed only by Julia Sharp, Elizabeth Gooding, and Gordon Kearse. Transcript of February 2, 2017 Hearing, Exh. 3-5. In fact, it was executed by less than half of the persons affected by its provisions considering the Trust is a separate legal entity involved in the underlying litigation and that would be affected by the Final Term Sheet, and no one has purported to speak, much less sign, on behalf of the Trust. Transcript of February 2, 2017 Hearing, Exh. 1, ¶ 6; Petition for Instruction, Exh. B.

The second method for securing a binding estate settlement is S.C. Code Ann. § 62-3-1102, which provides as follows (emphasis added):

> The procedure for securing court approval of a compromise is as follows:
>
> (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
>
> (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.
>
> (3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by

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> fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

As discussed previously, however, in this case the Final Term Sheet was not executed by all competent persons having beneficial interests or claims affected by the compromise. Transcript of February 2, 2017 Hearing, Exh. 3-5. Moreover, there was no application to the Court regarding the settlement, no notice to interested persons regarding the same, and no evidentiary finding that the terms were just and reasonable. Order filed February 27, 2017. As such, the Final Term Sheet failed to satisfy Section 62-3-1102 for multiple independent reasons.

Quite simply then, the Final Term Sheet does not satisfy South Carolina law regarding binding estate settlement agreements, and the fiction that it is a binding settlement may end here. However, it is worth noting that the Final Term Sheet also fails to satisfy the requirements for reaching a binding settlement of general civil litigation under the South Carolina Rules of Civil Procedure. Rule 43(k), SCRCP, provides as follows (emphasis added):

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

Although Rule 43, SCRCP is titled "Conduct of Trial," our State Supreme Court has held that it applies to settlement agreements generally, even outside of the trial context. Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 458 S.E.2d 533 (1995). As explained by the Supreme Court, "the application of Rule 43(k) will increase the certainty of settlement agreements by avoiding disputes ....[T]he purpose of rules such as Rule 43(k) is: To prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve

the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character." Id. at 494–95, 458 S.E.2d 533, 535 (quotation omitted).

That said, it appears that Rule 43(k), SCRCP does not apply to this matter for two reasons. First, it applies to agreements "between counsel," whereas the present matter involves the rights of multiple pro se parties, plus a Trust that does not have its own legal counsel. Transcript of February 2, 2017 Hearing, Exh. 1. In addition, as discussed previously, the South Carolina Probate Code already provides two statutes regarding estate settlements, one for private agreements and the other for court ordered settlements. See S.C. Code Ann. § 62-3-912 & -1102. Presumably, therefore, the legal maxim of lex specialis derogat legi generali would apply. That is, where two laws govern the same factual situation, a law governing a specific subject matter (estate settlements) overrides a law which only governs general matters (litigation settlements generally).

In any event, the Final Term Sheet also fails to satisfy Rule 43(k), SCRCP even if it could apply to the present matter. First, it was not "signed by counsel and entered in the record." Rule 43(k), SCRCP. In fact, not a single attorney signed it and, as stated previously, no unrepresented party signed it other than Gordon Kearse. Transcript of February 2, 2017 Hearing, Exh. 3-5. Similarly, it was not "signed by the parties and their counsel." Rule 43(k), SCRCP. Again, not a single attorney signed it and the only unrepresented party to sign it was Gordon Kearse. Transcript of February 2, 2017 Hearing, Exh. 3-5. Finally, it was not "made in open court and noted upon the record." Rule 43(k), SCRCP. Only this method may require some clarification.

Here, though the Final Term Sheet was of course "noted upon the record," it was not "made in open court" by counsel as required by Rule 43(k), SCRCP. Rather, if it was "made" at all, which Morgan Kearse disputes because there was no meeting of the minds as to Morgan Kearse's

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supplemental terms and no evidence that Rachael Best, Joseph Kearse, or the Trust agreed, it was only done outside of court, and then rescinded before being "made in open court." Rule 43(k), SCRCP. Ultimately, as established by our State's Supreme Court, "[u]ntil a party is bound, [he] is entitled to withdraw [his] assent." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that a settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial).

In other words, having an agreement "made" for purposes of Rule 43(k), SCRCP is more than merely stating the words of a purported agreement on the record; it is an affirmative acknowledgment to be bound by the agreement "in open court." See Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006) (emphasis added) ("Because the purported agreement the parties reached following mediation was neither entered into the court's record nor acknowledged in open court and placed upon the record, Rule 43(k), SCRCP, plainly provides that the agreement is unenforceable."). As defined in Black's Law Dictionary (10th ed. 2014), "acknowledge" means:

> 1. To recognize (something) as being factual or valid <acknowledge the federal court's jurisdiction>. 2. To show that one accepts responsibility for <acknowledge paternity of the child>. 3. To make known the receipt of <acknowledged the plaintiff's letter>. 4. To confirm as genuine before an authorized officer <acknowledged before a notary public>. 5. (Of a notary public or other officer) to certify as genuine <the notary acknowledged the signature as genuine>.

In the present case, however, the Final Term Sheet was neither "acknowledged" nor "made" in open Court. To the contrary, Morgan Kearse's counsel unequivocally disavowed the settlement in open court. Transcript, p. 7, l. 23-25. Though the proponents of the Final Term Sheet and even the Court may not like that result, the law in South Carolina remains that "[u]ntil a party is bound, [he] is entitled to withdraw [his] assent." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that a settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial).

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In summary, whether one analyzes the Final Term Sheet under Section 62-3-912, Section 62-3-1102, or Rule 43(k), SCRCP, there is only one conclusion that can be drawn; the proposed settlement agreement is not legally binding under South Carolina law. Furthermore, neither the Court nor any other party has attempted to analyze whether the Final Term Sheet complies with any of the foregoing three standards or otherwise cited to any other recognized standards for reaching binding settlement. Instead, a hodgepodge of justifications have been set forth that do not fit within the standards of Section 62-3-912, Section 62-3-1102, or Rule 43(k), SCRCP.

Because the Respondents will have the opportunity to articulate their arguments for a binding settlement in their appellate brief, Morgan Kearse will not attempt to address their prior arguments here. However, he will attempt to address what appear to be the Court's incorrect justifications for entering the Final Term Sheet as a binding settlement agreement.

At the first hearing, the Court actually acknowledged the fact that "this is not an agreed upon by all parties exclusively agreement any longer." Transcript of February 2, 2017 Hearing, p. 20, l. 19-20. Nevertheless, the Court subsequently executed a proposed Order approving the Final Term Sheet as a settlement. Order dated February 27, 2017, p. 4. Though not entirely clear, the apparent justifications provided in the Order were (1) that Rachael Best and Joseph Kearse were not affected by the Final Term Sheet, (2) Morgan Kearse's pre-hearing representation that he believed a settlement had been reached, and (3) that Rachael Best and Joseph Kearse chose not to attend the hearing. Id.

To begin with, and as discussed previously, the rights of the pro se parties and of the Trust, which is not mentioned by the Court at all, were affected by the Final Term Sheet. Transcript of February 2, 2017 Hearing, Exh. 1. As such, they are each necessary parties to the Final Term Sheet if it is to be a binding settlement. See S.C. Code Ann. §§ 62-3-912 & -1102; Rule 43(k), SCRCP.

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Further, parties cannot be bound to a settlement by the representations of others. Id. Allowing parties to be bound by a settlement they neither signed or affirmed in court, whether in person or through counsel, would undoubtedly wreak havoc that our State Supreme Court has tried to prevent by establishing clear settlement standards. See Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 494–95, 458 S.E.2d 533, 535 (1995) (stating that "the purpose of rules such as Rule 43(k) is: [T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character.") (quotation omitted).

As it is, a party cannot be bound by their own legal counsel in an estate matter at all, much less by a different party. See S.C. Code Ann. §§ 62-3-912 & -1102. Parties may not even be bound by counsel in general litigation matters unless their counsel signs the agreement and it is entered on the record, or counsel otherwise makes the agreement in open court and it is noted on the record. Rule 43(k), SCRCP. Here, Morgan Kearse's counsel did not even go that far in an estate matter, having clearly rescinded any approval of the Final Term Sheet as allowed pursuant to Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006).

Finally, the fact that pro se parties, and the Trust, would not attend a hearing that ended up being about a Final Term Sheet they did not agree to is of no consequence, particularly when no formal notice of a settlement hearing was issued as required by S.C. Code Ann. § 62-3-1102. The burden is not on non-consenting parties to prove the non-existence of an agreement that does not exist, but rather on the proponents to prove satisfaction of the formal requirements under South Carolina law. See S.C. Code Ann. §§ 62-3-912 & -1102; Rule 43(k), SCRCP. Moreover, Morgan Kearse has been disputing that the Final Term Sheet is a binding settlement and therefore other

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parties need not waste additional attorney's fees to duplicate that effort. It may also be noted that Racheal Best did attempt to voice her non-consent to the Final Term Sheet at the August 17, 2017 hearing in response to the Court's first order referencing her non-attendance, but the Court did not allow her to do so. Transcript of August 17, 2017 Hearing, pp. 29-32.

At the second hearing, the Court's stated reasons for upholding its Order dated February 27, 2017 were as follows:

> Primarily, No. 1, [Morgan Kearse's counsel] had an opportunity on behalf of his client prior to the hearing, even being heard that morning on that motion on presentation of this proposed agreement. He asked for no continuance. There was no correspondence, rather email, telephone call, anything from [Morgan Kearse's counsel] on behalf of his client to give them more time to present further why that agreement should not be taken into consideration and received into this Court record as it was presented many different ways on the day before that the parties were all in agreement. That being the first, there was no continuance asked for.
>
> Number 2, no testimony was offered that morning by [Morgan Kearse] or by any of the pro se parties. There has been nothing filed with the Court record from the pro se parties from the date of that hearing to current date.

Transcript of August 17, 2017 Hearing, pp. 33-34.

Therefore, it appears that the Court's primary legal basis for upholding the settlement is that Morgan Kearse's counsel did not ask for a continuance of the first hearing or otherwise warn the Court that the attempted settlement had not work out as expected. As to that rationale, it was certainly not Morgan Kearse's desire for the modified Final Term Sheet to fall apart at the last minute through no fault of his own, but his failure to convince a sibling to settle on more reasonable terms is obviously not a basis under South Carolina law for compelling him and others to comply with an agreement that was not ultimately consummated.

As for the second rationale, the Court again appears to be placing burden on the non-signing parties to personally appear to disavow the Final Term Sheet. However, if there is to be a binding settlement, the burden is on the proponents of the settlement to show that the settlement was in fact

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entered under the legal standards set forth under South Carolina law. See S.C. Code Ann. §§ 62-3-912 & -1102; Rule 43(k), SCRCP. The proponents of the Final Term Sheet have not and cannot do so.

Finally, the Order filed September 18, 2017 (and drafted by Julia Sharp) adds some additional purported justifications not provided by the Court at the hearing. First, it states that "[t]he [original] Order enforces an agreement ("Term Sheet" or "Settlement Agreement") entered into by all of the parties the day before the February 2, 2017 hearing." Order filed September 18, 2017, p. 2. To the contrary, the Final Term Sheet was never "entered" before the hearing pursuant to South Carolina law in that it was not signed by Rachael Best, Joseph Kearse, Morgan Kearse, or the Trust. S.C. Code Ann. §§ 62-3-912 & -1102; Rule 43(k), SCRCP. Simply calling an agreement "entered" does not make it a binding agreement under South Carolina law.

Next, the second Order states "[i]mportantly, [Morgan Kearse] does not contest, nor seek to alter or amend, this Court's essential findings of fact, including the following findings which are particularly relevant to his current Motion:" Order filed September 18, 2017, pp. 3-4. To the contrary, the cited "findings of fact" all go to the questions of whether there was a settlement, which Morgan Kearse has unequivocally denied since the matter was first raised before the Court on February 2, 2017. Transcript of February 2, 2017 Hearing; Motion to Alter or Amend or, in the Alternate, for a New Hearing; Transcript of August 17, 2017 Hearing.

Next, the Order states that Morgan Kearse "did not object and chose to offer no evidence or even an argument against the enforcement of an agreement the parties entered into the day before." Order filed September 18, 2017, p. 6. Again, however, there was no settlement "entered" under South Carolina law, Morgan Kearse has objected to the alleged agreement since first raised on February 2, 2017, and the only evidence needed to determine there was no binding settlement

agreement is the Final Term Sheet itself, which is unsigned by Rachael Best, Joseph Kearse, Morgan Kearse, and the Trust, and was not otherwise made in open court. S.C. Code Ann. §§ 62-3-912 & -1102; Rule 43(k), SCRCP; Transcript of February 2, 2017 Hearing, Exh. 3-5; Motion to Alter or Amend or, in the Alternate, for a New Hearing; Transcript of August 17, 2017 Hearing. Moreover, it should be noted that the settlement agreement was not even properly before the Court, pursuant to the Notice of Hearing and that Morgan Kearse did submit his affidavit as evidence, and the Respondents have chosen not to offer opposing affidavits. Notice of Hearing for February 2, 2017; Affidavit of Morgan Kearse.

Further, the second Order states that Morgan Kearse "admits that he and the Pro Se siblings agreed to the settlement which the Court approved [Affidavit P10]." Order filed September 18, 2017, p. 6. To the contrary, Morgan Kearse's affidavit states that he was willing to assent to an agreement that incorporated Morgan Kearse's supplemental terms, but that ultimately the parties did not agree to that supplement or the Final Term Sheet. Affidavit of Morgan Kearse ¶¶ 8-15.

In summary, the Court has failed to analyze whether the Final Term Sheet was a binding settlement agreement pursuant the well-settled requirements of South Carolina law, were it to have done so, its conclusions would have necessarily been that there has been no binding settlement in this matter.

II. The Particulars of the Final Term Sheet Were Not Otherwise Before the Court.

Since the parties to this matter failed to execute a binding settlement under South Carolina law, the next question is whether the Court could have otherwise entered an order that incorporated the Final Term Sheet without a binding settlement. The answer again must be no.

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The only matters properly before the Court, pursuant to the Amended Notice of Hearing, were Morgan Kearse's Motion to Dismiss the Petition for Instruction and Elizabeth Gooding's Motion for Summary Judgement. Therefore, at most, the Court could have (1) ruled that the Decedent's directive to build a house on Trust property could not be honored without the Trust's consent and (2) dismissed the Petition for Instruction.

In contrast, not before the Court in any form that could be ruled on were the questions of Morgan Kearse's personal representative fee and the allocation of legal fees and costs in this matter. Amended Notice of Hearing; Order filed February 27, 2017. Moreover, no evidence was introduced regarding these issues. Order filed February 27, 2017. Finally, it may also be noted that, despite the lack of evidence on point, the Court's allocation of legal fees pursuant to the Final Term Sheet conflicts with various default provisions of the South Carolina Probate Code. See S.C. Code Ann. § 62-3-720 (the estate pays the personal representative's legal fees and costs); S.C. Code Ann. § 62-1-111 (the beneficiaries pay their own legal fees and costs); and S.C. Code Ann. § 62-3-719 (the personal representative receiving a fee equal to 5% of all personal probate property, real estate sales proceeds, and income).

In summary, the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code. Accordingly, the Court had no basis to hold Morgan Kearse liable for the legal fees of Julia Sharp, and potentially also the fees of Elizabeth Gooding and himself as Personal Representative.

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III. Morgan Kearse Remains the Personal Representative.

S.C. Code Ann. § 62-3-610(b) (emphasis added) provides that "[a] personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. When the resignation is effective, the personal representative's attorney of record shall be relieved of any further duties to the court." In addition, a special administrator may only be appointed following an application or petition of an interested person. S.C. Code Ann. § 62-3-614.

In the present case, Morgan Kearse executed and filed his resignation on February 2, 2017, the same day as a hearing that had been scheduled for other matters. Statement of Resignation. Therefore, there was not twenty days' notice as required by S.C. Code Ann. § 62-3-610(b). Moreover, no person submitted an application or petition for appointment of a successor representative within the twenty day notice period as required by S.C. Code Ann. § 62-3-610(b), or for that matter any time since. Accordingly, Morgan Kearse's "filed statement of resignation is ineffective as a termination of appointment" under S.C. Code Ann. § 62-3-610(b), and the Court's purported acceptance of that resignation, first provided in its Order filed February 27, 2017, is void ab initio.

In contrast with its relevant orders, the Court appeared to recognize the additional procedural requirements when it stated, "Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of [Morgan Kearse] to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons [as special

administrator], and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary." Transcript of February 2, 2017 Hearing, p. 21, l. 7-13. In any event, the statutory requirements speak for themselves, and Morgan Kearse's resignation as Personal Representative was ineffective, and there have been no other applications or petitions heard which would otherwise allow the Court to remove Morgan Kearse as Personal Representative.

Ultimately, it is important for the record to accurately reflect that Morgan Kearse is pursuing this appeal as Personal Representative so that he has a firmer basis for recovering his legal fees and costs for the same. Although Morgan Kearse remains willing to resign as Personal Representative in favor of a special administrator, he is only willing to do so if he can confirm that his legal fees and costs will be paid by the Estate, including the cost of this appeal, which would not have been necessary except for Julia Sharp and Elizabeth Gooding attempting to hold Morgan Kearse personally liable for his legal fees as Personal Representative under the non-binding Final Term Sheet in contravention of South Carolina law. In fact, that was the essence of Morgan Kearse's motion that the Court refused to hear at the August 17, 2017 hearing. Transcript of August 17, 2017 Hearing pp. 10-11; Motion to Dismiss Petition for Instruction, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Costs filed August 2, 2017.

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CONCLUSION

Based on the foregoing, the Appellant Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, respectfully requests that the Allendale County Circuit Court rule that the Final Term Sheet does not represent a binding settlement agreement, that Morgan Kearse has not been removed or replaced as acting Personal Representative of the Estate of G.H. Kearse, and otherwise vacating the Orders of the Allendale County Probate Court in this matter filed February 27, 2017, March 20, 2017, and September 18, 2017.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers

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Columbia, South Carolina
December 1, 2017

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2017, addressed to Daniel A. Speights, Esquire, Speights & Runyan, Post Office Box 685, Hampton, SC 29924; Stephen M. Slotchiver, Esquire, Slotchiver & Slotchiver LLP, 44 State Street, Charleston, SC 29401; Gordon Kearse, P.O. Box 22, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

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December 1, 2017

ELECTRONICALLY FILED - 2018 Jan 19 4:17 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse.....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 5, 1992.....Respondents.

NOTICE OF HEARING

Please take notice that on Monday, January 29, 2018, at 2:00 o'clock p.m., or as soon thereafter as counsel can be heard, at the Jasper County Courthouse, Ridgeland, South Carolina, the Respondents, Elizabeth Kearse Gooding and Julia Kearse Sharp, will move before the Honorable Perry M. Buckner, Chief Administrative Judge, to hear the attached Motion to Mediate.

Respectfully submitted,

By: /s/ Daniel A. Speights
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January 19, 2018

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse.....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 5, 1992.....Respondents.

MOTION TO MEDIATE

Petitioner has appealed the Orders dated February 27, 2017 and September 15, 2017, issued by Judge Sheila B. Odom, as Special Probate Judge for the Allendale County Probate Court. Petitioner has filed his Designation of Matter to be Included in the Record on Appeal and his Brief of Appellant. Respondents, Elizabeth Kearse Gooding and Julia Kearse Sharp, have filed their Designation of Matter to be Included in the Record on Appeal, but their responsive brief is not yet due. No other party has appealed either Order.

Respondents Gooding and Sharp move the Court for an Order referring this matter to mediation. The Respondents request that the Court choose the mediator.

Respondents Gooding and Sharp also request that in the event that the parties are not able to resolve all matters in this mediation, Respondents Gooding and Sharp may have until thirty days

after the mediator declares an impasse to file their responsive briefs.

Respondents Gooding and Sharp also request that in the event that the Court denies this Motion, the Court grant them an extension until thirty days after said Order to file their responsive briefs.

A proposed Order granting this Motion is attached hereto.

Respectfully submitted,

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January 19, 2018

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse.....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 5, 1992.....Respondents.

ORDER

Upon review of the Motion to Mediate filed by Respondents Gooding and Sharp, and with good cause appearing therefor,

IT IS ORDERED that:

1. The Court appoints _____ to mediate all issues in this appeal from the Probate Court and any other disputes arising out of this matter.

2. Absent an extension granted by this Court, the Mediator shall conduct the mediation within thirty days of the date of this Order.

3. In the event that the parties do not resolve all of their differences which are subject to the present appeal, the time for Respondents Gooding and Sharp to file their responsive briefs shall be extended until thirty days after the Mediator declares an impasse.

4. Counsel for Movants shall serve all parties with a copy of this Order.

IT IS SO ORDERED.

HONORABLE PERRY M. BUCKNER
Chief Administrative Judge
Fourteenth Judicial Circuit

_____, South Carolina

January _____, 2018

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

AFFIDAVIT OF SERVICE

Re: J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse
v. The Kearse Family Education Trust, et al.
Case No: 2017-CP-03-00244

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Solomons, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Notice of Hearing and attached Motion to Mediate, this 19th day of January, 2018, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below, and by email as set forth below:

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Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
19th day of January, 2018

Rosemarie Lightsey (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/6/2022

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM ALLENDALE COUNTY
Probate Court
Sheila B. Odom, Probate Court Judge

Probate Case No. 2013-ES-03-00063
Circuit Court Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative
of the Estate of G.H. Kearse,..... Appellant,
v.

The Kearse Family Education Trust,
William Gordon Kearse, Elizabeth Kearse Gooding,
Julia Kearse Sharp, Rachael Kearse Best,
Joseph Weber Kearse, and John Morgan Kearse,
of which all are named individually and as
Trustees of the Kearse Family Education
Trust U/AID Nov. 05, 1992..... Respondents.

JOINT RESPONDENTS' BRIEF OF JULIA KEARSE SHARP AND ELIZABETH KEARSE GOODING

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III. Whether, as an alternative ground to affirm, the Court should hold that a will cannot require the building of a house on land the decedent did not own and that the appellant did not act in good faith by bringing a lawsuit in an effort to carry out such an instruction.

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STATEMENT OF ISSUES ON APPEAL

I. Whether this appeal should be dismissed because the appellant claims to be appealing in his capacity as an estate's personal representative but an un-appealed order appoints someone else to that office.

II. Whether the probate court correctly enforced a settlement that was acknowledged in a writing entered in the record by the very same party who subsequently attempted to rescind the settlement.

III. Whether, as an alternative ground to affirm, the Court should hold that a will cannot require the building of a house on land the decedent did not own and that the appellant did not act in good faith by bringing a lawsuit in an effort to carry out such an instruction.

STATEMENT OF THE CASE

This case arose over a will's directive to build a house on someone else's land.

The facts are not disputed. G.H. Kearse died in 2013. Item VI of his will directed his children to build a house copied after a historic home in Virginia.

The house was to be built on the family farm. In 1992, however, Mr. Kearse had established the Kearse Family Educational Trust and placed the farm into the Trust. (Trust, Articles I & II). Mr. Kearse's children are the trustees. *Id.* (paragraph before Article I).

In April of 2016, Morgan Kearse initiated this lawsuit by filing a "petition for instructions." Morgan is one of Mr. Kearse's sons and was at that time the estate's personal representative. (Pet. p.1, ¶5). He named himself and his five siblings as defendants.

Morgan sought an order requiring the home's construction. He said he believed the estate had sufficient funds to build the home, (Pet. p.3, ¶14), but he also proposed using the Trust's assets to aid in the construction if there was a shortfall, opining it would be proper to use Trust property to fund this alleged "improvement." *Id.*, p.4, ¶¶18-21.

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Two of Morgan's siblings actively opposed the suit. Julia Kearse Sharp and Elizabeth Kearse Gooding claimed the will could only be interpreted as a hopeful wish about building a house rather than a mandatory directive given that the farm was held in the Trust and legally separate from the estate. See (Separate Answers to Amended Petition p.2, ¶8).

Julia and Elizabeth also claimed the will had inconsistent language. *Id.*, p.2, ¶15. One clause explained Mr. Kearse left "all [his] monies, except the ad valorem tax money, to be used to build the house," (Will, Item VI), but another clause gave "any monies in any banks, bonds, or any cash in my possession" to the Trust to pay future ad valorem taxes on the property. *Id.*, Item VIII. Thus, as Julia and Elizabeth read the will, there was no money in the estate for the house. The will referred to money "except the ad valorem tax money" but the will left *all* the estate's money to the Trust *to be* ad valorem tax money.

None of the other siblings formally participated in the litigation, though Gordon Kearse indicated he opposed the house's construction and Joseph Kearse indicated he supported exploring whether building the house was "plausible and financially feasible."

Morgan amended his petition in response to a motion to dismiss the case for failing to include the Trust as a party. Elizabeth moved for summary judgment and filed a petition to remove Morgan as personal representative.

More filings followed. Morgan moved dismiss his own lawsuit. Elizabeth sought a restraining order because Morgan was using estate funds to pay his legal fees even though he had been served with a petition to remove him as personal representative.

The probate court was scheduled to hear the motions on February 2, 2017, but the day before the hearing, Morgan's lawyer sent the court a letter explaining the parties "have

reached a global settlement." The letter said Julia's lawyer would read the agreement into the record at the hearing. The letter explained some, but not all, of the settlement's terms.

At the hearing, however, Morgan's lawyer informed the court of two things. First, the lawyer said he did not have the signatures of the three siblings—Rachel, Gordon, and Joseph—who have not actively appeared in the litigation. (2/2/17 Tr.p.5, lines 4-22). Second, the lawyer said Morgan was "irrevocably" resigning as personal representative and that Morgan did not consent to the settlement. *Id.*, p.6, line 7 - p.7, line 25.

Julia's lawyer proceeded to read into the record the "term sheet" constituting the parties' agreement and to present exhibits proving the agreement the parties reached the day before the hearing. (2/2/17 Tr.p.8, line 3 - p.13, line 8). This was done without objection; meaning, although Morgan's lawyer had indicated Morgan did not agree to the settlement anymore, nobody disputed these as the terms that prompted Morgan's lawyer to write the probate court the day before and represent to the court the case had been settled.

At the conclusion of the hearing the probate court accepted the settlement as well as Morgan's resignation as personal representative. (2/2/17 Tr.p.21, lines 3-6). This ruling was memorialized in a formal order filed February 27, 2017.

Morgan filed a motion to alter or amend the probate court's decision. He purported to do so as personal representative even though he had already resigned. Days later, on March 20, 2017, the court appointed Harley Ruff as successor personal representative.

The probate court heard Morgan's motion to reconsider on August 17, 2017 and at the conclusion of the hearing, ruled orally that nothing had been presented at the prior hearing indicating the settlement should not be taken into the record after the court had been

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previously informed, in writing, that the parties had settled the case. (8/17/17 Tr.pp.33-34). This ruling was confirmed in a written order filed September 18, 2017.

STANDARD OF REVIEW

Actions in the probate court can sound in equity or at law. *In re Estate of Holden*, 343 S.C. 267, 278, 539 S.E.2d 703, 709 (2000). However, this case presents questions of law. An appellate court reviews questions of law de novo. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENTS

There are three reasons this Court should affirm.

First, Morgan purports to be taking this appeal as personal representative, yet an un-appealed order appoints someone else—Harley Ruff—to that position. Thus, Morgan's appeal is a nullity. He lacks authority to take this action on the estate's behalf.

Second, the probate court correctly enforced the settlement against Morgan, who had previously informed the probate court, in writing, of his assent to the settlement before attempting to rescind the next day. All of Morgan's arguments against the settlement are barred because they were not raised until his motion to alter or amend. Precedent prohibits a party from making new arguments in a post-trial motion. On the merits, the key feature distinguishing this case from other circumstances where a settlement would not be enforceable is the fact that Morgan acknowledged the settlement, in writing, and he filed that writing with the probate court before he attempted to back out.

Finally, as an alternative ground supporting the decision below, the conclusion that Morgan is responsible for his and his sisters' legal fees is correct, as there is no reasonable

dispute that this suit was not brought or conducted in good faith. Indeed, the very act of taking this appeal is contrary to the estate's best interest. It is time for this case to end.

I. This appeal should be dismissed because Morgan claims to be appealing in his capacity as personal representative but an un-appealed order appointed Harley Ruff to that office.

This appeal is a nullity. Morgan claims to be appealing in his capacity as the estate's personal representative, yet an un-appealed order from the probate court appoints Harley Ruff to that position.

This is evident from a cursory examination of the record. The probate court's March 20, 2017 order appoints Harley Ruff as "successor personal representative" for this estate and indicates Morgan's resignation "is hereby effective." Morgan has not appealed this order. His notice of appeal references the order enforcing the settlement (dated February 27, 2017) and the order denying his motion to alter or amend (dated September 5, 2017), but not the order confirming someone else to the office of personal representative.

An un-appealed order or ruling is the law of the case. Courts routinely enforce this principle. *McCain v. Brightharp*, 399 S.C. 240, 251, 730 S.E.2d 916, 921-922 (Ct. App. 2012) (a finding of contempt was the law of the case because the order of contempt was not appealed); *ML-Lee Acquisition Fund v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (un-appealed ruling that an investor was not an accountant's client was the law of the case). There is no way to meaningfully distinguish this principle's proper application here. The March 20, 2017 order confirms Harley Ruff as successor personal representative and states Morgan's resignation is effective. That order was not appealed and compels the conclusion that Morgan is not the personal representative.

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Morgan's continued attempt to litigate in his capacity as personal representative is also directly undermined by arguments he made below. At the hearing to confirm the settlement, Morgan's lawyer told the court Morgan was resigning "irrevocably." (2/2/17 Tr.p.6, lines 7-24). This was not equivocal. Morgan's lawyer said Morgan "has no power to write checks . . . no power to file documents . . . no power to take action . . . [and] can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary[.]" *Id.*, p.7, lines 2-10. Filing an appeal is not sitting on the sidelines. Morgan's continued filings—a motion to alter or amend, a renewed motion to dismiss the lawsuit he filed, and pursuing this appeal—are directly contrary to his representation to the probate court.

Fairness requires acknowledging a personal representative may not "immediately" resign his position. As Morgan's lawyer told the probate court, a statute requires twenty days written notice to persons with an interest in the estate and provides that the resignation is effective only upon the appointment and qualification of a successor personal representative and delivery of the estate's assets to him. (2/2/17 Tr.p.6, lines 12-24) (referencing S.C. Code Ann. § 62-3-610(b)). It was therefore possible—as a formal matter—for Morgan to file a motion to alter or amend in his capacity as personal representative because the probate court did not appoint Harley Ruff as successor personal representative until four days later. Though that motion may have been formally possible, it remains directly inconsistent with Morgan's arguments that his resignation was "irrevocable" and his authority was "frozen."

Still, nothing supports the idea that it is appropriate for Morgan to file or pursue *this* appeal—an appeal initiated seven months after Harley Ruff's appointment. Morgan purports to be taking this appeal in his capacity as the estate's personal representative. Doing so is

directly contrary to the un-appealed order appointing someone else to that position and the argument Morgan made to the probate court.

II. The probate court correctly enforced a settlement that Morgan acknowledged in a writing entered in the record before he subsequently attempted to rescind the settlement.

The probate court correctly enforced the settlement against Morgan because Morgan previously informed the probate court, in writing, of his assent to the settlement before attempting to rescind the settlement the next day.

a. Morgan's arguments and evidence are not properly before this Court.

First, it is important to identify the multiple arguments that are not properly before this Court because they were not presented until Morgan's motion to alter or amend.

At the settlement hearing, the only argument Morgan's lawyer made was that Morgan had agreed to the settlement because of mistake or fraud. (2/2/17 Tr.p.18, lines 5-7). The settlement called for Morgan to pay everyone's legal fees but also allowed Morgan to ask his siblings to consent to the estate bearing all or a portion of those fees. *Id.*, p.12, lines 8-21. Morgan's lawyer indicated one of the siblings had refused consent for the estate to pay these fees, but no testimony or evidence was offered. *Id.*, p.18, line 5 - p.19, line 15.

There was no objection when the exhibits proving the parties' agreement were entered in the record. There were no legal arguments referencing rules of procedure or the Probate Code. Those sorts of arguments did not appear until Morgan's motion to alter or amend. Also, Morgan's affidavit supporting his allegations of mistake or fraud did not appear until the motion to alter or amend.

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Precedent explains a party may not use a motion to alter or amend to raise an issue the party could have raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Arguments about the rules of civil procedure, the Probate Code, and Morgan's understanding of the settlement are accordingly improper. Close scrutiny of *Hickman* is helpful; it favorably cites cases explaining motions to alter or amend "are not vehicles for bringing . . . theories or arguments that were not advanced earlier" and do not "provi[de] a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment." *Id.* at 457-458, 392 S.E.2d at 482. Morgan's affidavit and his legal arguments are not properly before this Court because they were not properly raised to the probate court. These arguments could have easily been raised at the hearing where the settlement was put on the record. Instead, Morgan presented an argument based on mistake or fraud, but without any evidence.

b. The court properly enforced the settlement.

Turning to the merits, which this Court need not reach, the key feature of this case is that Morgan acknowledged the settlement, in writing, and filed that writing with the probate court before he attempted to back out. The controlling rule is Rule 43(k), SCRCP.

The relevant part of Rule 43(k) is the first sentence explaining:

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a *consent order* or *written stipulation signed by counsel* and *entered in the record*, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.

(Emphasis added). Morgan is bound by the settlement because he wrote a letter representing the parties had settled, his lawyer signed the letter, the letter identified the terms by indicating

Julia's lawyer would read them, and Morgan sent the letter to the probate court. Morgan's lawyer knew this, explaining the court would hear this exact argument and that enforcing the settlement "may well be" what the court would do. (2/2/17 Tr.p.7, lines 18-23).

It may be helpful to contrast this case's circumstances with examples from precedent.

First, consider *Ashfort Corp. v. Palmetto Construction Group*, a case where a settlement was unenforceable because the written stipulation must set forth the terms of the settlement. There, the circuit court issued a form order based on the lawyers' oral representation that the case settled. 318 S.C. 492, 458 S.E.2d 533 (1995). A dispute arose over the settlement's terms. The form order noting the case had settled was not binding because it did not disclose the settlement's terms.

Here however, Morgan wrote a letter, placed the letter in the record by sending it to the probate court, described some of the settlement's terms in the letter, and told the court the remainder would be read by Julia's lawyer at the hearing. Morgan did not object when Julia's lawyer read the terms or dispute that those had been the terms to which he had agreed. He similarly did not object or dispute the exhibits proving the fact of his prior agreement.

Next, consider *Farnsworth v. Davis Heating & Air Conditioning*, a case where a party successfully retracted consent to a settlement. *Farnsworth* was controlled by timing: the plaintiff sent the defendant a settlement offer, the defendant accepted by signing the offer, but before the defendant filed the signed offer with the court, the plaintiff retracted. The Supreme Court stressed that the defendant knew about the plaintiff's change in heart before the defendant filed the agreement with the court. 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). The settlement was retracted before it was filed and became binding.

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Here however, Morgan had already informed the probate court of the settlement, in writing, before he attempted to back out and change his mind. This case reverses the order from *Farnsworth*. The proof of settlement was filed first. Thus, Morgan cannot back out.

The only serious pushback to the settlement's enforcement is obvious. Drawing again from *Ashfort*, one might argue that this case is similar with respect to all settlement terms not being in the writing (Morgan's letter) filed in the record.

Applying that view would be nonsensical here. Morgan is the one who told the probate court the case had settled. Morgan is the one who told the court Julia's lawyer would read the full list of settlement terms into the record. Morgan did not dispute the terms when they were read to the court or the fact that he previously assented to them. An argument by Morgan that the settlement was defective because all of the terms did not appear in his letter would be foreclosed because Morgan would be complaining about an error his own conduct induced. See *Erickson v. Jones St. Publishers*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) (a party may not complain of an error his own conduct induced).

III. Alternatively, this Court should affirm because a will cannot require the building of a house on land the decedent did not own and there is no reasonable dispute that this suit was not brought or conducted in good faith.

Rule 220(c), SCACR, allows an appellate court to affirm a decision based on any ground appearing in the record. The settlement gives Morgan primary responsibility for the legal fees he incurred and the legal fees Julia and Elizabeth incurred. (2/2/17 Tr.p.12, lines 8021). The parties incurred these fees litigating Morgan's request that the probate court order the estate to construct a house on land the estate does not own.

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An alternative ground supporting Morgan's responsibility for these fees is that there is no reasonable dispute the petition was not brought or conducted in good faith. A statute allows the probate court to award attorneys fees to any party and to specify that those fees be paid by another party or by the estate. S.C. Code Ann. § 62-1-111. A different statute explains the personal representative is entitled to reasonable attorneys fees as long as a lawsuit is brought or defended by the personal representative in good faith. S.C. Code Ann. § 62-3-720.

Elizabeth's summary judgment memorandum correctly lists multiple reasons why this lawsuit should never have been filed. The original petition and the amended petition wrongly claim Mr. Kearse's will directs the building of a house on Mr. Kearse's land. (Both Petitions, ¶6). The Trust owns the land. Evidence proving this was in Morgan's possession before he filed this lawsuit. A 2014 letter specifically advised that real estate held by corporations in the Trust were not to be considered part of the estate. (Summ. J. Memo p.7).

Also, nobody has ever offered a legal theory explaining how the will's provision about building a replica of a historic home could be imposed on the Trust. Morgan acknowledged in his deposition that his father would not have any right to control the Trust's property. (Summ. J. Memo p.6). Morgan also read the relevant language of the Trust at his deposition and admitted the Trust owned all of the stock of the corporations that own the relevant land. *Id.* Minimal scrutiny would have counseled against filing this suit.

The list of deficiencies goes on. Morgan admitted he had no idea how many square feet were in the historic house, that he had not talked to an architect, that he had no estimates on what such a house would cost, and that he had no idea whether the estate or the Trust

could afford the taxes, insurance, and maintenance. (Summ. J. Memo pp.9-10). He also sued himself in his capacity as trustee of the Trust, placing him on both sides of this lawsuit with a direct conflict of interest and violating his duties to protect the estate and the Trust.

Morgan has continued litigation after being served with a petition to remove him as personal representative. This is important because a statute says a personal representative "shall not act except to account, to correct maladministration, or preserve the estate" after being served with a petition for removal. S.C. Code Ann. § 62-3-611(a). This appeal is a further act against the estate's interest. The settlement puts the initial burden of attorney's fees on Morgan personally but allows the possibility of the estate paying all or a some of those fees if the majority of Morgan's siblings agree. Dissatisfied with that outcome, Morgan is trying to unilaterally shift responsibility for his fees to the estate. This would deplete estate assets rather than protect them.

Nobody likes making an argument that an opposing litigant has not acted in good faith. Such an argument is all the more difficult to make in a lawsuit among members of a family.

But the record vividly illustrates there was no conceivable, good faith basis, for the initiation of a lawsuit that sought an order compelling a Trust to allow Mr. Kearse's estate to build a house on the Trust's land.

Morgan would have been in a strong position if one of his siblings had sued him and claimed the house should be built. There would have been more than just good faith arguments to defend such a suit. The arguments against such a dispute would have been correct. Here, the opposite approach was followed, with no lucid justification. This lawsuit

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affirmatively sought an order compelling relief that was wholly unjustified in law or fact. The only conclusion supported by the record is that this suit was not brought or conducted in good faith.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Respectfully submitted,

July 19, 2018

s/Blake A. Hewitt

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM ALLENDALE COUNTY
Probate Court
Sheila B. Odom, Probate Court Judge

Probate Case No. 2013-ES-03-00063
Circuit Court Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative
of the Estate of G.H. Kearse, ... Appellant,

v.

The Kearse Family Education Trust,
William Gordon Kearse, Elizabeth Kearse Gooding,
Julia Kearse Sharp, Rachael Kearse Best,
Joseph Weber Kearse, and John Morgan Kearse,
of which all are named individually and as
Trustees of the Kearse Family Education
Trust U/AID Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the pro se parties with a copy of the *Joint Brief of Respondents Julia Kearse Sharp and Elizabeth Kearse Gooding* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

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LEGAL ARGUMENT

Respondents Elizabeth Gooding and Julia Sharp ("Respondents") assert three grounds for affirming all or part of the Probate Court Orders appealed by Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse (the "Estate"). Each ground raises arguments not addressed in Appellant's Initial Brief and, therefore, Appellant takes up these arguments in turn below.

I. Whether this appeal should be dismissed because Appellant is appealing in his capacity as Personal Representative?

Respondents argue that Appellant's appeal is a nullity because the Probate Court purported to appoint a successor personal representative for the Estate. This argument is flawed for many reasons. First, however, two introductory paragraphs regarding the context of the purported appointment may aid in understanding the full extent of these flaws.

Appellant attempted to resign as Personal Representative on February 2, 2017, just one day after an attempted settlement with his siblings concerning the Estate fell through due to bad faith on the part of one or more of the siblings. Affidavit of Morgan Kearse, ¶¶ 7-15. Appellant realized that he simply could not satisfy Respondents under any circumstances and thought he could escape their wrath if he were to successfully resign as Personal Representative. However, Appellant did not realize until the day of the hearing that Respondents would attempt to put forward the proposed terms of the abandoned settlement as an allegedly completed settlement, one which would purport to compel Appellant and potentially the Estate to pay legal fees that each otherwise should not have to pay under law and equity.

As a result, Appellant timely filed a motion to alter or amend the Probate Court's entire February 27, 2017 Order, including Appellant's attempted resignation so that there would be no doubt about his authority to challenge the alleged settlement agreement and, after it is voided,

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seek a recovery of legal fees for having to do so.[1] Appellant also timely appealed the Probate Court's September 18, 2017 Order that denied Appellant's motion to alter or amend. In between those two Orders, the Probate Court also purported to appoint Harley Ruff, Esq. as successor personal representative via the standard "Statement of Resignation" probate form that Appellant had submitted at the February 2, 2017 hearing and had since retracted pursuant to his motion to alter or amend, the denial of which is a subject of this appeal.

With that context, the flaws in Respondents' argument are numerous. To begin with, Appellant's underlying argument regarding the legal insufficiency of his resignation has been made previously in both his motion to alter or amend and Initial Brief of Appellant (section IV), and is therefore not restated here. However, even Respondents have subsequently acknowledged that "a personal representative may not 'immediately' resign his position," noting the requirements of S.C. Code Ann. § 62-3-610(b), and that "[i]t was therefore possible – as a formal matter – for [Appellant] to file a motion to alter or amend in his capacity as personal representative ...." Joint Respondents' Brief, p. 6.

Second, the Statement of Resignation purported to terminate Appellant's appointment as Personal Representative "[u]pon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative ...." Statement of Resignation. However, Appellant has not yet provided a final accounting to the Probate Court and continues to retain possession of Estate tangible personal property (furniture, equipment, and books) located in the office occupied by Appellant. Accordingly, even by its own terms, the Statement of Resignation as completed by the Probate Court has not yet terminated Appellant's appointment as Personal Representative.

[1] Appellant remains ready, willing, and eager to resign as Personal Representative as soon as the alleged settlement is invalidated and the proper allocation of legal fees in this matter can be had.

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Third, the Statement of Resignation also states that the resignation is effective "[w]ith the appointment of Harley Ruff, Ruff & Ruff, LLC as Successor Personal Representative." However, this statement is not an affirmative declaration that Harley Ruff is successor personal representative, but instead merely indicates that Appellant's resignation would allegedly be effective when such event takes place. Therefore, it is a conditional statement similar to saying "With the election of Harley Ruff as Governor of South Carolina, Henry McMaster will no longer be Governor." This is further evidenced by the form itself being titled Statement of Resignation and not "Statement of Appointment." Accordingly, even by its own terms, the Statement of Resignation as completed by the Probate Court has not yet terminated Appellant's appointment as Personal Representative for a second independent reason.

Fourth, the Statement of Resignation contemplates the appointment of Harley Ruff as "Successor Personal Representative" on or after March 20, 2017, whereas the Court's prior Order dated February 27, 2017 stated, in relevant part, "The Court will contact Algernon Gibson Solomons, Jr., Esq. and determine if he will agree to serve as the Special Administrator. In the event that Mr. Solomons declines to serve, the Court will appoint a neutral non-family member to serve as the Special Administrator." Order filed February 27, 2017, p.5 (emphasis added). This is also in accord with the first section of the alleged settlement, which the Probate Court has purported to enforce. Transcript of February 2, 2017 Hearing, Exh. 3. However, special administrators and successor personal representatives are different statutorily created roles with different responsibilities under the South Carolina Probate Code. Cf. S.C. Code Ann. §§ 62-3-613, -616, & -617. Therefore, any purported appointment of Harley Ruff as successor personal representative is itself a nullity because the Probate Court's prior Order and the alleged settlement agreement both require the appointment of a special administrator specifically.

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Fifth, the proceedings for the appointment of a successor personal representative are governed by S.C. Code Ann. § 62-3-301 et seq. (for informal appointment) and S.C. Code Ann. § 62-3-401 et seq. (for formal appointment). See S.C. Code Ann. § 62-3-613. To that end, informal appointment of a successor personal representative requires an application by the proposed successor, with notice to interested persons, and findings by the court as to the applicant's statutory qualifications, including the applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-301, -308 & -310. Similarly, formal appointment of a successor personal representative requires a summons and petition by the proposed successor, served on all interested persons, and a formal hearing by the court, after notice of hearing sent to the interested parties, to confirm the applicant's qualifications, including the applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-402, -403, & -414. In this case, none of the informal or formal requirements were attempted, much less completed. Accordingly, any purported appointment of a successor personal representative is void ab initio, and there is nothing to appeal regarding the same because the legal process was not even begun.

Sixth, to the extent the Probate Court was instead attempting to appoint a special administrator, the requirements for doing so were not attempted, much less satisfied. Before a special administrator may be appointed, S.C. Code Ann. § 62-3-614 requires either an informal application or petition by an interested person along with additional findings. The Probate Court itself recognized as much at the February 2, 2017 hearing, stating "Mr. Wingate, as [Appellant's] attorney, you did read this statute [regarding special administrators] per se without reading it verbally that there are requirements of him to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons, and we need to reconvene on a hearing on that matter." Transcript of February 2, 2017 Hearing, p. 21, l. 7-12. Because no such application or

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petition was filed, any purported appointment of a special administrator is void ab initio, and there is nothing to appeal regarding the same because the legal process was not even begun.

Seventh, "[w]hen an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had." S.C. Code Ann. § 62-1-308(h). In this case, Appellant has appealed the Probate Court's Orders purporting to terminate his appointment as Personal Representative, which renders such resignation "and all proceedings in pursuance" thereof ceased under Section 62-1-308(h). Consequently, the Probate Court had no power to appoint a successor personal representative and, at least insofar as Appellant's appeal is concerned, Appellant remains the Personal Representative of the Estate.

Eighth, even without the mandate of Section 62-1-308(h), Appellant's appeal of his attempted resignation as Personal Representative is inextricably linked to the appointment of a successor fiduciary in that if Appellant's resignation is invalid then so is the appointment of a successor because there is no vacancy to fill. See, e.g., S.C. Code Ann. § 62-3-613 (regarding the "appointment of a personal representative to succeed one whose appointment has been terminated"); S.C. Code Ann. § 62-3-614 (regarding the appointment of a special administrator "if a prior appointment has been terminated"). In addition to basic legal precepts and common sense, this conclusion is supported by the fact that the purported appointment of the successor fiduciary was on the same form as Appellant's attempted resignation that is now on appeal. It may also be noted that Appellant's motion to alter or amend concerning his alleged resignation was filed prior to the Probate Court's purported appointment of a successor fiduciary.

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Ninth, even if Appellant had not appealed his alleged resignation, the law allows him, "at any time prior to distribution or until restrained or enjoined by court order," to "perform acts necessary to protect the estate." S.C. Code Ann. § 62-3-608. In this case, Appellant's appeal is necessary to protect the Estate because the underlying Orders would allow the Estate to pay the legal fees for one of Respondents. Furthermore, the Estate assets have not been distributed and there are no orders restraining Appellant from making this appeal, nor could there be without violating Appellant's right to due process.

Tenth, Appellant's appeal as Personal Representative is necessary in order to protect the interests of interested parties who are not represented by legal counsel and therefore have no way to effectively challenge the purported agreement. This is particularly relevant to the Kearse Family Education Trust U/A/D Nov. 05, 1992, which is the primary beneficiary of the Estate, has six trustees who are in disagreement as evidenced by this appeal itself, has heretofore not had legal representation, and otherwise cannot legally represent itself. See Real Estate Unlimited, LLC v. Rainbow Living Trust, No. 2004-UP-019, 2004 WL 6248341, at *2 (S.C. Ct. App. Jan. 15, 2004) (holding that a non-attorney trustee may not appear in court on behalf of a trust).

Eleventh, it is possible to simultaneously appoint a special administrator even while Appellant's appointment as Personal Representative remains valid. See S.C. Code Ann. § 62-3-617 ("The appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct."). In this case, because Appellant filed his motion to alter or amend before the purported appointment of a successor fiduciary, the Probate Court's purported appointment may be construed, at most, as the appointment of a limited purpose special administrator while Appellant's appeal and Respondents' Petition for Removal remained pending. In fact, such limited appointment may even be prudent while this appeal continues, and

such limited appointment would not by itself negate Appellant's lawful status as Personal Representative.[2]

Finally, and perhaps most fundamentally, Respondents' argument is flawed because Appellant's appeal is valid even if his appointment had been validly terminated and a successor fiduciary had been validly appointed. This is because the portions of the underlying Orders being appealed relate to Appellant's service as Personal Representative for the Estate. Therefore, it would be nonsensical for Appellant to appeal in any capacity other than as Personal Representative of the Estate, regardless of whether Appellant is the former, outgoing, or current Personal Representative. In fact, if Appellant had purported to appeal in his individual capacity, one could safely assume Respondents would claim Appellant had waived his right to appeal issues related to his service as Personal Representative. Ultimately, all that is necessary for Appellant to appeal as Personal Representative is that his appeal relate back to his service as Personal Representative, which it obviously does.

In summary, Respondents' argument that the appeal is a nullity is flawed for many independent reasons. However, even if Respondents could possibly be correct, the end result would be that the Estate remains subject to an alleged settlement that was never validly agreed to. But settlements that were never agreed to are not enforceable, and the court lacks subject matter jurisdiction to enforce them.[3]

"It is well settled that a district court retains inherent jurisdiction and equitable power to enforce agreements entered into in settlement of litigation before that court. However, it is clear

[2] Alternately, Mr. Ruff may continue to legally act for the Estate under Appellant's power to employ attorneys, see S.C. Code Ann. § 62-3-715(19), or simply as a person appointed in error from whom Appellant may later recover property of the Estate, see S.C. Code Ann. § 62-3-702.

[3] "Lack of subject matter jurisdiction may be raised at any time, and may be raised for the first time on appeal." Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525-26 (2018).

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that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds." Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983) (citations omitted) (cited with approval by Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992)). See also Ex parte McLeod, 323 S.C. 461, 464, 476 S.E.2d 167, 168–69 (Ct. App. 1996) (holding that probate court lacked subject matter jurisdiction to award attorney fees under a wrongful death settlement agreement absent a petition for approval of the settlement).

Accordingly, the crux of this matter – whether there was a valid settlement – will surely come back before the courts when the parties who never entered the settlement in the first place rightfully refuse to honor it, and Respondents then file an action to enforce it. Then, presumably, Respondents would be willing to allow the court to address the substantive matter at hand rather than trying to enforce an invalid settlement through procedural arguments.

II. Whether the alleged settlement was acknowledged in a writing entered and entered on the record?

A. Did Appellant fail to adequately address the alleged settlement's invalidity below?

As a threshold matter, Respondents assert that Appellant's arguments regarding the alleged settlement are barred because they were not raised until Appellant's motion to alter or amend. This assertion is both disingenuous and flawed for several reasons.

Most fundamentally, Appellant's counsel clearly informed the Probate Court at the February 2, 2017 hearing that the alleged settlement had not been entered by all of the pro se

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parties or Appellant.[4] As stated by Appellant's counsel, "[a]s we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and cannot present it to you." Transcript of February 2, 2017 Hearing, p. 5, l. 14-20. And specifically as to Morgan Kearse, "his position will be that he does not consent to the settlement." Transcript of February 2, 2017 Hearing, p. 7, l. 14-16.

Moreover, Appellant need not have said a word on the matter, as the incompleteness of alleged settlement submitted by Respondents was self-evident, having been signed by only three of the seven parties necessary to enter an agreement. Transcript of February 2, 2017 Hearing, Exh. 3-5. Even the Probate Court recognized the absence of an agreement, stating "this is not an agreed upon by all parties exclusively agreement any longer." Transcript of February 2, 2017 Hearing, p. 20, l. 19-20.

Nevertheless, Respondents claim the foregoing was inadequate to preserve Appellant's objection to the alleged settlement because "[t]here were no legal arguments referencing rules of procedure or the Probate Code." Joint Respondents' Brief, p.7. In addition, Respondents seem to take issue with an alleged lack of evidence submitted by Appellant to the Probate Court. Joint Respondents' Brief, p. 8.

As to the evidence presented, it is not Appellant's burden to disprove the existence of an alleged agreement, but rather the burden of the proponents of an agreement to prove it exists. See Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts."); W.E. Gilbert &

[4] Though not specifically stated by Appellant's counsel, it was also not entered by the Kearse Family Education Trust U/A/D Nov. 05, 1992.

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Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) ("To recover in an action for breach of contract, the plaintiff must, of course, prove the existence of a contract, oral or written.").

Regardless, the alleged settlement agreement speaks for itself by virtue of the lack of signatures thereto by four of the seven constituent parties, which is precisely why Appellant's counsel did not object to it being introduced at the February 2, 2017 hearing despite the lack of notice on that issue. Transcript of February 2, 2017 Hearing, Exh. 3-5. Moreover, although not necessary for Appellant's position, Appellant actually did submit an affidavit explaining the context of the alleged agreement for the benefit of the Probate Court, which was proper to include with his motion to alter or amend and for a new hearing. See Rule 6(d), SCRCP.

As for the lack of specific legal citations at the February 2, 2017 hearing, it goes without saying that a putative appellant need not have all nuances and refinements to the appellate argument set forth in the record. It is enough that the issue is sufficiently clear to the trial court that the trial court may rule on the issue. See, e.g., South Carolina Dep't of Transp. v. First Carolina Corp. of South Carolina, 372 S.C. 295, 301-03, 641 S.E.2d 903, 907 (2007). Although that case involved a proposed verdict form, it is instructive with regard to the present matter as well:

> SCDOT filed a motion for judgment notwithstanding the verdict asserting that the verdict form was unduly suggestive. The trial court found that SCDOT did not object to the use of the verdict form on that basis, and therefore, the court found that the objection was waived. SCDOT argues that although it did not use those exact words, it nonetheless objected to the use of the special verdict form on the basis that it emphasized the appraisal method advocated by First Carolina.
>
> We hold that SCDOT made a timely objection to the use of the special verdict form. Although SCDOT did not phrase its objection in the exact terms used in the issues on appeal, SCDOT's objection on the basis that the verdict form "emphasizes damages by its bifurcated nature" provided a meaningful objection with sufficient specificity to allow the trial court to rule on the issue. State v.

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> Russell, 345 S.C. 128, 134, 546 S.E.2d 202, 204 (Ct.App.2001) (holding that a party need not use the exact name of a legal doctrine in order to preserve an argument, but it must be clear that the argument has been presented on that ground).

Id. at 302-03, 641 S.E.2d at 907. Here, as stated previously, Appellant unequivocally voiced his disagreement with there being an alleged settlement, which along with the alleged settlement itself, is all the Probate Court needed to rule on that issue.

Furthermore, it was impossible for Appellant (or Respondents for that matter) to address specific legal authorities regarding the alleged settlement, since the Notice of Hearing did not indicate that an alleged settlement was to be discussed,[5] the terms of the alleged settlement had only been emailed to Appellant one business day prior to the hearing, and Respondents' counsel did not otherwise notify Appellant that they were going to attempt to enforce the alleged settlement terms despite the lack of consent. Notice of Hearing; Transcript of February 2, 2017 Hearing, Exh. 1.

It may also be noted that Respondents' counsel did not reference any statutes, rules of procedure, or legal precedent themselves. Transcript of February 2, 2017 Hearing. In fact, counsel for one Respondent admitted "up until about 30 minute ago, I was unaware we did not have a settlement," while counsel for the other Respondent stated "I thought I came to court today to read something into the record and be back in my office in ten minutes." Transcript of February 2, 2017 Hearing, p. 8, l. 12-14; p. 15, l. 15-17. Therefore, rather than asserting legal justifications for the alleged settlement's enforceability, which would have then prompted a more specific legal retort by Appellant, Respondents simply read the alleged settlement into the record

[5] In contravention of S.C. Code Ann. §§ 62-3-106 & -1102(3). See also S.C. Code Ann. §§ 62-1-401; 62-3-721.

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and asked the Probate Court to enforce it despite the lack of assent by the parties sought to bound thereto.

Ultimately, the alleged settlement did not even exist as a allegedly enforceable settlement until it was effectively created by the Probate Court's Order dated February 27, 2017, after which Appellant submitted a valid and proper motion to alter or amend which provided specific legal authorities that the Probate Court had not previously addressed, as well as a valid and proper motion for a new hearing so that the validity of the alleged settlement could be actually considered in a setting that provided advanced notice for all concerned. In response, the Probate Court actually did hold a hearing on Appellant's motions, during which both Appellant and Respondents were allowed to address the specific legal arguments regarding the alleged settlement.

However, if Appellant's objection to the alleged settlement could somehow be considered untimely, then the Probate Court's alleged enforcement of a settlement at a hearing to which there was no notice of the same is similarly invalid, and can therefore be collaterally attacked. Accordingly, even if Appellant's appeal could somehow be seen as technically deficient, it would still leave an invalid settlement to which the non-assenting parties need not comply, at which point Respondents would presumably file a petition to compel enforcements and be willing to dispense with procedural arguments that only obscure the core, simple issue at hand. See Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983) ("[I]t is clear that the district court only retains the power to enforce complete settlement agreements; it does not have the power to impose, in the role of a final arbiter, a settlement agreement where there was never a meeting of the parties' minds."); Ex parte McLeod, 323 S.C. 461, 464, 476 S.E.2d 167, 168–69 (Ct. App.

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1996) (holding that probate court lacked subject matter jurisdiction to award attorney fees under a wrongful death settlement agreement absent a petition for approval of the settlement).

B. May the Probate Court enforce the settlement?

To begin with, Respondents do not contest or address Appellant's argument that the alleged settlement does not satisfy the requirements for a valid estate settlement pursuant to either S.C. Code Ann. § 62-3-912 or S.C. Code Ann. § 63-3-1102. Accordingly, it may be presumed Respondents concede that each such statute requires all parties to the alleged settlement to execute the same, which did not happen in this instance.[6] This simple fact alone, as discussed in Appellant's Initial Brief, renders the alleged settlement invalidated. Initial Brief, p. 10-12. However, in an abundance of caution, Appellant addresses Respondents' arguments regarding the hypothetical validity of the alleged settlement under Rule 43(k), SCRCP.

Rule 43(k), SCRCP, provides as follows (emphasis added):

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

As an additional threshold matter, this time as to Rule 43(k), SCRCP specifically, Respondents have also failed to contest or address Appellant's argument that Rule 43(k), SCRCP only concerns "agreement[s] between counsel." Initial Brief, p. 13. Accordingly, it may also be presumed that Respondents concede that Rule 43(k), SCRCP does not apply where unrepresented persons are necessary parties to the agreement but do not themselves assent to the agreement, which is the case in this instance. Transcript of February 2, 2017 Hearing, Exh. 3-5.

---

[6] The signing parties were the two Respondents and Gordon Kearse. The non-signing parties included Appellant, Rachael Best, Joseph Kearse, and the Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992. Transcript of February 2, 2017 Hearing, Exh. 3-5.

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Rather than address Appellant's threshold arguments, Respondents instead highlight one of the three possible ways that an agreement subject to Rule 43(k), SCRCP, which the alleged settlement is not, may become a binding settlement. That is, by reducing it "to the form of a consent order or written stipulation signed by counsel and entered in the record." Joint Respondent's Brief, p. 8.

Here, however, there was no consent order, no written stipulation signed by all represented parties (or all unrepresented parties for that matter) and, because neither existed, no such document was entered in the record. In contrast, what was read into the record in a merely superficial sense were the terms of the draft document that Respondent's hoped to have enforced, which is not the same as having an agreement actually "entered into the record" as contemplated by Rule 43(k), SCRP. I.e., having a stipulation or consent order that is agreed to by all parties thereto read into the record without any such party disavowing the same.

Nevertheless, in an attempt to claim satisfaction of the highlighted portion of Rule 43(k), SCRCP, Respondents cite to a letter written by Appellant's counsel to the Probate Court the day before the hearing indicating counsel's belief that a settlement had been reached, which ultimately was not true. Respondents therefore must necessarily consider this letter as a "written stipulation signed by counsel and entered on the record" for purposes of Rule 43(k), SCRCP. However, this is patently flawed for at least three independent reasons.

First, the letter was not signed by counsel in that there were two represented parties that did not sign the letter (plus four unrepresented parties that did not sign it). Second, the letter was not entered on the record because it was never submitted into evidence. Respondents dubiously describe the letter as being "filed," but it was sent merely for informational purposes outside of the hearing and never made part of the hearing or even the follow up hearing on Appellant's

motion to alter or amend, for which Respondents had over a half-year to prepare. Third, the letter does not constitute a stipulation because it does not provide the key terms of the alleged settlement.

Even Respondents acknowledge the last flaw, but suggest that Appellant is somehow estopped from disputing the existence of an agreement because his counsel indicated that an agreement would be read into the record at a future point. Joint Respondents' Brief, p. 10. However, in addition to not citing any specific authority for that argument, it runs counter to the structure and purpose of Rule 43(k), SCRCP, which is to "increase the certainty of settlement agreement" and "to relieve the court of the necessity of determining such disputes." Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 494-95, 458 S.E.2d 533, 535 (1995) (quotation omitted). Respondents' argument also improperly negates their burden to prove the existence of an enforceable settlement. See Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("In South Carolina jurisprudence, settlement agreements are viewed as contracts."); W.E. Gilbert & Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985) ("To recover in an action for breach of contract, the plaintiff must, of course, prove the existence of a contract, oral or written.").

Respondents' argument also does not comport with precedent such as Ashfort Corp., 318 S.C. at 495, 458 S.E.2d at 535 (holding that lack of settlement terms in an order of dismissal rendered alleged settlement invalid) and Farnsworth v. Davis Heating & Air Cond., Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial). Respondents attempt to distinguish Farnsworth because of the letter of Appellant's counsel indicating the mistaken belief of a settlement. However, a letter from one of seven parties to a supposed agreement simply

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does not make a binding settlement under South Carolina law, especially when it does not contain the key terms of the alleged settlement and was never introduced in the record. Furthermore, "[u]ntil a party is bound, [he] is entitled to withdraw [his] assent." Id.

Perhaps recognizing their deeply flawed reasoning with regard to the letter from Appellant's counsel, Respondents also suggest Appellant did not dispute the alleged settlement terms when they were read at the hearing by one of Respondents' respective attorneys. However, that is patently false as Appellant's attorney made it clear that neither Appellant nor multiple pro se parties had consented to the alleged settlement in its entirety. Transcript of February 2, 2017 Hearing, p. 5, l. 14-20; p. 7, l. 14-16; p. 7, l. 23-25. Respondents therefore attempt to confuse the lack of an evidentiary objection, which was not made because the alleged settlement's non-acceptance speaks for itself, with the clear substantive objection and rejection Appellant's counsel made as to the alleged settlement's validity and enforceability.

Finally, Respondents have also failed to contest or even address Appellant's threshold argument that there was no meeting of the minds, which there must be as to all material terms for a settlement to be binding. Initial Brief, p. 10, citing Reed v. Associated Invest. of Edisto Island, Inc., 339 S.C. 148, 528 S.E.2d 94 (Ct. App. 2000). Accordingly, it may be presumed Respondents concede the fact that all parties to a settlement must agree to it and, furthermore, they have no evidence that the pro se parties Rachael Best, Joseph Kearse, and the Kearse Family Education Trust U/A/D Nov. 05, 1992 ever agreed to it.

In contrast, what Respondents did introduce is an email from Appellant's counsel to Respondents' counsel stating "I'm in the process of obtaining signatures from [unrepresented parties] Gordon, Rachael and Joseph to indicate their consent. I'll confirm to you when we have them in hand." Transcript of February 2, 2017 Hearing, Exh. 2. However, those signatures were

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never confirmed because they were never obtained as to Rachael Best, Joseph Kearse and, consequently, the Kearse Family Education Trust U/A/D Nov. 05, 1992, which operates by unanimous consent of the six siblings. Note also that Appellant's letter which Respondents rely so heavily upon, despite never being introduced as evidence, does not state that signatures were obtained, but simply indicates the mistaken belief of Appellant's counsel that the pro se parties had agreed. None of this is evidence of an agreement, nor can Respondents produce any such evidence.

In summary, the four pro se parties except Gordon Kearse did not agree to the settlement and, in any event, Appellant also indicated his non-agreement to the alleged settlement before its terms were presented to the Probate Court at a hearing in which the alleged settlement was not even part of the Notice of Hearing. That an alleged settlement in these circumstances could be binding under South Carolina law simply defies credulity, whether as an estate settlement under S.C. Code Ann. §§ 62-3-912 or -1102, or a general settlement under Rule 43(k), SCRCP.

III. Whether this Court should affirm because Appellant's underlying Petition for Instruction was allegedly not brought or conducted in good faith?

As an alternative ground pursuant to Rule 220(c), SCACR, Respondents ask this Court to affirm the portion of the Probate Court's February 2, 2017 Order that directs Appellant to pay certain legal fees and expenses for himself and Respondents, though with possibility of reimbursement from the Estate as to fees paid for himself and Elizabeth Gooding. Joint Respondents' Brief, p. 10-11; February 27, 2017 Order, p. 4-5. Respondents' central premise for this is "there is no reasonable dispute" that Appellant's underlying Petition for Instruction in this matter "was not brought or conducted in good faith." Joint Respondents' Brief, p. 11. However, Respondents' premise is both false and irrelevant.

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To begin with, Respondents' premise is irrelevant because neither of the Probate Court's Orders address the underlying allegations or merits of the Petition for Instruction or of Respondents' respective Answer, Motion to Dismiss, and Motion for Summary Judgment regarding the same, nor were these allegations or merits discussed at either Probate Court hearing. February 27, 2017 Order; Transcript of February 2, 2017 Hearing; September 18, 2017 Order; Transcript of August 17, 2017 Hearing. Rather, the Probate Court's Orders were based entirely on the alleged settlement and Appellant's attempted resignation as Personal Representative. Id. Accordingly, there simply exists no record upon which the Probate Court could independently compel Appellant to pay legal fees related to his Petition for Instruction.

In addition, Respondents' premise of there being "no reasonable dispute" of Appellant's alleged bad faith is patently false. In the entire record before the Court, the only evidence regarding the Petition for Instructions, outside of the pleadings themselves, is Appellant's affidavit submitted with his motion to alter or amend. This affidavit explains that Appellant was threatened with a lawsuit from one or more of his siblings regardless of whether or not he used Estate money to build a residence as directed under the Decedent's will,[7] and that Appellant's legal counsel, a Certified Specialist in Estate Planning and Probate Law, advised him to file the Petition for Instruction, which is a common method for dealing with such disagreements. Affidavit of Morgan Kearse ¶¶ 2-4.

Thus, far from there being "no reasonable dispute" of bad faith, the only evidence to date actually shows Appellant's good faith in filing the Petition for Instruction. Moreover, as a purely legal matter, it is unquestionable that a decedent may leave money in trust for a specific use, and

[7] Even Respondents admit that Appellant "would have been in a strong position if one of his siblings had sued him and claimed the house should be built. There would have been more than just good faith arguments to defend such a suit." Joint Respondents' Brief, p. 12. However, Appellant's proactive Petition for Instruction is fundamentally the same.

that a trustee's rejection of such money could constitute a breach of fiduciary duty. See S.C. Code Ann. § 62-7-401(a)(1)(i); S.C. Code Ann. §§ 62-7-105(b)(2) & -801. Therefore, whether Decedent's bequest fit within that legal framework is a reasonable and appropriate matter for the Probate Court to address. Frankly, Appellant's invocation of the court's jurisdiction to resolve that issue is much more appropriate than Respondents' attempt to enforce an alleged settlement not agreed to by all the parties thereto.

Finally, the allocation of legal fees against Appellant would contradict the default rules under South Carolina law. See S.C. Code Ann. § 62-3-720 (the estate pays the personal representative's legal fees and costs for actions brought or defended in good faith, whether successful or not); S.C. Code Ann. § 62-1-111 (the court may award legal fees be paid by a party to an estate proceeding as justice and equity require). Therefore, the only reasonable conclusion that can be made about the allocation of legal fees at this time is that Respondents must bear their own legal fees and Appellant's legal fees should be paid by the Estate, if not otherwise allocated to Respondents pursuant to S.C. Code Ann. § 62-1-111.

To the extent it may be considered an additional argument, Respondents also suggest that Appellant should not have continued litigation after being served with Petition for Removal of Personal Representative, which Petition was filed December 7, 2016. However, Appellant has not initiated any new matters and has only sought to mitigate and undo the damage being perpetuated by Respondents, both as to the Estate and as to Appellant as its Personal Representative. Such actions are plainly allowed under the directive that Appellant may continue "to correct maladministration, or preserve the estate" following a petition for removal. S.C. Code Ann. § 62-3-611(a). Moreover, to strip Appellant's ability to defend himself in the manner suggested by Respondents would violate Appellant's fundamental right to due process.

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CONCLUSION

Based on the foregoing and his Initial Brief, Appellant Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, respectfully requests the Allendale County Circuit Court to rule that the Final Term Sheet does not represent a binding settlement agreement, that Morgan Kearse has not been terminated as acting Personal Representative of the Estate of G.H. Kearse, and otherwise vacating the Orders of the Allendale County Probate Court in this matter filed February 27, 2017, March 20, 2017, and September 18, 2017.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers

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Columbia, South Carolina
August 8, 2018

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2017, addressed to Daniel A. Speights, Esquire, Speights & Runyan, Post Office Box 685, Hampton, SC 29924; Stephen M. Slotchiver, Esquire, Slotchiver & Slotchiver LLP, 751 Johnnie Dodds Boulevard, Suite 100, Mount Pleasant, SC 29464; Gordon Kearse, P.O. Box 22, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE PRO...TE COURT
	)	
COUNTY OF: ALLENDALE	)	RECUSAL AND REQUEST FOR APPOINTMENT OF SPECIAL PROBATE COURT JUDGE
	)	
IN THE MATTER OF:	)	
G. H. KEARSE	)	CASE NUMBER: 2013-ES-03-00063
(Decedent)	)	

I hereby recuse myself in the above estate and request the appointment of a Special Probate Court Judge.

Explanation (Optional): SANDY SHIRLEY IS MY CLERK IN THE ALLENDALE PROBATE COURT AND SHE HIS THE WIFE OF THE P.R. OF THE ESTATE JOHN MORGAN KEARSE.

☐ I recuse myself from said case in its entirety.

☒ I recuse myself from a portion of said case:

☐ Administration

☒ Litigation

Describe the litigation: PETITION FOR INSTRUCTIONS / MOTION TO DISMISS

Pursuant SCPC 82-1-303(e), venue for subsequent matters, including appeals, will remain with the county where that proceeding or file commenced.

List all Party(ies) and/or Attorney(s) involved:

Name of Party/Attorney: JOHN MORGAN KEARSE P.R. / ESQUIRE
Address: P.O. BOX 521
ALLENDALE, SC 29810
Name of Party/Attorney: SEE ATTCHED SHEET
Address:

Name of Party/Attorney:
Address:

D. KEITH SMITH, Probate Court Judge

DATE: JUNE 6 , 2016

-00635

FORM #SCCARecusal (1/2014)
62-1-303

1. JOHN MORGAN KEARSE P.R.

P.O. BOX S21

ALLENDALE, SC

2. STEPHEN M. SLOTCHIVER (ATTORNEY FOR ELIZABETH K. KEARSE)

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COLUMBIA, SC 29206

6. JOSEPH W. KEARSE

6620 MERRILL RD.

COLUMBIA, SC 29209

-00636

The Supreme Court of South Carolina

ORDER

I find that the Honoreble D. Keith Smith, Judge of Probate for Allendale County, is disqualified from any further hearings with regards to litigation In the Matter of G. H. Kearse (Case No. 2013-ES-03-00063) and therefore is unable to sit as judge of probate in this matter only.

Pursuant to the provisions of S.C. Const. Art. V, §4, S.C. Code Ann. § 14-23-1030 (Supp. 2015), and S.C. Code Ann. §14-23-1080 (Supp. 2015),

IT IS ORDERED that the Honorable Sheila Odom, Judge of Probate for Hampton County, be, and hereby is, appointed as special probate court judge to sit in the above matter. As such special probate court judge, the Honorable Sheila Odom shall have all the powers and duties appertaining to a probate court judge for Allendale County for the handling of the above matter only. Upon issuance of the final order regarding the litigation in the above referenced case, it will be transferred back to Allendale County where the Honorable D. Keith Smith will handle all other matters involving the Estate.

COSTA M. PLEICONES, CHIEF JUSTICE

BY: Rosalyn W. Frierson

Rosalyn W. Frierson, Director
South Carolina Court Administration

June 16, 2016
Columbia, South Carolina

-00638

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 02/27/2017

The Decedent, G.H. Kearse, died testate on June 10, 2013, survived by six children: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph"); and John Morgan Kearse ("Morgan"). The Petitioner (Morgan) was appointed Personal Representative of the Estate and in that capacity subsequently retained Kenneth B. Wingate, Esq. as his counsel.

On April 8, 2016, the Petitioner filed a Summons and Petition for Instructions asking the Court to interpret the Decedent's Will. Two of the Respondents, Beth and Julie, filed responsive pleadings through their counsel, Stephen M. Slotchiver, Esq. and Daniel A. Speights, Esq., respectively. The other three Respondents (Gordon, Rachael, and Joseph) (the "Pro Se Respondents") did not retain counsel, although two (Gordon and Joseph) served Responses to the

Petition. The file reflects that all of the Pro Se Respondents have been served with all pleadings and notices of hearing.

On June 16, 2016, the Supreme Court of South Carolina issued an Order appointing the undersigned as a Special Probate Judge for Allendale County. Since that time, the parties have litigated the Petition for Instructions in this Court. Following limited discovery, Mr. Slotchiver filed a Motion for Summary Judgment on the Petition for Instructions and a Petition for Removal of the Personal Representative, and Mr. Wingate filed a Motion to Dismiss the Petition for Instructions.

The Court scheduled a motions hearing on Mr. Slotchiver's Motion for Summary Judgment and Mr. Wingate's Motion to Dismiss for February 2, 2017. Notice of the hearing was duly served on all parties. The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "The parties have reached a global settlement in this matter, including the siblings who are pro se parties" [Letter from Wingate to Court at 5:09 p.m.]. Mr. Wingate further advised the Court that, "Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present" [*Id.*]. Finally, Mr. Wingate advised the Court that, "Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate" [*Id.*].

The Court called the matter for hearing as scheduled on February 2, 2017. Present were Messrs. Wingate, Slotchiver and Speights, and two of the parties, Beth and Julie. The Petitioner nor any of the Pro Se Respondents appeared, although they had notice of the hearing. Prior to the hearing, neither Mr. Slotchiver nor Mr. Speights had any notice that the Petitioner would attempt to

withdraw his consent to the settlement. [Tr. 15].

Before Mr. Speights read the settlement agreement into the record, Mr. Wingate advised the Court that, he did not have any document from the pro se litigants consenting to the settlement [Tr. at 5]. Mr. Wingate then took what he described as a "unilateral step" and submitted Petitioner's resignation as Personal Representative "irrevocably" [Tr. at 6]. Mr. Wingate informed the Court that as a result of this action, "all of his [the Petitioner's] authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do, for this estate" [Tr. at 7].

Finally, Mr. Wingate told the Court and the parties that the Petitioner's "position will be that he does not consent to the settlement" [Tr. at 7]. Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows:

> I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be - my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent.

[Tr. at 7].

Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record [Tr. at 11-13]. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. Mr. Wingate did not object to the introduction of any of the exhibits.

Mr. Speights then asked the Court to recognize the settlement. Mr. Slotchiver joined in Mr.

Speights' argument and pointed out that the two Pro Se Respondents (Rachnel and Joseph), who had not delivered their consents, are not required to take any action under the Term Sheet. In any event, the record clearly shows, and the Court finds, that Rachnel and Joseph advised the Petitioner that they agreed to the settlement before Mr. Wingate represented to the Court that a settlement had been reached, but they chose not to attend the hearing and dispute the settlement.

Following the presentations of counsel, the Court reviewed the Term Sheet and all of the exhibits submitted into evidence. At that point, the Court entered into the record the Final Term Sheet of Agreement as a family agreement and stated that an Order would be entered into the record and accepted on the terms as it is on the face of the agreement itself [Tr. 21]. This Order memorializes the rulings made from the Bench.

IN ACCORDANCE WITH THE FOREGOING, IT IS ORDERED AS FOLLOWS::

(1) The settlement set forth in the Term Sheet is approved.

(2) All parties shall comply with the Term Sheet.

(3) The Petition for Instructions is dismissed with prejudice.

(4) The Court accepts Petitioner's resignation as the Personal Representative. Effective February 2, 2017, Petitioner's authority is terminated. The Petitioner has no power to take any action. Petitioner will not issue any checks. The Petitioner shall not alter or destroy any estate assets or any documents or electronically stored information relating to the estate (including, but not limited to, any financial records, letters, emails, and social media messages).

(5) The Petitioner shall file with the Court an updated accounting within ten days of the date of this Order.

(6) Morgan shall pay Julie's legal fees and expenses incurred in connection with the

defense of his Petition for Instructions within seven (7) days of the date of this Order.

(7) Morgan shall pay Beth's legal fees and expenses within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(8) Morgan shall reimburse the Estate for all legal fees and expenses paid to Mr. Wingate, and shall be responsible to pay any outstanding legal fees and expenses owed, but not yet paid, to Mr. Wingate, within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(9) The Court will contact Algernon Gibson Solomons, Jr., Esq. and determine if he will agree to serve as the Special Administrator. In the event that Mr. Solomons declines to serve, the Court will appoint a neutral non-family member to serve as the Special Administrator.

(10) Immediately upon appointment of the Special Administrator, the Petitioner and his counsel shall turn over all estate assets (other than real estate) and all estate documents and electronically stored information to the Special Administrator. In the event that any such assets, documents, or electronically stored information are not in the possession of the Petitioner or his counsel, Petitioner shall immediately provide to the Court, with a copy to the Special Administrator and all parties, an itemized list of such assets, documents, or electronically stored information and the precise location and custodian of each such item.

IT IS SO ORDERED.

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina
February 27, 2017

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF HAMPTON)

Re: Estate of George H. Kearse
Case No: 2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Order this 3rd day of March, 2017, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

Kenneth B. Wingate, Esquire
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
PO Box 12129
Columbia, South Carolina 29211

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

J. Morgan Kearse, Esquire
Kearse Law Firm, LLC
Post Office Box 521
184 Barnwell Highway
Allendale, SC 29810

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Gordon Kearse
Post Office Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
3rd day of March, 2017

Tammy W Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3-3-2019

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

IN THE MATTER OF:
G.H. Kearse
(Decedent)

CASE NUMBER: 2013-ES-03-000063

I, J. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 20 17

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: J. Morgan Kearse
Print Name: J. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearselawallendale.com

ORDER

With the appointment of Harley Ruff, Ruff & Ruff, LLC as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of J. Morgan Kearse shall be terminated.

Executed this 20th day of March, 2017.

, Probate Court Judge

PROBATE COURT
HAMPTON COUNTY, SC
FILED
DATE 2/2/17
TIME 11:42 AM

FORM #335ES (1/2014)
62-3-610

STATE OF SOUTH CAROLINA	)	IN TI PROBATE COURT
	)	
COUNTY OF: HAMPTON	)	
	)	**ORDER FOR HEARING**
IN THE MATTER OF:	)	
GEORGE HAROLD KEARSE	)	CASE NUMBER: 2016ES250114
(Decedent)	)	

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: AUGUST 17TH, 2017

TIME: 2:00PM

PLACE: THE HAMPTON COUNTY COURT HOUSE - FAMILY COURT ROOM

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this 12th day of June, 2017.

SHEILA B. ODOM, Probate Court Judge

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

FORM #131ES (1/2014)
62-1-401, general

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ALLENDALE) CASE NUMBER: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 09/18 20 17

Petitioner originally instituted this action by filing a Petition for Instructions asking this Court to interpret the last Will and Testament of Decedent, G.H. Kearse, who died testate on June 10, 2013. Respondents are the Kearse Family Education Trust ("Trust") and all of the decedent's children, individually and as Trustees, to wit: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph") and John Morgan Kearse ("Morgan").

Respondents, Beth and Julie, by their respective counsel, Stephen M. Slotchiver and Daniel A. Speights, filed Responses to the Petition. Respondents, Gordon, Rachael, and Morgan, did not file Responses to the Petition. Respondents, Gordon, Rachael, and Joseph ("*Pro Se* Respondents"), nor Morgan (individually) are represented by counsel.

This matter is now before the Court on a Motion to Alter or Amend or, in the Alternative, for a New Hearing ("Motion"). The Motion was filed on or about March 16, 2017, by "Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney," Sweeny Wingate & Barrow P.A. ("S-W-B") (Kenneth B. Wingate and Matthew J. Myers). Petitioner seeks an order altering or amending this Court's February 27, 2017 Order ("Order"). No Respondent has filed a Joinder in the Motion.

Petitioner also filed a separate Notice of Motion and Motion to Dismiss Petition for Instructions, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Costs dated July 27, 2017. Although Petitioner attempted to argue this Motion (July 27. 2017), Mr. Slotchiver, on behalf of his client, objected that it was not properly before this Court, and the Court sustained the objection and denied the Motion.

By way of background, the Court scheduled a February 2, 2017 hearing to resolve several outstanding motions. The day before the hearing, Petitioner's counsel (Mr. Wingate) advised the Court that the parties had reached a global settlement which would be read into the record at the hearing. The following day, Petitioner, as the Personal Representative, appeared at the hearing through Mr. Wingate. Respondents, Beth and Julie, appeared and were represented by their respective counsel, Messrs. Slotchiver and Speights. Respondents, Gordon, Rachael, Joseph, and Morgan, did not appear individually or through counsel.

Following the hearing, the Court executed and filed the Order which Petitioner now challenges. The Order enforces an agreement ("Term Sheet" or "Settlement Agreement") entered into by all of the parties the day before the February 2, 2017 hearing. Petitioner particularly challenges the following provisions of the Settlement Agreement (Term Sheet):

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your [Mr. Wingate's] legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

[*Id.*]. In exchange for these considerations, Julie also agreed not to object to Morgan retaining the previously paid $25,000 P.R. commission, and to Morgan using their father's law office rent free so long as he complies with certain conditions set forth therein.

No Respondent, including Morgan, has joined in the present Motion or filed any pleading seeking such relief or otherwise challenging any provision of the Order. Additionally, no party (including Petitioner), has objected to this Court's Order dated March 20, 2017 appointing Harley Ruff as Successor Personal Representative.

In his present Motion, Petitioner asserts that "the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code." [Motion at 10]. Petitioner is mistaken. Messrs. Slotchiver and Speights introduced documentary evidence into the record at the February 2, 2017 hearing, including the Settlement Agreement (Term Sheet) and multiple emails to the Court and among counsel reflecting, among other things, that the parties had entered into the Settlement Agreement. Petitioner did not object to the introduction of any of this evidence.

Nevertheless, the Court has carefully reviewed Petitioner's request to reconsider its order in light of the record made before the Court at the hearing on February 2, 2017. Importantly, Petitioner

does not contest, nor seek to alter or amend, this Court's essential findings of fact, including the following findings which are particularly relevant to his current Motion:

- "The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "The parties have reached a global settlement in this matter, including the siblings who are pro se parties" [Letter from Wingate to Court at 5:09 p.m.]." [Order at 2 (emphasis added)].

- "Mr. Wingate further advised the Court that, 'Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present.'" [Order at 2 (emphasis added)].

- "Finally, Mr. Wingate advised the Court that, 'Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate.'" [Order at 2 (emphasis added)].

- "Mr. Wingate then took what he described as a 'unilateral step' and submitted Petitioner's resignation as Personal Representative 'irrevocably.'" [Order at 3 (emphasis added)].

- "Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows: I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be – my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent." [Order at 3 (emphasis added)].

- "Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record [Tr. at 11-13]. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. Mr. Wingate did not object to the introduction of any of the exhibits." [Order at 3 (emphasis added)].

- "Mr. Speights then asked the Court to recognize the settlement," and "Mr. Slotchiver joined in" the request. [Order at 3].

A full hearing was held on Petitioner's present Motion on August 17, 2017. Petitioner and his counsel (Mr. Myers) appeared, and Mr. Myers fully argued the Motion. Respondents, Beth and Julie, were present and again represented by their counsel, Messrs. Slotchiver and Speights,

respectively, both of whom fully argued their positions. In addition, Respondents, Rachael and Joseph, were present in the courtroom. Respondent, Gordon, was not present.

During his argument, Mr. Myers referred to the Affidavit of J. Morgan Kearse ("**Affidavit**") attached to the Motion. Messrs. Slotchiver and Speights timely objected to the Affidavit unless and until they had an opportunity to cross-examine the Affiant, who was present in the courtroom. The Court permitted Mr. Myers to continue and deferred ruling on that issue until after it fully heard the arguments of counsel. It is unnecessary to rule on the objection given the Court's decision as set forth below.

Following full argument, the Court advised the parties that for several independent reasons, the Motion does not set forth any basis for the Court to alter or amend its prior Order or to set this matter down for an evidentiary hearing. This Order memorializes those rulings.

First, and primarily, prior to the hearing, Mr. Wingate had an opportunity on behalf of his client to object to the presentation of the Settlement Agreement, or ask for a continuance. Mr. Wingate did neither. There is no correspondence, email, or telephone call from Mr. Wingate on behalf of his client seeking more time to present any argument why the Settlement Agreement should not be taken into consideration and received into this Court's record as it was presented many different ways that the parties were all in agreement.

Second, no testimony or evidence of any kind was offered by Mr. Wingate at the February 2, 2017 hearing, or by any of the *Pro Se* parties. Furthermore, there has been nothing filed with the Court from the *Pro Se* parties (or Morgan individually) from the date of that hearing to the current date.

Third, Mr. Wingate offered emphatically into the Court record on that day the resignation of

Mr. Kearse as the Personal Representative. While the Court heard from and considered all of Petitioner's arguments, the reality is that Petitioner is not the Personal Representative.

For those primary reasons alone, the Motion should be denied. Petitioner informed the Court that the Settlement Agreement was made and was going to be presented and read into record on February 2, 2017. That is exactly what happened. Petitioner did not object and chose to offer no evidence or even an argument against the enforcement of an agreement the parties entered into the day before.

Petitioner suggests that his Affidavit supports his position. In fact, the Affidavit supports this Court's findings as set forth in its Order. Specifically, Petitioner admits that he and the *Pro Se* siblings agreed to the settlement which the Court approved [Affidavit ¶10].[1] During oral argument, Mr. Myers also acknowledged this fact when he asserted that although the parties had entered into an agreement, Petitioner "backed out" at the February hearing. Again, it is uncontradicted that the parties entered into an agreement.

Furthermore, assuming everything in the Affidavit is true, which Beth and Julie dispute, every factual assertion in the Affidavit was known to the Petitioner at the February 2, 2017 hearing. Petitioner is not entitled to a second bite of the apple.

Finally, Petitioner asserts in one sentence at the end of his Motion that, "To the extent that

---

[1]While it is unnecessary to decide this issue, the Affidavit suggests that at some point in the evening before the February hearing, Petitioner – a fiduciary for all of the Respondents – circulated a separate agreement to the *Pro Se* Defendants (but not to Beth or Julie), seeking their agreement to support his fee requests. Petitioner asked the *Pro Se* Defendants to execute this "private agreement" not only as Respondents, but separately as Trustees of the Trust [Affidavit, Exhibit A]. According to the Affidavit, at some point after one of the *Pro Se* Defendants (Gordon) allegedly refused to sign, Petitioner decided to "withdraw" from the Settlement Agreement. For the reasons set forth above, Petitioner was not entitled to do that.

the Court does not alter or amend its Order dated February 27, 2017, as requested in this Motion, Petitioner requests a new hearing so that the parties may for the first time introduce evidence regarding the issues encompassed by the Order." [Motion at 10]. The request is not well-founded for two reasons. First, the central facts relevant to whether or not Petitioner may have a second day in Court are undisputed. Second, and more importantly, as briefly explained above, Petitioner appeared through counsel at the prior hearing and had every opportunity to introduce evidence. Petitioner chose not to request a continuance or produce any evidence.

For the foregoing reasons, Petitioner's Motion filed on or about March 16, 2017 is hereby denied.

IT IS SO ORDERED.

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina
September 15, 2017
~~August ____, 2017~~

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA
2016 DEC 13 PM 1:01

DATE: Monday, December 19th, 2016

TIME: 2:00 P.M.

PLACE: Hampton County Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2)

Executed this 9th day of December, 2016.

Signature: /s/ Kenneth B. Wingate
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
COUNTY OF:)
IN THE MATTER OF:)
_____)
(Decedent))

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
HAMPTON COUNTY, SOUTH CAROLINA
2016 DEC 13 PM 1:01

On the 9th day of December, 2016, I mailed or delivered the following document(s):

Notice of Hearing for Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2)

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☒ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachel K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 9th day of December, 2016

Dawn R. Kingsley
Notary Public for South Carolina
My Commission Expires: 9/24/25

Signature: Hilary A. Ingrum
Print Name: Hilary A. Ingrum
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: hai@swblaw.com
Relationship to Decedent/Estate: Assistant to Kenneth B. Wingate

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING (AMENDED)

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
16 DEC 20 AM 9:26
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

DATE: Thursday, February 2, 2017

TIME: 11:00 A.M.

PLACE: Hampton County Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2) and Motion for Summary Judgment

Executed this 16 day of December, 2016.

Signature: /Kenneth B Wingate
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: ALLENDALE)
) PROOF OF DELIVERY
IN THE MATTER OF:)
ESTATE OF G. H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent))

On the 16 day of December, 2016, I mailed or delivered the following document(s):

Amended Notice of Hearing for Motion to Dismiss Petition for Instructions Pursuant to SCRCP Rule 41(a)(2) and Motion for Summary Judgment

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☒ electronic message (Article 7, Trust matters only)

FILED FOR RECORD
16 DEC 20 AM 9:26
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachel K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 16th day of December, 2016

Curtis B Wingate
Notary Public for South Carolina
My Commission Expires: 8/31/26

Signature: Hilary Ingrum
Print Name: Hilary A. Ingrum
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: hai@swblaw.com
Relationship to Decedent/Estate: Assistant to Kenneth B. Wingate

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

STATE OF SOUTH CAROLINA)
)
COUNTY OF: Allendale)
)
IN THE MATTER OF:)
The Estate of George G. H. Kearse)
(Decedent))

IN THE PROBATE COURT

NOTICE OF HEARING

CASE NUMBER: 2013-ES-03-00063

DATE: Tuesday, February 2, 2017

TIME: 10:45 AM

PLACE: Hampton county Courthouse, 1 Courthouse Square Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion for Restraining Order

Executed this 20 day of Janurey, 2017.

Signature: _____
Print Name: Stephen M. Slotchiver
Address: 44 State Street
Charleston, SC 29401
Telephone (Work): 843-577-6531
(Home): _____
(Cell): _____
E-mail: steve@slotchiverlaw.com
Relationship to Decedent/Estate: attorney for Decedent's daughter

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OFALLENDALE)
) NOTICE OF HEARING
IN THE MATTER OF:)
THE ESTATE OF G.H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent))

FILED FOR RECORD
17 AUG -2 AM 11:04
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

DATE: August 17, 2017

TIME: 2pm

PLACE: Hampton County Courthouse, 1 Courthouse Square, Elm Street, Hampton, SC 29924

PURPOSE OF HEARING*:

Motion to Alter or Amend or, in the Alternate, for a New Hearing
Such other related matters as may be properly before the Court

Executed this 28 day of July, 2017.

Signature: [signature]
Print Name: Matthew J. Myers
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: mjm@swblaw.com
Relationship to Decedent/Estate: Attorney for Estate

NOTE: Probate Court recommends that all interested parties be represented by counsel licensed to practice law in South Carolina. If any interested party wishes to represent him/herself, he/she will be required to adhere to the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

*When sending Notice of Hearing to interested parties upon whom pleadings were not required to be served, attach the petition or motion to be held.

FORM #326ES (1/2016)
62-1-401

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: ALLENDALE)
) PROOF OF DELIVERY
IN THE MATTER OF:)
ESTATE OF G. H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent))

On the 28 day of July, 2017, I mailed or delivered the following document(s):

Notice of Hearing

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

FILED FOR RECORD
17 AUG -2 AM 11:06
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery ☒ ordinary first-class mail
☐ certified mail ☐ registered mail
☐ commercial delivery ☐ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP, Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209
Rachael K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924
Harley D. Ruff, Esquire proposed Special Administrator	17 Professional Village Cir., Beaufort, SC 29907

SWORN to before me this 28th day of July, 2017

Notary Public for South Carolina
My Commission Expires: 3/3/2027

Signature:
Print Name: Matthew J. Myers
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: mjm@swblaw.com
Relationship to Decedent/Estate: Attorney for Personal Rep.

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)	
)	
J. Morgan Kearse, Personal Representative)	SUMMONS
of the Estate of G. H. Kearse,)	
Petitioner,)	
)	
vs.)	
)	
William Gordon Kearse, Elizabeth Kearse)	
Gooding, Julia Kearse Sharp, Raehael)	
Kearse Best, Joseph Weber Kearse, and)	
John Morgan Kearse)	
Respondents.)	

FILED FOR RECORD
16 APR -8 AM 11:25
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO THE RESPONDENTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, of which a copy is herewith served upon you and to serve a copy of your Answer on the subscriber at his office, Post Office Box 521, Allendale, South Carolina, 29810, within thirty (30) days of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action may obtain judgment by default against you for the relief demanded in the Petition.

J. Morgan Kearse

J. Morgan Kearse
Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934

Allendale, South Carolina

Dated: April 8, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
J. Morgan Kearse, Personal Representative)
of the Estate of G. H. Kearse,)
Petitioner,)
)
vs.)
)
William Gordon Kearse, Elizabeth Kearse)
Gooding, Julia Kearse Sharp, Rachael)
Kearse Best, Joseph Weber Kearse, and)
John Morgan Kearse)
Respondents.)

IN THE PROBATE COURT
CASE NUMBER: 2013-ES-03-00063

PETITION FOR INSTRUCTIONS

FILED FOR RECORD
16 APR -8 AM 11:25
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Petitioner, J. Morgan Kearse, Petitions this Court for Instructions in regards to certain matters of the Estate based on the following:

1) The Decedent, G. H. Kearse, died testate June 10, 2013.

2) The will of the Decedent named all six of his children as Personal Representatives of his Estate.

3) The Decedent's will was entered into probate with the Application For Informal Probate of Will and Appointment on October 21, 2013.

4) The Deceedent's will dated May 16, 2011, is attached hereto as Exhibit A and is incorporated by reference herein.

5) The Decedent named all six of his children as Personal Representatives of his Estate, and the Petitioner was appointed Personal Representative (PR) of the Estate on October 22, 2013, with the five named Personal Representatives having executed and filed their Renunciation of Right to Administration, their Nomination of the Petitioner to serve as PR, and their Waiver of Bond on behalf of the Petitioner as PR of the Estate.

6) The Decedent's will instructs the building of a home on land of the Decedent, and such construction is in dispute between the Petitioner and certain siblings.

7) In 1992, the Decedent did create the Kearse Family Education Trust, for the purposes of preserving the family farm and providing financial assistance to his biological heirs for educational assistance and named his six children as Trustees.

8) The Decedent's Trust Agreement dated November 5, 1992, is attached hereto as Exhibit B and is incorporated by reference herein.

9) The Petitioner has indicated that he will not close the Estate of the Decedent until the dispute in building the home has been resolved and seeks the Court's assistance in resolving this matter.

10) Certain Trustees have informed their siblings that they have obtained legal counsel, have requested the Petitioner step down as PR of the Estate, and that the Estate be closed without consideration given to the construction of the home. Certain Trustees have also expressed deliberate opposition that a house ever be built.

11) The Decedent's will states the following:

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust Property, and do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may \also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted." I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

12) Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust.

13) The Petitioner asserts that *all monies* referenced by the Decedent in his will includes money held by the PR in bank accounts, certificate of deposits, money market accounts, stocks, bonds, gold and silver. Currently, this amount totals $689,214.78 from the following assets: $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver.

14) The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house and furthermore, that the Decedent intended that these funds be used for such purposes and that only unused Estate funds remaining after the construction of the home be held in reserve to pay future ad valorem taxes on trust real estate. The Petitioner asserts that to interpret the language of the will otherwise would result in directing all of the Decedent's liquid assets, approximately $700,000, to be held in reserve and make them unusable for any purpose other than the payment of property taxes on the trust estate property.

15) The Petitioner asserts that it was not the Decedent's intent to hold in reserve such a large sum as the entirety of his liquid assets and restrict their use to the payment of property taxes. The Decedent's will does stipulate in Article V that a fund be *maintained and designated as the ad valorem fund to protect the place from taxes* but does not designate an amount to be held in reserve.

16) The Petitioner asserts that the annual property taxes on the real estate owned by the Trust and the Estate are approximately $8,000 to $10,000 and that the Decedent instructed that this be paid from trust income. The Decedent's will states in Item V, *I would like the income from the Trust to be used first to pay the taxes and then to educate the young people in the family.* Article IV of the Trust states *there should always be enough land open in order that the rent from it will pay the taxes.*

17) The Petitioner asserts that the guidelines, restrictions, and powers set out in the Trust ensures both the availability and accumulation of funds from income generated by the Trust property sufficient enough to pay current property taxes while setting aside an ample amount for the ad valorem fund.

18) The Petitioner further asserts that the Estate and Trust are integrally related and, should the construction of the home encounter a shortage of funds, that certain Trust funds be considered and apportioned to complete the construction. This position is clearly supported by Article XIV (10) which empowers the Trustees *to make ordinary or extraordinary repairs or alteration in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.*

19) In addition, Article II of the Trust states that *the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporation owns and that the trustee may expend income, provided there is no invasion of the corpus;* thus provisions or conditions were contemplated by the Decedent in which Trustees are permitted to use Trust income for a variety of expenditures.

20) The facts listed below further support the assertion that sufficient Estate and Trust assets exist to construct the home, maintain trust property, pay current and future property taxes on Trust property, fund the ad valorem account, and assist in the educational needs of the known beneficiaries. They are as follows:

21) The Petitioner asserts that a substantial stand of timber is on the land, some of which is at the stage for thinning and clear cutting. According to Article II of the Trust, *subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and /or oil and minerals mined and the endowment account, and ten (10) percent of net trust income* and *shall be added to the principal. Such assets together with any other property, real or personal, cash or choses in action that may be invested and reinvested... shall be held, administered, and distributed by the Trustee as hereinafter set forth.* The Petitioner contends that improvements and construction on Trust property are the types of endeavors and expenditures that constitute investing in the lands of the Trust and clearly within the bounds and expectations of the Trust. Rough estimates have valued the current timber at or around $1,000,000.

22) In addition, the Petitioner asserts that the principal becomes an asset for the investment by the Trustees. Such principal will increase from proceeds received by the Trust from the sale of timber and non-corpus real estate (See exhibit C) as well as money transfer from the interest bearing income account to the principal due to the ten-year rule as set out in Article VIII (1).

23) Article VII states that the trustee: *may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in is sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepted accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiary's education.*

24) Article VIII directs the Trustee to set up an *Interest Bearing Income Account* to manage the Adjusted Net Income generated by the Trust that is to be used to assist in funding the education of Trust beneficiaries who are in need of financial assistance. Article VI states that trust income *will consist solely of annual land rents from agriculture, payments under government farm programs, and payments for hunting rights.* However, these funds, once deposited, are only available for ten years after deposit for the purpose of providing financial educational assistance.

25) Article VIII (1) states that: *If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid ten(10) year period, it shall be added to the principal and shall be undistributed thereafter, except as part of the termination of the trust.* Because of the *10-year rule* set out in Article VIII (1) of the Trust, a substantial amount of trust income directed to the Interest Bearing Income Account to be used for educational purposes will ultimately roll over into the principal of the trust.

26) Annual farm expenses: farm maintenance and operational costs in 2015 were approximately $6000.00. Attributed to these expenses was a one-time tractor repair of $2,534.57. Therefore, presumptively these expenses in future years should not exceed $6000.00. As stated previously, property taxes for 2015 were approximately $8000.00 to $10,000.

27) Annual farm income: the hunting rights and the agricultural lease in 2016 resulted in the Trust receiving $60,976.25. The Petitioner has negotiated with the lessees of the agricultural rights and is expected to increase the lease by $5 per acre, which will increase the annual lease from $32,750 to approximately $38,208.00 beginning in 2017. The hunting and agricultural leases in 2017 are anticipated to generate $66,434.25.

28) Currently, two grandchildren (Mary Katherine and Andrew) are receiving financial assistance from the Trust. Mary Katherine is scheduled to complete her studies May 2016, leaving Andrew as the sole beneficiary in the Trust. Andrew did receive $24,800 in 2015. The Petitioner does not anticipate Andrew's monetary requirements to change significantly in the coming years. Andrew has approximately two years of undergraduate studies remaining, and upon his completion there are no other grandchildren of the Decedent who might qualify for educational assistance. There is one grandchild who is younger than Andrew; however, it is presumed that she does not qualify for educational assistance based on need. This grandchild is the youngest grandchild of the Decedent, and currently no grandchildren or great grandchildren are expected to be born. Currently, the Decedent has no great grandchildren.

29) The decedent directs in Item VI of his will that all of his *monies* be used to build the home which currently includes approximately $118,867.27 in the Estate checking account;

$200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver. The Estate also holds various types of real estate holdings that were conservatively reported on the Inventory and Appraisement valued at $675,758 and, if sold, generates substantial liquidity to be used in the construction of the home.

Whereas the Petitioner prays this Court review these matters and provide instructions to the Personal Representative stating the construction of the home is a major requirement of the Decedent's will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will.

Executed this 8th day of April, 2016

J. Morgan Kearse, PR/Petitioner
Post Office Box 521
Allendale, South Carolina 29810
(803) 584-2934
morgan@kearselawallendale.com

EXHIBIT A

LAST WILL AND TESTAMENT
OF
G. H. KEARSE

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE

FILED FOR RECORD
16 APR 25 AM 11:25
ALLENDALE COUNTY, SOUTH CAROLINA
STATE OF SOUTH CAROLINA

I, G. H. KEARSE, of the County and State aforesaid, being of sound and disposing mind, memory, and understanding, and desiring to make such disposition of my worldly estate as I deem best, DO HEREBY MAKE, PUBLISH, AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT, hereby revoking any and all former Wills and Codicils whatever by me made.

ITEM I

I direct the payment by Personal Representative of all my just debts and funeral expenses as soon after my decease as may be practicable.

ITEM II

It is my wish and desire my body be cremated, and I direct my Personal Representative to make arrangements and do so timely. I direct two of my children to accompany my remains to the crematorium, inspect the oven for cleanliness, observe my remains being placed in the oven, await the completing of the process, observe the removal of my ashes, observe the processing of the ashes, and return home with my ashes. It is my will and desire that my ashes be divided into three equal parts with one part being placed in the ground on the vault of my mother; that the second part be scattered around the fig tree in the field on the Kearse Place where my grandparent's home once stood, and the third part buried on the grave of General T. J. Jackson in Lexington, Virginia.

(L.S)

Bridget Woods

Alice M. Kirkland

ITEM III

I give, devise, and bequeath to my beloved son, **John Morgan Kearse**, the use and contents of the office for the duration of his practice, including, but not limited to, furniture, typewriters, computers, books and contents for so long as he practices law. In the event his practice is terminated for any reason, it is my will and desire that another member of my family, with priority in degree of kinship, to use as **J. Morgan Kearse** has used the personal property, with the same restrictions as applied to the successor of **J. Morgan Kearse**.

ITEM IV

In the event my beloved son, **John Morgan Kearse** quits practicing law, it is my wish the property I have bequeathed to him for the term of his practice in **Item III** be used by successive members of the family in the practice of law or other endeavor, and that the members of the **Kearse Educational Trust** honor my wish regarding the contents being used in an office without cost to the user, as I have instructed **John Morgan Kearse** and set out in the Trust Deed which is recorded in the office of the Clerk of Court for Allendale County in Deed Book 177 at page 127 on October 5, 2005. It is my intention that I not convey any descendant a remainder interest or any vested interest that would allow them to liquidate or partition my estate.

ITEM V

I wish to explain the reason for the forming of the Kearse Education Trust and the drawing of my will in support of it. I wish to see the property owned by the Kearse's, for so long, remain in the Kearse family. And secondly that it be handled to benefit those in the family that otherwise would not receive an education. It is my opinion that an education is very important in a person's life. The more education you receive the better opportunity you will have to perfect their chosen field. I would like the income from the Trust be used first to pay the taxes and then to educate the young people of the family. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

(L.S.

Bridget Woods

Alice M. Kirkland

It is my intent that only blood descendants of my family be allowed to receive any benefit for educational purposes, excluding all other persons. It should be conservatively administered and a fund maintained designated as the ad valorem tax fund to protect the place from taxes. During the 1928-1929 depression the cost of the taxes to the property owner resulted in homeowners losing their businesses, homes, and farms and it can happen again.

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust property, and I do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted". I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

(L.S.)

Bridget Wood

Alice M. Kirkland

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

ITEM VII

I give, devise, and bequeath all the rest, residue, and remainder of my property, both real and personal, of which I may die seized or possessed or to which I may be entitled to at the time of my decease, to the **Kearse Educational Trust**, to be perpetuated and enlarged for the benefit of my descendants first, and then to other children who may be in need of aid for an education, in whatever amount the Trustees deem appropriate short of jeopardizing the Corpus, if so determined by the **Kearse Educational Trust** Board members, absolutely and forever, in fee simple. (See the **Kearse Educational Trust.**)

ITEM VIII

I give, devise, and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the **Kearse Educational Trust** to be held in reserve by the Trustees of the said Trust to pay future ad valorem taxes on the real estate after all monies have been exhausted from the Trust, that is rent or proceeds from timber. It is my will and desire that an annual inventory of liquid assets be made and, if entrusted to an individual's care, a surety bond be provided, and that there be no lending or use of the money, except as the Board of the Trust approves. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

ITEM IX

I hereby nominate and appoint my beloved six (6) children, **W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Anne Kearse Sharp, Rachael Kearse Best, J. Morgan Kearse, and Joseph Kearse** as Trustees and Personal Representatives of this My Last Will and testament, and I hereby direct that the Trustees and Personal Representatives be allowed to serve without posting any surety or sureties on her official bond.

Bridget Woods

Alice M. Kirkland

(L.S.)

Should any devisee, legatee, beneficiary, or trustee of this Will or of the trust agreement contest the validity of this Will or any provision thereof or attempt to prevent any provision from being carried out in accordance with its terms in legal proceedings or otherwise, then any interest provided for such beneficiary and his or her descendents is revoked and such beneficiary shall be deemed to have predeceased me for all purposes under this Will.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal to this My Last Will and Testament, at Allendale, South Carolina, this 16th day of May, in the Year of Our Lord Two Thousand Eleven.

(L.S.)

SIGNED, SEALED, PUBLISHED, AND DECLARED by the said **G. H. KEARSE**, as and for his Last Will and Testament, in the presence of us, who in his presence, at his request and in the presence of one another, all present together, have hereunto subscribed our names as witnesses.

Bridget Woods **Address** Allendale, SC

Alice M. Kirkland **Address** Allendale, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

PROOF OF WILL

WE, G. H. KEARSE, Bridget Woods **AND** Alice M. Kirkland the Testator and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as his Last Will and Testament on the 16th day of

May, 2011, and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the Testator, signed the Will as witnesses and to the best of their knowledge, the Testator was at that time Eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(L.S.)
G. H. KEARSE

Bridget Woods

Alice M. Kirkland

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY G. H. KEARSE, the Testator, and subscribed and sworn to before me by Bridget Woods and Alice M. Kirkland, the witnesses, this 16th day of May, 2011.

Elaine S Ferguson
Notary Public for South Carolina
My Commission Expires: 1/15/2019

EXHIBIT B

COPY

FILED FOR RECORD
16 APR -8 AM 11:25
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

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South Carolina law governs .....

THE KEARSE FAMILY EDUCATION TRUST

This agreement for the establishment of the Kearse Family Educational Trust is made this 5th day of NOVEMBER, 1992, between George H. Kearse, as Settlor, and the undersigned Trustees who are all of the children of the Settlor. All of the Trustees are hereinafter referred to, in the aggregate, as the "Trustee."

ARTICLE I.

Trust purpose. The purpose of the Trust is to maintain ownership of the family farm which as been conveyed to the Trustees, and to make good use of the income, rents, timber, minerals, and any other assets for educational purposes of the descendants of George H. Kearse who may need financial assistance in acquiring the best education available.

Definition of home place. Home place is synonymous with family farm. The homeplace was originally one hundred fifty (150) acres bought by the Settlor's grandfather, William Henry Kearse, in 1865 and enlarged by eighty (80) acres in 1933 by the Settlor's father, William Gordon Kearse. The Settlor has enlarged the home place to One Thousand Five Hundred (1500) acres, more or less. The home place acquired by the Settlor's grandfather and father has never been mortgaged or a lien placed upon it.

For the purpose of "Trust purpose", the home place is considered to be every acquired tract contiguous to the original home place or added to acquired property which is contiguous to the whole. That is to say, the land adjoined to the home place or any land acquired which is contiguous to land which is contiguous to the home place. The purpose being as stated in the paragraph "Trust purpose." The land must be preserved, however, the home place under this concept may be enlarged and the trust allowed to deal in real estate by acquiring contiguous tracts and by buying and selling noncontiguous tracts. If the transaction can be accomplished without creating debt.

ARTICLE II.

The trust estate. The Settlor has paid over, assigned, endorsed, granted, conveyed, transferred, and delivered, and by this agreement does hereby pay over, assign, endorse, grant, convey, transfer, and deliver unto the Trustee all of the issued and outstanding stock of SEH, Inc. and Elysium Field, Inc. Thus the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporations own. Subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and/or oil and minerals mined and the endowment account, and 10% of net trust income which as described below, shall be added to principal. Such assets, together with any other property, real or personal, cash or choses in action that may be received or which has been received or designated to be received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the Trust Estate") shall be held, administered and distributed by the Trustee as hereinafter set forth. The Trustee may add

additional property to the Trust Estate by purchase or by the acceptance of donative transfers, provided there is no lien on the property purchased or accepted. The Trustee may expend income, provided there is no invasion of the corpus or interest bearing income account. The trustee may not take title to any property unless such property is free and clear of liens and encumbrances.

ARTICLE III.

The beneficiaries. "Beneficiaries" as used herein shall be limited to all of the descendants of George H. Kearse who are alive during the administration of this Trust. The age of a Trust Beneficiary shall not be a consideration, it being the Settlor's desire that the benefit of income distributions from the Trust be available to Trust Beneficiaries of any age. In making distributions of income to trust beneficiaries, the Trustee may take into account such income and other financial resources of any beneficiary of this trust as is known to the Trustee.

No heir has the right or vested interest in or to any anticipated payment for education or otherwise, and if the funds are available from any other source, the heir has a duty to take advantage of the other sources and the trustees should refuse the heirs assistance.

ARTICLE IV.

Prohibited activities of the trustee. The Trustee is specifically forbidden from engaging in any business, especially farming, except that tree farming is permitted. There should always be enough land open in order that the rent from it will pay the taxes. The Trustee may not borrow for any purpose and may not grant security interests in any trust property, real or personal. The Trustee may not distribute the corpus of the trust except on termination thereof. The Trustee may not guarantee or endorse any other obligation. Except as provided in Article IX, paragraph (6) in regard to homesites, the Trustee may not sell, mortgage, dispose of or incumber the land or any shares of any close corporation (where a majority of the shares are held by the trustee) that shall own land. The Trustee may not advance money to support membership of a beneficiary in a sorority or fraternity only the necessities of education.

ARTICLE V.

General powers over trust income. Commencing with the execution of the Trust, the Trustee in its sole and absolute discretion, may pay to or apply for the benefit of the beneficiaries of this Trust, for the purposes herein described, such of the net income of this Trust in convenient installments, and such income, in the sole and absolute discretion of the Trustee, may be paid in such shares and proportions as the Trustee shall determine. ~~In exercising the discretion herein provided, the Trustee may take into account such income~~ and other financial resources of any beneficiary of this trust that is known to the Trustee.

The beneficiaries must be encouraged to help themselves or carry as much of the financial burden as is reasonably possible as determined by the Trustees.

ARTICLE VI.

Production of income from land. Income to the trust from real property will consist solely of annual land rents from agriculture, payments under government farm programs and payments for hunting rights.

ARTICLE VII.

Distribution of trust income. The Trustee shall distribute the net income of the Trust as follows:

(1) **In general.** During the term of this Trust, the Trustee, in its sole discretion, may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in its sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepting accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiarys' education in such public or private elementary schools, middle schools, high schools, technical schools, training classes, colleges, university undergraduate schools, post-graduate, and professional schools as the Trustee, in its sole discretion shall determine, in accordance with the following paragraphs of this Article.

(2) **Distribution considerations.** The Trustee shall take into consideration to the extent the Trustee deems advisable any other income or resources of the Trust Beneficiaries known to the Trustee. The Settlor does not desire that a Trust Beneficiary be required to impoverish himself or herself in order to qualify for distributions of income hereunder, but does desire that priorities for the distribution of income be based, at least in part, upon the lack of or insufficiency of the resources available to Trust Beneficiaries, but this sentence is precatory and not mandatory. The Settlor also requests but does not require that in making decisions about distributions of income to Trust Beneficiaries, the Trustee take into account (i) the cost of the educational institution that the Trust Beneficiary wishes to attend, as compared with other educational institutions of quality that the Trustee, in its sole discretion, deems comparable, (ii) the ability (in the opinion of the Trustee) of the Trust Beneficiary to absorb such education and (iii) the usefulness (in the opinion of the Trustee) to the Trust Beneficiary in achieving gainful employment of the educational program that the Trust Beneficiary desires to undertake. The Trustee shall not be required to consider the equalization of income among any Trust Beneficiaries for any reason, including but not limited to the generation membership of Trust Beneficiaries.

(3) **Definition of education costs.** In making distributions of income for purposes of education, the Trustee may include the following costs as costs of education:

i. School expenses (tuition, books, laboratory fees, and school supplies);

ii. Board (room and board, to the extent of the costs actually charged by the school). More specifically, the Trustee for purposes of room and board, may only distribute as income to or for the benefit of the Beneficiary the amount the school attended by the Beneficiary charges for room, board, and food.)

iii. Public transportation (commuting to and from school), but only if the Beneficiary does not have an automobile. If a Beneficiary does have an automobile, the Trustee may not distribute income to such Beneficiary for such transportation.

(4) **Advance payments.** The Trustee may anticipate a Trust Beneficiary's prospective attendance at an educational institution by making advance payments (on behalf of a specific Beneficiary) to such institution provided that such funds are returned to the Trustee, with a reasonable amount of interest, if such Beneficiary does not attend such institution. Such advance payments shall not be deemed to violate the 10 year rule described below.

(5) **Taxes.** In making distributions of income to or for the benefit of the Beneficiaries, the Trustee shall include such additional income as will permit the Beneficiary to pay all taxes of whatever kind may be imposed upon the beneficiary (at the highest marginal rate applicable to a beneficiary) by reason of such trust distribution. If the income of the trust is included in the gross income of any person, the Trustees may distribute to such person the amount equal to the income tax on such included income.

ARTICLE VIII.

Management of trust income. In managing the income and the corpus of the trust, the Trustee shall establish a special account called the Interest Bearing Income Account. All Adjusted Net Income shall be added to and become part of the Interest Bearing Income Account.

(1) **10 year rule.** Each addition deposit of income to the Interest Bearing Income Account shall be available for ten years after deposit to such account as a supplement to Adjusted Net Income and may be distributable in any of such 10 succeeding future years as if a part of Adjusted Net Income for such year. If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid 10 year period, it shall be added to principal and shall be undistributable thereafter, except as part of the termination of the trust. Income credited to the Interest Bearing Income Account shall be expended on a "first in, first out" basis. Interest earned by the interest Bearing Income Account shall be deemed added to the Interest Bearing Income Account on the date it is received and shall be subject to the 10 Year Rule hereinabove described.

(2) **Annual contribution to principal.** Ten Percent of Net Income (that portion of Net Income subtracted from the Net Income to calculate Adjusted Net Income) shall be added to and become a part of the principal and shall not be subject to distribution in future years as part of the Adjusted Net Income.

ARTICLE IX.

Homesites. Notwithstanding any other provision of the trust relating to the management of property or the disposition of income therefrom:

(1) **Available homesites.** There are six possible homesites available on real property owned by the corporations, the shares of stock of which were originally transferred to the Trustee, such homesites being identified on Schedule B attached hereto and made a part hereof. The Trustee shall permit any child or grandchild of the George H. Kearse (but not more remote descendants of his) to construct a personal residence, weekend or vacation retreat upon any one of such homesites, subject to the following conditions set forth in the succeeding paragraphs of this Article.

(2) **Trustee to retain ownership.** All rights of ownership (title, easements, etc.) shall remain in the Trustee, but upon the completion of the construction as provided herein, such child or grandchild shall have the right to occupy the improvements, until this trust is terminated or such right is terminated as herein provided. The right of occupancy of such child or grandchild may be transferred, devised or inherited to the children of such child or grandchild, and further transferred, devised or pass by intestacy to the descendants of such descendants, conditioned upon the continual personal use and occupancy thereof by such descendants and in default thereof, the right of occupancy shall be forfeited, in the discretion of the trustee, and the trustee may reclaim possession as provided below.

(3) **Construction costs.** All construction costs shall be paid for by the child or grandchild who constructs such improvements.

(4) **Liens.** The Trustee is prohibited from executing any mortgage or other lien on such property.

(5) **No rent to be charged.** No descendant of the Settlor who shall occupy a residence constructed upon a homesite described in Schedule B shall be required to pay rent for the use and occupancy of the homesite during such occupancy, nor shall any descendant's surviving spouse or children under the age of 21 be required to pay any such rent. The descendant who improves the homesite will be responsible for the ad valorem taxes.

(6) **Trustee possession.** When a residence constructed upon a homesite is no longer occupied by the child or grandchild who constructed it, or by such child or grandchild's spouse or any child or grandchild under age 21 descendant thereof, and in the Trustee's sole opinion, it is more likely than not that such residence will not be occupied in

the future by any such persons, then the Trustee shall offer the use thereof to descendants of George H. Kearse, with priority being based on closeness in degrees of relationship to him and there shall be no disqualification by reason of any person with priority having the occupancy of some other homesite held by the Trustees. If no eligible person accepts, then the Trustee may sell or lease the homesite, in the Trustee's discretion.

(7) **Homesite insurance.** Notwithstanding any provision in paragraphs (1) through (6) of this Article, any descendant of the Settlor who occupies a residence located on a homesite (or the spouse or children under 21 of such descendant) shall furnish the Trustee at least annually (and more frequently if the Trustee requests) with reliable evidence (as determined by the Trustee) that the residence is fully insured and there are adequate policies of insurance in force covering fire and other casualty to the improvements and that all real property taxes, assessments and other costs of the use of the premises have been paid. In addition, the Trustee shall have the usual and customary rights of a lessor, including a right of inspection of the premises at reasonable times. If the Trustee determines that the residence is not properly insured or maintained or the taxes and assessments and other costs have not be timely paid, then the Trustee may require that the premises be vacated immediately and in that event, paragraph (6) above shall be deemed operative.

(8) **Written agreements on homesites.** As a condition precedent to a descendant of the Settlor constructing a residence on a homesite described in Schedule B, the Trustee may require that such descendant execute a written agreement containing the conditions herein described and such other reasonable terms and conditions as the Trustee in its sole discretion may require.

ARTICLE X.

Trustee succession. Any Trustee or Co-Trustee at any time serving may appoint his or her own successor by filing a written designation of successor or successors with all other then serving trustees and the Beneficiaries. The instrument of succession may be effective immediately or its effectiveness may be deferred for a stated period of time or it may be dependent upon future stated contingencies. The instrument may also name a series of successors so that if a successor with a higher priority cannot serve, one with the next highest priority shall serve. Multiple successors may be named to serve concurrently. The instrument of succession may be amended or revoked at any time by the trustee who signed it if the trustee is serving as trustee at the time of such amendment or revocation. An instrument amending or revoking an instrument of succession must be delivered to all other then serving trustees and the Beneficiaries. If any named trustee shall for any reason fail to continue to serve and at such time shall have made no valid instrument of succession, the remaining trustee or trustees may fill the vacancy, or may continue to serve without filling the vacancy. The Trustee or Trustees may also appoint additional co-trustees to serve concurrently with incumbent trustees. Any Trustee or Co-Trustee may resign at any time without the approval of any court of competent jurisdiction, by delivering a written resignation to all remaining Trustees and all Beneficiaries who are sui juris.

ARTICLE XI.

Power to amend. The Trustee shall have power to amend this Trust Agreement at any time, to further carry out the original intent expressed herein where (I) the provisions of this agreement are inadequate to do so or (ii) applicable laws or regulations adopted after the execution of this agreement would prevent the carrying out of the purposes of this agreement unless the agreement is amended. Notwithstanding any provision herein to the contrary, no amendment may change the provisions of this Trust regarding distribution of the Principal of the Trust. No amendment shall be made that would grant to any Trustee a general power of appointment over Trust assets.

ARTICLE XII.

Termination of all trusts. Upon the day prior to the expiration of the longest period under applicable law (including applicable perpetuities statutes) that the vesting of interest created under this trust may be deferred:

a. without violating such applicable law, and

b. without loss of the Settlor's federal Generation Skipping Transfer Tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended,

each of the Settlor's then living issue, per stirpes, shall have the right to withdraw the stirpital share to which such beneficiary shall be entitled and such right shall continue for a period of 90 days following notification to such beneficiary by the Trustees.

(i) If a beneficiary shall exercise such right, then the trustees shall distribute to which such beneficiary such beneficiary's stirpital share, in cash or in kind, and thereafter neither such beneficiary nor any of the present nor future issue of such beneficiary shall be beneficiaries of this Trust.

(ii) If a beneficiary shall not exercise such right, then such beneficiary and such beneficiary's present and future issue shall remain or become beneficiaries of this Trust and such beneficiary's stirpital share shall remain in trust and the term of the trust for such share shall begin again for the period of time described above for the initial term of the trust, beginning the last date of such initial term, except that the measuring lives shall be all of the Settlor's then living issue.

ARTICLE XIII.

Definition of trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall

be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE XIV.

Trustee powers. The Trustee or Trustees named or described herein and the successors thereto (hereinafter called the Trustee) in the capacity of a fiduciary is authorized in its discretion with respect to any property, real or personal, at any time held under any provision of this Trust and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rules of law, except as otherwise specifically prohibited by other Articles of this Trust Agreement:

1. **Retaining property.** To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property, regardless of any lack of diversification, risk or nonproductivity, as long as the Trustee reasonably deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. **Investing.** To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

3. **Registration of securities.** To hold any securities or other property in the Trustee's own name as Trustee, in the Trustee's own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

4. **Cash.** To keep for reasonable periods of time all or any portion of the Trust Estate in cash and uninvested, without liability for and loss in income by reason thereof.

5. **Stock rights.** To sell or exercise stock subscription or conversion rights.

6. **Voting stock.** To refrain from voting or to vote shares of stock owned by

the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

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

8. **Leasing.** To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

9. **Developing.** To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

10. **Repairing.** To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings. The sell-off of a lot or several lots will not be considered subdividing and is prohibited.

11. **Collecting.** To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

12. **Insuring.** To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

13. **Dual positions.** In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with the Trustee in the Trustee's separate, or any fiduciary capacity.

14. **Compromising and settling.** To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

15. **Agents, etc.** To employ and compensate agents, accountants, investments

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

16. **Principal and income allocations.** To determine irrespective of statute or rule of law, what shall be fairly and equitably charged or credited to income and what to principal notwithstanding any determination by the courts or by any custom or statute; and whether or not to establish depreciation reserves; however, the discretion granted herein is not absolute, but rather is subject to the standard of reasonableness and good faith to all beneficiaries, impartiality between income and remainder beneficiaries, and may only be exercised in a fiduciary capacity.

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

18. **Payments.** To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value.

19. **In general.** In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in such individual's own right, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee may deem necessary or proper to carry out the purposes of this Trust.

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

21. **Lending.** To lend funds to the Settlor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Settlor's executor or administrator and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

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

23. **Division/consolidation of trusts.** For tax, administrative or investment purposes to divide any trust established hereunder, based upon the fair market values of the trust property at the time of division, into two or more separate trusts, the dispositive provisions of which shall be identical to those applicable to the trust prior to any such division, and to consolidate any trust established hereunder with any other trust (whether or not created by the Settlor) having substantially identical provisions for the same beneficiary or beneficiaries, if such consolidation, in the opinion of the Trustee, is consistent with my intent and does not defeat or impair a beneficial interest. Without limiting the generality of the foregoing, the Trustee may divide any trust into separate trusts consisting of (i) portions that would, and would not, respectively, be included in the gross estate of the Settlor's spouse or another beneficiary for federal estate tax purposes if such beneficiary died immediately prior to the division or (i) portions that for federal generation-skipping transfer tax purposes either have inclusion ratios of zero or one, or different transferors.

ARTICLE XV.

Retention of share for beneficiary under twenty-one. If any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21) years, then such share shall immediately vest in such beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of such share as the Trustee deems necessary to provide for the proper support, medical care, and education of such beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of such beneficiary or such beneficiary's parents known to the Trustee. Any income not so paid or applied shall be accumulated and added to principal. Such beneficiary's share shall be paid over and distributed to such beneficiary upon attaining age Twenty-one (21), or if such child shall sooner die, to such beneficiary's executors or administrators. The Trustee shall have with respect to each share so retained all the powers and discretions had with respect to the trusts created herein generally.

ARTICLE XVI.

Facility of payments. In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid

out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the care, support and education of such beneficiary; (4) by the Trustee using such amounts directly for such beneficiary's care, support and education.

ARTICLE XVII.

Definition of relationships. For the purposes of this Trust, "children" means the lawful blood descendants in the first degree of the parent designated; and "issue" and "descendants" mean the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall not be considered a child of such adopting parent and neither such adopted child nor such adopted child's issue shall be considered as issue of the adopting parent or parents nor of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents. The terms "child," "children," "issue," "descendant" and "descendants" or those terms preceded by the terms "living" or "then living" shall include the lawful blood descendant in the first degree of the parent designated even though such descendant is born after the death of such parent. The term "per stirpes" as applied to the issue of a person entitled to receive a trust distribution herein shall mean that the trust distribution shall be divided into as many equal shares as there are surviving heirs of such person in the nearest degree of kinship and deceased heirs of such person in the same degree who left issue who survive such person. Each such living heir shall be entitled to receive one equal share and the living lineal descendants of each such deceased heir shall take the share that their deceased ancestor would have taken had such deceased ancestor survived such person. This definition of "per stirpes" is intended to describe "taking by representation" as defined in the South Carolina Probate Code.

ARTICLE XVIII.

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

ARTICLE XIX.

South Carolina law governs. This Trust Agreement and the Trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

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

WITNESSES:

As to George H. Kearse

By _____ (SEAL)
George H. Kearse, Settlor

As to W. Gordan Kearse

By _____ (SEAL)
W. Gordan Kearse, Trustee

As to J. Morgan Kearse

By _____ (SEAL)
J. Morgan Kearse, Trustee

As to Joseph W. Kearse

By _____ (SEAL)
Joseph W. Kearse, Trustee

As to Elizabeth K. Gooding

By _____ (SEAL)
Elizabeth K. Gooding, Trustee

As to Julia K. Sharp

By _____ (SEAL)
Julia K. Sharp, Trustee

As to Rachael K. Harper

By _____ (SEAL)
Rachael K. Harper, Trustee

PROBATE FOR SETTLOR

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Settlor, George H. Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

_____
Witness

SWORN TO before me this

5th day of November, 1992

_____ (L.S.)
Notary Public for South Carolina
My commission expires: 10-23-94

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, W. Gordan Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Angela D. Sinde
Witness

SWORN TO before me this

5th day of November, 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, J. Morgan Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Anne McGeneese Kearse
Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, Joseph W. Kearse, sign, seal and as his act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Winifred Faulcon Kearse
Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

PROBATE FOR TRUSTEE

PERSONALLY APPEARED the undersigned witness and made oath that such witness saw the within named Trustee, Elizabeth K. Gooding, seal and as her act and deed deliver the within Trust Agreement and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

Angela W. Bullock
Witness

SWORN TO before me this

5th day of November 1992

(L.S.)
Notary Public for South Carolina
My commission expires: 3-13-2000

SCHEDULE "B"

Under Trust Agreement Dated NOVEMBER 5, 1992

HOMESITE #1

HOMESITE #2

APPROVED:

By _____ (SEAL)
George H. Kearse, Settlor

By _____ (SEAL)
W. Gordan Kearse, Trustee

By _____ (SEAL)
J. Morgan Kearse, Trustee

By _____ (SEAL)
Joseph W. Kearse, Trustee

By _____ (SEAL)
Elizabeth K. Gooding, Trustee

By _____ (SEAL)
Julia K. Sharp, Trustee

By _____ (SEAL)
Rachael K. Harper, Trustee

EXHIBIT "C"

PROPERTY TITLED IN NAME OF
G.H. KEARSE

FILED FOR RECORD
16 APR -8 AM 11:25
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Allendale County TAX MAP No.	DESCRIPTION	TAX ASSESSOR'S FMV
019-00-00-048	vacant lot (Martin)	3,000
105-02-06-023	warehouse on Barnwell Highway	6,900
105-02-06-018	old garage on Barnwell Highway	3,500
105-11-01-045	lot-John's Subdivision	$ 5,300
105-11-01-037	lot-John's Subdivision	$ 5,300
105-11-01-027	lot-John's Subdivision	$ 4,300
105-11-01-035	lot-John's Subdivision	$ 5,500
105-11-01-010	lot-John's Subdivision	$ 3,700
105-11-01-073	lot-John's Subdivision	$ 5,300
120-00-00-034	Williams house (next to Jack Morris)	$21,200
123-07-02-020	2 lots Fairfax	$ 3,400
123-06-10-006	5 acres - Todd	$ 4,918
122-00-00-026	13.28 – Bowers Place	$ 6,640
	Sub-Total	**$76,958**
	TITLED IN NAME OF W.G. KEARSE, ESTATE	
123-07-05-035	2 lots in Fairfax, W.G. Kearse, Estate	$ 2,500

Beaufort County	
R700 027 000 0026 0000 4/5 interest in Blackbeard Island, 25 acres	$582,200
Hendry County, Florida	
1324229-5000000 950, 1 lot	3,500
1324229-05000000 1080, 1 lot	3,500
1324229-05000000 1070, 1 lot	7,100
Total	$675,758

file Kearse (pleading)

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF ALLENDALE	CASE NO.: 2013-ES-03-00063
J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE, Petitioner, Vs. WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHARL KEARSE BEST, JOSEPH WEBER KEARSE and JOHN MORGAN KEARSE, Respondents.	**RESPONDENT, ELIZABETH KEARSE GOODING'S ANSWERS TO PETITION FOR INSTRUCTIONS**

The Respondent, Elizabeth Kearse Gooding, hereby Answers the Petition for Instructions filed by J. Morgan Kearse on behalf of Petitioner, J. Morgan Kearse, filed with this Probate Court on April 8, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demands strict proof thereof.

2. Respondent admits the allegations set forth in Paragraph 1.

3. Respondent admits the allegations set forth in Paragraph 2.

4. Respondent admits the allegations set forth in Paragraph 3.

5. Respondent admits the allegations set forth in Paragraph 4.

6. Respondent admits the allegations set forth in Paragraph 5.

7. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a

house be built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

8. Respondent admits the allegations set forth in Paragraph 7.

9. Respondent admits the allegations set forth in Paragraph 8.

10. Respondent admits the allegations set forth in Paragraph 9.

11. As to the allegations set forth in Paragraph 10, Respondent admits that she and some of her siblings have obtained legal counsel, she and some of her siblings have requested the Petitioner to step down as Personal Representative of the Estate, and that she and some of her siblings believe the Estate should be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

12. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

13. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

14. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust...".

15. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

16. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

17. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

18. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

19. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

20. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations set forth are denied and Respondent demands strict proof thereof.

21. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

23. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

24. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

25. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

27. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

30. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Petition for Instruction, Respondent, ELIZABETH KEARSE GOODING, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (4) to grant any

and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

Stephen M. Slotchiver, Esquire
S.C. Bar No.: 65477
44 State Street
Charleston, SC 29401
(843) 577-6531 Phone
(843) 577-0261 Fax
ATTORNEY FOR RESPONDENT, ELIZABETH KEARSE GOODING

Charleston, South Carolina
May 5, 2016

file - Kearse (pleadings binder)

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)	IN THE PROBATE COURT CASE NUMBER: 2013-ES-03-00063
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, vs. William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, Respondents.	)	MOTION TO DISMISS

TO: The Parties above-named and their counsel

You will please take notice that Respondent, Julia Kearse Sharp, by and through her undersigned attorney, will move before the Court ten (10) days from the filing of this motion, or as soon thereafter as she may be heard, for an Order dismissing this action pursuant to Rules 12(b)(1) and 12(b)(6) on the ground that Petitioner failed to join the Trustee of the Kearse Family Educational Trust (the "Kearse Trust"), an Indispensable Party to this proceeding. The following allegations set forth in the Petition for Instructions support the Motion:

1. Prior to his death on June 10, 2013, G. H Kearse ("Decedent") created the Kearse Trust.

2. Thereafter Decedent executed a Will which attempts to amend the Kearse Trust.

3. In this action, Petitioner seeks to affect the Kearse Trust under the terms of a Will.

4. The Kearse Trustees are made individual parties to this proceeding, but not in their fiduciary capacity as trustees.

5. The Court, without proper joinder of the Kearse Trust, lacks jurisdiction to direct action by the Trustees of the Kearse Trust, amend the Kearse Trust or bind the Kearse Trust.

6. The Kearse Trust, through its Trustees, are Indispensable Parties to this action.

For the reasons set forth above, Respondent Sharp respectfully moves this Court to dismiss the Complaint in its entirety. This motion is based on the South Carolina Probate Code, the South Carolina Rules of Civil Procedure, the entire record herein, applicable statutory and case law, and such additional memoranda as shall be presented to the Court prior to the hearing in this matter. Because this Motion benefits all beneficiaries of the Estate, Respondent Sharp is entitled to payment by Petitioner of her attorneys' fees and cost of filing this Motion.

Daniel A. Speights (SC Bar #5027)
SPEIGHTS & RUNYAN
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina 29924
803-943-4444
dspeights@speightsrunyan.com

By: Daniel A. Speights
DANIEL A. SPEIGHTS

ATTORNEYS FOR RESPONDENT,
JULIA KEARSE SHARP

Hampton, South Carolina

May 9, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

AFFIDAVIT OF SERVICE BY MAIL

Re: Estate of George H. Kearse
2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Motion to Dismiss this 9th day of May, 2016, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

J. Morgan Kearse
Kearse Law Firm
PO Box 521
Allendale, SC 29810-0521

Clerk of Court
Allendale County Probate Court
292 Barnwell Highway
Allendale, SC 29810

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
9th day of May, 2016
Tammy A. Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/3/2019

Joseph Weber Kearse
6620 Merrill Rd
Columbia, SC 29209
May 17, 2016

Hon. Keith Smith, Probate Judge
Allendale County Probate Court
P.O. Box 603
Allendale, SC 29810

Re: John Morgan Kearse, Personal Representative, of the Estate of G. H. Kearse, Petitioner, vs. Joseph Weber Kearse, et al, Respondents

Dear Judge Smith,

Please accept this as my answer to the Petition filed in the above-entitled action. As a Respondent in this case I have two positions I would like to confirm:

1. I support the exploration of building of a house as described in my father's will as long as this project is plausible and financially feasible.
2. I advocate that the estate be closed as quickly as possible without jeopardizing the execution of individual items of the will.

Thank you for protecting my interest in this matter.

Sincerely,

Joseph Weber Kearse

Joseph Weber Kearse

FILED FOR RECORD
16 MAY 23 PM 1:16
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

-00598

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	
	)	
vs.	)	
	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992, Respondents.	)	SUMMONS

FILED FOR RECORD
16 JUN -3 PM 1:16
PROBATE COURT
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO THE RESPONDENT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Amended Petition For Instructions in this action, of which a copy is herewith served upon you and to serve a copy of your Answer on the subscriber at his office, Post Office Box 521, Allendale, South Carolina, 29810, within thirty (30) days of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action may obtain judgment by default against you for the relief demanded in the Petition.

-00599

KEARSE LAW FIRM

J. Morgan Kearse
Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934

Allendale, South Carolina

Dated: June 3, 2016

-00500

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	PETITION FOR INSTRUCTIONS (Amended)
	)	
vs.	)	
	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992, Respondents.	)	

FILED FOR RECORD
16 JUN -3 PM 1:16
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Pursuant to RULE 15(a), of the *South Carolina Rules of Civil Procedure*, the above named Petitioner, J. Morgan Kearse, amends the original Petition as of right without leave of Court, and Petitions this Court for Instructions in regards to certain matters of the Estate based on the following:

1) The Decedent, G. H. Kearse, died testate June 10, 2013.

2) The will of the Decedent named all six of his children as Personal Representatives of his Estate.

3) The Decedent's will was entered into probate with the Application For Informal Probate of Will and Appointment on October 21, 2013.

4) The Decedent's will dated May 16, 2011, is attached hereto as Exhibit A and is incorporated by reference herein.

-00501

5) The Decedent named all six of his children as Personal Representatives of his Estate, and the Petitioner was appointed Personal Representative (PR) of the Estate on October 22, 2013, with the five named Personal Representatives having executed and filed their Renunciation of Right to Administration, their Nomination of the Petitioner to serve as PR, and their Waiver of Bond on behalf of the Petitioner as PR of the Estate.

6) The Decedent's will instructs the building of a home on land of the Decedent, and such construction is in dispute between the Petitioner and certain siblings.

7) In 1992, the Decedent did create the Kearse Family Education Trust, for the purposes of preserving the family farm and providing financial assistance to his biological heirs for educational assistance and named his six children as Trustees.

8) The Decedent's Trust Agreement dated November 5, 1992, is attached hereto as Exhibit B and is incorporated by reference herein.

9) The Petitioner has indicated that he will not close the Estate of the Decedent until the dispute in building the home has been resolved and seeks the Court's assistance in resolving this matter.

10) Certain Trustees have informed their siblings that they have obtained legal counsel, have requested the Petitioner step down as PR of the Estate, and that the Estate be closed without consideration given to the construction of the home. Certain Trustees have also expressed deliberate opposition that a house ever be built.

11) The Decedent's will states the following:

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust Property, and do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted." I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

12) Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust.

13) The Petitioner asserts that *all monies* referenced by the Decedent in his will includes money held by the PR in bank accounts, certificate of deposits, money market accounts, stocks, bonds, gold and silver. Currently, this amount totals $689,214.78 from the following assets: $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver.

14) The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house and furthermore, that the Decedent intended that these funds be used for such purposes and that only unused Estate funds remaining after the construction of the home be held in reserve to pay future ad valorem taxes on trust real estate. The Petitioner asserts that to interpret the language of the will otherwise would result in directing all of the Decedent's liquid assets, approximately $700,000, to be held in reserve and make them unusable for any purpose other than the payment of property taxes on the trust estate property.

15) The Petitioner asserts that it was not the Decedent's intent to hold in reserve such a large sum as the entirety of his liquid assets and restrict their use to the payment of property taxes. The Decedent's will does stipulate in Article V that a fund be *maintained and designated as the ad valorem fund to protect the place from taxes* but does not designate an amount to be held in reserve.

16) The Petitioner asserts that the annual property taxes on the real estate owned by the Trust and the Estate are approximately $8,000 to $10,000 and that the Decedent instructed that this be paid from trust income. The Decedent's will states in Item V, *I would like the income from the Trust to be used first to pay the taxes and then to educate the young people in the family.* Article

-00363

IV of the Trust states *there should always be enough land open in order that the rent from it will pay the taxes.*

17) The Petitioner asserts that the guidelines, restrictions, and powers set out in the Trust ensures both the availability and accumulation of funds from income generated by the Trust property sufficient enough to pay current property taxes while setting aside an ample amount for the ad valorem fund.

18) The Petitioner further asserts that the Estate and Trust are integrally related and, should the construction of the home encounter a shortage of funds, that certain Trust funds be considered and apportioned to complete the construction. This position is clearly supported by Article XIV (10) which empowers the Trustees *to make ordinary or extraordinary repairs or alteration in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.*

19) In addition, Article II of the Trust states that *the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporation owns and that the trustee may expend income, provided there is no invasion of the corpus;* thus provisions or conditions were contemplated by the Decedent in which Trustees are permitted to use Trust income for a variety of expenditures.

20) The facts listed below further support the assertion that sufficient Estate and Trust assets exist to construct the home, maintain trust property, pay current and future property taxes on Trust property, fund the ad valorem account, and assist in the educational needs of the known beneficiaries. They are as follows:

21) The Petitioner asserts that a substantial stand of timber is on the land, some of which is at the stage for thinning and clear cutting. According to Article II of the Trust, *subsequent additions to the Trust Estate will include funds derived from the sale and harvest of timber, minerals and /or oil and minerals mined and the endowment account, and ten (10) percent of net trust income* and *shall be added to the principal. Such assets together with any other property, real or personal, cash or choses in action that may be invested and reinvested... shall be held, administered, and distributed by the Trustee as hereinafter set forth.* The Petitioner contends that improvements and construction on Trust property are the types of endeavors and expenditures that constitute investing in the lands of the Trust and clearly within the bounds and expectations of the Trust. Rough estimates have valued the current timber at or around $1,000,000.

22) In addition, the Petitioner asserts that the principal becomes an asset for the investment by the Trustees. Such principal will increase from proceeds received by the Trust from the sale

of timber and non-corpus real estate (See exhibit C) as well as money transfer from the interest bearing income account to the principal due to the ten-year rule as set out in Article VIII (1).

23) Article VII states that the trustee: *may pay to or for the benefit of any one or more of the Beneficiaries (in such shares and proportions as the Trustee in is sole discretion shall determine) such of the adjusted net income ("Adjusted Net Income" means ninety (90) percent of the net income as determined under generally accepted accounting principles, except that the cash basis method of accounting may be employed by the Trustee) for the Trust Beneficiary's education.*

24) Article VIII directs the Trustee to set up an *Interest Bearing Income Account* to manage the Adjusted Net Income generated by the Trust that is to be used to assist in funding the education of Trust beneficiaries who are in need of financial assistance. Article VI states that trust income *will consist solely of annual land rents from agriculture, payments under government farm programs, and payments for hunting rights.* However, these funds, once deposited, are only available for ten years after deposit for the purpose of providing financial educational assistance.

25) Article VIII (1) states that: *If a deposit to the interest bearing income account is not exhausted as a supplement to Adjusted Net Income by the end of the aforesaid ten(10) year period, it shall be added to the principal and shall be undistributed thereafter, except as part of the termination of the trust.* Because of the *10-year rule* set out in Article VIII (1) of the Trust, a substantial amount of trust income directed to the Interest Bearing Income Account to be used for educational purposes will ultimately roll over into the principal of the trust.

26) Annual farm expenses: farm maintenance and operational costs in 2015 were approximately $6000.00. Attributed to these expenses was a one-time tractor repair of $2,534.57. Therefore, presumptively these expenses in future years should not exceed $6000.00. As stated previously, property taxes for 2015 were approximately $8000.00 to $10,000.

27) Annual farm income: the hunting rights and the agricultural lease in 2016 resulted in the Trust receiving $60,976.25. The Petitioner has negotiated with the lessees of the agricultural rights and is expected to increase the lease by $5 per acre, which will increase the annual lease from $32,750 to approximately $38,208.00 beginning in 2017. The hunting and agricultural leases in 2017 are anticipated to generate $66,434.25.

28) Currently, two grandchildren (Mary Katherine and Andrew) are receiving financial assistance from the Trust. Mary Katherine is scheduled to complete her studies May 2016, leaving Andrew as the sole beneficiary in the Trust. Andrew did receive $24,800 in 2015. The Petitioner does not anticipate Andrew's monetary requirements to change significantly in the

00605

coming years. Andrew has approximately two years of undergraduate studies remaining, and upon his completion there are no other grandchildren of the Decedent who might qualify for educational assistance. There is one grandchild who is younger than Andrew; however, it is presumed that she does not qualify for educational assistance based on need. This grandchild is the youngest grandchild of the Decedent, and currently no grandchildren or great grandchildren are expected to be born. Currently, the Decedent has no great grandchildren.

29) The decedent directs in Item VI of his will that all of his *monies* be used to build the home which currently includes approximately $118,867.27 in the Estate checking account; $200,149.97 in a First Citizens Bank certificate of deposit; $200,197.56 in a Region's money market account; $30,000 (face value) in US Savings Bonds; and approximately $140,000 in gold and silver. The Estate also holds various types of real estate holdings that were conservatively reported on the Inventory and Appraisement valued at $675,758 and, if sold, generates substantial liquidity to be used in the construction of the home.

Whereas the Petitioner prays this Court review these matters and provide instructions to the Personal Representative stating the construction of the home is a major requirement of the Decedent's will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will.

Executed this 3rd day of June, 2016

J. Morgan Kearse, PR/Petitioner
Kearse Law Firm, LLC
Post Office Box 521
Allendale, South Carolina 29810
(803) 584-2934
morgan@kearselawallendale.com

-00606

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE, Petitioner, vs. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992, Respondents.	)	IN THE PROBATE COURT CASE NO.: 2013-ES-03-00063 **RESPONDENT, ELIZABETH KEARSE GOODING'S ANSWERS TO AMENDED PETITION FOR INSTRUCTIONS**

FILED FOR RECORD
16 JUL -6 AM 10:46
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The Respondent, Elizabeth Kearse Gooding, hereby Answers the Amended Petition for Instructions filed by J. Morgan Kearse with this Probate Court on June 3, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demands strict proof thereof.

2. Respondent denies that the Personal Representative has authority to bring this action and name a Trust as a Respondent wherein he is a Co-Trustee of the Trust. It is a clear conflict of interest.

3. Respondent admits the allegations set forth in Paragraph 1.

4. Respondent admits the allegations set forth in Paragraph 2.

5. Respondent admits the allegations set forth in Paragraph 3.

6. Respondent admits the allegations set forth in Paragraph 4.

7. Respondent admits the allegations set forth in Paragraph 5.

00641

8. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a house be built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

9. Respondent admits the allegations set forth in Paragraph 7.

10. Respondent admits the allegations set forth in Paragraph 8.

11. Respondent admits the allegations set forth in Paragraph 9.

12. As to the allegations set forth in Paragraph 10, Respondent admits that she and some of her siblings have obtained legal counsel, she and some of her siblings have requested the Petitioner to step down as Personal Representative of the Estate, and that she and some of her siblings believe the Estate should be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

13. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

14. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

15. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my

-00642

possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust...".

16. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

17. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

18. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

19. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

20. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

21. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations set forth are denied and Respondent demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

23. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

24. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

25. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

27. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

30. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

31. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Amended Petition for Instruction, Respondent, ELIZABETH KEARSE GOODING, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond

the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) directing that it is a conflict of interest for the Personal Representative to bring an action and name a Trust as a Respondent for which the Personal Representative is also a Trustee of the Trust; (4) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (5) to grant any and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

Stephen M. Slotchiver, Esquire
S.C. Bar No.: 65477
44 State Street
Charleston, SC 29401
Telephone: (843) 577-6531
Facsimile: (843) 577-0261
Email: steve@slotchiverlaw.com
ATTORNEY FOR RESPONDENT, ELIZABETH KEARSE GOODING

Charleston, South Carolina
June 29, 2016

J0645

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ALLENDALE) CASE NUMBER: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

RESPONDENT, JULIA KEARSE SHARP'S ANSWERS TO AMENDED PETITION FOR INSTRUCTIONS

FILED FOR RECORD
16 JUL 11 AM 3:01
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The Respondent, Julia Kearse Sharp, hereby Answers the Amended Petition for Instructions filed by J. Morgan Kearse with this Probate Court on June 3, 2016, as follows:

1. Respondent denies any and all allegations of Petitioner's Petition not specifically herein admitted and demands strict proof thereof.

2. Respondent denies that the Personal Representative has authority to bring this action and name a Trust as a Respondent wherein he is a Co-Trustee of the Trust. It is a clear conflict of interest.

3. Respondent admits the allegations set forth in Paragraph I.

4. Respondent admits the allegations set forth in Paragraph 2.

-00647

5. Respondent admits the allegations set forth in Paragraph 3.

6. Respondent admits the allegations set forth in Paragraph 4.

7. Respondent admits the allegations set forth in Paragraph 5.

8. The Respondent denies the allegation contained in Paragraph 6 which alleges that the Decedent's Will instructs the building of a home on the land of the Decedent, and demands strict proof thereof. In fact, the Decedent's Will indicates that it was his wish and desire that a house he built on "the farm", which is owned by a Trust, and not part of the Decedent's probate estate, and thus, the language is precatory at best.

9. Respondent admits the allegations set forth in Paragraph 7.

10. Respondent admits the allegations set forth in Paragraph 8.

11. Respondent admits the allegations set forth in Paragraph 9.

12. As to the allegations set forth in Paragraph 10, Respondent admits that certain Trustees have obtained legal counsel and have requested the Petitioner to step down as Personal Representative of the Estate and that the Estate be closed without constructing a home as stated in Item VI of the Decedent's Will. That stated, the Respondent denies the remaining allegations set forth in Paragraph 10.

13. The statement contained set forth in Paragraph 11 does not call for an answer as the document speaks for itself.

14. Respondent denies the allegations set forth in Paragraph 12 and demands strict proof thereof.

15. In response to the allegations set forth in Paragraph 13, Respondent admits that the Petitioner asserts that it is the Petitioner's belief that all monies referenced by the Decedent in his

000350

Will includes "money held by the PR in bank accounts, certificates of deposit, money market accounts, stocks, bonds, gold and silver." That stated, the Respondent denies that that is the Decedent's direction as it is clearly in contradiction to Item VIII of the Decedent's Will which states "I give, devise and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the Trustees of the said Trust. .. ".

16. Respondent denies the allegations set forth in Paragraph 14 and demands strict proof thereof.

17. Respondent denies the allegations set forth in Paragraph 15 and demands strict proof thereof.

18. As to the allegations set forth in Paragraph 16, the Respondent craves reference to the County records with regard to what the annual property taxes are on the property owned by the Trust and Estate.

19. Respondent denies the allegations set forth in Paragraph 17 and demands strict proof thereof.

20. As to the allegations set forth in Paragraph 18, the Respondent denies that the Estate and Trust are integrally related and craves reference to the fact that in the eyes of the law, a Trust is a separate entity from the Decedent (and/or the Decedent's Estate). Respondent further denies that the Estate would have the legal authority to construct a home, even if it had the necessary funds, which the Respondent believes it does not, on property owned by the Trust.

21. As to the allegations set forth in Paragraph 19, the Respondent craves reference to the Trust document with regard to what the Trust document states. The remainder of the allegations

-00349

set forth are denied and Respondent demands strict proof thereof.

22. Respondent denies the allegations set forth in Paragraph 20 and demands strict proof thereof.

23. Respondent denies the allegations set forth in Paragraph 21 and demands strict proof thereof.

24. The allegations set forth in Paragraph 22 do not appear to call for an answer as it provides a statement as to what the Petitioner is attempting to assert. As a result, the Respondent denies the allegations set forth and demands strict proof thereof.

25. Respondent admits only so much of the allegations set forth in Paragraph 23 as it quotes sections from the Kearse Educational Trust.

26. Respondent admits only so much of the allegations set forth in Paragraph 24 as it quotes sections from the Kearse Educational Trust.

27. Respondent admits only so much of the allegations set forth in Paragraph 25 as it quotes sections from the Kearse Educational Trust. The Respondent lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, and therefore, neither admits or denies the same and demands strict proof thereof.

28. As to the allegations set forth in Paragraph 26, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

29. As to the allegations set forth in Paragraph 27, the Respondent lacks information sufficient to form a belief as to the truth of the allegations, and therefore, neither admits or denies the same, and demands strict proof thereof.

-00650

30. Respondent denies the allegations set forth in Paragraph 28 and demands strict proof thereof.

31. Respondent denies the allegations set forth in Paragraph 29 and demands strict proof thereof.

WHEREFORE, having fully answered the Petitioner's Amended Petition for Instruction, Respondent, JULIA KEARSE SHARP, respectfully and humbly prays this honorable Court issue an Order: (1) denying the Petitioner's request as having gone beyond the scope for a Petition for Instruction; (2) directing that the Estate cannot require the Estate to construct any home on property not owned by the Estate; (3) directing that it is a conflict of interest for the Personal Representative to bring an action and name a Trust as a Respondent for which the Personal Representative is also a Trustee of the Trust; (4) awarding the Respondent all costs and expenses incurred as a result of defending same, to include reasonable attorneys' fees; and (5) to grant any and all other further such relief as this Court may deem just and proper whether such remedies may sound in law or in equity.

Daniel A. Speights (SC Bar #5027)
SPEIGHTS & RUNYAN
100 Oak Street, East
Post Office Box 685
Hampton, South Carolina 29924
803-943-4444
dspeights@speightsrunyan.com

By: _____
DANIEL A. SPEIGHTS

ATTORNEYS FOR RESPONDENT,
JULIA KEARSE SHARP

Hampton, South Carolina
July 5, 2016

-00651

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF SERVICE BY MAIL
COUNTY OF HAMPTON)

Re: Estate of George H. Kearse
2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Respondent, Julia Kearse Sharp's Answers to Amended Petition for Instructions this ___ day of July, 2016, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

J. Morgan Kearse
Kearse Law Firm
PO Box 521
Allendale, SC 29810-0521

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

April Murdaugh, Deputy Probate Clerk
Hampton County Courthouse
1 Courthouse Square Elm Street
PO Box 601
Hampton, SC 29924

Clerk of Court
Allendale County Probate Court
292 Barnwell Highway
Allendale, SC 29810

Rosemarie Lightsey
~~RHONDA L. BOWERS~~
Rosemarie Lightsey

SWORN TO before me this
5th day of July, 2016

(L.S.)
Notary Public for South Carolina
My Commission Expires: 6/5/2025

-00652

STATE OF SOUTH CAROLINA,	)	
	)	IN THE PROBATE COURT
COUNTY OF ALLENDALE	)	
	)	
ELIZABETH KEARSE GOODING	)	SUMMONS
Petitioner,	)	
	)	
vs.	)	CASE NO. 2013-ES-03-00063
	)	
JOHN MORGAN KEARSE, WILLIAM GORDON KEARSE, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, and JOSEPH WEBER KEARSE	)	
Respondent(s).	)	

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

Charleston, South Carolina

Dated: December 6, 2016

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

SCCA 401PC (9/11)

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF: ALLENDALE)

IN THE MATTER OF:
ESTATE OF G. H. KEARSE) CASE NUMBER: 2013-ES-03-00063
(Decedent)
ELIZABETH KEARSE GOODIN(

Petitioner(s)

vs.
JOHN MORGAN KEARSE,WILLIAM GORDON KEARSE, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, AND JOSEPH WEBER KEARSE
Respondent(s)

*PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

I request an Order for the removal of JOHN MORGAN KEARSE, Personal Representative in the estate, because (check all that apply):

☐ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment. Additional Information:

☐ The Personal Representative disregarded a Court order. Additional Information:

☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional Information:

☒ The Personal Representative has mismanaged the estate. Additional Information: SEE ATTACHED AFFIDAVIT

☒ The Personal Representative failed to perform a required duty. Additional Information: SEE ATTACHED AFFIDAVIT

☒ Removal is in the best interests of the estate because: SEE ATTACHED AFFIDAVIT

(Attach additional sheets if necessary.)

Executed this day of DECEMBER, 2016.

Signature: Elizabeth Kearse Gooding
Print Name: ELIZABETH KEARSE GOODING
Address: P. O BOX 222
ALLENDALE, SC 29810
Telephone (Work):
(Home):
(Cell):
Email: ELIZABETHGOODING@BELLSOUTH.NET
Relationship to Decedent/Estate: DAUGHTER

Attorney: STEPHEN M. SLOTCHIVER
Address: 44 STATE STREET
CHARLESTON, SC 29401
Telephone: 843-577-8531
Email: STEVE@SLOTCHIVERLAW.COM

*NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

FORM #331ES (1/2014)
62-3-611

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

AFFIDAVIT OF
ELIZABETH K. GOODING

Elizabeth Kearse Gooding, being first duly sworn, deposes and says:

1. I am an heir or party of interest in the estate of G.H. Kearse, who is my father, and who died on June 10, 2013. His probate estate (2013-ES-03-00063) is filed in Allendale County, SC.

2. On September 24, 2013, Morgan Kearse (my brother), and I met with attorney Tom Bryant in Orangeburg. The purpose of this meeting was to seek advice from Tom, a respected estate lawyer, in proceeding with the administration of our father's estate. We had provided to Tom ahead of the meeting copies of the Will and general list of property. Tom shared his view that the provision of the Will regarding the building of Gunston Hall could not be accomplished. He conveyed his reasoning and there was no indication that Morgan was not in agreement.

3. My father's Will named all children (me and my five siblings) to be the personal representatives of his estate. We all agreed that it would be more convenient to allow one person to act in that capacity. We all agreed to allow my brother, Morgan Kearse, to act as personal representative. We all renounced our right to serve in favor of Morgan, and he was appointed on October 23, 2013.

4. Sometime after Morgan was appointed as personal representative, he went into my father's house at the farm and removed much of his personal belongings. Many things were put in an unlocked barn outside. This was done without the knowledge or consent of the heirs. My sister, Julia Sharp, just happened to be out at the farm

#1 ex2

one day and looked in the barn and saw some of my father's personal things. I believe it is impossible to know now exactly what was removed.

5. Months passed and nothing happened. I began to question my brother regularly, by phone calls and emails, about progress on the estate. I prepared a complete inventory of all real estate owned by my father and provided it to my brother. Shortly after this, he was able to file an Inventory on Feb. 18, 2014. There were a couple of Supplemental Inventories with property that had been overlooked (bonds and coins), but nothing else was accomplished toward administering the estate.

6. In January or February of 2015, I was in constant contact with Morgan, in an attempt to move the administration of the estate along. I was provided access to the estate bank account with the intention of assisting Morgan in preparing the Accounting. As I went through the bank statements I was shocked at what I found. Morgan was paying most of the farm expenses (the farm is owned by the Kearse Family Education Trust and is not part of the estate) out of the estate bank account. There were many expenses that were unverifiable, such as gas bills to "Tiger Express," "Mixson Oil," and some that were marked "reimburse" to J.Morgan Kearse. But the most shocking was a $2500 check (check #182), to "J. Morgan Kearse." When I asked what this was for, Morgan told me that he had sold a trailer he personally owned to the estate. He also wrote a $9150 check to Neeley Heating and A/C Co. in March 2014, for a new hvac in his office (the office building is also not owned by the estate). This check was written on an account which has not been reported on any of the filed Accountings with the Court.

#2 EKH

7. I prepared the financial information to provide to the accountant for the 2014 estate income tax returns. During the preparation of those returns the accountant advised that the estate should not be paying the expenses of the farm. We agreed that the Trust would reimburse the estate and that the Trust needed to pay its own expenses going forward. This was clearly conveyed to Morgan by both the accountant, Sharon Bramlett and myself.

8. In November 2015, I once again was provided access to the estate bank statements. I discovered that Morgan had written a $25,000 check from th estate to himself, designated as an attorney fee, and a separate check from the estate to himself for $1,200 for beds and bedding he stated he had "sold to the Trust" (not to the estate). He had also continued to write many checks from the estate to pay for expenses incurred on the farm, as well as pay for his office grounds maintenance from the estate account (both of these properties are not owned by the estate).

9. Throughout this time, since meeting with Tom Bryant in Orangeburg in Sept. 2013, I had no indication that Morgan believed that there was any realistic possibility that the estate could build the house my father referred to in his Will. I asked Morgan to prepare a Proposal for Distribution so that we could understand how he proposed the estate assets would be distributed. He told me many times he would, but never did.

10. I called a meeting of my siblings, the Trustees of the Kearse Family Education Trust on Feb. 6, 2016. I had shared my findings from the bank statements with everyone prior to the meeting. Rachael Best, one of my sisters and also a Trustee of the Kearse Family Education Trust, voiced her position that she wanted the estate to

#3 EKH

build the house. I tried to explain why it was not possible or feasible but it made no difference to Rachael. Morgan did not indicate a desire to build or not to build the house.

11. On March 29, 2016, my sister, Julia Sharp, and I asked Morgan to resign as personal representative. After two and a half years he still had done nothing to administer the estate. He had failed to inventory important and valuable estate property, particularly the contents of safes belonging to the decedent, which were in his possession and control. He had failed and refused to return the property removed from the decedent's home. We felt that he was wasting and misappropriating funds and refused to stop. He refused to resign. He did, however, file a first accounting two days later. It is, however, neither accurate nor complete. To this date, there is important financial information concerning at least one bank account that is not disclosed on any estate forms.

12. I personally made repeated requests of Morgan to prepare and produce a Proposal for Distribution, hoping that this would provide the information to the heirs as to Morgan's intentions regarding the proper distribution of the estate assets. He would not comply and refused to reveal to me what his intentions were regarding the distribution of assets. Instead, at the second meeting of the Trustees, on April 9, 2016, Rachael Best produced the "Petition for Instructions," which she stated had been prepared by Morgan and herself, and approved by attorney Ken Wingate. This "Petition," which was initiated without consultation with any of the heirs, except Rachael Best, is essentially a Rule to Show Cause why the Trustees of the Kearse Family Education Trust and the heirs of the G.H. Kearse estate should not

#4 EKH

be forced to ignore specific provisions of the Will and to invade assets of the Trust for purposes not provided by law or the Trust. Morgan, as personal representative, has taken an adversarial position in conflict with the preservation of the estate assets.

13. The personal representative is also a Trustee of the Kearse Family Education Trust, and has breached his fiduciary duty as a Trustee by prosecuting an action against the interests of the Trust. The personal representative has clearly disregarded a serious and obvious conflict of interest in pursuing an action against the Kearse Family Education Trust.

14. In the discovery that followed this lawsuit, we have learned that Morgan obtained my father's power of attorney while he was in the hospital, 20 days before he died, and that he used that power of attorney to direct that the bank add my sister , Rachael Best, on to my father's bank accounts as joint owner with right of survivorship, and not as tenants in common. This was done three days before my father died and was an unauthorized act under the power of attorney. Neither I ,nor any of my siblings, were aware of these actions. I would never have renounced my right to serve as personal representative had I known this at the time.

15. I have personally done everything I know to do to assist my brother as personal representative of this estate. I have collected and prepared much of the necessary financial information for tax returns and inventories. I have discussed with Morgan my legal opinion regarding the administration of the estate. I solicited outside legal advice, which I shared with him, and I also urged him to do the same if he was uncertain about the legal issues and proper course of action in administering the

#5 EXH

estate. He refused to indicate a formal, legal position until April 9, 2016, when he served the heirs with the legal proceedings, which is effectively a Rule to Show Cause why the heirs should not be forced to rob the Trust and build a house on land that the estate does not own.

16. Morgan admitted in his deposition that he has done nothing to determine the legal basis for complying with my father's directions to build the house he mentions in his Will. He admitted he has done nothing to determine the cost of such a project. In three years he has done nothing to move this estate forward but has now filed a lawsuit against the heirs asking that the estate be forced to build a house on land the estate does not own, and from money which the Decedent specifically bequeathed to the Kearse Educational Trust. And he has paid the legal fees for this frivolous cause from estate funds.

17. The personal representative has paid outside legal counsel to date $12,235 (and possibly more), from estate funds to prosecute this action against the interests of the estate and heirs and which cause of action has no legal or practical merit. I believe it is urgent that the Court intervenes immediately to stop the personal representative from wasting the assets of the estate.

18. I believe that the Court should not only remove Morgan as the personal representative of the estate, but also require that he: (1) reimburse the estate for all legal fees incurred; (2) reimburse all beneficiaries for all legal fees incurred in defending the meritless action he; (3) be required to forego and return any personal representative commission for which he may claim to be entitled (and/or previously received).

#6 EH

Elizabeth K. Gooding

Sworn to before me

this 7th day of December, 2016.

Notary Public for South Carolina

My Commission Expires: 1/16/2024

STATE OF SOUTH CAROLINA
IN THE PROBATE COURT
COUNTY OF ALLENDALE

CASE NO.: 2013-ES-03-00063

J. MORGAN KEARSE, Personal Representative of the Estate of G. H. Kearse,
Petitioner,
-vs-
The KEARSE EDUCATIONAL TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1999
Respondents.

RESPONDENT, ELIZABETH KEARSE GOODING'S MOTION FOR SUMMARY JUDGEMENT

FILED FOR RECORD
16 DEC -7 PM 4:40

TO: KENNETH B. WINGATE, ATTORNEY FOR THE PETITIONER:

YOU WILL PLEASE TAKE NOTICE that Elizabeth Kearse Gooding, by and through her undersigned attorney, will move before this Honorable Court:

For an Order granting the Respondents summary judgment in that there are no genuine issues as to any material fact in this case, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This Respondent, therefore, asserts that she is entitled to judgment in this action as a matter of law.

This motion for summary judgment is based on the following grounds:

1. The Petitioner, J. Morgan Kearse, has requested this Court to make a finding that the construction of the house (referred to in Decedent's Will as "Gunston Hall") is a "major requirement" and also an "integral requirement" of the Decedent's Will, and directing him to proceed with the construction of the house. He also asserts that there are sufficient funds to build this house and

requests the Court to make such a finding. The requested relief cannot be granted as a matter of law for the following reasons:

A. The property upon which the Decedent's Will directs the building of the house is owned by a corporation that is solely and undisputably owned by the Kearse Family Education Trust. The Trust is not a part of the Decedent's estate. The Decedent had no legal control over the Trust property and was without authority to direct the building of a house on land owned by the Trust.

B. The Kearse Family Education Trust is a separate legal entity that has no legal connection or obligation to the Decedent's estate. The Petitioner's request to have the Court order the Trust to bear any costs of the estate is inappropriate, without any legal authority, and a breach of his fiduciary duties to both the estate and the Trust.

C. The Decedent's Last Will and Testament clearly directs all estate moneys, gold and silver coins, bonds, and real estate to be paid to the Kearse Family Education Trust. There are no funds earmarked for building the house.

D. Petitioner testified that he has made no determination as to the cost to build this structure, nor has he engaged the services of a professional to advise him as to the anticipated cost to build such a structure (even though he states definitively in the Petition for Instruction that the Estate has sufficient funds to build a structure similar in structure to the Gunston House).

This motion is further based on the South Carolina Rules of Civil Procedure, the pleadings, the laws of the State of South Carolina, and upon such other and further grounds as may be presented to the Court.

Respectfully submitted,

12/6/16

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	IN THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	)))))))))))))	Case No.: 2013-ES-03-00063 MOTION TO DISMISS PETITION FOR INSTRUCTIONS PURSUANT TO SCRCP RULE 41(a)(2)

FILED FOR RECORD
16 DEC 13 PM 12:58
STATE OF SOUTH CAROLINA
ALLENDALE COUNTY

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WALKER KEARSE, INDIVIDUALLY; AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by his undersigned attorney will move before the Special Judge of the Allendale County Courthouse at the Hampton County Courthouse at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order voluntarily dismissing the Petitioner's Petition for Instructions pursuant to the South Carolina Rules of Civil Procedure Rule 41(a)(2), on the grounds that the purpose for which the Petition was filed is no longer feasible, and the Petitioner wishes to voluntarily dismiss the action and file the necessary documents to close the Estate of G.H. Kearse expeditiously in

accordance with the South Carolina Probate Code. The basis for this Motion may be supplemented by a memorandum of law in support of the motion. Prior to filing this Motion, the movant's counsel has attempted in good faith to resolve the matter contained in the Motion, and further consultation will serve no useful purpose.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

/s/ Kenneth B. Wingate

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PETITIONER

Columbia, South Carolina

December 8, 2016

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing Motion to Dismiss Pursuant to SCRCP Rule 41(a)(2) in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Rachael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206

Hilary A. Ingrum

Columbia, South Carolina
December 8, 2016

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF ALLENDALE)

Case No.: 2013-ES-03-00063

Elizabeth Kearse Gooding,

Petitioner,

v.

J. Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, The Kearse Family Education Trust, William Gordon Kearse, Julia Kearse Sharp, Rachael Kearse Best, and Joseph Weber Kearse, J. Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,

Respondents.

IN THE MATTER OF: ESTATE OF G.H. KEARSE

COPY

FILED FOR RECORD
17 JAN 17 AM 10:01
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

ANSWER TO PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE

The Respondent, John Morgan Kearse, individually and as personal representative hereby answers the Petition for Removal of Personal Representative (the "Petition") as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each and every allegation of the Petitioner's Petition not specifically admitted herein is denied.

2. Paragraph alleging Personal Representative intentionally misrepresented material facts on the Application or Petition leading to his/her appointment is unchecked, therefore no response is required.

3. Paragraph alleging the Personal Representative has disregarded a Court order is unchecked, therefore no response is required.

4. Paragraph alleging the Personal Representative has become incapable of carrying out his/her assigned duties is unchecked, therefore no response is required.

5. Respondent denies the allegation that the Personal Representative has mismanaged the estate.

6. Respondent denies the allegation that the Personal Representative has failed to perform a required duty.

7. Respondent denies the allegation that removal is in the best interests of the estate.

WHEREFORE, Respondent prays that this court dismiss the Petition for Removal of Personal Representative and grant such other relief as the court deems just and proper.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR RESPONDENT JOHN MORGAN KEARSE

Columbia, South Carolina

January 12, 2017

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing ANSWER TO PETITION FOR REMOVAL OF PERSONAL REPRESENTATIVE in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Rachael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206

Hilary A. Ingrum

Columbia, South Carolina

January 12, 2017

STATE OF SOUTH CAROLINA	)	
COUNTY OF ALLENDALE	)	Case # 2013-ES-03-00063
IN RE: Estate of G. H. Kearse, decedent	)	
	)	
Elizabeth Kearse Gooding, Petitioner,	)	
-vs-	)	
William Gordon Kearse, Julia Kearse Sharp,)		Motion for Restraining Order
Rachael Kearse Best, John Morgan Kearse,)		
Joseph Weber Kearse,	)	
Respondents.	)	

The Petitioner, Elizabeth K. Gooding, by and through her undersigned attorney, will move before this Court within 10 days hereof, or as soon thereafter as this matter may be heard, for an Order restraining the Personal Representative from acting on behalf of this Estate, and specifically from issuing checks from the Estate bank account, until the Petition for Removal is heard and adjudicated by this Court.

The grounds for this motion are as follows:

1. On December 7, 2016, the Petitioner filed with this Court a Summons and Petition for Removal of the Personal Representative, John Morgan Kearse. This Summons and Petition were served on the attorney for the Personal Representative on December 8, 2016.

2. S.C. Code Ann. § 62-3-611 (1976), clearly states, in part: "Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate.

3. The Petitioner has verified that the Personal Representative has continued to issue checks on the Estate account since receiving notice of the removal Petition, in violation of S.C. Code § 62-3-611 (1976). Specifically, the Personal Representative continues to advance payments to his attorney for an action which Petitioner maintains is without merit and for which this Court has scheduled a hearing on Summary Judgment for February 2, 2017.

4. Since the filing of the Petition for Removal, the Petitioner has learned of other, additional acts of misappropriation of Estate funds and negligence on the part of the Personal Representative, which occurred prior to the filing of the Petition but were not known by Petitioner at the time of filing the Petition.

5. A Restraining Order prohibiting the Petitioner from acting on behalf of the Estate, and specifically from spending Estate moneys, is necessary to protect the Estate from further harm.

This Motion is further based on the South Carolina Rules of Civil Procedure, the pleadings, the laws of the state of South Carolina, and upon such other and further grounds and evidence as may be presented to the Court.

Respectfully submitted,

STEPHEN M. SLOTCHIVER, ESQUIRE
SC BAR NO. 65477
SLOTCHIVER & SLOTCHIVER, LLP
44 STATE STREET
CHARLESTON, SC 29401
843-577-6531 (PHONE
843-577-0261 (FAX)
ATTORNEY FOR PETITIONER

CHARLESTON, SC

JANUARY 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Slotchiver & Slotchiver, LLP, attorney for Petitioner, do hereby certify that I have served a copy of the foregoing MOTION FOR RESTRAINING ORDER in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

William Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse
6620 Merrill Road
Columbia, SC 29209

Rachael K. Best
5055 Lakeshore Drive
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Daniel A. Speights, Esquire
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Kenneth B. Wingate, Esquire
Sweeny Wingate & Barrow
P.O. Box 12129
Columbia, SC 29211

JoAnne M. Jennings

Charleston, South Carolina
January 20, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

PROBATE COURT
Hampton County, SC
Filed 11:35am
Date 02/01/2017

J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse,
Petitioner,

-vs-

William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, John Morgan Kearse, Joseph Weber Kearse, all of which are named Individually and as Trustees of the Kearse Family Educational Trust under and Agreement dated November 5, 1992.
Respondents.

PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

BACKGROUND/STATEMENT OF FACTS

In November 1992, the Decedent, G. H. Kearse, established the Kearse Family Educational Trust, which the Petitioner attached to his Petition as "Exhibit B." Under the terms of this Trust, the Decedent stated in Article II:

> "The trust estate. The Settlor has paid over, assigned, endorsed, granted, conveyed transferred and delivered, and by this agreement does hereby pay over, assign, endorse, grant, convey, transfer, and deliver unto the Trustee all of the issued and outstanding stock of SEH, Inc. and Elysium Field, Inc. Thus the initial corpus of the trust will consist of the stock in the two (2) corporations and indirectly the land such corporations own."

It is undisputed that, between the years 1982-1992, the Decedent conveyed all of his interest in the real estate known to be the Kearse Family farm, to the two corporations, SEH, Inc., and Elysium Fields, Inc. In 1992, the Decedent had his accountant prepare and file a U.S. Gift Tax Return, acknowledging the transfer of all of the corporate stock to the Kearse Family Educational Trust, as recited in the Trust

Agreement. (See tax return as Exhibit to Petitioner's deposition at pages 000167 and 00168, as well as pages 000164 and 000165).

The Decedent, G.H. Kearse, died testate June 10, 2013. The Last Will and Testament of the Decedent named all six of his children as personal representatives. Five of the Decedent's six children waived their right to serve in favor of John Morgan Kearse, who was then appointed as personal representative of the Estate on October 22, 2013, which was the same date the Will was admitted to probate and filed with the Probate Court.

The controversy among the parties arose from Item VI of the Decedent's Last Will and Testament, in which he directs the children to build a specifically described house, copied after an historic home in Virginia, known as "Gunston Hall," and directs that it be built on a specific parcel of land, which has been indisputably owned by the Kearse Family Educational Trust, since 1992 (approximately 25 years).

The Respondent, Elizabeth K. Gooding, maintains that Item VI of the Decedent's Will cannot be carried out because: 1) the Decedent did not own, nor did he have a right to control, the land upon which this house was directed to be built; and 2) even if the estate did own the land (which it does not), the Estate lacks sufficient funds to build the structure.

On April 8, 2016, the personal representative, John Morgan Kearse, filed with the Probate Court this action entitled "Petition for Instructions." All six children, including the Petitioner himself, were named as Respondents in this action. In

response to a Motion to Dismiss for failure to name an indispensible party, an Amended Summons and Petition was filed on June 3, 2016, which simply added the clause in the case caption naming the Respondents both individually and as Trustees of the Kearse Family Educational Trust.

The Respondent, Elizabeth K. Gooding, has moved for summary judgment, maintaining that there is no genuine issue of any material fact in this matter, and that she believes that the Respondents are entitled to judgment against the Petitioner as a matter of law.

STANDARD OF REVIEW

In deciding a Rule 56 motion, the Court must view the facts and inferences there-from in the light most favorable to the nonmoving part. Summary judgment is appropriate only when the pleadings, depositions, interrogatory answers, admissions and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Thomas v. Waters, 445 S.E.2d 659 (S.C. Ct. App. 1994). Another formulation of the same standard is that summary judgment is only appropriate when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. Williams v. Chesterfield Lumber Co., 267 S.E.2d 708(1976). Further, in ruling on a motion for summary judgment, the Court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Jernigan v. King, 440 S.E. 379 (S.C. Ct. App. 1993).

Summary judgment is not a trial of the merits, but a determination that there is no factual issue to present to the trier of the fact and that the case may be decided as a matter of law. Spencer v. Miller, 259 S.C. 453, 192 S.E. 2d 863 (1972). Moreover, the Court does not try disputed issues on a motion for summary judgment; it simply decides whether one exists. Hammond v. Scott, 268 S.C. 137, 232 S.E. 2d 336 (1977). Consequently, summary judgment should not be granted even where the facts are undisputed, if the uncontested facts support different inferences. Koester v. Carolina Rental Ctr. 313 S.C. 490, 443 S.E. 2d 392 (1994); Dowling v. Home Buyers Warranty Corp., 303 S.C. 295, 400 S.E. 2d 143 (1991).

ARGUMENT

I. VIEWING THE EVIDENCE AND ALL REASONABLE INFERENCES IN THE LIGHT MOST FAVORABLE TO THE PETITIONER, THE COURT MUST GRANT SUMMARY JUDGEMENT AGAINST PETITIONER, AS THE UNDISPUTED EVIDENCE REJECTS EVERY MATERIAL ASSERTION OF THE PETITION.

First, it is important to note that this Petition does not seek true instruction from the Court. The first two pages of this Petition for Instruction sets forth the circumstances under which the Petitioner was appointed personal representative of this Estate. Beginning on page 3, paragraph 12, the Petition states "Whereas the Petitioner asserts the language is clear and unambiguous that a home shall be built on the relevant lands of the Trust." Thereafter, every paragraph that is not a verbatim recital from the Will or Trust, begins with "The Petitioner asserts..." The Petition is a rambling, discombobulating string of assertions that attempts to impose

provisions of the decedent's Will as mandates on the Trust in order to construct a rationale supporting the building of the house on land owned by the Trust.

There is not one paragraph of the Petition that alleges any question as to the interpretation or construction of either the Decedent's Will or the Irrevocable Educational Trust that the Decedent established in 1992, for which Petitioner, purportedly, seeks the Court's guidance. The Petitioner "asserts" that "the language is clear and unambiguous," ¶12); he states exactly what moneys are available for this directive (¶13); that the Estate has sufficient funds to build the house (¶14); that he knows the "Decedent's intent," (¶15); that the Estate and Trust are "integrally related" and the Trust must help build the house (¶18); and even states in ¶18 that his position is "clearly supported" by the language.

In the final paragraph, the Petitioner "prays" for "instructions" ...

> "stating the home is a major requirement of the Decedent's Will; designating and prioritizing the funds available for consideration for the construction of the home; that sufficient funds are available to construct the home; that the construction of the home is an integral requirement of the Decedent's Will and Estate and that certain assets of the Estate are to be allocated, if needed, for the complete construction of the home; and directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will."

This Respondent submits that this Petition is, in fact and substance, a Rule to Show Cause why the named Respondents should not be ordered to comply with the Petitioner's erroneous and unsupported interpretation of the Decedent's Last Will and Testament and Kearse Family Educational Trust Agreement.

A. THE KEARSE FAMILY EDUCATIONAL TRUST IS A SEPARATE LEGAL ENTITY THAT HAS NO LEGAL CONNECTION OR OBLIGATION TO THE DECEDENT'S ESTATE.

All of the property that is known as the Kearse Farm was transferred by the Decedent into two corporations, SEH, Inc., and Elysium Fields, Inc. between the years 1982-1992. The Petitioner admitted that the Decedent would not have any right of control over the farm property if the stock of the corporations had been transferred to the Kearse Family Educational Trust. See Deposition of John Morgan Kearse, dated September 7, 2016, p. 58, lines 8-20.

There is indisputable evidence that all of the corporate stock of SEH, Inc., and Elysium Fields, Inc., was transferred to the Kearse Educational Trust 21 years before the Decedent's death. The following provides overwhelming verification of that fact:

1. The Trust Agreement clearly states that the Decedent transferred all of the stock of the two corporations to the Trust. See Trust Agreement (attached to Petition as Exhibit B), Art. II. When asked to read this provision of the Trust, the Petitioner admitted that the Trust owned all of the corporate stock of these corporations. See deposition of John Morgan Kearse, dated September 7, 2016, p. 61, line 12 through p. 64, line 4.

2. Letter from William P. Edenfield, CPA, to G. H. Kearse, dated August 25, 1994, enclosing a copy of the Decedent's 1992 Federal Gift tax Return, showing that the Decedent transferred the corporate stock to the Kearse Family Educational Trust in 1992. See deposition of John Morgan Kearse, dated September 7, 2016, Defendant's Exhibit #1, page 167-170.

3. Letter from Alex Weatherly, Jr. (Moses, Koon, & Brackett), to Sharon Bramlett (decedent's accountant), dated April 16, 2002, showing that the Kearse Family Educational Trust owned the two corporations. Id. at 166.

4. An email from Elizabeth Gooding to Sharon Bramlett, dated Sept. 11, 2013, stating that the Trust owns all of the real estate through the corporations and that, in recognition of that fact, the personal representative (Petitioner, J. Morgan Kearse), had deposited the farm rent for that year in the Trust account. Id. at 400-401.

5. Letter from the Petitioner, J. Morgan Kearse, to Thomas B. Bryant, III, dated Dec. 31, 2013, which included a copy of a note, handwritten by the Decedent, indicating that the decedent had transferred all of the stock of the corporations to the Trust in 1992. See deposition of John Morgan Kearse, dated Sept. 7, 2016, Defendant's Exhibit #4.

6. Letter from Tom Bryant to the Petitioner dated Jan., 8, 2014, advising the Petitioner that the real estate held in the corporations, which were owned by the Trust, were not to be considered in the estate. Id. at p. 442-443.

7. The Petitioner filed fiduciary income tax returns (Form 1041), for the Estate for the tax years 2013, 2014, and 2015, and testified that he reported no ownership interest in any corporations on those returns. Id. at p. 48, lines 1-11.

It is significant to note that all of the cited evidence above was produced by the Petitioner at his deposition, with the exception of #5, a copy of which Petitioner provided to the Respondent, Elizabeth K. Gooding, in 2013. In other words, all of the evidence to support the conclusion that the Decedent had no ownership or control of the Trust lands, was in the prior possession and control of the Petitioner at the time of the filing of the Petition for Instruction.

Based upon the foregoing, the Petitioner's claim that the Estate and Trust are "integrally related" bears no truth in fact or law. Nowhere has the Petitioner postulated even a theory as to how this might be true. Since 1992, the Kearse Family Educational Trust has existed as a separate legal entity. Since 1992, the Kearse Family Educational Trust has owned the land where Decedent expressed under Item VI of his Will his (the Decedent's) "wish and desire" for the Estate to build the house. The Decedent was without legal authority to direct his personal representative to build a house on land he did not own.

Clearly, the undisputed evidence rejects every material assertion of the Petition that the Estate has a right to compel the Trust to participate in the building of a house on Trust land. Furthermore, the undisputed evidence rejects every material assertion of the Petition that the Estate has any right to build a house on Trust land, which it does not own. For these reasons, the Court must grant summary judgment to the Respondents in this matter.

The Respondent, Elizabeth K. Gooding, believes that the Decedent's instructions in Item VI of the Will to build the house cannot be fulfilled as a matter of law based upon the foregoing discussion. However, because the Petition also addresses the cost of building the house, a brief discussion of that issue follows.

B. THE PETITIONER HAS NO EVIDENCE TO SUPPORT THE CONCLUSION THAT THE ESTATE HAS SUFFICIENT FUNDS TO CONSTRUCT THE HOUSE.

Item VI of the Will says only this regarding the funding of the house:

"I have some money that should be enough to complete it."

The personal representative has not located any money specifically earmarked by the decedent for building the house. According to the Inventory, the Decedent had approximately $566,000 in cash or cash equivalent, and approximately $159,000 in gold and silver coins. Miscellaneous real estate in the estate was valued at approximately $675,000.

The Will clearly states in Item VIII, " I give, devise, and bequeath any monies in banks, bonds, or any cash in my possession, included but not limited to gold and

silver coins, to the Kearse Educational Trust..." Also, in Item VII, " I give, devise, and bequeath all the rest, residue, and remainder of my property both real and personal, of which I may be entitled to at the time of my decease, to the Kearse Educational Trust..."

The Decedent specifically directed that cash, gold coins, and any and all real estate to pass to the Trust. Without money specifically designated for the building of the house, the personal representative is without authority to direct that other specific provisions of the decedent's Will be disregarded. If the personal representative uses funds of the estate for building a house he would indisputably be violating Item VII and Item VIII of the Decedent's Will.

More importantly, the Petitioner does not know how much money would be required for the Estate to build a copy of the historic home known as "Gunston Hall," (for which the Decedent indicates under his Will that there should be an addition to provide space for a kitchen large enough that it can also be used as a sitting room, as well as that the house should be raised by two to three feet to allow the basement to be more useful) even though his Petition unequivocally states "The Petitioner asserts that the Estate is currently possessing sufficient funds to construct the house..." ¶14 of Petition.

Petitioner testified that he did not know how many square feet were in Gunston Hall. (See deposition of John Morgan Kearse, dated Sept. 7, 2016, p. 74, lines 20-21.) Also, he does not know how many bedrooms are in the house. (**Id.** at p. 85, lines 3-5). Petitioner testified that the only persons he had talked to about the cost

of building the house is his attorney (Id. at p. 75, lines 1-4), and his sister, Rachael Best (Id. at p. 75, lines 8-12).

Petitioner admitted that he does not know what it will take to build the house and that he has not personally talked to an architect or anyone else. (Id. at p. 75, line 15 through p. 76, line 11).

Petitioner admitted that he had no estimates for building the house and he did not know whether it could be built for a million dollars or for 3 million dollars. (Id. page 77, lines 5-22.) Later, he testified that the estate could build a house if it cost a million dollars but not 2 million dollars. (Id. p.79, line 3 through p. 80, line 15).

Petitioner testified that he could not even "speculate" on what the price of building the structure might be. (Id. p. 83, lines 8-12). He also testified that he had no idea what the taxes, insurance, and maintenance on such a structure would be or whether the Trust could afford to maintain it. (Id, p. 87, lines 13-19).

The Petitioner represented to the court in his Petition for Instruction that the Estate has sufficient funds to build the house described in Decedent's Will. This is not true. Even if the Petitioner had millions of dollars available within the Estate, he cannot represent to the Court that there are sufficient funds because he admitted he does not know how much such a structure would cost, and admitted that he had not consulted with any contractors, engineers, or and/architects. (Id. p. 75, line 1 through p. 77, line 7).

Significantly, Petitioner acknowledged that he and the Respondent, Elizabeth Gooding, consulted with attorney Tom Bryant of Orangeburg on Sept. 24, 2013, at which time Mr. Bryant advised that he believed that building the house was not possible. (Id. p. 170, lines 6-25). And Petitioner admitted that after over the three 3 years since meeting with Mr. Bryant, he had done nothing to determine what the costs of building the house might be. (Id. p. 171, lines 2-16). Although Petitioner stated in his Petition that the Estate had sufficient monies to build the house, he testified that, "I am speculating on what it is going to cost until I have some kind of idea of what we are looking at. That is not my---area of expertise, building a home, or even speculating on a price." (Id. p. 83, lines 8-12).

CONCLUSION

The Respondent, Elizabeth K. Gooding, respectfully submits to this Court that, based on the pleadings, deposition, exhibits, and admissions in this case, there is no genuine issue of material fact. The plain, palpable, and indisputable facts, upon which reasonable minds cannot differ, are:

1. The Decedent did not own the real estate on which Decedent requested the building of the house described in his Will. Even if the decedent had left earmarked funds for this purpose, the Petitioner is without authority to compel such an action on land owned by another.

2. There are no specific funds earmarked by Decedent for the building of the house and, therefore, there is no funding to fulfill this directive;

3. The Petitioner made assertions, totally unsupported, that the estate has sufficient funds to build the house. The Petitioner has failed to offer any facts to support this position.

Because the undisputed evidence in this case clearly rejects every material conclusion of the Petition, Respondent, Elizabeth K. Gooding, respectfully submits that there is no factual issue to be determined by the court and that the Respondents are entitled to judgment as a matter of law.

Slotchiver & Slotchiver, LLP

1/31/17

Stephen M. Slotchiver
Attorney for Respondent, Elizabeth K. Gooding
44 State Street
Charleston, SC 29401

COPY

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	) IN THE PROBATE COURT))	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	) Case No.: 2013-ES-03-00063))))))))))))	NOTICE OF MOTION AND MOTION TO ALTER OR AMEND OR, IN THE ALTERNATE, FOR A NEW HEARING

FILED FOR RECORD
17 MAR 20 PM 3:48

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WEBER KEARSE, INDIVIDUALLY; AND EACH ALSO FOR OR AS THE CO-TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney, will move immediately before the Court, and does hereby move, for an order altering or amending Order in this matter dated February 27, 2017 or, in the alternative, for an evidentiary hearing of the issues encompassed by that Order. Notice of the entry of the Order and the Order itself were received by Petitioner on March 6, 2017.

This motion is filed pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and may be further supplemented by one or more Affidavits, the Pleadings, citations to relevant authority, a Memorandum of Law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

BACKGROUND

G.H. Kearse ("Decedent") died on June 10, 2013, survived by six children, all of whom are named as Respondents in this matter, and the Decedent's spouse. The Decedent's probated will named all six children as co-personal representatives, five of whom renounced their right to serve and nominated Morgan Kearse to serve as the sole personal representative, which appointment was accepted by the Court.

Article VI of the Decedent's will directs his six children to use his "monies" to build a house on land owned by the Kearse Family Education Trust ("Trust"), which was itself established by the Decedent and is named as a respondent along with the six children in their capacities as co-trustees of the Trust. Morgan Kearse and two of his siblings believed this directive should be followed, and three siblings did not. Further, one sibling from each group threatened to sue Morgan Kearse whether or not he followed the directive to build the house. Accordingly, Morgan Kearse, as personal representative, exercised his statutory right to request guidance from the Court by filing a Petition for Instructions.

Julia Kearse Gooding filed an Answer to the Petition for Instruction and a subsequent Motion for Summary Judgement, each requesting the Court rule that the house may not be built. Following an indication that the siblings originally in favor of building the house would now consent to the house not being built, Morgan Kearse subsequently filed a Motion to Dismiss his own Petition for Instruction. Just before this filing, Ms. Gooding also filed a Petition for Removal of Personal Representative, and in the following month filed a Motion for Restraining Order (of the Personal Representative).

The Court scheduled a hearing for February 2, 2017 on the Motion to Dismiss the Petition for Instruction, Motion for Summary Judgement, and Motion for Restraining Order. Prior to the

hearing, legal counsel for the represented parties worked on a possible settlement to resolve all pending estate controversies, and even informed the Court that it believed a settlement had been reached by letter dated February 1, 2017. However, this statement proved to be inaccurate for the reasons stated in the Affidavit of Morgan Kearse and incorporated herein as Exhibit 1.

On the evening of February 1, 2017, Morgan Kearse informed his undersigned counsel that he would not officially enter into the settlement (titled "Final Term Sheet") on the basis that Gordon Kearse had withdrawn his consent to allow the estate to pay certain legal fees otherwise payable by Morgan Kearse under item 4 of the "Final Term Sheet." (Transcript, p. 7, l. 18-25). For Morgan Kearse, Gordon Kearse's consent had been a material term of the Final Term Sheet, without which he was no longer willing to submit the same for approval by the Court. In addition, Rachael Kearse Best and Joseph Weber Kearse, two of the pro se respondents, never signed the Final Term Sheet, nor did they attend the hearing (Transcript, p. 13, l. 18-25 & p. 14, l. 3-13).

In lieu of a hearing, a non-evidentiary discussion was conducted by the Court and legal counsel (Transcript, p.18, l. 21-25 & p. 19., l. 1-7). The Court acknowledged that the parties were no longer in agreement with the proposed settlement and appeared ready to simply to enter the Final Term Sheet into the record as information (Transcript, p. 20, l. 18-25 & p. 21, l. 1-6). However, although not understood by the undersigned counsel at the time, the Court apparently went on to imply that the proponents of the Final Term Sheet may present it by way of a proposed order for approval by the Court as a formal settlement (Transcript, p. 21, l. 14-22).

Ultimately, counsel for Julia Kearse Sharp did submit a proposed order that was signed by the Court on February 27, 2017, served on the parties by letter dated March 3, 2017, and received by the Petitioner on March 6, 2017. This Motion follows.

ARGUMENT

I. The Parties Did Not Reach a Binding Settlement.

As discussed above and in the attached Affidavit of Morgan Kearse, there was no assent by Morgan Kearse, Rachael Kearse Best, and Joseph Weber Kearse to the Final Term Sheet because a material set of additional terms was not incorporated into the Final Term Sheet. That fact alone is dispositive of the matter at hand. However, even if the additional material terms could be somehow disregarded, the required procedures for reaching an estate settlement were not followed.

There are at most three possible ways to consummate a binding estate settlement. The parties in the present matter did not satisfy any of the three. First, S.C. Code Ann. § 62-3-912 (emphasis added) provides as follows:

> 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, 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. The personal representative shall abide by the terms of the agreement subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

In this case, Section 62-3-912 is implicated because the Final Term Sheet affected the parties' "interests, shares, or amounts to which they are entitled under the will of the decedent," in that it would name a Special Administrator (§ 1), pay from the estate a personal representative fee (§ 2), allow the estate to pay legal fees (§ 4), allow for the rent free use of estate property (§ 5), and agree to sell estate property (§ 6). However, Section 62-3-912 is not satisfied because the Final Term Sheet was obviously not "executed by all who are affected by its provisions.". Id. In fact, it was executed by less than half of the persons affected by its provisions considering the Trust is a

separate legal person and it may only operate by unanimous vote of its co-trustees according to the Trust terms.

The proposed order offered by counsel for Julia Kearse Sharp attempts to skirt this fatal flaw by suggesting (1) that the pro se parties are not required to execute a settlement based on the Final Term Sheet and (2) that they otherwise did so simply by advising Morgan Kearse's legal counsel that they agreed to it.[1] (Order p. 4). However, Section 62-3-912 expressly requires the execution of a settlement (not merely an alleged oral affirmation to counsel for another party) by all who are affected by the settlement's terms.

Moreover, the "pro se" argument also ignores the fact that the Trust did not execute the settlement, which is ironic considering the opposition to the Petition for Instruction is premised on the argument that Decedent's direction to build a house on Trust property cannot be enforced without Trust consent. To date, the Trust has no more consented to the Final Term Sheet than it has consented to a house being built on Trust property.

Next, S.C. Code Ann. § 62-3-1102 (emphasis added) provides as follows:

> The procedure for securing court approval of a compromise is as follows:
>
> (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.
>
> (2) Any interested person, including the personal representative or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives.

[1] These alleged statements would be inadmissible hearsay had they been actually offered as evidence, which they were not.

(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

As discussed previously, however, in this case the Final Term Sheet was not executed by all competent persons. Moreover, there was no application to the Court regarding the settlement, no notice to interested persons regarding the same, and no evidentiary finding that the terms were just and reasonable. As such, the Final Term Sheet also failed to satisfy Section 62-3-1102 for multiple independent reasons.

Finally, Rule 43(k), SCRCP, provides as follows:

> No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

Although Rule 43, SCRCP is titled "Conduct of Trial," our State Supreme Court has held that it applies to settlement agreements generally, even outside of the trial context. Ashfort Corp. v. Palmetto Const. Grp., Inc., 318 S.C. 492, 458 S.E.2d 533 (1995). As explained by the Supreme Court, "the application of Rule 43(k) will increase the certainty of settlement agreements by avoiding disputes ....[T]he purpose of rules such as Rule 43(k) is: '[T]o prevent fraudulent claims of oral stipulations, and to prevent disputes as to the existence and terms of agreements and to relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself. The time of the court should not be taken up in controversial matters of this character.'" Id. at 494–95, 458 S.E.2d 533, 535 (quoting 83 C.J.S. Stipulations § 4 (1953).

That said, it appears that Rule 43(k), SCRCP does not apply to this matter for two reasons. First, it applies to agreements "between counsel," whereas the present matter involves the rights of three additional pro se parties, plus a Trust that does not have its own legal counsel. In addition, the South Carolina Probate Code already provides two statutes regarding estate settlements, one for private agreements and the other for court ordered settlements as discussed previously. Presumably, therefore, the legal maxim of lex specialis derogat legi generali would apply. That is, where two laws govern the same factual situation, a law governing a specific subject matter (estate settlements) overrides a law which only governs general matters (litigation settlements generally).

However, the Final Term Sheet also fails to satisfy Rule 43(k), SCRCP even if it could apply to the present matter. It was neither "signed by counsel," "signed by the parties," or otherwise "made in open court." Only the latter point may require some clarification. Here, though the alleged agreement may have arguably been "made" by counsel outside of court (based on Morgan Kearse's understanding of additional promises affecting the ultimate terms of the alleged agreement), the alleged agreement was not "made" by counsel "in open court" as plainly required by Rule 43(k), SCRCP.

In other words, having an agreement "made" for purposes of Rule 43(k), SCRCP is more than merely stating the words of a purported agreement on the record; it is an affirmative acknowledgment to be bound by the agreement "in open court." See Buckley v. Shealy, 370 S.C. 317, 322, 635 S.E.2d 76, 78 (2006) (emphasis added) ("Because the purported agreement the parties reached following mediation was neither entered into the court's record nor acknowledged in open court and placed upon the record, Rule 43(k), SCRCP, plainly provides that the agreement is unenforceable."). As defined in Black's Law Dictionary (10th ed. 2014), "acknowledge" means:

1. To recognize (something) as being factual or valid <acknowledge the federal court's jurisdiction>. 2. To show that one accepts responsibility for <acknowledge paternity of the child>. 3. To make known the receipt of <acknowledged the plaintiff's letter>. 4. To confirm as genuine before an authorized officer <acknowledged before a notary public>. 5. (Of a notary public or other officer) to certify as genuine <the notary acknowledged the signature as genuine>.

In the present case, however, Morgan Kearse's counsel unequivocally disavowed the settlement in open court (Transcript, p. 7, l. 23-25). Therefore, the Final Term Sheet was neither "acknowledged" nor "made" in open Court. Ultimately, "[u]ntil a party is bound, [he] is entitled to withdraw [his] assent." Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006) (holding that a settlement offer signed by each party's legal counsel with client authorization could be rescinded prior to trial).

In summary, whether one analyzes the Final Term Sheet under Section 62-3-912, Section 62-3-1102, or Rule 43(k), SCRCP, there is only one conclusion that can be drawn; the proposed settlement agreement is not and may not be legally binding under South Carolina law. Accordingly, Morgan Kearse asks the Court to amend its order to reflect that no binding settlement was reached by the parties to this matter and otherwise strikes the terms of the Final Term Sheet.

II. The Particulars of the Final Term Sheet Were Not Otherwise Before the Court.

Since the parties to this matter failed to execute a binding settlement under South Carolina law, the next question is whether the Court could have otherwise entered an order that incorporated the Final Term Sheet without a binding settlement. The answer again must be no.

The only matters properly before the Court, pursuant to the Notices of Hearing, were the Motion to Dismiss the Petition for Instruction, Motion for Summary Judgement, and Motion for Restraining Order. Therefore, at most, the Court could have (1) ruled that the Decedent's directive to build a house on Trust property could not be honored without the Trust's consent, (2) dismissed

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF ALLENDALE	)	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,	)	Case No.: 2013-ES-03-00063
	)	
Petitioner,	)	
v.	)	
	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,	)	AFFIDAVIT OF J. MORGAN KEARSE
	)	
Respondents.	)	

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17 MAR 20 PM 3:48
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

PERSONALLY APPEARED BEFORE ME, the undersigned, J. Morgan Kearse, who after being duly sworn, deposes and says:

1. I was nominated by my five siblings to serve as personal representative of the Estate of our father, G.H. Kearse, and was appointed by the Allendale County Probate Court to serve in that capacity.

2. The last will and testament of G.H. Kearse contained a directive to use his probate property to build a house on real estate owned by a trust that was previously established by G.H. Kearse.

3. Some of my siblings were in favor of building the home and some were not. Further, one sibling from each side threatened to sue me whether I took action to follow G.H. Kearse's directive to build the house or not.

4. Therefore, upon the advice of my independent legal counsel, I filed a Petition for Instruction so that the Court could resolve the contentious issue regarding the house.

5. Eventually, my siblings in favor of building the house agreed to relent on that issue (so that no house would be built) and the primary question remaining was the payment of legal fees for me, as personal representative, and for my sisters Julia Kearse Sharp ("Ms. Sharp") and Elizabeth Kearse Gooding ("Ms. Gooding").

6. My counsel has advised me that my legal fees should be paid by the Estate and that Ms. Sharp and Ms. Gooding should pay their own fees unless the court determines it would be

EXHIBIT
1
000396

the Petition for Instruction, and (3) directed Morgan Kearse to cease acting as personal representative. Though the Court may also have been prevented from reaching those conclusions to the extent that the hearing was non-evidentiary (Transcript, p.18, l. 21-25 & p. 19., l. 1-7), Morgan Kearse would take no exception to an order limited to the foregoing three conclusions.

Similarly, Morgan Kearse remains willing to resign as personal representative, and would not contest any order that accepted his resignation, even if the resignation was not properly before the Court and did not follow the procedure of S.C. Code Ann. § 62-3-610(b). Further, Morgan Kearse would not contest an order appointing Algernon Gibson Solomons, Jr., Esq. as Special Administrator, even if the appointment was not properly before the Court and did not follow the procedure of S.C. Code Ann. § 62-3-614.[2]

In contrast, not before the Court in any form that could be ruled on, and which ruling Morgan Kearse does hereby contest, were the questions of Morgan Kearse's personal representative fee and the allocation of legal fees and costs in this matter (see §§ 2-4 of the Final Term Sheet, as incorporated into the February 27, 2017 Order). Moreover, no evidence was introduced regarding these issues. Finally, it may also be noted that, despite the lack of evidence, the Court's approval of the Final Term Sheet conflicts, at least in part, with various default provisions of the South Carolina Probate Code. See S.C. Code Ann. § 62-3-720 (the estate pays the personal representative's legal fees and costs); S.C. Code Ann. § 62-1-111 (the beneficiaries pay their own legal fees and costs); and S.C. Code Ann. § 62-3-719 (the personal representative receiving a fee equal to 5% of all personal probate property, real estate sales proceeds, and income).

[2] Note that the Court appeared to state that it would require the procedure to be followed (Transcript, p. 21, l. 7-13), but evidently changed its mind by virtue of the terms of its February 27, 2017 Order.

In summary, the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code. Accordingly, Morgan Kearse asks the Court to amend its order, at a minimum, to strike sections 2, 3, and 4 of the Final Term Sheet, if not striking the Final Term Sheet and February 27, 2017 Order in their entirety.

III. New Hearing.

To the extent that the Court does not alter or amend its Order dated February 27, 2017, as requested in this Motion, Petitioner requests a new hearing so that the parties may for the first time introduce evidence regarding the issues encompassed by the Order.

CONCLUSION

Based on the foregoing, the Petitioner Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse, respectfully requests that the Court alter or amend its Order dated February 28, 2017 regarding the conclusions of law and fact raised in the foregoing Motion or, in the alternative, for an evidentiary hearing of the matters encompassed by the Order.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PETITIONER

Columbia, South Carolina
March 16, 2017

equitable to have their fees also paid by the Estate. However, Ms. Sharp has remained adamant that I should pay her legal fees.

7. Ultimately, a "Final Term Sheet" was offered by Ms. Sharp or Ms. Gooding that provided I would, in fact, pay her legal fees, but that my fees, as personal representative, and Ms. Gooding's fees could be paid from the Estate if a majority of the six siblings agreed, but if not then I would also have to pay the additional fees.

8. In response to the Final Term Sheet, I canvassed my siblings and was assured by William Gordon Kearse, Rachael Kearse Best, and Joseph Weber Kearse that they would support the Estate's payment of my fees, as personal representative, and the fees of Ms. Gooding.

9. This assurance was a necessary condition to any willingness I would otherwise have to accept the Final Term Sheet, and so I therefore sent a document to my three siblings, on February 1, 2017, for them to sign and confirm their assurance regarding the payment of fees (attached as Exhibit A). Each also told me they would sign the attached document.

10. Based on these assurances, on February 1, 2017, I also informed my counsel that I was willing to assent to the Final Term Sheet, even though I did not believe I should pay Ms. Sharp's fees, in the spirit of resolving this matter for my siblings' mutual best interest.

11. Because I fully expected the attached document to be signed by my three siblings, my counsel therefore informed the Court that a settlement had been reached.

12. Unfortunately, upon following up with my brother, William Gordon Kearse, on the evening of February 1, 2017, he informed me that he would not be signing the document after all.

13. Upon his own initiative, he then called Ms. Gooding and she angrily told William Gordon Kearse that he was not to sign my attached document.

14. Without the assurance of my fees, as personal representative, and Ms. Gooding's fees being paid by the Estate, I immediately informed my counsel that I did not consent to the Final Term Sheet, and he informed the Court the following day at the hearing.

15. In addition, I informed Rachael Kearse Best and Joseph Weber Kearse about what had transpired with William Gordon Kearse. In response, they also decided not to consent to the Final Term Sheet and did not go to the hearing.

FURTHER AFFIANT SAYETH NOT.

J. Morgan Kearse

SWORN TO and subscribed before me
this 15th day of March, 2017

Notary Public for South Carolina
My Commission Expires: 3/12/2025

Whereby the Parties, as Pro Se Respondents in this matter and as Trustees of the Kearse Family Education Trust, have reviewed the terms of the Settlement Agreement and hereby acknowledge and consent to such terms, and in addition, consent to, and upon his appointment by the Probate Court, hereby instruct the Special Administrator of the Estate of G.H. Kearse to make payment from said Estate funds for attorney fees on behalf of Elizabeth Kearse Gooding and to Sweeny, Wingate, and Barrow on behalf of J. Morgan Kearse as Personal Representative.

In witness whereof this 1st day of February, 2017.

_____

Rachael Kearse Best, Respondent

_____

William Gordon Kearse, Respondent

_____

Joseph Weber Kearse, Respondent

KEARSE FAMILY EDUCATION TRUST
DATED NOVEMBER 5, 1992

_____

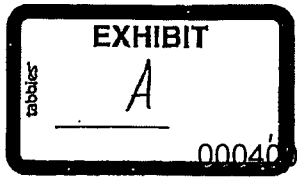
Rachael Kearse Best, Trustee

_____

William Gordon Kearse, Trustee

_____

Joseph Weber Kearse, Trustee



STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	IN THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	))))))))))))	Case No.: 2013-ES-03-00063 NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR INSTRUCTION, CONFIRM RESIGNATION OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SPECIAL ADMINISTRATOR, AND DIRECT PAYMENT OF LEGAL FEES AND COSTS

FILED FOR RECORD
17 AUG -2 AM 11:04
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

TO: STEVE M. SLOTCHIVER, ESQUIRE, ATTORNEY FOR RESONDENT ELIZABETH KEARSE GOODING; DANIEL A. SPEIGHTS, ESQUIRE, ATTORNEY FOR RESPONDENT JULIA KEARSE SHARP; WILLIAM GORDON KEARSE, INDIVIDUALLY; RACHAEL KEARSE BEST, INDIVIDUALLY; JOSEPH WEBER KEARSE, INDIVIDUALLY; AND EACH ALSO FOR OR AS THE CO-TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 05, 1992:

YOU WILL PLEASE TAKE NOTICE that the Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney, will move immediately before the Court, and does hereby move, for an order dismissing Petitioner's Petition for Instruction, confirming Petitioner's resignation as Personal Representative and the appointment of Harley Ruff, Esq. as Special Administrator, and directing payment of legal fees and costs.

This motion is made pursuant to Rule 41(a)(2), SCRCP and S.C. Code Ann. §§ 62-3-610(b), -614 & -720, and may be further supplemented by one or more Affidavits, the Pleadings, citations to relevant authority, a Memorandum of Law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

BACKGROUND

The relevant procedural and factual background was previously provided in Petitioner's Motion to Alter or Amend or, in the Alternate, for a New Hearing filed March 20, 2017, and is therefore incorporated herein by reference rather than restating the same. However, it may be added that this companion motion is made simply to ensure that all pending controversies regarding this Estate are properly before the Court for resolution.

ARGUMENT

I. Dismissing Petition for Instruction.

Pursuant to Rule 41(a)(2), SCRCP, upon the Petitioner's request, the Court may dismiss the pending Petition for Instruction "upon such terms and conditions as the court deems proper." The only Respondents formally responding to the Petition for Instruction have been Elizabeth Kearse Gooding, by way of an Answer and Motion for Summary Judgement, and Julia Kearse Sharp, by way of a Motion to Dismiss. Each of these filings requests a dismissal of the Petition. In addition, the Respondent who previously threatened legal action if Petitioner did not file the Petition for Instruction has chosen to relent on that position. Accordingly, there being no current opposition to dismissal of the Petition for Instruction, Petitioner respectfully requests that the Court dismiss the same.

II. Confirming Resignation of Petitioner and Appointment of Special Administrator.

S.C. Code Ann. § 62-3-610(b) (emphasis added) provides that "[a] personal representative may resign his position by filing a written statement of resignation with the court and providing twenty days' written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is

effective only upon the appointment and qualification of a successor representative and delivery of the assets to him. When the resignation is effective, the personal representative's attorney of record shall be relieved of any further duties to the court."

In the present case, Petitioner executed and filed his resignation on February 2, 2017, the same day as the last hearing in this matter. Therefore, there was neither twenty days' notice as required by S.C. Code Ann. § 62-3-610(b). Moreover, no person submitted an application or petition for appointment of a successor representative as required by S.C. Code Ann. § 62-3-610(b). Accordingly, so that the statute may be satisfied, this Motion is submitted both as a renewed resignation of Petitioner as Personal Representative (with 20 days' notice) as well as an application for Harley D. Ruff, Esq. to serve as Special Administrator.

As to the latter, S.C. Code Ann. § 62-3-614 provides that "[a] special administrator may be appointed: (1) informally by the court on the application of an interested person when necessary: .... (c) to take appropriate actions involving estate assets ...." In the present case, it is necessary for a special administrator to take appropriate actions regarding the Estate's assets, Harley D. Ruff, Esq. is able and willing to carry out that responsibility, it is believed that the Respondents are unanimous in their approval of Harley D. Ruff, Esq. to serve as Special Administrator, and this motion may be considered an application of an interested person.

Accordingly, the Petitioner respectfully requests that the Court formally accept Petitioner's resignation as Personal Representative and appoint Harley D. Ruff, Esq. as Special Administrator of the Estate, confirming the prior actions of each in accordance with the de facto transfer of fiduciary responsibility as need be.

III. Payment of Legal Fees and Costs.

As stated previously, the Court may dismiss the Petition for Instruction, "upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. Petitioner therefore strongly urges the Court to exercise its authority to deem it proper that Petitioner's legal fees and costs as Personal Representative, through final determination of this Court's order regarding the same, be paid by the Estate, and that Petitioner also has no obligation to individually pay the legal fees and costs of the Respondents with regard to Petitioner's Petition for Instruction.

By way of background, the purported settlement sought to be enforced by Respondents Elizabeth Kearse Gooding and Julie Kearse Sharp (as incorporated in the Court's Order dated February 27, 2017) would force Petitioner to pay their legal fees and costs, as well as his own as the Personal Representative. In addition to there being no actual settlement on this issue as discussed in the Petitioner's previously filed motion, the purported allocation of legal fees and costs is wholly inconsistent with South Carolina law, the facts of this matter, and fairness.

To begin with, Petitioner's legal fees and costs should be paid by the Estate. "If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred." S.C. Code Ann. § 62-3-720. See also S.C. Code Ann. § 15-53-20 ("Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."); S.C. Code Ann. § 62-1-301(a)(1) (giving the probate court broad jurisdiction over estate matters); S.C. Code Ann. § 62-7-201(a)(1) (giving the probate court broad jurisdiction over trustees, including an action to "instruct trustees").

In the present case, the Decedent expressed a clear intention, through his will, that his children use his probate property to build a house on property Decedent transferred to a trust created by Decedent and that Decedent placed under the control of his same children as co-trustees. As such, there is no question as to Decedent's intent, only as to whether his children were legally obligated to follow his wishes. Moreover, Petitioner faced the threat of an estate lawsuit from one of his siblings regardless of whether he followed Decedent's directive or not. Therefore, Petitioner filed a good faith Petition for Instruction to determine if Decedent's stated intentions should be followed, and has a right to have his legal fees related to the same covered by the Estate. Id.

In direct contrast with Petitioner's legal fees and costs, the Respondents have no general right to recover their private legal fees and costs from the Estate or any other party unless "the court, as justice and equity may require, may award [their] costs and expenses, including reasonable attorney's fees ... to be paid by another party or from the estate that is the subject of the controversy." S.C. Code Ann. § 62-1-111. While this is a relatively new statute for which there are no published judicial opinions to date, it should be obvious that Petitioner should not be required to pay Respondents' legal fees and costs when the Petition for Instruction was presented in good faith.

Petitioner leaves it to the Court's discretion whether the Estate may also be required to pay some or all of the Respondents' legal fees and costs in this matter, but would not oppose payment of the same if it would resolve the fee allocation issue without need of further litigation and appeals, which would harm the Estate and the familial relationships of the interested parties. However, Petitioner reiterates that his request is merely that the Estate pay his legal fees and costs through final determination of this Court's order regarding the same, and that Petitioner have no obligation to individually pay the legal fees and costs of the Respondents with regard to Petitioner's Petition for Instruction

IV. Miscellaneous.

Respondent Elizabeth Kearse Gooding's Motion for Restraining Order against Petitioner has become moot with Harley D. Ruff, Esq. assuming the responsibilities of Special Administrator, and will remain moot if his appointment is hereby confirmed.

CONCLUSION

WHEREFORE, the Petitioner respectfully prays for the Court to issue an Order that provides the following relief:

A. Vacating its Order in this matter dated February 27, 2017;

B. Accepting the resignation of Petitioner as Personal Representative and directing the Estate to pay Petitioner's legal fees and costs through the final determination of the Court's order regarding the same;

C. Appointing Harley D. Ruff, Esq. as Special Administrator of the Estate;

D. Dismissing the Petition for Instruction in this matter and ruling that Petitioner has no obligation to pay the Respondent's legal fees and costs regarding the same;

E. Such other relief as the Court may deem just and proper.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PETITIONER

Columbia, South Carolina

July 27, 2017

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for, do hereby certify that I have served a copy of the foregoing NOTICE OF MOTION AND MOTION TO DISMISS PETITION FOR INSTRUCTION, CONFIRM RESIGNATION OF PERSONAL REPRESENTATIVE AND APPOINTMENT OF SPECIAL ADMINISTRATOR, AND DIRECT PAYMENT OF LEGAL FEES AND COSTS in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

The Honorable Sheila Odom
Hampton County Probate Court
Post Office Box 601
Hampton, SC 29924
Presiding Special Judge of this matter

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
Attorney for Elizabeth Kearse Gooding

Gordon Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
6620 Merrill
Columbia, SC 29209

Rachael K. Best, Individually and as Trustee of
the Kearse Family Education Trust u/a/d Nov. 05, 1992
5055 Lakeshore Drive
Columbia, SC 29206

Dawn R. Kingsley

Dawn R. Kingsley

Columbia, South Carolina
July 27 2017

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse,
Petitioner,

-vs-

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, John Morgan Kearse, Joseph Weber Kearse, all of which are named Individually and as Trustees of the Kearse Family Educational Trust under and Agreement dated November 5, 1992.
Respondents.

RESPONDENT ELIZABETH GOODING'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO DISMISS THE PETITION FOR INSTRUCTIONS AND FOR OTHER RELIEF DATED JULY 27, 2017

BACKGROUND/STATEMENT OF FACTS

By Order of this Court dated February 27, 2017, this Court confirmed a settlement agreement between the parties in this matter, which dismissed the Petitioner's Petition for Instruction with prejudice, confirmed the resignation of John Morgan Kearse as personal representative, authorized the Court to appoint a special administrator, and directed the payment of legal fees and costs by the Petitioner, John Morgan Kearse.

On March 16, 2017, the Petitioner filed a "Notice of Motion and Motion to Alter or Amend or, in the Alternate, for a New Hearing of the Order of the Honorable Sheila B. Odom dated February 27, 2017..." The grounds of Petitioner's Motion were based entirely on the issue of the validity and enforceability of the parties' settlement agreement. The Court scheduled the Petitioner's Motion to be heard for August 17, 2017, at 2:00 PM.

On July 27, 2017, the Petitioner filed this "Notice of Motion and Motion to Dismiss the Petition for Instruction, Confirm the Resignation of the Personal Representative and Appointment of the Special Administrator, and Direct Payment of Legal Fees and Costs." Simply put, this Motion requests that this Court: 1) dismiss the Petition for Instruction; 2) confirm the resignation of John Morgan Kearse as personal representative of the estate; 3) confirm the appointment of Harley Ruff, Esq., as special administrator; and 4) to direct that Mr. Wingate, Petitioner's attorney, be awarded legal fees and costs from the estate for representing Morgan Kearse as personal representative.

This Motion was transmitted to the parties and attorneys on July 28, 2017, along with a "Notice of Hearing," which includes wording ("such other related matters as may be properly before the Court") to suggest that the Petitioner expects the Court to hear this Motion on August 17, 2017.

The Respondent, Elizabeth K. Gooding, submits to this Court that there is only one Motion properly before this Court, that is the Motion to Alter or Amend, or, in the Alternate, a New Trial, which was filed with the Court on March 16, 2017. The Motion filed on July 27, 2017, should be dismissed.

ARGUMENT

I. THE MOTION IS OUT OF ORDER AND MUST BE DISMISSED BECAUSE THE COURT HAS RULED ON ALL MATTERS ADDRESSED IN PETITIONER'S MOTION.

The Court's Order dated Feb. 27, 2017, made a final ruling on the issues raised by Petitioner's present Motion. This present Motion does not purport to request a rehearing of the subject issues. The Motion is presented as if the Petitioner is unaware that the Court has previously ruled on these matters. In fact, it is the Petitioner's attorney, Mr. Wingate,

who personally delivered to the Court at the hearing on Feb. 2, 2017, the written resignation of the Petitioner, Morgan Kearse, stating that the resignation was a "unilateral" act and "irrevocable." Following that action, the Court issued an Order dated March 20, 2017, accepting John Morgan Kearse's resignation and appointing the special administrator, Mr. Harley Ruff. No party appealed this Order and it is the law of the case and unappealable.

The Court's Order of Feb. 27, 2017, is also the law of this case. Unless and until that Order is altered, amended, or vacated, the Court's ruling is final. The Petitioner's Motion dated July 27, 2017 must be dismissed.

II. THE MOTION, EVEN IF RELEVANT, IS NOT TIMELY AND MUST BE DISMISSED.

Post-trial motions are strictly governed by the South Carolina Rules of Civil Procedure. Rule 59 specifically states that any such motion to amend or for new trial must be made **not later than 10 days of the filing or receipt of the Court's Order.** The Motion dated July 27, 2017 was filed five (5) months after the Court's Order of Feb. 27, 2017. It is referenced as a "companion motion," however it sets out totally new and different grounds and raises issues never raised at the hearing on Feb. 2, 2017.

The Petitioner waived his right to assert matters he did not properly raise in his timely filed Motion to Amend, Alter, or, in the Alternate, a New Trial.

III. IN THE EVENT THAT THE COURT SHOULD RULE TO VACATE THE FEB. 27, 2017 ORDER, RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO REMOVE THE PERSONAL REPRESENTATIVE SHOULD BE HEARD BEFORE ANY OTHER MOTIONS.

Respondent, Elizabeth K. Gooding, filed a Motion for Summary Judgment and a Motion to Remove the Personal Representative on Dec. 7, 2016. These motions were scheduled to be heard on Feb. 2, 2017, when the settlement agreement was announced, making these motions moot. The Motion to Dismiss filed by the Petitioner on Dec. 13, 2017, was after the Motion for Summary Judgment filed by Respondent Gooding.

If the Court should vacate the Feb. 27, 2017 Order, the Petitioner should not be allowed to be heard on the present Motion or any other motion, until Respondent is heard on her previously filed Motions.

IV. THE PETITIONER DOES NOT HAVE AN ABSOLUTE RIGHT TO HAVE HIS ATTORNEY FEES AND COSTS PAID FROM THE ESTATE.

On Dec. 7, 2017, the Respondent filed a Petition to Remove the Petitioner as Personal Representative of the estate. She alleged that the Petition for Instruction was a frivolous action, had no merit, and was brought by Petitioner without regard to the good of the estate or heirs. She specifically requested that he be prevented from further use of estate funds for this and that he be required to reimburse the estate for sums paid to that attorney. She simultaneously filed a Motion for Summary Judgment based on the same grounds and later filed a Motion for Restraining Order preventing further payments of estate funds by him.

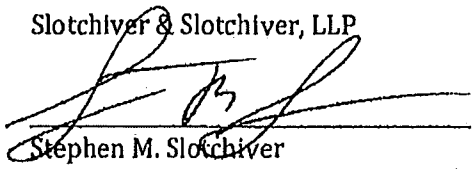
Petitioner has repeatedly referred to S.C. Code, Ann. §62-3-720, as authority for payment of his attorney fees and costs. This statute expressly provides for payment of attorney fees by the estate if the personal representative prosecutes in "good faith." Petitioner is well aware of the Respondent's long-standing objection to the payment of these fees and the basis of that objection.

The Order of Feb. 27, 2017, provides that the Petitioner shall personally pay all attorney fees and costs. That is the law of the case until and unless the Order of Feb. 27 is vacated. If the Court rules to vacate the Order, the previously filed Motions of Respondent Gooding (Motion for Summary Judgment and Motion to Remove Petitioner) should be scheduled to address the contested issue of attorney fees and costs. This issue cannot be addressed without affording the Respondent the right to be heard.

CONCLUSION

Based on the foregoing argument, the Respondent, Elizabeth K. Gooding, respectfully submits to this Court that the Motion filed by the Petitioner on July 27, 2017, should be dismissed. Further, if the Court should vacate its Order or grant a new trial, the Respondent would respectfully request that the previously filed Motion for Summary Judgment and Petition for Removal be given priority over later filed motions and scheduled for hearing at the Court's earliest convenience.

Slotchiver & Slotchiver, LLP



Stephen M. Slotchiver
Attorney for Respondent, Elizabeth K. Gooding
44 State Street
Charleston, SC 29401

15 day of August, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

Case # 2013-ES-03-00063

J. Morgan Kearse, Personal Representative
of the Estate of G. H. Kearse,
Petitioner,

-vs.-

The Kearse Family Education Trust,
William Gordon Kearse, Elizabeth Kearse
Gooding, Julia Kearse Sharp,
Rachael Kearse Best, John Morgan Kearse,
Joseph Weber Kearse, all of which are named
Individually and as Trustees of the Kearse
Family Educational Trust under and
Agreement dated November 5, 1992.
Respondents.

RESPONDENT, GOODING'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION TO ALTER OR AMEND OR, IN THE ALTERNATE, FOR A NEW TRIAL DATED MARCH 16, 2017

BACKGROUND/STATEMENT OF FACTS

The Decedent, G.H. Kearse, died testate June 10, 2013. The Last Will and Testament of the Decedent named all six of his children as personal representatives. Five of the Decedent's six children waived their right to serve in favor of John Morgan Kearse, who was then appointed as personal representative of the Estate on October 22, 2013.

The controversy among the parties arose from Item VI of the Decedent's Last Will and Testament, in which he directs the children to build a specifically described house, copied after an historic home in Virginia, known as "Gunston Hall," and directs that it be built on a specific parcel of land, which has been indisputably owned by the Kearse Family Educational Trust, since 1992 (approximately 25 years).

On April 8, 2016, the personal representative, John Morgan Kearse, filed with the Probate Court this action entitled "Petition for Instructions." All six children, including the Petitioner himself, were named as Respondents in this action. In response to a Motion to Dismiss for failure to name an indispensible party, an Amended Summons and Petition was filed on June 3, 2016, which simply added the clause in the case caption naming the Respondents both individually and as Trustees of the Kearse Family Educational Trust.

The Court scheduled pretrial motions in this matter to be heard on February 2, 2017. All parties and attorneys were properly served with notice of this hearing. The day before the scheduled hearing, the parties reached a settlement of the issues. Petitioner's attorney, Mr. Wingate advised the Court of this settlement on February 1, 2017.

By Order of this Court dated February 27, 2017, this Court confirmed the settlement agreement between the parties in this matter, which among other things, dismissed the Petitioner's Petition for Instruction with prejudice, confirmed the resignation of Morgan Kearse as personal representative, authorized the Court to appoint a special administrator, and directed the payment of all parties legal fees (including the Estate legal fees) and costs by the Petitioner, Morgan Kearse.

On March 16, 2017, the Petitioner filed a "Notice of Motion and Motion to Alter or Amend or, in the Alternate, for a New Hearing of the Order of the Honorable Sheila B. Odom dated February 27, 2017..." The grounds of Petitioner's Motion were based entirely on the issue of the validity and enforceability of the parties' settlement agreement, and filed pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. Attached to the Notice

of Motion is an Affidavit of John Morgan Kearse and also a page marked "Exhibit A." The Court scheduled the Petitioner's Motion to be heard for August 17, 2017, at 2:00 PM.

STANDARD OF REVIEW

Rule 59(e) of the South Carolina Rules of Civil Procedure provides a mechanism for parties to move the court to alter or amend a judgment within ten days following receipt of written notice of the entry of the order. The purpose of a motion to alter or amend is "to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Coward Hund Constr.Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E. 2d56,58 (Ct. App. 1999); see also *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9,21,602 S.E. 2d 772, 778 (2004).

A motion for reconsideration is not intended to give the moving party a "second bite of the apple." Under South Carolina law, Rule 59(e) of the South Carolina Rules of Civil Procedure governs a motion for reconsideration. Federal case law is also instructive on this issue, as the comments to South Carolina Rule 59 state "Rule 59 is substantially the Federal Rule." A motion for reconsideration under Rule 59(e) "should not be granted, absent highly unusual circumstances, unless the ...court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." See 389 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999); *McColl v. Williams*, 59 F. Supp.2d 556, 558 (D.S.C. 1999). Motions for reconsideration are not vehicles for providing litigants with the opportunity to re-litigate previously decided issues. *National Ecological Foundation v. Alexander*, 496 F3d 466, 477 (6th Cir. 2007).

ARGUMENT

I. PETITIONER HAS NOT IDENTIFIED A BASIS UNDER RULE 59 FOR AMENDING THE ORDER.

In South Carolina, a Motion to Alter or Amend, or for reconsideration, as it is often called, pursuant to Rule 59, SCRCP, is appropriate in two basic situations. First, "a party may wish to file such a motion when [he] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Elam v. S.C. Dept of Transp.*, 361 S.C. 9,24, 602 S.E. 2d 772,780 (2004). Second, "a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

The Petitioner's Motion does not identify any misunderstandings by the Court, and fails to identify any arguments he believes were raised, but not ruled upon. None of the arguments made by Petitioner in support of his Motion were ever made at the hearing on February 2, 2017. A party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E. 2d 436,437 (Ct. App. 1995); see also *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340,468 S.E. 2d 633 (1996).

The Petitioner chose not to attend the court hearing on Feb. 2, 2017, though he was properly notified. The Court had scheduled this hearing for the express purpose of hearing the Respondent's Motion for Summary Judgment and Motion to Remove the Petitioner as Personal Representative, as well as the Petitioner's subsequent Motion to Dismiss the Petition for Instruction. As the Court's records will reflect, the Petitioner's attorney advised the Court on Feb. 1, 2017, by telephone and in writing that a settlement had

been reached. Mr. Speights, attorney for Respondent Sharp, read the settlement agreement into the record. Mr. Wingate did not refute the terms of the settlement represented as the agreement reached between the parties, nor did he request a continuance of the hearing until such time as the Petitioner could be present to make any explanations to the Court.

The Petitioner now argues that the parties had not reached a binding settlement agreement. The Petitioner's attorney did not raise this argument to the Court on February 2, 2017, and has waived his right to now assert this argument. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E. 2d 436,437 (Ct. App. 1995); *McGee v. Bruce Hosp. Sys.* 321 S.C. 340,468 S.E. 2d 633 (1996). This Respondent submits that the Court should not allow argument on matters not raised in the Feb. 2, 2017, hearing; however, Petitioner has raised these arguments in his written Motion and the Respondent offers this limited response.

II. The Settlement Agreement is Binding on All Parties.

The Petitioner should not be allowed to argue that the settlement agreement is not binding because this issue was never raised in the hearing on Feb. 2, 2017. The Motion filed by the Petitioner is ten pages in length, not including an affidavit of the Petitioner and a document marked "Exhibit A," and having signature lines for three of the named parties (siblings: Rachael, Gordon, and Joseph), though the writing contains no signatures. Clearly, the Petitioner is attempting to argue these never-before-argued matters in a written "Motion" before the Court. The affidavit of John Morgan Kearse is an attempt to offer testimony of new issues never presented and/or argued in the hearing of Feb. 2, 2017. None of this evidence should be allowed.

Had the Petitioner intended to refute the settlement agreement, he had the opportunity to present evidence at the hearing on Feb. 2, 2017. He did not appear and do so. Petitioner's attorney acknowledged that the Petitioner told him that he would agree to the terms of the settlement agreement and, based on that information, Mr. Wingate advised the Court by letter that the parties would present the agreement to the Court on Feb. 2, 2017. (See Transcript of hearing of Feb. 2, 2017, p.5, lines4-10)

Petitioner attempts to argue that the settlement agreement cannot be binding because it does not comply with S.C. Code §62-3-912, and also §62-3-1102. Those sections have no application to this situation. Those sections govern private agreements between parties (including trusts) to an estate to alter the interest of the parties. In the present case, the settlement agreement arises from a settlement of a legal action commenced by the Petitioner against the respondents, and does not alter the interests of any parties under the Decedent's Will.

The Petitioner also argues that the settlement is not binding because it was not signed by all of the parties. The settlement agreement was signed by three of the named Respondents, who were named individually and as Trustees of the Kearse Family Educational Trust. The parties, therefore, also represent the Trust. Even though Rachael Kearse Best and Joseph Kearse did not enter a responsive pleading to the Amended Petition and are in default, they both still received proper notice of the Hearing and chose not to appear. The Petitioner did not personally appear but was represented by his attorney, Mr. Wingate, who acknowledged that, based upon his client's word, he advised the Court one day prior to the hearing that the Petitioner, Rachael Kearse Best, and Joseph Kearse all

agreed to the settlement. (Transcript of hearing of Feb. 2, 2017, p.5, lines 4-10). It is also notable that neither Rachael Kearse Best nor Joseph Kearse has filed any motion to amend the Order of Feb. 27, 2017.

To be enforceable, settlement agreements must either be entered into the court's record or acknowledged in open court and placed upon the record. *Buckley v. Shealy*, 370 S.C. 317,322, 635 S.E. 2d 76,78 (2006); *Galloway v. Regis Corp.*, 325 S.C. 541,481 S.E. 2d 714 (Ct. App. 1997), *Kumar v. Third Generation, Inc.*, 324 S.C. 284,485 S.E. 2d 626 (Ct. App. 1995). This requirement is provided by Rule 43 (k) of the South Carolina Rules of Civil Procedure.

Clearly, this settlement agreement was entered into the court's record after Petitioner's attorney advised the Court that the Petitioner had consented to this agreement. It is a long-standing and well-settled rule that an attorney may settle litigation on behalf of his client and that the client is bound by his attorney's settlement actions. *Crowley v. Harvey & Battey, P. A.*, 327 S.C. 68, 488 S.E. 2d 334 (1997); *Shelton v. Bressant*, 312 S.C. 183, 439 S.E. 2d 833 (1993); *Poore v. Poore*, 105 S.C. 206, 89 S.E. 569 (1915); *Arnold v. Yarborough*, 281 S.C. 570, 572, 316 S.E. 2d 416, 417 (Ct. App. 1984).

Contrary to Petitioner's assertion, Mr. Wingate, his attorney, did not unequivocally disavow the settlement in open court. Mr. Wingate stated, "I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be--my client would be bound to that. That very well may be what you decide..." (Transcript, p. 7, l. 18-22). Clearly, Mr. Wingate understood

that the Court was within its authority to accept his representation to the Court that his client had agreed to the terms of the settlement.

As repeatedly stated herein, the Respondent maintains that the Petitioner should not be allowed to argue any of these matters not raised at the Feb. 2, 2017 hearing. However, it is interesting to note that the Petitioner admits, as his reason for attempting to withdraw his consent, that he had unsuccessfully attempted to secure a separate, secret agreement with three of his siblings which would have effectively nullified an essential term of the settlement agreement in his favor.

Paragraph 4 of the settlement agreement states:

> "Morgan shall be responsible for the payment of your [meaning Mr. Wingate's] legal fees and Beth's legal fees. Morgan may seek to have the estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth , Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority."

The obvious intent of this term is to allow John Morgan Kearse the opportunity in the future to make a request for the estate to contribute to these fees and for the others to discuss and vote as a group on this matter. Otherwise, it would make no sense to make this a part of the settlement. The agreement could simply say that the estate would pay these legal costs, if that is what the parties agreed on.

Instead, the Petitioner attempted to get a secret, side agreement--written assurance from his siblings (with the exception of Elizabeth Kearse Gooding and Julie Kearse Sharp) to direct the estate to pay those legal fees. He did so secretly from Elizabeth Kearse Gooding and Julie Kearse Sharp because if they knew, they would realize that paragraph 4 of the settlement agreement was meaningless. In other words, he was attempting to withhold

crucial information from Elizabeth Kearse Gooding, Julie Kearse Sharp, and their attorneys (possibly his own attorney)which materially altered the consequences of their agreement. Fortunately, brother Gordon Kearse, a pro se respondent, refused to comply and the Petitioner's plot was foiled.

At that point, Respondent submits that the Petitioner had already agreed to the terms of the settlement. This secret, side agreement he was attempting to broker was not a part of the agreement put forth by the parties' attorneys and agreed upon by all.

CONCLUSION

The Respondent, Elizabeth Kearse Gooding, submits to this Court that the Petitioner has failed to present any grounds to alter or amend its Order of February 27, 2017, or for a new trial. There is no newly discovered evidence, nor are there any issues raised by Petitioner that were raised at the hearing and not decided by the Court. There is no misunderstanding or error of law to be corrected. For these reasons, Respondent, Elizabeth Kearse Gooding, respectfully requests that the Petitioner's Motion be dismissed.

Slotchiver & Slotchiver, LLP

Stephen M. Slotchiver
Attorney for Respondent, Elizabeth Kearse Gooding
44 State Street
Charleston, SC 29401

16 day of August, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

IN THE PROBATE COURT

COPY

CASE NO.: 2013-ES-03-00063

file - Kearse (pleadings)

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,

Petitioner,

vs.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,

Respondents.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

SECTION I: Hearing Information

Nature of Motion: Motion for Protective Order – J. Morgan Kearse

Estimated Time Needed: 15 mins Court Reporter Needed: ☒YES/☐ NO

SECTION II: Motion/Order Type

☒Written motion attached

☐Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

/s/ Linda S. Wingate 9/9/16

Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ 0

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: $ _____

☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

PROBATE COURT
Hampton County, SC
Filed 2:16 pm
Date 09/12/16

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	THE PROBATE COURT

COPY

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents(s).	)	Case No.: 2013-ES-03-00063 MOTION FOR PROTECTIVE ORDER AS TO THE DEPOSITION OF J. MORGAN KEARSE

Pursuant to Rules 26(c) and 30(j)(3), SCRCP, the undersigned counsel for J. Morgan Kearse moves for a protective order to preserve any objections made during his deposition on September 7, 2016, on the grounds of attorney-client or work product privileges and any directions given to him not to testify about such matters. Mr. Kearse preserves any other objections made on his behalf during the deposition, although a motion on this ground is not required.

The transcript of the deposition is not yet available, as the deposition will be continued in the future, but undersigned counsel will file it in support of this motion when it is available, and after Mr. Kearse has had the opportunity to read, note any changes, and sign the transcript. Counsel for Mr. Kearse will file a memorandum with the deposition transcript identifying those parts of the deposition in which objections were made consistent with this motion.

Therefore, Mr. Kearse requests that this Court issue a protective order preserving his objections, and barring further questioning by counsel for Respondents about such matters.

Undersigned counsel certifies that consultation with opposing counsel pursuant to Rule 11, SCRCP, would serve no useful purpose.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Emily B. McMillan
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PETITIONER

Columbia, South Carolina
September 9, 2016

CERTIFICATE OF SERVICE

I, the undersigned legal assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs, do hereby certify that I have served a copy of the foregoing MOTION FOR PROTECTIVE ORDER AS TO THE DEPOSITION OF MORGAN J. KEARSE in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daniel A. Speights
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 2940I

Gordon Kearse
P.O. Box 221
264 6th Street West
Fairfax, SC 29827

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Hilary A. Ingrum

Columbia, South Carolina
September 9, 2016

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)))	IN THE PROBATE COURT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Petitioner, v. The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992, Respondents.	)))))))))))))	Case No.: 2013-ES-03-00063 NOTICE OF INTENTION TO APPEAL

FILED FOR RECORD
2017 SEP 27 AM 11:41
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, SC

Pursuant to S.C. Code Ann. § 62-1-308(a) & 62-1-303(e), the undersigned Petitioner hereby provides notice that he intends to appeal and does appeal the orders dated February 27, 2017 and September 15, 2017, respectively, issued by Judge Sheila B. Odom, as Special Probate Judge for the Allendale County Probate Court. The February 27, 2017 order was received by Petitioner on March 6, 2017, and Petitioner filed a Motion to Alter or Amend or, in the Alternate, for a New Hearing of the same on March 16, 2017. The September 15, 2017 order denying Petitioner's said motion was ultimately received by Petitioner on September 19, 2017. A copy of both orders are attached.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Matthew J. Myers
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
Attorneys for Petitioner

Columbia, South Carolina
September 27, 2017

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

FILED FOR RECORD
2017 SEP 27 AM 11:41
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

A TRUE COPY
Sheila B. Odom Probate Judge
Hampton County SC
Date 09/18 20 17

Petitioner originally instituted this action by filing a Petition for Instructions asking this Court to interpret the last Will and Testament of Decedent, G.H. Kearse, who died testate on June 10, 2013. Respondents are the Kearse Family Education Trust ("Trust") and all of the decedent's children, individually and as Trustees, to wit: William Gordon Kearse ("**Gordon**"); Elizabeth Kearse Gooding ("**Beth**"); Julia Kearse Sharp ("**Julie**"); Rachael Kearse Best ("**Rachael**"); Joseph Weber Kearse ("**Joseph**") and John Morgan Kearse ("**Morgan**").

Respondents, Beth and Julie, by their respective counsel, Stephen M. Slotchiver and Daniel A. Speights, filed Responses to the Petition. Respondents, Gordon, Rachael, and Morgan, did not file Responses to the Petition. Respondents, Gordon, Rachael, and Joseph ("*Pro Se* Respondents"), nor Morgan (individually) are represented by counsel.

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
) CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE)

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,

Petitioner,

vs.

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

ORDER

FILED FOR RECORD
2017 SEP 27 AM 11:46
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

A TRUE COPY
Sheila B. Dillon Probate Judge
Hampton County SC
Date 02/27 20 17

The Decedent, G.H. Kearse, died testate on June 10, 2013, survived by six children: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph"); and John Morgan Kearse ("Morgan"). The Petitioner (Morgan) was appointed Personal Representative of the Estate and in that capacity subsequently retained Kenneth B. Wingate, Esq. as his counsel.

On April 8, 2016, the Petitioner filed a Summons and Petition for Instructions asking the Court to interpret the Decedent's Will. Two of the Respondents, Beth and Julie, filed responsive pleadings through their counsel, Stephen M. Slotchiver, Esq. and Daniel A. Speights, Esq., respectively. The other three Respondents (Gordon, Rachael, and Joseph) (the "Pro Se Respondents") did not retain counsel, although two (Gordon and Joseph) served Responses to the

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

AFFIDAVIT OF SERVICE BY MAIL

FILED FOR RECORD
2017 SEP 27 AM 11:42
ELAINE SABBRN
CLERK OF COURT
ALLENDALE COUNTY, SC

Re: Estate of George H. Kearse
Case No: 2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing Order this 3rd day of March, 2017, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

Kenneth B. Wingate, Esquire
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
PO Box 12129
Columbia, South Carolina 29211

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

J. Morgan Kearse, Esquire
Kearse Law Firm, LLC
Post Office Box 521
184 Barnwell Highway
Allendale, SC 29810

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Gordon Kearse
Post Office Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
3rd day of March, 2017

Tammy W Shaffer (L.S.)
Notary Public for South Carolina
My Commission Expires: 3-3-2019

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992..... Respondents.

STATEMENT OF ISSUES ON APPEAL

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ELECTRONICALLY FILED - 2017 Nov 03 10:54 AM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

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STATEMENT OF ISSUES ON APPEAL

I. Did the probate court err in denying the appellant's motion to alter or amend or amend?

II. Did the probate court err in ruling that a binding settlement agreement had been reached between appellant, respondents, three other individuals, and all of them as co-trustees?

III. Did the probate court err in otherwise ordering the payment of appellant's and respondents' attorney fees pursuant to the invalid settlement agreement?

IV. Did the probate court err in accepting appellant's resignation of personal representative and appointment of a successor personal representative without meeting the requirements of S.C. Code Ann. § 62-3-610(b) and S.C. Code Ann. § 62-3-614?

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

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Columbia, South Carolina
November 1, 2017

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

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J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992..... Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Statement of Issues on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on November 1, 2017, addressed to Daniel A. Speights, Esquire, Speights & Runyan, Post Office Box 685, Hampton, SC 29924; Stephen M. Slotchiver, Esquire, Slotchiver & Slotchiver LLP, 44 State Street, Charleston, SC 29401; Gordon Kearse, P.O. Box 22, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

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Columbia, South Carolina
November 1, 2017

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF ALLENDALE

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G. H. KEARSE,

Petitioner,

vs. CASE NO. 2013-ES-03-00063

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

BEFORE THE HONORABLE SHEILA B. ODOM

DATE: February 2, 2017

TIME: 11:17 a.m.

LOCATION: Hampton County Courthouse
One Elm Street West
Hampton, SC

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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THE COURT: This matter is before this Hampton Probate Court by Order of the Supreme Court of South Carolina dated June 16, 2016. As special probate court judge in this matter, let the record reflect these case numbers assigned to this case, Allendale County Probate Court case number to this case, 2013-ES-25-03-00063, and the Hampton County Court case number assigned, 2016-ES-25-0114.

At last we were to convene in December of '16, there was a Motion to Dismiss, a Petition for Instruction that was filed. As a matter of housekeeping, this Court is just going to reiterate what the record reflects for Hampton County. We then had a Motion for Summary Judgment filed December 12, '16, and since we've had a Petition for Removal filed as well as a Motion for Restraining Order.

Mr. Wingate, you filed that Amended Petition -- I'm sorry -- the Amended Motion for Instruction, and --

MR. WINGATE: Yes, Your Honor.

THE COURT: -- there were several issues I know that we're going to address about these pending motions, and I'm not exactly sure what agreements you all have reached and where

y'all feel you need to begin.

MR. WINGATE: If I may give you a little bit of background from that point -- I'll stand here if this picks up a little better. Of course today's hearing, when originally scheduled and as noticed, is for the purpose of hearing a couple of motions. First one filed was my motion to withdraw the petition for instructions or, I should say, to withdraw the Amended Petition for Instructions, just as you indicated.

I believe also on today's docket is at least one other motion, which I believe the next one would be Mr. Slotchiver's Motion for Summary Judgment on his petition that came in later to remove the Personal Representative.

I reached out to the Court, I believe it was yesterday, indicating to Your Honor that the parties had reached a settlement, and if I may, it's important to understand, one, the issue of who represents whom. I represent Morgan Kearse in his capacity as Personal Representative of the Estate. Mr. Slotchiver represents Ms. Gooding. Mr. Speights represents Ms. Sharp. And then there are three other siblings who are beneficiaries of the Estate, all of whom are pro se. If I may just

use their first names, there's Gordon, there's Joseph, and there's Rachael. None of us as attorneys represent any of those parties.

I was told by my client yesterday that he would agree to the terms of a settlement agreement and on that basis I wrote the letter to Your Honor indicating as much and requesting that rather than a motions hearing today that we would be present together to read a settlement into the record and to consent to that.

I also was told by my client that the other pro se parties would also sign the document, the settlement, and that I would be provided those signatures. As we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and I cannot present it to you. They are not my clients. I have no control over them. I don't have that.

Secondly, my client is now going to take a step -- if I may approach.

THE COURT: Yes, sir.

MR. WINGATE: I've handed --

MR. SPEIGHTS: Would counsel identify what he's handed the Court?

MR. WINGATE: I've got a copy for you. I want her to see what it is and...

MR. SPEIGHTS: Thank you, Your Honor.

MR. WINGATE: And so my client, Your Honor, would like to take a unilateral step and submit a letter -- not a letter -- a pleading announcing his resignation as Personal Representative.

Now, as the Code indicates and as Your Honor is aware, a Personal Representative cannot automatically resign because, as it says in the Code, such resignation is not effective until one of two things happen, at least 20 days after all parties have been given notice -- so that would go out today after this conversation -- or until the Court appoints a successor Personal Representative or Special Administrator, but my client in his capacity as Personal Representative is so frustrated with the state of affairs that he hereby, this minute, submits his resignation to Your Honor irrevocably.

I have instructed him, as I told my

opposing counsel yesterday, that when we thought there was a settlement, first of all -- certainly now that there's a resignation -- that all of his authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do, for this estate.

I realize that, regrettably, this creates quite a conundrum for the Court, for me and my client, and for all the beneficiaries of this estate, for which I apologize; however, his position will be that he does not consent to the settlement; rather, he resigns as Personal Representative.

I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be -- my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent. Thank you.

THE COURT: Thank you.

Mr. Speights, how are you this morning?

MR. SPEIGHTS: Good morning, Your Honor. I told Mr. Gooding when we walked in this morning that I think I've come full circle. Forty-five years ago I clerked for Judge Bill Rhodes, and the first matter we ever heard was an appeal from Judge Ellis of the probate court, and it was the most convoluted mess I had ever worked on, but it was good training for a young lawyer back then.

I thought I came to court today to read something into the record and be back in my office in ten minutes. Having said that, Your Honor, on behalf of Julie Kearse Sharp, my client, I believe we have a settlement, and at the end of the day, and hopefully in only about ten or fifteen minutes, I'm going to ask Your Honor to enforce the settlement. It's something a lot of people worked on long and hard late into the night, and I thought we had everything worked out.

The settlement is part of a term sheet. It is a term sheet. And the settlement provides -- we agreed that I would read the term sheet into the record. I have -- am going to ask to be marked as

Exhibit 1 a copy of the term sheet, and attached to that are three e-mails between the parties, the first one from me to Mr. Wingate and Mr. Slotchiver, the second from Mr. Slotchiver giving his consent, and the third from Mr. Wingate giving his consent.

And in addition, Your Honor, I have -- and I would like that term sheet with those attachments marked as Exhibit 1, and next I have another e-mail from Mr. Wingate to -- from Mr. Wingate to Mr. Slotchiver and me advising us that the other siblings have consented to the settlement. And if I could mark those as Exhibit 1 --

MR. WINGATE: Could I just glance at one and assure they're what I sent you? I'm sure they are.

MR. SPEIGHTS: Sure.

THE COURT: For clarity, when you refer to the other siblings, that would be the pro se.

MR. SPEIGHTS: The pro se siblings.

THE COURT: Thank you.

MR. SPEIGHTS: And --

THE COURT: And the representative.

MR. SPEIGHTS: And just before I hand

those up, I also have three copies of the term sheet. Well, let me go ahead and mark these as one and two and then I have three more documents to mark.

That's one.

(EXH. 1, Final Term Sheet, e-mails dated January 31, 2017, and February 1, 2017, was marked for identification.)

MR. SPEIGHTS: Then, Your Honor, I'd like marked as Exhibits 3, 4, and 5 the consent of my client, Julie Kearse Sharp, on the term sheet; the consent of Elizabeth K. Gooding, Mr. Slotchiver's client; and the consent of W. Gordon Kearse, who is one of the pro se parties to the case.

MR. WINGATE: Can I see those a moment?

(EXH. 2, E-mails dated January 31, 2017, and February 1, 2017, was marked for identification.)

(EXH. 3, Final Term Sheet with signature of Julia Kearse Sharp, was marked for identification.)

(EXH. 4, Final Term Sheet with signature of Elizabeth K. Gooding, was marked for identification.)

(EXH. 5, Final Term Sheet with signature of W. Gordon Kearse, was marked for identification.)

MR. SPEIGHTS: Now, Your Honor, I am required under the settlement to read the full Final Term Sheet into the record. I'm going to hand you a copy of it and so -- it's also now marked an exhibit, but I'm handing you a copy. And fortunately it's short so I don't have to read for 20 minutes to get it into the record.

Will you hand that to her?

The term sheet provides as follows: Morgan will immediately resign as the personal representative. Effective immediately, Morgan will not disburse any more Estate funds. A. G. Solomons shall be appointed as the Special Administrator of this Estate; if A. G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

Two -- and we, by the way -- parenthetically, let me add we refer to the parties by first names in order to avoid confusion.

Two: Julie will not object to Morgan retaining the previously paid $25,000 P.R.

commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

Three: Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

Four, Morgan shall be responsible for the payment of your legal fees -- parenthetically, Mr. Wingate's legal fees -- and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

Five, Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the

building from decay and depreciation, pays taxes, and carries hazard insurance to ensure full replacement in the event of destruction.

Six, all parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Now, Your Honor, on behalf of Julie Kearse Sharp, and I am sure that Mr. Slotchiver is going to speak as well, I believe we have a settlement from all of the papers I have provided to you. Absolutely we have a settlement with Mr. Wingate's client, Morgan Kearse, represented to us by Mr. Wingate dealing with us, I'm confident in good faith, representing to us that his client had agreed to the settlement.

So the only question is the other -- and we have the signed consent to the settlement by Gordon, which leaves two so-called pro se defendants out there, which I don't have written authority from them to you today. That would be Rachael and Joseph, of which Mr. Wingate has represented to us in his letter, leaving aside oral discussions, that they were on board with the

settlement, and I believe that Mr. Wingate believes that they were on board and had consented.

I don't know what, if anything -- I don't know the circumstances of -- concerning those two, but I will tell you, Your Honor, I think they are bound to the settlement because they represented that they were -- had consented to it to Mr. Wingate, and in reliance on that we all have come here today to approve the settlement. I am not even sure that their consent is needed. I'll leave that to Mr. Slotchiver to deal with in a little while, but, in any event, I know of no reason why we can't go forward with the settlement.

The worst thing in the world is for everything in this matter to unravel and us start all over again, and if we had a bad war before, we're going to have a nuclear war now if this thing unravels.

With that, Your Honor, I may speak after Mr. Slotchiver or Mr. Wingate. We're here today to ask Your Honor to enforce the settlement as reflected in the documents I've handed to you, with the consents and representations contained in those documents, put this matter behind us, and hopefully Algie Solomons will agree to be the

personal representative as agreed to by the parties and Mr. Solomons can then wrap this up to everybody's satisfaction. Thank you, Your Honor.

THE COURT: Thank you.

MR. SLOTCHIVER: Your Honor, if I may, briefly.

THE COURT: Yes, sir.

MR. SLOTCHIVER: First, Your Honor, I'm Steve Slotchiver, representing Beth Gooding. I came today with an envelope containing three things: A blank yellow pad, a copy of an e-mail I got from Mr. Wingate confirming the settlement, and for some reason I put in there a copy of the memorandum that I submitted to the Court yesterday, and that was it. The reason being is that up until about 30 minutes ago, I was unaware we did not have a settlement.

As Dan had mentioned -- Mr. Speights had mentioned, all parties had agreed. But let's now talk for a moment about the parties that have not agreed or may not have agreed in terms of the two unrepresented individuals. I candidly cannot fathom how they could be remotely possibly negatively impacted by this agreement because the agreement calls for, as Mr. Speights has read into

the records, for John Morgan to be financially responsible for his attorney's fees, for my client's attorney's fees, for Mr. Speights' client's attorney's fees, not for the Estate to be responsible for it, not for Rachael Best to be responsible for it, not for Joseph Kearse to be responsible for it, but for John Morgan to be responsible for it. And now, for them to allegedly back out or to back out, whatever it may be today, does not make any sense.

We were here for this purpose. John Morgan's -- John Morgan Kearse's -- excuse me, Your Honor -- his counsel informed not only us but informed Your Honor that this case was settled. We were here -- he was not even going to be present today until I spoke with him yesterday saying I cannot not show up for a motion hearing that I filed. I didn't want the Estate to incur the additional expense or for his client to incur the additional expense, but I just could not do that, which is why I think he's here today. So I would ask Your Honor to enforce the settlement as Mr. Speights had mentioned.

Separately, just for housekeeping -- it's only because of my own OCD -- the Motion to

Dismiss was actually filed about four or five days after the Motion for Summary Judgment. I filed that first. I think I -- it was dated the 7th and I filed it on the 8th, and I think Mr. Wingate's Motion to Dismiss was dated the 8th but not filed until the 13th or so, and I just wanted Your Honor -- or I wanted the record to reflect that as well.

THE COURT: Thank you.

MR. SLOTCHIVER: Okay. Thank you, Your Honor.

MR. WINGATE: If I may, Your Honor.

THE COURT: Yes, sir.

MR. WINGATE: And I certainly don't take any exception to what Mr. Slotchiver said, if he said the dates are what they are. And as often is the case, for what it is worth, and it may be worth very little, I think the attorneys have dealt very professionally and honorably with each other. This is not about lawyer infighting. And as I have apologized to these gentlemen, I apologize again to the Court for where we find ourselves today.

The issue, Your Honor, is this has been a long and tortured estate. It's been open far longer than the average, as you are aware from the record, and it is one in which Morgan -- they refer

to him as John Morgan, the Personal Representative -- was asked to take on this duty. I know we're not here for evidence, but I'm here to explain myself professionally to this court.

The issue is, from my client's perspective, fraud or mistake in the inducement in being told that he could rely upon this settlement. What am I referring to? One of the family members who is pro se, Gordon, whom I do not know, wouldn't know him if he walked into this room, according to my client, told my client that he would support Paragraph 4 of the settlement agreement that Mr. Speights just accurately read into the record, the provision in second sentence that the Estate would pay legal fees if a majority of the other siblings, and it names them, would consent.

Morgan had the consent of four of six and therefore said yes to the settlement. His position -- and it will be argued another day in court -- I realize this --

MR. SPEIGHTS: If I could, Your Honor, I'm just going to object, but you can go ahead. Probably don't need to object, but this is not evidence and we're not considering evidence, and clearly it's double or triple hearsay and we --

Morgan's not here nor anybody else is here, but I have no problem with, just for background, Mr. Wingate wants to give his impression, but Mr. Wingate doesn't know.

MR. WINGATE: I was just getting ready to say this is not testimony. I am not attempting an evidentiary hearing. I agree with Mr. Speights. I will not continue any further explanation other than to say his position -- Morgan's position is that he does not consent to the settlement due to fraud or mistake in the inducement. He does resign as Personal Representative of this estate --

THE COURT: Thank you.

MR. WINGATE: -- irrevocably. Thank you.

THE COURT: The Court is to understand that the Final Term Sheet is the summarization of the exhibits that were entered into the record. Is that correct, Mr. Speights?

MR. SPEIGHTS: The Final Term Sheet stands on its own as a settlement agreement. What I've entered into the evidence would be the e-mails which circulated the term sheet --

THE COURT: That derived to.

MR. SPEIGHTS: -- and the comments of

counsel agreeing to it.

THE COURT: Okay. I'm going to take a moment. I'm going to take these exhibits and just review them, Madam Court Reporter.

Thank you.

There are a lot of assumptions that this Court could draw from in the presentation and timing of the consent agreement, when all parties essentially were to have agreed to this agreement, and then the statement of resignation signed by Mr. Kearse, which of course being February 2, 2017. There's no way for the Court to draw conclusions from the assumptions that the Court can obtain from the issues as to why Mr. Morgan all of the sudden does not now agree with the agreement that was presented and that all parties allegedly agreed upon.

Being the -- what I would refer to as the 11th hour that this is not an agreed upon by all parties exclusively agreement any longer, the Court is left in a conundrum because I have nothing further from Mr. Kearse what all of a sudden he doesn't agree to specifically in the agreement, and having found -- this particular time with nothing further on that except that he just is going to

resign and doesn't agree and all parties having been present this morning to present this agreement, the Court finds no other way at this point to move forward other than to, A, accept the agreement into the court record, and, B, accept the appointment of resignation of Mr. Kearse.

Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of him to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons, and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary.

And if there is nothing further, the Court is going to enter into the record that this Final Term Sheet of agreement be filed as a family agreement and that the record will reflect that the order provided to this court on behalf of either Mr. Slotchiver and Mr. Speights to state that this order will be entered into the record and accepted on the terms as it is on the face of the agreement itself.

MR. SPEIGHTS: Thank you, Your Honor.

THE COURT: Thank you.

MR. SLOTCHIVER: Thank you, Your Honor.

THE COURT: If there's nothing further, the court is adjourned.

(EXH. 6, Statement of Resignation, was marked for identification.)

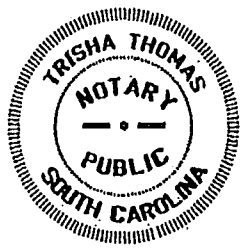
(The hearing was concluded at 11:51 a.m.)

CERTIFICATE OF REPORTER

I, Trisha M. Thomas, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of February, 2017, at Hardeeville, Jasper County, South Carolina.



T Thomas

Trisha M. Thomas,
Court Reporter
My Commission expires
February 2018

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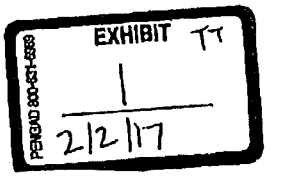
FINAL TERM SHEET

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

2. Julie will not object to Morgan retaining the previously paid $25,000 P.R. commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.



5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Tab

1

Dan Speights

From:	Dan Speights
Sent:	Tuesday, January 31, 2017 9:01 PM
To:	Ken Wingate (kbw@swblaw.com)
Cc:	Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights
Subject:	Confidential Settlement Offer
Attachments:	07 Draft Term Sheet.pdf

Ken,

Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

This offer will remain open until noon tomorrow unless we agree otherwise.

The ball is in your court.

Dan

CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY

– DRAFT TERM SHEET –
(NOT APPROVED BY CLIENT)

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

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6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Tab

2

Dan Speights

From: Steve Slotchiver <steve@slotchiverlaw.com>
Sent: Tuesday, January 31, 2017 10:39 PM
To: Ken Wingate (kbw@swblaw.com); Dan Speights
Cc: Stephen M. Slotchiver
Subject: Re: Confidential Settlement Offer

Ken

I apologize for not getting back to you sooner. I had 2 Hearings today and had planned to call you first thing tomorrow. That said, I saw Dan's below email providing a draft of a settlement proposal that his client is willing to agree to and wanted to let you know (as well as Dan know), that I have sent the proposal to my client and she agrees as well.

Let me know if John Morgan is in agreement so we can finally put this matter to bed. Thanks

Steve

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
843-577-6531 (phone)
843-577-0261 (fax)
steve@slotchiverlaw.com

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Sent from my iPhone

On Jan 31, 2017, at 9:00 PM, Dan Speights <dspeights@speightsrunyan.com> wrote:

> Ken,
>
> Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.
>
> If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.
>
> This offer will remain open until noon tomorrow unless we agree otherwise.
>
> The ball is in your court.

Dan

<07 Draft Term Sheet.pdf>

Tab

3

Dan Speights

From: Ken B. Wingate <KBW@swblaw.com>
Sent: Wednesday, February 01, 2017 10:47 AM
To: Dan Speights
Cc: Steve Slotchiver (steve@slotchiverlaw.com)
Subject: RE: Confidential Settlement Offer

Dan and Steve:

Thank you for your emails last evening. As I told Dan a few minutes ago by phone, this email hereby confirms that Morgan also agrees to the terms set forth in the Settlement Offer.

I will send a letter to Judge Odom this morning, notifying her that we have reached an agreement. Dan plans to attend Thursday's hearing for the purpose of reading the agreement into the record, and will have a court reporter present. I do not plan to attend the hearing in person, but would be available by phone if any further questions arise.

I look forward to working with you on any remaining formalities, such as a stipulation of dismissal of the Petition for Instructions, a formal resignation by Morgan if the court desires one, etc.

Ken

SWB

Kenneth B. Wingate | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

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From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Tuesday, January 31, 2017 9:01 PM

To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights
Subject: Confidential Settlement Offer

Ken,

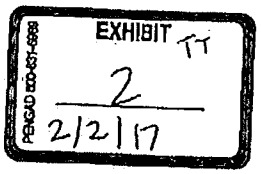
Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

This offer will remain open until noon tomorrow unless we agree otherwise.

The ball is in your court.

Dan



From: Ken B. Wingate KBW@swblaw.com
Subject: RE: Confidential Settlement Offer
Date: Feb 1, 2017, 4:17:47 PM
To: Steve Slotchiver Steve@slotchiverlaw.com, Dan Speights dspeights@speightsrunyan.com

Steve and Dan:

I spoke to Morgan again at 4:15pm, and have confirmed the following:

1. Joseph, Gordon and Rachael are each signing the agreement this afternoon, and I'll have copies of their signatures with me at the hearing.
2. I alone will attend the hearing on behalf of Morgan, for reading the agreement into the record. Morgan, Joseph, Gordon and Rachael will NOT attend.

Anything else needed before tomorrow?

Ken

From: Steve Slotchiver [mailto:Steve@slotchiverlaw.com]
Sent: Wednesday, February 01, 2017 3:02 PM
To: Ken B. Wingate; 'Dan Speights'
Subject: RE: Confidential Settlement Offer

Ken,

Any update?

Steve

From: Ken B. Wingate [mailto:KBW@swblaw.com]
Sent: Wednesday, February 01, 2017 12:29 PM
To: 'Steve Slotchiver'; Dan Speights
Subject: RE: Confidential Settlement Offer

Steve:

I'm in the process of obtaining signatures from Gordon, Rachael and Joseph to indicate their consent. I'll confirm to you when we have them in hand.

As for attendance at the court tomorrow, I have a concern about asking all the siblings show up. I expect their presence could spark unnecessary fireworks based on prior patterns of interaction. Written consents should be adequate. Do Julie and/or Beth plan to attend?

This email also confirms that I've spoken to Morgan about writing checks on the estate account. He understands and consents to an immediate moratorium on all checks or disbursements, effective

this minute, unless all siblings request in writing that he sign a check.

Ken

From: Steve Slotchiver [mailto:steve@slotchiverlaw.com]
Sent: Wednesday, February 01, 2017 12:07 PM
To: Ken B. Wingate; Dan Speights
Cc: Stephen M. Slotchiver
Subject: Re: Confidential Settlement Offer

Ken and Dan

I just saw the chain of emails. Candidly, I would prefer that all interested parties, including John Morgan and each of his siblings be present to place on the record their consent to this Agreement; that said, I'm not dead set on it in light of the fact that I understand that Ken's letter to the Court will confirm that he has personally spoken with Joseph, Gordon, and Rachel to confirm their consent to the Agreement.

Separately, there is a motion hearing set for 10:45 on the restraining order that I previously filed. I would like Ken's letter to the Court to also confirm to the Court that John Morgan will not write any checks from the estate account (regardless of the reason) until and unless he obtains the written consent of all of his siblings. As we all know, although the agreement has been reached, it may take some time to have the successor personal representative appointed , as well as transfer the bills and accounts to him , which is why there may be some bills that need to be paid (I just don't want John Morgan to pay any bills without the approval of my client and her siblings. Thoughts?

Steve

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
843-577-6531 (phone)
843-577-0261 (fax)
steve@slotchiverlaw.com

CONFIDENTIAL / PRIVILEGED / WORK PRODUCT / FOR NEGOTIATIONS ONLY

Sent from my iPhone

On Feb 1, 2017, at 11:15 AM, Ken B. Wingate <KBW@swblaw.com> wrote:

Dan:

Will do.

I also called the clerk of the Hampton County Probate Court, April Murdaugh, and advised her that we have reached a settlement. I requested permission to not attend the hearing, and she said she'll confirm that with Judge Odom.

Thanks,

Ken

From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Wednesday, February 01, 2017 10:51 AM
To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com)
Subject: RE: Confidential Settlement Offer

Thanks, Ken. Please include in your letter that all the other siblings have agreed to the settlement. I can only speak for Julie and Steve can only speak for Beth. I know that you ad Morgan have gotten everyone to sign off.

From: Ken B. Wingate [mailto:KBW@swblaw.com]
Sent: Wednesday, February 01, 2017 10:47 AM
To: Dan Speights <dspeights@speightsrunyan.com>
Cc: Steve Slotchiver (steve@slotchiverlaw.com) <steve@slotchiverlaw.com>
Subject: RE: Confidential Settlement Offer

Dan and Steve:

Thank you for your emails last evening. As I told Dan a few minutes ago by phone, this email hereby confirms that Morgan also agrees to the terms set forth in the Settlement Offer.

I will send a letter to Judge Odom this morning, notifying her that we have reached an agreement. Dan plans to attend Thursday's hearing for the purpose of reading the agreement into the record, and will have a court reporter present. I do not plan to attend the hearing in person, but would be available by phone if any further questions arise.

I look forward to working with you on any remaining formalities, such as a stipulation of dismissal of the Petition for Instructions, a formal resignation by Morgan if the court desires one, etc.

Ken



Kenneth B. Wingate | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

T § 803-256-2233
F § 803-256-9177

Web | Bio | Email

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From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Tuesday, January 31, 2017 9:01 PM
To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights

Subject: Confidential Settlement Offer

Ken,

Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

This offer will remain open until noon tomorrow unless we agree otherwise.

The ball is in your court.

Dan

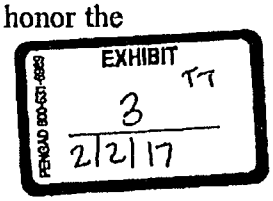
FINAL TERM SHEET

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

2. Julie will not object to Morgan retaining the previously paid $25,000 P.R. commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.



I Consent
Julia Kearse Sharp

5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

tl Consent
Julia Kearse Sharp

FINAL TERM SHEET

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

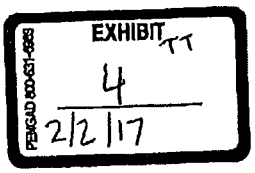
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I CONSENT:

Elizabeth K. Gordon



5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

I CONSENT:
Elizabeth K. Gooding

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

2. Julie will not object to Morgan retaining the previously paid $25,000 P.R. commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael,

I CONSENT:
W Gordon Keane

EXHIBIT TT
5
2/2/17
PENGAD 800-631-6989

Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

I CONSENT:
/s/ Gordon Kearse

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)
IN THE MATTER OF:)
G.H. Kearse)
(Decedent))

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

CASE NUMBER: 2013-ES-03-00063

I, J. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 20 17

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: J. Morgan Kearse
Print Name: J. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearsebwallendale.com

ORDER

With the appointment of _____ as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of _____ shall be terminated.

Executed this _____ day of _____, 20_____.

_____, Probate Court Judge

FORM #335ES (1/2014)
62-3-610

PROBATE COURT
HAMPTON COUNTY, SC
FILED
DATE 2/2/17
TIME 11:43 AM

EXHIBIT TT
6
2/2/17
PENGAD 800-631-6989

APPEARANCES

PRESIDING THE COURT:
The Honorable,
Sheila B. Odom

FOR THE PLAINTIFF:
Matthew J. Myers, Esquire
Sweeny, Wingate & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201

FOR THE DEFENDANTS:
Representing Julia K. Sharp
Daniel A. Speights, Esquire
Speights & Solomons, LLC
Post Office Box 685
100 Oak Street, East
Hampton, South Carolina 29924
Representing Elizabeth K. Gooding, Esquire
Stephen H. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, South Carolina 29401

ALSO PRESENT:
Ms. Rachael Kearse Hast
Mr. William Gordon Kearse
H. Woodrow Gooding, Esquire

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EXHIBITS

NO EXHIBITS WERE MARKED FOR THIS DEPOSITION.
*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

OPENING STATEMENT BY THE COURT

THE COURT: Good afternoon.

MR. SPEIGHTS: Good afternoon, Your Honor.

THE COURT: Scheduled motion hearing this afternoon from a motion filed on March the 16th, 2017 on the motion, the motion to alter or amend or in the alternate for a new hearing for the order dated February 27th, 2017. Mr. Wingate?

MR. MYERS: Mr. Myers --

THE COURT: Mr. Myers?

MR. MYERS: -- on behalf of Morgan Kearse.

THE COURT: Okay. Mr. Myers, Mr. Wingate filed this motion with the Court as the Court stated in February, and due to this Court's misunderstanding there was some time in the space of the filing of the motion scheduling of the hearing. Albeit we are here today for that motion, so if you would just present that motion for the Court's record, please, sir.

OPENING STATEMENT BY MR. MYERS

MR. MYERS: Yes, Your Honor. If there's nothing further, again, my name is Matt Myers, and I'm here on behalf of Morgan Kearse as the initial Personal Representative of the Estate of G.K. Kearse.

As you say we filed a motion to reconsider an order that confirmed a proposed settlement agreement that was put forth February 2nd, two thousand -- of this year. And also a second motion to address any loose ends that remain in the Estate if in fact the -- that order is voided.

There's been a lot of confusion about that tentative settlement agreement. As you've seen a lot of back and forth, but ultimately, it was never consummated and has been flip -- flipped forth we would argue unreasonably about some of the family members at the expense of this Estate.

And so we thank you for the opportunity to set the record straight on this matter. Although, I'm Morgan's attorney, my goal is to be objective about this and about -- as possible as we can. And I certainly welcome the Court to seek the independent wisdom of the proposed special administrator to see if, you know, what he may feel is in the best interest of the Estate.

So the confusion dates back to a final term sheet, specifically, Item 4 of that final term sheet that was drafted by Julia Sharp's Counsel and provided to Morgan through Mr. Wingate. And Item 4 says that Morgan would individually pay Ms. Sharp's attorney's fees and his own attorney's fees as the personal representative unless the majority of the siblings, which there are six, agreed otherwise. And so, consequently Morgan took that and immediately canvased his siblings to see if in fact they would hold him accountable for -- try to hold him accountable for his own legal feels and the legal fees of Ms. Sharp.

And -- because that was a material term to Morgan. He was not going to agree to pay fees that under law we feel strongly that he doesn't have an obligation to pay. And then so when canvassing those siblings --

MR. SPEIGHTS: Excuse me, Counsel, just a minute.

MR. MYERS: Your Honor, if I --

MR. SPEIGHTS: Won't take but a second. I'm going to object to Counsel summarizing what might be in an affidavit or testimony. But I have no problem if you're hearing him out in full, subject to my objection. I may move to strike what's not in the record. He's explained Morgan's position and to me that's not under oath before the Court.

THE COURT: So noted.

MR. SPEIGHTS: Again, go ahead with anything you want so long as I'm protected on the record.

THE COURT: So noted. Thank you. And --

MR. MYERS: Well, thank you, Your Honor. And as to that point I'll just say that Rule 6D of the South Carolina Rules of Civil Procedure allows us to provide an affidavit with our motion, which we have done so.

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Mr. Morgan Kearse has provided his affidavit, which as an exhibit includes the agreement that he gave to Gordon, Rachael and Joseph, the other siblings, which would make four siblings, including Morgan that supplements that Item 4 of the final term sheet and would prevent Morgan from having to pay fees that we don't think he has to pay.

So as he explained in his affidavit, which is valid evidence before this Court under the rules of procedure, Morgan got that oral affirmation, but then through, I guess influence we -- we are not really quite sure why Gordon changed his mind, but he did change his mind. And so with that there was no agreement. And although, the parties wanted there to be a settlement and Morgan was willing to actually pay Ms. Best -- excuse me -- Ms. Gooding's fees when we don't feel like --

MR. J. MORGAN KEARSE: Sharp.

MR. MYERS: I'm sorry, Ms. Sharp's fees when we don't feel like he should have to, that agreement didn't formulate. There was, again, that Item 4, there was an agreement about that incorporated into the agreement that was not fulfilled, and so with that there was no agreement.

Far from being secret Morgan was actually

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obtaining signatures by the Pro Se parties that would have helped fulfill that agreement. So, ultimately, however, it was another sibling as we said that changed Gordan's mind evidently and he withdrew his oral consent and would not sign that document.

So -- but regardless of what Morgan did or didn't do, the fact remains the Pro Se siblings have simply not signed off on anything and they didn't go to Court to affirm the settlement -- proposed settlement, nor have -- nor has the trust spoken for that matter. There are six trustees who have to act under the terms of this trust unanimously and that's simply has not been done.

As such there's no agreement under the various standards under South Carolina Law which includes Section 62-3-912, which is in regard to settlement agreements on successors to estates. 62-3-1102, which is Probate Court Code procedure for securing a compromise for Rule 43K, which is regarding settlements generally.

So, none of these standards have been met. And the proponents of the proposed settlement have not put forward a alternate standard upon which the proposed settlement could be accepted. So we're certainly within one or more of those standards. Again, none of

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which have been met.

As the Supreme Court said specifically as to Rule 43K these formalities are necessary, "To prevent disputes such as the existance of terms of agreements and to relieve the Court of the necessity of determining such disputes." The time of the Court should not be taken up with controversial matters of this character. Of course, that's exactly what we're doing today.

Ms. Best's memorandum on the -- of law does address Rule 43K. She claims that it was satisfied simply by "entering into the Court's record the proposed settlement." Well, that's not standard under 43K. It has to be both signed by counsel and entered on the record. That's one of the ways to get the settlement approved.

Here the term sheet didn't even include -- well, not only was it not signed by counsel or anyone else, it didn't even have blanks for signatures. So that standard of 43K which was not met. Moreover, Mr. Wingate unequivocally came to that hearing and stated Morgan Kearse had backed out of the settlement. His quotes include his position, meaning Morgan, will be that he does not consent to the settlement, which is Page 7, Lines 14 through 16.

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Again, his position, however, is that -- is what I have said. Number 1, he resigns. Number 2, he does not consent. It's Page 7, Lines 23 to 25.

So -- and the Supreme Court is quite clear on this. The Farnsworth Case that I've cited in my brief that's even in the motion -- and I've got copies here if anyone wishes to see that -- but the Supreme Court allowed counsel to offer a settlement and then when that piece of paper in writing was signed by the opposing counsel that -- the offering counsel rescinded that agreement before it was entered into the record. And so Supreme Court's quite clear about the formalities have to be met, and if they're not met there is no settlement.

Moreover, Mr. Wingate also advised as to the lack of consent by the Pro Se parties and said, "As we stand here this morning I'm afraid to announce to the Court that two things have changed. Number 1, I have not been provided copies of any documents from the Pro Se litigants consenting to the settlement. So where as I was told that I would be able to present that to you, I do not have that and could not present it to you." It's Page 5, Lines 14 through 20.

So, in addition to the formalities not being met to the substantive issue here, Ms. Gooding also raises

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a particular argument that we are somehow raising new issues through our motion to reconsider. Well, if, you know, quite frankly, we looked at the transcript and that's all this is about, whether there was a settlement or not. That's not a new issue. That was the issue of that hearing. And of course, the reason why we're unfortunately here today.

Ms. Gooding also argues that we are re-litigating it. However, that's not the case. This 59 is a well known and a longstanding rule that allows judges to reconsider their decisions and that's all we're asking hear and giving the Court a chance to do.

We believe that the settlement agreement or proposed agreement is legally deficient on its face, so that hearing being non-evidentiary, this one being non-evidentiary, other than the affidavit that was allowed to be presented, some agreement simply is deficient on its face.

So then assuming that's enough to dispense with the fiction that this family reached an agreement we can also address the PR second motion, which is simply intended to help the Court and this family resolve all the open issues before it. As such, the second motion is not untimely as argued by Ms. Best, but merely anticipates a clean slate so to speak if the Court was

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to propose a settlement. Ms. Gooding --

MR. SLOTCHIVER: Your Honor?

MR. MYERS: -- I misspoke, it was not Ms. Best's argument that was untimely but rather Ms. Gooding. So Ms. Gooding also recerts that her --

MR. SLOTCHIVER: Your Honor?

THE COURT: Yes, sir?

MR. SLOTCHIVER: I would re-iterate Mr. Speights' objection on the first motion. I don't think this motion's properly before Your Honor at all at this stage. I don't think it's been noticed --

THE COURT: So noted, and that objection is sustained.

MR. MYERS: Well, Your Honor, would you allow me to proffer the argument for the benefit of the Court on the record or do you want me to -- because the rest of my argument is about the second motion.

THE COURT: The second motion? If you would, just stop where you are.

MR. MYERS: Thank you, Your Honor.

THE COURT: Thank you.

MR. MYERS: But if I may close I just -- I do ask -- reiterate that I do ask the Court to rescind its prior order because it was not a settlement. I believe that if we can -- if the family can start from a clean

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slate they can -- my hope was reach a compromise or come to a follow up hearing where we do resolve the key issue. The Estate's position again is to anticipate that future hearing or further litigation that, you know, Morgan Kearse should not be required to pay his own expenses for simply trying to help his family as personal representative, so, we ask for fairness and we ask for mercy because this family is set to -- to destroy their father's legacy and that's all we're trying to prevent.

And again, I would welcome the Court to seek the wisdom of the independent special administrator that I don't think anybody has any problem with to access what is in the best interest of this family.

THE COURT: Thank you.

MR. MYERS: Thank you.

OPENING STATEMENT BY MR. SPEIGHTS

MR. SPEIGHTS: May it please the Court, Dan Speights representing the Respondent Ms. Julia Kearse Sharp. When I appeared before you in February, Your Honor, I indicated to you it'd been a long time since I'd been in the Probate Court. I had anticipated I'd be back within six months, but thank you for entertaining the motion.

Let me just comment on something that's not on my

Page 13

outline, which Counsel brought up in his last sentence about the desire to heal all these divisions and get this family down the road again. Unlike most people in this courtroom other than siblings I knew Rip Kearse. I practiced law at the time Rip Kearse was practicing law and I'll assure you he would --

MR. MYERS: Objection, Your Honor --

MR. SPEIGHTS: -- like to resolve --

MR. MYERS: -- as I would like to re-iterate what Mr. Speights said earlier, that's certainly not in the record and would be inadmissible pursuant to the Dead man's Statute, so --

MR. SPEIGHTS: I'm not going to say anything that Rip Kearse said. I just knew him. And I'm sure that Counsel would agree that he would like this matter resolved.

MR. MYERS: Objection. I --

THE COURT: Thank you.

MR. MYERS: -- can't speak for me --

MR. SPEIGHTS: That's fine.

MR. MYERS: -- or for Mr. Kearse --

MR. SPEIGHTS: Well --

THE COURT: Sustained.

MR. MYERS: -- and he's not --

THE COURT: Move along, Mr. Speights.

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MR. SPEIGHTS: I was --
THE COURT: Thank you for the history, but I -- I do appreciate it but --
MR. SPEIGHTS: -- I was going to talk about the efforts made before your last hearing, but I'll move along. I appreciate it, Your Honor. Keep us all on track. I appreciate that.
Your Honor, as with the last hearing I'm going to refer to the siblings by first name to avoid confusion. That's unusual. I'm usually pretty formal and address them. And I would tell you, Your Honor, that for a number of separate reasons this motion is without merit. I will say at the outset that I don't understand how the motion is being made by Morgan as the personal representative because he is not the personal representative and has not been for some period of time as I will deal with in a minute. His lawyer told us at the last hearing that he was resigning effective immediately. [Inaudible response] function of getting somebody else in, but he told us -- and told us that he resigned back on February -- I think it's February 21. Now I'm not sure what effect that has legally. I'll let my probate lawyer Mr. Slotchiver address that if it comes up, but I think it's important to note that that is the only party that

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is before Your Honor in support of the motion. That is nobody else filed the motion to alter or amend. None of the others have -- or appeared at the last hearing, only Morgan as a personal representative appeared at the last hearing. And I say that because most of my comments will be addressed to Morgan and his appearance through Mr. Wingate at the last hearing.
Now, I'm not suggesting that the other siblings don't have a remedy if they disagree with what Your Honor rule. They have a remedy. Rule 59, the rule he proceeds under, specifically provides that the time to appeal your decision is suspended if anyone files a motion to alter or amend. He just filed the motion to alter or amend. And if you've denied the motion, as I hope you will, Morgan individually, Morgan, if he qualifies as a personal representative and any other sibling can file an appeal and Judge Buckner or somebody else will hear the appeal. So I'm not here saying that they've got to go home and this decision of yours is locked in concrete. They have an avenue. It's an appeal. But they've got a very tough road to hold to get you to reverse or reconsider a decision that was made after a full record. They have a tough road to hold because under Rule 59 to file a motion to alter or amend and support it, which is not unheard of,

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but it's rarely granted because lawyers always want a second bite out of the apple. And we had a full and complete hearing in which Morgan Kearse was represented by counsel before you on February 21. And I would say to Your Honor that there is nothing new, or at least nothing that could not have been shown you, back on February 21. You can't just come in and say I want to mulligan. You can't just come in and say, well, I'd like to add this additional evidence if you knew about it back then. Otherwise, lawyers would be back to courts all the time. I mean, it would be like if you rule against us today then we could file a motion to reconsider. And if you rule one way or the other on that seems like you're going to -- or the Wingate Firm could file a motion to reconsider. This could go on forever and that's the reason the court very narrowly construe when it's appropriate to file a motion, we call it reconsider. Technically, it's a motion to alter or amend.
So Your Honor, I'd like to go back to the hearing. And what's most interesting about their brief is what they do not contest. They do not challenge almost all of the fundamental findings you made in your order. Your order says the parties have reached a global agreement. That's undisputed. We can deal with the

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technical issue in a minute, whether it was properly reduced to a certain form, etcetera, etcetera, but there's no question the parties reached a global agreement. Indeed counsel just told you three minutes ago that Morgan backed out. So there was an agreement. There is no dispute about that. In fact, it's all over the record before you when Mr. Wingate was here as a representative of Mr. Kearse, the personal representative at that time. Mr. Wingate further advised the Court -- I'm reading from the order -- an email before the hearing, "Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record." And we did do that. We read it into the record. And you had a trail of emails where everybody confirmed there was a settlement. No, as I'll get to in a minute, we didn't sign the document because we're in different locations. These big corporations, they complete deals by -- doing emails all the time. You have written evidence from emails from Mr. Wingate, from me and Mr. Slotchiver confirming that we had an agreement. And Mr. Wingate advised you, as you found in your order, that the other siblings were in agreement. And I'm sure Mr. Wingate believed that. I'm not cascading Mr. Wingate for telling you that because he was apparently informed by Morgan that the

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	IN THE PROBATE COURT CASE NO. 2013-ES-03-00063
J. MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE OF G.H. KEARSE, PLAINTIFF, VS. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, AND JOHN MORGAN KEARSE, OF WHICH ALL ARE NAMED INDIVIDUALLY AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 5, 1992, DEFENDANTS.	HEARING PROCEEDINGS

THE WITHIN HEARING WAS TAKEN BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 2:05 P.M., THURSDAY, AUGUST 17, 2017 AT THE HAMPTON COUNTY COURTHOUSE, PROBATE COURT, SECOND FLOOR, 1 COURTHOUSE SQUARE, HAMPTON, SOUTH CAROLINA.

REPORTED BY
SUESAN L. RICHARDSON

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so called Pro Se litigants had agreed to. And so, everything was in place until we arrived on that morning. And I learned for the first time, no prior telephone call, that somehow Morgan was withdrawing his consent.

Now, we heard all that. Mr. Wingate resigned and this is what he says after he resigned, "I am certain, Your Honor" -- and this is in your order, and it's in the hearing -- "I am certain, Your Honor, will hear arguments today that once I had represented to the Court yesterday in writing that we had a settlement that my party would be -- my client would be bound to that." He knows what we argued. We didn't spring a surprise. That very well may be what you decide. His position is how -- what I have said, Number 1, he resigns. Number 2, he does not consent. So -- and Mr. Wingate was here when we put in the evidence. He didn't object to the introduction of the evidence. He understood we were going to argue that and he told the Court that he understood you might rule against him on that. And you did. So there was no surprise and there's no basis for a reconsideration. Again, they want to appeal to Judge Buckner and say you should've done something differently, they can file that appeal anytime after this hearing in the designated time.

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Then Your Honor we get the affidavit of Mr. Kearse in support of this motion on behalf of Morgan Kearse. Again, I object to the affidavit for reasons I will explain without having an opportunity to cross-examine the witness. I'm sure Morgan can take the stand and he can say what he said in that affidavit. I hope we don't get to that. We've had enough fuel on this fire already, but if we do, we do. But just take the affidavit as completely true. Let's just assume it's true. I don't concede it's accurate, but let's assume everything is the truth. What Morgan says in his affidavit is everything I've said is right. Everything Mr. Wingate said is right but at some point later that evening that he could not secure an agreement that he prepared, a separate agreement, which he never served on Beth or Julia, okay? A separate agreement among the other siblings that they would support his fee petition in this Court for fees. So there was a breakdown there. And there's a breakdown apparently between Gordon -- and I am not going to say anything bad about Gordan. Gordon is -- Gordon is, Your Honor, respected by all parties to this litigation. But as -- supposedly his breakdown in communication leading to Morgan according to his affidavit to pull the plug. But we weren't a party to that and we don't know what

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the disagreement was. We don't -- we don't -- we don't accept Morgan's affidavit, which is double hearsay that Gordan told him what Beth told him and etcetera, etcetera. But it doesn't matter. That was not -- he did not have the right to withdraw his consent to an agreement carefully negotiated to prevent the parties from doing -- from going through all this, which everybody agreed was fair. Because he thought that he might have trouble getting the Court to approve his fees.

Now, Counsel did a nice job in his presentation, but he made fundamental mistake, and I think -- and I assume that it was an honest mistake. He told the Court that Morgan could not get paid unless there was consent of the majority of the parties. That's not what the agreement says, the term sheet. The term sheet is Exhibit 5 in the prior hearing. And the paragraph says, "Morgan shall be responsible for the payment of your legal fees," which is Wingate's fees, "of your legal fees and Beth's legal fees." Then it adds, "Morgan may seek to have the Estate pay all or some portion of those legal fees." He has that right. "In such event if the majority of the other siblings, Gordon, Beth, Rachael, Joseph and Julia do not object to the Estate paying such fees Julia will honor the

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decision of the majority." That's all it says. He doesn't say that he couldn't get fees approved. All this provision is that he knew that Julia, for reasons I'll be glad to explain, but I think again (inaudible response) if I tried -- that Julia would not agree to pay Morgan's fees. Okay. So, the compromise that was worked out was, Julia despite whatever strong feelings she had about that would not object if the majority of her brothers and sisters didn't object. But if everybody objected but Morgan he could've come in and asked you to approve his fees. That was not a condition, not as counsel said, "unless." He has every right to do that if this agreement is enforced. And I personally don't know what Beth and Joseph and Gordan and Rachael will do. I know what my client will do. She will -- she will sit back if the majority support it and if the majority don't support it she will probably object to it. But he is misreading the agreement. That's all the agreement provides on that score and I urge your -- and I call on the agreement of course is the term sheet and I invite Your Honor to read that provision. I think I have accurately stated what it is.

Now, let me deal with the one argument that I think he relies on primarily. He talks about -- well,

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this agreement -- it's a technical argument that, believe me, I appreciate technical lawyers. It's a technical argument because we didn't both cross our -- cross all the Ts and dot all the Is to get this agreement enforced. And I tried to address it briefly a moment ago and I'm sure Mr. Slotchiver has some comments on this as well.

First of all, Mr. Wingate informed the Court before the hearing that there was a written settlement agreement. Secondly, we introduced both the agreement and the term sheet and the emails verifying that there was an agreement agreed to by all the parties into the record without an objection. Third, in his affidavit, Morgan acknowledges that there was a term sheet which was a settlement agreement. And finally, Counsel has said today that Morgan pulled out of the settlement agreement. So I think the requirement -- you know, the Supreme Court is understandably weary of settlement agreements coming into the record and the parties come along and say I disagree with this provision. I disagree with that provision. They said, wait a minute, there must be evidence that there was an agreement and there's some consent by all the parties to the agreement. That's what's involved here so people won't come along and say, well, he agreed to

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give me a Chevrolet and there's nothing in the record to support it or -- support that at all. So there are requirements. Two requirements for you to get an agreement enforced. But in this instance everybody agrees that there was an agreement and everybody told the Court there was an agreement before the hearing. So Your Honor, I think technically as, you know, as to [inaudible response] as well.

Now, Your Honor, I mentioned earlier that when I objected to the affidavit, and I mentioned it again in my presentation that if the Court feels like it should go beyond the legal arguments to resolve this matter then I would turn to Your Honor and say, that is if you want to rely on this affidavit in some ways being pivotal, and I don't think it matters, okay, then at the completion of the arguments I would want to present some testimony to refute the allegations of that affidavit. Mr. Slotchiver is now going to address another.

MR. MYERS: Your Honor, I would like to address some of his factual statements now or wait for closing arguments?

THE COURT: If you would wait for --

MR. MYERS: Yes, Your Honor.

THE COURT: Thank you.

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OPENING STATEMENT BY MR. SLOTCHIVER

MR. SLOTCHIVER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. SLOTCHIVER: I'm going to be brief because Mr. Speights has covered the majority of the points that I wanted to raise. I want to bring up a couple things, Your Honor, for your consideration.

One is, had any of the Pro Se litigants wanted to challenge Your Honor's order that was issued back in February they had the opportunity and not one of them did. None of the individuals that allegedly no longer were in agreement to this term sheet, the settlement showed up at that hearing knowing full well, I'm assuming, that their brother John Morgan Kearse was going to rescind his consent. They never filed a motion to alter or amend Your Honor's order. And as Mr. Speights mentioned, the only one that did came from the -- from Mr. Kearse -- John Morgan Kearse, who is no longer the personal representative.

Second point, Your Honor, is that -- and I mentioned this during this hearing that was held back in February, I cannot fathom in any way, shape or form how any of the Pro Se litigants or any of the beneficiaries of this Estate, Your Honor, could be harmed by the settlement that was reached and approved

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by Your Honor. The essence of that settlement that Your Honor [inaudible response], one, allowed -- or not allowed, but had the services of John Morgan Kearse ended, terminated where the Court was going to appoint another individual to serve, and as Mr. Wingate had mentioned during that hearings his client was separately irrevocably resigning at that hearing. And Number 2, to require that all legal fees incurred at that point by my client, by Mr. Sharps' -- Mr. Speights' client -- excuse me -- and by the Estate would be paid for individually by John Morgan Kearse. So there's absolutely no potential detrimental impact that could've incurred to any of the individuals.

One of the things that John Morgan Kearse's attorney has raised is that -- and referring to the [inaudible response] agreement statute, Your Honor, which really I don't think is applicable here. Because to have a proper [inaudible response] in our settlement all individuals that are impacted must be a party to it. Well, the other individuals could not have been impacted. They could not have been damaged by this. Their only actually bettered off by this, Your Honor.

And I apologize, I think that Mr. Speights had mentioned this as well, if he didn't I'm going to state it now and if he did bear with me for just a moment.

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There's never been a dispute about the terms of what that settlement was. The term sheet was a term sheet was a terms. Everybody agreed that's what we were talking about. That's what was being addressed. Your Honor, with that said I've got nothing else at this time.

THE COURT: Okay.

MR. SLOTCHIVER: I have nothing else at this time.

THE COURT: Okay. Thank you.

MR. SLOTCHIVER: Thank you, Your Honor.

MR. MYERS: Redirect, Your Honor.

MR. SPEIGHTS: Your Honor, I am -- I meant to hand over you a copy of the term sheet if you didn't have one in front of you. I have an extra for you, but I know you had it in the record.

THE COURT: I have it in the record. Thank you.

MR. MYERS: Your Honor, if I may just take a couple moments. I've heard the statement made several times here today that everyone was in agreement. Everyone was not in agreement. There was no signature from Joseph, from Gordon and Rachael. And, Morgan exercised his right to say no, Your Honor, there was not an agreement. The Supreme Court's been clear on that. Again, the Farnsworth case 367-SC-634 where there was a written agreement, which we don't even have

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here and the part about the counsel rescinding that. The Supreme Court said, yes, we're going to make sure that we honor the technical rules of 43K because we don't want to have to look at emails back and forth and change going this way and that way. We need a clear way to decide how to resolve things, and unfortunately this family hasn't resolved things. Now they've tried to say that Joseph and Rachael have no objection to what's going on here today, and I don't represent them but I will tell you, Your Honor, they are here today and I would submit that they do, and that they do have --

MR. SPEIGHTS: Well, wait a minute. If I can't talk about Mr. Rip Kearse, I believe --

MR. MYERS: Retract -- retracting, Your Honor.

MR. SPEIGHTS: -- he can't report what the other people will say.

MR. MYERS: Retracting, Your Honor. I will say that they are subject to a substantial detriment if this agreement is not voided because there's going to be an appeal. Morgan's not simply not going to carry everybody's weight when he's not legally entitled to or obligated to, and so, this whole family's going to suffer. So we're not asking for a mulligan. We're full well of our appeal rights and we'll use those if

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necessary but we're asking for mercy that you could help us avoid that path by voiding that agreement and letting folks resolve this on a reasonable basis.

They mentioned the affidavit. I'll just touch on that. Rule 60, it's clear we can provide Morgan's affidavit and they've got the opportunity to provide counter affidavits, which they didn't do. But Your Honor, you don't even have to reach that. As I said, and as the term sheet shows on its face there was no agreement under the standards of South Carolina Law and I think that is the one sentence that resolves everything. Thank you.

THE COURT: Thank you.

MS. RACHAEL KEARSE BEST: Your Honor, I'm Rachael Kearse Best.

THE COURT: Yes, ma'am.

MS. RACHAEL KEARSE BEST: I'm one of Rip Kearse's children. May I have an opportunity to speak?

THE COURT: Is there any objection from any parties here present?

MR. SPEIGHTS: Your Honor, I reluctantly have to object, which I don't what Ms. Best wants to say, but I'm afraid that it will wander into testimony. First of all, she's not a party. She didn't give notice that she wanted to speak. I don't know what it is she

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contends to now, and if we go down the road of what she intended or didn't intend, or what her daddy wanted or didn't want, I think we've got -- gotten far a feel from what the narration before this court is. I think Counsel has properly, although, I disagree with him, properly stated the issue before the Court, the fundamental issue, was this an enforceable agreement? And I don't think anything Ms. Best will say would add or subtract from that.

MS. RACHAEL KEARSE BEST: I am a party to this and I feel like I have a -- need to have an opportunity to speak. I know we're in Hampton County and things kind of work differently, but I do think I need -- I deserve an opportunity to speak.

THE COURT: But you didn't file anything separate on behalf to represent your --

MS. RACHAEL KEARSE BEST: I did not but I'm a party to this.

THE COURT: -- for today's --

MS. RACHAEL KEARSE BEST: And I should be able to speak.

THE COURT: Okay. Well, we're going to go off the record for a moment and I would like to have both Counsel and Ms. Gooding in chambers.

[Briefly off the record from 2:44 p.m. to 3:01 p.m..]

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THE COURT: Thank you, you may be seated. Yes, sir?

MR. SPEIGHTS: Your Honor, I must respectively continue with my objection. I believe for a host of reasons, but that's most importantly we would go down lengthy roads that we do not need to go to if Ms. Best is heard from and if in the event you feel like you need to hear from Ms. Both -- Best then I would request, Your Honor, have an evidentiary hearing later and anybody can testify if they want to talk about the things which I believe -- we -- Ms. Best raised with us. I'm not trying to disparage Ms. Best or anybody else here. I think it's -- the issues have been squarely T'd up and lastly I want to say Ms. Best did not file a response to the pleading and petition. That may or may not prevent her from being heard from. She did not appear at the previous hearing despite modifying incorrectly. Had she had notice of the previous hearing and she did not file a motion to alter or amend or join in Morgan's alter or amend here. That's why I stood up and said, you know, she's springing this up normally, and I don't think it's appropriate. But again, Your Honor, I understand she may try to appeal your -- today if she does not prevail on your order of February. And with that I -- I just

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would say, Your Honor, I'd be very concerned to allow Ms. Best to make any presentation not under oath and if you're going to take sworn testimony, I believe it should be an evidentiary hearing and we'd probably have all the siblings come and testify.

THE COURT: Thank you. I respect your input on that, sir. And sir?

MR. MYERS: And if don't --

THE COURT: And sir, as well?

MR. MYERS: -- if you don't mind, Your Honor, for the Estate, we would just simply say that since there have been allegations that [inaudible response] that everyone was in agreement and that we are the only party in support of voiding the proposed agreement, we just think that opens the door to, at a minimum, just Joseph and Rachael telling the Court if they wish to that they are not in agreement. That's the Estate's perspective on that issue.

THE COURT: Thank you. The Court is going to respectfully decline your -- your request to be heard this afternoon, Ms. Best. I asked all Counsel and yourself to go into chambers to discuss any new evidentiary issues that may be needed to be presented to the case. And based upon the presentations back to the Court as a result of that meeting apparently

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there's nothing further that could be added that has not been added already. So the Court is respectfully declining your request to be heard at this time.

And I believe we left off before that short recess. You were going to respond to Mr. Speight's presentation, Mr. Myers.

MR. MYERS: I believe I did, Your Honor. Again, that -- just in case you missed any or part of that. There's been a lot of statements that everybody's in agreement. I think that the term sheet reflects that there was not an agreement. And that can't be backdoored against the [inaudible response] law in South Carolina.

MR. SPEIGHTS: The only thing I would say in response to that in one sentence, Mr. Wingate advised the Court that everybody was in agreement.

MR. MYERS: And Your Honor, Mr. Wingate, of course, doesn't represent the Pro Se parties. And to you, if I may, end on a lighter note a lame analogy. Many of us get engaged and announce to the world we're getting married, but when we find out something untort about the future spouse we do not get married and the marriage is not consummated. Unfortunately, that's the -- what's happened here.

CLOSING STATEMENT BY THE COURT

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THE COURT: Thank you. All right. I'd like to thank you all, all parties involved this afternoon. It is a family matter and generally family matters this Court does not go without saying I understand there are usually heated arguments and all sorts of issues and feelings and emotions involved in those and y'all have maintained your positions and respectfulness to one another especially in this courtroom. So, outside of that it really does not matter to me, but in this courtroom you have done so and I appreciate that, both from the attorneys and from yourselves.

Having said that, the order of this Court this afternoon from the bench would be that the motion to alter and amend, to reconsider, however, it's been put twice, both ways twice today in this -- this proceeding, that order is going to be denied for several reasons that the Court has made abundant notes on in going back and forth with this after its filing.

Primarily, No. 1, Mr. Wingate had an opportunity on behalf of his client prior to the hearing, even being heard that morning on that motion on presentation of this proposed agreement. He asked for no continuance. There was no correspondence, rather email, telephone call, anything from Mr. Wingate on behalf of his client to give them more time to present

further why that agreement should not be taken into consideration and received into this Court record as it was presented many different ways on the day before that the parties were all in agreement. That being the first, there was no continuance asked for.

Number 2, no testimony was offered that morning by Mr. Kearse or by any of the Pro Se parties. There has been nothing filed with the Court record from the Pro Se parties from the date of that hearing to current date.

And No. 3, Mr. Wingate offered emphatically into the Court record on that day the resignation of Mr. Kearse as the personal representative.

So for those three primary reasons alone the Court had been informed that the agreement was made, was going to be presented and read into record in the morning of February -- forgive me, I -- February 27th it was read into the record and presented by -- that morning. We did not have a court reporter but we do have the tape recording of that proceeding.

And so for those basis alone the Court is denying your motion to alter or amend, and the motion to dismiss. Also, for the resignation by Morgan Kearse in that impart presentation that you made before the Court sustained the objection for your presenting that

motion is denied as well.

And Mr. Speights, the Court would ask that you prepare an order in regards to these proceedings today within 10 days if at all possible, Sir.

MR. SPEIGHTS: Yes, Your Honor, glad to.

THE COURT: And, the Court does realize as it has been stated this will be appealed. That is your privy. That is your right. This Court does sincerely hope that this family will be able to peacefully resolve these issues. If there's nothing further, this Court is adjourned.

MR. NYERS: If I may clarify? Your final order will not be rendered until the proposed order is signed?

THE COURT: Correct.

MR. NYERS: Thank you, Your Honor.

MR. SPEIGHTS: Thank you, Your Honor.

(WHEREUPON, AT 3:10 P.M., THE PROCEEDING OF THE ABOVE-ENTITLED MATTER WAS RECESSED.)

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STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)IN THE PROBATE COURT)CASE NO. 2013-ES-03-00063
J. MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE OF G.H. KEARSE, PLAINTIFF, VS. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, AND JOHN MORGAN KEARSE, OF WHICH ALL ARE NAMED INDIVIDUALLY AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 5, 1992, DEFENDANTS.	)))))))))))))))) HEARING PROCEEDINGS

Be it known that I took the foregoing hearing; and for the State of South-Carolina-at-large;

The foregoing transcription represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 28th day of October, 2017.

Suesan L. Richardson, Notary Public for SC
Notary in and for the State of South Carolina
My Commission Expires: August 24, 2027

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LAST WILL AND TESTAMENT
OF
G. H. KEARSE

STATE OF SOUTH CAROLINA **COUNTY OF ALLENDALE**

I, G. H. KEARSE, of the County and State aforesaid, being of sound and disposing mind, memory, and understanding, and desiring to make such disposition of my wordly estate as I deem best, **DO HEREBY MAKE, PUBLISH, AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT,** hereby revoking any and all former Wills and Codicils whatever by me made.

ITEM I

I direct the payment by Personal Representative of all my just debts and funeral expenses as soon after my decease as may be practicable.

ITEM II

It is my wish and desire my body be cremated, and I direct my Personal Representative to make arrangements and do so timely. I direct two of my children to accompany my remains to the crematorium, inspect the oven for cleanliness, observe my remains being placed in the oven, await the completing of the process, observe the removal of my ashes, observe the processing of the ashes, and return home with my ashes. It is my will and desire that my ashes be divided into three equal parts with one part being placed in the ground on the vault of my mother; that the second part be scattered around the fig tree in the field on the Kearse Place where my grandparent's home once stood, and the third part buried on the grave of General T. J. Jackson in Lexington, Virginia.

Bridget Wood

(L.S)

Alice M. Kirkland

ITEM III

I give, devise, and bequeath to my beloved son, **John Morgan Kearse**, the use and contents of the office for the duration of his practice, including, but not limited to, furniture, typewriters, computers, books and contents for so long as he practices law. In the event his practice is terminated for any reason, it is my will and desire that another member of my family, with priority in degree of kinship, to use as **J. Morgan Kearse** has used the personal property, with the same restrictions as applied to the successor of **J. Morgan Kearse**.

ITEM IV

In the event my beloved son, **John Morgan Kearse** quits practicing law, it is my wish the property I have bequeathed to him for the term of his practice in **Item III** be used by successive members of the family in the practice of law or other endeavor, and that the members of the **Kearse Educational Trust** honor my wish regarding the contents being used in an office without cost to the user, as I have instructed **John Morgan Kearse** and set out in the Trust Deed which is recorded in the office of the Clerk of Court for Allendale County in Deed Book 177 at page 127 on October 5, 2005. It is my intention that I not convey any descendant a remainder interest or any vested interest that would allow them to liquidate or partition my estate.

ITEM V

I wish to explain the reason for the forming of the Kearse Education Trust and the drawing of my will in support of it. I wish to see the property owned by the Kearse's, for so long, remain in the Kearse family. And secondly that it be handled to benefit those in the family that otherwise would not receive an education. It is my opinion that an education is very important in a person's life. The more education you receive the better opportunity you will have to perfect their chosen field. I would like the income from the Trust be used first to pay the taxes and then to educate the young people of the family. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

Bridget Woods

H Kearse (L.S.

Alice M. Kirkland

-00502

It is my intent that only blood descendants of my family be allowed to receive any benefit for educational purposes, excluding all other persons. It should be conservatively administered and a fund maintained designated as the ad valorem tax fund to protect the place from taxes. During the 1928-1929 depression the cost of the taxes to the property owner resulted in homeowners losing their businesses, homes, and farms and it can happen again.

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust property, and I do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted". I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

Bridget Wood

(L.S.)

Olive M. Kirkland

-00503

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

ITEM VII

I give, devise, and bequeath all the rest; residue, and remainder of my property, both real and personal, of which I may die seized or possessed or to which I may be entitled to at the time of my decease, to the **Kearse Educational Trust,** to be perpetuated and enlarged for the benefit of my descendants first, and then to other children who may be in need of aid for an education, in whatever amount the Trustees deem appropriate short of jeopardizing the Corpus, if so determined by the **Kearse Educational Trust** Board members, absolutely and forever, in fee simple. (See the **Kearse Educational Trust.**)

ITEM VIII

I give, devise, and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the **Kearse Educational Trust** to be held in reserve by the Trustees of the said Trust to pay future ad valorem taxes on the real estate after all monies have been exhausted from the Trust, that is rent or proceeds from timber. It is my will and desire that an annual inventory of liquid assets be made and, if entrusted to an individual's care, a surety bond be provided, and that there be no lending or use of the money, except as the Board of the Trust approves. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

ITEM IX

I hereby nominate and appoint my beloved six (6) children, **W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Anne Kearse Sharp, Rachael Kearse Best, J. Morgan Kearse, and Joseph Kearse** as Trustees and Personal Representatives of this My Last Will and testament, and I hereby direct that the Trustees and Personal Representatives be allowed to serve without posting any surety or sureties on her official bond.

Bridget Woods _____ _____ (L.S.)

Alice M. Kirkland _____

-00504

Should any devisee, legatee, beneficiary, or trustee of this Will or of the trust agreement contest the validity of this Will or any provision thereof or attempt to prevent any provision from being carried out in accordance with its terms in legal proceedings or otherwise, then any interest provided for such beneficiary and his or her descendents is revoked and such beneficiary shall be deemed to have predeceased me for all purposes under this Will.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal to this My Last Will and Testament, at Allendale, South Carolina, this 16th day of May, in the Year of Our Lord Two Thousand Eleven.

G H Kearse (L.S.)

SIGNED, SEALED, PUBLISHED, AND DECLARED by the said **G. H. KEARSE,** as and for his Last Will and Testament, in the presence of us, who in his presence, at his request and in the presence of one another, all present together, have hereunto subscribed our names as witnesses.

Bridget Woods **Address** Allendale, SC

Alice M. Kirkland **Address** Allendale, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

PROOF OF WILL

WE, G. H. KEARSE, Bridget Woods **AND** Alice M. Kirkland the Testator and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as his Last Will and Testament on the 16th day of

-09505

May, 2011, and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the Testator, signed the Will as witnesses and to the best of their knowledge, the Testator was at that time Eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(L.S.)
G. H. KEARSE

Bridget Woods

Alice M. Kirkland

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY G. H. KEARSE, the Testator, and subscribed and sworn to before me by Bridget Woods and Alice M. Kirkland, the witnesses, this 16th day of May, 2011.

Elaine S Ferguson

Notary Public for South Carolina
My Commission Expires: 1/15/2019

00506

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
G. H. KEARSE)
(Decedent))

IN THE PROBATE COURT

ACCOUNTING

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
16 MAR 31 AM 11:15
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

☐ FINAL
☒ INTERIM # 1
(See attached Check Register-5 pages)

The undersigned Personal Representative(s) submits this accounting, which covers the period from MARCH 17, 2014 through FEBRUARY 12, 2016.

The documentation on the following page(s) of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance from Inventory(ies) or prior Interim Accounting, if applicable	4,452.79
Plus: Receipts (Rent, Refunds, Dividends, Interest, etc.)	268,465.42
Subtotal	272,918.21
Less: Disbursements and Distributions	165,810.00
Ending Balance	107,108.21

The Personal Representative(s) 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 30TH day of MARCH, 20 16

Melodie K. Ford
Notary Public for South Carolina
My Commission Expires: March 12, 2025

Signature: J. Morgan Kearse
Print Name: J. MORGAN KEARSE
Address: PO BOX 521
ALLENDALE, SC 29810
Telephone (Work): (803) 584-2934
(Home):
(Cell):
Email: MORGAN@KEARSELAWALLENDALE.COM

Co-Personal Representative Signature:
Print Name:
Address:

SWORN to before me this _____ day of _____, 20 _____

Telephone (Work):
(Home):
(Cell):
Email:

Notary Public for South Carolina
My Commission Expires: _____

Check Register

GHK
3/8/2016

Date	Num	Payee	Category	Memo	Amount	C	Balance
3/17/2014		Beginning Balance	[GHK]		4,452.79	R	4,452.79
3/20/2014	DEP	GHK Estate		GHK Estate	154.99		4,607.78
4/11/2014	DEP	REGIONS GHK Estate		REGION ACCT CLOSED 8...	82,341.76		86,949.54
4/23/2014	DEP	ACB GHK Estate		ACB ACCT CLOSED 0606	17,158.30		104,107.84
4/23/2014	DEP	ACB GHK Estate		ACB ACCT CLOSED 0006	19,467.51		123,575.35
4/24/2014	101	Palmetto State Bank		To Estate Account	-100,000.00		23,575.35
4/28/2014	32622	Transfer To Acct 1790606		Transfer to acct 1790606	-1,719.28		21,856.07
5/6/2014	102	Rosalee Robinson		House Cleaning	-30.00		21,826.07
5/7/2014	103	S.C. Secretary Of State		Invoices 13-03032;13-03048	-6.00		21,820.07
5/7/2014	104	Jessie Youmans		Yard maintenance	-72.00		21,748.07
5/12/2014	105	Mary Catherine		Education	-400.00		21,348.07
5/12/2014	106	Edisto Electric		Power - Farm	-35.48		21,312.59
5/12/2014	107	Edisto Electric		Power - Farm	-16.20		21,296.39
5/12/2014	108	AT&T		Phone - Farm	-26.09		21,270.30
5/14/2014	109	David Wilson		Yard Maintenance	-185.00		21,085.30
5/14/2014	110	Kearse Law Firm		Reimburse - HVAC Office	-400.00		20,685.30
5/14/2014	111	J. Morgan Kearse		Reimburse for gas P/U	-90.00		20,595.30
5/30/2014	112	Roy Mixon		40 Hours - Farm	-290.00		20,305.30
5/30/2014	113	Lorraine Mixon		30 Hours - Farm	-217.50		20,087.80
6/2/2014	DEP	GHK		Carolyn Barker	225.00		20,312.80
6/2/2014	114	Mary Catherine		Education	-400.00		19,912.80
6/2/2014	115	Mixson Oil		Farm Diesel	-94.08		19,818.72
6/20/2014	116	AT&T		Phone - Farm	-26.08		19,792.64
6/20/2014	117	Edisto Electric		Power - Farm	-52.16		19,740.48
6/20/2014	118	Farm Bureau		Policy GL0941456	-673.24		19,067.24
6/20/2014	119	Farm Bureau		Policy FL0443495-9	-321.07		18,746.17
6/26/2014	DEP	MWV		MWV	24.00		18,770.17
7/1/2014	120	Tiger Express		Fuel P/U	-75.00		18,695.17
7/1/2014	121	Roy Mixon		30 Hours	-217.50		18,477.67
7/1/2014	122	Lorraine Mixon		20 Hours	-145.00		18,332.67
7/1/2014	123	NAPA		Maintence - Farm	-65.40		18,267.27
7/7/2014	124	AT&T		Phone - Farm	-26.08		18,241.19
7/7/2014	125	Mary Catherine		Education	-400.00		17,841.19
7/8/2014	DEP	GHK		Interest on Checking	0.46		17,841.65
7/9/2014	126	Edisto Electric		Power - Farm	-35.80		17,805.85
7/9/2014	127	Edisto Electric		Power - Farm	-16.20		17,789.65
7/11/2014	128	David Wilson		Yard Maintenance	-280.00		17,509.65
7/11/2014	130	Mary Catherine		Education	-400.00		17,109.65
7/11/2014	131	AT&T		Phone - Farm	-27.18		17,082.47
7/29/2014	129	Mixson Oil Co.		Farm Diesel	-110.52		16,971.95
8/7/2014	132	Mixson Oil Co.		Farm Diesel	-105.57		16,866.38
8/7/2014	133	Lorraine Priester		Labor - Farm	-145.00		16,721.38
8/7/2014	134	Rox Mixon		Labor - Farm	-290.00		16,431.38
8/7/2014	135	Tiger Express		Fuel P/U	-60.00		16,371.38
8/12/2014	DEP	GHK		Interest on Checking	1.68		16,373.06
8/13/2014	136	Edisto Electric		Power - Farm	-52.82		16,320.24

Date	Num	Payee	Category	Memo	Amount	C	Balance
8/26/2014	DEP				14,360.15		30,680.39
9/8/2014	137	Mary Catherine		Education	-400.00		30,280.39
9/8/2014	138	AT&T		Phone - Farm	-26.62		30,253.77
9/9/2014	DEP	GHK		Interest on Checking	1.84		30,255.61
9/15/2014	139	SC Dept. Of Revenue		Elysium Field	-25.00		30,230.61
9/15/2014	140	SC Dept. Of Revenue		SEH Inc.	-25.00		30,205.61
9/15/2014	141	Sharon Bramlett		2013 Corp. Tax Returns/Fid...	-395.00		29,810.61
9/15/2014	142	Lorraine Priester		Labor - Farm	-145.00		29,665.61
9/15/2014	143	Roy Mixon		Labor - Farm	-290.00		29,375.61
9/15/2014	144	Tiger Express		Fuel P/U	-65.00		29,310.61
9/17/2014	145	NAPA		Maintenance P/U	-18.03		29,292.58
9/17/2014	146	Mixson Oil Co.		Farm Diesel	-67.18		29,225.40
9/17/2014	147	Restoration Landscape		Lawn Maintenance	-370.00		28,855.40
9/17/2014	148	Edisto Electric		Power - Farm	-61.13		28,794.27
9/17/2014	149	Edisto Electric		Power - Farm	-36.40		28,757.87
9/20/2014	150	Mary Catherine		Education (3 months)	-1,200.00		27,557.87
10/7/2014	EFT	GHK		Transfer from PSB 372	100,000.00		127,557.87
10/14/2014	DEP	GHK		Interest on Checking	4.93		127,562.80
10/15/2014	151	Jessie Youmans		Yard maintenance	-72.00		127,490.80
10/21/2014	152	Edisto Electric		Power - Farm	-60.47		127,430.33
11/5/2014	153	Restoration Landscape		Lawn Maintenance	-750.00		126,680.33
11/5/2014	154	Hendry County Tax Collector		Property Tax - Florida Lots	-439.73		126,240.60
11/5/2014	155	Mixson Oil Co.		Farm Diesel	-220.15		126,020.45
11/10/2014	DEP	GHK		Interest on Checking	9.43		126,029.88
11/10/2014	EFT	GHK		Interest on Treasury Bills	52.50		126,082.38
11/19/2014	156	Edisto Electric		Power - Farm	-52.27		126,030.11
11/20/2014	157	AT&T		Phone - Farm	-53.75		125,976.36
11/20/2014	158	Rosalee Robinson		House Cleaning (two times)	-48.00		125,928.36
11/26/2014	160	Roy Mixon		Labor - Farm	-362.50		125,565.86
11/26/2014	161	Void		VOID	0.00		125,565.86
11/26/2014	162	Lorraine Priester		Labor - Farm	-217.50		125,348.36
11/26/2014	163	Tiger Express		Fuel P/U	-50.00		125,298.36
11/29/2014	159	Kenny Kearse		Satellite - Farm	-150.00		125,148.36
12/9/2014	DEP	GHK		Interest on Checking	10.01		125,158.37
12/9/2014	164	Georgia Lock & Safe		Farm Safe	-350.00		124,808.37
12/9/2014	165	Edist Electric		Power - Farm	-61.90		124,746.47
12/9/2014	166	Allendale County Treasurer		P/U Tax	-68.07		124,678.40
12/9/2014	167	NAPA		Maintenance - Farm	-65.38		124,613.02
12/29/2014	168	Estill Gas		Heating Fuel - Farm	-283.00		124,330.02
12/31/2014	169	Mary Katherine		Education	-400.00		123,930.02
1/2/2015	170	Priester's Small Engine		Chain Repair and Supplies	-395.89		123,534.13
1/6/2015	171	Jason's Station		Maintenance - Farm	-87.00		123,447.13
1/6/2015	172	Tiger Express		Fuel P/U	-50.00		123,397.13
1/7/2015	173	Jason's Station		Maintenance - Farm	-60.00		123,337.13
1/7/2015	174	Beaufort County Treasurer		Taxes on Blackbeard	-48.28		123,288.85
1/9/2015	191	AT&T		Phone - Farm	-26.69		123,262.16

Date	Num	Payee	Category	Memo	Amount	C	Balance
1/13/2015	DEP	GHK		Interest on Checking	11.93		123,274.09
1/14/2015	175	Town Of Fairfax		2014 Real Estate Taxes	-31.37		123,242.72
1/14/2015	176	Allendale County Treasurer		2014 Real Estate Taxes	-2,215.46		121,027.26
1/15/2015	177	AT&T		Phone - Farm	-26.69		121,000.57
1/19/2015	178	Town Of Allendale		2014 Real Estate Taxes	-328.87		120,671.70
1/19/2015	179	Edisto Electric		Power - Farm	-53.17		120,618.53
1/19/2015	180	Edisto Electric		Power - Farm	-16.35		120,602.18
1/29/2015	DEP	GHK		Dividend Payment (Westva...	48.00		120,650.18
1/30/2015	181	Sandy Shirley		Farmhouse Bedding	-145.00		120,505.18
1/30/2015	182	J. Morgan Kearse		Equipmet Trailer	-2,500.00		118,005.18
2/6/2015	183	Allendale Auto Supply		Maintenance - Farm	-8.31		117,996.87
2/6/2015	193	AT&T		Phone - Farm	-26.79		117,970.08
2/10/2015	DEP	GHK		Interest on Checking	9.22		117,979.30
2/11/2015	184	Edisto Electric		Power - Farm	-69.89		117,909.41
2/11/2015	185	Mary Catherine		Education (4 months)	-1,600.00		116,309.41
2/24/2015	186	Estill Gas Co.		Heating Fuel - Farm	-263.00		116,046.41
3/10/2015	DEP	GHK		Interest on Checking	8.94		116,055.35
3/13/2015	194	Priester's Small Engines		Maintenance - Farm (chain ...	-95.30		115,960.05
3/16/2015	195	Tiger Express		Fuel P/U	-50.00		115,910.05
3/16/2015	196	Edisto Electric		Power - Farm	-65.00		115,845.05
3/16/2015	197	Edisto Electric		Power - Farm	-16.20		115,828.85
4/14/2015	DEP	GHK		Interest on Checking	11.12		115,839.97
4/14/2015	EFT	GHK		US Treasury (Interest)	52.50		115,892.47
4/14/2015	192	**VOID**		VOID	0.00		115,892.47
4/14/2015	198	**VOID**		VOID	0.00		115,892.47
4/16/2015	199	AT&T		Phone - Farm	-26.98		115,865.49
4/16/2015	200	Edisto Electric		Power - Farm	-80.52		115,784.97
4/17/2015	DEP	GHK		$450 ($225 x 2 C. Barker); ...	474.00		116,258.97
4/17/2015	201	USC Salkehatchie		GHK Scholarship	-40.00		116,218.97
4/21/2015	DEP	GHK		Reimbursement From Trust	27,500.35		143,719.32
4/28/2015	202	Sharon Bramlett		2014 Tax Prep	-145.00		143,574.32
5/4/2015	203	Roy Mixon		Labr - Farm	-290.00		143,284.32
5/4/2015	204	Lorraine Priester		Labor - Farm	-145.00		143,139.32
5/4/2015	205	Tiger Express		Fuel - P/U	-60.00		143,079.32
5/5/2015	206	Restoration Landscape		Lawn Maintenance	-190.00		142,889.32
5/12/2015	DEP	GHK		Interest on Checking	10.56		142,899.88
5/15/2015	207	Edisto Electric		Power - Farm	-63.53		142,836.35
5/15/2015	208	AT&T		Phone - Farm	-27.06		142,809.29
5/15/2015	209	Kearse Law Firm		Attorney Fee	-25,000.00		117,809.29
5/22/2015	210	Priester's Small Engines		Maintenance - Farm	-36.97		117,772.32
6/3/2015	211	Mixson Oil Co.		Fuel P/U	-74.72		117,697.60
6/4/2015	DEP	GHK		$225 C. Barker; $24 MWV	249.00		117,946.60
6/8/2015	212	David Wilson		Lawn Maintenance	-160.00		117,786.60
6/9/2015	DEP	GHK		Interest on Checking	9.19		117,795.79
6/12/2015	213	AT&T		Phone - Farm	-27.02		117,768.77
6/12/2015	214	Edisto Electric		Power - Farm	-66.07		117,702.70

Date	Num	Payee	Category	Memo	Amount	C	Balance
6/26/2015	215	Beaufort Probate Court		Ancillary Admin.	-20.00		117,682.70
6/26/2015	216	Tiger Express		Fuel P/U	-65.00		117,617.70
7/10/2015	217	Mixson Oil Co.		Farm Diesel	-154.73		117,462.97
7/10/2015	218	AT&T		Phone - Farm	-27.02		117,435.95
7/10/2015	219	Edisto Electric		Power - Farm	-99.10		117,336.85
7/10/2015	220	Restoration Landscape		Lawn Maintenance	-160.00		117,176.85
7/14/2015	DEP	GHK		Interest on Checking	11.29		117,188.14
7/31/2015	Debit	Lorraine Priester (Counter Check)		Labor - Farm	-217.50		116,970.64
7/31/2015	Debit	Roy Mixon (Counter Check)		Labor - Farm	-290.00		116,680.64
8/10/2015	DEP	GHK		Carolyn Barker	225.00		116,905.64
8/10/2015	221	Edisto Electric		Power - Farm	-83.96		116,821.68
8/10/2015	222	AT&T		Phone - Farm	-28.32		116,793.36
8/10/2015	223	Mixson Oil Co.		Fuel P/U	-58.51		116,734.85
8/10/2015	224	Restoration Landscape		Lawn Maintenance	-220.00		116,514.85
8/10/2015	225	Charles Erikson		Florida Ancillary/DoD	-403.00		116,111.85
8/11/2015	DEP	GHK		Interest on Checking	8.98		116,120.83
9/4/2015	226	Leroy's Equipment		Tractor Maintenance/Repair	-2,534.57		113,586.26
9/4/2015	227	Mixson Oil Co.		Farm Diesel	-130.04		113,456.22
9/4/2015	228	Restoration Landscape		Lawn Maintenance	-160.00		113,296.22
9/4/2015	229	Neeley Heating & Cooling		HVAC - Farm House	-4,300.00		108,996.22
9/8/2015	DEP	GHK		Interest on Checking	8.95		109,005.17
9/11/2015	DEP	GHK		Fiber Optics	89.48		109,094.65
9/11/2015	230	AT&T		Phone - Farm	-27.67		109,066.98
9/11/2015	231	**VOID**		VOID	0.00		109,066.98
9/11/2015	232	Edisto Electric		Power - Farm	-64.45		109,002.53
9/24/2015	233	Roy Mixon		Labor - Farm	-300.00		108,702.53
9/24/2015	234	Lorraine Priester		Labor - Farm	-225.00		108,477.53
10/6/2015	235	J. Morgan Kearse		Furnshings at Farm	-1,500.00		106,977.53
10/13/2015	DEP	GHK		Interest on Checking	10.46		106,987.99
10/16/2015	236	AT&T		Phone - Farm	-27.67		106,960.32
10/16/2015	237	Salk Arts		Honorariaum GHK/JWK	-250.00		106,710.32
10/16/2015	238	Edisto Electric		Power - Farm	-69.31		106,641.01
10/16/2015	239	Restoration Landscape		Lawn Maintenance	-160.00		106,481.01
10/16/2015	240	J. Morgan Kearse		Maintenance - Farm (oil/par...	-67.21		106,413.80
10/16/2015	241	Mixson Oil Co.		Farm Diesel	-133.54		106,280.26
10/20/2015	242	J. Morgan Kearse		Beds/Bedding for Farm	-1,200.00		105,080.26
10/21/2015	243	Mike Loadholt		Electrical Repair	-100.00		104,980.26
10/27/2015	DEP	GHK		Carolyn Barker	220.00		105,200.26
11/10/2015	DEP	GHK		Interest on Checking	8.11		105,208.37
11/13/2015	244	Jason's Station		Maintenance - Farm	-50.00		105,158.37
11/18/2015	245	AT&T		Phone - Farm	-27.61		105,130.76
11/18/2015	246	Edisto Electric		Power - Farim	-54.57		105,076.19
11/18/2015	247	Restoration Landscape		Lawn Maintenance	-60.00		105,016.19
11/24/2015	248	Roy Mixon		Labor - Farm	-290.00		104,726.19
12/8/2015	DEP	GHK		Interest on Checking	8.05		104,734.24
12/11/2015	DEP	GHK		C. Barker $225; Ed.Elec $1...	242.54		104,976.78

Date	Num	Payee	Category	Memo	Amount	C	Balance
12/11/2015	249	Mixson Oil Co.		Fuel P/U	-55.32		104,921.46
12/11/2015	250	Allendale Auto Supply		Maintenance/Repair - Farm	-27.05		104,894.41
12/11/2015	251	Edisto Electric		Power - Farm	-66.01		104,828.40
12/11/2015	252	AT&T		Phone - Farm	-27.64		104,800.76
12/21/2015	DEP	GHK		Reimbursement by JMK	5,200.00		110,000.76
12/21/2015	259	**VOID**		VOID	0.00		110,000.76
12/22/2015	253	Town Of Allendale		2015 Town Taxes	-319.30		109,681.46
12/22/2015	254	Beaufort County Treasurer		2015 Taxes - Blackbeard	-48.72		109,632.74
12/22/2015	255	Hendry County Tax Collector		2015 Taxes - Florida lots	-442.48		109,190.26
12/22/2015	256	Town Of Fairfax		2015 Town Taxes	-31.37		109,158.89
12/22/2015	257	Allendale County Treasurer		2015 County Taxes	-2,217.58		106,941.31
12/31/2015	258	Gerzell Chaney		P/U Taxes - Farm	-68.29		106,873.02
1/12/2016	DEP	GHK		Interest on Checking	10.19		106,883.21
2/12/2016	DEP	GHK		Carolyn Barker	225.00		107,108.21

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	ACCEPTANCE OF SERVICE
vs.	)	
William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse Respondents.	)	

FILED FOR RECORD
16 APR 18 PM 4:45
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Respondent, Elizabeth Kearse Gooding, received service of the Petitioner's Petition for Instructions and Summons in the above referenced matter, such service did occur on the date referenced below.

Date: April 3, 2016

Elizabeth K. Gooding

Elizabeth Kearse Gooding
Respondent

00387

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	ACCEPTANCE OF SERVICE
vs.	)	
William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse Respondents.	)	

FILED FOR RECORD
16 APR 26 PM 12:45
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Respondent, William Gordon Kearse, received service of the Petitioner's Petition for Instructions and Summons in the above referenced matter, such service did occur on the date referenced below.

Date: April 25, 2016

William Gordon Kearse

William Gordon Kearse
Respondent

-00585

W. Gordon Kearse
P.O. Box 221
Fairfax, SC 29817
May 2, 2016

Hon. Keith Smith, Probate Judge
Allendale County Probate Court
P.O. Box 603
Allendale, SC 29810

FILED FOR RECORD
16 MAY -4 PM 4:45
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Re: J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner, vs. William Gordon Kearse, et al, Respondents

Dear Judge Smith,

Please accept this as my Answer to the Petition filed in the above-entitled action. As a Respondent in this case I have two positions I would like to confirm:

1. I oppose the building of a house on our family farm, whether this is constructed with funds of my father's estate or funds of the Kearse Family Educational Trust;

2. I believe that my father's estate should be closed as quickly as possible. It has been open for too long.

Thank you for protecting my interest in this matter.

Sincerely,

W. Gordon Kearse

W. Gordon Kearse

KEARSE
LAW FIRM, LLC

J. Morgan Kearse
G. H. Kearse (1928-2013)

Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934
Facsimile: (803) 584-2212

June 3, 2016

Dear Sihlings:

I have either sent to you directly or directly to your attorney, the enclosed Amended Petition For Instructions, a Summons, and the same three Exhibits sent to you when I served you with the first Petition and Summons. My purpose for forwarding this to you was in response to the Motion to Dismiss that you recently received. I did amend the caption which now names Papa's Trust, the six of us individually, and the six of us acting as Trustees as the Respondents in this matter. The first paragraph of the Petition was amended that attempts to clarify the purpose for amending and re-filing. No other material change was made to the Petition. The numbered paragraphs, and the information contained in them, are the same as the first Petition you received.

Let me know if you have any questions.

Morgan

Morgan

cc:
Gordon
Rachael
Joseph
Beth
% Stephen Slotchiver
Julie
% Dan Speights

SWEENY WINGATE & BARROW P.A.

February 1, 2017

Reply to: Main Office
Kenneth B. Wingate
(803) 256-2233 x7133
kbw@swblaw.com

VIA US MAIL & EMAIL (sodom@hamptoncountysc.org)
The Honorable Sheila Odom
Hampton County Probate Court
Post Office Box 601
Hampton, SC 29924

RE: Estate of G. H. Kearse
Case No.: 2013-ES-03-00063
Our File: 5330-10329

Dear Judge Odom:

This letter will confirm that the motions hearing scheduled for Thursday, February 2, 2017, will not be necessary. The parties have reached a global settlement in this matter, including the siblings who are pro se parties.

Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present. I would like to be excused from attendance at the hearing, if possible, to save the estate additional fees since all matters have been resolved. Please let me know if that is acceptable to the Court.

Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate. If you require any additional documentation in the future, such as stipulations of dismissal, please let us know.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

/ Kenneth B. Wingate

Kenneth B. Wingate

KBW/hai
cc: Steven M. Slotchiver, Esquire (via US Mail & Email)
Daniel A. Speights, Esquire (via US Mail & Email)
April Murdaugh, Clerk of Court, (via Email)
J. Morgan Kearse, Esquire (via US Mail & Email)

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)
IN THE MATTER OF:)
G. H. Kearse)
(Decedent))

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

CASE NUMBER: 2013-ES-03-00063

I, S. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 20 17

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: S. Morgan Kearse
Print Name: S. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearsebuwallendale.com

ORDER

With the appointment of _____ as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of _____ _____ shall be terminated.

Executed this _____ day of _____, 20____.

_____
, Probate Court Judge

PROBATE COURT
HAMPTON COUNTY SC
FILED
DATE 2/2/17
TIME 11:43 AM

FORM #335ES (1/2014)
62-3-610

STATE OF SOUTH CAROLINA)
COPY
COUNTY OF: ALLENDALE)

IN THE MATTER OF:
ESTATE OF G. H. KEARSE)
(Decedent)

IN THE PROBATE COURT

PROOF OF DELIVERY

CASE NUMBER: 2013-ES-03-00063

On the 2 day of February, 2017, I mailed or delivered the following document(s):

Statement of Resignation

☒ A copy of which is attached hereto and incorporated herein, or
☐ The original of which is on file with the Court.

Delivery was accomplished by the following method (check appropriate box):

☐ personal delivery
☐ certified mail
☐ commercial delivery
☒ ordinary first-class mail
☐ registered mail
☒ electronic message (Article 7, Trust matters only)

to each of the following persons at the address shown:

NAME	ADDRESS
Daniel A. Speights, Esquire, Speights & Runyan Attorney for Julia Kearse Sharp	PO Box 685, Hampton, SC 29924 dspeights@speightsrunyan.com
Steven M. Slotchiver, Esquire, Slotchiver & Slotchiver, LLP, Attorney for Elizabeth Kearse Gooding	44 State Street, Charleston, SC 29401 steve@slotchiverlaw.com
Gordon Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	PO Box 221, Fairfax, SC 29827 gordonkearse@yahoo.com
Joseph W. Kearse, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	6620 Merrill, Columbia, SC 29209 jwkearse@aol.com
Rachael K. Best, Individually and as Trustee of the Kearse Family Education Trust u/a/d Nov. 05, 1992	5055 Lakeshore Drive, Columbia, SC 29206 Rbest2@tecinfrared.com
John Morgan Kearse, as Personal Representative of the Estate of G.H. Kearse	Post Office Box 521, Allendale, SC 29810 morgan@kearselawallendale.com
The Honorable Sheila Odom Hampton County Probate Court	Post Office Box 601, Hampton, SC 29924 sodom@hamptoncountysc.org

SWORN to before me this 2 day of February, 2017

Notary Public for South Carolina
My Commission Expires: 2/19/23

Signature: /s/ Kenneth B. Wingate
Print Name: Kenneth B. Wingate
Address: Post Office Box 12129
Columbia, SC 29211
Telephone (Work): (803) 256-2233
(Home):
(Cell):
E-mail: kbw@swblaw.com
Relationship to Decedent/Estate: Attorney

DATE 2/2/17
TIME 11

FORM #120PC (1/2014)
62-1-401, 62-3-706, 62-3-1001, SCRCP 4(d)(9)

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers

Kenneth B. Wingate
Matthew J. Myers
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Appellant

Columbia, South Carolina
August 20, 2018

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992..... Respondents.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by electronically filing the same as of the date stated below with the Clerk of Court for Allendale County and on the parties who have served a brief in this matter through their respective attorneys Daniel A. Speights, Esquire, Speights & Runyan; Stephen M. Slotchiver, Esquire, Slotchiver & Slotchiver LLP; and Blake A. Hewitt, Esquire, Bluestein Thompson Sullivan LLC.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers
Kenneth B. Wingate
Matthew J. Myers
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Appellant

Columbia, South Carolina
August 20, 2018

ELECTRONICALLY FILED - 2018 Nov 08 4:27 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

APPELLANT'S MOTION TO ALTER OR AMEND AND, IF NECESSARY, FOR RATIFICATION, JOINDER, OR SUBSTITUTION OF A REAL PARTY IN INTEREST

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
Attorneys for Appellant

ELECTRONICALLY FILED - 2018 Nov 08 4:27 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

Appellant, by and through his undersigned attorney, will move immediately before the Court, and does hereby move, for an order altering or amending the Circuit Court's Order in this matter dated October 29, 2018 and, if necessary to maintain this appeal, for ratification, joinder, or substitution of an appropriate real party in interest. This motion is filed pursuant to Rules 59(e), 17(a), 15(c), and 74 of the South Carolina Rules of Civil Procedure and may be further supplemented by the Pleadings, citations to relevant authority, a Memorandum of Law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

Please note that the South Carolina Rules of Civil Procedure continue to apply to this matter while it remains with the Circuit Court, pursuant to Rule 74, SCRCP. See also State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51–52 (2011) (applying SCRCP to a criminal appeal to the circuit court); State v. Jenkinson, No. 2015-000252, 2016 WL 6092507, at *1 (S.C. Ct. App. Oct. 19, 2016) (applying SCRCP to an appeal from magistrate's court); Dortch v. City of Columbia Planning & Dev. Servs./Zoning Div., No. 2013-002686, 2015 WL 7686970, at *1 (S.C. Ct. App. Nov. 25, 2015) (applying SCRCP to an appeal from a board of zoning appeals).

I. Validity of Alleged Settlement

The Order does not address the primary issue on appeal, which is the validity of the alleged settlement incorporated into the Probate Court's orders dated February 27, 2017 and September 18, 2017. If the alleged settlement is not stricken by the Circuit Court, then it will continue to be a matter of new litigation by one or more representatives of the Kearse Family Education Trust U/A/D Nov. 05, 1992 (the "Trust"), which did not consent to the alleged settlement even though it affected the Trust's interest, was not given proper legal notice that the

Probate Court would hold a hearing to approve a settlement in violation of S.C. Code Ann. §§ 62-1-401 & -1102, and continues to lack any legal representative through which to contest any of the rulings that affect it. See, e.g., Real Estate Unlimited, LLC v. Rainbow Living Trust, No. 2004-UP-019, 2004 WL 6248341, at *2 (S.C. Ct. App. Jan. 15, 2004) (holding that a non-attorney trustee may not appear in court on behalf of a trust).

An overarching rule governing this appeal is that the South Carolina Rules of Civil Procedure "shall be construed to construe the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. However, a dismissal of this appeal prior to a determination of the validity of the settlement is neither just because there was no underlying settlement as explained in Appellant's briefs and all but conceded by Ms. Gooding and Ms. Sharp at oral argument, nor will it be speedy or inexpensive when a new claim will be initiated by the Trust.

"It is too late in the day and entirely contrary to the spirit of the ... Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. 'The ... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.'" Patton v. Miller, 420 S.C. 471, 493, 804 S.E.2d 252, 263 (2017), reh'g denied (Sept. 27, 2017) (quoting Foman v. Davis, 371 U.S. 178, 181–82 (1962)).

II. Appellant May Continue This Appeal as Personal Representative Even if His Interest as Such Has Been Validly Terminated.

To follow are eleven independent grounds why Appellant may continue this appeal as Personal Representative even if his interest as Personal Representative has been validly terminated.

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A. The March 20, 2017 Statement of Resignation is not the law of this appeal.

The central premise of Ms. Gooding and Ms. Sharp's argument that Appellant lacks standing to bring this appeal as Personal Representative is that the Statement of Resignation has become "the law of the case," citing ML-Lee Acquisition Fund v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997); McCain v. Brightharp, 399 S.C. 240, 251, 730 S.E.2d 916, 921-922 (Ct. App. 2012). However, the law of the case doctrine does not apply to this matter for several reasons.

To begin with, the question of Appellant's status as Personal Representative is a specific issue on appeal that is yet to be finally determined. This fact alone leaves no room for there to be a determination that Appellant's interest as Personal Representative has already been legally severed as a final matter.

Second, the Statement of Resignation is itself a component of the Orders appealed by Appellant. It is the exact form Appellant submitted at the February 2, 2017 hearing which resulted in the Probate Court's February 27, 2017 Order determining that Appellant had resigned. Therefore, the Statement of Resignation falls directly within the scope of Appellant's appeal of the February 27, 2017 Order.

Third, to the extent the Statement of Resignation is somehow outside of the scope of Appellant's appeal, the law of the case doctrine pertains to questions that were resolved within the case at issue. Ms. Gooding and Ms. Sharp have cited no authority for the proposition that an issue on appeal can become the law of the case through a collateral order, particularly one that did not follow mandatory procedure and is void or voidable (see Section III, infra).

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Fourth, the Statement of Resignation (1) has not yet appointed a Successor Personal Representative or Special Administrator even on its own terms, (2) will become automatically nullified when the February 27, Order on appeal is vacated, and (3) is already legally void or voidable because it did not follow procedure and it contravened the Probate Court's February 27, 2017 Order and statements at the February 2, 2017 hearing (see Section III, infra).

Finally, the law of the case doctrine only applies to final orders. "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right....Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits." Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App.1989) (quoting 21 C.J.S. Courts Section 195 at 335 (1940)) (quoted with approval by Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013)).

Here, the purported appointment of Harley Ruff as Successor Personal Representative or Special Administrator is not a final order because it left further action by the Probate Court (or an appellate court) to finally determine the rights and obligations of Appellant as Personal Representative. "As a general rule, only final judgments are appealable. Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citations omitted). See also S.C. Code Ann. § 62-1-308(a) ("A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court ....").

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It may also be noted that, although the boilerplate language in the Statement of Resignation refers to Harley Ruff as Successor Personal Representative, the Probate Court's prior February 27, 2017 Order holding that a special administrator was to be appointed. To that end, it has been held that "[t]he appointment of a special administrator is clearly temporary, and this Court does not have subject matter jurisdiction to hear an appeal challenging the appointment of a special administrator as an interlocutory order." Pope v Estate James Brown, No. 2013CP021337, 2014 WL 6682618, at *3 (S.C.Com.Pl. Jan. 17, 2014). See also Estate of Boyce v. Work, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991), case dismissed sub nom. Boyce-Abel In re Estate of Boyce v. Work, 308 S.C. 234, 417 S.E.2d 597 (1992).

Ultimately, however, the purported appointment of Harley Ruff, whether as Successor Personal Representative or Special Administrator, is not a final determination of the rights and obligations of Appellant as Personal Representative, and is therefore not the law of the case. Rather, it is this appeal which will determine the rights and obligations of Appellant as Personal Representative. In sum, the Statement of Resignation is not the law of the appeal for a host of reasons.

B. Appellant has merely appealed in the same capacity as he was designated in the underlying matter that is now on appeal.

This controversy originated with Appellant's Summons and Petition for Instruction, which he filed as Personal Representative of the Estate. The February 2, 2017 hearing scheduled for that Petition resulted in a February 27, 2017 Order that continued to name Appellant in his capacity as Personal Representative. Consequently, Appellant filed a motion to alter or amend that Order in his capacity as Personal Representative. The Probate Court heard that motion on August 17, 2017, and subsequently issued an order identifying Appellant in his capacity as

Personal Representative on September 18, 2017. That final order did not state that Appellant lacked standing, despite being issued nearly a half year after the Statement of Resignation was signed by the Probate Court on March 20, 2017.

Quite logically then, when Appellant appealed the Probate Court orders that had identified and affected him in his capacity as Personal Representative, he did so in his capacity as personal Representative. It made no sense to do it any other way, particularly when the purported Successor Personal Representative or Special Administrator had and has an inherent conflict from vacating the order that purportedly terminated Appellant's interest as Personal Representative in the first place. In fact, had Appellant not appealed as Personal Representative, Ms. Gooding and Ms. Sharp would surely argue that he had abandoned his right to contest portions of those orders affecting his rights and obligations as Personal Representative.

Furthermore, the South Carolina Appellant Court Rules do not require any change in identification of the parties, and merely provide that "[t]he party appealing shall be known as the appellant and the adverse party as the respondent." Rule 202(a), SCACR. Therefore, the Appellant Court Rules indicate that the important identification is that of appellant and respondents, and that the specific title of each is either a mere formality or simply presumed to be the same as it was from the matter being appealed. It may also be noted that Appellant has also continued to be named as a Respondent in the appeal in his individual capacity, so he is in fact before the Circuit Court in both capacities as it is.

In sum, it defies fundamental due process, and logic, that an appeal could be dismissed when the parties were merely identified in the same manner as they were identified below, and where there has been no opportunity for a substitution, joinder, or ratification of a proper party.

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C. Appellant in his capacity as Personal Representative was the real party in interest.

Rule 17(a), SCRCP requires that "[e]very action shall be prosecuted in the name of the real party in interest." Here, the alleged settlement relates to Appellant's rights and obligations as Personal Representative and affects the Estate, which makes Appellant's capacity as Personal Representative the real party in interest and therefore the capacity in which Appellant had no choice but to appeal. "Under Rule 17(a), the definition of the proper party is the same as it has always been—the proper party is any real party in interest.... Where, as here, the named plaintiff has suffered an actionable loss at the hand of the defendant, he is a real party in interest and the requirement of Rule 17(a) is met." Patton v. Miller, 420 S.C. 471, 487, 804 S.E.2d 252, 260 (2017), reh'g denied (Sept. 27, 2017) (quotation and citation omitted).

D. Appellant, apart from his capacity as Personal Representative, was not aggrieved by the Probate Court's orders and therefore could not appeal individually.

Rule 201(b), SCACR provides that "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal." Because Appellant was not individually aggrieved by the alleged settlement apart from his service and capacity as Personal Representative, it is actually in Appellant's individual capacity that he apparently would have no standing to appeal. Therefore, to deny Appellant the right to appeal as Personal Representative likely leaves him completely without recourse and therefore also denies his right to due process.

E. In rendering its final Order, the Probate Court declined to realign Appellant from his capacity as Personal Representative.

"Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP. "The decision whether to realign the parties lies within the sound discretion of the trial court and will

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not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice." Branham v. Ford Motor Co., 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010). Here, the Probate Court declined to realign Appellant from his capacity as Personal Representative, even though the alleged appointment of a Successor personal Representative or Special Administrator had occurred nearly six months before its September 18, 2017 Order now on appeal. Furthermore, to now separate Appellant from his capacity as Personal Representative only on appeal would result in prejudice to Appellant by denying him with his fundamental right to appeal, and also prejudice to the Trust and/or Estate for having to file an entirely new challenge to the alleged settlement.

F. Appellant may act as Personal Representative until a motion for substitution or joinder is made.

"In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Rule 25(c), SCRCP (emphasis added). See also S.C. Code Ann. § 62-3-613 ("After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party ....").

Here, Ms. Gooding and Ms. Sharp argue on appeal that Appellant's interest as Personal Representative has been transferred to Harley Ruff, Esq. However, even if that were true, Rule 25(c), SCRCP expressly provides that Appellant may continue the appeal as Personal Representative until Harley Ruff is substituted or joined to the action as Personal Representative or Special Administrator upon a motion for the same. However, no such motion, much less an order, for substitution or joinder has been made.

ELECTRONICALLY FILED - 2018 Nov 08 4:27 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

G. Any need to substitute the Personal Representative is not grounds to dismiss the appeal.

"No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." Rule 17(a), SCRCP.

"The purpose of this provision is to avoid precisely what occurred here—the unnecessary procedural dismissal of a lawsuit the court should resolve on the merits. As the Reporter's Note to the rule indicates, this sentence is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake." Patton v. Miller, 420 S.C. 471, 488, 804 S.E.2d 252, 261 (2017) (quotation omitted), reh'g denied (Sept. 27, 2017). "Formerly, the failure to bring suit in the name of the real party in interest was a jurisdictional failure requiring dismissal of the lawsuit. Under the Rules of Civil Procedure, however, it is improper to immediately dismiss a lawsuit simply because it was not brought in the name of the real party in interest." Id., 420 S.C. at 487, 804 S.E.2d at 260.

Here, even if the Circuit Court believes that Appellant in his capacity as Personal Representative cannot maintain the appeal as a real party in interest, then under Rule 17(a), SCRCP the appropriate response is not to dismiss the appeal, but to allow the ratification, joinder, or substitution of a real party in interest. Though Appellant adamantly disputes appealing as Personal Representative is in error, at worst it was an honest mistake given the circumstances, and the validity of the alleged settlement should nevertheless be resolved on the merits, as a dismissal of the appeal simply leaves that question for another round of litigation.

ELECTRONICALLY FILED - 2018 Nov 08 4:27 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

H. Appellant's alleged lack of standing cannot be raised for the first time on appeal.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citations omitted). "This Court has the inherent authority to consider justiciability. However, when a party belatedly attempts to raise the issue of standing, our courts have applied error preservation principles and held that the matter was not preserved for review where the trial court was not given an opportunity to first rule on the issue." James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732–33 (2010) (citations by footnote omitted).

At the August 17, 2017 hearing, neither Ms. Gooding nor Ms. Sharp argued that Appellant lacked standing or otherwise referred to the Statement of Resignation signed by the Probate Court, roughly a half year earlier. The closest statement was from counsel for Ms. Sharp, who stated:

> I will say at the outset that I don't understand how the motion is being made by Morgan as the Personal Representative because he is not the personal representative and has not been for some period of time as I will deal with in a minute. His lawyer told us at the last hearing [on February 2, 2017] that he was resigning effective immediately....Now I'm not sure what effect that has legally. I'll let my probate lawyer Mr. Slotchiver address that if it comes up, but I think it's important to note that this is the only party that is before Your Honor in support of the motion.

August 17, 2017 Hearing Transcript, p. 14, l. 13-19. However, Mr. Slotchiver never addressed the standing issue either beyond claiming that Appellant "is no longer the Personal Representative." August 17, 2017 Hearing Transcript, p. 24, l. 18-19.

Accordingly, at most, Ms. Gooding and Ms. Sharp simply stated their shared belief that Appellant's resignation was effective as of the first hearing on February 2, 2017, which is an

issue now on appeal. However, neither argued that Appellant lacked standing to be in Probate Court as Personal Representative or otherwise referenced the Statement of Resignation that was filed a half year prior.

Ultimately, the September 18, 2017 Order prepared by counsel for Ms. Sharp, as he acknowledged in oral argument, did refer to the March 20, 2017 Statement of Resignation, but it did so without any contextual connection to the actual hearing and, most importantly, without stating or even implying that Appellant was without standing as Personal Representative to argue his Motion to Alter or Amend or otherwise appeal the same.

In summary, Ms. Gooding and Ms. Sharp's argument that Appellant lacks standing as Personal Representative due to the collateral Statement of Resignation was not raised below, and is therefore not reserved for appellant review. See James v. Anne's Inc., 390 S.C. at 193, 701 S.E.2d at 732–33; Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733.

I. Appellant's lack of standing was not raised promptly.

"Unless a party promptly challenges the opposing party's status as a real party in interest, such a challenge is waived." Bryson v. Bryson, 378 S.C. 502, 509, 662 S.E.2d 611, 614 (Ct. App. 2008) (holding waiver occurred when argument that personal representative was not the real party in interest was not presented until the end of trail). Therefore, even if the Probate Court's reference to the Statement of Resignation in its Order after the final hearing could somehow be considered to make the standing issue raised below, the standing argument was nevertheless not raised promptly. The purpose of allowing time for the ratification, joinder, or substitution of a real party in interest "is to avoid precisely what occurred here – the unnecessary procedural dismissal of a lawsuit the court should resolve on the merits." Patton v. Miller, 420 S.C. 471, 488, 804 S.E.2d 252, 261 (2017) (quotation omitted), reh'g denied (Sept. 27, 2017).

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Because Ms. Gooding and Ms. Sharp did not provide such an opportunity for ratification, joinder, or substitution by promptly challenging Appellant's standing, their challenge is waived.

J. Appellant has general standing regardless of whether he currently remains Personal Representative.

The South Carolina Supreme Court previously ruled that a county sheriff had standing to challenge a law from 1959 divesting the sheriff of control over the county prison where the sheriff (1) had statutory duties regarding prisoners and (2) an economic interest in fees regarding those same prisoners. See Henry v. Horry Cty., 334 S.C. 461, 463, 514 S.E.2d 122, 123 (1999). Under those general principles as applied to this matter, Appellant has standing to challenge the alleged settlement where the alleged settlement gives Appellant both (1) duties as Personal Representative and (2) an economic interest as Personal Representative.

K. Appellant maintains a statutory right to appeal as Personal Representative even if he had been validly terminated as Personal Representative.

Under the South Carolina Probate Code, a terminated personal representative "at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate ...." S.C. Code Ann. § 62-3-608. Here, quite simply, the appeal is necessary to protect the Estate because the alleged order would bind the Estate to various obligations if not challenged, and the Estate has not been distributed and Appellant has not been restrained or enjoined by court order from maintaining this appeal.

III. Appellant Currently Remains Personal Representative of the Estate

Although Appellant has a right to maintain this appeal even if his interest as Personal Representative has been validly terminated, that is ultimately a moot issue since Appellant in fact remains Personal Representative. To follow are twelve independent grounds why that is true.

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A. Appellant's resignation became automatically invalid by statute.

Appellant's resignation automatically became invalid after 20 days because no one applied for a successor personal representative during that time pursuant to S.C. Code Ann. § 62-3-610(b). Even the Probate Court at the time the resignation was tendered noted "Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of [Appellant] to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons [as successor], and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary." Transcript of February 2, 2017 Hearing, p. 21, l. 7-13.

Moreover, even Ms. Gooding and Ms. Sharp admitted "[f]airness requires acknowledging a personal representative may not 'immediately' resign his position. As [Appellant]'s lawyer told the probate court, a statute requires twenty days written notice to persons with an interest in the estate and provides that the resignation is effective only upon the appointment and qualification of a successor personal representative and delivery of the estate's assets to him." Joint Respondents' Brief, p. 6. Ultimately, however, no one followed the formal process that everyone acknowledges must be followed for Appellant's resignation to become valid.

B. Appellant has properly challenged the validity of his resignation since the original order addressing that issue.

On February 27, 2017, the Probate Court first ruled that it had accepted Appellant's resignation despite the resignation being void in accordance with South Carolina law. Appellant then served a timely motion to alter or amend that issue on March 16, 2017, before the Statement of Resignation form purporting to appoint Successor Personal Representative was completed by the Probate Court on March 20, 2017. Appellant's motion was denied on August 18, 2017, and

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Appellant thereafter filed a timely appeal that challenges the February 27, 2017 Order that first purported to accept Appellant's resignation.

Even Ms. Gooding and Ms. Sharpe admit that "a personal representative may not 'immediately' resign his position," noting the requirements of S.C. Code Ann. § 62-3-610(b), and that "[i]t was therefore possible – as a formal matter – for [Appellant] to file a motion to alter or amend in his capacity as personal representative ...." Joint Respondents' Brief, p. 6. Once that motion was denied, Appellant consequently had a right to appeal the denial of that order, which right cannot be lost by the alleged happening of an extrinsic event.

C. The mandatory statutory procedure for appointing a successor personal representative or a special administrator was not followed.

The mandatory statutory procedure for the informal appointment of a successor personal representative requires an application by the proposed successor, with notice to interested persons, and findings by the court as to the applicant's statutory qualifications, including the applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-301, -308 & -310. The mandatory statutory procedure for the formal appointment of a successor personal representative requires a summons and petition by the proposed successor, served on all interested persons, and a formal hearing by the court, after notice of hearing sent to the interested parties, to confirm the applicant's qualifications, including the applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-402, -403, & -414. Finally, the mandatory statutory procedure for both the informal and formal appointment of a special administrator requires either an informal application or petition by an interested person along with additional findings. See S.C. Code Ann. § 62-3-614.

None of these mandatory statutory procedures were attempted in the present matter. As stated previously, the Probate Court, Ms. Gooding, and Ms. Sharp have each acknowledged there is a procedure that must be followed to replace a personal representative. Accordingly, any purported appointment of a successor personal representative is void ab initio, and there is nothing to appeal regarding the same because the mandatory legal process was not even initiated.

D. The Statement of Resignation provides conditions that have yet to be satisfied before Appellant's termination as Personal Representative becomes effective.

The Statement of Resignation specifically states that Appellant's appointment is only effective "[u]pon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative ...." Neither such condition has been fulfilled, nor is there any evidence of such in the record on appeal.

The Statement of Resignation specifically states that Appellant's resignation is effective only "[w]ith the appointment of Harley Ruff, Ruff & Ruff, LLC as Successor Personal Representative in this Estate." However, as stated previously, the mandatory procedure for appointing Harley Ruff as Successor Personal Representative has yet to be initiated.

The Statement of Resignation specifically states that Appellant "realize[s] that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and the delivery of the assets to that person." Again, however, the mandatory procedure for appointing a Successor Personal Representative has not been attempted, nor have the assets been delivered to such hypothetical person.

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E. The Statement of Resignation does not even purport to appoint a Successor Personal Representative.

If one reads the Statement of Resignation closely, they will notice that it merely provides that Appellant's interest as Personal Representative terminates at such time that Harley Ruff is appointed Successor Personal Representative. However, it does not actually state that Harley Ruff is appointed Successor Personal Representative by virtue of the Statement of Resignation itself. This makes perfect sense because the mandatory procedure for appointment had not been initiated.

Moreover, the title of the form – Statement of Resignation – indicates that the purpose is simply to determine the point when a personal representative has officially resigned. In this case, the "Order" component provides for a prospective termination date; i.e., whenever Harley Ruff is validly appointed and the Appellant accounts to the Court and turns over the assets. However, none of these preconditions have yet been satisfied.

F. There is no evidence in the record that anyone has actually accepted the purported appointment of Successor Personal Representative or Special Administrator.

In appeals from the probate court, [t]he hearing must be strictly on appeal and no new evidence may be presented." S.C. Code Ann. § 62-1-308(i). See also Rule 210(h), SCACR. Here, however, the record includes absolutely no evidence that Harley Ruff has actually accepted the purported appointment as Successor Personal Representative or Special Administrator. Note that, at most, the Statement of Resignation merely purports to appoint Harley Ruff. However, his acceptance of such alleged appointment cannot be assumed.

In fact, the only references to Harley Ruff in the record are the September 18, 2017 Order (p. 3) referencing the existence of the purported appointment but without any evidence of acceptance, and Appellant's reference to Harley Ruff as the "proposed Special Administrator,"

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both in the July 28, 2017 Notice of Hearing and in the August 17, 2017 Hearing Transcript (p. 4, l. 16), neither references of which were refuted by Ms. Gooding, Ms. Sharp, or the Probate Court.[1] Further, a lack of acceptance is logical since the Statement of Resignation itself provides that it is only effective "[u]pon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative ...." which has not happened and for which there is no record.

In summary, there is no factual basis to support a conclusion that Appellant has been replaced as Personal Representative by Harley Ruff. Accordingly, the argument that Appellant may not appeal in his capacity as Personal Representative must fail for lack of factual support in the record. While Appellant recognizes that this may be a technical argument, Appellant would note that it is only by way of alleged technicality (standing) that Ms. Gooding and Ms. Sharp are seeking to avoid the valid merits of this appeal in the first place.

G. The Statement of Resignation directly contradicts the Probate Court's prior Order.

The Probate Court's February 27, 2017 Order specifically directed for the appointment of a Special Administrator. In contrast the Statement of Resignation contemplates the eventual replacement of Appellant as Personal Representative with a Successor Personal Representative. These are different statutory roles with differing authority. Cf. S.C. Code Ann. §§ 62-3-613, -616, & -617. Accordingly, the portion of the Statement of Resignation signed by the Probate Court on March 20, 2017 is in contravention of its own prior order and is void ab initio. The only other logical possibilities are that it negated the prior order, in which case there is no longer

[1] Appellant also filed a Motion on August 2, 2017 that would have provided the Probate Court with an opportunity to validly confirm his resignation as Personal Representative and appoint a special administrator, but the Probate Court did not entertain it on the objection of Ms. Gooding. August 17, 2017 Hearing Transcript, p. 10, l. 19-25; p. 11, l. 1-21.

an alleged settlement, or that it modified the prior settlement, and is therefore incorporated in that prior settlement which no one disputes was timely appealed by Appellant.

H. There cannot be a validly appointed successor personal representative if there is no vacancy.

S.C. Code Ann. § 62-3-613 references the portions of the Probate Code that "govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated." It also provides that "the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated." Id. The clear implication is that the successor personal representative only follows a valid termination, which of course also comports with basic logic. Therefore, to the extent that the Statement of Resignation purports to appoint a successor personal representative, it is invalid because there was no vacancy as will be determined in this appeal.

I. The appointment of a special administrator does not in and of itself terminate the interest of a personal representative.

A special administrator may be appointed informally "to take appropriate actions involving estate assets" and formally "to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act." S.C. Code Ann. § 62-3-614(1)(c) & (2). Further, "[t]he appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct." S.C. Code Ann. § 62-3-617. As the comments to Section 62-3-614 note, "[a]ppointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of a conflict of interest." Accordingly, the Probate Code

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makes clear that the appointment of a special administrator does not necessarily terminate the interest of a personal representative.

Therefore, to the extent the Statement of Resignation purports to appoint a special administrator (which the Probate Court's prior order dated February 27, 2017 had said it would do rather than a successor personal representative), then such appointment of the special administrator does not in and of itself negate Appellant's status as general Personal Representative. Instead, the special administrator would simply continue with the necessary acts of Estate administration that Appellant is prevented from doing while Ms. Gooding's Petition for Removal of Personal Representative remains pending. See S.C. Code Ann. § 62-3-611(a).

J. Any appointment of Harley Ruff is in error and Appellant as the original Personal Representative may recover Estate assets from the subsequent appointee.

"If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed ...." S.C. Code Ann. § 62-3-702 (titled "Priority Among Different Letters"). As discussed previously, any purported appointment of Harley Ruff as Successor Personal Representative or Special Administrator is in plain error as a matter of law. Therefore, if and when Appellant's interest as Personal Representative is confirmed in this appeal, Appellant may resume his role as such and recover any Estate property in the hands of Harley Ruff.

K. Any appointment of Harley Ruff, even if not in error, does not terminate Appellant's interest as Personal Representative due to Appellant's appeal.

"A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified." S.C. Code Ann. § 62-3-702. Therefore, even if the Statement of Resignation appointed a Successor Personal Representative and is "the law of

this case," such appointment did not terminate Appellant's interest as Personal Representative because his termination is one of the subjects as yet to be determined on appeal.

L. Any termination of Appellant's interest as Personal Representative ceases for the duration of this appeal under the South Carolina Probate Code.

"When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had." S.C. Code Ann. § 62-1-308(h). See also Rule 241(a), SCACR (providing an automatic stay of matters decided in the order being appealed). Because Appellant appealed the first order accepting his resignation, all "proceedings in pursuance" thereof are currently ceased. This includes the Statement of Resignation that was originally provided by Appellant on February 2, 2017 and upon which the Probate Court based its February 27, 2017 ruling that Appellant had resigned as Personal Representative.

IV. Ratification, Joinder, or Substitution of a Real Party in Interest

Appellant believes he has provided ample support for the position that he remains Personal Representative or, even if not, may continue this appeal in such capacity. However, if the Circuit Court is not satisfied with Appellant's arguments in that respect, Appellant has also moved for ratification, joinder, or substitution of an appropriate real party in interest pursuant to Rule 17(a), SCRCP. Such persons may include Morgan Kearse in his individual capacity or as Co-Trustee of the Trust impacted by the alleged settlement or, to the extent he would faithfully pursue it despite his potential conflict, by Harley Ruff as the purported Successor Personal Representative or Special Administrator.

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Note also that it is no defense to substitution that the request was not made below. See Patton v. Miller, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017), reh'g denied (Sept. 27, 2017) ("The defendants contend that any argument under Rule 17(a) is not preserved for our review because Patton never specifically mentioned Rule 17. We find this argument troubling. It was the defendants who first invoked the Rule 17(a) requirement that "Every action shall be prosecuted in the name of the real party in interest" by claiming Patton in her representative capacity was not the proper party to bring the claim for Alexia's medical expenses. In doing so, it was the defendants who first failed to mention Rule 17.").

Here, it is Ms. Gooding and Ms. Sharp who failed to raise the need for a substitution of parties before the Probate Court, if in fact there is such a need. Therefore, Appellant may seek this relief now in order to preserve the appeal for the final and most expedient resolution of the issues at hand. Further, Ms. Gooding and Ms. Sharp would not be prejudiced by the addition of a party that the Circuit Court believes has standing since Ms. Gooding and Ms. Sharp have been on notice from the first day they proffered the alleged settlement over Appellant's objection that it was not a valid settlement. In fact, the sooner the settlement validity is addressed, the less of their own money Ms. Gooding and Ms. Sharp will potentially spend to attempt to enforce the alleged settlement.

V. Conclusion

Based on the foregoing and Appellant's Initial Brief and Reply Brief, Appellant respectfully requests the Circuit Court to amend its Order dated October 29, 2018, and issue a ruling that:

A. Appellant remains Personal Representative, otherwise has standing to appeal, or allowing joinder, substitution, or ratification of the real party in interest;

B. The Final Term Sheet does not represent a binding settlement agreement; and

C. Vacating the Orders of the Allendale County Probate Court in this matter filed February 27, 2017 and September 18, 2017.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Kenneth B. Wingate

s/Matthew J. Myers

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November 8, 2018

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THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Alter or Amend and, if Necessary, for Ratification, Joinder, or Substitution of a Real Party in Interest by depositing a copy of it in the United States Mail, postage prepaid, on November 8, 2018, addressed to Gordon Kearse, P.O. Box 221, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers
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APPELLANT'S MOTION TO ALTER OR AMEND AND, IF NECESSARY, FOR RATIFICATION, JOINDER, OR SUBSTITUTION OF A REAL PARTY IN INTEREST

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Appellant, by and through his undersigned attorney, will move immediately before the Allendale County Circuit Court ("Circuit Court"), and does hereby move, for an order altering or amending the Circuit Court's Orders in this matter filed December 13, 2018 and October 29, 2018[1] and, if necessary to maintain this appeal, for a ratification, joinder, or substitution of an appropriate real party in interest. This motion is filed pursuant to Rules 59(e), 17(a), 25(c), and 74 of the South Carolina Rules of Civil Procedure and may be further supplemented by the pleadings, citations to relevant authority, one or more affidavits, a memorandum of law, and any other admissible information. The undersigned counsel certifies that this filing meets the obligations of Rule 11, SCRCP.

I. Introduction

This matter is on appeal to the Circuit Court from the Allendale County Probate Court ("Probate Court"). The Circuit Court, by formal order filed December 13, 2018, held that Appellant Morgan Kearse, as Personal Representative for the Estate of G.H. Kearse, lacked standing to bring the appeal due to Appellant's February 2, 2017 Statement of Resignation entered by the Probate Court on March 20, 2017. Before continuing his appeal further, Appellant respectfully requests that the Circuit Court reconsider its holding for several independent reasons as stated herein. If it may aid the Circuit Court, an outline of these reasons is as follows:

II. Ratification, Substitution, or Joinder.

A. Lack of prosecution by a real party in interest is not grounds for dismissal until a reasonable time is allowed for ratification, substitution, or joinder by the proper party.

B. Appellant has the power to act as Personal Representative until the court substitutes or joins the proper party upon motion for substitution or joinder.

C. The substantive merits of the appeal must be addressed before the full administration of the Estate can be had.

[1] The Order dated October 29, 2018 was a form 4 order providing for a subsequent written order.

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III. Appellant Has Standing Even If He Is No Longer Personal Representative.

A. Lack of standing cannot be raised for the first time on appeal.

B. Lack of standing must also be raised promptly in the matter below.

C. The Statement of Resignation was not appealable and, therefore, is not the law of the case.

D. Appellant properly appealed in the same capacity as designated in the underlying matter.

E. Appellant, in his capacity as Personal Representative, is the real party in interest.

F. Appellant, apart from his status as Personal Representative, was not an aggrieved party.

G. The Probate Court itself declined to alter Appellant's status as Personal Representative.

H. Appellant has statutory standing to appeal as Personal Representative after termination.

I. Appellant has general standing to appeal as Personal Representative after termination.

IV. Appellant Remains The Legally Valid Personal Representative.

A. Appellant's resignation became automatically invalid by statute.

B. Appellant properly challenged the validity of his resignation from the first opportunity.

C. All proceedings pursuant to the Order setting forth Appellant's resignation are ceased.

D. The mandatory statutory procedures for appointing a new fiduciary were not followed.

E. The Statement of Resignation is not itself an order of appointment.

F. The Statement of Resignation also is not yet effective on its own terms.

G. The Record on Appeal also contains no evidence of an acceptance of appointment.

H. The Statement of Resignation also directly contradicts the Probate Court's prior Order.

I. A successor personal representative cannot be appointed if there is no vacancy.

J. Appointment of a special administrator does not terminate the personal representative.

K. Appellant may act as Personal Representative if any contrary appointment was in error.

V. Conclusion.

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II. Ratification, Substitution, or Joinder

Although Appellant strongly believes he has the right to maintain this appeal in his capacity as Personal Representative (see Sections III & IV, infra), if the Circuit Court disagrees then the appropriate procedural action is either ratification, joinder, or substitution of the deemed proper party to the appeal, not dismissal of the action. Please note that the South Carolina Rules of Civil Procedure continue to apply to this matter while it remains with the Circuit Court, pursuant to Rule 74, SCRCP. See also State v. Oxner, 391 S.C. 132, 134, 705 S.E.2d 51, 51–52 (2011) (applying SCRCP to a criminal appeal to the circuit court); State v. Jenkinson, No. 2015-000252, 2016 WL 6092507, at *1 (S.C. Ct. App. Oct. 19, 2016) (applying SCRCP to an appeal from magistrate's court); Dortch v. City of Columbia Planning & Dev. Servs./Zoning Div., No. 2013-002686, 2015 WL 7686970, at *1 (S.C. Ct. App. Nov. 25, 2015) (applying SCRCP to an appeal from a board of zoning appeals).

To that end, if the Circuit Court believes that Appellant in his individual capacity is the property party then it should simply join or substitute Appellant in his individual capacity as the Appellant. Alternately, if the Circuit Court believes Harley Ruff, Esq. is the proper party as the alleged acting Estate fiduciary, then it should accept his ratification of Appellant's appeal as provided in Mr. Ruff's Affidavit (attached as Exhibit A). As Mr. Ruff states, "I believe that [Appellant's] above referenced appeal is necessary to resolve legal disputes that prevent the full administration of the Estate of G.H. Kearse, and anticipate that a dismissal of the appeal would not provide a final resolution of those issues. Id. ¶ 2. At the same time, however, Mr. Ruff does "not wish to be directly joined or substituted as a party because [Appellant] already has legal counsel that is well versed in the factual and legal issues involved, and so that I may remain neutral." Id. ¶ 4.

A. Lack of prosecution by a real party in interest is not grounds for dismissal until a reasonable time is allowed for ratification, substitution, or joinder.

"No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." Rule 17(a), SCRCP.

"The purpose of this provision is to avoid precisely what occurred here—the unnecessary procedural dismissal of a lawsuit the court should resolve on the merits. As the Reporter's Note to the rule indicates, this sentence is intended to prevent forfeiture in those cases in which the determination of the proper party to sue is difficult or when there has been an honest mistake." Patton v. Miller, 420 S.C. 471, 488, 804 S.E.2d 252, 261 (2017) (quotation omitted), reh'g denied (Sept. 27, 2017). "Formerly, the failure to bring suit in the name of the real party in interest was a jurisdictional failure requiring dismissal of the lawsuit. Under the Rules of Civil Procedure, however, it is improper to immediately dismiss a lawsuit simply because it was not brought in the name of the real party in interest." Id., 420 S.C. at 487, 804 S.E.2d at 260.

Finally, ratification, substitution, and joinder may be made on appeal, and it is no defense to substitution that the request was not made below. See id., 420 S.C. at 489, 804 S.E.2d at 261 ("The defendants contend that any argument under Rule 17(a) is not preserved for our review because Patton never specifically mentioned Rule 17. We find this argument troubling. It was the defendants who first invoked the Rule 17(a) requirement that "Every action shall be prosecuted in the name of the real party in interest" by claiming Patton in her representative capacity was not the proper party to bring the claim for Alexia's medical expenses. In doing so, it was the defendants who first failed to mention Rule 17.").

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In the present case, the Appellant's standing to litigate as Personal Representative has been questioned only before the Circuit Court on appeal, and it was Ms. Gooding and Ms. Sharp who failed to raise the need for a substitution of parties before the Probate Court, if in fact there is such a need. Moreover, because Appellant maintains many independent grounds why he remains the proper party for the appeal (see sections III and IV, infra), then, at worst, the proper party for this appeal is difficult to determine or Appellant has made an honest mistake as to his interest as the proper party.

Finally, though it is not a relevant inquiry under Rule 17(a), SCRCP, Ms. Gooding and Ms. Sharp would not be prejudiced by the ratification, substitution, or joinder of a proper party since Ms. Gooding and Ms. Sharp have been on notice from the first day they proffered the alleged settlement over Appellant's objection that it was not a valid settlement. In fact, the sooner the settlement validity is addressed, the less of their own money Ms. Gooding and Ms. Sharp will potentially spend to attempt to enforce the alleged settlement.

Ultimately, even if the Circuit Court believes that Appellant in his capacity as Personal Representative cannot maintain the appeal as a real party in interest, then the appropriate response under Rule 17(a), SCRCP is not to dismiss the appeal, but to allow the ratification, joinder, or substitution of a real party in interest.

B. Appellant has the power to act as Personal Representative until the court substitutes or joins the proper party upon motion for substitution or joinder.

"In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Rule 25(c), SCRCP (emphasis added). In addition, [s]ubstitution of parties under the provision of this rule may be made by the

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trial court either before or after judgement, or pending appeal, by the appellate court." Rule 25(e), SCRCP (emphasis added). See also S.C. Code Ann. § 62-3-613 ("After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party ....") (emphasis added).

Here, Ms. Gooding and Ms. Sharp argue on appeal that Appellant's interest as Personal Representative has been transferred to Harley Ruff, Esq. However, even if that were true, Rule 25(c), SCRCP expressly provides that Appellant may continue the appeal as Personal Representative until Harley Ruff is substituted or joined to the action as Personal Representative or Special Administrator upon a motion for the same, which joinder or substitution may be made even on appeal pursuant to Rule 25(e), SCRCP.

Therefore, since neither Ms. Gooding nor Ms. Sharp have undertaken to substitute Harley Ruff as the proper party, Appellant's appeal has been proper notwithstanding the alleged transfer of his interest as Personal Representative. Furthermore, because Appellant himself has moved for joinder or substitution to cure any alleged procedural defects, the Circuit Court may now substitute or join Harley Ruff as Appellant if it wishes. However, Appellant submits that the better course of action is to adhere to Mr. Ruff's own request to remain neutral in this matter, Affidavit of Harley Ruff, ¶ 4, and to simply accept Mr. Ruff's ratification of Appellant's appeal.

C. The substantive merits of the appeal must be addressed before the full administration of the Estate can be had.

The Circuit Court's Orders do not address the primary issue on appeal, which is the validity of the alleged settlement incorporated into the Probate Court's orders dated February 27, 2017 and September 18, 2017. If the alleged settlement is not stricken by the Circuit Court, then it will continue to be a matter of new litigation by one or more representatives of the Kearse

Family Education Trust U/A/D Nov. 05, 1992 (the "Trust").[2] As stated by Harley Ruff, Esq., "I believe that [Appellant's] above referenced appeal is necessary to resolve legal disputes that prevent the full administration of the Estate of G.H. Kearse, and anticipate that a dismissal of the appeal would not provide a final resolution of those issues. Affidavit of Harley Ruff, ¶ 2.

An overarching rule governing this appeal is that the South Carolina Rules of Civil Procedure "shall be construed to construe the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. "It is too late in the day and entirely contrary to the spirit of the ... Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. 'The ... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.'" Patton v. Miller, 420 S.C. 471, 493, 804 S.E.2d 252, 263 (2017), reh'g denied (Sept. 27, 2017) (quoting Foman v. Davis, 371 U.S. 178, 181–82 (1962)).

However, a dismissal of this appeal prior to a determination of the validity of the settlement is neither just because there was no underlying settlement as thoroughly explained in Appellant's briefs without legitimate rebuttal by Ms. Gooding or Ms. Sharp, nor will it be speedy or inexpensive when a new claim will need to be initiated by one or more Co-Trustees of the Trust in order to resolve the substantive dispute.

[2] The Trust did not consent to the alleged settlement even though it affected the Trust's interest, was not given proper legal notice that the Probate Court would hold a hearing to approve a settlement in violation of S.C. Code Ann. §§ 62-1-401 & -1102, and continues to lack any legal representative through which to contest any of the rulings that affect it. See, e.g., Real Estate Unlimited, LLC v. Rainbow Living Trust, No. 2004-UP-019, 2004 WL 6248341, at *2 (S.C. Ct. App. Jan. 15, 2004) (holding a non-attorney trustee may not appear in court on behalf of a trust).

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III. Appellant Has Standing Even If He Is No Longer Personal Representative.

For the following independent reasons, Appellant maintains standing as Personal Representative even if his interest as Personal Representative has been validly terminated.

A. Lack of standing cannot be raised for the first time on appeal.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citations omitted). "This Court has the inherent authority to consider justiciability. However, when a party belatedly attempts to raise the issue of standing, our courts have applied error preservation principles and held that the matter was not preserved for review where the trial court was not given an opportunity to first rule on the issue." James v. Anne's Inc., 390 S.C. 188, 193, 701 S.E.2d 730, 732–33 (2010) (citations by footnote omitted).

At the August 17, 2017 hearing, neither Ms. Gooding nor Ms. Sharp argued that Appellant lacked standing or otherwise referred to the Probate Court's entry of the Statement of Resignation on March 20, 2017, nearly a half year prior to the hearing. The closest statement was from counsel for Ms. Sharp, who stated:

> I will say at the outset that I don't understand how the motion is being made by Morgan as the Personal Representative because he is not the personal representative and has not been for some period of time as I will deal with in a minute. His lawyer told us at the last hearing [on February 2, 2017] that he was resigning effective immediately....Now I'm not sure what effect that has legally. I'll let my probate lawyer Mr. Slotchiver address that if it comes up, but I think it's important to note that this is the only party that is before Your Honor in support of the motion.

August 17, 2017 Hearing Transcript, p. 14, l. 13-19. However, Mr. Slotchiver never addressed the standing issue either beyond simply claiming that Appellant "is no longer the Personal Representative." August 17, 2017 Hearing Transcript, p. 24, l. 18-19.

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Accordingly, at most, Ms. Gooding and Ms. Sharp simply stated their shared belief that Appellant's resignation was effective as of the first hearing on February 2, 2017, which is an issue now on appeal. However, neither argued that Appellant lacked standing to be in Probate Court as Personal Representative or referenced the entry of the Statement of Resignation nearly a half year prior, nor did the Probate Court otherwise suggest that Appellant lacked standing to participate in the August 17, 2017 hearing.

Ultimately, despite not being mentioned at the hearing, the September 18, 2017 Order did refer to the March 20, 2017 Statement of Resignation at page 3.[3] However, the Order did not state or even imply that Appellant was without standing as Personal Representative to argue his Motion to Alter or Amend or otherwise appeal the same. In summary, Ms. Gooding and Ms. Sharp's argument that Appellant lacks standing as Personal Representative due to the collateral Statement of Resignation was not raised below, and is therefore not reserved for appellant review. See James v. Anne's Inc., 390 S.C. at 193, 701 S.E.2d at 732–33; Wilder Corp. v. Wilke, 330 S.C. at 76, 497 S.E.2d at 733.

B. Lack of standing must also be raised promptly in the matter below.

"Unless a party promptly challenges the opposing party's status as a real party in interest, such a challenge is waived." Bryson v. Bryson, 378 S.C. 502, 509, 662 S.E.2d 611, 614 (Ct. App. 2008) (emphasis added) (holding waiver occurred when argument that personal representative was not the real party in interest was not presented until the end of trail). "The purpose of allowing sufficient time for the ratification, joinder, or substitution of a real party in interest is to avoid precisely what occurred here – the unnecessary procedural dismissal of a

[3] As acknowledged at oral argument before the Circuit Court, the September 18, 2017 Order was drafted by counsel for Ms. Sharp after the hearing.

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lawsuit the court should resolve on the merits." Patton v. Miller, 420 S.C. 471, 488, 804 S.E.2d 252, 261 (2017) (quotation omitted), reh'g denied (Sept. 27, 2017).

Here, the Statement of Resignation was entered by the Probate Court on March 20, 2017, almost a half year prior to the August 17, 2017 hearing and subsequent Order dated September 18, 2017. Therefore, even if the standing issue could somehow be considered raised below at the final hearing or in an Order drafted by Ms. Sharp's counsel after the final hearing, the standing argument was nevertheless not raised promptly. Because Ms. Gooding and Ms. Sharp did not provide Appellant with a timely opportunity for ratification, joinder, or substitution by promptly challenging Appellant's standing, their challenge is waived.

C. The Statement of Resignation was not appealable and, therefore, is not the law of the case.

"The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right....Ordinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits." Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App.1989) (quoting 21 C.J.S. Courts Section 195 at 335 (1940)) (quoted with approval by Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013)). "As a general rule, only final judgments are appealable. Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citations omitted). See also S.C. Code Ann. § 62-1-308(a) ("A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court ....").

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Here, the purported appointment of Harley Ruff as Estate fiduciary was not a final order with regard to Appellant's status as Personal Representative because there remained further action by the Probate Court (or an appellate court) to finally determine the rights and obligations of Appellant as Personal Representative. In fact, the Probate Court did hold a subsequent hearing involving Appellant in his capacity as Personal Representative, the Order from which the Appellant has now appealed. It would have been nonsensical, and needlessly complicated the proceedings, for Appellant to interrupt the Probate Court's own process for handling Appellant's grievance in order to attempt to appeal a collateral interlocutory order.

As it has been held, "[t]he appointment of a special administrator is clearly temporary, and this Court does not have subject matter jurisdiction to hear an appeal challenging the appointment of a special administrator as an interlocutory order." Pope v Estate James Brown, No. 2013CP021337, 2014 WL 6682618, at *3 (S.C.Com.Pl. Jan. 17, 2014). See also Estate of Boyce v. Work, 305 S.C. 43, 44, 406 S.E.2d 184, 185 (Ct. App. 1991), case dismissed sub nom. Boyce-Abel In re Estate of Boyce v. Work, 308 S.C. 234, 417 S.E.2d 597 (1992). Here, the Statement of Resignation was entered following the Probate Court's prior February 27, 2017 Order holding that a special administrator was to be appointed. Although the boilerplate language in the Statement of Resignation uses the phrase "Successor Personal Representative," the Probate Court's intention could not have been to contradict or amended its own Order without any reference to the same, nor could Appellant be put on notice of such intention.

Ultimately, the purported appointment of Harley Ruff, whether as Special Administrator or Successor Personal Representative, was not meant to be, and was not otherwise, a final determination of the rights and obligations of Appellant as Personal Representative, and is

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therefore not the law of the case. Rather, it is this appeal which will determine the rights and obligations of Appellant as Personal Representative.

D. Appellant properly appealed in the same capacity as designated in the underlying matter.

This controversy originated with Appellant's Summons and Petition for Instruction, which he filed as Personal Representative of the Estate. The February 2, 2017 hearing scheduled for that Petition resulted in a February 27, 2017 Order that continued to name Appellant in his capacity as Personal Representative. Consequently, Appellant filed a motion to alter or amend that Order in his capacity as Personal Representative. The Probate Court heard that motion on August 17, 2017, and subsequently issued an order identifying Appellant in his capacity as Personal Representative on September 18, 2017. That final order did not state that Appellant lacked standing, despite being issued nearly a half year after the Statement of Resignation was signed by the Probate Court on March 20, 2017.

Quite logically then, when Appellant appealed the Probate Court orders that had identified and affected him in his capacity as Personal Representative, he did so in his capacity as Personal Representative. It made no sense to do it any other way, particularly when the purported Successor Personal Representative or Special Administrator possibly has a conflict of interest in vacating the Order that resulted in his alleged appointment and, in any event, does not wish to become directly involved in the appeal. Affidavit of Harley Ruff, ¶ 4. In fact, had Appellant not appealed as Personal Representative, Ms. Gooding and Ms. Sharp would surely argue that Appellant had abandoned his right to contest portions of those orders affecting his rights and obligations as Personal Representative.

Furthermore, the South Carolina Appellant Court Rules do not require any change in identification of the parties, and merely provide that "[t]he party appealing shall be known as the

appellant and the adverse party as the respondent." Rule 202(a), SCACR. Therefore, the Appellant Court Rules indicate that the important identification is that of appellant and respondents, and presume that the specific title of each is simply to be the same as it was from the matter being appealed.

In sum, it defies fundamental due process, and logic, that an appeal could be dismissed when the parties were merely identified in the same manner as they were identified below, and where there has been no opportunity for a substitution, joinder, or ratification of a proper party. It may also be noted that Appellant has also continued to be named as a Respondent in the appeal in his individual capacity, so he is already before the Circuit Court in both capacities as it is.

E. Appellant, in his capacity as Personal Representative, is the real party in interest.

Rule 17(a), SCRCP requires that "[e]very action shall be prosecuted in the name of the real party in interest." Here, the alleged settlement relates to Appellant's rights and obligations as Personal Representative and affects the Estate, which makes Appellant in his capacity as Personal Representative the real party in interest and, therefore, the capacity in which Appellant had no choice but to appeal. "Under Rule 17(a), the definition of the proper party is the same as it has always been—the proper party is any real party in interest.... Where, as here, the named plaintiff has suffered an actionable loss at the hand of the defendant, he is a real party in interest and the requirement of Rule 17(a) is met." Patton v. Miller, 420 S.C. 471, 487, 804 S.E.2d 252, 260 (2017), reh'g denied (Sept. 27, 2017) (quotation and citation omitted).

F. Appellant, apart from his capacity as Personal Representative, was not an aggrieved party.

Rule 201(b), SCACR provides that "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal." Because Appellant was not individually aggrieved by the

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alleged settlement apart from his service and capacity as Personal Representative, it is actually in Appellant's individual capacity that Appellant believes he would have no standing to appeal. Had Appellant instead appealed in his individual capacity, Ms. Gooding and Ms. Sharp would surely argue that Appellant has no individual standing and has otherwise abandoned his right to contest portions of the orders affecting his interest as Personal Representative. Therefore, to deny Appellant the right to appeal as Personal Representative likely leaves him completely without recourse and therefore would also deny his right to due process.

G. The Probate Court itself declined to alter Appellant's status as Personal Representative.

"Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Rule 21, SCRCP. "The decision whether to realign the parties lies within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice." Branham v. Ford Motor Co., 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010). Here, the Probate Court declined to realign Appellant from his capacity as Personal Representative, even though the alleged appointment of a Successor personal Representative or Special Administrator had occurred nearly six months before its September 18, 2017 Order now on appeal. To only now on appeal separate Appellant from his capacity as Personal Representative would effectively deny Appellant's right to appeal, and therefore his right to due process. It would also prejudice to the Trust and/or Estate for having to file an entirely new challenge to the alleged settlement.

H. Appellant has statutory standing to appeal as Personal Representative after termination.

Under the South Carolina Probate Code, a terminated personal representative "at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate ...." S.C. Code Ann. § 62-3-608. Here, quite simply, the appeal is

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necessary to protect the Estate because the alleged order would bind the Estate to various inequitable obligations if not challenged. For example, absent a contrary finding under S.C. Code Ann. § 62-1-111, the legal fees for Ms. Gooding and Ms. Sharp should be paid by themselves and not by the Estate. In addition, the Estate has not been distributed and Appellant has not been restrained or enjoined by court order from maintaining this appeal, and there is no evidence of the same. Therefore, under statute, Appellant may continue the appeal even if terminated as Personal Representative.

I. Appellant has general standing to appeal as Personal Representative after termination.

The South Carolina Supreme Court has conferred general standing where a claimant had (1) statutory duties regarding the subject of the litigation and (2) an economic interest in the same. See Henry v. Horry Cty., 334 S.C. 461, 463, 514 S.E.2d 122, 123 (1999) (holding a county sheriff had standing to challenge a law from 1959 divesting the sheriff of control over the county prison several decades earlier). Under those general principles as applied to this matter, Appellant has standing to challenge the alleged settlement as Personal Representative where the alleged settlement gives Appellant both (1) duties with respect to Appellant's status as Personal Representative and (2) an economic interest with respect to Appellant's status as Personal Representative.

IV. Appellant Remains The Legally Valid Personal Representative

Although Appellant has a right to maintain this appeal even if his interest as Personal Representative has been validly terminated, that is ultimately a moot issue since Appellant in fact remains Personal Representative. To follow are several independent grounds why that is true.

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A. Appellant's resignation became automatically invalid by statute.

Appellant's resignation automatically became invalid after 20 days because no one applied for a successor personal representative during that time pursuant to S.C. Code Ann. § 62-3-610(b). Even the Probate Court at the time the resignation was tendered noted "Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of [Appellant] to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons [as successor], and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary." Transcript of February 2, 2017 Hearing, p. 21, l. 7-13.

Moreover, even Ms. Gooding and Ms. Sharp admitted "[f]airness requires acknowledging a personal representative may not 'immediately' resign his position. As [Appellant]'s lawyer told the probate court, a statute requires twenty days written notice to persons with an interest in the estate and provides that the resignation is effective only upon the appointment and qualification of a successor personal representative and delivery of the estate's assets to him." Joint Respondents' Brief, p. 6. Ultimately, however, no one followed the formal process that everyone acknowledges must be followed for Appellant's resignation to become valid.

B. Appellant properly challenged the validity of his resignation from the first opportunity.

On February 27, 2017, the Probate Court first ruled that it had accepted Appellant's resignation despite the resignation being void in accordance with South Carolina law. Appellant then served a timely motion to alter or amend that issue on March 16, 2017, before the Statement of Resignation form purporting to appoint successor fiduciary was entered by the Probate Court on March 20, 2017. Appellant's motion was denied on September 18, 2017, and Appellant

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thereafter filed a timely appeal that challenges both the September 18, 2017 Order and the February 27, 2017 Order that first purported to accept Appellant's resignation.

Even Ms. Gooding and Ms. Sharpe admit that "a personal representative may not 'immediately' resign his position," noting the requirements of S.C. Code Ann. § 62-3-610(b), and that "[i]t was therefore possible – as a formal matter – for [Appellant] to file a motion to alter or amend in his capacity as personal representative ...." Joint Respondents' Brief, p. 6. Once that motion was denied, Appellant consequently had a right to appeal the denial of that order, which right cannot be lost by the entry of a collateral filing of the Statement of Resignation pursuant to the Orders being appealed.

C. All proceedings pursuant to the Order setting forth Appellant's resignation are ceased.

"When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals or Supreme Court is had." S.C. Code Ann. § 62-1-308(h). See also Rule 241(a), SCACR (providing an automatic stay of matters decided in the order being appealed). Because Appellant appealed the first order accepting his resignation, all "proceedings in pursuance" thereof are currently ceased. This includes the Statement of Resignation that was originally provided by Appellant on February 2, 2017 and upon which the Probate Court based its February 27, 2017 ruling that Appellant had resigned as Personal Representative.

D. The mandatory statutory procedure for appointing a new fiduciary were not followed.

The mandatory statutory procedure for the informal appointment of a successor personal representative requires an application by the proposed successor, with notice to interested persons, and findings by the court as to the applicant's statutory qualifications, including the

applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-301, -308 & -310. The mandatory statutory procedure for the formal appointment of a successor personal representative requires a summons and petition by the proposed successor, served on all interested persons, and a formal hearing by the court, after notice of hearing sent to the interested parties, to confirm the applicant's qualifications, including the applicant's priority for appointment. See S.C. Code Ann. §§ 62-3-402, -403, & -414. Finally, the mandatory statutory procedure for both the informal and formal appointment of a special administrator requires either an informal application or petition by an interested person along with additional findings. See S.C. Code Ann. § 62-3-614.

None of these mandatory statutory procedures were attempted in the present matter. As stated previously, the Probate Court, Ms. Gooding, and Ms. Sharp have each acknowledged there is a procedure that must be followed to replace a personal representative. Transcript of February 2, 2017 Hearing, p. 21, l. 7-13; Joint Respondents' Brief, p. 6. Accordingly, any purported appointment of a successor personal representative is void ab initio, and there is nothing to appeal regarding the same because the mandatory legal process was not even initiated.

E. The Statement of Resignation is not itself an order of appointment.

If one reads the Statement of Resignation closely, they will notice that it merely provides that Appellant's interest as Personal Representative terminates at such time that Harley Ruff is appointed Successor Personal Representative. However, the Statement of Resignation does not actually state that Harley Ruff is appointed Successor Personal Representative by virtue of the Statement of Resignation alone. This construction of the Statement of Resignation makes perfect sense because the mandatory procedure for appointment of a Successor Personal Representative

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had not been initiated, and Appellant's status as Personal Representative was undergoing further review by the same Probate Court that entered the Statement of Resignation.

Had the procedure for appointment of a successor personal representative been followed, then the Probate Court would have provided for the actual appointment in the "Order of Appointment" section of the applicable probate form 333ES (attached as Exhibit B) or a similar order, and Harley Ruff would have executed the "Qualification and Statement of Acceptance" section thereof or a similar statement. Similarly, had the procedure for appointment of a special administrator been followed, then the Probate Court would have provided for the actual appointment in the "Order of Appointment" section of the applicable probate form 335ES (attached as Exhibit C), and Harley Ruff would have executed the "Qualification and Statement of Acceptance" section thereof or a similar statement.

In contrast, the Statement of Resignation contains no such "Order of Appointment" or "Statement of Acceptance." Rather, it simply provides an "Order" section that indicates when a resignation applied for under the Statement of Resignation would be deemed approved, which in this case would be whenever Harley Ruff is otherwise validly appointed and the Appellant accounts to the Court and turns over all Estate assets. This construction is supported by the title of the form itself, which is simply "Statement of Resignation" and not a "Petition for Successor Personal Representative" as with probate form 333ES or "Petition for Appointment of Special Administrator" as with probate form 335ES.

F. The Statement of Resignation also is not yet effective on its own terms.

Even if the Statement of Resignation could be construed as an "Order of Appointment," (which it does not purport to be), the Statement of Resignation specifically states that Appellant's appointment is only effective "[u]pon accounting to the Court for the assets and the delivery of

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the assets of the Decedent to the Successor Personal Representative ...." Neither such condition has been fulfilled, nor is there any evidence of such in the record on appeal.

The Statement of Resignation also specifically states that Appellant's resignation is effective only "[w]ith the appointment of Harley Ruff, Ruff & Ruff, LLC as Successor Personal Representative in this Estate." However, as stated previously, the mandatory procedure for appointing Harley Ruff as Successor Personal Representative has yet to be initiated.

Finally, the Statement of Resignation specifically states that Appellant "realize[s] that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and the delivery of the assets to that person." Again, however, the mandatory procedure for appointing a Successor Personal Representative has not been attempted, nor have the assets been delivered to such hypothetical person.

G. The Record on Appeal also contains no evidence of an acceptance of appointment.

In appeals from the probate court, [t]he hearing must be strictly on appeal and no new evidence may be presented." S.C. Code Ann. § 62-1-308(i). See also Rule 210(h), SCACR. Here, however, the record includes absolutely no evidence that Harley Ruff has actually accepted the purported appointment as Successor Personal Representative or Special Administrator. At most, the Statement of Resignation merely purports to appoint Harley Ruff. However, his acceptance of such alleged appointment cannot be assumed, especially given that there is no "Qualification and Statement of Acceptance" as is found on the forms actually intended to be used for appointment of a fiduciary. See Forms 333ES and 335ES, at Exhibit B and C.

In fact, the only references to Harley Ruff in the record are the September 18, 2017 Order (p. 3) referencing the existence of the purported appointment but without any evidence of acceptance, and Appellant's reference to Harley Ruff as the "proposed Special Administrator,"

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both in the July 28, 2017 Notice of Hearing and in the August 17, 2017 Hearing Transcript (p. 4, l. 16), neither references of which were refuted by Ms. Gooding, Ms. Sharp, or the Probate Court.[4] Further, a lack of acceptance is logical since the Statement of Resignation itself provides that it is only effective "[u]pon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative ...." which has not happened and for which there is no record.

It is quite noteworthy that, on November 28, 2018, Ms. Gooding filed an Affidavit attempting to provide evidence of Mr. Ruff's acceptance of alleged appointment. First, the affidavit is an implicit acknowledgment that there is, in fact, no evidence in the record of Harley Ruff's acceptance. Therefore, if the affidavit is inadmissible then the argument that Appellant is no longer Personal Representative must fail as a matter of law for lack of factual support.[5] However, if Ms. Gooding's affidavit is admissible, then so too is Mr. Ruff's affidavit ratifying this appeal. To that end, Mr. Ruff's affidavit should be given great respect as the person allegedly entrusted with administering the Estate as a fiduciary and, in any event, should be given effect under Rule 17(a), SCRCP.

H. The Statement of Resignation also directly contradicts the Probate Court's prior Order.

The Probate Court's February 27, 2017 Order specifically provided for the appointment of a Special Administrator. In contrast, the Statement of Resignation contemplates the eventual replacement of Appellant as Personal Representative with a Successor Personal Representative.

[4] Appellant also filed a Motion on August 2, 2017 that would have provided the Probate Court with an opportunity to validly confirm his resignation as Personal Representative and appoint a special administrator, but the Probate Court did not entertain it on the objection of Ms. Gooding. August 17, 2017 Hearing Transcript, p. 10, l. 19-25; p. 11, l. 1-21.

[5] While Appellant recognizes that this may be a technical argument, Appellant would note that it is only by way of alleged technicality (standing) that Ms. Gooding and Ms. Sharp are seeking to avoid the valid merits of this appeal in the first place.

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These are different statutory roles with differing authority. Cf. S.C. Code Ann. §§ 62-3-613, -616, & -617. Accordingly, the portion of the Statement of Resignation signed by the Probate Court on March 20, 2017 is in contravention of its own prior order and is void ab initio. The only other logical possibilities are that it negated the prior order, in which case there is also no longer an alleged settlement, or that it modified the prior settlement, and is therefore incorporated in that prior settlement which no one disputes was timely appealed by Appellant.

I. A successor personal representative cannot be appointed if there is no vacancy.

S.C. Code Ann. § 62-3-613 references the portions of the Probate Code that "govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated." It also provides that "the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if his appointment had not been terminated." Id. The clear implication is that the appointment of a successor personal representative only follows a valid termination, which of course also comports with basic logic. Therefore, to the extent that the Statement of Resignation purports to appoint a successor personal representative, it is invalid because there was no vacancy as will ultimately be determined in this appeal.

J. Appointment of special administrator does not terminate the personal representative.

A special administrator may be appointed informally "to take appropriate actions involving estate assets" and formally "to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act." S.C. Code Ann. § 62-3-614(1)(c) & (2). Further, "[t]he appointment may be for a specified time, to perform particular acts, or on other terms as the court may direct." S.C. Code Ann. § 62-

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3-617. As the comments to Section 62-3-614 note, "[a]ppointment of a special administrator would enable the estate to participate in a transaction which the general personal representative could not, or should not, handle because of a conflict of interest." Accordingly, the Probate Code makes clear that the appointment of a special administrator does not necessarily terminate the interest of a personal representative without an independent order of termination.

Therefore, to the extent the Statement of Resignation purports to appoint a special administrator (which the Probate Court's prior order dated February 27, 2017 had said it would do rather than a successor personal representative), then such appointment of the special administrator does not in and of itself negate Appellant's status as general Personal Representative. Instead, the special administrator would simply continue with the necessary acts of Estate administration that Appellant is prevented from doing while Ms. Gooding's Petition for Removal of Personal Representative remains pending. See S.C. Code Ann. § 62-3-611(a).

K. Appellant may act as Personal Representative if any contrary appointment was in error.

"A person to whom general letters are issued first has exclusive authority under the letters until his appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed ...." S.C. Code Ann. § 62-3-702 (titled "Priority Among Different Letters"). As discussed previously, any purported appointment of Harley Ruff as Successor Personal Representative or Special Administrator is in plain error as a matter of law. Therefore, Appellant may continue to act as Personal Representative in order to confirm his rightful status as Personal Representative and recover any Estate property in the hands of one who has been wrongfully appointed.

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V. Conclusion

Based on the foregoing and Appellant's Initial Brief and Reply Brief, Appellant respectfully requests the Circuit Court to amend its Orders filed December 13, 2018 and October 29, 2018, and issue a ruling that:

A. Appellant remains Personal Representative or, if not, otherwise has standing to appeal or, if neither, allowing joinder, substitution, or ratification of the real party in interest;

B. The Final Term Sheet does not represent a binding settlement agreement; and

C. Vacating the Orders of the Allendale County Probate Court in this matter filed February 27, 2017 and September 18, 2017.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Kenneth B. Wingate

s/Matthew J. Myers

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, South Carolina 29211
Telephone: (803) 256-2233
Attorneys for Appellant

Columbia, South Carolina

December 27, 2018

ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM THE ALLENDALE COUNTY PROBATE COURT
Sheila B. Odom, Special Probate Judge

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse ..... Appellants,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Alter or Amend and, if Necessary, for Ratification, Joinder, or Substitution of a Real Party in Interest by depositing a copy of it in the United States Mail, postage prepaid, on December 27, 2018, addressed to Gordon Kearse, P.O. Box 221, Fairfax, SC 29827; Joseph W. Kearse, 6620 Merrill, Columbia, SC 29209; Rachael K. Best, 5055 Lakeshore Drive, Columbia, SC 29206.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

s/Matthew J. Myers
Kenneth B. Wingate
Matthew J. Myers
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Appellant

Columbia, South Carolina
December 27, 2018

ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF ALLENDALE	)	
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,	)	**Case No.: 2013-ES-03-00063**
	)	
Petitioner,	)	
v.	)	
	)	
The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,	)	**AFFIDAVIT OF HARLEY D. RUFF**
	)	
Respondents.	)	

PERSONALLY APPEARED BEFORE ME, the undersigned, Harley D. Ruff, who after being duly sworn, deposes and says:

1. Morgan Kearse has appealed Orders of the specially appointed Probate Judge for the Allendale Probate Court that would recognize an alleged settlement agreement concerning the Estate of G.H. Kearse and terminate his status as Personal Representative thereof.

2. I believe that Morgan Kearse's above referenced appeal is necessary to resolve legal disputes that prevent the full administration of the Estate of G.H. Kearse, and anticipate that a dismissal of the appeal would not provide a final resolution of those issues.

3. Accordingly, to the extent that I am now the validly acting fiduciary for the Estate of G.H. Kearse, I am willing to ratify, and do hereby offer my ratification of, Morgan Kearse's pursuit of above referenced appeal so that it may be resolved on the merits. I do not take any position, and I remain neutral, regarding the substance of such appeal.

4. Furthermore, I do not wish to be directly joined or substituted as a party because Morgan Kearse already has legal counsel that is well versed in the factual and legal issues involved, and so that I may remain neutral.

FURTHER AFFIANT SAYETH NOT.

Harley D. Ruff

SWORN TO and subscribed before me
this 13th day of DEC, 2018

Notary Public for South Carolina

DIANA WASIELEWSKI
NOTARY PUBLIC
My Commission Expires 11/28/2022
SOUTH CAROLINA

EXHIBIT
A
000577

My Commission Expires: 11/28/2022

ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

STATE OF SOUTH CAROLINA)
)
COUNTY OF: _____)
)
IN THE MATTER OF:)
_____)
(Decedent))

IN THE PROBATE COURT

APPLICATION/*PETITION FOR
SUCCESSOR PERSONAL REPRESENTATIVE

CASE NUMBER: _____

*ONLY COMPLETE THIS SECTION IF FILING PETITION FOR SUBSEQUENT ADMINISTRATION

* _____
Petitioner(s)
vs.
* _____
Respondent(s)

☐ INFORMAL ☐ *FORMAL

The previous/original application/petition is adopted, unless noted on the amended FORM 300ES attached hereto.

The name(s) and address(es) of the most recent duly qualified and acting Personal Representative(s) for this estate is/was: _____
_____

If not previously filed with the Court, a copy of the above Personal Representative's death certificate, resignation or termination of appointment is attached.

The name(s) and address(es) of the proposed Successor Personal Representative(s) is/are: _____
_____
_____

Priority for appointment of the Successor Personal Representative is:

- ☐ named as Primary Personal Representative in Will
- ☐ named as Alternate Personal Representative in Will
- ☐ nominee of above Primary Personal Representative in Will
- ☐ nominee of above Alternate Personal Representative in Will
- ☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
- ☐ other devisee of Decedent (describe): _____ or nominee of said devisee
- ☐ surviving spouse of Decedent or nominee of said spouse
- ☐ other heir of Decedent (describe): _____ or nominee of said heir
- ☐ creditor (Forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, Form #371ES, is attached
- ☐ other (describe): _____
_____

*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

EXHIBIT
tabbies
B

ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this _____ day of _____, 20_____

Signature: _____
Print Name: _____
Address: _____
_____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

_____
Notary Public for South Carolina
My Commission Expires: _____

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of_____20_____.

_____
, Probate Court Judge

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for Successor Personal Representative be
☐ GRANTED ☐ DENIED and

☐ Fiduciary Bond in the amount of $_____
☐ Bond not required for Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____
_____

Executed this _____ day of_____20_____.

_____
, Probate Court Judge

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QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Successor Personal Representative of this estate and hereby submit to the Court's jurisdiction in this matter.

Signature: _____
Print Name: _____
Address: _____
_____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____
_____
Telephone: _____
Email: _____

ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)
)
IN THE MATTER OF:)
_____)
(Decedent))

IN THE PROBATE COURT

APPLICATION/*PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

CASE NUMBER: _____

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR SPECIAL ADMINISTRATOR

*_____;
Petitioner(s)

vs.

*_____,
Respondent(s)

☐ INFORMAL ☐ *FORMAL

Appointment of a Special Administrator is requested:

INFORMAL PROCEEDING:

- ☐ to protect the Estate of Decedent prior to the appointment of a general Personal Representative.
- ☐ to safeguard Estate assets until a Successor Personal Representative is appointed due to the death or disability of _____, the previously appointed Personal Representative.
- ☐ to enforce a creditor's security interest upon property of the Estate or to institute proceedings to establish the Decedent's liability to the extent of the limits of insurance protection only.
- ☐ to take appropriate actions involving Estate assets, specifically: _____.
- ☐ to obtain medical, tax, or other confidential records, specifically: _____.
- ☐ to gain access to and take possession of any Wills, deeds to cemetery plots, and insurance policies, or other Estate related documents in Decedent's safe deposit box located at: _____.
- ☐ Other: _____.

FORMAL PROCEEDING:

- ☐ Appointment of a Special Administrator is requested to preserve the Estate and to secure the Estate and to secure the Estate's proper administration because: _____.
- ☐ Other: _____.

*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO A PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF $150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

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ELECTRONICALLY FILED - 2018 Dec 27 3:08 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statements are true to the best of the undersigned's knowledge, information and belief; and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this _____ day of _____, 20 _____

_____
Notary Public for South Carolina
My Commission Expires: _____

Signature: _____
Print Name: _____
Address: _____
_____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____
Relationship to Decedent/Estate: _____

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____
TIME: _____
PLACE: _____

Pursuant to SCPC 62-1-401, Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this _____ day of _____, 20____.

_____
, Probate Court Judge

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment of Special Administrator in the above estate be
☐ GRANTED ☐ DENIED as follows:

RESTRICTIONS: _____
_____
_____

Executed this _____ day of _____, 20____.

_____
, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept appointment and agree to perform the duties and discharge the trust of the office of Special Administrator of the foregoing Estate and submit to the jurisdiction of the Court in this matter.

Signature: _____
Print Name: _____
Address: _____
_____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____
_____
Telephone: _____
Email: _____

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COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
MAY 29 2019
SC Court of Appeals

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative
Of the Estate of G.H. Kearse.....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992.....Respondents.

NOTICE OF APPEAL

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, appeals the orders of the Honorable R. Lawton McIntosh dated December 12, 2018 and May 13, 2019, which were subsequently e-filed and received by Appellant on December 13, 2018 and May 14, 2019, respectively.

May 29, 2019

/s/ Kenneth B. Wingate

Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803) 256-2233
Attorneys for Appellant

Other Counsel of Record:

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Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
(803) 943-4444
Attorney for Respondent Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
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Charleston, SC 29464
(843) 577-6531
Attorney for Respondent Elizabeth Kearse Gooding

Blake A. Hewitt, Esquire
Bluestein Thompson & Sullivan LLC
PO Box 7965
Columbia, SC 29202
(803) 779-7599
Attorney for Respondent Elizabeth Kearse Gooding

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
MAY 29 2019
SC Court of Appeals

Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative
Of the Estate of G.H. Kearse.....Appellant,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal depositing a copy of same into the United States Mail, First-class postage prepaid, on May 29, 2019, addressed to the respondents or their attorneys of record as follows:

Daniel A. Speights, Esquire
Speights & Runyan
100 Oak Street, East
Post Office Box 685
Hampton, SC 29924
Attorney for Respondent Julia Kearse Sharp

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds Blvd, Ste. 100
Charleston, SC 29464
Attorney for Respondent Elizabeth Kearse Gooding

Blake A. Hewitt, Esquire
Bluestein Thompson & Sullivan LLC
PO Box 7965
Columbia, SC 29202
Attorney for Respondent Elizabeth Kearse Gooding

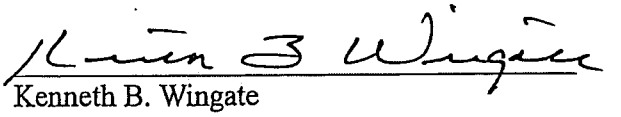
William Gordon Kearse
PO Box 221
Fairfax, SC 29827
Pro se

Rachael Kearse Best
5055 Lakeshore Drive
Columbia, SC 29206
Pro se

Joseph Weber Kearse
6620 Merrill Road
Columbia, SC 29209
Pro se

John Morgan Kearse
Post Office Box 521
Allendale, SC 29810
Pro se in individual capacity

I certify that the Kearse Family Education Trust is heretofore unrepresented in this matter and otherwise has no known address, and I have therefore delivered an additional copy of the Notice of Appeal with the Clerk of Court for the South Carolina Court of Appeals on May 29, 2019, pursuant to Rule 262, SCACR(b).



Kenneth B. Wingate
Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803) 256-2233
Attorneys for Appellant

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF ALLENDALE

J. MORGAN KEARSE, Personal Representative of the ESTATE OF G. H. KEARSE,

Petitioner,

vs. CASE NO. 2013-ES-03-00063

THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Respondents.

BEFORE THE HONORABLE SHEILA B. ODOM

DATE: February 2, 2017

TIME: 11:17 a.m.

LOCATION: Hampton County Courthouse
One Elm Street West
Hampton, SC

REPORTED BY: TRISHA M. THOMAS

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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A W R A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PETITIONER
J. MORGAN KEARSE, Personal Representative of the ESTATE OF G. H. KEARSE:

SWEENY, WINGATE & BARROW, P.A.
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ATTORNEYS FOR THE RESPONDENT
ELIZABETH KEARSE GOODING:

SLOTCHIVER & SLOTCHIVER
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ATTORNEYS FOR THE RESPONDENT
JULIA KEARSE SHARP:

SPEIGHTS & RUNYAN
BY: DANIEL A. SPEIGHTS
200 Jackson Avenue East
Hampton, SC 29924
(803) 943-4444
Dspeights@speightsrunyan.com

(INDEX AT REAR OF TRANSCRIPT)

THE COURT: This matter is before this Hampton Probate Court by Order of the Supreme Court of South Carolina dated June 16, 2016. As special probate court judge in this matter, let the record reflect these case numbers assigned to this case, Allendale County Probate Court case number to this case, 2013-ES-25-03-00063, and the Hampton County Court case number assigned, 2016-ES-25-0114.

At last we were to convene in December of '16, there was a Motion to Dismiss, a Petition for Instruction that was filed. As a matter of housekeeping, this Court is just going to reiterate what the record reflects for Hampton County. We then had a Motion for Summary Judgment filed December 12, '16, and since we've had a Petition for Removal filed as well as a Motion for Restraining Order.

Mr. Wingate, you filed that Amended Petition -- I'm sorry -- the Amended Motion for Instruction, and --

MR. WINGATE: Yes, Your Honor.

THE COURT: -- there were several issues I know that we're going to address about these pending motions, and I'm not exactly sure what agreements you all have reached and where

y'all feel you need to begin.

MR. WINGATE: If I may give you a little bit of background from that point -- I'll stand here if this picks up a little better. Of course today's hearing, when originally scheduled and as noticed, is for the purpose of hearing a couple of motions. First one filed was my motion to withdraw the petition for instructions or, I should say, to withdraw the Amended Petition for Instructions, just as you indicated.

I believe also on today's docket is at least one other motion, which I believe the next one would be Mr. Slotchiver's Motion for Summary Judgment on his petition that came in later to remove the Personal Representative.

I reached out to the Court, I believe it was yesterday, indicating to Your Honor that the parties had reached a settlement, and if I may, it's important to understand, one, the issue of who represents whom. I represent Morgan Kearse in his capacity as Personal Representative of the Estate. Mr. Slotchiver represents Ms. Gooding. Mr. Speights represents Ms. Sharp. And then there are three other siblings who are beneficiaries of the Estate, all of whom are pro se. If I may just

use their first names, there's Gordon, there's Joseph, and there's Rachael. None of us as attorneys represent any of those parties.

I was told by my client yesterday that he would agree to the terms of a settlement agreement and on that basis I wrote the letter to Your Honor indicating as much and requesting that rather than a motions hearing today that we would be present together to read a settlement into the record and to consent to that.

I also was told by my client that the other pro se parties would also sign the document, the settlement, and that I would be provided those signatures. As we stand here this morning, I'm afraid to announce to the Court that two things have changed. Number one, I have not been provided copies of any document from the pro se litigants consenting to the settlement, so whereas I was told that I would be able to present that to you, I do not have that and I cannot present it to you. They are not my clients. I have no control over them. I don't have that.

Secondly, my client is now going to take a step -- if I may approach.

THE COURT: Yes, sir.

MR. WINGATE: I've handed --

MR. SPEIGHTS: Would counsel identify what he's handed the Court?

MR. WINGATE: I've got a copy for you. I want her to see what it is and...

MR. SPEIGHTS: Thank you, Your Honor.

MR. WINGATE: And so my client, Your Honor, would like to take a unilateral step and submit a letter -- not a letter -- a pleading announcing his resignation as Personal Representative.

Now, as the Code indicates and as Your Honor is aware, a Personal Representative cannot automatically resign because, as it says in the Code, such resignation is not effective until one of two things happen, at least 20 days after all parties have been given notice -- so that would go out today after this conversation -- or until the Court appoints a successor Personal Representative or Special Administrator, but my client in his capacity as Personal Representative is so frustrated with the state of affairs that he hereby, this minute, submits his resignation to Your Honor irrevocably.

I have instructed him, as I told my

opposing counsel yesterday, that when we thought there was a settlement, first of all -- certainly now that there's a resignation -- that all of his authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do, for this estate.

I realize that, regrettably, this creates quite a conundrum for the Court, for me and my client, and for all the beneficiaries of this estate, for which I apologize; however, his position will be that he does not consent to the settlement; rather, he resigns as Personal Representative.

I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be -- my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent. Thank you.

THE COURT: Thank you.

Mr. Speights, how are you this morning?

MR. SPEIGHTS: Good morning, Your Honor. I told Mr. Gooding when we walked in this morning that I think I've come full circle. Forty-five years ago I clerked for Judge Bill Rhodes, and the first matter we ever heard was an appeal from Judge Ellis of the probate court, and it was the most convoluted mess I had ever worked on, but it was good training for a young lawyer back then.

I thought I came to court today to read something into the record and be back in my office in ten minutes. Having said that, Your Honor, on behalf of Julie Kearse Sharp, my client, I believe we have a settlement, and at the end of the day, and hopefully in only about ten or fifteen minutes, I'm going to ask Your Honor to enforce the settlement. It's something a lot of people worked on long and hard late into the night, and I thought we had everything worked out.

The settlement is part of a term sheet. It is a term sheet. And the settlement provides -- we agreed that I would read the term sheet into the record. I have -- am going to ask to be marked as

Exhibit 1 a copy of the term sheet, and attached to that are three e-mails between the parties, the first one from me to Mr. Wingate and Mr. Slotchiver, the second from Mr. Slotchiver giving his consent, and the third from Mr. Wingate giving his consent.

And in addition, Your Honor, I have -- and I would like that term sheet with those attachments marked as Exhibit 1, and next I have another e-mail from Mr. Wingate to -- from Mr. Wingate to Mr. Slotchiver and me advising us that the other siblings have consented to the settlement. And if I could mark those as Exhibit 1 --

MR. WINGATE: Could I just glance at one and assure they're what I sent you? I'm sure they are.

MR. SPEIGHTS: Sure.

THE COURT: For clarity, when you refer to the other siblings, that would be the pro se.

MR. SPEIGHTS: The pro se siblings.

THE COURT: Thank you.

MR. SPEIGHTS: And --

THE COURT: And the representative.

MR. SPEIGHTS: And just before I hand

those up, I also have three copies of the term sheet. Well, let me go ahead and mark these as one and two and then I have three more documents to mark.

That's one.

(EXH. 1, Final Term Sheet, e-mails dated January 31, 2017, and February 1, 2017, was marked for identification.)

MR. SPEIGHTS: Then, Your Honor, I'd like marked as Exhibits 3, 4, and 5 the consent of my client, Julie Kearse Sharp, on the term sheet; the consent of Elizabeth K. Gooding, Mr. Slotchiver's client; and the consent of W. Gordon Kearse, who is one of the pro se parties to the case.

MR. WINGATE: Can I see those a moment?

(EXH. 2, E-mails dated January 31, 2017, and February 1, 2017, was marked for identification.)

(EXH. 3, Final Term Sheet with signature of Julia Kearse Sharp, was marked for identification.)

(EXH. 4, Final Term Sheet with signature of Elizabeth K. Gooding, was marked for identification.)

(EXH. 5, Final Term Sheet with signature of W. Gordon Kearse, was marked for identification.)

MR. SPEIGHTS: Now, Your Honor, I am required under the settlement to read the full Final Term Sheet into the record. I'm going to hand you a copy of it and so -- it's also now marked an exhibit, but I'm handing you a copy. And fortunately it's short so I don't have to read for 20 minutes to get it into the record.

Will you hand that to her?

The term sheet provides as follows: Morgan will immediately resign as the personal representative. Effective immediately, Morgan will not disburse any more Estate funds. A. G. Solomons shall be appointed as the Special Administrator of this Estate; if A. G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

Two -- and we, by the way -- parenthetically, let me add we refer to the parties by first names in order to avoid confusion.

Two: Julie will not object to Morgan retaining the previously paid $25,000 P.R.

commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

Three: Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

Four, Morgan shall be responsible for the payment of your legal fees -- parenthetically, Mr. Wingate's legal fees -- and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

Five, Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the

building from decay and depreciation, pays taxes, and carries hazard insurance to ensure full replacement in the event of destruction.

Six, all parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Now, Your Honor, on behalf of Julie Kearse Sharp, and I am sure that Mr. Slotchiver is going to speak as well, I believe we have a settlement from all of the papers I have provided to you. Absolutely we have a settlement with Mr. Wingate's client, Morgan Kearse, represented to us by Mr. Wingate dealing with us, I'm confident in good faith, representing to us that his client had agreed to the settlement.

So the only question is the other -- and we have the signed consent to the settlement by Gordon, which leaves two so-called pro se defendants out there, which I don't have written authority from them to you today. That would be Rachael and Joseph, of which Mr. Wingate has represented to us in his letter, leaving aside oral discussions, that they were on board with the

settlement, and I believe that Mr. Wingate believes that they were on board and had consented.

I don't know what, if anything -- I don't know the circumstances of -- concerning those two, but I will tell you, Your Honor, I think they are bound to the settlement because they represented that they were -- had consented to it to Mr. Wingate, and in reliance on that we all have come here today to approve the settlement. I am not even sure that their consent is needed. I'll leave that to Mr. Slotchiver to deal with in a little while, but, in any event, I know of no reason why we can't go forward with the settlement.

The worst thing in the world is for everything in this matter to unravel and us start all over again, and if we had a bad war before, we're going to have a nuclear war now if this thing unravels.

With that, Your Honor, I may speak after Mr. Slotchiver or Mr. Wingate. We're here today to ask Your Honor to enforce the settlement as reflected in the documents I've handed to you, with the consents and representations contained in those documents, put this matter behind us, and hopefully Algie Solomons will agree to be the

personal representative as agreed to by the parties and Mr. Solomons can then wrap this up to everybody's satisfaction. Thank you, Your Honor.

THE COURT: Thank you.

MR. SLOTCHIVER: Your Honor, if I may, briefly.

THE COURT: Yes, sir.

MR. SLOTCHIVER: First, Your Honor, I'm Steve Slotchiver, representing Beth Gooding. I came today with an envelope containing three things: A blank yellow pad, a copy of an e-mail I got from Mr. Wingate confirming the settlement, and for some reason I put in there a copy of the memorandum that I submitted to the Court yesterday, and that was it. The reason being is that up until about 30 minutes ago, I was unaware we did not have a settlement.

As Dan had mentioned -- Mr. Speights had mentioned, all parties had agreed. But let's now talk for a moment about the parties that have not agreed or may not have agreed in terms of the two unrepresented individuals. I candidly cannot fathom how they could be remotely possibly negatively impacted by this agreement because the agreement calls for, as Mr. Speights has read into

the records, for John Morgan to be financially responsible for his attorney's fees, for my client's attorney's fees, for Mr. Speights' client's attorney's fees, not for the Estate to be responsible for it, not for Rachael Best to be responsible for it, not for Joseph Kearse to be responsible for it, but for John Morgan to be responsible for it. And now, for them to allegedly back out or to back out, whatever it may be today, does not make any sense.

We were here for this purpose. John Morgan's -- John Morgan Kearse's -- excuse me, Your Honor -- his counsel informed not only us but informed Your Honor that this case was settled. We were here -- he was not even going to be present today until I spoke with him yesterday saying I cannot not show up for a motion hearing that I filed. I didn't want the Estate to incur the additional expense or for his client to incur the additional expense, but I just could not do that, which is why I think he's here today. So I would ask Your Honor to enforce the settlement as Mr. Speights had mentioned.

Separately, just for housekeeping -- it's only because of my own OCD -- the Motion to

Dismiss was actually filed about four or five days after the Motion for Summary Judgment. I filed that first. I think I -- it was dated the 7th and I filed it on the 8th, and I think Mr. Wingate's Motion to Dismiss was dated the 8th but not filed until the 13th or so, and I just wanted Your Honor -- or I wanted the record to reflect that as well.

THE COURT: Thank you.

MR. SLOTCHIVER: Okay. Thank you, Your Honor.

MR. WINGATE: If I may, Your Honor.

THE COURT: Yes, sir.

MR. WINGATE: And I certainly don't take any exception to what Mr. Slotchiver said, if he said the dates are what they are. And as often is the case, for what it is worth, and it may be worth very little, I think the attorneys have dealt very professionally and honorably with each other. This is not about lawyer infighting. And as I have apologized to these gentlemen, I apologize again to the Court for where we find ourselves today.

The issue, Your Honor, is this has been a long and tortured estate. It's been open far longer than the average, as you are aware from the record, and it is one in which Morgan -- they refer

to him as John Morgan, the Personal Representative -- was asked to take on this duty. I know we're not here for evidence, but I'm here to explain myself professionally to this court.

The issue is, from my client's perspective, fraud or mistake in the inducement in being told that he could rely upon this settlement. What am I referring to? One of the family members who is pro se, Gordon, whom I do not know, wouldn't know him if he walked into this room, according to my client, told my client that he would support Paragraph 4 of the settlement agreement that Mr. Speights just accurately read into the record, the provision in second sentence that the Estate would pay legal fees if a majority of the other siblings, and it names them, would consent.

Morgan had the consent of four of six and therefore said yes to the settlement. His position -- and it will be argued another day in court -- I realize this --

MR. SPEIGHTS: If I could, Your Honor, I'm just going to object, but you can go ahead. Probably don't need to object, but this is not evidence and we're not considering evidence, and clearly it's double or triple hearsay and we --

Morgan's not here nor anybody else is here, but I have no problem with, just for background, Mr. Wingate wants to give his impression, but Mr. Wingate doesn't know.

MR. WINGATE: I was just getting ready to say this is not testimony. I am not attempting an evidentiary hearing. I agree with Mr. Speights. I will not continue any further explanation other than to say his position -- Morgan's position is that he does not consent to the settlement due to fraud or mistake in the inducement. He does resign as Personal Representative of this estate --

THE COURT: Thank you.

MR. WINGATE: -- irrevocably. Thank you.

THE COURT: The Court is to understand that the Final Term Sheet is the summarization of the exhibits that were entered into the record. Is that correct, Mr. Speights?

MR. SPEIGHTS: The Final Term Sheet stands on its own as a settlement agreement. What I've entered into the evidence would be the e-mails which circulated the term sheet --

THE COURT: That derived to.

MR. SPEIGHTS: -- and the comments of

counsel agreeing to it.

THE COURT: Okay. I'm going to take a moment. I'm going to take these exhibits and just review them, Madam Court Reporter.

Thank you.

There are a lot of assumptions that this Court could draw from in the presentation and timing of the consent agreement, when all parties essentially were to have agreed to this agreement, and then the statement of resignation signed by Mr. Kearse, which of course being February 2, 2017. There's no way for the Court to draw conclusions from the assumptions that the Court can obtain from the issues as to why Mr. Morgan all of the sudden does not now agree with the agreement that was presented and that all parties allegedly agreed upon.

Being the -- what I would refer to as the 11th hour that this is not an agreed upon by all parties exclusively agreement any longer, the Court is left in a conundrum because I have nothing further from Mr. Kearse what all of a sudden he doesn't agree to specifically in the agreement, and having found -- this particular time with nothing further on that except that he just is going to

resign and doesn't agree and all parties having been present this morning to present this agreement, the Court finds no other way at this point to move forward other than to, A, accept the agreement into the court record, and, B, accept the appointment of resignation of Mr. Kearse.

Mr. Wingate, as his attorney, you did read this statute per se without reading it verbally that there are requirements of him to give notice of his resignation and formal process and to obtain the acceptance of Mr. Solomons, and we need to reconvene on a hearing on that matter. I expect that you will so file those documents as necessary.

And if there is nothing further, the Court is going to enter into the record that this Final Term Sheet of agreement be filed as a family agreement and that the record will reflect that the order provided to this court on behalf of either Mr. Slotchiver and Mr. Speights to state that this order will be entered into the record and accepted on the terms as it is on the face of the agreement itself.

MR. SPEIGHTS: Thank you, Your Honor.

THE COURT: Thank you.

MR. SLOTCHIVER: Thank you, Your Honor.

THE COURT: If there's nothing further, the court is adjourned.

(EXH. 6, Statement of Resignation, was marked for identification.)

(The hearing was concluded at 11:51 a.m.)

CERTIFICATE OF REPORTER

I, Trisha M. Thomas, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of February, 2017, at Hardeeville, Jasper County, South Carolina.

TRISHA THOMAS NOTARY PUBLIC SOUTH CAROLINA

T Thomas

Trisha M. Thomas,
Court Reporter
My Commission expires
February 2018

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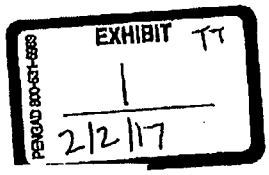
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2. Julie will not object to Morgan retaining the previously paid $25,000 P.R. commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.



5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Tab

1

Dan Speights

From:	Dan Speights
Sent:	Tuesday, January 31, 2017 9:01 PM
To:	Ken Wingate (kbw@swblaw.com)
Cc:	Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights
Subject:	Confidential Settlement Offer
Attachments:	07 Draft Term Sheet.pdf

Ken,

Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

This offer will remain open until noon tomorrow unless we agree otherwise.

The ball is in your court.

Dan

CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY

– DRAFT TERM SHEET –
(NOT APPROVED BY CLIENT)

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

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6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

Tab

2

Dan Speights

From: Steve Slotchiver <steve@slotchiverlaw.com>
Sent: Tuesday, January 31, 2017 10:39 PM
To: Ken Wingate (kbw@swblaw.com); Dan Speights
Cc: Stephen M. Slotchiver
Subject: Re: Confidential Settlement Offer

Ken

I apologize for not getting back to you sooner. I had 2 Hearings today and had planned to call you first thing tomorrow. That said, I saw Dan's below email providing a draft of a settlement proposal that his client is willing to agree to and wanted to let you know (as well as Dan know), that I have sent the proposal to my client and she agrees as well.

Let me know if John Morgan is in agreement so we can finally put this matter to bed. Thanks

Steve

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
843-577-6531 (phone)
843-577-0261 (fax)
steve@slotchiverlaw.com

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Sent from my iPhone

On Jan 31, 2017, at 9:00 PM, Dan Speights <dspeights@speightsrunyan.com> wrote:

> Ken,
>
> Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.
>
> If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.
>
> This offer will remain open until noon tomorrow unless we agree otherwise.
>
> The ball is in your court.

Dan

<07 Draft Term Sheet.pdf>

Tab

3

Dan Speights

From: Ken B. Wingate <KBW@swblaw.com>
Sent: Wednesday, February 01, 2017 10:47 AM
To: Dan Speights
Cc: Steve Slotchiver (steve@slotchiverlaw.com)
Subject: RE: Confidential Settlement Offer

Dan and Steve:

Thank you for your emails last evening. As I told Dan a few minutes ago by phone, this email hereby confirms that Morgan also agrees to the terms set forth in the Settlement Offer.

I will send a letter to Judge Odom this morning, notifying her that we have reached an agreement. Dan plans to attend Thursday's hearing for the purpose of reading the agreement into the record, and will have a court reporter present. I do not plan to attend the hearing in person, but would be available by phone if any further questions arise.

I look forward to working with you on any remaining formalities, such as a stipulation of dismissal of the Petition for Instructions, a formal resignation by Morgan if the court desires one, etc.

Ken

S·W·B

Kenneth B. Wingate | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

T ▪ 803-256-2233
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Web | Bio | Email

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From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Tuesday, January 31, 2017 9:01 PM

To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights
Subject: Confidential Settlement Offer

Ken,

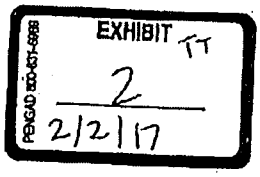
Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

This offer will remain open until noon tomorrow unless we agree otherwise.

The ball is in your court.

Dan



From: Ken B. Wingate KBW@swblaw.com
Subject: RE: Confidential Settlement Offer
Date: Feb 1, 2017, 4:17:47 PM
To: Steve Slotchiver Steve@slotchiverlaw.com, Dan Speights dspeights@speightsrunyan.com

Steve and Dan:

I spoke to Morgan again at 4:15pm, and have confirmed the following:

1. Joseph, Gordon and Rachael are each signing the agreement this afternoon, and I'll have copies of their signatures with me at the hearing.
2. I alone will attend the hearing on behalf of Morgan, for reading the agreement into the record. Morgan, Joseph, Gordon and Rachael will NOT attend.

Anything else needed before tomorrow?

Ken

From: Steve Slotchiver [mailto:Steve@slotchiverlaw.com]
Sent: Wednesday, February 01, 2017 3:02 PM
To: Ken B. Wingate; 'Dan Speights'
Subject: RE: Confidential Settlement Offer

Ken,

Any update?

Steve

From: Ken B. Wingate [mailto:KBW@swblaw.com]
Sent: Wednesday, February 01, 2017 12:29 PM
To: 'Steve Slotchiver'; Dan Speights
Subject: RE: Confidential Settlement Offer

Steve:

I'm in the process of obtaining signatures from Gordon, Rachael and Joseph to indicate their consent. I'll confirm to you when we have them in hand.

As for attendance at the court tomorrow, I have a concern about asking all the siblings show up. I expect their presence could spark unnecessary fireworks based on prior patterns of interaction. Written consents should be adequate. Do Julie and/or Beth plan to attend?

This email also confirms that I've spoken to Morgan about writing checks on the estate account. He understands and consents to an immediate moratorium on all checks or disbursements, effective

this minute, unless all siblings request in writing that he sign a check.

Ken

From: Steve Slotchiver [mailto:steve@slotchiverlaw.com]
Sent: Wednesday, February 01, 2017 12:07 PM
To: Ken B. Wingate; Dan Speights
Cc: Stephen M. Slotchiver
Subject: Re: Confidential Settlement Offer

Ken and Dan

I just saw the chain of emails. Candidly, I would prefer that all interested parties, including John Morgan and each of his siblings be present to place on the record their consent to this Agreement; that said, I'm not dead set on it in light of the fact that I understand that Ken's letter to the Court will confirm that he has personally spoken with Joseph, Gordon, and Rachel to confirm their consent to the Agreement.

Separately, there is a motion hearing set for 10:45 on the restraining order that I previously filed. I would like Ken's letter to the Court to also confirm to the Court that John Morgan will not write any checks from the estate account (regardless of the reason) until and unless he obtains the written consent of all of his siblings. As we all know, although the agreement has been reached, it may take some time to have the successor personal representative appointed , as well as transfer the bills and accounts to him , which is why there may be some bills that need to be paid (I just don't want John Morgan to pay any bills without the approval of my client and her siblings. Thoughts?

Steve

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
843-577-6531 (phone)
843-577-0261 (fax)
steve@slotchiverlaw.com

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Sent from my iPhone

On Feb 1, 2017, at 11:15 AM, Ken B. Wingate <KBW@swblaw.com> wrote:

Dan:

Will do.

I also called the clerk of the Hampton County Probate Court, April Murdaugh, and advised her that we have reached a settlement. I requested permission to not attend the hearing, and she said she'll confirm that with Judge Odom.

Thanks,

Ken

From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Wednesday, February 01, 2017 10:51 AM
To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com)
Subject: RE: Confidential Settlement Offer

Thanks, Ken. Please include in your letter that all the other siblings have agreed to the settlement. I can only speak for Julie and Steve can only speak for Beth. I know that you ad Morgan have gotten everyone to sign off.

From: Ken B. Wingate [mailto:KBW@swblaw.com]
Sent: Wednesday, February 01, 2017 10:47 AM
To: Dan Speights <dspeights@speightsrunyan.com>
Cc: Steve Slotchiver (steve@slotchiverlaw.com) <steve@slotchiverlaw.com>
Subject: RE: Confidential Settlement Offer

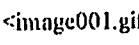
Dan and Steve:

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I will send a letter to Judge Odom this morning, notifying her that we have reached an agreement. Dan plans to attend Thursday's hearing for the purpose of reading the agreement into the record, and will have a court reporter present. I do not plan to attend the hearing in person, but would be available by phone if any further questions arise.

I look forward to working with you on any remaining formalities, such as a stipulation of dismissal of the Petition for Instructions, a formal resignation by Morgan if the court desires one, etc.

Ken



Kenneth B. Wingate | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

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From: Dan Speights [mailto:dspeights@speightsrunyan.com]
Sent: Tuesday, January 31, 2017 9:01 PM
To: Ken B. Wingate
Cc: Steve Slotchiver (steve@slotchiverlaw.com); Dan Speights

Subject: Confidential Settlement Offer

Ken,

Julie has agreed to the attached Term Sheet which I sent her before receiving your proposal. I can delete the words "DRAFT" and "NOT APPROVED BY CLIENT" when my assistant arrives tomorrow.

If everyone else is on board, I am prepared to read this into the record on Thursday. It would be a great mistake to continue the hearing while we circulate documents. We need to seize the moment.

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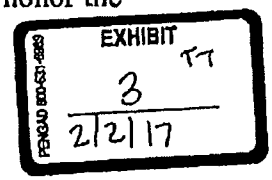
FINAL TERM SHEET

1. Morgan will immediately resign as the Personal Representative. Effective immediately, Morgan will not disburse any more Estate funds. A.G. Solomons shall be appointed as the Special Administrator of this Estate; if A.G. Solomons is unwilling to serve, then all parties consent that the Court shall appoint a neutral non-family member to serve as the Special Administrator.

2. Julie will not object to Morgan retaining the previously paid $25,000 P.R. commission, with the understanding that no monies have been paid to or on behalf of Morgan which have not been disclosed on the Probate Court accountings heretofore filed, and further with the understanding that Morgan will not be entitled to any additional P.R. commission and/or legal fees payment.

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4. Morgan shall be responsible for the payment of your legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.



el Consent
Julia Kearse Sharp

5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

tl Consent
Julia Kearse Sharp

FINAL TERM SHEET

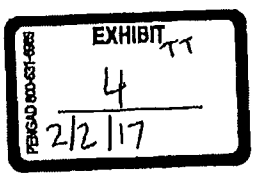
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I CONSENT:
Elizabeth R. Gordon



5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

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I CONSENT:
Elizabeth K. Gooding

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I CONSENT:
W Gordon Kiarse

EXHIBIT TT
5
2/2/17
PENGAD 800-631-6989

Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

5. Julie does not object to Morgan using his father's office rent free, so long as he continues to actively practice law full time in that office and provided that he maintains the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.

6. All parties agree to the Kearse Educational Trust purchasing their mother's home for the appraised value of $89,000 (which will provide liquidity for their mother's care since her liquid assets are depleted).

I CONSENT:
/s/ Gordon Kearse

STATE OF SOUTH CAROLINA)
COUNTY OF Allendale)
IN THE MATTER OF:)
G.H. Kearse)
(Decedent))

IN THE PROBATE COURT

STATEMENT OF RESIGNATION

CASE NUMBER: 2013-ES-03-000063

I, J. Morgan Kearse, Personal Representative of the above Estate, do hereby resign. Twenty (20) days written notice to the persons known to me to be interested in this Estate has been/is being given.

I realize that this resignation is effective only upon the appointment and qualification of a Successor Personal Representative and delivery of the assets to that person.

I further understand that neither resignation nor termination of appointment discharges a Personal Representative from liability for transactions or omissions occurring before termination, nor relieves him/her of the duty to preserve assets subject to his/her control, to account therefore, and to deliver the assets.

SWORN to before me this 2nd day of February, 20 17

Notary Public for South Carolina
My Commission Expires: August 23, 2026

Signature: J. Morgan Kearse
Print Name: J. Morgan Kearse
Address: Post Office Box 521
Allendale, South Carolina 29810
Telephone: (Work): (803) 584-2934
(Home):
(Cell):
Email: morgan@kearselawallendale.com

ORDER

With the appointment of _____ as Successor Personal Representative in this Estate, the above resignation is hereby effective. Upon accounting to the Court for the assets and the delivery of the assets of the Decedent to the Successor Personal Representative, the appointment of _____ shall be terminated.

Executed this _____ day of _____, 20____.

_____, Probate Court Judge

PROBATE COURT
HAMPTON COUNTY, SC
FILED
DATE 2/2/17
TIME 11:43 AM

EXHIBIT TT
6
2/2/17

FORM #335ES (1/2014)
62-3-610

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APPEARANCES

PRESIDING THE COURT:
The Honorable,
Sheila B. Odom

FOR THE PLAINTIFF:
Matthew J. Myers, Esquire
Sweeny, Wingate & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201

FOR THE DEFENDANTS:
Representing Julia K. Sharp
Daniel A. Speights, Esquire
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Post Office Box 685
100 Oak Street, East
Hampton, South Carolina 29924
Representing Elizabeth K. Gooding, Esquire
Stephen M. Slotchiver, Esquire
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44 State Street
Charleston, South Carolina 29401

ALSO PRESENT:
Ms. Rachael Kearse Hest
Mr. William Gordon Kearse
H. Woodrow Gooding, Esquire

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EXHIBITS

NO EXHIBITS WERE MARKED FOR THIS DEPOSITION.
*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

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OPENING STATEMENT BY THE COURT

THE COURT: Good afternoon.

MR. SPEIGHTS: Good afternoon, Your Honor.

THE COURT: Scheduled motion hearing this afternoon from a motion filed on March the 16th, 2017 on the motion, the motion to alter or amend or in the alternate for a new hearing for the order dated February 27th, 2017. Mr. Wingate?

MR. MYERS: Mr. Myers --

THE COURT: Mr. Myers?

MR. MYERS: -- on behalf of Morgan Kearse.

THE COURT: Okay. Mr. Myers, Mr. Wingate filed this motion with the Court as the Court stated in February, and due to this Court's misunderstanding there was some time in the space of the filing of the motion scheduling of the hearing. Albeit we are here today for that motion, so if you would just present that motion for the Court's record, please, sir.

OPENING STATEMENT BY MR. MYERS

MR. MYERS: Yes, Your Honor. If there's nothing further, again, my name is Matt Myers, and I'm here on behalf of Morgan Kearse as the initial Personal Representative of the Estate of G.H. Kearse.

As you say we filed a motion to reconsider an order that confirmed a proposed settlement agreement

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that was put forth February 2nd, two thousand -- of this year. And also a second motion to address any loose ends that remain in the Estate if in fact the -- that order is voided.

There's been a lot of confusion about that tentative settlement agreement. As you've seen a lot of back and forth, but ultimately, it was never consummated and has been flip -- flipped forth we would argue unreasonably about some of the family members at the expense of this Estate.

And so we thank you for the opportunity to set the record straight on this matter. Although, I'm Morgan's attorney, my goal is to be objective about this and about -- as possible as we can. And I certainly welcome the Court to seek the independent wisdom of the proposed special administrator to see if, you know, what he may feel is in the best interest of the Estate.

So the confusion dates back to a final term sheet, specifically, Item 4 of that final term sheet that was drafted by Julia Sharp's Counsel and provided to Morgan through Mr. Wingate. And Item 4 says that Morgan would individually pay Ms. Sharp's attorney's fees and his own attorney's fees as the personal representative unless the majority of the siblings, which there are six, agreed otherwise. And so, consequently Morgan

put forth

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took that and immediately canvased his siblings to see if in fact they would hold him accountable for -- try to hold him accountable for his own legal feels and the legal fees of Ms. Sharp.

And -- because that was a material term to Morgan. He was not going to agree to pay fees that under law we feel strongly that he doesn't have an obligation to pay. And then so when canvassing those siblings --

MR. SPRIGHTS: Excuse me, Counsel, just a minute.

MR. MYERS: Your Honor, if I --

MR. SPEIGHTS: Won't take but a second. I'm going to object to Counsel summarizing what might be in an affidavit or testimony. But I have no problem if you're hearing him out in full, subject to my objection. I may move to strike what's not in the record. He's explained Morgan's position and to me that's not under oath before the Court.

THE COURT: So noted.

MR. SPEIGHTS: Again, go ahead with anything you want so long as I'm protected on the record.

THE COURT: So noted. Thank you. And --

MR. MYERS: Well, thank you, Your Honor. And as to that point I'll just say that Rule 6D of the South Carolina Rules of Civil Procedure allows us to provide an affidavit with our motion, which we have done so.

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Mr. Morgan Kearse has provided his affidavit, which as an exhibit includes the agreement that he gave to Gordon, Rachael and Joseph, the other siblings, which would make four siblings, including Morgan that supplements that Item 4 of the final term sheet and would prevent Morgan from having to pay fees that we don't think he has to pay.

So as he explained in his affidavit, which is valid evidence before this Court under the rules of procedure, Morgan got that oral affirmation, but then through, I guess influence we -- we are not really quite sure why Gordon changed his mind, but he did change his mind. And so with that there was no agreement. And although, the parties wanted there to be a settlement and Morgan was willing to actually pay Ms. Best -- excuse me -- Ms. Gooding's fees when we don't feel like --

MR. J. MORGAN KEARSE: Sharp.

MR. MYERS: I'm sorry, Ms. Sharp's fees when we don't feel like he should have to, that agreement didn't formulate. There was, again, that Item 4, there was an agreement about that incorporated into the agreement that was not fulfilled, and so with that there was no agreement.

Far from being secret Morgan was actually

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obtaining signatures by the Pro Se parties that would have helped fulfill that agreement. So, ultimately, however, it was another sibling as we said that changed Gordan's mind evidently and he withdrew his oral consent and would not sign that document.

So -- but regardless of what Morgan did or didn't do, the fact remains the Pro Se siblings have simply not signed off on anything and they didn't go to Court to affirm the settlement -- proposed settlement, nor have -- nor has the trust spoken for that matter. There are six trustees who have to act under the terms of this trust unanimously and that's simply has not been done.

As such there's no agreement under the various standards under South Carolina Law which includes Section 62-3-912, which is in regard to settlement agreements on successors to estates. 62-3-1102, which is Probate Court Code procedure for securing a compromise for Rule 43K, which is regarding settlements generally.

So, none of these standards have been met. And the proponents of the proposed settlement have not put forward a alternate standard upon which the proposed settlement could be accepted. So we're certainly within one or more of those standards. Again, none of

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which have been met.

As the Supreme Court said specifically as to Rule 43K these formalities are necessary, "To prevent disputes such as the existance of terms of agreements and to relieve the Court of the necessity of determining such disputes." The time of the Court should not be taken up with controversial matters of this character. Of course, that's exactly what we're doing today.

Ms. Best's memorandum on the -- of law does address Rule 43K. She claims that it was satisfied simply by "entering into the Court's record the proposed settlement." Well, that's not standard under 43K. It has to be both signed by counsel and entered on the record. That's one of the ways to get the settlement approved.

Here the term sheet didn't even include -- well, not only was it not signed by counsel or anyone else, it didn't even have blanks for signatures. So that standard of 43K which was not met. Moreover, Mr. Wingate unequivocally came to that hearing and stated Morgan Kearse had backed out of the settlement. His quotes include his position, meaning Morgan, will be that he does not consent to the settlement, which is Page 7, Lines 14 through 16.

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Again, his position, however, is that -- is what I have said. Number 1, he resigns. Number 2, he does not consent. It's Page 7, Lines 23 to 25.

So -- and the Supreme Court is quite clear on this. The Farnsworth Case that I've cited in my brief that's even in the motion -- and I've got copies here if anyone wishes to see that -- but the Supreme Court allowed counsel to offer a settlement and then when that piece of paper in writing was signed by the opposing counsel that -- the offering counsel rescinded that agreement before it was entered into the record. And so Supreme Court's quite clear about the formalities have to be met, and if they're not met there is no settlement.

Moreover, Mr. Wingate also advised as to the lack of consent by the Pro Se parties and said, "As we stand here this morning I'm afraid to announce to the Court that two things have changed. Number 1, I have not been provided copies of any documents from the Pro Se litigants consenting to the settlement. So where as I was told that I would be able to present that to you, I do not have that and could not present it to you." It's Page 5, Lines 14 through 20.

So, in addition to the formalities not being met to the substantive issue here, Ms. Gooding also raises

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a particular argument that we are somehow raising new issues through our motion to reconsider. Well, if, you know, quite frankly, we looked at the transcript and that's all this is about, whether there was a settlement or not. That's not a new issue. That was the issue of that hearing. And of course, the reason why we're unfortunately here today.

Ms. Gooding also argues that we are re-litigating it. However, that's not the case. This 59 is a well known and a longstanding rule that allows judges to reconsider their decisions and that's all we're asking hear and giving the Court a chance to do.

We believe that the settlement agreement or proposed agreement is legally deficient on its face, so that hearing being non-evidentiary, this one being non-evidentiary, other than the affidavit that was allowed to be presented, some agreement simply is deficient on its face.

So then assuming that's enough to dispense with the fiction that this family reached an agreement we can also address the PR second motion, which is simply intended to help the Court and this family resolve all the open issues before it. As such, the second motion is not untimely as argued by Ms. Best, but merely anticipates a clean slate so to speak if the Court was

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to propose a settlement. Ms. Gooding --

MR. SLOTCHIVER: Your Honor?

MR. MYERS: -- I misspoke, it was not Ms. Best's argument that was untimely but rather Ms. Gooding. So Ms. Gooding also recerts that her --

MR. SLOTCHIVER: Your Honor?

THE COURT: Yes, sir?

MR. SLOTCHIVER: I would re-iterate Mr. Speights' objection on the first motion. I don't think this motion's properly before Your Honor at all at this stage. I don't think it's been noticed --

THE COURT: So noted, and that objection is sustained.

MR. MYERS: Well, Your Honor, would you allow me to proffer the argument for the benefit of the Court on the record or do you want me to -- because the rest of my argument is about the second motion.

THE COURT: The second motion? If you would, just stop where you are.

MR. MYERS: Thank you, Your Honor.

THE COURT: Thank you.

MR. MYERS: But if I may close I just -- I do ask -- reiterate that I do ask the Court to rescind its prior order because it was not a settlement. I believe that if we can -- if the family can start from a clean

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slate they can -- my hope was reach a compromise or come to a follow up hearing where we do resolve the key issue. The Estate's position again is to anticipate that future hearing or further litigation that, you know, Morgan Kearse should not be required to pay his own expenses for simply trying to help his family as personal representative, so, we ask for fairness and we ask for mercy because this family is set to -- to destroy their father's legacy and that's all we're trying to prevent.

And again, I would welcome the Court to seek the wisdom of the independent special administrator that I don't think anybody has any problem with to access what is in the best interest of this family.

THE COURT: Thank you.

MR. MYERS: Thank you.

OPENING STATEMENT BY MR. SPEIGHTS

MR. SPEIGHTS: May it please the Court, Dan Speights representing the Respondent Ms. Julia Kearse Sharp. When I appeared before you in February, Your Honor, I indicated to you it'd been a long time since I'd been in the Probate Court. I had anticipated I'd be back within six months, but thank you for entertaining the motion.

Let me just comment on something that's not on my

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outline, which Counsel brought up in his last sentence about the desire to heal all these divisions and get this family down the road again. Unlike most people in this courtroom other than siblings I knew Rip Kearse. I practiced law at the time Rip Kearse was practicing law and I'll assure you he would --

MR. MYERS: Objection, Your Honor --

MR. SPEIGHTS: -- like to resolve --

MR. MYERS: -- as I would like to re-iterate what Mr. Speights said earlier, that's certainly not in the record and would be inadmissible pursuant to the Dead man's Statute, so --

MR. SPEIGHTS: I'm not going to say anything that Rip Kearse said. I just knew him. And I'm sure that Counsel would agree that he would like this matter resolved.

MR. MYERS: Objection. I --

THE COURT: Thank you.

MR. MYERS: -- can't speak for me --

MR. SPEIGHTS: That's fine.

MR. MYERS: -- or for Mr. Kearse --

MR. SPEIGHTS: Well --

THE COURT: Sustained.

MR. MYERS: -- and he's not --

THE COURT: Move along, Mr. Speights.

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MR. SPEIGHTS: I was --
THE COURT: Thank you for the history, but I -- I do appreciate it but --
MR. SPEIGHTS: -- I was going to talk about the efforts made before your last hearing, but I'll move along. I appreciate it, Your Honor. Keep us all on track. I appreciate that.
Your Honor, as with the last hearing I'm going to refer to the siblings by first name to avoid confusion. That's unusual. I'm usually pretty formal and address them. And I would tell you, Your Honor, that for a number of separate reasons this motion is without merit. I will say at the outset that I don't understand how the motion is being made by Morgan as the personal representative because he is not the personal representative and has not been for some period of time as I will deal with in a minute. His lawyer told us at the last hearing that he was resigning effective immediately. [Inaudible response] function of getting somebody else in, but he told us -- and told us that he resigned back on February -- I think it's February 21. Now I'm not sure what effect that has legally. I'll let my probate lawyer Mr. Slotchiver address that if it comes up, but I think it's important to note that that is the only party that

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is before Your Honor in support of the motion. That is nobody else filed the motion to alter or amend. None of the others have -- or appeared at the last hearing, only Morgan as a personal representative appeared at the last hearing. And I say that because most of my comments will be addressed to Morgan and his appearance through Mr. Wingate at the last hearing.
Now, I'm not suggesting that the other siblings don't have a remedy if they disagree with what Your Honor rule. They have a remedy. Rule 59, the rule he proceeds under, specifically provides that the time to appeal your decision is suspended if anyone files a motion to alter or amend. He just filed the motion to alter or amend. And if you've denied the motion, as I hope you will, Morgan individually, Morgan, if he qualifies as a personal representative and any other sibling can file an appeal and Judge Buckner or somebody else will hear the appeal. So I'm not here saying that they've got to go home and this decision of yours is locked in concrete. They have an avenue. It's an appeal. But they've got a very tough road to hold to get you to reverse or reconsider a decision that was made after a full record. They have a tough road to hold because under Rule 59 to file a motion to alter or amend and support it, which is not unheard of,

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but it's rarely granted because lawyers always want a second bite out of the apple. And we had a full and complete hearing in which Morgan Kearse was represented by counsel before you on February 21. And I would say to Your Honor that there is nothing new, or at least nothing that could not have been shown you, back on February 21. You can't just come in and say I want to mulligan. You can't just come in and say, well, I'd like to add this additional evidence if you knew about it back then. Otherwise, lawyers would be back to courts all the time. I mean, it would be like if you rule against us today then we could file a motion to reconsider. And if you rule one way or the other on that seems like you're going to -- or the Wingate Firm could file a motion to reconsider. This could go on forever and that's the reason the court very narrowly construe when it's appropriate to file a motion, we call it reconsider. Technically, it's a motion to alter or amend.
So Your Honor, I'd like to go back to the hearing. And what's most interesting about their brief is what they do not contest. They do not challenge almost all of the fundamental findings you made in your order. Your order says the parties have reached a global agreement. That's undisputed. We can deal with the

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technical issue in a minute, whether it was properly reduced to a certain form, etcetera, etcetera, but there's no question the parties reached a global agreement. Indeed counsel just told you three minutes ago that Morgan backed out. So there was an agreement. There is no dispute about that. In fact, it's all over the record before you when Mr. Wingate was here as a representative of Mr. Kearse, the personal representative at that time. Mr. Wingate further advised the Court -- I'm reading from the order -- an email before the hearing, "Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record." And we did do that. We read it into the record. And you had a trail of emails where everybody confirmed there was a settlement. No, as I'll get to in a minute, we didn't sign the document because we're in different locations. These big corporations, they complete deals by -- doing emails all the time. You have written evidence from emails from Mr. Wingate, from me and Mr. Slotchiver confirming that we had an agreement. And Mr. Wingate advised you, as you found in your order, that the other siblings were in agreement. And I'm sure Mr. Wingate believed that. I'm not cascading Mr. Wingate for telling you that because he was apparently informed by Morgan that the

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	IN THE PROBATE COURT CASE NO. 2013-ES-03-00063
J. MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE OF G.H. KEARSE, PLAINTIFF, VS. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, AND JOHN MORGAN KEARSE, OF WHICH ALL ARE NAMED INDIVIDUALLY AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 5, 1992, DEFENDANTS.	HEARING PROCEEDINGS

THE WITHIN HEARING WAS TAKEN BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 2:05 P.M., THURSDAY, AUGUST 17, 2017 AT THE HAMPTON COUNTY COURTHOUSE, PROBATE COURT, SECOND FLOOR, 1 COURTHOUSE SQUARE, HAMPTON, SOUTH CAROLINA.

REPORTED BY
SUESAN L. RICHARDSON

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so called Pro Se litigants had agreed to. And so, everything was in place until we arrived on that morning. And I learned for the first time, no prior telephone call, that somehow Morgan was withdrawing his consent.

Now, we heard all that. Mr. Wingate resigned and this is what he says after he resigned, "I am certain, Your Honor" -- and this is in your order, and it's in the hearing -- "I am certain, Your Honor, will hear arguments today that once I had represented to the Court yesterday in writing that we had a settlement that my party would be -- my client would be bound to that." He knows what we argued. We didn't spring a surprise. That very well may be what you decide. His position is how -- what I have said, Number 1, he resigns. Number 2, he does not consent. So -- and Mr. Wingate was here when we put in the evidence. He didn't object to the introduction of the evidence. He understood we were going to argue that and he told the Court that he understood you might rule against him on that. And you did. So there was no surprise and there's no basis for a reconsideration. Again, they want to appeal to Judge Buckner and say you should've done something differently, they can file that appeal anytime after this hearing in the designated time.

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Then Your Honor we get the affidavit of Mr. Kearse in support of this motion on behalf of Morgan Kearse. Again, I object to the affidavit for reasons I will explain without having an opportunity to cross-examine the witness. I'm sure Morgan can take the stand and he can say what he said in that affidavit. I hope we don't get to that. We've had enough fuel on this fire already, but if we do, we do. But just take the affidavit as completely true. Let's just assume it's true. I don't concede it's accurate, but let's assume everything is the truth. What Morgan says in his affidavit is everything I've said is right. Everything Mr. Wingate said is right but at some point later that evening that he could not secure an agreement that he prepared, a separate agreement, which he never served on Beth or Julia, okay? A separate agreement among the other siblings that they would support his fee petition in this Court for fees. So there was a breakdown there. And there's a breakdown apparently between Gordon -- and I am not going to say anything bad about Gordan. Gordon is -- Gordon is, Your Honor, respected by all parties to this litigation. But as -- supposedly his breakdown in communication leading to Morgan according to his affidavit to pull the plug. But we weren't a party to that and we don't know what

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the disagreement was. We don't -- we don't -- we don't accept Morgan's affidavit, which is double hearsay that Gordan told him what Beth told him and etcetera, etcetera. But it doesn't matter. That was not -- he did not have the right to withdraw his consent to an agreement carefully negotiated to prevent the parties from doing -- from going through all this, which everybody agreed was fair. Because he thought that he might have trouble getting the Court to approve his fees.

Now, Counsel did a nice job in his presentation, but he made fundamental mistake, and I think -- and I assume that it was an honest mistake. He told the Court that Morgan could not get paid unless there was consent of the majority of the parties. That's not what the agreement says, the term sheet. The term sheet is Exhibit 5 in the prior hearing. And the paragraph says, "Morgan shall be responsible for the payment of your legal fees," which is Wingate's fees, "of your legal fees and Beth's legal fees." Then it adds, "Morgan may seek to have the Estate pay all or some portion of those legal fees." He has that right. "In such event if the majority of the other siblings, Gordon, Beth, Rachael, Joseph and Julia do not object to the Estate paying such fees Julia will honor the

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decision of the majority." That's all it says. He doesn't say that he couldn't get fees approved. All this provision is that he knew that Julia, for reasons I'll be glad to explain, but I think again [inaudible response] if I tried -- that Julia would not agree to pay Morgan's fees. Okay. So, the compromise that was worked out was, Julia despite whatever strong feelings she had about that would not object if the majority of her brothers and sisters didn't object. But if everybody objected but Morgan he could've come in and asked you to approve his fees. That was not a condition, not as counsel said, "unless." He has every right to do that if this agreement is enforced. And I personally don't know what Beth and Joseph and Gordan and Rachael will do. I know what my client will do. She will -- she will sit back if the majority support it and if the majority don't support it she will probably object to it. But he is misreading the agreement. That's all the agreement provides on that score and I urge your -- and I call on the agreement of course is the term sheet and I invite Your Honor to read that provision. I think I have accurately stated what it is.

Now, let me deal with the one argument that I think he relies on primarily. He talks about -- well,

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this agreement -- it's a technical argument that, believe me, I appreciate technical lawyers. It's a technical argument because we didn't both cross our -- cross all the Ts and dot all the Is to get this agreement enforced. And I tried to address it briefly a moment ago and I'm sure Mr. Slotchiver has some comments on this as well.

First of all, Mr. Wingate informed the Court before the hearing that there was a written settlement agreement. Secondly, we introduced both the agreement and the term sheet and the emails verifying that there was an agreement agreed to by all the parties into the record without an objection. Third, in his affidavit, Morgan acknowledges that there was a term sheet which was a settlement agreement. And finally, Counsel has said today that Morgan pulled out of the settlement agreement. So I think the requirement -- you know, the Supreme Court is understandably weary of settlement agreements coming into the record and the parties come along and say I disagree with this provision. I disagree with that provision. They said, wait a minute, there must be evidence that there was an agreement and there's some consent by all the parties to the agreement. That's what's involved here so people won't come along and say, well, he agreed to

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give me a Chevrolet and there's nothing in the record to support it or -- support that at all. So there are requirements. Two requirements for you to get an agreement enforced. But in this instance everybody agrees that there was an agreement and everybody told the Court there was an agreement before the hearing. So Your Honor, I think technically as, you know, as to [inaudible response] as well.

Now, Your Honor, I mentioned earlier that when I objected to the affidavit, and I mentioned it again in my presentation that if the Court feels like it should go beyond the legal arguments to resolve this matter then I would turn to Your Honor and say, that is if you want to rely on this affidavit in some ways being pivotal, and I don't think it matters, okay, then at the completion of the arguments I would want to present some testimony to refute the allegations of that affidavit. Mr. Slotchiver is now going to address another.

MR. MYERS: Your Honor, I would like to address some of his factual statements now or wait for closing arguments?

THE COURT: If you would wait for --

MR. MYERS: Yes, Your Honor.

THE COURT: Thank you.

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OPENING STATEMENT BY MR. SLOTCHIVER

MR. SLOTCHIVER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. SLOTCHIVER: I'm going to be brief because Mr. Speights has covered the majority of the points that I wanted to raise. I want to bring up a couple things, Your Honor, for your consideration.

One is, had any of the Pro Se litigants wanted to challenge Your Honor's order that was issued back in February they had the opportunity and not one of them did. None of the individuals that allegedly no longer were in agreement to this term sheet, the settlement showed up at that hearing knowing full well, I'm assuming, that their brother John Morgan Kearse was going to rescind his consent. They never filed a motion to alter or amend Your Honor's order. And as Mr. Speights mentioned, the only one that did came from the -- from Mr. Kearse -- John Morgan Kearse, who is no longer the personal representative.

Second point, Your Honor, is that -- and I mentioned this during this hearing that was held back in February, I cannot fathom in any way, shape or form how any of the Pro Se litigants or any of the beneficiaries of this Estate, Your Honor, could be harmed by the settlement that was reached and approved

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by Your Honor. The essence of that settlement that Your Honor [inaudible response], one, allowed -- or not allowed, but had the services of John Morgan Kearse ended, terminated where the Court was going to appoint another individual to serve, and as Mr. Wingate had mentioned during that hearings his client was separately irrevocably resigning at that hearing. And Number 2, to require that all legal fees incurred at that point by my client, by Mr. Sharps' -- Mr. Speights' client -- excuse me -- and by the Estate would be paid for individually by John Morgan Kearse. So there's absolutely no potential detrimental impact that could've incurred to any of the individuals.

One of the things that John Morgan Kearse's attorney has raised is that -- and referring to the [inaudible response] agreement statute, Your Honor, which really I don't think is applicable here. Because to have a proper [inaudible response] in our settlement all individuals that are impacted must be a party to it. Well, the other individuals could not have been impacted. They could not have been damaged by this. Their only actually bettered off by this, Your Honor.

And I apologize, I think that Mr. Speights had mentioned this as well, if he didn't I'm going to state it now and if he did bear with me for just a moment.

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There's never been a dispute about the terms of what that settlement was. The term sheet was a term sheet was a terms. Everybody agreed that's what we were talking about. That's what was being addressed. Your Honor, with that said I've got nothing else at this time.

THE COURT: Okay.

MR. SLOTCHIVER: I have nothing else at this time.

THE COURT: Okay. Thank you.

MR. SLOTCHIVER: Thank you, Your Honor.

MR. MYERS: Redirect, Your Honor.

MR. SPEIGHTS: Your Honor, I am -- I meant to hand over you a copy of the term sheet if you didn't have one in front of you. I have an extra for you, but I know you had it in the record.

THE COURT: I have it in the record. Thank you.

MR. MYERS: Your Honor, if I may just take a couple moments. I've heard the statement made several times here today that everyone was in agreement. Everyone was not in agreement. There was no signature from Joseph, from Gordon and Rachael. And, Morgan exercised his right to say no, Your Honor, there was not an agreement. The Supreme Court's been clear on that. Again, the Farnsworth case 367-SC-634 where there was a written agreement, which we don't even have

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here and the part about the counsel rescinding that. The Supreme Court said, yes, we're going to make sure that we honor the technical rules of 43K because we don't want to have to look at emails back and forth and change going this way and that way. We need a clear way to decide how to resolve things, and unfortunately this family hasn't resolved things. Now they've tried to say that Joseph and Rachael have no objection to what's going on here today, and I don't represent them but I will tell you, Your Honor, they are here today and I would submit that they do, and that they do have --

MR. SPEIGHTS: Well, wait a minute. If I can't talk about Mr. Rip Kearse, I believe --

MR. MYERS: Retract -- retracting, Your Honor.

MR. SPEIGHTS: -- he can't report what the other people will say.

MR. MYERS: Retracting, Your Honor. I will say that they are subject to a substantial detriment if this agreement is not voided because there's going to be an appeal. Morgan's not simply not going to carry everybody's weight when he's not legally entitled to or obligated to, and so, this whole family's going to suffer. So we're not asking for a mulligan. We're full well of our appeal rights and we'll use those if

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necessary but we're asking for mercy that you could help us avoid that path by voiding that agreement and letting folks resolve this on a reasonable basis.

They mentioned the affidavit. I'll just touch on that. Rule 60, it's clear we can provide Morgan's affidavit and they've got the opportunity to provide counter affidavits, which they didn't do. But Your Honor, you don't even have to reach that. As I said, and as the term sheet shows on its face there was no agreement under the standards of South Carolina Law and I think that is the one sentence that resolves everything. Thank you.

THE COURT: Thank you.

MS. RACHAEL KEARSE BEST: Your Honor, I'm Rachael Kearse Best.

THE COURT: Yes, ma'am.

MS. RACHAEL KEARSE BEST: I'm one of Rip Kearse's children. May I have an opportunity to speak?

THE COURT: Is there any objection from any parties here present?

MR. SPEIGHTS: Your Honor, I reluctantly have to object, which I don't what Ms. Best wants to say, but I'm afraid that it will wander into testimony. First of all, she's not a party. She didn't give notice that she wanted to speak. I don't know what it is she

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contends to now, and if we go down the road of what she intended or didn't intend, or what her daddy wanted or didn't want, I think we've got -- gotten far a feel from what the narration before this court is. I think Counsel has properly, although, I disagree with him, properly stated the issue before the Court, the fundamental issue, was this an enforceable agreement? And I don't think anything Ms. Best will say would add or subtract from that.

MS. RACHAEL KEARSE BEST: I am a party to this and I feel like I have a -- need to have an opportunity to speak. I know we're in Hampton County and things kind of work differently, but I do think I need -- I deserve an opportunity to speak.

THE COURT: But you didn't file anything separate on behalf to represent your --

MS. RACHAEL KEARSE BEST: I did not but I'm a party to this.

THE COURT: -- for today's --

MS. RACHAEL KEARSE BEST: And I should be able to speak.

THE COURT: Okay. Well, we're going to go off the record for a moment and I would like to have both Counsel and Ms. Gooding in chambers.

[Briefly off the record from 2:44 p.m. to 3:01 p.m..]

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THE COURT: Thank you, you may be seated. Yes, sir?

MR. SPRIGHTS: Your Honor, I must respectively continue with my objection. I believe for a host of reasons, but that's most importantly we would go down lengthy roads that we do not need to go to if Ms. Best is heard from and if in the event you feel like you need to hear from Ms. Both -- Best then I would request, Your Honor, have an evidentiary hearing later and anybody can testify if they want to talk about the things which I believe -- we -- Ms. Best raised with us. I'm not trying to disparage Ms. Best or anybody else here. I think it's -- the issues have been squarely T'd up and lastly I want to say Ms. Best did not file a response to the pleading and petition. That may or may not prevent her from being heard from. She did not appear at the previous hearing despite modifying incorrectly. Had she had notice of the previous hearing and she did not file a motion to alter or amend or join in Morgan's alter or amend here. That's why I stood up and said, you know, she's springing this up normally, and I don't think it's appropriate. But again, Your Honor, I understand she may try to appeal your -- today if she does not prevail on your order of February. And with that I -- I just

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would say, Your Honor, I'd be very concerned to allow Ms. Best to make any presentation not under oath and if you're going to take sworn testimony, I believe it should be an evidentiary hearing and we'd probably have all the siblings come and testify.

THE COURT: Thank you. I respect your input on that, sir. And sir?

MR. MYERS: And if don't --

THE COURT: And sir, as well?

MR. MYERS: -- if you don't mind, Your Honor, for the Estate, we would just simply say that since there have been allegations that [inaudible response] that everyone was in agreement and that we are the only party in support of voiding the proposed agreement, we just think that opens the door to, at a minimum, just Joseph and Rachael telling the Court if they wish to that they are not in agreement. That's the Estate's perspective on that issue.

THE COURT: Thank you. The Court is going to respectfully decline your -- your request to be heard this afternoon, Ms. Best. I asked all Counsel and yourself to go into chambers to discuss any new evidentiary issues that may be needed to be presented to the case. And based upon the presentations back to the Court as a result of that meeting apparently

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there's nothing further that could be added that has not been added already. So the Court is respectfully declining your request to be heard at this time.

And I believe we left off before that short recess. You were going to respond to Mr. Speight's presentation, Mr. Myers.

MR. MYERS: I believe I did, Your Honor. Again, that -- just in case you missed any or part of that. There's been a lot of statements that everybody's in agreement. I think that the term sheet reflects that there was not an agreement. And that can't be backdoored against the [inaudible response] law in South Carolina.

MR. SPRIGHTS: The only thing I would say in response to that in one sentence, Mr. Wingate advised the Court that everybody was in agreement.

MR. MYERS: And Your Honor, Mr. Wingate, of course, doesn't represent the Pro Se parties. And to you, if I may, and on a lighter note a lame analogy. Many of us get engaged and announce to the world we're getting married, but when we find out something untoward about the future spouse we do not get married and the marriage is not consummated. Unfortunately, that's the -- what's happened here.

CLOSING STATEMENT BY THE COURT

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THE COURT: Thank you. All right. I'd like to thank you all, all parties involved this afternoon. It is a family matter and generally family matters this Court does not go without saying I understand there are usually heated arguments and all sorts of issues and feelings and emotions involved in those and y'all have maintained your positions and respectfulness to one another especially in this courtroom. So, outside of that it really does not matter to me, but in this courtroom you have done so and I appreciate that, both from the attorneys and from yourselves.

Having said that, the order of this Court this afternoon from the bench would be that the motion to alter and amend, to reconsider, however, it's been put twice, both ways twice today in this -- this proceeding, that order is going to be denied for several reasons that the Court has made abundant notes on in going back and forth with this after its filing.

Primarily, No. 1, Mr. Wingate had an opportunity on behalf of his client prior to the hearing, even being heard that morning on that motion on presentation of this proposed agreement. He asked for no continuance. There was no correspondence, rather email, telephone call, anything from Mr. Wingate on behalf of his client to give them more time to present

further why that agreement should not be taken into consideration and received into this Court record as it was presented many different ways on the day before that the parties were all in agreement. That being the first, there was no continuance asked for.

Number 2, no testimony was offered that morning by Mr. Kearse or by any of the Pro Se parties. There has been nothing filed with the Court record from the Pro Se parties from the date of that hearing to current date.

And No. 3, Mr. Wingate offered emphatically into the Court record on that day the resignation of Mr. Kearse as the personal representative.

So for those three primary reasons alone the Court had been informed that the agreement was made, was going to be presented and read into record in the morning of February -- forgive me, I -- February 27th it was read into the record and presented by -- that morning. We did not have a court reporter but we do have the tape recording of that proceeding.

And so for those basis alone the Court is denying your motion to alter or amend, and the motion to dismiss. Also, for the resignation by Morgan Kearse in that impart presentation that you made before the Court sustained the objection for your presenting that

motion is denied as well.

And Mr. Speights, the Court would ask that you prepare an order in regards to these proceedings today within 10 days if at all possible, Sir.

MR. SPEIGHTS: Yes, Your Honor, glad to.

THE COURT: And, the Court does realize as it has been stated this will be appealed. That is your privy. That is your right. This Court does sincerely hope that this family will be able to peacefully resolve these issues. If there's nothing further, this Court is adjourned.

MR. MYERS: If I may clarify? Your final order will not be rendered until the proposed order is signed?

THE COURT: Correct.

MR. MYERS: Thank you, Your Honor.

MR. SPEIGHTS: Thank you, Your Honor.

(WHEREUPON, AT 3:10 P.M., THE PROCEEDING OF THE ABOVE-ENTITLED MATTER WAS RECESSED.)

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STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	)IN THE PROBATE COURT)CASE NO. 2013-ES-03-00063
J. MORGAN KEARSE, PERSONAL REPRESENTATIVE OF THE ESTATE OF G.H. KEARSE, PLAINTIFF, VS. THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, AND JOHN MORGAN KEARSE, OF WHICH ALL ARE NAMED INDIVIDUALLY AND AS TRUSTEES OF THE KEARSE FAMILY EDUCATION TRUST U/A/D NOVEMBER 5, 1992, DEFENDANTS.	))) HEARING PROCEEDINGS))))))))))))))

Be it known that I took the foregoing hearing; and for the State of South Carolina-at-large;

The foregoing transcription represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Witness my hand and seal this 26th day of October, 2017.

Suesan L. Richardson, Notary Public for SC
Notary in and for the State of South Carolina
My Commission Expires: August 24, 2027

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In the Court of Common Pleas for the
State of South Carolina, County of Allendale

Case No.: 2017CP0300244

Morgan Kearse, Personal Representative
of the Estate of G.H. Kearse,
Plaintiff(s),
vs.
William Gordon Kearse,
Defendant(s).

Transcript of Record

October 8, 2018
Allendale, South Carolina

BEFORE:
The Honorable L. Mcintosh

APPEARANCES

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PROCEEDINGS

THE COURT: Is it your appeal?

MR. MYERS: Yes, Your Honor.

THE COURT: All right. I will be glad to hear from you.

MR. MYERS: Thank you, Your Honor. My name is Matthew Myers. I'm before the court on behalf of Morgan Kearse, personal representative of the estate of G.H. Kearse. This matter is quite simple really in law as to the recorded settlement which was entered into this estate before probate court. And I think that the only facts that you need to know are the parties to this matter. There are seven parties. Six children of G.H. Kearse, decedent. Morgan Kearse is one, and personal representative as well. Rachael Kearse Best who is pro se. Gordon Kearse who is pro se, Joseph Kearse who is pro se. And then Julie Sharp represented by Dan Speights, and Beth Goodman represented by Steve Slotchiver. And they are all, all six of them are also trustees of the trust that is the primary beneficiary of Mr. Kearse's estate. So, really, seven total parties.

In this case there is a purported settlement that was ultimately signed by three of the parties. That would be Gordon Kearse, Julie Sharp, and Beth Goodman.

It was not signed by two of the pro se parties as I have already mentioned, and it was not signed by Morgan Kearse as personal representative or individually. And it was not entered by the trust. In fact, nobody is speaking for the trust in this litigation, which is -- which can't be done under South Carolina law. The trust cannot represent itself as an entity pro se, it has got to have an attorney.

So, from the very beginning there is -- it is impossible for there to be a settlement implicating the trust, even if the trustee wanted to. They need to either do that unanimously or have a counsel sign on behalf under the proper procedures. So, on estate settlements there are two ways to potentially get a settlement. One is under Section 62-3-1102, that is a procedure for securing award and approval of a compromise. Or there is also, your attention at 62-3-912, which is private --

THE COURT: What are those code sections again, please, sir.

MR. MYERS: Thank you, Your Honor. 62-3-1102, that is the procedure for securing award and approval of a compromise. And 62-3-912, that is private agreements among successors to decedent binding on personal representative.

And both of these statutes, among other requirements, but key requirements under both is that they have to be executed by all competent persons affected thereby. In this case, we have seven of those persons that are affected by the agreement. Again, six children and the trust. However, as I said before, that is disputed by three. So, this very simple question, did it meet the formalities of the statute? The answer is no. Wasn't executed by over half of the interested parties.

The PR informed the probate court of this and in fact said himself, quote, this is not an agreed-upon-by-all-parties exclusive agreement any longer, end quote. Syntax is a little bit off, but what they are point blank saying is that they are not, all parties are not in agreement, yet for whatever reason --

THE COURT: What do they mean by any longer?

MR. MYERS: Thank you, Your Honor. So, the day before the hearing -- this is a little factual entanglement -- probably relevant to the contest here. Two days before the hearing at, I believe, 9:01 p.m. a term sheet was emailed to the PR. And the term sheets offered a settlement of the underlying estate matters. Part of one component of that settlement was the

allocation of attorneys fees in this matter.

And the proposed terms said that if the majority of the siblings agree, essentially, that the PR's attorneys fees would get paid by the estate, as well as one of the other sibling's attorneys fees, but if the majority did not agree, then those would be borne by my client as personal representative. So, in light of that, my PR, my client, polled his siblings to make sure that he had the approval necessary to go forward. And he was willing to enter that settlement on the basis that the estate would pay his legal fees and the legal fees of his other sibling.

But -- and so the next day, the day before the hearing, our managing partner, Ken Wingate, told the Court that we believed that there was settlement. And we expected there would be a settlement. However, there were settlement formalities. And before the hearing occurred it was discovered -- not before the hearing so there was no way to come forward -- it was discovered that one of the siblings had changed his mind about the allocation. So, if the settlement was actually entered, my client would unfairly have to bear his own fees as personal representative.

So, of course, he said there's no way that I'm doing that. Which is perfectly allowed because there

are formalities to enter settlement agreements. A case of Farnsworth is most constructive. That is a Federal -- excuse me, it is a Supreme Court case of South Carolina, Farnsworth versus Davis Heating and Air, 367 SC 634, 2006. And that -- in that case it is even more forward than -- much more forward than what is happening here. In that case the plaintiff's attorney offered a 22,000-dollar settlement by letter, which was signed by the recipient attorney and returned. But the plaintiff decided to withdraw that offer before it was entered in court, or signed by both parties.

And the Supreme Court said, That is not a settlement. We have got these formalities laid out, they are specific. And the purpose of that is very well intentioned to prevent disputes as to the existence and terms of agreements and should relieve the court of the necessity of determining such disputes. The time of the court should not be taken up in controversial matters of this character. That is actually from a different case, Supreme Court case 318 SC 492, 1995.

Yet, here we are to establish that reason, to argue about a settlement that was never entered. So, when the probate court said this is not agreed upon by

the parties exclusively, the agreement any longer. What she meant is that she was under the impression, as we all were, that there was going to be a settlement entered that day and it just didn't happen. Whether that is regrettable or not is beside the point. It just didn't happen under the law.

So, again, those two probate code sections require execution by all competent persons. 62-3-1102 also requires application of the approval of settlement and notice of the hearing, which did not happen in this case. So, and then in the responsive brief in this matter, I think it's important to note that the proponents of the settlement had not countered our arguments under those two statutes. I guess they -- they can speak for themselves, but I guess that they think that those don't apply to this matter for some reason.

Instead, they argue under Rule 43(k) under South Carolina rules of procedure, which as you are well familiar, just a general section regarding settlements in circuit court. And that also does not apply, or was not satisfied. I would say, of course, right off the bat it doesn't apply because we have specific statutes regarding estate settlements. But even if you disregard those, 43(k) does not apply either.

THE COURT: Let me ask you this: What actually happened at the propbate court for it to issue, apparently, an order saying this matter has been resolved?

MR. MYERS: I wish that I could answer that question, Your Honor. I did the best that I could to explain, and it is a pretty simple issue, I think. You know, we don't have the signature. We don't have people coming forth to say that we all agree. It is just not a settlement. I don't know if -- you know, I can't speak for the judge. There was an order that was drafted by the proponents of the settlement agreement, and it says what it says. But as to what the court truly, you know, what its true rationale was, you would have to ask the court.

THE COURT: All right.

MR. MYERS: As to 43(k), I'll say off of the bat, in addition to it not applying to estate matters, I would say that it covers agreements between counsel. Here you have three pro se parties and a trust that was not represented. So, for that and additional reasons, 43(k) does not apply. And then -- but even if you move past that, there are three ways that you can have an agreement under 43(k). One is if it's signed by the parties and their counsel. In this case, the

agreement, proposed agreements, or alleged agreement is not signed by any counsel, none whatsoever. And again it's not signed by four of the seven total parties. So that doesn't apply.

Another way is that it is made in open court and noted on the record. In this case only two of the proponents of the settlement actually came to court and tried to enforce the settlement. We were there representing the personal representative who said, Not only are the pro se parties not there, but our PR was not consenting to that point blank on the record. So that doesn't apply.

And the third way under 43(k) is under advisement by counsel and entered on the record. That is the only prong that I saw argued in their brief. And of course, they can address others if they want, but as to that prong, I would say again, it was not signed by any of the counsel. They tried to make a point in their brief that the letter to the court the day prior indicating that we thought there was going to be a settlement is -- was a writing signed by the PR's counsel. However, there was no terms in that letter and the letter itself was not even entered in the record.

But nevertheless, even if you called it a writing signed by counsel, number one, you can withdraw that

before the actual hearing, which we did. And two, there's not a written -- any signing by the other parties -- excuse me, other counsel that were represented in this matter. And that is -- you know, nevermind the fact that two pro se parties didn't sign before the trustee signs, so I repeat that.

And then, finally, even with disregarding any formalities whatsoever, there's simply no meeting of the minds. For a settlement to be enforceable you have to -- there is a contract under law you have to have a meeting of the minds, but that didn't happen here. Two people -- well, two people at that -- excuse me, three people at that time wanted to enforce the settlement out of seven. At this point, I understand that it's only two. So, two out of seven wanted to enforce it. The settlement was never agreed to, this thing, and there's just no meeting of the minds.

And finally, I'll say too, because it is a contract, the burden is on them to prove that it exists and it's enforceable. So, with that, I would rest unless there's any questions.

THE COURT: None. Thank you.

MR. HEWITT: Thank you, Your Honor, may it please the Court. My name is Blake Hewitt and I represent Beth Gooding. With me today and also representing

Ms. Gooding is Steve Slotchiver and Dan Speights, who is on the end.

Your Honor, I have just a couple of things to pass up, if that's okay. May I approach?

THE COURT: Sure, please. Thank you, sir.

MR. HEWITT: Your Honor, the appellant in this case is Morgan Kearse as personal representative of the estate of G.H. Kearse. And our argument has two points. First, that this appeal should be dismissed because Mr. Kearse is not the personal representative of the estate of G.H. Kearse. And the second is that the appeal should be denied because none of these arguments are properly before this court. They were not made for the first time until the motion to reconsider the probate court's decision. And the argument that appears in the reply brief of the appellant is that he's still somehow the PR. That argument was never presented to the probate court.

So, the first document you and your clerk have there in front of you is the order of the probate court confirming Harley Ruff's appointment as the personal representative of the late Mr. Kearse's estate. That order was signed March 20th, 2017 and it says, The appointment of Mr. Ruff as successor personal representative is hereby effective. The second page in

the pack, the bundle of documents that I handed to you is the notice of the intent to appeal the probate court decision. It says that Mr. Kearse, as personal representative of the late Mr. Kearse's estate, appeals order dated February 27th, 2017 and September 15th, 2017. No mention in there of the March 20, 2017 order confirming Harley Ruff as successor personal representative of the late Mr. Kearse's estate.

So, an unappealed order recognizes that Morgan Kearse is no longer the PR. That order, whether right or wrong, is the law of this case. So the appeal should be denied. Mr. Kearse lacks standing to appeal in his capacity as personal representative.

The reason why this appeal should be dismissed is that none of these arguments, Farnsworth, Rule 43(k), the two statutes in the probate code that deal with a settlement, none of these arguments were made to the probate court until the motion to reconsider the probate court's decision. And as we are all well aware, there are lots of cases saying that arguments cannot be made for the first time in a motion for reconsideration or rehearing. There again, right or wrong, those arguments are waived.

The only arguments that the court could consider on reconsideration are the arguments that were voiced

to the probate court in the original hearing. The only argument at the original hearing was that Morgan, after his lawyer wrote a letter to the probate court saying that the hearing will not be necessary, everybody is in agreement, there is going to be a term sheet that is read into the record. The only argument properly presented to the probate court was that Morgan objected to the settlement's confirmation based on fraud.

There was no evidence presented in support of that allegation of fraud. And he did not at all, in the dialogue between Morgan's counsel and the probate court judge reflect that Morgan's counsel agreed this was not an evidentiary hearing, but no evidence was presented. Morgan did not dispute the terms of the settlement sheet, argue the Farnsworth case, argue Rule 43(k), argue the probate code statutes. And the argument that appears in their reply brief, that Morgan somehow remained the personal representative, as I say, was never presented to the probate court at all.

THE COURT: What date did this hearing take place?

MR. HEWITT: February. I'm sorry, February 2nd, 2017, I believe. Yes, it was set for a February 2nd hearing and then, I think, though I cannot speak with certainty, because I was not there, but I believe that the transcript from that hearing reflects that everyone

but Morgan came in -- and his lawyer -- came in to court under the impression that there was a settlement. Because, of course, Morgan's lawyer had written the probate court judge either the day before or two days before saying that this matter has reached a global settlement. I don't even want to come. Mr. Spike is going to read the terms of the settlement sheet into the record.

You asked my brother what happened at the probate court hearing, the transcript of that hearing, and this is in the record. Page 173, 174 of the record assembled for this appeal is that after announcing, after Morgan's counsel announced that there would be no settlement, Morgan did not consent. Morgan took the unilateral step and announced his resignation. Morgan's lawyer said, The code says this is not effective immediately, but Morgan submits it irrevocably, all of his authority is frozen, he has no power to write checks, he has no power to file documents, he has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary, which the probate court did March 20th of 2017.

And the probate court, page 188, this is again a citation from the record page, not the transcript page,

basically outlined the dilemma it thought it faced. The probate court said Morgan's lawyer put in writing indication that Morgan agreed. I have the terms that have been -- of that settlement that had been read into the record without objection. Morgan now says that he doesn't agree, but he's not here. I have the signatures of these other people. That is Beth Gooding and Ms. Julie Gooding Sharp. And the pro se parties, Rachael Gooding Best, Gordon -- and who am I forgetting -- Joseph were not present and didn't object. So, the probate court said I don't have anything else to do but to enforce this settlement.

Now, if we argue the merits, that reasoning may stand up under Farnsworth or under 43(k), or under the statutes, or it may not, but the fact of the matter is at the end of the day we have an order -- an appeal taken by someone who is personal representative, who is no longer the personal representative, presenting arguments that were not properly presented to the probate court and are not properly presented to this court. And that is our argument, Your Honor. Thank you.

THE COURT: All right. Thank you, sir.

MR. MYERS: Your Honor, i would like to address those, if I may. Because the allegation is that we

didn't raise these matters below. And there is a very serious one and I just want to tell the court --

THE COURT: Sorry, I missed what you said, the last part.

MR. MYERS: The allegations that we didn't raise these arguments with the probate court and it is a serious one and I just didn't want to -- it is addressed in the brief as well, Your Honor, in our reply brief, but I did want the court to know that in this case I wanted to point blank tell the court that the pro se parties were not here and I believe it's paraphrased as I thought that they were going to agree. But you do not have a signed agreement by the pro se parties; they are just not here, can't speak for them. And they did not show up in court, by the way, at least to affirm settlement.

If memory serves, Rachael Kearse Best did try to speak to the court to express her disagreement with the settlement and that she did not agree with it, but the court did not allow her to speak. So, as the record -- but as the record would reflect, the only parties there were Morgan Kearse, Julie Sharp, and Beth Gooding. Two of which -- one to enforce the settlement, one of which did not and told the court that the pro se parties were not there. And in addition, of course, the trust was

not there and could not act for itself because it wasn't represented. So, that wasn't before the court.

In terms of evidence, it was not an evidentiary hearing so what -- what evidence would we need to bring, other than the proposed settlement itself, the alleged settlement itself? They have the burden, if they want to enforce the settlement, it's their burden to show that there is a settlement. We didn't even have to say anything at all. If they are going to enter a document that only three of seven parties have executed, that speaks for itself. That is all of the evidence that you need. And so we did object to that. And I just want to make sure that that's -- that that is clear for the record. And I go over that in the brief as well.

In addition, the notion that Morgan cannot appeal in his capacity as personal representative also I think is plainly incorrect. His resignation was tendered at the same time as the hearing because he was frustrated with the situation and he was frustrated that they thought that there was going to be a settlement and then it got pulled and there was not a settlement, he didn't want to deal with this family strife. It's very stressful. And he has more important things to do. He tendered a resignation.

THE COURT: I mean, it was more than just tendering, there was an effected resignation.

MR. MYERS: I gave it to Your Honor. What our counsel said, his counsel, and the court even said at that time that, Okay, we are taking this resignation, but you realize that you have to follow certain formalities for that to be effected. And that is in Rule section 62-3-610(b), a resignation of a PR requires 20 days notice. And no application or petition for successor PR will be made during that time, then the notice is ineffective. The court acknowledges as much. We indicated as much. And since that time there's been no application of petition.

So, that -- the resignation ultimately was not effected. The client wanted to resign but he did not realize that the court was going to try to enforce a settlement that was never entered. He had no way to know that because it's just contrary to basic law. So, he -- since there is no validly appointed successor of personal representative or special administrator, he's continued this appeal. And, you know, in addition to that, the supposed resignation was a part of that first order and part of the subsequent order after the motion for reconsideration.

So, appealing those orders appeals his supposed

resignation right along with it. And dovetailing on that, 62-1-308(h) which says, and I quote, "When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had."

So, when he appeals an underlying order that supposedly accepts his resignation, that matter, and as long as the court as it stands, extended that original order ceases (phonetic) under law, which makes common sense. Another section that is noteworthy is just like successor of personal representative has to -- there has to be an application or petition with special administrator is very similar under 62-3-614. Requires a petition by an interested person. So, that would -- that did not happen here.

Another thing, the order itself, (inaudible) says that it is conditional upon an accounting to the court for the assets and delivery of the assets of the decedent to successor personal representative the appointment shall terminate. In this case he has no accounting. So, you know, this, even if you took this resignation order for what it is, it says that it's conditioned upon a final accounting, and that hasn't

happened yet.

THE COURT: Let me ask you this, what order is it that was issued on February 27th, 2017? Is that the order that approved this alleged settlement?

MR. MYERS: Yes, sir.

THE COURT: What is the order of September 15th, 2017?

MR. MYERS: That is the -- which? All right, which number?

THE COURT: September 15, 2017, is that denying the motion for reconsideration?

MR. MYERS: Yes, Your Honor.

THE COURT: So, he did not appeal the order that was signed by the probate judge accepting his resignation, so that would be the law of the case; would it not be?

MR. MYERS: Well, no, Your Honor, the resignation is also part of both of those two orders.

THE COURT: You have to designate the issue on appeal, you can't just say just because there is no order in the file that that is part of the appeal.

MR. MYERS: And our resignation or notice of appeal and so forth, those did specify that the PR issue was a matter on appeal. So, that has been properly raised before the court.

THE COURT: Well, let me ask you this then, and I'm looking at notice of intention to appeal by Mr. Wingate or you, and it says, We are appealing the order of February 27th, 2017, which would be the settlement, proposed settlement order or alleged settlement order. And then you have September 15th, 2017, which would be, according to what you are telling me, the order denying motion for reconsideration. So, how can I read into this notice of intent the inclusion of an order that is dated March 23rd, 2017 accepting the resignation?

MR. MYERS: Well, Your Honor, because the resignation was part of the original order. In fact, this statement of resignation contradicts the Court's prior order. So, it is a nullity in and of itself for various reasons. The order, the original order said that there was going to be a special administrator appointed. This one is for a successor personal representative, which is a different issue.

THE COURT: Who is Harley Ruff.

MR. MYERS: He is an attorney that practices in the probate estate area down in Bluffton.

THE COURT: Well, did the order not say that they were going to appoint Mr. Ruff as successor PR of this estate?

MR. MYERS: This order is a nullity, Judge.

THE COURT: I understand that is your position, but did this order not purport to do that?

MR. MYERS: I don't think that it did. It said upon --

THE COURT: How can you read it to say anything other than that?

MR. MYERS: The Judge said, Upon accounting to the court for the assets and delivery of the assets of the decedent to the succeeding/succesor personal representative. That is a conditional statement and that hasn't happened.

THE COURT: I got you. All right.

MR. MYERS: That is the point on my argument and my brief goes into that in much more depth. But even, Your Honor, one point that I don't want to escape here is that even if Morgan would not be considered legally the personal representative at whatever date, he has the right to appeal. The order relates to the service as personal representative. How can he appeal in any other capacity than as personal representative? There's no argument that it was timely --

THE COURT: Mr. Myers, I am not buying that aspect of the argument, quite frankly. Either he is the PR or he is not the PR. And if he is appealing in that

capacity, he has to be acting in that capacity.

MR. MYERS: Well, Your Honor, if I may respectfully say, statutes such as 62-3-608 make it clear --

THE COURT: 62-3-648?

MR. MYERS: 608.

THE COURT: Say that again, I'm sorry.

MR. MYERS: 62-3-608.

THE COURT: 608, okay.

MR. MYERS: That even an outgoing personal representative, meaning one whose turn has ended, may perform acts necessary to protect the estate. So, you know, as I said in the brief, if he appealed in his individual capacity, they would say that he doesn't have standing to raise matters relative to the estate and the services of the PR. It was be akin to -- I don't know how else he can protect his interest as personal representative whether he's current, outgoing, or former PR than to appeal as PR. That -- he's got the standing before the court to do that. I think it is just a fundamental reality of the situation.

THE COURT: All right. Thank you, sir. Anything further?

MR. HEWITT: Your Honor, can I confess an error? I'm sorry, Your Honor, I was supposed to, at the end of

my presentation, opt to Mr. Speights if he wanted to say anything briefly.

THE COURT: Sure, Mr. Speights, I'll be glad to hear from him.

MR. SPEIGHTS: Your Honor, with your permission, I'm hearing impaired.

THE COURT: I am too. So, speak up and we will both be good.

MR. SPEIGHTS: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. SPEIGHTS: I don't know that I need to speak directly to the narrow issue which is before you, at least as articulated by my cocounsel, and whose brief I join in this matter. Just out of an abundance of caution I always want to make sure that the record is protected a little bit because Morgan's counsel certainly made a lot of factual statements which we don't accept and I want that to be said.

So, very briefly, protecting our probate judge a little bit, counsel said the order as prepared for counsel of Ms. Shaw. I object to that. I prepared the orders and of course the law of the state is, that is recognized as normally done.

And those orders are extensive and they give the facts. But there is something else. We have got both

of the transcripts here and I would encourage you, Judge, to read those transcripts and what she ruled if there is any question.

I think I was an honest scribe and I reported what she ruled from the bench with Mr. Wingate at that first hearing and Mr. Myers there at the second.

Secondly, Your Honor, I believe there was a meeting of the minds but that's not for today's hearing. But there was a full record presented to the probate judge at the first hearing with a lot of exhibits. And Mr. Wingate, representing Morgan, who would refer -- I almost said a first name, but I didn't want to confuse you.

Mr. Wingate was there and not just to say that he was resigning, or his client was resigning, but sat through the entire hearing and did not object to any of that record coming forth and the presentation made to the probate judge. The record is undisputed. And there is a lot in the record, as set forth in her order.

One other point, Your Honor. Counsel makes a number of factual assertions, and they are in the brief, based on an affidavit of Morgan Kearse, which was not before the court at the first hearing and was presented in connection with a motion to reconsider or

alter are amended. However, during the hearing, as will be reflected in the transcript, when he presented that in support of this motion to reconsider I objected and I said, Your Honor -- this is reflected in the transcript -- I don't believe that he can just submit that affidavit. If you are going to consider that I want to call (inaudible) who was sitting right there at the table, and cross examine him. I was not just going to accept an affidavit which I had never seen before. And the judge said, I'll let you know on that.

At the end of the hearing she ruled. She ruled she didn't have to and she was ruling, it's clear from the transcript of the first hearing, that she was not going to allow them to set aside the first order based upon that record that was made. I say that only if for some reason, and I hope that you don't feel compelled to do so, if for some reason you want to get into a number, a plethora of facts and assertions which counsel made which are really not relevant to anything, but things that my cocounsel argued. In the possibility that you remand it back to the probate court, to allow us to have a hearing on that affidavit and not just submit an affidavit at a hearing.

With that, Your Honor, I will --

THE COURT: Do you believe those transcripts -- or

have they been filed?

MR. SPEIGHTS: They are part of the record, they are in the file.

THE COURT: In all fairness, Mr. Speights, I have not looked at them and I will, okay, sir.

MR. SPEIGHTS: Well, that was part of my concern is that, and many years ago I was a clerk for a circuit judge and --

THE COURT: I have been there and done that myself, I promise you.

MR. SPEIGHTS: So, the Allendale clerk of court has it I'm sure.

THE COURT: My law clerk will get it and I will make sure.

MR. SPEIGHTS: Mr. Myers emailed it to me and I can get your law clerk's address and email her what Mr. Myers emailed me and you will have the complete record in this matter. Thank you, Your Honor.

THE COURT: All right. Thank you so much.

MR. HEWITT: Thank you, Your Honor.

THE COURT: Anything in response to that?

MR. MYERS: Just, Your Honor, the motion that they object to the evidence is, as mentioned before, I just want to make it clear and distinguish, we didn't object to the evidence because the evidence speaks for itself

with regards to the settlement. We did object that there was a settlement. So, that should be clear from the record as you will see. And the affidavit, it is admissible pursuant to Rule 6(D) under the rules of civil procedure submitted with this motion to reconsider. So, I -- if that -- I don't think that its relevancy is your decision today, but I just want to mention that and I appreciate your time.

THE COURT: Certainly. I'll read everyones' briefs and transcripts and give you my order.

(Hearing concluded.)

CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 24th day of July, 2019.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

State of South Carolina)
)
County of Allendale)

In The Court of Common Pleas
Fourteenth Judicial Circuit
2017-CP-03-00244

J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse,

Appellant,

vs.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust U/A/D Nov. 05, 1992,

Respondents.

Transcript of Record

April 4, 2019
Ridgeland, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

A P P E A R A N C E S:

Matthew J. Myers, Esquire
Attorney for the Appellant

Blake A. Hewitt, Esquire
Attorney for Elizabeth Kearse Gooding

Daniel A. Speights, Esquire
A.G. Solomons, III, Esquire
Attorneys for Julia Kearse Sharp

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

No.	Description	Ev.

No exhibits introduced.

THE COURT: Thank you for your patience. All right, this is a motion for a reconsideration. Is that correct?

MR. MYERS: Yes, Your Honor.

THE COURT: All right, sir. I'll be glad to hear from you.

MR. MYERS: Thank you, Your Honor. If it may it please the court?

THE COURT: Let me do, let me this first. I'm sorry to interrupt you. This is an Allendale case. Is that correct?

MR. MYERS: Yes, Your Honor, it is. It's on appeal.

THE COURT: Obviously we're in Jasper County. Is everybody agreeable with disposing of this motion here in Jasper County?

MR. MYERS: We do, Your Honor.

MR. HEWITT: Yes, Your Honor.

THE COURT: Okay. All right. Very good.

All right, sir, go ahead.

MR. MYERS: Thank you, Your Honor. My name is Matthew Myers, and I'm here for Morgan Kearse as personal representative of the estate of G.H. Kearse, his father. As you may recall, this is a matter from, of course, Allendale probate court where there was an alleged settlement agreement between six siblings and a trust that the siblings all represent as trustees. However, that

agreement was not actually entered into by at least half the parties involved. So, we filed this, you know, a motion to reconsider the probate judge which was denied, denied and then appealed that.

At the last hearing before Your Honor, you may recall the issue of standing, Morgan as personal representative, was raised. We briefed that. We argued it at the hearing and we, we appreciate this opportunity to file a motion for reconsideration so that perhaps I can articulate those issues better and hopefully reach the result that we believe is correct.

THE COURT: Would you give me a brief factual ---

MR. MYERS: I did.

THE COURT: --- background because I'm a little bit ---

MR. MYERS: I e-filed it and I'll be glad to hand it up if you'd like.

THE COURT: Yes, sir. I'll be glad to take it.

MR. MYERS: Thank you, Your Honor.

THE COURT: Mr. Hewitt, if you have anything you want for me to consider as well? Do you have any ---

MR. HEWITT: No, Your Honor. We're going to make our presentation this morning, if that's okay.

THE COURT: Okay. Yes, sir.

MR. HEWITT: Actually, forgive me. We did file an

affidavit, but I can hand that up.

THE COURT: All right. Thank you, sir.

All right. Go ahead.

MR. MYERS: As you can see there, that was e-filed December 27th of last year, and I would incorporate it by reference today here, Your Honor, to the extent that I don't cover everything in there because I, I -- it would take me quite a while to really cover all the arguments laid out there.

THE COURT: Sure.

MR. MYERS: But I'll try to hit the highlights here today. And, let's see, generally as to all the arguments, I just want to point out that although this is on appeal from the probate court, it is subject to the Rules of Civil Procedure, and that's with Rule 74 of the South Carolina Rules of Civil Procedure. I don't think there's any controversy about that; I just want to provide that as an overview.

And with that, the first argument is under Rule 17(a). It says:

> No action shall be dismissed on the ground that it's not presented ---

Excuse me.

> --- prosecuted in the name of the real party in interest until a reasonable time has been allowed

> after objection or ratification or commencement of the action by or joinder or substitution of the real party in interest. And such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

In this case, their standing was not objected in the lower court. That, that was raised on appeal. So, Rule 17, I think, very plainly allows for ratification, joinder, or substitution of whoever the court feels is the proper party.

And to that point, the, the -- I know that the respondents in this matter that are here today have advocated Harley Ruff as, as being the new successor personal representative. We dispute that on technical grounds, but nevertheless, be that as it may, he -- be that as it may, he has filed an affidavit which is included as Exhibit A in this, in the motion that he believes -- well, I'll just quote it:

> I believe that Morgan Kearse -- Kearse's above-referenced appeal is necessary to resolve legal disputes that prevent the full administration of the estate of G. H. Kearse.

THE COURT: Where, where is this affidavit?

MR. MYERS: It's Exhibit A.

THE COURT: Okay.

MR. MYERS: It's towards the very end.

(A PAUSE.)

THE COURT: All right, sir.

MR. MYERS: Thank you, Your Honor. So, as you -- the affidavit speaks for itself. As you can see there, Harley Ruff, if, if he is indeed the successor PR, he is, he is clearly ratifying Morgan Kearse's current appeal and under 17(a), Morgan would be, therefore, allowed to continue this appeal.

Alternately, Your Honor could join whoever you think the proper party is or substitute that person. If you think that the proper party is Morgan Kearse individually, you could literally substitute or join him individually into this matter. Alternately, Harley Ruff, although he indicates, you know, he'd, he'd rather not be involved because he, you know, wants to remain impartial and he thinks that, you know, Morgan has presented this case well, he, he could be joined or substituted as a party under Rule 17(a). And there's a South Carolina Supreme Court case, *Patton vs. Miller*, 420 SC 471 from 2017, that notes that 17(a), a substitution or, or ratification may occur on appeal. So, it doesn't even -- it doesn't necessarily have to occur at the lower court.

The next argument is under Rule 25(e).

THE COURT: 25(e)?

MR. MYERS: Yes, sir, and I'll read that:

> In the case ---

Excuse me, 25(c) and (e). I'll read both:

> In the case of any transfer of interest ---

And here the interesting question would be Morgan Kearse's status as personal representative if, if the court, in fact, thinks that status was transferred.

> In the case of any transfer of interest, the action may be continued by or against the original party unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

That's 25(c). 25(e) goes on to state:

> Substitution of parties under the provision of this rule may be made by the trial court either before or after judgment, or pending appeal, or by the appellate court.

So, talk about 17(a) in first 25 is very similar. You know, you can, you can join the proper party if the other side objects, which they obviously have now done on appeal to Morgan's standing.

Another ground is that, as I said before, standing was

only raised in this case ---

THE COURT: I'm sorry, what was the last thing you said?

MR. MYERS: The next ground. I apologize, Your Honor. The next ground, independent ground for sustaining this matter is that, as I said before, standing has only been raised on appeal here. And of course numerous cases say that issues cannot be raised for the first time on appeal. For example, just to cite one Supreme Court case, South Carolina, *James vs. Anne's, Inc.*, 390 SC 188 from 2010. So, with that being the case, I think they have waived their right to argue standing because they didn't do that with the probate court.

Similarly, there is body of precedent that even if you raise it in the lower court, if you don't raise that soon enough, you've also waived your objection. That if, if the objection isn't raised promptly -- and that's *Bryson vs. Bryson*. That's a Court of Appeals case, 378 SC 502.

And so even if -- well, in this case, just so you know the sequence of events, Morgan appealed his -- the decision regarding the appeal at one point, and then a few months later, March 2017, the court issued this statement of resignation. And then six months later, the court finally heard Morgan's motion for reconsideration. And so the parties in this matter had about a half a year to, if they

wanted to object to standing after that, after that statement of resignation, they had time to make that argument. It wasn't made in the lower case, so they waived it and then did not raise that promptly.

Furthermore, that, that statement of resignation I mentioned was simply an interlocutory order. So, it is not the law of the case because it was not appealable. Of course, numerous cases advance that principle, so I don't even need to cite that, but just in the context of this case, the -- even if Harley Ruff had been appointed as a successive personal representative, that didn't end Morgan's case about the validity of the agreement. Didn't bring any finality to that. So, that is not the law of the case with respect to Morgan's appeal.

Similarly, the probate court itself declined to alter appellant's status even after itself issued that statement of resignation. Under Rule 21:

> Parties may be dropped or added by order of the court on motion of any party or of its own motion ---

Excuse me.

> --- or of its own initiative at any stage of the action and on such terms are just.

That's Rule 21. Furthermore, under the Supreme Court case of Branford -- *Branham vs. Ford Motor Company*, 390 SC

203 from the year 2010:

> The decision whether to realign the parties lies within the sound discretion of the trial court and will not be disturbed on appeal absent a showing of abuse of discretion and resulting prejudice.

So in this case, the probate court itself, if it had wanted to raise an issue about standing independently, could have done so but it didn't do that. And that should not be violated on appeal or overruled on appeal.

Another civil rule of procedure -- well, and, and that -- excuse me, that gets into just the general equities of the matter, if you will. Probate court issued its final decision denying Morgan's motion to reconsider as to him as personal representative. So, it just is logical and, and makes sense for Morgan to appeal in that same capacity.

There is no requirement that, under the appellate rules, that the party aggrieved of an order change their capacity if something has happened. He just simply took the caption that was there.

THE COURT: Say, say that again, please. There's no requirement under appellate rules of what?

MR. MYERS: For a party to, to change the caption. In fact, stated differently -- maybe the other way -- I don't think there is an avenue under the appellate court rules to

change the, the name of the party other than what we've talked about here today through substitution, joinder, or ratification. I think if you've got a case and a decision and an order that's under a certain framework with Morgan as personal representative, you just logically continue that. And that speaks back to 17(a), which also says:

> Every action shall be prosecuted in the name of the real party in interest.

Of course, in this case Morgan's appeal and the settlement, alleged settlement is really all about him as personal representative, what his obligations and rights are as personal representative, whether it's acting or outgoing personal representative. So, he is the real party in interest as personal representative. On the flip side of that, appellate court Rule 201(b) says:

> Only the party aggrieved by an order, judgment, or sentence, or decision may appeal.

So, in his individual capacity, I don't think he had a grievance. So, if he had appealed in this individual capacity, I think the other side would clearly be arguing that, well, he waived his arguments as personal representative because that's what the case is really about.

And I also want to mention. I think I touched on this previously, but the -- there's a probate court statute,

62-3-608. Even if a personal representative has been terminated, it says, quote:

> At any time prior to distribution or until restrained or enjoined by the court order, personal representative may perform acts necessary to protect the estate.

So, even if one were to accept the argument that Morgan is not the personal representative, also under probate court order he can -- he's got statutory authority to protect the estate in this case by undoing a settlement that, that affects the estate that was not actually validly entered.

And finally I'd like to talk or address the, the statement of resignation itself in a little bit further detail because one thing I think that's gotten lost in this is that that statement of resignation is not the same thing as an order of appointment. The probate court has orders of appointment. They are attached as exhibits B and C in the motion, and those are probate forms 332 and 333. One is for appointment of a successor personal representative. One is for the appointment of a special administrator and those, those are called orders of appointment. And they both include a section called Qualification and Statement of Acceptance, and that would be statement of acceptance by the -- whoever the successor is.

Here, the statement of resignation, it's just a form that's designed to tell the outgoing personal representative, okay, we accept your resignation if there is a subsequent order of appointment or simultaneous order of appointment. However, here there, there was no such order. And, in fact, there is no evidence on the record that Harley Ruff has accepted the appointment whatsoever, and of course on appeals you can only go with the record. So, that speaks for itself.

Interestingly, though, the other side did submit an affidavit -- and I think they'll, they may talk about it -- that tries to introduce evidence that Harley Ruff has accepted that position. Well, if, if that, if that's acceptable to the court, then it needs to also accept Harley Ruff's own affidavit that allows for ratification joinder, or substitute. Can't have it both ways. If, if they want to kick out Harley's affidavit for any reason, then there's no evidence Harley's ever even accepted the position. And if they want their own affidavit to be accepted for that premise, then they need to accept his decision and affidavit that he wants to ratify this appeal.

So with that, I would ask that the court find Morgan has standing to continue this matter, if need be through ratification, joinder, or substitution, and also invalidate the alleged settlement that was never agreed to by the

parties thereto.

THE COURT: Mr. Hewitt.

MR. HEWITT: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. HEWITT: For the record, my name is Blake Hewitt. I represent Elizabeth Kearse Gooding. Seated with me at counsel table is my colleague Dan Speights and his partner, Mr. Solomons. They represent Ms. Julia Kearse Sharp. Both of those women are the respondents in this appeal.

Judge, I'm going to approach this from a little bit of a different direction and talk for a few minutes about the background of this lawsuit and its inception because I hope that will be helpful in understanding the respondents' positions.

And it is unfortunate that this case involves family. These are all good people, so nothing I say is meant to be critical of anybody on the other side personally. That's just the nature of a lawsuit. You have to make clear the contrast in everybody's positions.

Judge, we're here because the petitioner filed a lawsuit against himself and against his siblings seeking an order from the probate court compelling his father's estate to build a house on land the estate did not own, and if that's confusing, here's what happened.

The late Mr. Kearse, everybody's father, had a rather large farm in Allendale County, about 1500 acres, and in 1992 he transferred ownership of that farm into a trust. Now, when he died in 2013, his will asked that a large home be built on the farm modeled after a historic colonial home in the state of Virginia. The problem, though, was readily apparent and obvious: Mr. Kearse didn't own the family farm when he died. The farm had been owned by the trust twenty-one years before.

Three years after Mr. Kearse dies, three years later, long past the time the estate should have been closed, the petitioner filed a lawsuit against himself and against his siblings asking the probate court to order the estate, use estate funds to build this home on land owned by the trust, and asking the court to order that the trust could be invaded. Trust funds and assets could be used to fund the building of this house. My client and Mr. Speights's client opposed that lawsuit for obvious reasons.

After eight months of litigation -- we had to litigate the case for eight months -- the petitioner filed a motion in the probate court asking the probate court to dismiss his own lawsuit. That motion has never been heard. Since that time, the parties have been litigating liability for the attorneys' fees related to bringing and defending that lawsuit.

My client has a lot of heartburn about her father's estate being liable to pay attorneys' fees for this lawsuit which she thinks was ill considered. I think that's the concern of Mr. Speights's client as well, but I'm going to defer to him to speak to that.

On the eve of a hearing in probate court where several motions were going to be considered, the parties reached a settlement agreement about how those attorneys' fees would be handled. Now, I know the validity of that settlement agreement is very much in dispute, so I don't want to overstate anything.

The basics of that agreement were that the petitioner was going to pay his own attorney's fees and the attorney's fees of my client and the attorney's fees of Mr. Speights's client, but that he could ask the estate to pay a portion of the fees for himself and for my client if the majority of his siblings agreed. And that's important because this settlement agreement, which I understand is in dispute, affects the petitioner individually. He agreed to pay everybody's fees. The estate was only affected if a majority of his siblings agreed that he could ask the estate to bear a portion of those fees.

The probate court enforced that settlement agreement. Again, the validity of that settlement agreement is disputed, so I don't want to overstate anything. That's

why we're here.

The petitioner appealed the order enforcing that settlement agreement, and this court issued an order dismissing that appeal. And we think that decision is right because he appealed in his capacity as personal representative, but the problem is he's not the personal representative. He resigned as personal representative because the probate court was getting ready to hear a motion to remove him as personal representative in a motion for summary judgment against the petition for instructions. Someone else was appointed as personal representative. And, most importantly, he never argued to the probate court that the probate court should not have accepted his resignation as PR. In fact, this is what he told the probate court.

May I approach, Your Honor?

THE COURT: Yes, sir.

MR. HEWITT: This is an excerpt from the record on appeal that was presented to you.

THE COURT: Do you have a copy of this?

MR. MYERS: That's fine, Your Honor. Thank you.

MR. HEWITT: His lawyer in February 2017 said this:

All of his authority is ---

The highlighted language is on the last page. The second page where it's underlined in blue is that he was

resigning irrevocably as PR, and then on the last page:

> All of his authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do for this estate.

That's exactly what happened. A successor fiduciary, Harley Ruff, was appointed in March of 2017 and is, in fact, serving as PR right now, yet the petitioner claims to be appealing as personal representative of the estate.

THE COURT: Let me ask you this. How do you reconcile the argument of -- under 17(a) that it's not being prosecuted by the real person, party at interest? However, that goes back to the date of the filing, if I'm not mistaken, and the PR says now I'll ratify that and I think it needs to go forward.

MR. HEWITT: Yeah. So, we raised in probate court at the hearing on the motion to reconsider that he was no longer the PR. We didn't know how he was purporting to make this motion as PR. We raised it in the appellate brief, and there was no argument until now about Rule 17, Rule 25, Rule 21, any of that stuff.

So, what happens is they take a position. A court

rules against them, and then they change their arguments on the Rule 59 motion. That argument might have been meritorious. I don't want to concede that it would have been had it been raised in a timely fashion, but you can't make new arguments on a Rule 59 motion. The time to make that argument would have been (A) in the probate court, which we did. My colleague Mr. Slotchiver, who handled that hearing, and Mr. Speights both mentioned at the hearing on their motion for reconsideration I don't how we're here and he's claiming he's the PR. He's not the PR, but the time to raise it would have at least been then. If not then, in the reply brief, but there was none of that until now.

THE COURT: All right, sir. Go ahead.

MR. HEWITT: That concludes my presentation, Your Honor. I'd like to pass up this affidavit. I did not object to Mr. Ruff's affidavit. They're welcome to object to this if they want to.

THE COURT: You have any objection?

MR. MYERS: Not if, if both are accepted, Your Honor.

MR. HEWITT: It's not in the record on appeal. I don't think the court can consider it for purposes of the appeal. We just felt compelled to correct the suggestion that was made in some of the written filings that Harley Ruff has not been appointed PR and is not serving as PR. I

mean, he, he plainly is.

THE COURT: I'll tell you what. I'll make it a court exhibit, but I'm not going to consider it because I agree with you. It's outside the scope of the issues on appeal. All right, sir.

MR. HEWITT: I'd be happy to answer any questions from the court, but that concludes my representation. I believe Mr. Speights may want to say a couple of things.

THE COURT: Mr. Speights.

MR. SPEIGHTS: May it please the court, Your Honor? I don't know if I'm going to speak five minutes or five hours, but I will defer to your judgment, which I believe is five minutes.

I've been involved in this from the outset when Morgan Kearse as the PR -- and it's important we distinguish Mr. Kearse as PR or former PR, and Mr. Kearse as just one of the other siblings. When Mr. Kearse sued my client -- I'm not an estate lawyer. I was hired to defend Julie, and we refer to them by first names to keep it straight. I was hired to defend Julie in a lawsuit brought by Morgan as PR against my client. For reasons counsel has explained, that lawsuit went south and Mr. Kearse, Mr. Kearse's -- well, the PR's lawyer and I worked out this settlement agreement which counsel disparages but the probate court enforced.

The PR's lawyer resigned unequivocally. We had a full

hearing. Evidence was presented on the merits that there was an agreement, and the probate court ruled in favor of my client and other siblings there that there was a settlement agreement. Seems pretty simple.

Since then we've lived with Rule 59. Mr. Kearse as PR made a Rule 59 motion before the probate court. I found it interesting. The most interesting thing that counsel said was the first thing he said: we have filed this motion so I can better articulate. That's not the standard of Rule 59 before you and it was not the standard of Rule 59 before the probate court. The probate court specifically said everything you have raised now in your motion to alter or amend, you could have raised the first time when, when you were here present in the courtroom, and you decided to resign and say nothing.

But in any event, she gave him a full hearing on his motion to alter or amend. And then the PR, Morgan as the PR, appeals to Your Honor and we go to, we go to Allendale and Your Honor rules -- correctly, I might say -- rules that he had no standing. No surprise. We briefed it; we argued it. Your Honor ruled in our favor. So, what happens? They file another Rule 59 motion because we can now better articulate what was before you down in Allendale.

Now, I'm not trying to be over technical, Your Honor,

but this is not let me keep trying until I get it right. We would double the caseload of our circuit court judges if you could file a motion to alter or amend every time you disagreed with a decision. Having said that, counsel has dealt with the merits of that, and I just ask Your Honor, as I asked the probate court when they did the same thing, to, to deny the motion.

We have four orders now, but I need to make two points. First of all, I said at the last hearing in Allendale, Your Honor, I've relied on cocounsel to argue the standing issue. If for any reason Your Honor is uncomfortable with the standing issue, we have a whole bunch of arguments on why the order itself should be kept in place.

Leaving aside standing, leaving aside who is before you, Your Honor, this was a correct decision by the probate court enforcing this agreement. And so I just want to say if ever you have doubts about standing -- and hopefully we don't; hopefully we finish with this today -- there's a whole nother argument out there that they've tried to say, aside the ruling itself, on the merits of this controversy. But clearly they had no standing.

Now, Your Honor, I want to make one other point. My client is slightly distinct from my cocounsel's client. They get along. They file things together. They make the

same arguments, but the agreement which the probate court enforced is an agreement, and counsel said this, but it's an important point to my client. It enforced the settlement against Morgan individually -- not as PR, as individually -- to pay her attorney's fees and then there's a sum certain and she's out of here. She has peace, okay? The rest of them have to deal with an approval by the, the -- a process that requires some approval to get their fees, including Beth, okay?

This case is over as to my client. We have a judgment and the important point is Morgan Kearse does not just have a standing problem because he failed to appeal, timely appeal as the PR because he resigned as PR, et cetera, et cetera. Morgan Kearse individually did not appeal, and that's just not a technicality. Counsel does not represent Morgan Kearse individually. We established that from the outset, and he can't represent him individually. You can't represent the fiduciary and sue yourself and represent yourself individually in the case.

Morgan Kearse chose not to appeal, as did some of his siblings, the order of the probate court that ordered Morgan Kearse individually to pay my client's fees. So, in that sense we have a judgment and, frankly, we think they ought to just send us a check and let us go home.

So, one, we agree with counsel 100 percent that Morgan

Kearse as PR has no standing. Two, if we ever got to the merits, we think we are right on that, too, and we'll be glad to defend probate court's two orders. And number three, whatever else is said, Morgan Kearse made a decision not to appeal individually an order that requires him to pay my client her attorney's fees and let her be out of here. The estate lawyers can argue for years over this matter if it goes back on how to divide this up. We've defended our lawsuit. They've agreed the lawsuit. She's entitled to her fees for that lawsuit. So, we think the matter is resolved. Thank you.

THE COURT: Thank you.

All right, any response?

MR. MYERS: Yes, Your Honor. Thank you very much. As to Rule 59(e), that, that's the standard procedural tool that all of us use, and it's simply to be able to allow the judge and the court to clear up legal ---

THE COURT: Well, how do you address the issue that they raise that you're attempting to insert a new issue that wasn't considered?

MR. MYERS: Well, Your Honor, I address it this way. Standing, as soon as it was raised, which was on appeal, was addressed by us. It's addressed in the brief. If you want to go back and see it, I laid out numerous arguments. Argued some of those at the hearing, and I apologize if,

like I said, maybe I didn't do that articulately enough, but I've -- you know, that's what 59 is exactly for, to clear up legal issues that, that parties think are improperly decided. Yes, we could appeal also or alternately -- and if, you know, if our motion's denied today, we'll certainly take that opportunity.

But, you know, this -- and, you know, I don't want there to be any assertion, and maybe there wasn't, that we're trying to do anything improper with a 59(e), whichever subsection it is, Rule 59 motion. We're, we're just trying to cut to the chase, save this family from itself. Invalidate the settlement agreement, the alleged settlement agreement, and get back to square one so there can be a resolution because the way this is trending, we -- I want to commend counsel, by the way. In the last several days, we've, we've done a yeoman's job trying to get these people -- this family, excuse me, to, to agree on some sort of resolution and, and it's just not possible.

This is the most intractable situation I've ever seen. It will, you know, continue on appeal. The trust itself can even independently bring an action to invalidate the settlement agreement. It's a party to this agreement. It's affected by the agreement because it's a residual -- or beneficiary of the estate. And, and so if Morgan didn't have standing -- which we disagree with. We think for

numerous reasons he does, whether it's PR or not. The trust ---

THE COURT: Well, what about ---

MR. MYERS: --- can file a collateral action and knock it out.

THE COURT: --- Mr. Speight's argument that this order of the probate court was against Mr. Kearse individually and he did not appeal that?

MR. MYERS: Well, Your Honor, I, I disagree just fundamentally. If you want to look back at the Final Terms Sheet, that's the alleged settlement agreement. It's phrased as a Final Terms Sheet. That's the heading. Had just a few clauses. One of those had to do with who pays the fees, as we talked about, and one of the options is the estate pays them. So, that does affect the estate. It talks about PR fees. That, that affects Morgan as PR. It affects the estate.

THE COURT: Well, it seems to me, and I'm going to read through this before I issue a decision, but the issue on appeal would be whether or not the provision that the majority of the beneficiaries agree toward the payment of fees would be the issue, but he did not individually appeal his agreement to ---

MR. MYERS: Well.

THE COURT: --- pay the fees.

MR. MYERS: Because it was an estate settlement, it involves the estate. So, the -- just fundamentally the personal representative, if something affects the estate, that who else is supposed to, to advocate that? Yes, beneficiaries can do that, but, but most fundamentally that is, that's actually his job as PR to, to defend the estate from, from things that are not proper.

If he, if he didn't, if he failed to defend some sort of erroneous order as personal representative, a personal representative would be liable for that potentially. So, I just don't understand that fundamentally that, that Morgan, as personal representative, cannot appeal an order that affects the estate. It was a probate court hearing.

THE COURT: Well, no, no, no, I'm not -- that's not what I'm asking. Mr. Speights says look. There's two provisions effectively here. There's one: Mr. Kearse as an individual, not as personal representative, agreed to pay fees. And then if the majority of the beneficiaries agree, then a portion of those fees may be offset by the estate.

MR. MYERS: Well.

THE COURT: And so he did not appeal that judgment against him individually, and so why ---

MR. MYERS: Two, two ---

THE COURT: --- can he do it now?

MR. MYERS: Two things there, Your Honor. Morgan, as

personal representative, has a statutory right.

THE COURT: He was not the personal representative; he gave that up unequivocally before the probate court.

MR. MYERS: Even they would agree, I hope, that when he's allegedly entered this agreement, he was doing so as personal representative.

THE COURT: Yeah, I think -- no. That, I think you're right.

MR. MYERS: So, so, at that time, he had a statutory right to have his personal representative fees paid for by the estate unless the probate court decides differently for improper grounds or what have you. So, he had that right and that was a right that he was giving up.

THE COURT: Well, are we talking the same fees? You're talking about personal representative fees ---

MR. MYERS: No. I'm ---

THE COURT: --- versus attorneys' fees in defending this suit, and I think those are two separate things.

MR. MYERS: Either one, Your Honor. He, he had a statutory ability to both collect a PR fee, and when he hires a lawyer as personal representative -- which he did. He hired Ken Wingate, who is a certified estate planning specialist who -- I do want to make the point that Ken, as his paid advisor, advised him to file this petition for instruction because there is a legal ambiguity in the

estate plan. So, that takes work; that takes time. Ken helped Morgan with that process, and ultimately there was this alleged settlement that -- in which Morgan, as personal representative, very critically as personal representative would have agreed to give up that role and, and give up the opportunity to have the estate pay his own legal fees as personal representative as part of this agreement.

So, it's, it's part and parcel. I don't think you can separate the two. It, it, it's just a specious distinction. It doesn't have any, any real life validity. He was -- entered this thing. if he did at all, as personal representative and, and, and when, to his surprise, after not everybody agreed to this thing, the probate court entered, you know, entered it as a valid order or settlement, he continued in his capacity as PR to say wait. No. We didn't. And that, that's why we're here today. So, let -- and I'm -- so, if it's okay to move on from the 59 ---

THE COURT: Sure. Sure.

MR. MYERS: --- aspect? I'm glad that Mr. Hewitt raised the petition for instruction. As I said before, Morgan wasn't out to get anybody. Being a personal representative, you may know, that, that might be the most thankless job in America, especially with a family of six

siblings that clearly not see eye to eye and are willing to go to court to have their, their feelings expressed.

So, naturally when there's legal ambiguity in, in the estate plan -- and I've looked at it. I don't think it's black and white. I would be willing to go back to court and argue it; you know, I think it can be argued either way.

So, when -- at the advice of his counsel, he filed a petition for instruction to resolve that issue. Moreover, he, he had gotten word from both sides of his siblings -- there were two camps. One said build the house, one said didn't, and he got threats of litigation on both sides. So, he did the only thing that, that it was reasonable in that situation other than resign. I'm sure he would agree if he could have resigned from day one and would never accept, he would have. But for the benefit of the family, he, he thought he, he -- you know, thought he could try to work something out, and we, we still hope that, that things will be at peace one day. But, but dismissing this appeal because he supposedly doesn't have standing as personal representative is not, is not going to bring this family peace.

Invalidating the settlement that, that simply people didn't agree to and wasn't signed in accordance with the legal standards, that, that's the way to bring a quicker

resolution for this family, Your Honor. That, that's my true prayer for relief in more ways than one.

So, you know, another little thing Mr. Hewitt mentioned is that we didn't raise the standing issue in probate court. Well, simply because it wasn't raised to us, that for the first time it's been on appeal and we've been -- as I said at the prior hearing, we argued that. And maybe not well, but we, we do think that the law is clear for numerous reasons, as I've said today and that we've articulated in the briefs. Again, I incorporate those by reference and hope Your Honor would take those into consideration.

THE COURT: All right. Thank you, sir.

MR. MYERS: Thank you.

THE COURT: Logistical matter, I'm going to make Mr. Hewitt's submission and the other submissions -- well, you've already filed. You filed yours actually.

MR. MYERS: Filed my what? I'm sorry.

THE COURT: Your, your brief, your ---

MR. MYERS: Yes. Yes, Your Honor, December 27th ---

THE COURT: All right. That's already part of the record.

But, Mr. Hewitt ---

MR. HEWITT: The affidavit was filed as well.

THE COURT: They were?

MR. HEWITT: Electronically.

THE COURT: Well, that's my question. Do I need to authorize anyone to transport this back to the clerk's office in Allendale?

MR. HEWITT: Oh, no, sir. I don't, I don't believe so. It's already a part of the record. Now, it was -- I specifically mentioned it this morning principally for the reasons mentioned during my presentation, but also because you may remember. As often happens in cases, there's a form 4 and then a formal order later. There were -- there was a motion for reconsideration filed after the form 4.

THE COURT: Right.

MR. HEWITT: That affidavit was filed outside of that time but before the subsequent motion to reconsider. So, just wanted to clear up any ---

THE COURT: Okay.

MR. HEWITT: --- gray area of procedure.

THE COURT: So, everyone agrees, then, that -- what matters need to be part of the record are in the record?

MR. HEWITT: I agree that his submissions are part of the record, absolutely.

THE COURT: Okay.

MR. HEWITT: And I don't object to the contents of those submissions.

THE COURT: And do you agree as well?

MR. MYERS: Your Honor, in the spirit of just wanting to get to the, the proper result in this matter, I'm glad for his affidavit to be part of it if ours is, too.

THE COURT: All right, very good. I'll take this under consideration and issue my order. Thank you, gentlemen.

--- **END OF TRANSCRIPT OF RECORD** ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR ALLENDALE COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF APRIL, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 7TH, 2019

Form 14 - Title to Real Estate
887899 Revised 1976

Document 2005-815

The State of South Carolina,
County of Allendale

ALLENDALE COUNTY
DOCUMENTARY
Tax Exempt
Paid 10-5-05
MARY JEAN CARLSON
RMC

2005 OCT -5 AM 11:15
FILED
ALLENDALE, S.C.

Know All Men by These Presents, That I,

Jacqueline W. Kearse

(hereinafter whether singular or plural the "Grantor")

In the State aforesaid County aforesaid for and in consideration of the sum of

Five and no/100 ($5.00) Dollars

DOLLARS,

to me in hand paid at and before the sealing of these presents by

Julia Ann K. Sharp as Trustee
Post Office Box 521
Allendale, South Carolina 29810

In the State aforesaid County aforesaid the receipt whereof is hereby acknowledged, first reserving a Life Estate unto the Grantor, Jacqueline W. Kearse have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Julia Ann K. Sharp as Trustee, her successors in office, the following described property, to-wit:

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and located on the North side of Pine Street, now Barnwell Highway, in the Town of Allendale County of Allendale, State of South Carolina.

Said lot is bounded, now or formerly, as follows, to-wit: On the Northeast by Allen Street, measuring thereon 76.8 feet; On the Southeast by lots of Annie Laurie Moody and J. W. Thomas, measuring thereon 200 feet; On the Southwest by Pine Street, now Barnwell Highway, measuring thereon 76.8 feet; and on the Northwest by County property, measuring thereon 210 feet.

Being the same property conveyed unto Jacqueline W. Kearse by Deed of G. H. Kearse dated February 14, 1972 and recorded February 15, 1972 in the Office of the Clerk of Court for Allendale County in Deed Book 45 at page 113.

TMN: #105-03-04-022

G. H. KEARSE, Attorney-At-Law
P.O. Box 521 • Allendale, S.C. 29810 • Ph. 803-584-2934

The Trust: To provide John Morgan Kearse a place to practice law free of any rent or lease payments. If John Morgan Kearse does not practice law or carry on some other business endeavor in the building, another member of my immediate family may practice law on the location and in the building now known as Kearse Law Firm, free of any rent or lease payment.

A primary occupant is a family member who has been allowed to first enter the building or remains the only occupant for the practice of law or other business endeavor after a joint occupant has vacated the building. A person who is occupying space within the building at the pleasure of the primary occupant may become primary occupant by the primary occupant vacating the building or by death of the primary occupant. The practice of law has priority over any business endeavor if the building is vacant. If the building is occupied by a member of the family for a business endeavor, the occupant may not be displaced for the practice of law.

In the event no one in the family desires to practice law or has a business office on the premises and in the building, it may be leased on a month-to month basis until a member of the family wishes to occupy it for the practice of law or other business endeavor.

The primary occupant, John Morgan Kearse, or any subsequent family member who qualifies as primary occupant must maintain the building from decay and depreciation, pay taxes, and carry hazard insurance to insure replacement in the event of destruction.

The primary occupant, John Morgan Kearse, or subsequent primary occupant, has the right to determine who will occupy the building with him and evict any person or persons whom he has allowed to enter the building as an occupant.

Once the primary occupant, John Morgan Kearse, or a family member, subsequently occupying the building vacates the building, he has no standing to re-occupy the building where another family member has qualified as primary occupant. However, if the building is unoccupied or occupied by a tenant, a family member may occupy the building for the practice of law or other business endeavor at the exclusion of the tenant.

If the Trustee fails to serve for any reason, she will be replaced by the Trustees of the Kearse Family Educational Trust, and the property will become apart of said trust with a fee simple title to said property passing to the Trust. The Trustee is to convey said property to the Kearse Family Educational Trustees in fee simple.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise Incident or appertaining.
first reserving a Life Estate unto the Grantor, Jacqueline W. Kearse
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Julia Ann K. Sharp, Trustee, her Successor in office ~~Heirs and Assigns~~ forever.

AND I do hereby bind myself and my Heirs, first reserving a Life Estate unto the Grantor, Jacqueline W. Kearse Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Julia Ann K. Sharp, as Trustee, her Successors in office ~~Heirs and Assigns,~~ against me and my Heirs, and all persons whomsoever else lawfully claiming, or to claim the same or any part thereof.

WITNESS the Hand and Seal of the Grantor this 11th *day of* May *In the year of the Lord two thousand and* five *and in the two hundredth and* twenty-eighth *year of the Sovereignty and Independence of the United States of America.*

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Derrill Leigh Harter

Mary Anna Morris

Jacqueline W. Kearse (SEAL)
Jacqueline W. Kearse

(SEAL)

The State of South Carolina
County of Allendale

Probate

PERSONALLY appeared before me Mary Anna Morris and made oath that s/he saw the within named Jacqueline W. Kearse sign, seal, and as her act and deed, deliver the within written Deed, and that s/he with Derrill Leigh Harter (Name Other Subscribing Witness) witnessed the execution thereof.

SWORN to before me this

11th *day of* May , 2005

Derrill Leigh Harter (L.S.)
Notary Public of South Carolina

Mary Anna Morris
Witness

My Commission Expires: May 4, 2014

G. H. KEARSE, *Attorney-At-Law*
P.O. Box 521 • Allendale, S.C. 29810 • Ph. 803-584-2934

LAST WILL AND TESTAMENT
OF
G. H. KEARSE

STATE OF SOUTH CAROLINA **COUNTY OF ALLENDALE**

I, G. H. KEARSE, of the County and State aforesaid, being of sound and disposing mind, memory, and understanding, and desiring to make such disposition of my wordly estate as I deem best, **DO HEREBY MAKE, PUBLISH, AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT,** hereby revoking any and all former Wills and Codicils whatever by me made.

ITEM I

I direct the payment by Personal Representative of all my just debts and funeral expenses as soon after my decease as may be practicable.

ITEM II

It is my wish and desire my body be cremated, and I direct my Personal Representative to make arrangements and do so timely. I.direct two of my children to accompany my remains to the crematorium, inspect the oven for cleanliness, observe my remains being placed in the oven, await the completing of the process, observe the removal of my ashes, observe the processing of the ashes, and return home with my ashes. It is my will and desire that my ashes be divided into three equal parts with one part being placed in the ground on the vault of my mother; that the second part be scattered around the fig tree in the field on the Kearse Place where my grandparent's home once stood, and the third part buried on the grave of General T. J. Jackson in Lexington, Virginia.

Bridget Woods

(L.S)

Alice M. Kirkland

Book W-3 Pg. 7

000730

ITEM III

I give, devise, and bequeath to my beloved son, **John Morgan Kearse,** the use and contents of the office for the duration of his practice, including, but not limited to, furniture, typewriters, computers, books and contents for so long as he practices law. In the event his practice is terminated for any reason, it is my will and desire that another member of my family, with priority in degree of kinship, to use as **J. Morgan Kearse** has used the personal property, with the same restrictions as applied to the successor of **J. Morgan Kearse.**

ITEM IV

In the event my beloved son, **John Morgan Kearse** quits practicing law, it is my wish the property I have bequeathed to him for the term of his practice in **Item III** be used by successive members of the family in the practice of law or other endeavor, and that the members of the **Kearse Educational Trust** honor my wish regarding the contents being used in an office without cost to the user, as I have instructed **John Morgan Kearse** and set out in the Trust Deed which is recorded in the office of the Clerk of Court for Allendale County in Deed Book 177 at page 127 on October 5, 2005. It is my intention that I not convey any descendant a remainder interest or any vested interest that would allow them to liquidate or partition my estate.

ITEM V

I wish to explain the reason for the forming of the Kearse Education Trust and the drawing of my will in support of it. I wish to see the property owned by the Kearse's, for so long, remain in the Kearse family. And secondly that it be handled to benefit those in the family that otherwise would not receive an education. It is my opinion that an education is very important in a person's life. The more education you receive the better opportunity you will have to perfect their chosen field. I would like the income from the Trust be used first to pay the taxes and then to educate the young people of the family. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

Bridget Woods

J. Morgan Kearse (L.S.

Alice M. Kirkland

-00502

It is my intent that only blood descendants of my family be allowed to receive any benefit for educational purposes, excluding all other persons. It should be conservatively administered and a fund maintained designated as the ad valorem tax fund to protect the place from taxes. During the 1928-1929 depression the cost of the taxes to the property owner resulted in homeowners losing their businesses, homes, and farms and it can happen again.

ITEM VI

It is my wish and desire, and I so direct certain conditions I want complied with in the event of my demise. I want a house built on the farm at the location between my greenhouse and Arthur's house only. I have some money that should be enough to complete it. I have some money set aside to pay the taxes on the Trust property, and I do not want that money spent except for ad valorem taxes if it cannot be found elsewhere. I am sure everyone is aware I want to copy the house in Lorton, Virginia owned by Mason known as Gunston Hall. Because there is not a kitchen in Gunston Hall since the cooking was done out of the house, I wish that an extension on the North side at the end of the narrow hall be made a kitchen large enough that it may also be used as a sitting room, and that it have an entrance on the North side. I give and bequeath all my monies, except the ad valorem tax money, be used to build the house. I direct that my six (6) children build the house.

The house in Virginia, from a distance, appears to me to be "squatted". I think that it should be taller by two or three feet, which will make the basement a greater height and more useful. I wish the basement to be used as a storm shelter or tornado shelter with an entrance on the main floor behind the stairway in the main hall. I have considered masonry floors on the first and second level with wood covering. I do not want a cold house.

Bridget Wood

(L.S.)

Olive M. Kirkland

-00503

I want the house used as a place for my grandchildren, as well as other family members, to come with their friends and relatives. For that reason, I want it managed and unoccupied, or occupied by a member of the family that can handle it.

ITEM VII

I give, devise, and bequeath all the rest; residue, and remainder of my property, both real and personal, of which I may die seized or possessed or to which I may be entitled to at the time of my decease, to the **Kearse Educational Trust,** to be perpetuated and enlarged for the benefit of my descendants first, and then to other children who may be in need of aid for an education, in whatever amount the Trustees deem appropriate short of jeopardizing the Corpus, if so determined by the **Kearse Educational Trust** Board members, absolutely and forever, in fee simple. (See the **Kearse Educational Trust.**)

ITEM VIII

I give, devise, and bequeath any monies in any banks, bonds, or any cash in my possession, included but not limited to gold and silver coins, to the **Kearse Educational Trust** to be held in reserve by the Trustees of the said Trust to pay future ad valorem taxes on the real estate after all monies have been exhausted from the Trust, that is rent or proceeds from timber. It is my will and desire that an annual inventory of liquid assets be made and, if entrusted to an individual's care, a surety bond be provided, and that there be no lending or use of the money, except as the Board of the Trust approves. It is my will and desire and I so direct that only a lawful blood descendant can take any portion of my estate.

ITEM IX

I hereby nominate and appoint my beloved six (6) children, **W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Anne Kearse Sharp, Rachael Kearse Best, J. Morgan Kearse, and Joseph Kearse** as Trustees and Personal Representatives of this My Last Will and testament, and I hereby direct that the Trustees and Personal Representatives be allowed to serve without posting any surety or sureties on her official bond.

Bridget Woods

Alice M. Kirkland

(L.S.)

-00504

Should any devisee, legatee, beneficiary, or trustee of this Will or of the trust agreement contest the validity of this Will or any provision thereof or attempt to prevent any provision from being carried out in accordance with its terms in legal proceedings or otherwise, then any interest provided for such beneficiary and his or her descendents is revoked and such beneficiary shall be deemed to have predeceased me for all purposes under this Will.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal to this My Last Will and Testament, at Allendale, South Carolina, this 16th day of May, in the Year of Our Lord Two Thousand Eleven.

G. H. Kearse (L.S.)

SIGNED, SEALED, PUBLISHED, AND DECLARED by the said **G. H. KEARSE,** as and for his Last Will and Testament, in the presence of us, who in his presence, at his request and in the presence of one another, all present together, have hereunto subscribed our names as witnesses.

Bridget Woods **Address** Allendale, SC

Alice M. Kirkland **Address** Allendale, SC

STATE OF SOUTH CAROLINA)
) **PROOF OF WILL**
COUNTY OF ALLENDALE)

WE, G. H. KEARSE, Bridget Woods **AND** Alice M. Kirkland the Testator and witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as his Last Will and Testament on the 16th day of

-09505

May, 2011, and that he had signed willingly, and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the Testator, signed the Will as witnesses and to the best of their knowledge, the Testator was at that time Eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(L.S.)
G. H. KEARSE

Bridget Woods

Alice M. Kirkland

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY G. H. KEARSE, the Testator, and subscribed and sworn to before me by Bridget Woods and Alice M. Kirkland, the witnesses, this 16th day of May, 2011.

Elaine S Ferguson

Notary Public for South Carolina
My Commission Expires: 1/15/2019

00506

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF: G. H. KEARSE)
)
)

IN THE PROBATE COURT

FIDUCIARY LETTERS

CASE NUMBER: 13-ES-03-00063

☒ Personal Representative
☐ Guardian
☐ Conservator
☐ Trustee
☐ _____

On the 22ND day of OCTOBER, 2013, J. MORGAN KEARSE was 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:

Executed this 23RD day of OCTOBER, 2013.

Brenda P. Bennett

BRENDA P. BENNETT , Probate Court Judge

71-4 pg. 53

FORM #140PC (2/2012)
62-3-103, 62-5-304, 62-5-421, 62-7-201

-00539

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF: G. H. KEARSE)
)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 13-ES-03-00063

This is to certify that

J. MORGAN KEARSE

is/are the duly qualified

- [x] PERSONAL REPRESENTATIVE
- [ ] GUARDIAN
- [ ] CONSERVATOR
- [ ] TRUSTEE
- [ ] _____

in the above matter and that this appointment, having been executed on the 23RD day of OCTOBER, 2013, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

Executed this 23RD day of OCTOBER, 2013.

/S/

BRENDA P. BENNETT, Probate Court Judge

Do not accept a copy of this certificate without the raised seal of the Probate Court.

issued 10 certificates
10-23-13

-005:20

FORM #141PC (1/91)
62-1-305, 62-3-103, 62-5-304, 62-5-421, 62-7-201

STATE OF SOUTH CAROLINA)
)
COUNTY OF: ALLENDALE)
)
IN THE MATTER OF:)
G. H. KEARSE)
(Decedent))

IN THE PROBATE COURT

ACCOUNTING

CASE NUMBER: 2013-ES-03-00063

FILED FOR RECORD
16 MAR 31 AM 11:15
STATE OF SOUTH CAROLINA

☐ FINAL
☒ INTERIM # 1
(See attached Check Register-5 pages)

The undersigned Personal Representative(s) submits this accounting, which covers the period from MARCH 17, 2014 through FEBRUARY 12, 2016.

The documentation on the following page(s) of this form sets forth a complete accounting for the period specified, which is summarized as follows:

Beginning Balance from Inventory(ies) or prior Interim Accounting, if applicable	4,452.79
Plus: Receipts (Rent, Refunds, Dividends, Interest, etc.)	268,465.42
Subtotal	272,918.21
Less: Disbursements and Distributions	165,810.00
Ending Balance	107,108.21

The Personal Representative(s) 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 30TH day of MARCH, 20 16

Melodie K. Ford
Notary Public for South Carolina
My Commission Expires: March 12, 2025

Signature: J. Morgan Kearse
Print Name: J. MORGAN KEARSE
Address: PO BOX 521
ALLENDALE, SC 29810
Telephone (Work): (803) 584-2934
(Home):
(Cell):
Email: MORGAN@KEARSELAWALLENDALE.COM

Co-Personal Representative Signature:
Print Name:
Address:

SWORN to before me this _____ day of _____, 20 _____

Telephone (Work):
(Home):
(Cell):
Email:

Notary Public for South Carolina
My Commission Expires: _____

Check Register

GHK
3/8/2016

Date	Num	Payee	Category	Memo	Amount	C	Balance
3/17/2014		Beginning Balance	[GHK]		4,452.79	R	4,452.79
3/20/2014	DEP	GHK Estate		GHK Estate	154.99		4,607.78
4/11/2014	DEP	REGIONS GHK Estate		REGION ACCT CLOSED 8...	82,341.76		86,949.54
4/23/2014	DEP	ACB GHK Estate		ACB ACCT CLOSED 0606	17,158.30		104,107.84
4/23/2014	DEP	ACB GHK Estate		ACB ACCT CLOSED 0006	19,467.51		123,575.35
4/24/2014	101	Palmetto State Bank		To Estate Account	-100,000.00		23,575.35
4/28/2014	32622	Transfer To Acct 1790606		Transfer to acct 1790606	-1,719.28		21,856.07
5/6/2014	102	Rosalee Robinson		House Cleaning	-30.00		21,826.07
5/7/2014	103	S.C. Secretary Of State		Invoices 13-03032;13-03048	-6.00		21,820.07
5/7/2014	104	Jessie Youmans		Yard maintenance	-72.00		21,748.07
5/12/2014	105	Mary Catherine		Education	-400.00		21,348.07
5/12/2014	106	Edisto Electric		Power - Farm	-35.48		21,312.59
5/12/2014	107	Edisto Electric		Power - Farm	-16.20		21,296.39
5/12/2014	108	AT&T		Phone - Farm	-26.09		21,270.30
5/14/2014	109	David Wilson		Yard Maintenance	-185.00		21,085.30
5/14/2014	110	Kearse Law Firm		Reimburse - HVAC Office	-400.00		20,685.30
5/14/2014	111	J. Morgan Kearse		Reimburse for gas P/U	-90.00		20,595.30
5/30/2014	112	Roy Mixon		40 Hours - Farm	-290.00		20,305.30
5/30/2014	113	Lorraine Mixon		30 Hours - Farm	-217.50		20,087.80
6/2/2014	DEP	GHK		Carolyn Barker	225.00		20,312.80
6/2/2014	114	Mary Catherine		Education	-400.00		19,912.80
6/2/2014	115	Mixson Oil		Farm Diesel	-94.08		19,818.72
6/20/2014	116	AT&T		Phone - Farm	-26.08		19,792.64
6/20/2014	117	Edisto Electric		Power - Farm	-52.16		19,740.48
6/20/2014	118	Farm Bureau		Policy GL0941456	-673.24		19,067.24
6/20/2014	119	Farm Bureau		Policy FL0443495-9	-321.07		18,746.17
6/26/2014	DEP	MWV		MWV	24.00		18,770.17
7/1/2014	120	Tiger Express		Fuel P/U	-75.00		18,695.17
7/1/2014	121	Roy Mixon		30 Hours	-217.50		18,477.67
7/1/2014	122	Lorraine Mixon		20 Hours	-145.00		18,332.67
7/1/2014	123	NAPA		Maintence - Farm	-65.40		18,267.27
7/7/2014	124	AT&T		Phone - Farm	-26.08		18,241.19
7/7/2014	125	Mary Catherine		Education	-400.00		17,841.19
7/8/2014	DEP	GHK		Interest on Checking	0.46		17,841.65
7/9/2014	126	Edisto Electric		Power - Farm	-35.80		17,805.85
7/9/2014	127	Edisto Electric		Power - Farm	-16.20		17,789.65
7/11/2014	128	David Wilson		Yard Maintenance	-280.00		17,509.65
7/11/2014	130	Mary Catherine		Education	-400.00		17,109.65
7/11/2014	131	AT&T		Phone - Farm	-27.18		17,082.47
7/29/2014	129	Mixson Oil Co.		Farm Diesel	-110.52		16,971.95
8/7/2014	132	Mixson Oil Co.		Farm Diesel	-105.57		16,866.38
8/7/2014	133	Lorraine Priester		Labor - Farm	-145.00		16,721.38
8/7/2014	134	Rox Mixon		Labor - Farm	-290.00		16,431.38
8/7/2014	135	Tiger Express		Fuel P/U	-60.00		16,371.38
8/12/2014	DEP	GHK		Interest on Checking	1.68		16,373.06
8/13/2014	136	Edisto Electric		Power - Farm	-52.82		16,320.24

Date	Num	Payee	Category	Memo	Amount	C	Balance
8/26/2014	DEP				14,360.15		30,680.39
9/8/2014	137	Mary Catherine		Education	-400.00		30,280.39
9/8/2014	138	AT&T		Phone - Farm	-26.62		30,253.77
9/9/2014	DEP	GHK		Interest on Checking	1.84		30,255.61
9/15/2014	139	SC Dept. Of Revenue		Elysium Field	-25.00		30,230.61
9/15/2014	140	SC Dept. Of Revenue		SEH Inc.	-25.00		30,205.61
9/15/2014	141	Sharon Bramlett		2013 Corp. Tax Returns/Fid...	-395.00		29,810.61
9/15/2014	142	Lorraine Priester		Labor - Farm	-145.00		29,665.61
9/15/2014	143	Roy Mixon		Labor - Farm	-290.00		29,375.61
9/15/2014	144	Tiger Express		Fuel P/U	-65.00		29,310.61
9/17/2014	145	NAPA		Maintenance P/U	-18.03		29,292.58
9/17/2014	146	Mixson Oil Co.		Farm Diesel	-67.18		29,225.40
9/17/2014	147	Restoration Landscape		Lawn Maintenance	-370.00		28,855.40
9/17/2014	148	Edisto Electric		Power - Farm	-61.13		28,794.27
9/17/2014	149	Edisto Electric		Power - Farm	-36.40		28,757.87
9/20/2014	150	Mary Catherine		Education (3 months)	-1,200.00		27,557.87
10/7/2014	EFT	GHK		Transfer from PSB 372	100,000.00		127,557.87
10/14/2014	DEP	GHK		Interest on Checking	4.93		127,562.80
10/15/2014	151	Jessie Youmans		Yard maintenance	-72.00		127,490.80
10/21/2014	152	Edisto Electric		Power - Farm	-60.47		127,430.33
11/5/2014	153	Restoration Landscape		Lawn Maintenance	-750.00		126,680.33
11/5/2014	154	Hendry County Tax Collector		Property Tax - Florida Lots	-439.73		126,240.60
11/5/2014	155	Mixson Oil Co.		Farm Diesel	-220.15		126,020.45
11/10/2014	DEP	GHK		Interest on Checking	9.43		126,029.88
11/10/2014	EFT	GHK		Interest on Treasury Bills	52.50		126,082.38
11/19/2014	156	Edisto Electric		Power - Farm	-52.27		126,030.11
11/20/2014	157	AT&T		Phone - Farm	-53.75		125,976.36
11/20/2014	158	Rosalee Robinson		House Cleaning (two times)	-48.00		125,928.36
11/26/2014	160	Roy Mixon		Labor - Farm	-362.50		125,565.86
11/26/2014	161	Void		VOID	0.00		125,565.86
11/26/2014	162	Lorraine Priester		Labor - Farm	-217.50		125,348.36
11/26/2014	163	Tiger Express		Fuel P/U	-50.00		125,298.36
11/29/2014	159	Kenny Kearse		Satellite - Farm	-150.00		125,148.36
12/9/2014	DEP	GHK		Interest on Checking	10.01		125,158.37
12/9/2014	164	Georgia Lock & Safe		Farm Safe	-350.00		124,808.37
12/9/2014	165	Edist Electric		Power - Farm	-61.90		124,746.47
12/9/2014	166	Allendale County Treasurer		P/U Tax	-68.07		124,678.40
12/9/2014	167	NAPA		Maintenance - Farm	-65.38		124,613.02
12/29/2014	168	Estill Gas		Heating Fuel - Farm	-283.00		124,330.02
12/31/2014	169	Mary Katherine		Education	-400.00		123,930.02
1/2/2015	170	Priester's Small Engine		Chain Repair and Supplies	-395.89		123,534.13
1/6/2015	171	Jason's Station		Maintenance - Farm	-87.00		123,447.13
1/6/2015	172	Tiger Express		Fuel P/U	-50.00		123,397.13
1/7/2015	173	Jason's Station		Maintenance - Farm	-60.00		123,337.13
1/7/2015	174	Beaufort County Treasurer		Taxes on Blackbeard	-48.28		123,288.85
1/9/2015	191	AT&T		Phone - Farm	-26.69		123,262.16

Date	Num	Payee	Category	Memo	Amount	C	Balance
1/13/2015	DEP	GHK		Interest on Checking	11.93		123,274.09
1/14/2015	175	Town Of Fairfax		2014 Real Estate Taxes	-31.37		123,242.72
1/14/2015	176	Allendale County Treasurer		2014 Real Estate Taxes	-2,215.46		121,027.26
1/15/2015	177	AT&T		Phone - Farm	-26.69		121,000.57
1/19/2015	178	Town Of Allendale		2014 Real Estate Taxes	-328.87		120,671.70
1/19/2015	179	Edisto Electric		Power - Farm	-53.17		120,618.53
1/19/2015	180	Edisto Electric		Power - Farm	-16.35		120,602.18
1/29/2015	DEP	GHK		Dividend Payment (Westva...	48.00		120,650.18
1/30/2015	181	Sandy Shirley		Farmhouse Bedding	-145.00		120,505.18
1/30/2015	182	J. Morgan Kearse		Equipmet Trailer	-2,500.00		118,005.18
2/6/2015	183	Allendale Auto Supply		Maintenance - Farm	-8.31		117,996.87
2/6/2015	193	AT&T		Phone - Farm	-26.79		117,970.08
2/10/2015	DEP	GHK		Interest on Checking	9.22		117,979.30
2/11/2015	184	Edisto Electric		Power - Farm	-69.89		117,909.41
2/11/2015	185	Mary Catherine		Education (4 months)	-1,600.00		116,309.41
2/24/2015	186	Estill Gas Co.		Heating Fuel - Farm	-263.00		116,046.41
3/10/2015	DEP	GHK		Interest on Checking	8.94		116,055.35
3/13/2015	194	Priester's Small Engines		Maintenance - Farm (chain ...	-95.30		115,960.05
3/16/2015	195	Tiger Express		Fuel P/U	-50.00		115,910.05
3/16/2015	196	Edisto Electric		Power - Farm	-65.00		115,845.05
3/16/2015	197	Edisto Electric		Power - Farm	-16.20		115,828.85
4/14/2015	DEP	GHK		Interest on Checking	11.12		115,839.97
4/14/2015	EFT	GHK		US Treasury (Interest)	52.50		115,892.47
4/14/2015	192	**VOID**		VOID	0.00		115,892.47
4/14/2015	198	**VOID**		VOID	0.00		115,892.47
4/16/2015	199	AT&T		Phone - Farm	-26.98		115,865.49
4/16/2015	200	Edisto Electric		Power - Farm	-80.52		115,784.97
4/17/2015	DEP	GHK		$450 ($225 x 2 C. Barker); ...	474.00		116,258.97
4/17/2015	201	USC Salkehatchie		GHK Scholarship	-40.00		116,218.97
4/21/2015	DEP	GHK		Reimbursement From Trust	27,500.35		143,719.32
4/28/2015	202	Sharon Bramlett		2014 Tax Prep	-145.00		143,574.32
5/4/2015	203	Roy Mixon		Labr - Farm	-290.00		143,284.32
5/4/2015	204	Lorraine Priester		Labor - Farm	-145.00		143,139.32
5/4/2015	205	Tiger Express		Fuel - P/U	-60.00		143,079.32
5/5/2015	206	Restoration Landscape		Lawn Maintenance	-190.00		142,889.32
5/12/2015	DEP	GHK		Interest on Checking	10.56		142,899.88
5/15/2015	207	Edisto Electric		Power - Farm	-63.53		142,836.35
5/15/2015	208	AT&T		Phone - Farm	-27.06		142,809.29
5/15/2015	209	Kearse Law Firm		Attorney Fee	-25,000.00		117,809.29
5/22/2015	210	Priester's Small Engines		Maintenance - Farm	-36.97		117,772.32
6/3/2015	211	Mixson Oil Co.		Fuel P/U	-74.72		117,697.60
6/4/2015	DEP	GHK		$225 C. Barker; $24 MWV	249.00		117,946.60
6/8/2015	212	David Wilson		Lawn Maintenance	-160.00		117,786.60
6/9/2015	DEP	GHK		Interest on Checking	9.19		117,795.79
6/12/2015	213	AT&T		Phone - Farm	-27.02		117,768.77
6/12/2015	214	Edisto Electric		Power - Farm	-66.07		117,702.70

Date	Num	Payee	Category	Memo	Amount	C	Balance
6/26/2015	215	Beaufort Probate Court		Ancillary Admin.	-20.00		117,682.70
6/26/2015	216	Tiger Express		Fuel P/U	-65.00		117,617.70
7/10/2015	217	Mixson Oil Co.		Farm Diesel	-154.73		117,462.97
7/10/2015	218	AT&T		Phone - Farm	-27.02		117,435.95
7/10/2015	219	Edisto Electric		Power - Farm	-99.10		117,336.85
7/10/2015	220	Restoration Landscape		Lawn Maintenance	-160.00		117,176.85
7/14/2015	DEP	GHK		Interest on Checking	11.29		117,188.14
7/31/2015	Debit	Lorraine Priester (Counter Check)		Labor - Farm	-217.50		116,970.64
7/31/2015	Debit	Roy Mixon (Counter Check)		Labor - Farm	-290.00		116,680.64
8/10/2015	DEP	GHK		Carolyn Barker	225.00		116,905.64
8/10/2015	221	Edisto Electric		Power - Farm	-83.96		116,821.68
8/10/2015	222	AT&T		Phone - Farm	-28.32		116,793.36
8/10/2015	223	Mixson Oil Co.		Fuel P/U	-58.51		116,734.85
8/10/2015	224	Restoration Landscape		Lawn Maintenance	-220.00		116,514.85
8/10/2015	225	Charles Erikson		Florida Ancillary/DoD	-403.00		116,111.85
8/11/2015	DEP	GHK		Interest on Checking	8.98		116,120.83
9/4/2015	226	Leroy's Equipment		Tractor Maintenance/Repair	-2,534.57		113,586.26
9/4/2015	227	Mixson Oil Co.		Farm Diesel	-130.04		113,456.22
9/4/2015	228	Restoration Landscape		Lawn Maintenance	-160.00		113,296.22
9/4/2015	229	Neeley Heating & Cooling		HVAC - Farm House	-4,300.00		108,996.22
9/8/2015	DEP	GHK		Interest on Checking	8.95		109,005.17
9/11/2015	DEP	GHK		Fiber Optics	89.48		109,094.65
9/11/2015	230	AT&T		Phone - Farm	-27.67		109,066.98
9/11/2015	231	**VOID**		VOID	0.00		109,066.98
9/11/2015	232	Edisto Electric		Power - Farm	-64.45		109,002.53
9/24/2015	233	Roy Mixon		Labor - Farm	-300.00		108,702.53
9/24/2015	234	Lorraine Priester		Labor - Farm	-225.00		108,477.53
10/6/2015	235	J. Morgan Kearse		Furnshings at Farm	-1,500.00		106,977.53
10/13/2015	DEP	GHK		Interest on Checking	10.46		106,987.99
10/16/2015	236	AT&T		Phone - Farm	-27.67		106,960.32
10/16/2015	237	Salk Arts		Honorariaum GHK/JWK	-250.00		106,710.32
10/16/2015	238	Edisto Electric		Power - Farm	-69.31		106,641.01
10/16/2015	239	Restoration Landscape		Lawn Maintenance	-160.00		106,481.01
10/16/2015	240	J. Morgan Kearse		Maintenance - Farm (oil/par...	-67.21		106,413.80
10/16/2015	241	Mixson Oil Co.		Farm Diesel	-133.54		106,280.26
10/20/2015	242	J. Morgan Kearse		Beds/Bedding for Farm	-1,200.00		105,080.26
10/21/2015	243	Mike Loadholt		Electrical Repair	-100.00		104,980.26
10/27/2015	DEP	GHK		Carolyn Barker	220.00		105,200.26
11/10/2015	DEP	GHK		Interest on Checking	8.11		105,208.37
11/13/2015	244	Jason's Station		Maintenance - Farm	-50.00		105,158.37
11/18/2015	245	AT&T		Phone - Farm	-27.61		105,130.76
11/18/2015	246	Edisto Electric		Power - Farim	-54.57		105,076.19
11/18/2015	247	Restoration Landscape		Lawn Maintenance	-60.00		105,016.19
11/24/2015	248	Roy Mixon		Labor - Farm	-290.00		104,726.19
12/8/2015	DEP	GHK		Interest on Checking	8.05		104,734.24
12/11/2015	DEP	GHK		C. Barker $225; Ed.Elec $1...	242.54		104,976.78

Date	Num	Payee	Category	Memo	Amount	C	Balance
12/11/2015	249	Mixson Oil Co.		Fuel P/U	-55.32		104,921.46
12/11/2015	250	Allendale Auto Supply		Maintenance/Repair - Farm	-27.05		104,894.41
12/11/2015	251	Edisto Electric		Power - Farm	-66.01		104,828.40
12/11/2015	252	AT&T		Phone - Farm	-27.64		104,800.76
12/21/2015	DEP	GHK		Reimbursement by JMK	5,200.00		110,000.76
12/21/2015	259	**VOID**		VOID	0.00		110,000.76
12/22/2015	253	Town Of Allendale		2015 Town Taxes	-319.30		109,681.46
12/22/2015	254	Beaufort County Treasurer		2015 Taxes - Blackbeard	-48.72		109,632.74
12/22/2015	255	Hendry County Tax Collector		2015 Taxes - Florida lots	-442.48		109,190.26
12/22/2015	256	Town Of Fairfax		2015 Town Taxes	-31.37		109,158.89
12/22/2015	257	Allendale County Treasurer		2015 County Taxes	-2,217.58		106,941.31
12/31/2015	258	Gerzell Chaney		P/U Taxes - Farm	-68.29		106,873.02
1/12/2016	DEP	GHK		Interest on Checking	10.19		106,883.21
2/12/2016	DEP	GHK		Carolyn Barker	225.00		107,108.21

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	ACCEPTANCE OF SERVICE
	)	
vs.	)	
	)	
William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse Respondents.	)	

FILED FOR RECORD
16 APR 18 PM 4:45
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Respondent, Elizabeth Kearse Gooding, received service of the Petitioner's Petition for Instructions and Summons in the above referenced matter, such service did occur on the date referenced below.

Date: April 3, 2016

Elizabeth Kearse Gooding
Respondent

00387

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
	)	
J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner,	)	ACCEPTANCE OF SERVICE
	)	
vs.	)	
	)	
William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse Respondents.	)	

FILED FOR RECORD
16 APR 26 PM 12:45
PROBATE COURT
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

The above named Respondent, William Gordon Kearse, received service of the Petitioner's Petition for Instructions and Summons in the above referenced matter, such service did occur on the date referenced below.

Date: April 25, 2016

William Gordon Kearse

William Gordon Kearse
Respondent

-00585

W. Gordon Kearse
P.O. Box 221
Fairfax, SC 29817
May 2, 2016

Hon. Keith Smith, Probate Judge
Allendale County Probate Court
P.O. Box 603
Allendale, SC 29810

FILED FOR RECORD
16 MAY -4 PM 4:45
PROBATE JUDGE
ALLENDALE COUNTY
STATE OF SOUTH CAROLINA

Re: J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse, Petitioner, vs. William Gordon Kearse, et al, Respondents

Dear Judge Smith,

Please accept this as my Answer to the Petition filed in the above-entitled action. As a Respondent in this case I have two positions I would like to confirm:

1. I oppose the building of a house on our family farm, whether this is constructed with funds of my father's estate or funds of the Kearse Family Educational Trust;

2. I believe that my father's estate should be closed as quickly as possible. It has been open for too long.

Thank you for protecting my interest in this matter.

Sincerely,

W. Gordon Kearse

W. Gordon Kearse

-00589

KEARSE LAW FIRM, LLC

J. Morgan Kearse
G. H. Kearse (1928-2013)

Post Office Box 521
184 Barnwell Highway
Allendale, South Carolina 29810
Phone: (803) 584-2934
Facsimile: (803) 584-2212

June 3, 2016

Dear Siblings:

I have either sent to you directly or directly to your attorney, the enclosed Amended Petition For Instructions, a Summons, and the same three Exhibits sent to you when I served you with the first Petition and Summons. My purpose for forwarding this to you was in response to the Motion to Dismiss that you recently received. I did amend the caption which now names Papa's Trust, the six of us individually, and the six of us acting as Trustees as the Respondents in this matter. The first paragraph of the Petition was amended that attempts to clarify the purpose for amending and re-filing. No other material change was made to the Petition. The numbered paragraphs, and the information contained in them, are the same as the first Petition you received.

Let me know if you have any questions.

Morgan

cc:
Gordon
Rachael
Joseph
Beth
% Stephen Slotchiver
Julie
% Dan Speights

Page 1

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF ALLENDALE) C/A #: 2013-ES-03-00063

J. Morgan Kearse, Personal Representative of the Estate of G. H. Kearse,

Plaintiff,

v.

The Kearse Family Education Trust, William Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachael Kearse Best, Joseph Weber Kearse, and John Morgan Kearse, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,

Defendants.

DEPOSITION OF

JOHN MORGAN KEARSE

****

Wednesday, September 7,, 2016
11:56 a.m. - 6:18 p.m.

The deposition of JOHN MORGAN KEARSE, taken on behalf of the Defendants at Gooding & Gooding, P.A., 265 Barnwell Highway, Allendale, South Carolina, on the 7th day of September, 2016 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

Page 2

APPEARANCES

Kenneth B. Wingate, Esquire
SWEENEY, WINGATE & BARROW, P.A.
1515 Lady Street
Columbia, South Carolina 29201
Attorney for the Plaintiff

Stephen M. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, L.L.P.
44 State Street
Charleston, South Carolina 29401
Attorney for the Defendant, Elizabeth Kearse Gooding

Daniel A. Speights, Esquire
Speights & Runyon
100 Oak Street, East
Hampton, South Carolina 29924
Attorney for the Defendant, Julia Sharp

Also Present:
Elizabeth Kearse Gooding, Defendant
Julia Kearse Sharp, Defendant
Rachael Kearse Best

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STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby not waived. Signature sheet is attached at page 178.

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JOHN MORGAN KEARSE, having been duly sworn, deposes and testifies as follows:

MR. KEARSE - EXAMINATION BY MR. SLOTCHIVER:

Q: Mr. Kearse, I'm Steve Slotchiver. I represent your sister Beth. We're here to talk about your father's estate, okay? A couple of things -- I'm assuming you've been involved with depositions before.

A: I have.

Q: Both giving -- have you ever taken -- have you ever been deposed before?

A: I have.

Q: Okay.

A: Yes.

Q: Then you'll recall that you can't nod.

A: Right.

Q: You can't say uh-huh or huh-uh.

A: Sure.

Q: The court reporter's got to be able to take everything down. If I ask any questions that you don't understand, please ask me to rephrase it. But I assume any answers you give otherwise would be a proper answer. If at any point you need a break, just let me know. I'm happy to stop. And I got the feeling we're

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going to for a while today, so at some point we probably will break for lunch, okay?
A: Okay.
Q: Is there any reason why you can't give your deposition today? Any kind of medical conditions? Any kind of medications?
A: No reason.
Q: Okay. One of the things I spoke with your counsel about just a few moments ago before the commencement was that we just received approximately four or five hundred pages of documents. That although we've taken a very quick look at, we need some more time to go through. And as a result, we may end up reconvening this deposition once we've had the opportunity -- at least once I've had the opportunity to review the documents.
MR. WINGATE: And I'll speak to that on the record. I agree with you Steve, that we have discussed that and we do agree to that.
MR. SLOTCHIVER: Okay. Very good.
Q: Well, if you're ready to get started I'm going to get you to state your full name for the record.
A: John Morgan Kearse.

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Q: And where do you currently reside?
A: I reside in Allendale at 143 Christiana Estates, Allendale, South Carolina, 29810.
Q: Tell me a little bit about your education. Not high school. Where'd you go to college?
A: Well, I started out at Wofford, then I finished up my undergrad at Carolina, and then I went to law school at USC Law School.
Q: Did you go directly from college to law school?
A: I did.
Q: And what year did you graduate college?
A: I graduated -- well, I started law school in '97, so I graduated in '97.
Q: Graduated college in '97, okay.
A: Yes.
Q: So then you started law school in '97.
A: That is correct.
Q: Okay. What did you major in college?
A: I majored in English.
Q: Any minors?
A: No.
Q: Okay. Then law school you graduated that in 2000?
A: 2000. That's correct.
Q: And you've been practicing since that time?

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A: I've been practicing since 2002.
Q: What did you do between 2000 and 2002?
A: I worked for an attorney on James Island, Bonum Wilson.
Q: Okay.
A: And I lived down in Charleston on James Island with my wife and two children.
Q: Okay. I've known Bo for a number of years. He does a lot of mediations right now.
A: Bo's a good lawyer and a good friend. He and Jeannette both.
Q: They -- so, then you started practicing two years later?
A: In 2002. That's correct.
Q: And what did your practice -- what does and did your practice consist of?
A: Well, I came to Allendale to practice and I came to my father's firm, and like my father, Papa has always been a generalist as far as an attorney. He's, you know, a small town attorney and we handle a variety of things. And people ask me what kind of law you practice here and I tell them it's probably easier for me to tell you what I don't do; and I don't do malpractice, I don't do complex estate

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planning, I don't do tax law. I stay away from that as well.
Q: So, you do domestics?
A: I do domestic, yes.
Q: Personal injury?
A: Yes.
Q: You do non-complex but you do wills and trusts.
A: Yeah, well, yes, I do, sure.
Q: I cut this thing off, I apologize. And you do -- you've handled estates before?
A: Yes.
Q: And you've handled trusts before?
A: Yes.
Q: When I say that, have you served as a personal representative before, other than the case we're talking about here today?
A: No, I haven't.
Q: Have you ever served as a trustee before, other than as a co-trustee on the Kearse Educational Trust?
A: No, I haven't served as a trustee or co-trustee on any other trust, if that's what you're asking?
Q: It is.
A: Okay, well, no, I have not.

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Q: Okay. And in terms of -- how many wills do you think you've prepared over the last 16 years? More than a hundred?
A: I would definitely say a hundred.
Q: Okay. More than two?
A: Oh, yes.
Q: More than two hundred -- excuse me.
A: I don't know. I don't know if I've prepared two hundred.
Q: But a hundred would be a fair ---
A: I think a hundred would be -- I think it would be safe to say I've drafted a hundred wills, yes.
Q: All right. And how about trust agreements?
A: Usually with trust agreements, I tend to rely on someone who's more experienced in trusts. I know I've relied on Dave Sojourner of Columbia who's helped me a number of times, and Rita Cullum, and Rita Bragg; and I've relied on them. And Dave Sojourner, who's actually helped me, he's pulled me into some cases before where he handles the trust part and I kind of do the -- sort of the nuts and bolts of the real estate work. And we kind -- you know, and we're transferring things around and things

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need to be done over at the courthouse, being right next door to the courthouse has it's advantages, I mean. And, you know, I've helped him on -- and I've called on him to help me as well.
Q: In terms of the administration of estates, how many estates -- and you said this is the first estate you've actually served as a personal representative of ---
A: Yes.
Q: --- but you've represented clients that were serving in that role for other estates as a personal representative?
A: Yes.
Q: How many times do you expect to have done that?
A: Gosh. Forty? Thirty, forty, fifty?
Q: Okay.
A: Forty. Yeah, something like that.
Q: And have you also represented trustees that were administering trust?
A: I'm not sure. I can't -- I can't recall any but I'm not absolutely sure. I may have, but I'm just not sure.
Q: All right. And when a client comes to meet you and says I've been appointed to handle my

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daddy's estate or my mother's estate or my spouse's estate, and they want to retain your services, and they ask you the question, tell me what that role entails. What would you tell them?
A: Wait a minute now. You're asking me what does the role entail as personal representative?
Q: Yes.
A: Okay. Well, the personal representative -- I normally would say -- I always say that the personal representative has a duty to preserve and protect the assets of the estate and to oversee the operation of a will.
Q: Okay. In terms of -- what would be the first step somebody needs to do in order to open an estate?
A: Well, here in Allendale -- and I don't -- you know, most of my work is right here in Allendale but, you know, you've gotta -- you produce a will. I mean, I think you've got 30 days to produce a will if there's one. You need a death certificate. I mean, you need to be -- I mean, that always helps to open an estate. I always ask a client to provide to me a funeral bill. Has it been paid has it not,

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since the funeral bill ---
Q: Is there a petition you need to file at the court?
A: Well, I mean, you would file an ap- -- I mean, you would file an application for normally, I mean, informal probate or -- and is it a testate estate or is it in testate? I mean, you would file an application, yes, that's what gets it started.
Q: That's exactly right. And with that, in this case, and I've just taken in a cursory review of the documents you -- that your counsel provided. I did not see -- and it may have been in there, but I did not see a copy of a the petition to open the estate.
A: Well, I think we filed an application and if it's -- I do think that the application is certainly part of the probate record and, I mean, if we need to provide it to you, we certainly want to.
Q: Do you have a copy of that with you now?
A: I don't have it on my -- you know, with me right now. I've got a copy over at my office.
Q: Can we have someone from your office bring it over?

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MS. SHARP: One of your secretaries was right at the door ---
THE WITNESS: Okay, sure.
MS. SHARP: --- one minute ago.
MR. WINGATE: Y'all can go off the record for a second.
(A break was taken from 12:07 p.m. until 12:24 p.m.)
(Defendant's Exhibit Number One was marked for identification purposes during the break.)
Q: All right. During that break what we've done is we've reclassified Defendant's Exhibit Number One to be the entire package of discovery responses that we received that are Bates numbered 0001 up and through 00463. The numbers have gone through 00456 but we included at the end of it a copy of the petition or application to open the estate, a form 300PC that was filed with the court. I'm not sure the date it was filed. It was signed on October 21st, 2013. Mr. Kearse, do you have a copy of it? And if not, here's an extra copy.
A: Okay. I have one now.
(Defendant's Exhibit Number One was introduced into the record at this time.)

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A: Let me get on my glasses. Okay.
Q: Is this the application or petition that you filed with the Probate Court?
A: It appears to be, yes.
Q: And that was signed by you on page 406, which is 00461?
A: Yes.
Q: Under the verification section.
A: Uh-huh.
Q: Okay. And this was to probate your father's will that was dated May 16th, 2011. Is that correct? I call your attention to page three, paragraph number three.
A: The thing is I have an attachment that's page three ---
Q: Okay.
A: May 16th. It says 2011.
Q: Was the date of your father's will?
A: Is there a copy of the will? I don't think -- obviously that's incorrect. We did -- we did file the will with the document.
MS. BEST: May 16, 2011.
A: Oh. I don't -- I mean, I don't have the will in front of me, so ---
Q: I believe that at one point your sister had

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brought back a notebook, a three-ring binder, that would have had the documents that y'all filed with the probate court?
A: It could have the will in there.
Q: All right. If that's here, let's go ahead and have you take a look at that because ---
A: Yeah, let me take a look at it because I just -- I mean, I can't recall the date of the will.
Q: I'd like you to go ahead and take a look at the entire notebook rather than having somebody else ---
A: Okay.
Q: --- pull it out for you.
MS. BEST: I didn't know if this was the notebook or not. I was looking to see if it was.
Q: While you're flipping through it looking for it, is there a reason why you think the will would not have been executed on May 16th, 2011?
A: I don't know. I may have misstep- -- may have misspoken. I just don't know. I don't have the will in front of me therefore I don't know. Just hang on.
Q: Why don't I produce you a copy of the will?
A: Okay.
MR. WINGATE: To expedite things.

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THE WITNESS: Yeah, that's -- that looks like it.
A: All right. The 16th day of May, 2011. So, that appears to be correct.
Q: Okay. I'm going to mark that as Number Two.

MR. WINGATE: And it's the copy of the will, Steve, that you're marking as Number Two?
MR. SLOTCHIVER: A copy of the will that's labeled as Exhibit A, and it is stamped by the Allendale Probate Court, it looks like, on April 16th of 2013, filed for record.
(Defendant's Exhibit Number Two was marked for identification purposes.)
Q: That's the will that you're referring to in the application and petition that we went through. Is that correct?
A: That is correct.
Q: And on this -- let's take a look at page -- the second page of that application under paragraph 4A.
A: Of the application, I'm sorry.
Q: That's okay.
A: You say what page?
Q: The second page of it.
A: Okay.

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Q: Paragraph 4A. And it states names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state. Who is listed under 4A?
A: Obviously, I'm listed there.
Q: Is there anyone else listed there?
A: No, there's not.
Q: Is there a reason why you are the only person listed as being a devisee under the will?
A: No.
Q: Can you take a look at the will for a moment and refresh your memory as to who the beneficiaries are under the will?
A: Well, item three is a bequeath to myself of the practice where I am right now.
Q: Let's talk about that for a moment.
A: Okay.
Q: Tell me what item three means to you?
MR. WINGATE: Object to the form of the question. You can answer.
A: Okay. Well, my father -- I was the only one that was practicing law with him at the time, and he wanted me -- he wanted the building and the practice to continue and he gave me that opportunity. And all of the furnishings and

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everything that is in the building, he has allowed me to use. It's not -- it's mine to use as an attorney is what it means.
Q: So, item three allows you to use his building and the things in the building throughout your practice of law?
A: Yes.
Q: And what happens at such time that you choose, if you choose, not to continue to practice law, or you decide to retire?
A: Well ---
MR. WINGATE: Again, object to the form of the question. You may continue.
A: --- if I no longer practice, the building -- well, it depends, I mean if the practice is terminated, I certainly would terminate the practice. And as far as the use of the building, I would think that my use and control over the building would cease also.
Q: And what would then happen?
A: Well, if there's another family member that would like to practice they would have a right to do so. His objective was -- that's been a law office since he built it in '65, I believe. It's been a law office and he would like it to

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remain a law office. I'm sure he would like for it to remain Kearse Law Firm.
Q: Under the will, show me where it tells you what takes place if you are no longer practicing law in that office building.
A: Well, it says in the event his practice is terminated for any reason, it is my will and desire that another member of my family with priority in degree of kinship to use as Morgan Kearse has used the personal property with the same restrictions as applied to the successor of J. Morgan Kearse.
Q: So, he's providing you kind of a lifetime right but then he extends it on to other members of the family at such time as you choose not to continue. Is that correct?
A: That's -- that's -- that's correct.
Q: Tell me about item four.
MR. WINGATE: Again, I object to the form of the question. Now, for the sake of not interrupting you continuously on the questions related to interpretations of the clauses of the will, I'll just enter a one-time objection to the form of the question.
MR. SLOTCHIVER: I'm perfectly fine with that, thank

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you.
MR. WINGATE: Thank you.
A: Well, in item four, it begins by referencing the termination of the law practice and that he's giving -- it references paragraph three which would appear to suggest -- I mean, if there are other family members wanting to practice, they have the right to do so, provided I'm not there. But it also says that the members of the Kearse Educational Trust, that they honor his wishes concerning the contents -- the contents being used, you know, for no cost. And it references a trustee.
Q: A trustee to what?
A: Well, it's got a deed book 177 at page 127.
Q: Are you familiar with what that is a deed to?
A: Well, I would have to pull the deed but it's -- I would have to look at the -- I'd have to look at the document -- which you are giving me right now.
Q: I'm going to mark this copy of the deed as Number Three, I believe.
(Defendant's Exhibit Number Three was marked for identification purposes.)
MR. WINGATE: Do you have an extra copy, Steve?

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MR. SLOTCHIVER: Well, I will, once he labels it.
MR. WINGATE: I'll let you work from the exhibit and I'll -- this is Number Three -- the deed?
MR. SLOTCHIVER: Yes.
MR. WINGATE: Thank you.
Q: So, you were saying just a moment ago, Mr. Kearse, that item four was referencing a deed in your father's wish or his desires regarding what should take place with that property?
A: Yes.
Q: Who is that deed from?
A: Well, it's from the grantor -- would be my mother.
Q: And her name, just for the record?
A: Well, on the deed it's Jacqueline W. Kearse.
Q: And, who is she deeding this property to?
A: Well, she's reserving a life estate to herself and then she's releasing the property to Julie Sharpe, my sister, who is serving as trustee.
Q: Your mother is still alive, is that correct?
A: That is correct.
Q: Okay. And she's granted to herself a life estate interest in the property. Is that what you just testified to?
A: That is correct.

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Q: You understand what a life estate interest is?
A: Yes.
Q: What is your understanding of a life estate interest?
A: Well ---
MR. WINGATE: Object to the form.
A: The property would be hers to use and control for and during her lifetime.
Q: And this deed is covering the property where you currently practice law?
A: It appears to be, yes.
Q: So, you're father is not the owner of this property. Is that correct?
A: Yes. It appears that way. According to this deed, yes.
Q: And your father references this deed under his will?
A: He -- deed book 177 at 127. Well, it was filed October 5, 2005. Deed book 177 -- I'm looking at the last page at page 127. That appears to be the correct book and page number.
Q: Okay. And if you would, take a look at the second to last page of that document entitled Affidavit for Exempt Transfers.
A: Okay.

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Q: Under paragraph five, who was the name of the person that signed off on behalf of this transaction?
A: Well, my father signed that, G. H. Kearse.
Q: Would that -- and number four states that he was signing in what capacity? It's bolded.
A: As an attorney.
Q: Okay. So, he was certainly aware of this transaction. Did your father prepare deeds typically?
A: Yes.
Q: Okay. So, your mother owns this property and she transfers -- she reserves a life estate interest but then transfers it to your sister Julia Sharpe in her capacity as a trustee. Is that a fair assessment?
A: Yes.
Q: You agree with that?
A: Yes.
Q: And then, throughout your mother's lifetime she would have the right to continue to use that property or to use that property since she reserved the life estate?
A: Yes.
Q: And then, upon her demise, that's when the

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conditions kick in with reference to your right as well as other people's rights to utilize the property for the practice of law or other business. Is that correct? And I call your attention to the second page of the deed. The first five or six paragraphs kind of break down what happens.
A: Okay. The second page -- what paragraph?
Q: The first six paragraphs will address it. If you take a minute and read that. I want to make sure I understand what you understand.
A: Okay.
MR. WINGATE: Object to the form to the extent you're asking him to interpret the language of the deed. You can go ahead and answer the question.
Q: I'm not rushing. Once you finish reading it, just let me know so I can continue.
A: Okay. One, two, three, four -- I've read the first five paragraphs. I think that's all you wanted me to read. Is that right.
Q: I'd like you to go ahead and read -- hold on one second. Go ahead and just read the sixth and seventh paragraph also. Up to where the paragraph starts off, together with all ---

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A: Gotcha.
Q: --- and singular.
A: Okay. I finished.
Q: Okay. So, now that you've read that second page, or refreshed your memory regarding that second page, is it your testimony that your mother has a life estate interest in that property and at her demise that it would entitle you and or other individuals, if you decide not to practice law or to continue to practice law, to utilize that building. Is that correct?
A: Well, I think the first paragraph that begins on page two gives me the right to practice law currently, not upon her death. Is that what you're telling me?
Q: No. The way I read this, it would appear that she's reserved a life estate interest.
A: She has but she's also saying I can practice law. It's a -- it's a present tense instruction, is it not?
Q: I'm asking you the questions.
A: Well, my feeling is it's telling me that I can currently practice law in this building.
Q: If your -- if your presumption is not correct,

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would agree that you should be paying rent to your mother in order to utilize that building throughout her lifetime?
A: It says to practice law, free of any rent or lease payments.
Q: That's not my question.
A: All right. What is your -- sorry.
Q: My question is, if your interpretation of this deed is not correct, should you be paying rent to your mother in order to utilize that office building?
A: I'm not sure how to answer that.
Q: I'll move on. What is your mother's current financial affairs? Do you know? Do you know what her net worth is at this point?
A: I don't know.
Q: Do you know what assets that she has other than her home?
A: I think my mother has an interest maybe in the lot behind the house there right next to the office. I think she has an interest in a lot there behind our home that we grew up in.
Q: Any idea of what the value of that home -- that lot would be? Not the house but the lot.
A: I don't know what it's valued at. Her tax

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assessor and I don't -- haven't had it appraised. So, I don't know what it's worth.
Q: Do you think it's worth more than 10,000?
A: The lot itself? I don't know. It's right there on 301 so it could have -- it could have a higher value than just a standard lot.
Q: More than 20,000?
A: I don't know. I don't know what it's worth.
Q: Do you know what her monthly expenses are running?
A: I don't know. I don't have those documents in front of me. I can't tell you precisely what that is.
Q: Would it surprise you to know that your mother's liquid assets are approximately $12,000 at this point?
A: I know that her assets are decreasing but I don't know that specific figure.
Q: And, I'm not sure if you said it, did you know what her expenses are running per month on average?
A: I don't know.
Q: Give me just a moment. Let's go back to the will for a moment.
A: Okay, the will.

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Q: Do you have that document?
A: I do have the will -- the last will and testament of my father, yes.
Q: And we've talked about item three and item four of the will, correct?
A: Okay, item three and item four, we have talked about it, yes.
Q: And item three starts off with the words: I give, devise and bequeath. Is that correct?
A: That is correct.
Q: That's a direction, isn't it?
A: It is.
Q: Item four states it's his -- it's my wish and it goes on to define what his wish is. Is that correct? First line of item four.
A: Right. It -- it does talk about his wish.
Q: In fact, the last sentence of item four also says it's his intention that he not convey any decedent a remainder interest or any vested interest that would allow them to liquidate or partition my estate. Is that correct?
A: No, it -- you said decedent?
Q: Descendant, I apologize.
A: Okay. It says it is my intention that I not convey any descendant a remainder interest or

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any vested interest that would allow them to liquidate or partition my estate.
Q: And even on the fourth line, he talks about it was his wish, he was relaying in that the members of the Kearse Education Trust honor my wish regarding the contents being used in an office without cost to the user. That's correct, right?
A: That's what it says, yes.
Q: Are you familiar with the difference in precatory language and mandatory language?
A: No.
Q: Item five starts off with, I wish to explain the reason for forming the Kearse Education Trust. Is that correct?
A: Yes.
Q: Would your father have any right or control over the Kearse Education Trust?
MR. WINGATE: Object to the form.
A: Repeat that question.
Q: Would your father have any right to have any control over the Kearse Education Trust? Let me clarify it a little bit. In the last five years of your father's life, did he have any ownership interest in the Kearse Education

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Trust?
A: Well, he created it.
Q: Was he a beneficiary of the Kearse Education Trust?
A: I would -- I would say he was -- he created the trust and he was overseeing the operation of the trust.
Q: Was he a beneficiary of the trust?
A: I don't know. I don't know.
Q: Have you reviewed the trust?
A: I've looked at the trust, yes. I would have to look at it again, but -- and I'd be glad to but ...
Q: I think you testified earlier that you're serving as a co-trustee of that trust. Is that correct?
A: That is correct.
Q: And as the co-trustee, you'd have a fiduciary obligation to the beneficiaries of that trust. Is that correct?
A: That is correct.
Q: And that fiduciary obligation would also extend to you as the personal representative of your father's estate. Is that correct?
A: Yes.

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Q: Do you not find it to be important to understand what the terms of the trust state in order to fulfill your obligations as serving as a co-trustee?
A: I think it would be important for me to understand that, yes.
Q: And is it your testimony at this time that you do not understand what the ---
A: No, that's not -- that's not true. If you'll hand me the trust document, we can go over it. I just -- you're asking me to recall something that I would like to have the document in front of me to review.
Q: We'll come back to that part.
A: Okay.
Q: As an attorney that practices law, as an attorney that has prepared wills, as an attorney that has administered estates on behalf of his clients serving as a personal representative, do you believe that your father would be able to direct, under his will, what takes place with an asset that's not within his control?
A: If the asset, being the land ---
Q: I'm not talking about the land, I'm talking

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about just any asset.
A: Okay, what was your question again?
Q: He is referring to -- under item five ---
A: Okay.
Q: --- making sure that, I guess the family is provided with the benefit of education. That was apparently very important to your father.
A: Uh-huh.
Q: Is that correct?
A: That is correct.
Q: Okay. And, do you believe that your father would have the legal right to direct what the Kearse Education Trust does or does not do with reference to the assets of the Kearse Education Trust?
A: Yes.
Q: You believe he does?
A: I believe he did.
Q: On what basis?
A: Well, he created the trust, and in creating the trust he drafted the language as to how the trust was going to operate.
Q: When he created the trust, did -- is it your opinion that he relinquished control of the assets that were placed into the trust or did

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he not relinquish control of the assets placed into the trust?
A: He did not relinquish control over the trust when he created the trust.
Q: Are you aware that your father and mother both filed gift tax returns back in 1992 at the time that he created the trust?
A: I've seen that document, yes.
Q: And, had he not relinquished control, he would not have been required to file a gift tax return. Is that correct?
A: That's correct.
Q: Then wouldn't it make sense that since he filed a gift tax return, that he must have relinquished control over the assets?
A: He did not relinquish control over the assets.
Q: Yet he still filed a gift tax return. Is that correct?
A: He had -- he did control the asset and he did file a gift tax return.
Q: Okay. So, it's your testimony that you believe that your father was able to control or to direct what took place with the Kearse Education Trust during his lifetime? Let me rephrase that: Throughout his lifetime?

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A: He controlled the asset until he died. Is that what you're asking me?
Q: I'm asking you if he continued to control the asset throughout his lifetime, the asset being the trust?
A: Yes.
MR. SLOTCHIVER: Ken, do y'all have a copy of the full 400 and some odd pages?
MR. WINGATE: Yes.
MR. SLOTCHIVER: Okay. So I can review it, can you show him specific pages?
MR. WINGATE: Sure. I'd be happy to.
Q: I'd like to have you take a look at pages 167, 168, and 169, and 170.
MR. WINGATE: Okay. He's got those.
Q: And on that -- page 167 -- this is a letter to your father. Is that correct?
A: That's correct.
Q: And it's from Bill Edenfield, or William Edenfield.
A: Correct.
Q: And he's referencing -- Mr. Edenfield is referencing a document he's attaching to this letter. What is he referencing?
A: He's referencing the 1992 gift tax return.

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Q: Okay. And this is the gift tax return that your parents would have filed, or at least your father would have filed. Is that correct?
A: Well, it is a gift tax return. Its not signed, but it is a gift tax return.
Q: Okay, and this is located in your files, correct?
A: That's correct.
Q: Do you have any reason to believe this was not filed?
A: I don't know. I've provided you with what I had, and this is -- this is what I had.
Q: Let's look at page 170.
A: Okay.
Q: And it talks about the -- it's an Exhibit A to the gift tax return, correct?
A: Yes, yes.
Q: And, if you would, just read into the record, what does number one under Exhibit A state?
A: Number one says, Kearse Educational Trust, and then it's got $582,800. And then it lists beneficiaries. And it lists my brother Gordon and my sister Beth and my sister Julie and my sister Rachel and myself and my brother Joseph.
Q: Does it list your father?

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A: No.
Q: Does it list your mother?
A: No.
Q: Assuming that your father has actually filed the gift tax return, would you now agree with me that he was making a gift to a trust for the benefit of just you and your siblings and not for his own benefit?
MR. WINGATE: Object to the form.
A: It appears as though he is listing the beneficiaries, myself and my siblings.
Q: But you still believe he did not relinquish control over that asset?
A: If the asset is the land, he still has some control over it.
Q: Which land are you referring to, Mr. Kearse?
A: Well, more than likely, we're dealing with the property of -- that was conveyed to Elysium Fields and SEH, two corporations.
Q: Is it your understanding that both of those corporations were transferred into this trust?
A: Yes.
Q: And that those two trusts would own the properties referred to as the farm land?
A: Those two corporations ---

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Q: Excuse me.
A: --- would own the land. The land is titled in the corporation, and the trust owns the corporations.
Q: The lad you're referring to is not the land that was owned by your father at the time of his death but was the land that was owned by the corporations at the time of your father's death. Is that correct?
A: Repeat that again, please.
Q: The land you're referring to is not any of the real estate that is owned by your father at the time of his death.
A: Right. This is -- the property that I think is in the trust is the property that is titled in the two corporations.
Q: Okay. And it's your testimony that your father retained control over the assets of the trust throughout his lifetime?
A: Well, he was a -- he would have been a shareholder in the corporation.
Q: Are you sure about that?
A: Well, I'm -- you know, I'm not absolutely sure. I don't know. I don't know if he was an actual shareholder.

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Q: If all of the stock of the corporations was transferred -- both corporations was transferred into the trust back in 1992, would your father have then had any control over the assets of the trust?
A: Well, the shares -- you're saying he would -- if he had no shares in the corporation he would not be in control.
Q: That's what I'm asking you.
A: He would not, based on what you're saying. If the shares -- if he had no shares in his name, he would not control the corporation. He'd have no interest in the corporation.
MR. WINGATE: Steve, were you planning to mark those as an exhibit -- those pages 167 through 170?
MR. SLOTCHIVER: Not as a separate group. We'd put the whole file -- this entire file that came right out of that book.
MR. WINGATE: Okay. What I'll -- that's fine. Since you're just referencing the pages then we won't need to make it a separate -- you'll give him that entire exhibit -- you give the court reporter that entire exhibit one when the deposition concludes ---
MR. SLOTCHIVER: Yes.

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MR. WINGATE: --- so I'll be able to retrieve these pages from my documents?
MR. SLOTCHIVER: Absolutely.
MR. WINGATE: Thank you.
MR. SLOTCHIVER: Yes. We've got four exhibits so far, is that right? Three.
MS. GOODING: Yeah, it's just three.
Q: Let's turn back to the petition -- or the application to open the estate.
A: Let's see. Okay.
Q: On page two of six, which is Bates number 458, paragraph 4A, we're talking about the only person named as a devisee in the will that's listed is yourself. Is that correct?
A: It says that, yes.
Q: Do you believe that's correct?
A: No.
Q: Is there a reason why you would have completed this document if ---
A: That had to have been just an error on my part.
Q: Now you testified earlier that you handled a lot of estates over the years, administrations of estates, but this was just an oversight on your part?
A: It had to have been, yes.

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Q: Who do you think the proper people or persons or entities that should have been listed under 4A should be?
A: I think -- I think all of my siblings should have been listed.
Q: As beneficiaries under your father's will?
A: Yes, I do.
Q: Can you show me where in your father's will specifically he makes any bequest to either of y'all -- any of y'all, y'all representing you and/or your siblings, other than the right to use the office building that we talked about earlier?
A: Well, you know, he named the Kearse Educational Trust, and all of the trustees are made up of my siblings and myself.
Q: Wouldn't mean that the beneficiary listed should have just been the Kearse Education Trust?
A: It -- well, yes you could -- you could put the Kearse Educational Trust, but ...
Q: Mr. Kearse, did somebody assist you in completing this form or did you prepare it yourself?
A: I prepared it myself. I had someone type it

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up, I'm sure.
Q: I think I'd heard earlier that your wife used to work at the Probate Court.
A: She worked there for just a very short period of time. She was not -- I don't think she was working there when this was prepared. I think she worked there about a year -- year and a half.
Q: And that ended recently?
A: Yes.
Q: So she would have ---
A: I don't think ---
Q: --- she would have started after you would have opened this estate.
A: Yes, yes.
Q: But you would have prepared this document yourself.
A: Yes.
Q: And you typically would prepare these same documents for other clients that are retaining your services in order to assist them in administering the estates they're trying to handle?
A: That is correct.
Q: And just so I'm clear and the record's clear:

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You have not found any specific gifts made to any of your siblings under your father's will; that all gifts were made directly to the trust?
A: To myself, to the trust.
Q: Anyone else?
A: It appears as though no one else is named but myself and the trust.
Q: And I call your attention on that application petition to Bates number -- Bates number 461, which is page four of six of the form 300 PC, Article 4 in specific. It's titled Verification.
A: Okay.
Q: Can you read into the record the first two lines of -- just below Verification.
A: The undersigned being sworn states that the facts set forth and foregoing statements are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the court's jurisdiction in this matter.
Q: Okay. And did you sign right below that?
A: I did.
Q: Okay. All right. We'll move on. Now, the property that's referred to as The Farm you

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indicated was owned by one of two corporations, and those two corporations were transferred into the Kearse Education Trust in 1992 or thereabouts.
A: Yes, it appears that way, yes.
Q: If you would, take a look at your father's will --
A: Okay.
Q: --- on page three of his will ---
A: Okay.
Q: --- item number six.
A: Okay.
Q: If you need to refresh yourself, I'd ask that you read item six throughout the entirety of that page up through the first three lines of page four.
A: Okay. I've read item six.
Q: Tell me what item six means to you.
A: Item six refers to my father's wish and desire that a house be built on The Farm. And he explains where he would like the house placed and he explains that he has some money to complete it -- to complete building the house. He also says that he has some money set aside to pay the taxes on the trust property. He

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also states that the money is to be used for the ad valorem taxes only if it cannot be found elsewhere. He says that he wants a house built and patterned after the Gunston Hall home in Lorton, Virginia. He goes into some detail about the kitchen also being used as a sitting room and that it be located -- that there be an entrance on the north side. And then he gives all of his monies, except the ad valorem tax money, be used to build the house. And he instructs the six children to do that. And then he explains that the house up here is to be squatted as he put it. And he feels as though it should be not so squatted by two to three feet, making the basement a greater height and more useful. He actually says where he wants the entrance to the basement in the interior of the building. And he does not want a cold house having masonry floors on the first and second level. And then the last paragraph he says the house is to be used as a place for my grandchildren as well as other family members to bring their friends and relatives. He says he wants it managed and occupied or occupied by a member of the family that can

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handle it.
Q: Anything else?
A: That's what it -- that's everything, pretty much. That summarizes it, yes.
Q: So, he's directing his estate to construct a home that's similar to the Gunston Hall located in Virginia with some modifications on property that was not owned by your father. Is that correct?
MR. WINGATE: Object to the form.
A: Repeat that questions, please?
MR. SLOTCHIVER: Mr. Court Reporter, could you read that back?
COURT REPORTER: (Played back recording of question.)
A: That is correct.
Q: And you in your capacity as the personal representative of your father's estate, and as an attorney that handles the administration of estates, believes that is a valid direction?
A: Well, in this case, I'm not sure.
Q: Can you expound on that?
A: Well, my father certainly had -- the cor- -- the corporations owned the property, and I don't believe that he was absent some control over the property.

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Q: Are you testifying that you believe that you father retained control or some control over the properties owned by the corporation throughout his lifetime.
A: Through the corporations, possibly, yes.
Q: What about after his death?
A: He did have after his death -- his trust -- the provisions in his trust that he created and developed do control that property.
Q: Can you state that again because I did not follow you on your response?
A: Well, the trust contr- -- at his death the trust definitely controls the corporate -- the property that's in the corporations.
Q: Does your father -- let me rephrase that. On any of the Inventory and Appraisements that you filed with the court, including the one that was most recently filed yesterday at 3:53, did you list down any stock that your father had in either of these two corporations that would have owned the real estate that's commonly referred to as The Farm?
A: I haven't found any stock.
Q: So, on what basis do you believe that your father would have any right to control, after

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his demise, what would take place with reference to the assets of the trust?
A: I don't have any stock to show that's in his name right now.
Q: Are you aware of any stock that has been in his name in the last several years regarding those two entities that were transferred to the trust in 1992?
A: Am I aware of a stock -- a stock certificate? Is that what you're asking me?
Q: Whether a stock certificate or just some ownership interest in the entity or one of the entities.
A: I don't have any stock certificate. There may be some reference to stock, but I can't say that I've seen that reference right now.
Q: Have you filed any income tax returns on behalf of your father's estate since the time that he passed away?
A: Yes.
Q: Your father passed away in 2013. Is that correct?
A: That's correct.
Q: Did you file a tax return for 2013?
A: We filed '13, '14 and '15. I provided you, I

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think, with '15. But we did file '13 and '14. I need to get copies of the for you if you don't have them there.
Q: Are you aware of having any reference -- let me rephrase that. Are you aware of any reference on the tax returns that you filed on behalf of your father's estate, whether in '13, '14 or '15, that would reflect him having ownership interest in either one of those corporations?
A: I'm not aware. I would need to look at those tax returns.
MR. SLOTCHIVER: Just off the record for a moment.
(Off the record discussions)
Q: Mr. Kearse, I call your attention to -- it's on the discovery responses you provided this morning -- your counsel provided -- on page 055.
MR. WINGATE: Give me a second, I'll pull those for him to look at. You want just that page, Steve, or ---
MR. SLOTCHIVER: No, it looks like it goes through page 0076.
MR. WINGATE: 0076?
MR. SLOTCHIVER: Yes, sir. 55 through 76. Through and including 76.

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Q: I'd ask while you're looking through that return, Mr. Kearse, that you try to locate, or call to my attention anywhere that references ownership interest in either one of those entities we discussed that were transferred into the Kearse Education Trust.
A: Okay. I've looked at it.
Q: Did you see any reference in the 2015 return?
A: Not in this 2015 return, no.
Q: I'm going to present to you -- the handwritten list I understand was prepared -- or may have been prepared by your father's accountant. I want to know if you've ever seen this before. And I'm going to mark that as the next exhibit.
MR. WINGATE: May I see that? You read it first. I want to see it before you are asked questions, please.
THE WITNESS: Absolutely.
MR. WINGATE: Steve, are you through with 55 through ---
MR. SLOTCHIVER: I am.
Q: And if it helps your recollection, I understand that was attached to a letter that you provided to your sister, Beth, that was from you to Tom Bryant dated December 31st, 2013.

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A: I don't know if I've got this inclu- ---
THE WITNESS: Well, is that what you're looking at?
MR. WINGATE: Before we do anything else, let me just take a look at it.
THE WITNESS: Okay.
MR. WINGATE: Steve, what I want to do -- if you would record this -- under Rule 30, related to documents that weren't produced to us two days prior, I want to take a short moment to confer with my client to determine whether or not there's anything in this document for which he need to assert a privilege, and then we'll return to the record in just a moment.
MR. SLOTCHIVER: I don't know if there could possibly be a privilege since he provided that to my client.
MR. WINGATE: But I have opportunity under Rule 30 to discuss that question and determine whether I agree with you or don't.
MR. SLOTCHIVER: Limited to that, I completely agree.
MR. WINGATE: Sure. Okay. So, why don't we go off the record and take a little short break.
(A break was taken from 1:38 p.m. until 1:48 p.m.)
MR. WINGATE: Let me assert that, as we said prior

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to the short break, that pursuant to Rule 30(j)(8), that the documents that had not been provided to us in advance of this deposition, I did take a short break to privately discuss the documents before the witness answers questions concerning the document. And you may proceed.
Q: Mr. Kearse, you've reviewed that packet of -- that letter with those attachments in your hand right now.
A: That is correct.
Q: I'd like to take it back for just a moment.
A: Sure.
Q: I'd like to show you specific pieces of this letter. We'll end up marking this -- does the court reporter have a stapler? Something that we can actually fasten this together to avoid issue? All right. We'll mark this as Exhibit Number Four.
(Defendant's Exhibit Number Four was marked for identification purposes.)
Q: I'm going to show it to you. I'm going to take it right back though.
A: Okay.
Q: And I would just like for you to identify what

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Exhibit Number Four is. It's a letter from you to whom dated ---
A: It's a letter that's signed by me. It's addressed to Tom Bryant out of Orangeburg, South Carolina, and it's dated December 31, 2013.
Q: Let me take the letter back for just a moment. I apologize. In light of the fact that this letter is from you to Mr. Bryant in 2013, that was after you were appointed as your father's personal representative?
A: I think that's correct, yes. What's the date of my appointment? Hold on. The appointment is October 21st, 2013. And what is the date on that? October 31st, 2013.
Q: December 31st.
A: I'm sorry. Okay, so that would be after my appointment. That's correct.
Q: This should be part of the 450-some odd pages of discovery that you provided to us today?
A: It should be.
Q: Attached to this letter is a -- I'm going to turn to the third page of the document -- is a handwritten note. Is that correct? Read what's at the very top of it.

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A: It says G.H. Kearse gifts for 1992.
Q: And if you look at the bottom two lines that are highlighted, can you read that into the record?
A: All stocks -- all stocks and corporations given to Kearse Educational Trust on 11/05/92.
Q: That would be the stock in the two corporations that we discussed earlier. I think one was Elysium and the other was ESH? Is that correct?
A: Well, it references Elysium and SEH.
Q: SEH, okay. So, that would be -- all the stock, according to at least that piece of paper, would have been transferred into the trust?
A: That's what it says.
Q: Can you read the fifth to the seventh lines into the record on page one of this letter from you to Mr. Bryant dated December 31st, 2013, starting with the words, I have been.
A: I have been unable to locate any shares of the corporations but have acquired some documents between Papa and Billy Edenfield referencing the transfer of corporate stock.
Q: At that point, the documents attached to this letter, would those be the documents that you

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were referring to?
A: If this is the attachment, yes.
Q: This is on the second to last page of the attachments to the December 31st, 2013 letter from you to Mr Bryant, marked as Defendant's Exhibit Four, and I would like for you to tell me what this is.
A: This appears to be a letter that my father wrote in his hand dated September 16th, 1993.
Q: Who is it addressed to?
A: It's addressed to Billy.
Q: Billy would be who? Do you know?
A: Well, it probably would be Billy Edenfield.
Q: And that was your father's accountant at the time?
A: That is correct.
Q: And what does that letter state?
A: It says that there are eight deeds enclosed -- copies of eight deeds -- and he says to please note deed number one, per upper right hand corner, conveyed 60 acres to Joanne and should be taken out of the number 2 of 236.5 acres leaving 176.5 acres. And it says, next paragraph, these deed [sic] the -- the -- convey to two closed corporations of which I own all

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the stock. Next paragraph, I gave the stock to the trust, Kearse Educational Trust, on November 5, 1992. He -- it said 1993, but he -- someone, or so he did, struck through the 3 and placed a 2 next to the strike-through. And then the next paragraph says, let me know if you need anything else, sincerely, Rip.
Q: Is that your dad -- is that your father's handwriting?
A: It appears to be, yes.
Q: And, do you recall reviewing that note previously to today?
A: I don't know. I don't know. I don't recall, but I don't know.
Q: Now that you've reviewed that note, does your position -- has your position changed with reference to whether or not your father retained an ownership interest in either of those two companies that we've been discussing?
A: I would want to -- I would want to look into this and no more before I could answer that. I don't know.
Q: So reviewing your father's handwritten note to his accountant in conjunction with reviewing the estate tax return in conjunction with --

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excuse me -- in conjunction with reviewing the estate income tax return, you still are uncertain whether or not your father retained any interest in either of the two corporations?
MR. WINGATE: Object to the form of the question. Now, you may answer.
A: I'm not -- I'm not absolutely, positively sure as to what's going on. I don't know. I don't know the answer to that.
Q: If your father has in fact transferred all of his interest in those two corporations to the trust, does that change your position with reference to believing the estate should construct a home on property owned by the trust?
MR. WINGATE: Object to the form.
A: It doesn't change my position.
Q: You understand you've got a fiduciary obligation to the beneficiaries of this estate -- of your father's estate ---
A: Uh-huh.
Q: --- and you understand that you've got a -- is that a yes or a no answer?
A: Oh, I'm sorry. Yes, I understand that, yes.
Q: And you understand that you've got a fiduciary

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obligation to the beneficiaries of the Kearse Education Trust?
A: Yes.
Q: And your position is still that you were uncertain whether or not the Kearse Education Trust owns all the stock or if your father still has retained some of the stock of these two corporations?
A: I don't know if he still retains any interest in the corporations. I don't know that.
Q: Do you find it to put you into a conflicting position because you are a co-trustee of the Kearse Education Trust and you are the sole personal representative of your father's estate regarding who the owner of that stock should be?
A: You're asking -- rephrase that. You're asking -- would you rephrase that please or would you ask the question again?
Q: I'll -- I'll change the question.
A: Okay.
Q: How would you go about and confirm ownership of stock if there is a dispute as to whom the owners of the stock would be? Would you file an action with the court to confirm who the

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proper owners of the stock would be?
A: True. You could.
Q: If you wanted to confirm who the owners of this stock would be, is it your testimony that it could only be one of two potential entities: either your father's estate or the Kearse Education Trust, or some combination thereof.
A: I think should all the stock be transferred to the trust, he would not have control over it -- over the property.
Q: And would that mean that had he transferred all of the ownership interest in the stock to the trust that he would not be able to direct under his will the construction of a home on property that he has no control over?
MR. WINGATE: Object to the form.
A: I think that is correct. He would not have control over the property and it would be difficult to direct in his will that a house be built.
Q: Just one moment, please. If you wanted to confirm -- we talked about this a few moments ago. If you wanted to confirm who owned the stock, if there was a dispute, the protocol would be to bring an action in court and to

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have the court determine who the proper owner would be?
A: Yes.
Q: And the potential owners of the stock would be comprised of your father's estate and/or the Kearse Education Trust. Is that correct?
A: Yes.
Q: Is there -- are you aware of any other potential owner of the stock of either one of those two entities?
A: I don't know if my mother -- she might be a party in the action as well.
Q: Besides your mother. Potentially besides your mother.
A: And you're asking me who the beneficiaries would be?
Q: Well I'm trying to figure out if you had to caption an action, who would the petitioner be and who would the potential respondents be? And let's assume that you've captioned it with your father's estate as being the petitioner, who would the respondent's be?
A: The respondents would definitely be my siblings and the trustees.
Q: Well, your siblings individually or your

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siblings as co-trustees?
A: As co-trustee.
Q: And yourself also as a co-trustee?
A: Well, I am a co-trustee, yes.
Q: So, the -- if the petitioner is your father's estate, the respondents would be you and your siblings in your capacities as the co-trustees of your -- of the Kearse Education Trust, as well as possibly your mother, too.
A: Yes.
Q: Does that, in your opinion as an attorney, result in a conflict of interest?
A: It could result in a conflict.
Q: Basically you'd be bringing an action against yourself -- you'd be on both sides: You'd be a fiduciary on behalf of the estate and a cofiduciary on behalf of the trust. Is that correct?
A: Yes.
Q: I -- and I hate to presume, but I'm presuming somewhere in this file is probably a copy of the educational trust because it was certainly attached to the petition that you filed for instruction with the court.
A: I think I made reference to it. It's not

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attached in there but it's not -- it's not in there but we can put it in there. I mean I ---
Q: I'm going to provide you with a copy of the attachment to the Petition for Instruction that you filed with the court that's labeled the Kearse Family Education Trust.
A: Right.
Q: And Im going to mark that as an -- Exhibit Number Five.
(Defendant's Exhibit Number Five was marked for identification purposes.)
Q: And I call your attention to the very first paragraph and I'd like for your to read just the first paragraph starting off with, this agreement, into the record
A: This agreement for the establishment of the Kearse Family Educational Trust is made this fifth day of November 1992, between George H. Kearse as settlor and the undersigned trustees who are all of the children of the Settlor. All of the trustees are herein after referred to, in the aggregate, as the Trustee.
Q: On that paragraph, do you see anywhere where your father is named as a co-trustee?
A: No.

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Q: And on that paragraph, would it appear that all of the trustees are his children being you and your siblings?
A: That is correct.
Q: And the grantor of the -- excuse me, the settlor of this trust is your father?
A: That is correct.
Q: I call your attention to Article Two at the bottom of that page, and I would like you to read the first four lines of that article into the record.
A: The trust estate. The settlor has paid over, assigned, endorsed, granted, conveyed, transferred, and delivered, and by this agreement does hereby pay over assign, endorse, grant, convey, transfer, and deliver unto the trustee all of the -- all of the issued and outstanding stock of SEH Incorporated and Elysium Field Incorporated.
Q: Okay. Then call your attention to page 13 of this trust.
A: Page 13, okay.
Q: And it says, In witness whereof, the settlor and the trustee have executed this trust agreement. Is that correct?

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A: That's correct.
Q: Do you see your father's signature on that page?
A: I do.
Q: And who are the -- not the witnesses, but who are the other individuals that have also signed this trust agreement?
A: Aside from -- you're not talking about the witnesses.
Q: Not the witnesses. They'll all be on the right hand side, besides your father, who else signed this trust agreement?
A: It would be the trustees -- the siblings, the six of us.
Q: Being W. Gordon Kearse, J. Morgan Kearse, Joseph W. Kearse, Elizabeth K. Gooding, Julia K. Sharp and Rachel K. Harper. Is that correct?
A: That's correct.
Q: Okay. Is this the Kearse Education Trust Agreement as you know it?
A: Yes.
Q: Now that you've reviewed it, on page 1, Article 2, the first 4 lines, does that change your opinion with reference to whether the trust

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owns all of the stock in SEH, Inc. and Elysium Field, Inc.
A: It certainly indicates that the trust -- the trust has all of the corporate shares.
Q: As a result, has your opinion now changed with reference to the Petition for Instruction filed with the court?
A: One second, please.
Q: I'd like to go off the record. I'd like to take a four or five minute break to talk with my client.
(A break was taken from 2:12 p.m. until 3:08 p.m.)
Q: Mr. Kearse, we just took a little break, and now that we're back on the record I want to ask you, what did you discuss while we were taking a break ---
A: Well, we discussed ---
Q: --- between Mr. Wingate and Ms. -- and your sister. What did you discuss?
A: --- we discussed the settlement -- the settlement issues that we've all talked about.
Q: And what was your position on the settlement issues?
MR. WITNESS: Let me interrupt. I'm going to instruct the witness not to discuss settlement

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offers per the rules of evidence settlement discussions are inadmissible subjects of testimony.
Q: Just a moment.
(Off the record discussion)
MR. WINGATE: I have instructed the witness not to answer questions about the settlement offer that you made and the counteroffer that he has extended which you did not accept. So, settlement discussions are off the table.
MR. SPEIGHTS: My position on behalf of Ms. Sharpe is that I don't agree with Counsel, but he has instructed the witness not to answer.
MR. WINGATE: That is correct.
MR. SPEIGHTS: So, I'm going to reserve my position. However, to make it clear, when I get the witness, be it today or at some other future time, I'm certainly going to pursue other discussions that took place beside the settlement offer and a response, to the extent that such discussions were held between Morgan Kearse and Rachel Best and Counsel.
MR. WINGATE: That is fine. So, I have instructed him not to answer.
MR. SLOTCHIVER: Okay.

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Q: Mr. Kearse?
A: Yes.
Q: Who represents you on this matter?
A: Ken Wingate.
Q: In what capacity, as personal representative or individually or both?
MR. WINGATE: I've already indicated to you I represent him as personal representative.
MR. SLOTCHIVER: I just wanted to confirm on the record that you only represent him in that capacity.
MR. WINGATE: Yes, I do.
MR. SLOTCHIVER: Okay.
Q: Prior to the deposition today, what steps did you take to prepare for it?
A: Well, I went through all of the documents that I have and I did my best to present them to -- you know, through discovery, through the Request to Produce, and through the interrogatories I tried to, you know, provide you with the documents that you have requested. I realized we don't have -- there's documents that we're going to supplement the record with. And also, by going through all of these documents, reading the will, reading the

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Petition for Instructions. Just going over the documents that we've prepared.
Q: Who'd you meet with?
A: I've met with my attorney.
Q: I'm not going to ask you anything about your conversations that were directly with your attorney. When you met with your attorney, was your sister ever present?
A: She was present this morning but I don't know if I've met with -- I don't think I've met with my attorney and my sister collectively since this started.
Q: Today was the first time that you recall meeting with your sister and your attorney at the same time?
A: Well, my attorney came to Allendale -- I think he got here between 9:30 and 10. and we had -- we had a glitch in our -- I was trying to pull documents up, the system went down, it was down most of the day yesterday and I was pulling up some documents today to su- -- you know, to add to the discovery. So I didn't -- I didn't have a whole lot of discussion time with my attorney today because I was trying to get all of this together and he was looking at the documents

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and ---
Q: Other than today, how many times have you met with your counsel?
A: I have spoken with him on the phone a number of times. I don't know how many. We've talked about this in length.
Q: Three times? Five times?
A: Gosh. Probably more than f- -- I would say five to ten times probably.
Q: On the phone or in person?
A: Definitely on the phone. I don't think -- I have not met with him -- I hadn't met with him face to face until -- I mean I've met him before but not from a business standpoint. But I certainly -- you know, all of my interaction with him has been on the phone and through the internet. That kind of stuff.
Q: So this was your first face to face -- today was your first face to face meeting with him on this case?
A: I think that's correct. Face to face, yes.
Q: Were there any e-mails between you and your sister Rachel that were not produced in this (indicating) stack?
A: There have been e-mails that I have sent to my

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certain siblings, yes. I mean -- and Rachel is included.
Q: I'm referring to any e-mails, not sent to all of your siblings, but just e-mails sent to your sister -- well, let me put it a different way. I'll rephrase it. Were there any e-mails sent to your sister, Rachel, that did not include all of your siblings on this estate ---
A: I would ---
Q: --- or trust.
A: I'm not sure if there are or not. I can go check and see. But I can also -- I don't know if I included any on the -- I think all of the e-mails that I've included have been e-mails between myself and the trustees mostly. I think there may have been some communications between Beth and myself. So ---
Q: And I'm not inquiring about those.
A: Right.
Q: And Im not inquiring about e-mails that would be ---
A: There may be. I'm going to have to go back and check. I don't -- and I certainly will. And I will supplement if they're there.
Q: Okay.

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A: Let me say this, though. There is a tremendous volume of documents in this project. Its very voluminous and it's taken a lot of time. And I'm not -- I'm definitely going to have to supplement in some respects, and I intend to because I'm obligated to.
Q: Do you know how long it's going to take you to supplement?
A: No, I don't.
Q: Could it be done in the next two weeks?
A: Based on our timing to go to court, I would think so, yes.
MR. SLOTCHIVER: Off the record for just a moment.
(Off the record discussion)
Q: Okay, all right. So, in terms of supplementing your discovery, you plan on being able to do that within the next two weeks?
A: I will do my very best, yes.
Q: Okay. With reference to this home that your father would like to have built on the property owned by the trust, what they refer to as in the style of the Gunston Hall -- have you been to the Gunston Hall before?
A: I have. It's been a while but I -- this was a long time ago. It was probably -- I was

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probably a child when I went.
Q: Tell me about -- I mean, I saw pictures of it online, I thought it was pretty amazing. Obviously your father thought very highly of it. How large of a structure is it?
A: It's -- I don't know, it's -- I don't know. Its probably got 3,500, 4,000 square feet in it. I don't know for a fact. I don't have the actual plans in front of me. I don't know the square footage.
Q: How many bedrooms does it have?
A: Don't know.
Q: Have you -- bear with me for just a moment. Looking at the package of information that was -- that your counsel provided to us this morning that's been marked as Exhibit -- Defendant's Number One, and the numbering of the pages apparently is not correct. The Bates stamps are not correct. Only in light of the fact that the two pages I'm referring to are between page 00101 and page 00101. And there can't be two pages that are 00101. But the two pages I'd like to look at are in between those two page number 101s. And those are not Bates stamped. There should be a ---

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A: It's ---
MR. WINGATE: Let me speak for a second.
THE WITNESS: I'm sorry. I agree with you that there's a page 101, then there are two intermediate pages that are not marked, and then I see that there's a 101 and a handwritten letter capital A behind it. So that there is a 101-A that looks like a copy of some Series-E bonds.
MR. SLOTCHIVER: That's correct. Mine is -- hold on one second. Mine does not have the A on it. Okay. That was inked on yours. It was not on mine. But I'm happy to mark on the exhibit with everyone's blessing, an A.
MR. WINGATE: Yes, that is not a problem. And I also agree with you there are two unmarked pages in between 101 and 101-A. But you should also ---
MR. SPEIGHTS: Could you identify those for the record?
MR. WINGATE: I'd be glad to. One is a photograph of Gunston Hall. It says Gunston Hall, Lorton, Virginia. The other is a one-page narrative about Gunston Hall in Lorton, Virginia. And for ease, Steve, I'd also ask that you just

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mark for the exhibit some number -- 101-B and 101-C as you choose so that everything's got a number.

MR. SLOTCHIVER: Okay. I'll do the photograph being 101-B. That's 101, dash, B. And the page titled Gunston Hall, Lorton, Virginia, will be 101-C.

MR. WINGATE: Thank you.

Q: And I would ask, Mr. Kearse, if you would take a look at the photograph marked as 101-B.

A: 101-B. Got it.

Q: That's a picture of Gunston Hall. Is that correct?

A: I believe it is, yes.

Q: Does it actually -- what does it state on the bottom left hand corner?

A: Gunston Hall, Lorton, Virginia.

Q: And this photograph was in your file. Is that correct?

A: Well, the photograph has been hiding in my father's office since I was a child. That's where it came from if that's ---

Q: But you produced a copy of your file today pursuant to discovery. So, this was something that was located in your estate file. Is that

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correct?

A: It was -- it was -- it was in the office. It was hanging as a picture in the office. It's something my father put there.

Q: Did you -- did you make ---

MR. SPEIGHTS: Excuse me, counsel. When I drafted the request to produced, I did not limit the request to the estate file but included requests at the office of both Mr. Kearse, the Decedent, and Morgan Kearse. So, I just want to make it -- I don't want to restrict my own request to produce by the discussion.

MR. SLOTCHIVER: Thank you. I'll retract it.

Q: In terms of that home, the detail, just from the photograph although it's black and white, seems to be quite impressive. Would it surprise you that this home is over 7,000 feet?

A: Would it surprise me?

Q: Yes. You indicated before that it might be 3,500 or 4,000.

A: I don't know how many square feet is in this house.

Q: Have you spoken with anybody with reference to what it would cost to recreate the Gunston Hall?

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A: I have spoken to someone to assist in pulling this information together.

Q: Who'd you speak with?

A: Well, I spoke with my attorney.

Q: I don't what to know what you talked with your attorney about if it was just the two of y'all, but have you spoken to any contractors?

A: I have spoken with my sister who owns an engineering company, and they ---

Q: For the record, would you let us know which sister you're referring to?

A: It's my sister, Rachel.

Q: Okay. You spoke with her about what it would take to ---

A: Well, we're trying to determine what it would take. We don't know what it would take. But we want to know. I think it's very important that we find out what it's going to take.

Q: So, you've not -- you've personally not spoken with any architects to be able to redesign the Gunston Hall?

A: I've kind of turned it over to someone who has a better -- who has the expertise to do it, or at least much more experience than I do to come up with a design and to come up with estimates

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as to what it's going to cost. That's what I want to find out. What will it cost based on licensed -- you know, based on a contractor to build it. And, you know, what other ---

Q: Okay. The person you spoke with that you're referring to is your sister, Rachel?

A: That is correct.

Q: Have you spoken with anyone else besides your sister regarding what it would take to recreate this home on the trust property?

A: No, I haven't.

Q: Has your sister -- are you aware if your sister has spoken with any contractors or architects?

A: I am of the belief that she has -- contractors, drafters. I know that she actually traveled to Virginia to obtain more information and take pictures. I have not seen those pictures. But what we're trying to do is to come up with an estimate -- come up with a plan and an estimate that we can present to the siblings.

Q: Do you -- you said she's taken photograph's -- are you aware -- I think you just testified that you believe that she has spoke to some either architects or contractors or ---

A: I don't know -- I don't know who she has spoken

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to, but -- but she has a business where they have licensed engineers that are qualified to assist in doing this. And I -- she's actually trying to do this at little to no cost.

Q: Has she provided you with any estimates of amounts that it's going to cost?

A: I don't have any information yet, no.

Q: Do you believe that it could be done? When I say done, do you believe that a home similar to the Gunston Hall could be built after architect fees, contractors, licenses, for under a million dollars?

A: I don't know the answer. I don't -- I can't answer that.

Q: Do you believe it would cost more than two million dollars?

A: I don't know. I don't now that answer. I'm not qualified to give that answer off the hip.

Q: I understand. I'm just -- I'm asking, do you think it could be done for under three million dollars?

A: I don't know.

Q: If it was to cost a million dollars to build it, do you think the estate has sufficient liquidity to pay it?

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A: It -- that's hard to answer because we need to determine what estate assets would pay for the construction of the home.

Q: We're going to come to the Inventory and Appraisement, all three of them, in a little bit. But you just filed one as recent as yesterday afternoon. So, I would imagine you have a pretty good understanding as to what the estate assets consist of.

A: Well, I ---

Q: Based on your current understanding, would there be sufficient assets in the estate?

A: Can we look at the accounting ---

Q: Yes.

A: --- that I filed yesterday?

Q: The accounting or the Inventory and Appraisement?

A: Well, let's look at both.

Q: I'm happy to present you with a copy of both.

A: Okay.

MR. WINGATE: Just on the details, while he's refreshing his memory about those, did you ask that 101-B and 101-C be marked as exhibits?

MR. SLOTCHIVER: No, because they're already part of the whole Exhibit ---

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MR. WINGATE: That's great. Thank you.

MR. SLOTCHIVER: --- Number One.

A: Based on the interim accounting, the ending balance is $511,306. Your question was if it costs a million dollars can the estate pay for it. Based on this accounting, it could not. Based on the Inventory and Appraisement, it's $1.438 million worth of value. Yes, there's enough money in the Inventory and Appraisement to pay for a million dollar home.

Q: The Inventory and Appraisement reflects the assets that your father had at the time of his death or does it reflect the current value of the assets?

A: It should reflect the value at his death. Things just -- I mean, we keep -- I keep finding more things, which is why we've -- I guess this is the -- well, we filed an original and then two supplementals.

Q: So, you think based upon the most recent filed Inventory and Appraisement that the estate could afford to pay to build a home if it cost a million dollars.

A: Well, it certainly -- it shows sufficient estate value to pay for it, yes.

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Q: What if it cost two million dollars?

A: Well, then the answer is no because I'm showing $1.438 million.

Q: So, is it your testimony that if the house construction was to cost more than the value on the Inventory and Appraisement, of 1.4 and change, that then it would not be possible to build the home that your father indicated in his will he'd like to be built on this property owned by the trust.

A: Based on the current documents, I would say -- if I heard you correctly I would say yes. If it cost's 2 million and we're holding $1.4 million in assets, then there's not enough money to build the home.

Q: When you were at the -- you went to visit the Gunston Hall property you said many years ago. Have you since reviewed any photographs of the inside of the home -- whether online or -- I think you indicated you had not seen the ones that your sister, Rachel, took.

A: I have not. You know, I know that I have seen pictures of it out of curiosity. Because that's what -- I mean, because that's what we've heard all of our lives, that this is a

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home that Papa wants built on The Farm. And over my lifetime, I definitely -- if I'm at a bookstore, I will definitely pull a book and look at -- if it's on colonial architecture in Virginia, I definitely will pull a book and look. I mean, so ---

Q: Have you -- you've seen photographs of the inside of Gunston Hall at some point?

A: Yes, I know I have, yes.

Q: Okay. And the details of the craftsman ship -- -

A: Well ---

Q: --- of the interior in terms of the moldings, the fireplaces?

A: I'm sure that it is -- I'm sure it's elaborate.

Q: Have you ever built a home yourself? Not personally, but -- well, I'll ask you. Have you personally ever built a home?

A: I never have.

Q: Okay. Have you ever hired somebody to build a home for you?

A: I never have.

Q: Okay. Are you aware at what general -- are you aware what it costs on average per foot to build a house, whether it's 200 foot, 300 foot,

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400 foot, $50 a foot?

A: You know, am I aware of what it costs? I'm sure that square footage can vary greatly depending on the ---

Q: The detail?

A: --- the detail, the quality of material, the size. I mean ...

Q: What would you think a low-end construction cost per foot would be versus a high-end construction cost?

A: I would say -- I mean, I'm speculating here, but I would say a low-end would be $75 a square foot, $80 a square foot. If it's built on a slab. High-end? I mean, you can run it up as high as you want to depending on the quality of material that goes in it. I mean, I don't -- you know.

Q: Three hundred, four hundred, five hundred a foot?

A: Two, three, four, five hundred dollars a square foot would be -- would be a high end I guess depending on your pocketbook.

Q: I think that the renovation of the Charleston County Probate Court ended up topping out or capping out about $900 a foot ---

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A: Right.

Q: --- which I thought was obscene, but I mean it can get expensive. I understand. And I'm not a contractor to know what the exact dollar amounts are, but you're testifying that it could be three, four, five hundred dollars a foot depending on the quality.

A: I am testifying that I am speculating on what it's going to cost until I have some kind of idea of what we're looking at. That is not my -- that is not my area of expertise, building a home, or even speculating on a price.

Q: I understand. I want to mark the Inventory and Appraisement. That's the next number. That would be number ---

MS. SHARP: Six.

MR. SLOTCHIVER: Six? And Number Seven will be the accounting?

(Defendant's Exhibit Numbers Six and Seven were marked for identification purposes.)

Q: Give me one moment. I wanted to look at one thing. Although I understand you were speculating, or you are speculating as to what it would cost in order to build -- whether it's something similar to the Gunston Hall or some

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other property, the detail in Gunston Hall would be a higher end project. Is that correct?

A: I don't -- as compared to -- the thing is, I'm really not qualified to speak on the detail in Gunston Hall. I just -- for me to look at someone's workmanship -- I mean, you know, I do know that nowadays they make extremely fancy molding in PVC. I mean, the thing is -- and it's cheap. I mean, I don't know. I have no idea. I really want to leave that up to someone who can help us.

Q: Okay. But what I can take away I guess from so far is that you don't know what it would cost to build, you haven't spoken with anybody with reference to what it's going to cost to build other than your sister, correct?

A: That is correct.

Q: And she's not provided you with any numbers -- your sister being Rachel, but she's not provided you with you with any amounts that she's been informed of that it may cost to build. Is that correct?

A: That's correct.

Q: But you don't know what the square footage of

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the home is?
A: That's correct.
Q: You don't know how many bedrooms are in the home?
A: That's correct.
Q: But that if it would cost more than the value of the assets listed on the Inventory and Appraisement, then it would not be possible to build?
A: Based on the numbers that are presented, that is correct.
Q: Which means that if Gunston Hall is 7,000 feet, and it a cost in excess of $205 a foot, that it would not be possible to build. Does that sound right?
A: Well, what is 7,000 times 205?
Q: 1,438,573, which is the amount listed on your Inventory and Appraisement filed yesterday.
A: If that is -- if that is the correct total, then we're right on the cusp, yes.
Q: Okay. Bear with me just a moment. Would it surprise you if I told you that there's been an estimate done as to what it would cost to prepare Gunston Hall and that number would be between four and five million dollars?

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A: If there's been an estimate, I mean, I would say, I guess I would believe you that there's been an estimate. I mean, I have not seen the estimate and, you know ...
Q: But that price amount would not surprise you?
A: Well, whoever -- I don't know how to answer that. I mean, I don't -- I know nothing about the estimate.
Q: Okay.
A: And I really don't -- I really don't have the expertise in building or estimating costs to really lend much of any credible opinion about per square foot cost of a home. I just ---
Q: It's all right, we can move on. The Farm property that's owned by the two entities ---
A: Okay.
Q: --- that, I think we've established earlier today is owned by the Kearse Education Trust.
A: It appears that way, yes.
Q: Okay. Have you requested the consent -- you as personal representative requested the consent of the trustees for which you were one of, of the Kearse Education Trust to be able to build this replica of the Gunston Hall with the modifications that your father wanted on the

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trust property.
A: Have I been given ---
Q: Have you requested the trustees of the Kearse Education Trust their permission, their consent to allowing the estate, assuming the estate had sufficient funds to do it with, to build this house?
A: Formally I have not. I have not written down a formal request.
Q: Did you not think that was -- that would have been appropriate, prudent?
A: Under the current situation, I don't think so.
Q: Do you know what it would cost once the home is constructed ---
A: No.
Q: --- to maintain it?
A: No, no.
Q: Taxes, insurance, maintenance? No idea?
A: No.
Q: Do you think that would be important to understand before you actually were to build that home to make sure that it could be maintained?
A: I think it would be important. I think the more information you have the better.

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MR. SLOTCHIVER: Which Exhibit was the will?
MS. SHARP: Number Two.
THE WITNESS: Yep.
Q: Take a look at Number Two.
A: Oh, sure.
Q: I'd request you go to page three of your father's will under item six. The third line down says, I have some money that should be enough to complete it. What is your belief what your father was referring to when he said I have some money that should be enough to complete it. What is it?
A: It would be the house, the subject of all of this.
Q: Do you know what money he's referring to?
A: Well, he has left money -- he's left -- I mean, how do you answer -- you're supposed not to answer a -- use the same word to -- you know, to answer what you're trying to say. But money in this case would certainly be, in my opinion, everything that is in the estate. Certainly not -- it starts with the estate, I guess, it does.
Q: So, when -- is it your understanding that money would involve the Series-E bonds that your

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father had?
A: yes.
Q: The Series H -- I said E, I meant to say EE bonds and the HH bonds.
A: The ones that are in his name, yes.
Q: As listed on your Inventory and Appraisement that was filed yesterday?
A: Yes.
Q: Okay. And would those monies also include the bank accounts that were listed on the Inventory and Appraisement?
A: Yes.
Q: And that would include the Allendale County Bank Farm checking account?
A: No. No, it would be all the liquid income that is in the -- I think all of those accounts have been closed.
Q: Well, I'm -- what I'm referring to is at the time of his death ---
A: Oh, sure.
Q: --- not where they might have been merged into since his death ---
A: Right.
Q: --- but at the time of his death it would include the Allendale County Bank Farm account

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that ended in '06.
A: Yeah, I -- this -- yes.
Q: And there was a separate Allendale County Bank Subdivision account.
A: Yes.
Q: And there was a separate Palmetto State Bank checking account.
A: Yes.
Q: And there appears to be another Regions Bank account, which was a checking account.
A: Right, yes.
Q: The monies that are listed down here on the Inventory and Appraisement ---
A: Let me get the Inventory and Appraisement. Okay.
Q: It would be -- there's two sections that are going to reflect liquid assets: One is Schedule B, which would be stocks and bonds, and those are the bonds we discussed. What was the total amount of the bonds value at the time of your father's death?
A: These bonds had matured ---
Q: What's the value you listed down ---
A: Well, you know what, I've got $37,000 is what we've got.

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Q: Okay. And what about under Schedule C, which would have been for his bank accounts.
A: All right. Schedule C, we've got $566,023.63.
Q: So, if we take, for example -- give me those numbers? It was 567?
A: 566 ---
Q: Hold on one second. 566?
A: 023 ---
Q: I apologize.
A: It's okay.
Q: 566,023.
A: .63.
Q: .63. Plus?
A: 37,000.
Q: Even?
A: Yes.
Q: It would total at $603,023.63 if those numbers added up to be that number, you are in agreement with that? I won't ask you to do the math in your head. I couldn't do it.
A: I'm in agreement to that total.
Q: Okay. So, the monies that your father's referring to would have had to have been those funds in your opinion?
A: It definitely would have included -- I think it

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would have included those monies, yes.
Q: Okay. And let's go back to the will for a moment. Just to your left, right ---
A: Oh, right in front of me, yes, okay.
Q: If you go to page four, item eight. Can you read the first four lines for me into the record?
A: Item eight?
Q: Eight, yeah.
A: Eight, okay. I give, devise and bequeath any monies in any banks, bonds or any cash in my possession, included but not limited to gold and silver coins, to the Kearse Educational Trust to be held in reserve by the trustees of the said trust to be -- to pay future ad valorem taxes on the real estate after all monies have been exhausted from the trust, that is rent or proceeds from timber.
Q: Okay. So, is that confusing to you?
A: Well ---
MR. WINGATE: Object to the form of the question.
Q: Let me rephrase it. Does the last sentence -- second to last sentence of Art- -- of item six seem to conflict with the first four lines of item eight?

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A: Well, based on what I know of my father, no.
Q: I'm asking you based on the will itself.
A: You ---
Q: The four corners of this document. Do you think there is a contradiction in what your father's stating?
A: The words could reflect a contradiction, yes.
Q: Is it your testimony that your father's estate should be required to build Gunston Hall or a home similar, excuse me, to Gunston Hall, out of the estate funds -- estate monies, on the property owned by the trust?
A: You know, it's my position that he certainly meant for us to build the house, to use the assets of the estate, and even to consider assets in the trust.
Q: I think you testified earlier that your father would not have had the ability to control under his will what the trust does.
A: But it was his intent and I think -- and we ---
Q: Respectfully, I'm not asking -- and I do mean it respectfully, I'm not asking about what your fathers intent may or may not have been. I'm asking about under the will what it states and your duties as a personal representative of the

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will.
A: Is to use the estate funds to build a home.
Q: And that -- you don't have any concern that item eight states that all the monies in any banks, bonds or any cash in his possession, included but not limited to gold and silver coins, are to go to the Kearse Educational Trust? Is that not concerning to you?
A: No.
Q: Do you -- do you think that raises a potential conflict like we discussed before about the ownership interest of The Farm property or the stock that owns The Farm property since you're serving as a personal representative and serving as a co-trustee, you're serving as a personal representative of your father's estate and you're serving as a co-trustee of the Kearse Educational Trust? In this provision, item eight states that the bank accounts, bonds, which would appear to be the EE bonds, HH bonds, the bank accounts we went through, as well the gold and silver which we've not addressed yet but I understand it's worth about 140 or 150,000. That would appear to be going specifically to the Kearse Educational Trust

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under item eight, for which you have a fiduciary duty to protect the beneficiaries' best interest, but your taking a position that's contrary to the trust by stating it should be used to construct a home pursuant to item six. I'm just trying to understand ---
A: Okay.
Q: --- how you formed your opinion.
A: My position is this Petition for Instructions was filed to remedy any conflicts, and thus the purpose of drafting and filing the petition.
Q: Who prepared the Petition for Instruction? The first one. Not the amended, the first one.
A: I prepared the majority of it. I ran it past Mr. Wingate and he helped draft it.
Q: Was he retained at that time?
A: I don't know if he was retained or not.
Q: Well, I don't want to ask you anything about -- anything to be attorney/client privilege. I just want to know who drafted it. If he was not retained at that point there would not have been a privilege, so.
A: Well ---
MR. WINGATE: Clarification on the record. Your question or statement then, Steve, misquotes

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what he said. He did not say that I had not been retained, he said he did not know.
MR. SLOTCHIVER: Noted.
A: And the majority of the petition was developed by myself and Mr. Wingate. I did forward the petition to my sister, Rachel, so that she could look at it as well.
Q: Did she make any edits?
A: She made some comments, yes. If that would be an edit, she did.
Q: What do you recall her comments being?
A: I don't know. Let me see. Hold on. She certainly critiqued me from a grammar perspective -- from a punctuation perspective.
Q: I've been told that on myself. I always needs someone else to help critique me on that. So, I appreciate that point.
A: Bear with me. I'm just kind of running through it right now.
Q: How did you send it to your sister? Did you e-mail it to your sister?
A: I'm not sure. I will check. I will be glad to share that with you. Rachel and I discussed this and, you know, we just -- you know, I basically was just bouncing this petition off

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of her for her feedback, for her input.
Q: Okay. We can move along.
A: Okay. I'm sorry I can't give you more. I can look at this and it's -- so much has happened since then with just everything.
Q: Do you have an extra copy of the amended petition that you filed with the court?
A: I should -- well, let me ---
Q: Let me take those other exhibits back.
A: Oh, I'm sorry.
Q: That's all right.
MR. WINGATE: What was this, Steve?
MR. KEARSE: The amended petition.
MR. SLOTCHIVER: The amended Petition for Instruction.
MR. WINGATE: You've got everything.
A: I thought I had included that. Maybe this -- I might have to get a copy for you. You don't -- obviously you don't have one.
Q: I've got one but I've only got one.
A: Oh, I got you, okay.
(Off the record discussion)
Q: I'm going to mark as the next exhibit, the Summons and Petition for Instructions marked amended, which will be number -- we'll see in

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just a minute -- Number Eight.
(Defendant's Exhibit Number Eight was marked for identification purposes.)
MR. SPEIGHTS: Number Eight?
MS. SHARP: Uh-huh.
MR. WINGATE: What were six and seven?
MR. SLOTCHIVER: Number Seven was the accounting and Number Six was the Inventory and Appraisement. When I refer to those, the accounting filed yesterday at 3:53 and the Inventory and Appraisement filed yesterday at 3:53.
MR. WINGATE: Thanks.
Q: All right. Mr. Kearse, you've got the Summons and amended petition that you filed or that was filed on your behalf on June 3rd, 2016 for the Petition for Instruction in front of you?
A: I do.
Q: Okay. I'd like to take a look at page three of that document, paragraph number fourteen. I'd like for you to read into the record the first four lines of paragraph number fourteen.
A: The Petitioner asserts that the estate is currently possessing sufficient funds to constrict the house and furthermore, that the Decedent intended that these funds be used for

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such purposes and that only unused estate funds remaining after the construction of the home be held in reserve to pay future ad valorem taxes on trust real estate.
Q: Now on that you state that you're asserting -- you're the Petitioner, correct?
A: That is correct.
Q: You're asserting that the estate is currently possessing sufficient funds to construct a house. So I want to know if you haven't consulted with a contractor or an architect or any professional that can give you what that value would be, an estimate, then how are you asserting to the court in this filing that the estate is currently possessing sufficient funds to construct the house?
A: Well, I had to take a position here for the court to hear this matter, and I think it would have been -- I mean, for me to take the opposite standing would be ridiculous.
Q: Have you ever filed a Petition for Instruction before?
A: I've never filed a Petition for Instruction.
Q: Have you ever been involved with a case that dealt with filing a Petition for Instruction?

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A: I don't think -- I don't know. I -- I -- I don't know. I probably have not been but I can't -- I don't know for sure.
Q: Couldn't you have stated to the court that you don't know whether or not the estate has sufficient assets to construct a home rather than stating that it current possesses sufficient assets to build a home?
A: Well, sure. I could have said that.
Q: Wouldn't it -- don't you find it to be somewhat misleading by stating to the court that the estate is currently possessing sufficient funds to construct the house?
A: Well, when I look at all of the instructions left by my father through the estate and though the trust, I made the decision that I felt like there was sufficient funds to do this. Could I have drafted it differently? I could have.
Q: So you think the $603,000 amount that we talked about before would be enough to construct Gunston Hall?
A: I want the court to give me some instruction on what funds we can use to build the house.
Q: For argument sakes, assuming the court interpreted the will and the two provisions

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that we discussed before, article six and article eight, -- item six and item eight -- let me pull the will out to make sure I'm not misspeaking, I apologize. I'm not trying to confuse you or anybody else. The will states under item six, I give and bequeath all monies except the ad valorem tax money to be used to build the house, okay?

A: Uh-huh.

Q: Under item eight it says, I give, devise and bequeath any monies in any banks, bonds or cash in my possession, including but not limited to gold and silver coins, to the Kearse Educational Trust, okay? Assuming the court decided that item eight was not applicable, it ignored it -- I don't think it will, but assuming that it did, and the court said Mr. Kearse, we agree with you that you should be entitled to use all the monies in the estate. We've already been through the Inventory and Appraisement. You've already determined that the monies in the estate was $603,000. So my question for you is, do you reasonably anticipate that's enough money to construct the Gunston Hall?

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A: Until I see the plans and the estimates, I can't answer that. Until I provide those to you and to the court.

Q: You've already informed the court that the estate had currently sufficient funds to construct the house.

A: I want the court to take a look at what funds are available and let the court help us determine what funds are available.

Q: What other monies could be available from your father's estate besides what we went through?

A: Well, there's land that is in the name of the estate.

Q: So you think the land could be interpreted under your father's will as ---

A: I don't ---

Q: --- excuse me, you think money ---

A: I don't know.

Q: I'm not done with my question yet, sir. I apologize. But you're indicating that you believe monies under item six of your father's will could be interpreted to include the value of the real estate owned by your father's estate?

A: I don't know.

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Q: Let's look at page six of your Petition for Instructions.

A: Okay, I'm on page six.

Q: I'd ask you to take a second to read the last full paragraph that begins with the word, Whereas.

A: Do you want me to read that or just ---

Q: No, read it to yourself.

A: Okay, okay.

Q: When you're done, just let me know. There's no race here.

A: Okay, I am done.

Q: Okay. So, you have a series of things that you are praying to the court to address for your in your Petition for Instruction. Is that correct?

A: That is correct.

Q: And the first one is the construction of the home is a major requirement of your fathers will. You want the court to affirm that's your belief.

A: Yes.

Q: And I think we -- you testified earlier that if it turns out that that property was not owned by your father or your father had no interest

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in the corporations that owned the real estate, that he would not have the ability to require the estate to construct a home on that property. Want me to restate it?

A: I don't think -- I don't know if I said it -- I don't know if I said that. I don't know if I said that. I don't know ---

Q: Well, let me put it a different way. Do you believe that the estate can require the trust to allow it to construct a home on the trust property?

A: I think that there is -- I think that there is evidence here that would allow this home to be built on trust property. Do you believe that the estate, and you as a personal representative of the estate, can require the trust to allow the estate to build a house on the trust property?

A: I think I would be breaching my fiduciary duty if I didn't find out through the court.

Q: So you're answer is yes? Can I put a provision in my will that directs that my estate construct a shed on your backyard?

A: That's not -- that's not -- that's not the same. It's clearly not the same.

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Q: Tell me why.
A: Well ---
Q: I'm just trying to understand it.
A: I know. I know. My father drafted his will and this trust, and he did so knowing that his wishes were going to be followed through. He expected his children to do this. This is not something that he put in writing and did not share with us. We have heard this our entire lives.
Q: Show me in the will where it allows that to take place. Have you conducted any research or engaged the services of somebody to conduct any research to provide you with a legal basis for being able to do that?
A: I have an attorney ---
Q: Are you ---
A: --- who is assisting us with this.
Q: Are you aware of -- are you personally aware of any cases or other legal authority for requiring the trust to allow the estate to construct a home on it's property?
A: I can't recite a case to you right now that will support that.
Q: Are you aware of any case without recalling

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what the name of it would be?
A: I -- you know, I've -- I would -- I'm sure that I have -- I don't know. I can't answer that. I don't know. I know I have looked into this but I have brought my attorney in -- our attorney to look into this.
Q: Who is our attorney?
A: Well, Mr. Wingate.
Q: Who is our?
A: Well, okay, my attorney.
Q: Im just asking a question.
A: I understand. I understand. I apologize for that. That was incorrect.
Q: You then state, designating and prioritizing the funds -- this is on page six -- designating and prioritizing the funds available for consideration for the construction of the home. Tell me what you're trying to state in that blurb: Designating and prioritizing the funds available. Which specific funds under the Inventory and Appraisement are you referring to? I'm happy to provide you with another copy of that if you'd like. It's number six. Take a look at that, please.
A: Well, it certainly would appear that anything

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in the estate starting with the liquid assets would be the first source of finances to build or construct this home. As you move away from the liquid assets, the test becomes a bit more strenuous. I understand that.
Q: Well, the liquid assets would consist of which categories again?
A: Well, liquid here meaning money in the bank.
Q: All the items ---
A: Savings bonds.
Q: --- all of the items listed under Schedule B and Schedule C on the Inventory and Appraisement that was filed yesterday?
A: Certainly B. Well, B, possibly F.
Q: On F you're referring to the silver and gold?
A: Yes. And C of course, the -- the -- but ---
Q: And you don't believe that item eight in your father's will that states: I give, devise and bequeath any monies in any banks, bonds or any cash in my possession, including but not limited to gold and silver coins to the Kearse Education Trust, You would ignore that provision?
A: No, I'm not ignoring it.
Q: Do you think you have a duty as a trust -- as

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a co-trustee of that trust to maximize what comes to the trust?
A: I have a duty -- I have a duty to abide by the will, to follow the will and to protect the interests of the estate, and -- and -- but I also have a duty -- because there is disagreement here, I feel as though I have a duty for instruction to help us determine where we go with this.
Q: You've got a conflict, don't you? The court reporter's going to need an answer to that question.
A: Do I have a conflict? Possibly.
Q: I'm going to move along. Mr. Kearse, are you familiar with the updates that were done to the Probate Code in the last couple of years?
A: I've ---
Q: Generally familiar with them?
A: Well I have them at my disposal, yes.
Q: Are you familiar with the fact that the court can now hold any party to an action personally responsible for any costs incurred by any other party?
A: Yes.
Q: You understand that could include -- if the

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court was to disagree with your position, that could include not just your sibling's legal fees incurred, but conceivably the legal fees that you've incurred on behalf of the estate?
A: Yes.
Q: I'm getting closer, by the way, to winding down. I know it's been a long day. On the Inventory and Appraisement ---
A: Here -- don't let me slip away with that.
Q: Bear with me just a moment. Okay, I'm going to mark this as the next exhibit. It's the supplemental number one Inventory and Appraisement that was filed on June 26th, and I did bring an extra copy.
MR. WINGATE: This is going to be number nine, I believe.
(Defendant's Exhibit Number Nine was marked for identification purposes.)
MR. SLOTCHIVER: That's my understanding.
Q: I'll have you take a quick look at that before I ask you any questions.
A: Okay. I looked at it.
Q: Bear with me one moment. This was signed and filed by you on June 26th, 2015. Is that correct?

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A: I did sign it on June 26th, 2015.
Q: Okay. And this would have been an update to the original Inventory and Appraisement?
A: It would be.
Q: And if I told you the only distinction between this one and the original one was the listing of the bonds for $37,000, would that sound accurate?
A: Well, no, it's not. Wait a minute, wait a minute. You're saying -- oh, from the original?
Q: The original.
A: I think from the original, yes. I think -- I mean, I don't have the original in front of my but I think it -- I think I did -- I did ad the bonds.
Q: That's my understanding of it for what it's worth.
A: I think that's correct.
Q: Okay. But at that time in June of 2015 -- you've been handling the administration of your dad's estate since around October of '13, I believe. Is that correct?
A: Uh-huh.
Q: He passed away in April of '13.

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A: I think we opened the estate in October. I don't know. Hold on. October 21st, 2013 was when this estate was opened.
Q: So in June of 2015, you've been in charge for about 20 months or so?
A: That's correct.
Q: Okay. When I look at that one versus the one you filed yesterday, which is Exhibit Number Six which I'll hand you, I think the only distinction you're going to see appears to be the inclusion of the gold and silver.
A: Yes, I think that's correct.
Q: And I guess that's done in error because on the first page of the one you filed yesterday you did not list it under the recapitulation section.
A: Hold on one second. The gold and -- you're saying the gold and silver is not listed?
Q: Not on the recapitulation section of the -- hold on maybe it is.
A: I thought it was.
Q: Oh, I apologize, it is. My mistake. Okay, so the only change to it -- can I see Number Eight for a second -- the one that you filed?
A: I've got six and nine.

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MR. WINGATE: Number Nine is supplemental. Number One ---
Q: Let me see the one you filed. I'll give them right back to you. I apologize. My -- my error. Okay. So, the change between the first supplemental and the second supplemental is to include the gold and silver?
A: That was the intent, yes.
Q: Okay. Where did your father keep the silver and the gold?
A: In a safe in the office.
Q: How may safes did your father have?
A: Papa's got three safes in the office.
Q: Three in the office?
A: I think. There's two, and then the one in my office is three. Is there anymore? I think that's it. Three.
Q: Did he have any other safes at his house, The Farm?
A: He's got one at The Farm. And you're going to see I actually had it opened, and in that safe was ancestry information, and I put it back in there and locked it up.
Q: That was all that was in that safe at The Farm?
A: That was all that was in there?

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Q: How about have you inventoried the three safes that he had in the office building?
A: Well, there's one safe that he and I used for business, wills, just important documents that we need to keep locked up.
Q: Is there anything else in that safe?
A: No -- I mean, that safe, I consider that the business safe, you know?
Q: Okay. Where is that safe located?
A: That one's in my office because that's the one I go into all the time.
Q: Okay, that -- that is -- when you say your office are you referring to in your office within that building?
A: In my office within that building.
Q: Okay, not in terms of the office building generally but in specifically your office?
A: That is correct.
Q: Okay. Where are the other two safes located in your office building?
A: Papa's got a little room that he built when we added on to the office, and he has those two safes in there, they're really big.
Q: And have you inventoried those two safes?
A: Well, the smaller safe has Mama's silver in it.

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Papa-- it has guns and silver.
Q: These your mom's guns or your dad's guns?
A: They're not my mothers.
Q: Okay.
A: They're Papa's.
Q: I learned to ask that question. I have a couple of friends with wives that like guns better than their husbands do.
A: Well, and I think that the other safe ---
Q: Let's keep on that one with the guns.
A: Okay.
Q: How many guns did your father have in that safe?
A: There must be about six or eight, I would think
Q: What kind of guns are those?
A: Shotguns, rifles.
Q: Have you listed those down here.
A: I have not listed those on any inventory. I have not.
Q: Okay. When you say listed on inventory, you're referring to any inventory filed with the court?
A: Right. I haven't -- I haven't gone through and listed each and every item.
Q: Is there a reason why you haven't listed them

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-- the guns on the inventory? Whether it was the first, the second, or the third draft -- or not draft ---
A: No, not at all, and certainly that's something we can do. I don't -- you know, everybody's -- I mean, I think most of my siblings probably know what's I that safe. I mean, Mama's silver and guns are in that safe.
Q: Well, I think you're mother's silver -- I haven't spoken of but I'm assuming that's your mother's silver and that would not be part of what we're talking about today. That would be your mother's assets.
A: I have -- let me tell you, I have -- I don't know what silver's in there but I think my sisters probably do because they know that kind of stuff.
Q: What I'm trying to inquire is whether or not each of those safes have been inventoried so we know what's there ---
A: No.
Q: --- and what was there at the time of your father's demise.
A: Okay. Well I do know that my brother Gordon, he knew about the gold and silver. I had -- I

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actually asked Gordon to come in and count it, and Gordon came in and cou- -- I think I included that in my discovery. Gordon came in and counted it, and bef- -- and Gordon had indicated what was there before he counted it.
Q: What I ---
A: And he was ---
Q: That was kept in the safe?
A: Uh-huh.
Q: When did he -- when did he inventory it?
A: I don't know. I provided those documents to you, and it was just -- it was Gordon's little handwritten ---
Q: And I haven't had the opportunity to go through all of it.
A: It wasn't too long ago because I know that my siblings wanted to get into the safe and I opened it up. We had a meeting back in April, I think, and they wanted to go in and look and I opened up the safe and let them -- they all went in there and looked -- they looked. I mean, there's a lot of family stuff in there. I know when people die, family, for some reason they take the decedent's purse and they wrap it up and -- I mean, there's some -- there's some

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really old coins in there and watches ---
Q: Those things you have not -- you haven't itemized.
A: I haven't -- I haven't inventoried. And you know, that's family stuff and I don't know -- honestly, I would like for the family to come together and try to figure out what to do with that stuff because -- and I know that the will says something but, you know, I don't know. I don't know. I just ...
Q: Is there any clause ---
A: No, there isn't ---
Q: Well, I got to ask the questions first.
A: Okay, I'm sorry.
Q: I apologize but I've gotta ask the question. Is there any clause in your father's will that leaves his personal things, his guns, the coins, et cetera ---
A: It says, I think, all the rest, reside and remainder, everything goes to the trust. Isn't that ---
Q: Well, I see ---
A: I'd have to look at the will.
Q: I call your attention to item seven of the will ---

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A: Okay.
Q: --- and item eight.
A: Okay.
Q: And item seven was stating ---
MR. WINGATE: Can I interrupt for second?
MR. SLOTCHIVER: Yes.
MR. WINGATE: Can we put that in front of him if you're going to ask him a question?
MR. SLOTCHIVER: He's got it.
MR. KEARSE: I have it.
MR. WINGATE: I'm sorry.
MR. SLOTCHIVER: He's got it, I believe.
A: Just state again, if you don't mind, which paragraphs or sections we're looking at.
MR. WINGATE: Okay, tell me ---
Q: It's on page four of your father's will, item seven is a residuary clause, and it states what? The first three lines?
A: I give -- right -- I do -- item seven says I give, devise and bequeath all the rest, residue and remainder of my property, both real and personal, of which I may die seized or possessed or which may be entitled to at the time of my decease to the Kearse Educational Trust.

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Q: Okay. And then under item seven [sic], the first three lines.
A: The first three lines it says, I give, devise and bequeath any monies in any banks, bonds or any cash in my possession, including but not limited to gold and silver coins, to the Kearse Educational Trust.
Q: So if there are coins in that safe, the will does direct where it goes.
A: It does, it does, it does, you're right, it does.
Q: Give me just a moment, please.
MR. SLOTCHIVER: I'd like to take just a couple minute break.
MR. WINGATE: Sure.
(A break was taken from 4:41 p.m. until 4:44 p.m.)
Q: So the gold and silver, you didn't have it itemized by your brother until recently but you know it was there.
A: I knew it was there, and Gordon -- Gordon -- there's other coins in there, they probably belong to Gordon. We would have to ask Gordon. Gordon was a coin collector ---
Q: Have you asked your brother Gordon about this?
A: Yeah, Im pretty sure he's got some coins in

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there.
Q: Have you asked him if he's got coins in there?
A: I have.
Q: And what did he say?
A: I'm pretty sure he told me that he had some -- he has some books that have coins in them -- as a child he had them. And I'm pretty sure they're in there.
Q: But -- okay. When did you first become aware there was gold and silver in the safe?
A: Gordon -- I've -- Papa told -- Papa told me -- I don't know, a long time ago, and I don't know how long a long time ago was but well before he died. Gordon knew about it probably before -- oh, I know. Gordon actually took Papa -- I think he went somewhere in Augusta? That's what I was told, to get the gold. So, Gordon knew about it from the very onset.
Q: And you had known about it from what your father told you but you hadn't actually gone in ---
A: I had never laid eyes on it.
Q: It's been valued on that Inventory and Appraisement that you filed yesterday at $159,000 and change. Is that correct?

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A: Whatever I put on there, yes.
Q: I affirm to you that you stated $159,791.51.
A: Okay. Well, that's what we put. Yeah, 159,791.51.
Q: As the personal representative of your father's estate, don't you think that's a significant asset that you should have known about and/or marshaled and controlled?
A: I never lost control over it.
Q: But you never inventoried it. You didn't know where it was.
A: I knew where it was.
Q: Is there anything else in that safe that you believe that has value that's not been inventoried?
A: Like I say, there's those family coins and stuff. I think -- there's some things that Papa had in there, I -- you know, whatever he had in there is what's in there and -- I'm trying to think what else is in there. Mostly what he had in there was some personal stuff. But, I mean he's got these documents in there. Not just court papers and whatnot that obviously meant something to him and they are in there and I don't -- but obviously the gold

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and the silver are, you know, the most valuable things in that one safe.
Q: Who has access to the safe besides you? Who knows the ---
A: I've got it.
Q: Does anybody else have access to the password or whatever the combination is?
A: No, no.
Q: Okay, so it's secured in your mind.
A: Absolutely.
Q: But you do agree that that gold and silver represents a little bit more than 10 percent of the value of your dad's estate?
MR. WINGATE: Object to the form of the question. You can go ahead.
A: Well, you say the gold represents more than 10 percent?
Q: Or approximately. I'm okay with that.
A: Well, based on the numbers we put down, yeah, yes, I'm sorry.
Q: All right. The accounting that you filed yesterday.
A: Okay.
Q: It's already been produced. I'm not sure what the number was.

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A: Seven.
Q: Number Seven. Can you pass that back to me for just a moment?
A: I don't -- here's ---
Q: Oh, you know what, it's in front of me. I apologize. I will pass it to you in just a minute.
THE WITNESS: Was it Seven or Six?
MR. WINGATE: Seven, Six was the Inventory and Appraisal.
Q: Did you prepare this accounting?
A: I did.
Q: Did you prepare the first accounting as well?
A: I did. I need to look at them though. I'd like to see them. Hold on. Let me see if I can ---
Q: I can provide you with a copy of the first accounting. We can introduce.
A: Okay.
MR. WINGATE: So it's just numbering -- that's going to be number Ten?
MR. SLOTCHIVER: Number Ten.
(Defendant's Exhibit Number Ten was marked for identification purposes.)
Q: Did you prepare the first accounting as well?

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A: The interim number one?
Q: Yes, sir.
A: I did.
Q: Okay. And, if you -- do me a favor, take a look at the attachment to the accounting.
A: The check register?
Q: The check register, that's correct. And I'd like you to look at both of them, both for the first accounting and the second accounting.
A: Okay.
Q: There's a reason for this question.
A: Okay. Well I'm looking at the first, where's the ---
MR. WINGATE: Number Seven and Number Ten.
MR. SLOTCHIVER: Oh, number Seven is right here.
MR. KEARSE: I've got number Ten.
MR. SLOTCHIVER: That's number seven.
THE WITNESS: Okay. All right. Okay.
MR. SLOTCHIVER: Nope, that's inventory.
MS. SHARP: Inventory?
MR. SLOTCHIVER: Other accounting.
MS. SHARP: Okay, on the other accounting. Let's see. The first one you're talking about?
MR. SLOTCHIVER: No, the ---
MR. WINGATE: Here, you can refer to mine.

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MS. SHARP: This is the second one, I've marked on it ---
MR. SLOTCHIVER: That's okay, I just want to look at it for a minute.
MS. SHARP: Okay. That's fine, you can.
Q: So, you're looking at the checkbook register on both the first accounting and the second accounting, and what I'm trying to make sure that I understand ---
A: Okay.
Q: --- is that -- the first item is dated March 17th, 2014.
A: March Seventeen, Two thousand ---
Q: And it says -- the pay column, it says beginning balance, and then the balance amount is 4,452.79. That's correct on both of them, correct?
A: Well, let's see.
Q: I'm just trying o determine -- let me tell you what my question's going to be. I'm trying to determine if everything on the first page is the same on both of these. Were there any changes made to any of the accounting entries from the time of the first accounting to the time of the second accounting or is it just a

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continuation of expenses?
A: It's a -- I think this is a continuation. I mean, obviously ---
Q: It would appear that way to me. I just, I don't want to spend a lot of time on something if we're spinning our wheels doing it.
A: Right, and if -- I mean, if you look, the numbers appear, I mean, the last number on page one is the same thing. I mean, obviously we must be, you know, deducting the same -- the same numbers throughout, you know. I would say it's the same thing, yes.
Q: Since you just filed yesterday and you prepared this, I guess I'm asking you, do you recall anything off hand that you would have changed on the initial accounting for an entry between March 17th, 2014, up through February 12th, 2016? It's not a trick question. I don't think you did, I just -- I'm just asking to try to clarify things.
A: I don't -- No, I don't. Papa died June 10th, 2013. Let me say this: I did provide to y'all, and this has been provided to my siblings also throughout this entire process, but I gave you in the discovery, I copied all

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of the statements -- there were nine of them -- there were nine different accounts, and I provided y'all that in discovery, okay.
Q: We're going to come to that. And I'll indicate that it appears on the first accounting, on page five of the check book register ---
A: Okay.
Q: --- that the last item -- the last entry item was February 12th and it had a balance at that time of 107,108.21. And that would appear to be the same balance as of February 12th on the updated account.
A: Well ---
Q: So what you included it looks like was probably about a dozen and a half entries. I just want to make sure that's all I need to look at on the new accounting, not the ---
A: Right. Yes, sir, that's right.
Q: Okay. That's what I wanted to accomplish. Now on that, the expenses that you would have incurred on behalf of the estate would be paid by the estate, correct?
A: Yes.
Q: I mean, as personal representative you would only be paying the administration expenses of

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the estate or making distributions to the beneficiaries of the estate. Is that correct?
A: That's correct.
Q: I didn't look, obviously at -- or not closely, at the accounting that you just filed, but it looks like the one that you filed previously, the first accounting -- had about 200 or 250 entries approximately. I'm not asking you to verify that, I'm telling you that's what it looks like to me, about 50 per page.
A: Probably so.
Q: And I'm looking at a number of expenses dealing with The Farm.
A: Right.
Q: A number of expenses, whether it's for electric, whether it's for gas, whether it's for phone, whether it's for a Roy Mixen or a Lorraine Mixen.
A: Gotcha.
Q: Why would the estate be paying farm expenses if The Farm's owned by the trust and not by the estate.
A: I have always been involved in what's going on at The Farm.
Q: But you've got two hats on.

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A: Well, I -- right. But whatever I did, I did bring it to the attention of all my siblings, and we actually reimbursed certain -- I mean, for certain expenses they were reimbursed to the estate. And ---
Q: So you admit that you paid certain things from the estate that were not obligations of the estate?
A: Yes. Yes, I admit that.
Q: Okay. I see there's some education expenses paid as well, a number of them to a Mary Catherine, which is one of your nieces. Is that correct?
A: Right.
Q: Is it your belief now that that should have been paid by the estate or by the trust?
A: Well, we were transitioning through all of this but -- but, yes, the trust should have been paying it.
Q: Okay. But you, in your capacity as a personal representative, paid it instead.
A: Well, yes, that's true.
Q: In terms of -- what are the regular expenses running on the actual estate? Do you know offhand?

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A: Since January 1, 2016, I wrote a letter to everyone because there was -- there was some expressed discord -- discontent with what I had done. And I -- I wrote something to the accountant, I wrote something to my siblings and I told them that as of January 1, 2016, I was not going to do this anymore because it was ---
Q: Do what?
A: Write any checks that were not estate related.
Q: So up until then, for the first two and a little bit more years of the administration, you were writing checks for non-estate related expenses?
A: That is correct.
Q: Okay. Tell me about -- I think it's on January 30th, 2015, check number ---
A: Hold on, hold on.
Q: This will be on page -- I think page three of that printout.
A: January ---
Q: Thirty of 2015. Page three.
A: Okay, I got it.
Q: It's about maybe eight or ten numbers down. It's check number 181.

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A: Right.
Q: Farmhouse Bedding. What is that?
A: Well, we had been cleaning up and fixing up a place for people to stay at at The Farm. And we had some brand new beds that are still out there -- and bedding and everything that went with it, two queen sized beds and all of the bedding, and we, in essence, sold that to the trust -- to the estate.
Q: You sold the bedding to the estate?
A: I did. And ---
Q: On -- and just on that note, on what basis?
A: Well, because I had been cleaning up and fixing up out there for people to use the property, to go out there and stay, to -- well, I mean, we had some scheduled hunts out there. And -- but in response to this, it was this and a few other things that caused some of my siblings to disapprove of what I did, and so what I did was I reversed that. I just -- I just said, you know -- I paid them back and that's kind of what led to me saying I can't -- I'm not going to do this anymore.
Q: Okay. So would that involve the equipment trailer, which is the next item?

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A: That was -- that was the other thing, and I reimbursed the estate.
Q: Twenty-five hundred dollars?
A: That was all together and I just -- I just, you know ---
Q: When did you reimburse the estate?
A: I would have to look and see. I'm not sure. But it wasn't -- Rachel came -- my sister, Rachel, came up to me and said Morgan, you need to do something about that. And I said well, the only thing I can do now is just simply pay the -- pay the estate back.
Q: Did you pay the estate back -- was it this year? It will be on the accounting, won't it be?
A: I think so, it should be, yes.
Q: Let me -- I don't have the new accounting in front of me. Let me look at the new accounting for just a moment.
A: That was 5,000 some-odd dollars.
Q: I see it.
A: Where is it?
Q: It looks like it's on page 5 on December 21st, 2015.
A: December 21st -- wait a minute. No.

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Q: About four or five items down.
A: Wait a minute
Q: GHK reimbursement by JMK, $5,200.
A: Yes.
Q: Okay. So you did reimburse him but you did that in two thousand -- the end of 2015 for expenses that were previously incurred maybe in ---
A: Right. That's right. The numbers ---
Q: --- earlier in 2015 or 2014?
A: That's correct.
Q: Okay. Tell me about -- on page three of the accounting ---
A: Which one?
Q: Oh, either one will be fine.
A: Oh, sure. Page three, okay.
Q: I see May 15th, 2015. This is probably seven or eight numbers from the bottom.
A: Okay. May ---
Q: Check number 209 to the Kearse Law Firm.
A: Right. An attorney fee.
Q: An attorney fee.
A: Right.
Q: Twenty-five thousand dollars.
A: That's correct.

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Q: Tell me what that is.
A: That would be my five percent -- and it's not even five percent, but it would be an administrative fee for everything I've done in this estate.
Q: Was that a personal representative commission or was that a legal fee?
A: Well, it's -- I don't -- it's not a legal fee and I didn't intend for it to be a legal fee. I didn't ---
Q: I just want to understand, that's all. But it was a -- some form of commission?
A: Well, by statute, and I guess you would base that on ---
Q: That was going to be my next question: How would you compute?
A: Well ---
Q: Do you know what the statute says?
A: It's liquid assets. It's assets that are not -- I mean, real estate doesn't factor in it. Now if you take real estate and convert it, then it becomes calculable. You would include that. But, I figured five percent of -- you know, even at -- with the cash in the bank account, well, the total cash would be -- what?

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Q: We talked about it before, it was going to be 603 not including the stock -- not including the gold.
A: Right, right. So it's not five percent, it's something less than that.
Q: But that's what that distribution was for.
A: Yes.
Q: Okay. Now on the next page, page four of the accounting ---
A: Okay.
Q: --- there was an HVAC farmhouse expense on September 4th, 2015, maybe 20 items down.
A: September 4th. Tell me what you're looking at.
Q: Item 229. Neeley Heating and Cooling
A: Right. $4,300. That was for the heating and cooling system out at The Farm.
Q: All right. That was one of the expenses that -- because I think you testified a little while ago that you said as of the beginning of 2016, the beginning of this year, anything you cut is going to be just for ---
A: Well, I hope so.
Q: You intended it to be?
A: Yes.
Q: Okay. And in that reimbursement you talked

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about -- of the 5,200, would that cover ---
A: No, the 5,200 does not cover that.
Q: Not the HVAC. Okay. But in terms of the next item being furnishings at The Farm, $1,500, which is check number ---
A: The furnishings in that trailer, I think those were the items that I added together and ---
Q: As well as the bed and bedding for The Farm ---
A: Yes, yes.
Q: --- $1,200?
A: That is correct.
Q: Okay. And obviously you cashed in some savings bonds this year.
A: I did. They had matured a number of years ago and I went ahead and cashed them in.
Q: All of them?
A: Just the ones that had matured.
Q: Okay. So that 7,000 that I see on page 5, and 4,742, these are on February 24th and February 26th, 2016, respectively.
A: Yes.
Q: That's part of the $37,000 in bonds listed on the inventory?
A: Yes.
Q: Okay.

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A: Let me say this, and I do want to point this out. I had my own personal bonds, and the next day ---
Q: It was inadvertently your bonds were deposited into the estate account so you had them transferred back out?
A: Yes, did you see that?
Q: I understand. I do.
A: All right. I just don't, you know -- and I gave y'all that information in the ---
Q: I saw it in the stack and I saw it here too, and I appreciate you bringing that up. There's some taxes that were to the town of Allendale on December 22nd, 2015, number 253?
A: December ---
Q: Twenty-second, 2015.
A: Okay.
Q: Check number 253. Do you know what that was on?
A: 2015 county taxes and it would have been -- it was written right at the end of the year, so it's got to be property taxes.
Q: But is that property taxes that might have been for something other than an estate piece, because you said you started January 1 of this

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year to ---
A: I hope not. I mean, no, it shouldn't.
Q: So that should be for ---
A: It should be -- and you should have those bank statements with the copies of the check. I don't -- I don't know if ---
Q: Okay. But that should be for property owned by the estate?
A: Yes.
Q: Okay. Same thing for the town of Fairfax?
A: Oh, yes, absolutely. This -- the estate owned some property in Fairfax in the town limits, yes.
Q: There were some expenses that you incurred -- or that you paid on behalf of the estate for office grounds maintenance. Do you want me to point out some specific instances of it? If you look at page one ---
A: Page -- okay.
Q: --- page one of the check register.
A: Hang on, okay, page one, okay.
Q: May 7th, 2014, number 104.
A: May 7, all right, and check number what?
Q: 104 to Jesse Youmans.
A: Right.

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Q: Office Grounds or Yard Maintenance. What is that?
A: Jesse was working -- I feel almost positive -- it says -- does it say, yeah, yard maintenance. Jesse was working over at Mama's house that's what it -- you know, Jesse was working over at Mama's house -- and I provided all -- the check registry -- I provided the check registry to everybody. I mean, they saw that, but ---
Q: Well, this would have been an expense to take care of your mother's property?
A: Right. To clean it, yes.
Q: And same thing with David Wilson, check number 109.
A: Right. And what we've done is that would have been the same thing. I do know that David -- David may have cleaned up the office yard. I don't know if -- where we stand with that.
Q: Have those monies been reimbursed yet?
A: I don't -- the thing is, I would have to go back and look and see. They probably have not. David was cleaning up Mama's yard.
Q: Okay.
A: And the office yard is right next door. Now, I don't see it as -- it's not a huge expense,

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but then again, I mean ---
Q: Just going through the numbers, that's all.
A: Okay. But, you know, certainly if this is something that ought to be reimbursed, the house -- I had David Wilson cleaning up Mama's yard from the very beginning. And for -- and there's been -- I think there's been reimbursement to the estate for David. Not ever? Okay. Well, maybe we should consider that.
Q: And then we've got Restoration Landscape.
A: That's David Wilson.
Q: That's his company? Okay.
A: Yes.
Q: Because I saw them kind of going on throughout the next page as well.
A: Right. David is now -- he's no longer taking care of my mother's yard but he does take care of the office, and I pay David for that. I pay him out of the office account.
Q: Right. Not out of the estate account, out of the office account.
A: No, no.
Q: Okay. Let me take about another two minute break to talk with my client for a moment.

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A: Okay.
(A break was taken from 5:13 p.m. until 5:17 p.m.)
MR. SLOTCHIVER: Ken you had an extra copy of the Defendant's Number One for 400 some-of pages?
MR. WINGATE: I've got my copy of it, yes, I do.
MR. SLOTCHIVER: Can you let your client look at it as I point out certain page numbers?
MR. WINGATE: Absolutely.
MR. SLOTCHIVER: Okay.
MR. WINGATE: There, it begins at 001. Please try to keep them in sequence.
THE WITNESS: I won't drop it.
Q: I'll first want to go to page 77 of that exhibit.
A: Sure.
Q: These are going to be a series of very quick questions, by the way.
A: I'm sorry, what?
Q: They'll be a series of very quick questions. I'm going to try not to be as long-winded as best as I can. On page 77, do you have that available?
A: I do.
Q: It's a letter from your firm or from you to the Department of Revenue.

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A: Right. Well, yes. You want to know what that's about, or -- I'll just answer your questions.
Q: You indicate in the second paragraph of that letter that your father died in June of 2013, that his widow, your mother, has requested that these funds be paid to her, and as personal -- and that you're the personal representative of your father's estate. Is that correct?
A: It is.
Q: Well then you're asking the court to forward a check payable to whom?
A: It says please forward this check to Post Office Box 521, Allendale, 29810.
Q: What are you attempting to do by this? Are you asking the State to reissue the check just payable to your mother?
A: They did. I think they did and I thought I gave that check to Beth.
Q: Is there a reason why ---
A: I was told that Papa was not -- that Papa was not entitled to that money for that month but that his widow would be, like it was some sort of benefit. So I went ahead -- and they would have made the check out to Mama. So ---

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Q: Was this a tax refund or was this is a ---
A: It's a -- due -- claiming refund. You know what ---
Q: It appears to be an income tax refund.
A: It was a tax refund, and I think I had talked to Sharon Bramble about this too. I hope I've got something in my discovery. Well, do I have anything in the discovery?
Q: This is from your discovery.
A: Yeah, yep, yep, yep. Well, here's -- there's a check here -- it must be -- this must be the check. It's 79?
Q: Well, page 79 is actually a check that was issued on October 22nd, 2013, so it would appear that maybe you were having them reissue it, and I'm trying to understand what took place.
A: We did -- there was a check that was made out jointly to them and it had to do with Papa dy-- I -- hold on, let's see.
Q: My point of the question is were you asking the State to reissue it just in your mother's name?
A: Yes, yes, absolutely.
Q: Your believe as personal representative was that your father had no entitlement to any

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portion of that estate?
A: That's what -- and that's what that form indicates: Statement of person claiming refund due -- due a deceased tax payer.
Q: That's all I wanted to get across on that.
A: I think -- I'm pretty sure that's -- I know that's what -- hold on. Mama's the claimant. She's the surviving spouse. Papa's the decedent. Let's see what this says. Here is ...
Q: I understand that a check was issued and was deposited into your mother's account in approximately February of that year.
A: So you think we're okay with that?
Q: Well I don't know if you're okay or not, I just think that the check was initially issued to both your mom and your dad and then it was reissued just to your mom. I'm not going to advise you, I'll let your lawyer advise you on whether that was appropriate or not appropriate. Let's take a look at a different page, though.
A: Okay.
Q: Let's go to page 159.
A: Okay, 159, I'm looking at it.

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Q: That's a letter from you to Regions Bank. Is that correct?
A: That's correct.
Q: Take a minute and read that letter for me.
A: I've read -- I mean, okay.
Q: Just refresh your memory with it. Unless you've already -- if you're familiar with it, we can go on.
A: Right, okay.
Q: You're providing to the bank a copy of a power of attorney?
A: I did, yes.
Q: And that's the power of attorney that you received from your father?
A: That is correct.
Q: But it's not attached to this letter.
A: Oh. There's a power of attorney that's recorded over at the courthouse and I'll supplement that for you if you need it.
Q: I'm going to provide you with a copy of it right now.
MR. SLOTCHIVER: Do you have an extra copy of this?
MS. SHARP: Did I make another copy? I will real quickly.
MR. SLOTCHIVER: This is one that I have. I just

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want to make sure I've got one, and Ken might ---
MS. SHARP: I brought one in here this morning. Is that the one that ---
MR. SLOTCHIVER: That's the one I ---
MR. WINGATE: If you don't mind.
MR. SLOTCHIVER: Why don't you make four or five copies of it.
MS. SHARP: I will.
(Off the record discussion)
(Defendant's Exhibit Number Eleven was marked for identification purposes.)
Q: Take a look at what's just been marked as Exhibit Eleven. And is that the power of attorney that would have been submitted to Regions Bank as an attachment to item number 159.
A: It is.
Q: That's a durable power of attorney from your father to you?
A: It is.
Q: And that was signed by your father on May 20th, 2013. Is that correct?
A: That is correct.
Q: And it was witnessed by whom?

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A: It was witnessed by Bill Best and Rachael Best.
Q: And, I know who Rachael Best is, who is Bill Best.
A: Bill Best is Rachael's husband.
Q: And who notarized this?
A: Sandra Browning.
Q: And who is she?
A: Sandra used to work for me.
Q: She was working for you at that time?
A: That is correct.
Q: Where was your father located when he signed this power of attorney?
A: Papa was located -- he was in the hospital. He was in Columbia, Richland Memorial.
Q: How long had he been in there?
A: He had been in there for a number of days -- a number of weeks.
Q: A number of weeks?
A: I -- yes.
Q: And who prepared this power of attorney?
A: Well, it came out of my office. This thing -- it came out of my office so I guess that would be me.
Q: And I see that your father had signed it with an X.

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A: That is correct.
Q: Which was anticipated because at the time you prepared it you put on the signature line George H. Kearse by his mark.
A: That's correct.
Q: Who assisted him with making that marking, or did he do that on his own?
A: I'm not sure who assisted him.
Q: Is that his mark? Did he make it?
A: Well, I'm -- absolutely.
Q: Did you witness this?
A: My name is not on there.
Q: I understand that.
A: But I didn't witness.
Q: I'm sorry, I did not hear you: You did or did not?
A: I did not witness, no,, I did not. I wasn't present.
Q: You weren't present. Well if your office prepared this and your father's in Columbia, which isn't that far away, how did it get from here to there?
A: Well, my father, for a number of months asked me to be his attorney in fact through a durable power of attorney. And I told him no, no, no,

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you're going to be okay. On this day, Papa was -- he wasn't long for the world, and what we did was we -- I took the power of attorney and I put Rachael's name on some of his accounts so that we could pay bills. Because Papa had a lot of bills that he regularly paid and we had no access to his money, and that's what we did. We put -- and Rachael, for a while -- and I've included all those accounts with the checks, and you'll see Rachael's name on them. They're in the discovery.

Q: And I understand in my cursory review of this Exhibit Number One, the 400 and some-odd pages, that I remember seeing some bank account statements and such. However, regarding this power of attorney, it looks like it was recorded on June the 7th, 2013?

A: That -- I want to say that that was on a -- that everything was done on a Friday. Matter of fact, let me think. Everything was done on a Friday. And I contacted the lending institutions and they worked with me to do this. And the purpose was to be able to get to Papa's money just so we could keep things going until we opened the estate and -- but what I

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did was, all of the accounts that I've given you, it shows -- I mean, all of that, when he died -- Papa died the following Monday -- Monday early -- was it Monday morning or Tuesday morning? I don't know if it was -- I think it was Monday morning. Papa -- yeah, it was Monday morning. Papa died early before the sun came up the following Monday.

Q: After the date this was recorded.

A: That is correct. But what we did -- what we were doing is simply using his money to pay his bills. And you will see in the discovery that the checks that were written were a lot of the same kind of bills that the ---

Q: We're going to come to that.

A: Okay.

Q: My question -- let's look now at that June 7th letter to Regions Bank ---

A: Okay.

Q: --- and we'll come right afterwards to the same dated letter to Palmetto State Bank.

A: Okay.

Q: I'd like for you to read into the record the first two lines of the second paragraph.

A: It is my desire to name Rachael Kearse as

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signatory and joint owner with right of survivorship of all funds currently held by your institution in the name of G. H. Kearse.

Q: So, you're not ---

A: I'm not trying to take anything from Papa, I'm trying to say that if Rachael dies, Papa's got right of survivorship on those things. That's what we were trying to do.

Q: But these accounts that you're referring to, are these accounts that were solely in your father's name? Because you testified a few minute ago that the reason for adding on -- a reason for getting the power of attorney done was so that you could then start paying bills for your dad that needed to be paid. Which is -- I understand that part. What I don't understand is the reason ---

A: Yes, these were only in my father's name.

Q: The re- -- what I do not understand, I'm asking you, is why are you asking the bank -- you're the power of attorney, not your sister. Why are you asking the bank to put your sister's name as a signatory on your father's account first? So I'll let you answer that, then I've got a follow up question behind it.

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A: I felt like -- I don't now. I would rather not -- I -- that's kind of like the fox guarding the henhouse. I wouldn't want to do that. I put Rachael's name on there. I mean, I just felt like that that was an added safeguard.

Q: Why didn't your father just name Rachael as his power of attorney rather than you?

A: Because he trusted me.

Q: Then I'm asking why ---

A: But he trusted Rachael. I mean ---

Q: But if you were going to have her name added on to his account ---

A: And I did that.

Q: --- why didn't you -- you prepared the power of attorney. If he trusted Rachael, why didn't you say, dad, name Rachael.

A: To me, I felt -- honestly, I see that as an added safeguard. That was my purpose for it.

Q: All right. That was my first question. Let's go to the next part of it. And that is, the rest of that sentence, it says, as signatory and joint owner with right of survivorship of all funds currently held by your institution in the name of G.H. Kearse. Under what authority would you have to direct a bank as your

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father's power of attorney to switch his account from being his name to being his name with right of survivorship with your sister? Because all of a sudden -- saying what everyone's already thinking, all of a sudden -- or at least I was thinking -- you've added her on as -- you've made this asset that was a probate asset potentially a non-probate asset, and I want to know the basis for it. You altered your father's desires.

A: Right. My thoughts were if something were to happen to Rachael that money would flow back to my father.

Q: What happens if something happened to your father? Where would you think the money would go? You already stated that your father was in very poor health at that time.

A: You're right, it would -- it would -- it would go to Rachael, but ---

Q: How is that benefitting his best interest?

A: Because it benefitted his best interest. You can look at the checks and see. Don't -- I mean -- just look at the checks.

Q: It's -- you've altered his ultimate desires and I don't understand the basis for it. And I'm

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looking at the power of attorney, I want to ask you on that, the one that was done a few days or a week before your father passed where he signed it with an X, what authority you would have under the power of attorney to alter his estate plan?

A: The authority that I took was under the durable power of attorney and I ---

Q: Show me, please. Respectfully, show me what you're referring to because I don't see it.

A: One second. If there's any section of this that might come into play, it would be right at the tail end of this power of attorney.

Q: Show me specifically what you're referring to, please.

A: Well, to make such payments and expenditures as may be necessary in connection with any of the foregoing matters or with the administration of my affairs hereby giving and granting to said attorney full power and authority to do and perform all and every act and thing whatsoever as fully and to all intents and purposes as I might or could do if personally present with full power of substitution, revocation hereby ratifying and confirming all that my said

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attorney may do pursuant to this power. I used this power of attorney to name my sister, and I don't think that was without knowledge of others. Maybe after the fact, but I did ---

Q: I'm not asking whether or not anyone else had knowledge, I'm just asking ---

A: Right.

Q: --- whether or not, one, you think the power of attorney -- or show me where in the power of attorney you have the right to name ---

A: I think maybe that last section could possibly cover what I did.

Q: Is this your standard power of attorney that you use?

A: This is a standard -- well, yeah, it is. I do have -- I do have a power of attorney that deals with conveying property to yourself. I know there's -- I've made a few changes to my power of attorney but it's basically deeding property to yourself. I mean, but besides that ---

Q: Do you see in this power of attorney any provision that allows you to make a gift?

A: No, it does not.

Q: Is it your opinion that naming your sister,

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Rachael, not only as an authorized signor but as a joint owner with right of survivorship is the same essence as making a gift to her of what's in your dad's account at the time of his death?

MR. WINGATE: Object to the form of the question.

A: If it is construed as a gift, it never was gifted. Nothing was gifted.

Q: Whose idea was it to put her onto the account with right of survivorship?

A: It was my idea. But there was no intent to gift anything to Rachael.

Q: Okay, let's move along. And I'm guessing that's the same responses you will have with reference to the next bank?

A: That is correct.

Q: The Palmetto State Bank, item number 160?

A: That is correct.

Q: Okay. Was it your belief that after your father passed that the monies in those accounts should be your sister's, Rachael's, or they should have been the estate's?

A: They should have been the estate's.

Q: Did Rachael exercise any control over those accounts that you're aware of after your

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father's demise?
A: No. What I would do is I would actually write -- I would tell Rachael -- I would write the check and Rachael would sign it.
Q: I mean, signing the checks is exercising authority, isn't it? You were ---
A: Well, maybe, I mean -- I mean, I would -- Rachael never had access to any checks.
Q: Okay. From the time your father passed away in 2013, June I believe, up until the time that the estate was opened up at some point in October of 2013, any checks that would have been signed would have been signed by you as a power of attorney ---
A: No.
Q: --- or just signed by Rachael?
A: Signed by Rachael on only the accounts that she had been named. I think there may have been -- there may have been -- I think there were accounts that she was not named.
Q: But she was the one that would have been signing the checks. You might have given her the checks to sign and maybe you even prepared the checks for her to sign.
A: No, I prepared the checks and she would -- when

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she was in town she would sign them.
Q: Once the estate was officially opened in October of 2013, who then signed the checks?
A: Well, we did. We -- we ---
Q: Who's we?
A: Well, we -- I -- we had to close out these accounts and deposit that money into the estate account which is what we did. Were any checks written? I'd have to go back and check and see. I don't think that there would have been. It doesn't make sense that there would have been any checks written after we opened an estate account. But I don't know for sure.
Q: I'm looking at a series of checks and statements in your discovery responses, and we can look at some of these pages. I'm not going to go through each of them, but lets go for example to page 317.
MR. WINGATE: 317?
MR. SLOTCHIVER: 317, yes, sir.
MR. WINGATE: Give us a second just to keep things in sequence.
MR. SLOTCHIVER: I understand. Absolutely.
Q: I'm going to give you a further number. That's not a good example.

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A: Okay.
Q: Well, I say that -- give me just a moment. Let's actually go to number 319.
A: Oh, here it is right here.
Q: That's a Palmetto State Bank account statement?
A: It's a Palmetto State bank account, that's correct.
Q: What's -- the upper right hand side, what's the date of that statement?
A: It's closed 7/18/2014 -- is that what you're telling me?
Q: No, that's -- I'm looking for the date of the statement itself.
A: Oh, it is August 12, 2014.
Q: And what's the title on that account?
A: It's Kearse Farms, Rachael Kearse Best, J. Morgan Kearse POA.
Q: Now you had been operating that estate at that point for about 10 months, since October of 2013. Why was that account not changed? Why is it still showing Rachael's name and you as power of attorney?
A: Well, if you notice -- hold on -- hang on -- let me -- I might be able to give you an answer. Well ---

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Q: If you don't know, you don't know. I'm just asking the question.
A: There was an issue about -- I do know -- there was an issue about Joanne's land rent money that actually the check was deposited -- something -- if you notice something created a charge on the account and I had to go in -- and it took me a while to fix it, but it dated -- I think it stemmed from a check that was actually written to Joanne, 1238. I think ---
Q: Who is Joanne?
A: She's my aunt.
Q: No, 1238, that's on page 326.
A: But -- and I think what had happened, Joanne was written a check. There was an attempt -- there was something -- an attempt to void something and -- but anyway, it caused -- if you noticed, I kind of scribbled over, there was a five -- I mean, there was an overdraft in that one area, and I've got all of that waived. And I'd have to go back an research it, but something -- a check -- I think Joanne's check was voided. It wasn't -- it was -- I can't remember. I'd have to go back and check.
Q: We're going to come to that check because that

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check is specifically one of the things I wanted to ask you about.
A: Okay.
Q: Let's go to page 326.
A: Okay.
Q: Just let me know when you get to that page.
A: I'm on 326.
Q: Okay, I see on that page there are four checks, not including the deposit slip at the top, but there's four checks there. Is that correct?
A: That is -- there's four checks, yeah.
Q: And they're all dated in April of 2014?
A: That's right.
Q: And that would all be six months or seven months after you were appointed as personal representative of your father's estate, approximately?
A: That's right.
Q: And they're all -- under the signature line it all appears to be signed by somebody indicating Rachael Best. Is that correct?
A: That is correct.
Q: Would you recognize your sister's signature?
A: I would.
Q: Do those appear to be your sister's signature?

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A: Well ...
Q: Because 1238 does not look like the other two -- the other three checks. The signature on 1238 to your aunt looks nothing at all like check number 1255, 1236 or 1234 on that page.
A: Well, it does look different, but ---
Q: Who else could have signed that?
A: I have no idea.
Q: And I thought you indicated that you thought once you opened up the estate account that your sister Rachael would not have been signing any more checks, but there's four on that page.
A: Correct.
Q: Does that change your opinion as to what was going on?
A: Well, when was the estate account opened? I don't have that in front of me.
Q: Well, I'd venture to say at least by March 17th, 2014, because that's the first line item that you have on your accounting.
A: Okay, so it was opened in March. Well, you know ---
Q: These were checks written a month later.
A: Well, these are checks that were written out of my father's funds and they were applied towards

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my father's expenses and -- as was all of these accounts.
Q: So, in fact, if you look on page 329.
A: 329.
Q: Bates number 329.
A: I'm looking at it.
Q: There's 10 checks there, and all 10 of those checks were signed by your sister or appear to be signed by your sister?
A: That is correct. They're dated March 14th.
Q: Up and through the latest one was April 9th. Is that correct?
A: It appears so.
Q: And that's -- we're talking about the calendar year 2014.
A: Right.
Q: On the accountings that you filed, as recent as the most recent one yesterday, okay, I don't see -- and I don't remember which number it is but -- let me see if I've got it. Otherwise, you're going to have it in your stack somewhere.
A: Tell me what you're looking for.
Q: The accounting that you filed yesterday. It's going to be one of the exhibits probably over

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there.
A: Let me give this back to Ken.
Q: Okay.
A: All right. Tell me, you're looking for ---
Q: The accounting that you filed yesterday.
MR. WINGATE: Is that Exhibit Number Seven you're referring to, Steve?
A: No, this is -- yes, it's Exhibit Number Seven.
Q: That is it. That's correct.
A: Okay.
Q: What I'm looking for -- if you turn to the check register page, page one?
A: Okay.
Q: The first entry we talked about before was March 17th, 2014.
A: Okay.
Q: You were appointed in fact in October of 2013.
A: Okay.
Q: One of your duties as personal representative is to account for all receipts and distributions on behalf of the estate. Was there another accounting filed that I have not seen that would cover the time period from October of 2013 up and through March of 2014?
A: No, I do not think so. This is when the estate

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account was opened. I'd have to go back and check. Now ...
Q: Don't you think it's important and a personal representative to account to the courts and ---
A: I think maybe on my original accounting I -- I need to go back and check that. I need to go back and check that. Everything's been provided to you. If there -- if we ---
Q: You should have your original accounting right next to you as well, I believe. But it all started with March 17th of 2014.
A: Right.
Q: And I'm looking for the time period beforehand.
A: I see what you're saying. From the date of death---
Q: Right.
A: --- to that time period.
Q: I mean, I think you testified there was monies expounded from you dad's accounts or accounts that even though they might have been jointly titled right of survivorship with your sister you still considered them to be an estate asset.
A: I do. I do.
Q: So, I'm looking for an accounting on that

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portion.
A: I don't -- I don't have anything in front of me to show where -- if that has been filed.
Q: Do you recall preparing any kind of accounting to ---
A: I've p- -- yes. I have prepared some financial documents that would show the money in each one of those accounts prior to his death, with disbursements made throughout that time period between the date of his death and the date of opening the estate account. And there's also records to reflect the money being rolled in, being deposited into his estate account.
Q: So, you've got some kind of schedule somewhere that you'll provide to us?
A: I will. I sure will.
Q: That will show the monies that your father's account started with at the time of his death up and through at least the March date when you started the accountings with the court ---
A: Sure. I know.
Q: --- which you have not filed with the court as of yet that you recall.
A: I don't -- I don't know. Let me just -- let me look into that. I do know that I provided that

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information to my siblings as well.
Q: But it's not been filed with the court ---
A: Right.
Q: --- and you don't have it within the stack of stuff that your counsel ---
A: I don't know ---
Q: --- provided us this morning.
A: I will look and see.
Q: Okay. I only have two other things to question you about, okay?
A: Okay.
Q: And I apologize, I'm going to go back to that big stack. It's going to be page 330. That's page 330, towards the end.
A: Okay.
Q: It's a check.
A: All right, 330, yes.
Q: A check from Mark Tinsley and Diana -- Diane Tinsley to you. Is that correct?
A: Mark Tinsley made a check out to me, and that money, if I'm not mistaken, was provided to the trust. It would have been hunting rights.
Q: It says hunting lease on it.
A: Yeah.
Q: So that check would have been deposited into

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the trust account?
A: The check may have been deposited into the estate account but -- but I feel sure that that check -- that those funds were given to the trust. I'm sure that Beth can tell you.
Q: Give us just one moment.
A: And I may have -- well, obviously I --- it was a deposit.
Q: Okay, it was deposited where it needed to go.
MS. GOODING: 11/10/14.
Q: Let me hand that back. Last -- the last document I want you to look at is number 452.
A: Okay, 452. Hang on. Okay, 452, I'm looking at it.
Q: That's a -- is that a letter or a memo from Tom Bryant to your sister?
A: It's a letter from Tom Bryant to Beth.
Q: Okay. Did you have a meeting with Tom Bryant and your sister?
A: I did.
Q: Was it around that same date?
A: I don't -- I'm not sure. I don't know. Did he -- he might have referred to the meeting in here.
Q: Well, the last sentence ---

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A: I'm sorry I could not get this into your hands before our meeting at twelve today. So that would indicate that we did have something scheduled for September 24th at twelve o'clock. I guess that's right. I guess that's what it says.
Q: And do you recall discussing the interpretation of your father's will with Mr. Bryant?
A: I think I'm probably going to invoke privilege here.
Q: Privilege between you and Mr. Bryant in the presence of your sister?
A: Yes.
Q: For the record, is -- Ken, are you instructing him not to answer that questions?
MR. WINGATE: No, I am not, on the record, instructing him not to answer that question.
MR. SLOTCHIVER: Did I use a double negative?
MR. WINGATE: Yes, I did use a double negative. I would not object to his answering the question.
A: Okay. So what was the question? I'm sorry.
Q: That's -- listen, it's been a long day, and I know it's been longer for you then it has been for me. Mr. Court Reporter, can you let me know what the question was?

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COURT REPORTER: (Played back recording of question.)
Q: That was the question.
A: I was reading this. Repeat it or ---
Q: Do you recall discussing with Mr. Bryant the interpretation of your father's will?
A: I recall meeting with Mr. Bryant, with Beth, and we discussed the will. His interpretation, I guess I would have to go back and look at his notes or his letter here. I do know that he called Gunston Hall a pipe dream of my father's, and ---
Q: Do you know why?
A: Well, he said there wasn't enough money to build it. And, he was very quick to say that. And I was shocked. I was -- I wanted to understand more. But I was shocked because I didn't even know how much money I was holding at the time.
Q: Well, that conference was ---
A: I mean ---
Q: --- almost two years ago to today -- excuse me, almost three years ago from today. Is that correct? September the 24th, 2013. And if I'm not confused, today is September the 7th, 2016. In three years, you haven't investigated this

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to determine what it would cost?
A: To build the house?
Q: Yes, sir.
A: That is -- we're -- you're correct. We haven't come up with a price. We haven't come up with a plan, but ---
Q: Is this the only issue that needs to be addressed prior to being able to resolve this estate?
A: Building of the home is a major issue and -- or at least determining if this, if the home can be built and if there are funds to build it.
Q: And you understand as personal representative you've got a duty to administer this estate as swiftly and reasonably as possible.
A: Right.
Q: Three years to try to determine whether it was a possibility to build that home seems to be a little excessive. Don't you agree?
A: Well, I thought that we were going to be able to come to some sort of a consensus and it has just -- we haven't been able to. It's actually gotten worse. And I've got family members saying I'm going to sue you of you don't build it and I've got family members who are saying

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you're not going to build it. And that's not the way I want to go into anything, with that kind of discord.
Q: I don't dispute the fact that you're in a very hard position serving as a personal representative -- not an easy place to be. Not to mention the fact that you've got to answer to your siblings. I can appreciate that. But you still have that duty to act, and if you're unable to unwilling to do so, you always have the option of resigning.
A: Or filing a Petition for Instructions.
Q: That's -- that's your position, I understand. In terms of your meeting with Mr. Bryant, not only did he tell you that it was a pipe dream, did he also discuss with you that a house like that would cost in the millions? I would call your attention to paragraph C on page 452.
A: C?
Q: Last sentence.
A: Well, maybe he understands this better than I do. Maybe he understands the building of a house. I don't know. But ---
Q: Did he also point out to you, in paragraph D, concerns about what he property taxes would be

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in order to maintain a home of that stature?
A: Certainly taxes are going to be based on the value of the house, but I don't know what the value's going to be. I don't know.
Q: And let's take a look at paragraph B.
A: B. B as in boy?
Q: B as in boy. Could you read that out loud, please?
A: Item five attempts to transfer property, the law building, to Morgan, conditionally that Rip does or did not own -- of course, can I do that?
Q: So, he expressed to you what appears to be an opinion that your father was trying to do some things, maybe expressing desires, but things that he could not actually do. Is that a fair statement?
A: Well that's what he said, but my mother's trust mirrors -- I mean, my mother's trust and the deed is quite similar to the trust itself.
Q: But your mother's deed -- the property is not owned and was not owned by your father at the time of his death, nor does it appear ---
A: But doesn't that show intent? Doesn't that show my father's intent to dispose of property

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that he did have control over at one time? And he had buy-in from others to do this.
Q: The question is, where in the documents does it state that you can do these things? And if there's something that allows you to do it, I'd ask you to please point it out to me in the will because I don't see it. Are you aware of any provision in the will that allows you to do that?
MR. WINGATE: Object to the form of the question. Go ahead and answer.
A: It doesn't appear as though the will gives him that right, but there is evidence there to show that the deed -- the trust deed and the trust itself provide me with the same benefits. And there's no disputing that this is property that originated and was developed by our father. All of this property was. And he was setting this up.
Q: I think there's different ways to interpret that deed. One interpretation might be, which we discussed with your counsel, that your mother retur- -- reserved a life estate throughout her entire life time and that your rights to be able to access or utilize that

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property would not accrue until after she's gone. But that's going to be a question for a different person at a different time. I am done. Thank you very much. I apologize for going on this long.
A: You gotta do what you gotta do.
MR. WINGATE: Let's discuss mechanics. Are you intending to ask questions of Mr. Kearse?
MR. SPEIGHTS: Well, I'm certainly intending to ask questions of Mr. Kearse. The question is do I want to start now---
MR. WINGATE: Right.
MR. SPEIGHTS: --- or is it for another day.
MR. WINGATE: That's what I want to talk about.
MR. SPEIGHTS: I'm happy to talk about that. I'm also -- even if I started today and went for three hours today, I would want to review the documents we got today and more importantly the documents that he's going to supply in the next two weeks. So I am not wedded to starting today but if somebody wants me to go for a while today I'm prepared to do that today.
MR. WINGATE: I would suggest for efficiency that we not go forward today. Let us get to you each the supplemental documents that he's -- that

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you've asked about and he has indicated he will provide. That would be more efficient for your review. Let's hit it cleanly and fresh on another day.
MR. SPEIGHTS: That's fine. I have my calendar with me and I think we need to schedule this deposition -- the continuation of this deposition before we take the depositions of Elizabeth Gooding and Julia Sharpe ---
MR. WINGATE: I have no objections.
MR. SPEIGHTS: --- which are now on schedule, so either we need to move this into that date or find a date between now and then. I've got my calendar and am prepared to do it. But I think we need to finish this before we go to the other two and at some point Ms. Best probably realizes that we will be requesting her deposition but I understand that will be after her two sisters.
MR. WINGATE: Sure. So, just to clarify. I agree with you. You certainly may finish his deposition before I begin their depositions.
MR. SPEIGHTS: Good.
MR. WINGATE: So, I guess for record purposes, we could go ahead and close it out and we can sit

there right now and continue to look into calendars together. Is that acceptable with both of you?

MR. WINGATE: Yes.

MR. SPEIGHTS: Yes. Unless you want to give instruction to the court reporter abut the handling of these exhibits before we go off the record. He has one huge set, Exhibit One. I don't need a copy of Exhibit One. I don't know if anyone else does.

MR. WINGATE: I'd be glad to provide you a copy of Exhibit One. I'll give you one, Steve.

MR. SPEIGHTS: I do want the court reporter to know while we're on the record that I want a copy of everything that was separately marked. That way, tomorrow morning he'll remember what I requested.

MR. WINGATE: No problem.

MR. SPEIGHTS: With that, I have nothing further to say on the record today.

MR. WINGATE: Okay, I think we're ready to go off the record.

(There being no further questions, the deposition concluded at 6:18 p.m.)

SWB

SWEENY WINGATE & BARROW P.A.

February 1, 2017

Reply to: Main Office
Kenneth B. Wingate
(803) 256-2233 x7133
kbw@swblaw.com

VIA US MAIL & EMAIL (sodom@hamptoncountysc.org)
The Honorable Sheila Odom
Hampton County Probate Court
Post Office Box 601
Hampton, SC 29924

RE: Estate of G. H. Kearse
Case No.: 2013-ES-03-00063
Our File: 5330-10329

Dear Judge Odom:

This letter will confirm that the motions hearing scheduled for Thursday, February 2, 2017, will not be necessary. The parties have reached a global settlement in this matter, including the siblings who are pro se parties.

Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present. I would like to be excused from attendance at the hearing, if possible, to save the estate additional fees since all matters have been resolved. Please let me know if that is acceptable to the Court.

Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate. If you require any additional documentation in the future, such as stipulations of dismissal, please let us know.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

/ Kenneth B. Wingate

Kenneth B. Wingate

KBW/hai
cc: Steven M. Slotchiver, Esquire (via US Mail & Email)
Daniel A. Speights, Esquire (via US Mail & Email)
April Murdaugh, Clerk of Court, (via Email)
J. Morgan Kearse, Esquire (via US Mail & Email)

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February 23, 2017

The Honorable Sheila B. Odom
Probate Court Judge
Post Office Box 601
Hampton, South Carolina 29924-0601

Re: Estate of George Harold Kearse
Case No: 2013-ES-03-00063

Dear Judge Odom:

I am enclosing herewith a proposed Order in accordance with your directive at the conclusion of the hearing.

Please accept my high regards.

Respectfully yours,

Dan

Daniel A. Speights

DAS/rb
Enclosure

cc Kenneth B. Wingate, Esquire
Stephen M. Slotchiver, Esquire
J. Morgan Kearse, Esquire
Gordon Kearse
Rachael K. Best
Joseph W. Kearse

FEB 27 2017

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,	)	
Petitioner,	)	
vs.	)	ORDER
THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,	)	
Respondents.	)	

The Decedent, G.H. Kearse, died testate on June 10, 2013, survived by six children: William Gordon Kearse ("Gordon"); Elizabeth Kearse Gooding ("Beth"); Julia Kearse Sharp ("Julie"); Rachael Kearse Best ("Rachael"); Joseph Weber Kearse ("Joseph"); and John Morgan Kearse ("Morgan"). The Petitioner (Morgan) was appointed Personal Representative of the Estate and in that capacity subsequently retained Kenneth B. Wingate, Esq. as his counsel.

On April 8, 2016, the Petitioner filed a Summons and Petition for Instructions asking the Court to interpret the Decedent's Will. Two of the Respondents, Beth and Julie, filed responsive pleadings through their counsel, Stephen M. Slotchiver, Esq. and Daniel A. Speights, Esq., respectively. The other three Respondents (Gordon, Rachael, and Joseph) (the "Pro Se Respondents") did not retain counsel, although two (Gordon and Joseph) served Responses to the

Petition. The file reflects that all of the Pro Se Respondents have been served with all pleadings and notices of hearing.

On June 16, 2016, the Supreme Court of South Carolina issued an Order appointing the undersigned as a Special Probate Judge for Allendale County. Since that time, the parties have litigated the Petition for Instructions in this Court. Following limited discovery, Mr. Slotchiver filed a Motion for Summary Judgment on the Petition for Instructions and a Petition for Removal of the Personal Representative, and Mr. Wingate filed a Motion to Dismiss the Petition for Instructions.

The Court scheduled a motions hearing on Mr. Slotchiver's Motion for Summary Judgment and Mr. Wingate's Motion to Dismiss for February 2, 2017. Notice of the hearing was duly served on all parties. The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "The parties have reached a global settlement in this matter, including the siblings who are pro se parties" [Letter from Wingate to Court at 5:09 p.m.]. Mr. Wingate further advised the Court that, "Dan Speights will appear at the scheduled time tomorrow to read the agreement into the record, and will have a court reporter present" [*Id.*]. Finally, Mr. Wingate advised the Court that, "Among the terms of the agreement, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate" [*Id.*].

The Court called the matter for hearing as scheduled on February 2, 2017. Present were Messrs. Wingate, Slotchiver and Speights, and two of the parties, Beth and Julie. The Petitioner nor any of the Pro Se Respondents appeared, although they had notice of the hearing. Prior to the hearing, neither Mr. Slotchiver nor Mr. Speights had any notice that the Petitioner would attempt to

withdraw his consent to the settlement. [Tr. 15].

Before Mr. Speights read the settlement agreement into the record, Mr. Wingate advised the Court that, he did not have any document from the pro se litigants consenting to the settlement [Tr. at 5]. Mr. Wingate then took what he described as a "unilateral step" and submitted Petitioner's resignation as Personal Representative "irrevocably" [Tr. at 6]. Mr. Wingate informed the Court that as a result of this action, "all of his [the Petitioner's] authority is terminated or is frozen. He has no power to write checks. He has no power to file documents. He has no power to take action. He can do nothing but sit on the sidelines and wait for Your Honor to appoint a successor fiduciary or fiduciaries, whatever you decide to do, for this estate" [Tr. at 7].

Finally, Mr. Wingate told the Court and the parties that the Petitioner's "position will be that he does not consent to the settlement" [Tr. at 7]. Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows:

> I am certain Your Honor will hear arguments today that once I have represented to the Court yesterday in writing that we had a settlement that my party would be -- my client would be bound to that. That very well may be what you decide. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent.

[Tr. at 7].

Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record [Tr. at 11-13]. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. Mr. Wingate did not object to the introduction of any of the exhibits.

Mr. Speights then asked the Court to recognize the settlement. Mr. Slotchiver joined in Mr.

Speights' argument and pointed out that the two Pro Se Respondents (Rachael and Joseph), who had not delivered their consents, are not required to take any action under the Term Sheet. In any event, the record clearly shows, and the Court finds, that Rachael and Joseph advised the Petitioner that they agreed to the settlement before Mr. Wingate represented to the Court that a settlement had been reached, but they chose not to attend the hearing and dispute the settlement.

Following the presentations of counsel, the Court reviewed the Term Sheet and all of the exhibits submitted into evidence. At that point, the Court entered into the record the Final Term Sheet of Agreement as a family agreement and stated that an Order would be entered into the record and accepted on the terms as it is on the face of the agreement itself [Tr. 21]. This Order memorializes the rulings made from the Bench.

IN ACCORDANCE WITH THE FOREGOING, IT IS ORDERED AS FOLLOWS::

(1) The settlement set forth in the Term Sheet is approved.

(2) All parties shall comply with the Term Sheet.

(3) The Petition for Instructions is dismissed with prejudice.

(4) The Court accepts Petitioner's resignation as the Personal Representative. Effective February 2, 2017, Petitioner's authority is terminated. The Petitioner has no power to take any action. Petitioner will not issue any checks. The Petitioner shall not alter or destroy any estate assets or any documents or electronically stored information relating to the estate (including, but not limited to, any financial records, letters, emails, and social media messages).

(5) The Petitioner shall file with the Court an updated accounting within ten days of the date of this Order.

(6) Morgan shall pay Julie's legal fees and expenses incurred in connection with the

defense of his Petition for Instructions within seven (7) days of the date of this Order.

(7) Morgan shall pay Beth's legal fees and expenses within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(8) Morgan shall reimburse the Estate for all legal fees and expenses paid to Mr. Wingate, and shall be responsible to pay any outstanding legal fees and expenses owed, but not yet paid, to Mr. Wingate, within seven (7) days of the date of this Order. As set forth in the Term Sheet, Morgan may seek to have the Estate reimburse him for all or some portion of these legal fees and expenses.

(9) The Court will contact Algernon Gibson Solomons, Jr., Esq. and determine if he will agree to serve as the Special Administrator. In the event that Mr. Solomons declines to serve, the Court will appoint a neutral non-family member to serve as the Special Administrator.

(10) Immediately upon appointment of the Special Administrator, the Petitioner and his counsel shall turn over all estate assets (other than real estate) and all estate documents and electronically stored information to the Special Administrator. In the event that any such assets, documents, or electronically stored information are not in the possession of the Petitioner or his counsel, Petitioner shall immediately provide to the Court, with a copy to the Special Administrator and all parties, an itemized list of such assets, documents, or electronically stored information and the precise location and custodian of each such item.

IT IS SO ORDERED.

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina
February ____, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

AFFIDAVIT OF SERVICE BY MAIL

Re: Estate of George H. Kearse
Case No: 2013-ES-03-00063

PERSONALLY APPEARED before me Rhonda L. Bowers, who being duly sworn, deposes and says: that she is employed in the office of Speights & Runyan, attorneys for Respondent Julia Kearse Sharp in the above-referenced action and that she served the foregoing **proposed Order** this 23rd day of February, 2017, by personally depositing in a United States Postal Service mail box a copy of the same, postage prepaid, addressed to the attorneys and the unrepresented parties listed below:

Kenneth B. Wingate, Esquire
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
PO Box 12129
Columbia, South Carolina 29211

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

J. Morgan Kearse, Esquire
Kearse Law Firm, LLC
Post Office Box 521
184 Barnwell Highway
Allendale, SC 29810

Joseph W. Kearse
6620 Merrill
Columbia, SC 29209

Gordon Kearse
Post Office Box 221
264 6th Street West
Fairfax, SC 29827

Rachael K. Best
5055 Lakeshore Drive
Columbia, SC 29206

Rhonda L. Bowers
RHONDA L. BOWERS

SWORN TO before me this
23rd day of February, 2017

Rosemarie Lightsey (L.S.)
Notary Public for South Carolina
My Commission Expires: 11/26/2022

SPEIGHTS & RUNYAN
ATTORNEYS AT LAW
100 OAK STREET, EAST
POST OFFICE BOX 685
HAMPTON, SOUTH CAROLINA 29924
(803) 943-4444

DANIEL A. SPEIGHTS
dspeights@speightsrunyan.com

TELECOPIER
(803) 943-4599

August 28, 2017

Via Email
The Honorable Sheila B. Odom
Probate Court Judge
Post Office Box 601
Hampton, South Carolina 29924-0601

AUG 31 2017

Re: Estate of George Harold Kearse
Case No: 2013-ES-03-00063

Dear Judge Odom:

At the direction of the Court, I am enclosing herewith a proposed Order memorializing your rulings at the hearing on August 17, 2017.

Please accept my high regards.

Respectfully yours,

Dan

Daniel A. Speights

DAS/rb
Enclosure

cc The Honorable Sheila B. Odom (hand-delivered and U.S. Mail)
Matthew J. Myers, Esquire (via U.S. Mail/email)
Kenneth B. Wingate, Esquire (via U.S. Mail/email)
Stephen M. Slotchiver, Esquire (via U.S. Mail/email)
J. Morgan Kearse, Esquire (via U.S. Mail)
Gordon Kearse (via U.S. Mail)
Rachael K. Best (via U.S. Mail)
Joseph W. Kearse (via U.S. Mail)

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2013-ES-03-00063
COUNTY OF ALLENDALE	)	
J. MORGAN KEARSE, Personal Representative of the ESTATE OF G.H. KEARSE,	)	
Petitioner,	)	
vs.	)	ORDER
THE KEARSE FAMILY EDUCATION TRUST, WILLIAM GORDON KEARSE, ELIZABETH KEARSE GOODING, JULIA KEARSE SHARP, RACHAEL KEARSE BEST, JOSEPH WEBER KEARSE, and JOHN MORGAN KEARSE, of which all are named individually and as Trustees of the Kearse Family Education Trust under Agreement dated November 5, 1992,	)	
Respondents.	)	

Petitioner originally instituted this action by filing a Petition for Instructions asking this Court to interpret the last Will and Testament of Decedent, G.H. Kearse, who died testate on June 10, 2013. Respondents are the Kearse Family Education Trust ("**Trust**") and all of the decedent's children, individually and as Trustees, to wit: William Gordon Kearse ("**Gordon**"); Elizabeth Kearse Gooding ("**Beth**"); Julia Kearse Sharp ("**Julie**"); Rachael Kearse Best ("**Rachael**"); Joseph Weber Kearse ("**Joseph**") and John Morgan Kearse ("**Morgan**").

Respondents, Beth and Julie, by their respective counsel, Stephen M. Slotchiver and Daniel A. Speights, filed Responses to the Petition. Respondents, Gordon, Rachael, and Morgan, did not file Responses to the Petition. Respondents, Gordon, Rachael, and Joseph ("***Pro Se* Respondents**"), nor Morgan (individually) are represented by counsel.

This matter is now before the Court on a Motion to Alter or Amend or, in the Alternative, for a New Hearing ("**Motion**"). The Motion was filed on or about March 16, 2017, by "Petitioner, John Morgan Kearse, in his capacity as Personal Representative of the Estate of G.H. Kearse, by and through his undersigned attorney," Sweeny Wingate & Barrow P.A. ("**S▪W▪B**") (Kenneth B. Wingate and Matthew J. Myers). Petitioner seeks an order altering or amending this Court's February 27, 2017 Order ("**Order**"). No Respondent has filed a Joinder in the Motion.

Petitioner also filed a separate Notice of Motion and Motion to Dismiss Petition for Instructions, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Costs dated July 27, 2017. Although Petitioner attempted to argue this Motion (July 27. 2017), Mr. Slotchiver, on behalf of his client, objected that it was not properly before this Court, and the Court sustained the objection and denied the Motion.

By way of background, the Court scheduled a February 2, 2017 hearing to resolve several outstanding motions. The day before the hearing, Petitioner's counsel (Mr. Wingate) advised the Court that the parties had reached a global settlement which would be read into the record at the hearing. The following day, Petitioner, as the Personal Representative, appeared at the hearing through Mr. Wingate. Respondents, Beth and Julie, appeared and were represented by their respective counsel, Messrs. Slotchiver and Speights. Respondents, Gordon, Rachael, Joseph, and Morgan, did not appear individually or through counsel.

Following the hearing, the Court executed and filed the Order which Petitioner now challenges. The Order enforces an agreement ("**Term Sheet**", or "**Settlement Agreement**") entered into by all of the parties the day before the February 2, 2017 hearing. Petitioner particularly challenges the following provisions of the Settlement Agreement (Term Sheet):

3. Morgan shall immediately pay Julie's legal fees and expenses incurred in connection with the defense of Morgan's Petition for Instructions. Julie does not want the Estate to pay any of these fees or expenses.

4. Morgan shall be responsible for the payment of your [Mr. Wingate's] legal fees and Beth's legal fees. Morgan may seek to have the Estate pay all or some portion of these legal fees. In such event, if the majority of the other siblings (Gordon, Beth, Rachael, Joseph, and Julie) do not object to the Estate paying such fees, Julie will honor the decision of the majority.

[*Id.*]. In exchange for these considerations, Julie also agreed not to object to Morgan retaining the previously paid $25,000 P.R. commission, and to Morgan using their father's law office rent free so long as he complies with certain conditions set forth therein.

No Respondent, including Morgan, has joined in the present Motion or filed any pleading seeking such relief or otherwise challenging any provision of the Order. Additionally, no party (including Petitioner), has objected to this Court's Order dated March 20, 2017 appointing Harley Ruff as Successor Personal Representative.

In his present Motion, Petitioner asserts that "the particulars of the Final Term Sheet were not properly before the Court for consideration and, despite no evidence being taken thereon, were accepted by the Court in contradiction of various default rules of the South Carolina Probate Code." [Motion at 10]. Petitioner is mistaken. Messrs. Slotchiver and Speights introduced documentary evidence into the record at the February 2, 2017 hearing, including the Settlement Agreement (Term Sheet) and multiple emails to the Court and among counsel reflecting, among other things, that the parties had entered into the Settlement Agreement. Petitioner did not object to the introduction of any of this evidence.

Nevertheless, the Court has carefully reviewed Petitioner's request to reconsider its order in light of the record made before the Court at the hearing on February 2, 2017. Importantly, Petitioner

does not contest, nor seek to alter or amend, this Court's essential findings of fact, including the following findings which are particularly relevant to his current Motion:

- "The day before the scheduled hearing, however, Mr. Wingate advised the Court that, "**The parties have reached a global settlement** in this matter, including the siblings who are pro se parties" [Letter from Wingate to Court at 5:09 p.m.]." [Order at 2 (emphasis added)].

- "Mr. Wingate further advised the Court that, 'Dan Speights will appear at the scheduled time tomorrow **to read the agreement into the record**, and will have a court reporter present.'" [Order at 2 (emphasis added)].

- "Finally, Mr. Wingate advised the Court that, '**Among the terms of the agreement**, as you will see, my Petition for Instructions and Mr. Slotchiver's Petition for Removal of Personal Representative will be withdrawn, Morgan Kearse will resign as Personal Representative, and an agreed-upon special administrator will be appointed to conclude the administration of the probate estate.'" [Order at 2 (emphasis added)].

- "Mr. Wingate then took what he described as a 'unilateral step' and submitted Petitioner's resignation as Personal Representative '**irrevocably**.'" [Order at 3 (emphasis added)].

- "Mr. Wingate presented no evidence to the Court in support of his client's position and advised the Court as follows: **I am certain Your Honor will hear arguments** today that once I have represented to the Court yesterday in writing **that we had a settlement that** my party would be – **my client would be bound to that. That very well may be what you decide**. His position, however, is what I have said. Number one, he resigns. Number two, he does not consent." [Order at 3 (emphasis added)].

- "Mr. Speights read the terms of the settlement agreement (which the parties called a "Term Sheet") into the record [Tr. at 11-13]. Mr. Speights next introduced the Term Sheet into evidence, as well as exhibits clearly documenting that all of the parties had entered into a settlement the previous day. Among the other exhibits, Mr. Speights entered written consents executed by Beth, Julie, and Gordon. **Mr. Wingate did not object to the introduction of any of the exhibits**." [Order at 3 (emphasis added)].

- "Mr. Speights then asked the Court to recognize the settlement," and "Mr. Slotchiver joined in" the request. [Order at 3].

A full hearing was held on Petitioner's present Motion on August 17, 2017. Petitioner and his counsel (Mr. Myers) appeared, and Mr. Myers fully argued the Motion. Respondents, Beth and Julie, were present and again represented by their counsel, Messrs. Slotchiver and Speights,

respectively, both of whom fully argued their positions. In addition, Respondents, Rachael and Joseph, were present in the courtroom. Respondent, Gordon, was not present.

During his argument, Mr. Myers referred to the Affidavit of J. Morgan Kearse ("**Affidavit**") attached to the Motion. Messrs. Slotchiver and Speights timely objected to the Affidavit unless and until they had an opportunity to cross-examine the Affiant, who was present in the courtroom. The Court permitted Mr. Myers to continue and deferred ruling on that issue until after it fully heard the arguments of counsel. It is unnecessary to rule on the objection given the Court's decision as set forth below.

Following full argument, the Court advised the parties that for several independent reasons, the Motion does not set forth any basis for the Court to alter or amend its prior Order or to set this matter down for an evidentiary hearing. This Order memorializes those rulings.

First, and primarily, prior to the hearing, Mr. Wingate had an opportunity on behalf of his client to object to the presentation of the Settlement Agreement, or ask for a continuance. Mr. Wingate did neither. There is no correspondence, email, or telephone call from Mr. Wingate on behalf of his client seeking more time to present any argument why the Settlement Agreement should not be taken into consideration and received into this Court's record as it was presented many different ways that the parties were all in agreement.

Second, no testimony or evidence of any kind was offered by Mr. Wingate at the February 2, 2017 hearing, or by any of the *Pro Se* parties. Furthermore, there has been nothing filed with the Court from the *Pro Se* parties (or Morgan individually) from the date of that hearing to the current date.

Third, Mr. Wingate offered emphatically into the Court record on that day the resignation of

Mr. Kearse as the Personal Representative. While the Court heard from and considered all of Petitioner's arguments, the reality is that Petitioner is not the Personal Representative.

For those primary reasons alone, the Motion should be denied. Petitioner informed the Court that the Settlement Agreement was made and was going to be presented and read into record on February 2, 2017. That is exactly what happened. Petitioner did not object and chose to offer no evidence or even an argument against the enforcement of an agreement the parties entered into the day before.

Petitioner suggests that his Affidavit supports his position. In fact, the Affidavit supports this Court's findings as set forth in its Order. Specifically, Petitioner admits that he and the *Pro Se* siblings agreed to the settlement which the Court approved [Affidavit ¶10].[1] During oral argument, Mr. Myers also acknowledged this fact when he asserted that although the parties had entered into an agreement, Petitioner "backed out" at the February hearing. Again, it is uncontradicted that the parties entered into an agreement.

Furthermore, assuming everything in the Affidavit is true, which Beth and Julie dispute, every factual assertion in the Affidavit was known to the Petitioner at the February 2, 2017 hearing. Petitioner is not entitled to a second bite of the apple.

Finally, Petitioner asserts in one sentence at the end of his Motion that, "To the extent that

---

[1]While it is unnecessary to decide this issue, the Affidavit suggests that at some point in the evening before the February hearing, Petitioner – a fiduciary for all of the Respondents – circulated a separate agreement to the *Pro Se* Defendants (but not to Beth or Julie), seeking their agreement to support his fee requests. Petitioner asked the *Pro Se* Defendants to execute this "private agreement" not only as Respondents, but separately as Trustees of the Trust [Affidavit, Exhibit A]. According to the Affidavit, at some point after one of the *Pro Se* Defendants (Gordon) allegedly refused to sign, Petitioner decided to "withdraw" from the Settlement Agreement. For the reasons set forth above, Petitioner was not entitled to do that.

the Court does not alter or amend its Order dated February 27, 2017, as requested in this Motion, Petitioner requests a new hearing so that the parties may for the first time introduce evidence regarding the issues encompassed by the Order." [Motion at 10]. The request is not well-founded for two reasons. First, the central facts relevant to whether or not Petitioner may have a second day in Court are undisputed. Second, and more importantly, as briefly explained above, Petitioner appeared through counsel at the prior hearing and had every opportunity to introduce evidence. Petitioner chose not to request a continuance or produce any evidence.

For the foregoing reasons, Petitioner's Motion filed on or about March 16, 2017 is hereby denied.

IT IS SO ORDERED.

_____

The Honorable Sheila B. Odom
Probate Court Judge

Hampton, South Carolina

August _____, 2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF Allendale)	**AMENDED**
)	PROOF OF ADR OR EXEMPTION
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse)	
)	
Plaintiff,)	
vs.)	FILE NO.: 2017-CP-03-0244
)	
Elizabeth Kearse Gooding and Julia Kearse Sharp)	
)	
Defendant.)	
)	

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

_____	_____
Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
_____	_____
Print Name	Print Name
_____	_____
Phone/Fax	Phone/Fax
Date: _____	

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

a mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

John H. Tiller

3. The ADR was conducted on Feb 26 2018
And negotiations continuing thereafter.

4. As a result of ADR, this case should be considered (please check one);

() Fully Settled.

( ) by Consent Judgment, to be filed by _____

or ( ) Voluntary Dismissal to be filed by _____

( ) Partially Settled.

(XX) At an Impasse.

() In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☒ was present ☐ was not present
Defendant X was present ☐ was not present

6. Other participants were:

X Lawyers for Defendant _____
X Lawyer for Plaintiff _____
X Representative for Insurance Carrier _____
_____ Guardian *ad Litem* _____
_____ Experts
_____ Others _____

7. Choice of the neutral was by:

X Stipulation
_____ Court Order

8. The total number of hours spent in the ADR conference was: 6.0 hours.

9. Further comments of the neutral:

SC Bar 10174
Neutral's Signature

Date: June 19, 2018

DM: 2134266 V.1

BLUESTEIN ATTORNEYS

BLUESTEIN THOMPSON SULLIVAN, LLC

BLUESTEINATTORNEYS.COM

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

November 28, 2018

The Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
lmcintoshj@sccourts.org

RE: J Morgan Kearse, Personal Representative Of The Estate G. H. Kearse VS Willliam Gordon Kearse , defendant, et al
Civil Action No.: 2017-CP-03-00244

Dear Judge McIntosh:

This letter concerns an appeal from probate court you heard in Allendale in October. You issued a Form 4 requesting a formal order and I believe a formal order is in your queue for consideration. The Appellant in the case has filed a motion for reconsideration. A hearing has been set for December 18 in Beaufort.

Attached to this letter are an affidavit and three exhibits the Respondents will be offering for the Court's consideration at the upcoming hearing. The Respondents believe there is 'good cause' for the Court to accept this affidavit outside the initial 10-day period set in Rule 59(c) because even though the motion to reconsider was filed November 8th, it concerns a ruling made in a Form 4 that advised a formal order would follow. No formal order has been filed. Thus, the reconsideration deadline and the deadline for opposing affidavits have yet to formally begin.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Yours sincerely,

Blake A. Hewitt
BLUESTEIN THOMPSON SULLIVAN, LLC

BAH:emb
Enclosures
cc: The Honorable Robert J. Harte
Stephen M. Slotchiver, Esquire
Daniel A. Speights, Esquire
Matthew J. Myers, Esquire
Kenneth B. Wingate, Esquire

STATE OF SOUTH CAROLINA COUNTY OF ALLENDALE	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT
J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse, Appellant, v. The Kearse Family Education Trust and others, Respondents.	Case No. 2017-CP-03-00244 **AFFIDAVIT**

Elizabeth Kearse Gooding states that she is an adult over the age of eighteen and, under oath, the following:

1. I am one of the daughters of the late G.H. Kearse and a defendant in this case both in my individual capacity and in my capacity as a Trustee of the Kearse Family Education Trust.

2. The first attachment to this affidavit is a memorandum from Harley Ruff dated July 11, 2017 describing the transfer of estate assets to him following his appointment March 20, 2017.

3. The second and third attachments to this affidavit are deeds of distribution that were executed by Harley Ruff transferring various parcels of real property from my father's estate to the Kearse Family Education Trust.

FURTHER AFFIANT SAYETH NOT.

Elizabeth K. Gooding

Elizabeth Kearse Gooding

Sworn to and subscribed before me
this 28th day of November, 2018

Rhonda T. Lawson

Notary Public for South Carolina
My commission expires: 1/16/2024

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

Attachment 1

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

RUFF & RUFF
COUNSELORS AT LAW LLC

MEMORANDUM

TO: BENEFICIARIES OF THE ESTATE OF G.H. KEARSE
CASE NO: 2013-ES-03-00063 (ALLENDALE) and 2016-ES-25-00114 (HAMPTON)
FROM: HARLEY D. RUFF
SUBJECT: CONSOLIDATION OF ESTATE ASSETS
DATE: JULY 11, 2017

This is to summarize the consolidation of Estate assets following my appointment as Special Administrator on March 20, 2017.

In late March, the former Personal Representative, J. Morgan Kearse ("Morgan"), mailed me the Estate checking account, which had a balance of $93,852.75. On June 7, 2017, Morgan delivered the remaining Estate assets to my office, including gold and silver, which are now in a safe. Since then, I have:

1. Redeemed 10 savings bonds totaling $23,638.93;
2. Sold the sixty-seven (67) remaining shares of West Rock stock for $3,762.87;
3. Cashed out a money market account at Regions Bank in the amount of $200,314.23;
4. Collected $95.00 from the unclaimed property division at the South Carolina Secretary of State's Office; and
5. Withdrew the proceeds from a CD at First Citizens Bank worth $200,345.78.

I deposited all the above referenced funds and other small sums collected into the Estate checking account at Palmetto State Bank and paid Estate expenses as needed. In late June I made initial deposits to Ally Bank totaling $114,000.00 to open online savings and checking accounts that will earn 1.15% and .6% interest, respectively. After all this, the account balances are:

1. $400,930.61 in the Estate checking account at Palmetto State Bank;
2. $30,000.00 in the Estate checking account at Ally Bank; and
3. $84,000.00 in the Estate savings account at Ally Bank.

As soon as I receive checks and deposit slips from Ally Bank, I intend to transfer all of the remaining Estate funds currently held at Palmetto State Bank ($400,930.61) to the Estate accounts at Ally Bank.

In addition, this Estate has real property in Allendale and Beaufort counties, as well as property in Florida. My plan is to transfer title to all the real property to the Trustees of the Kearse Family Educational Trust through Deeds of Distribution.

I will continue managing the Estate assets until I am able to distribute all the assets, including the gold and silver, to the Trustees of the Kearse Family Educational Trust.

Thank you very much and please feel free to call me if you have any questions.

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Attachment 2

3 380 1008
10 Ruff Ruff

RECORDED
2017 Dec -05 01:25 PM
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 3623 Pg 1668
FILE NUM 2017063166
11/20/2017 03:43:21 PM
REC'D BY sherrellw RCPT# 851416
RECORDING FEES $10.00

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

RECORDING REQUESTED BY, AND
AFTER RECORDING PLEASE RETURN TO:
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
Phone: 843.524.5400

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF: BEAUFORT	)	**DEED OF DISTRIBUTION (Real Property Only) NOT A WARRANTY DEED**
	)	
IN THE MATTER OF: THE ESTATE OF G. H. KEARSE A/K/A GEORGE HAROLD KEARSE	)	
(Decedent)	)	**CASE NUMBER: 2015ES0700589**

The undersigned states as follows:

Decedent died on June 10, 2013; and probate of the Estate is being administered in the Probate Court for Allendale County, South Carolina in File # 2013-ES-03-00063. In addition, this Estate is involved in litigation in the Probate Court for Hampton County, South Carolina in File # 2016ES2500114.

I/We was/were appointed Personal Representative on March 20, 2017.

Decedent owned real property described as follows:

Tax Map Number: R700 027 000 0026 0000

Street Address: Black Beard Island

Legal Description: **SEE EXHIBIT A**

☐ Additional sheet(s) for additional property(ies) is attached (check if applicable)

This transfer is made pursuant to:

☒ Decedent's Will
☐ Intestacy Statute: SCPC 62-2-103
☐ Private Family Agreement: SCPC 62-3-912
☐ Disclaimer by: _____
☐ Probate Court Order _____
☐ Other: _____

This deed was prepared by Harley D. Ruff, Esq., of Ruff & Ruff, LLC, 17 Professional Village Circle, Beaufort, South Carolina, 29907, without the benefit of a title search or a title examination, and does not constitute an opinion of title.

ADD DMP Record 11/22/2017 02:32:45 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R700	027	000	0026	0000	00

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

In accordance with the laws of the State of South Carolina, the Personal Representative does/do hereby release all of the Personal Representative's right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachel Kearse Best, J. Morgan Kearse and Joseph W. Kearse, as Trustees of the Kearse Family Educational Trust dated November 5, 1992
Address: P.O. Box 521, Allendale, SC 29810

Name: _____
Address: _____

[ ] Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representative of the above estate, has executed this Deed of Distribution, on this 17 day of November, 2017.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: _____
Print Name: Denise K. Collins

Witness: _____
Print Name: Diana Wasielewski

Estate of: G. H. Kearse a/k/a George Harold Kearse

Signature of Personal Representative: _____
Print Name: Harley D. Ruff

If applicable,
Signature of Co-Personal Representative: _____
Print Name: _____

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF BEAUFORT

I, Diana Wasielewski, Notary Public, for the State of South Carolina do hereby certify that Harley D. Ruff, as Personal Representative of the Estate of G. H. Kearse a/k/a George Harold Kearse, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 17 day of November, 2017.

DIANA WASIELEWSKI NOTARY PUBLIC My Commission Expires 11/28/2022 SOUTH CAROLINA

_____ (SEAL)
(Signature of Notary Public)

Diana Wasielewski
(Print name of Notary Public
Notary Public for State of South Carolina
My Commission Expires: 11/28/2022

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP0300244

EXHIBIT A

ALL OF THE DECEDENT'S INTEREST IN AND TO:

All that certain piece, parcel or tract of land, being on the East side of Huspah Creek, known as "Black Beard Island" in Sheldon Township (10-0), County of Beaufort, State of South Carolina.

Said tract contains twenty-five (25) acres, more or less, as is shown on a map in the Beaufort County Courthouse No. 0027 parcel 0026 Block 0001.

Said tract of land is the same tract conveyed to the Decedent by Deeds of Rose McCoy Haywood, Margaret McCoy Hatcher, Francis McCoy and Theresa McCoy White, all dated May 21, 1979 and all recorded June 1, 1979 in the Office of the RMC for Beaufort County, South Carolina in Book 282 at Pages 746, 742, 750 and 754, respectively. And also by Deed of Mildred K. McCoy dated June 24, 1978 and recorded July 20, 1978 in the Office of the RMC for Beaufort County, South Carolina in Book 266 at Page 1814.

TMS No.: R700 027 000 0026 0000

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Attachment 3

ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

RECORDING REQUESTED BY, AND
AFTER RECORDING PLEASE RETURN TO:
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907
Phone: 843.524.5400

2018-625 DATE: 10/31/2018
DEED Book: 278 Page: 95 - 103
Filed for Record in ALLENDALE COUNTY ROD.
Deed of Distribution

STATE OF SOUTH CAROLINA)	IN THE PROBATE COURT
)	
COUNTY OF: ALLENDALE)	DEED OF DISTRIBUTION
)	(Real Property Only)
IN THE MATTER OF: THE ESTATE OF)	NOT A WARRANTY DEED
G. H. KEARSE A/K/A GEORGE HAROLD)	
KEARSE)	
(Decedent))	CASE NUMBER: 2013-ES-03-00063

The undersigned states as follows:

Decedent died on June 10, 2013; and probate of the Estate is being administered in the Probate Court for Allendale County, South Carolina in File # 2013-ES-03-00063. As of the recording of this Deed, this Estate is involved in litigation in the Probate Court for Hampton County, South Carolina in File # 2016ES2500114.

I/We was/were appointed Personal Representative on March 20, 2017.

Decedent owned real property described as follows:

Tax Map Numbers: multiple Tax Map Numbers

Street Addresses: multiple Street Addresses

Legal Description: **SEE EXHIBIT A**

FILED FOR RECORD
2018 OCT 31 AM 9:57
ELAINE SAUB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

☐ Additional sheet(s) for additional property(ies) is attached (check if applicable)

This transfer is made pursuant to:

☒ Decedent's Will
☐ Intestacy Statute: SCPC 62-2-103
☐ Private Family Agreement: SCPC 62-3-912
☐ Disclaimer by: _____
☐ Probate Court Order _____
☐ Other: _____

I hereby certify that the within Instrument was filed for record in the office of the Tax Assessor at 8:24 o'clock on the 31st day of October 2018 and was duly indexed and recorded in Book 9 Page 5 and is referred to in the files at this office as
Parcel No. 123-07-02-020, 123-06-60-[illegible] 105-11-01-045, 122-[illegible]-020, 019-00-00-048
Transfer No. _____
ALLENDALE COUNTY
HARVEY E. ROUSE, Tax Assessor
Allendale County, South Carolina

SCDOR EXEMPT
Tax _____
Paid 10/31/18
ELAINE SAUB

105-11-01-027, 105-02-06-018
120-00-00-034, 105-11-01-035, 105-11-01-010, 105-02-06-023

This deed was prepared by Harley D. Ruff, Esq., of Ruff & Ruff, LLC, 17 Professional Village Circle, Beaufort, South Carolina, 29907, without the benefit of a title search or a title examination, and does not constitute an opinion of title.

105-11-01-037, 123-07-05-035

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In accordance with the laws of the State of South Carolina, the Personal Representative does hereby release all of the Personal Representative's right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name:	W. Gordon Kearse, Elizabeth Kearse Gooding, Julia Kearse Sharp, Rachel Kearse Best, J. Morgan Kearse and Joseph W. Kearse, as Trustees of the Kearse Family Educational Trust dated November 5, 1992	Name:	
Address:	P.O. Box 521 Allendale, SC 29810	Address:	

[ ] Additional sheet(s) for names of additional beneficiaries is attached (check, if applicable)

IN WITNESS WHEREOF the undersigned, as Personal Representatives of the above estate, has executed this Deed of Distribution, on this 29 day of October, 2018.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: D. K. Call
Print Name: Denise K. Collins

Witness:
Print Name:

Estate of: G. H. Kearse a/k/a George Harold Kearse

Signature of Personal Representative:
Print Name: Harley D. Ruff

If applicable,
Signature of Co-Personal Representative:
Print Name:

STATE OF SOUTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF BEAUFORT

I, Diana Wasielewski, Notary Public, for the State of South Carolina do hereby certify that Harley D. Ruff, as Personal Representative of the Estate of G. H. Kearse a/k/a George Harold Kearse, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the 29 day of October, 2018.

DIANA WASIELEWSKI NOTARY PUBLIC My Commission Expires 11/28/2022 SOUTH CAROLINA

(SEAL)
(Signature of Notary Public)
Diana Wasielewski
(Print name of Notary Public
Notary Public for State of South Carolina
My Commission Expires: 11/28/2022

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

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EXHIBIT A

ALL OF THE DECEDENT'S INTEREST IN AND TO:

Parcel One:

ALL those certain pieces, parcels, or lots of land, situate, lying and being in the Town of Fairfax, County of Allendale, State of South Carolina, known as Lot #21 and #22 in Block 34 as shown and delineated on Plat of Fairfax of record in the Office of the Clerk of Court for Barnwell County in Deed Book 6 B at Pages 482 and 483.
Said property is bounded and measures as follows: On the East by Aiken Avenue, Fifty (50) feet; On the South by lot now or formerly owned by Hildagard H. Ritter, One Hundred (100) feet; On the West by an alloy of the Town of Fairfax, Fifty (50) feet; and on the North by lot now or formerly of Hildagard H. Ritter, One Hundred (100) feet.

Said lots being the same lots conveyed to G. H. Kearse by Deed of Jessie Addison Hall dated August 17, 1966 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Book 38 at Page 209.

AND ALSO:

ALL that certain lot of land, situate, lying and being in the Town of Fairfax, County of Allendale, State of South Carolina. Said lot is shown as Lots No. Twenty-three (23) and Twenty-four (24) in block Thirty-four (34) of a map of the Town of Fairfax, made by George Dole Wadley recorded in the Office of the Clerk of Court for Barnwell Countyin Deed Book 6 B at Page 483.
Said lots have the following metes and bounds: On the North by Lot No. Twenty-two (22) in Block thirty-four (34); On the East by Aiken Avenue; On the South by Seventh Street; And on the West by a lane running through block Thirty-four (34). Said lots measure fifty (50) feet on Aiken Avenue by one hundred (100) feet on Seventh Street, together with the buildings thereon.

Said lots being the same lots conveyed to G. H. Kearse by Deed of Hildagard H. Savage, Alice R. Polson, Sara Rebecca Ritter, and William Richard Ritter dated September 17, 1974 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Book 49 at Page 160.

TMS No.: 123-07-02-020

Parcel Two:

ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Allendale, State of South Carolina. Said tract contains five (5) acres, more or less.

Said lot is bounded, nor or formerly, as follows, to-wit: on the Northeast by lands of Mary Youmans; on the Southeast by Orangeburg public road; on the Southwest by Myrtle Branch, by Right of Way of Charleston and Western Carolina Railway Company; and on the Northwest by Myrtle Branch and by lands of Youmans.

AND ALSO:

ALL the unused portion of the Cemetery Lot located on the West side of the Northern extension of Aiken Avenue in the Town of Fairfax, County of Allendale, State of South Carolina. Said Lot is shown and delineated as Lot 7 in Section C on a Plat located in the Office of the First Baptist Church of Fairfax as Property of Todd. Said Plat was prepared by Joe P. Miley, Reg., C.E., L.S., dated October 20, 1964.

Said lot is bounded, now or formerly, as follows, to-wit: on the North by a walkway; on the East by the extension of Aiken Avenue; on the South by Lot of Smith; and on the West by Lot of Kearse.

This being the same property conveyed to G. H. Kearse by Deed of Carl E. Todd, Bobby Todd, Daphna

Mills Todd, and Patricia T. Todd recorded in the Office of the Clerk of Court for Allendale County, South Carolina on August 13, 2004 in Book 168 at Page 106.

TMS No.: 123-06-10-006

Parcel Three:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the West side of Jackson Street in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 30 on a Plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated February 20, 1971, and recorded February 18, 1972, in the Office of the Clerk of Court for Allendale County in Plat book 10 at Page 52.

Said lot is bounded, nor or formerly, as follows, to-wit: on the North by Lot No. 31 in said subdivision and measuring thereon 150 feet, more or less; on the East by Jackson Street and measuring thereon 100 feet, more or less; on the South by Lot No. 29 and measuring thereon150 feet, more or less; and on the West by Lot No. 24 in said subdivision and measuring thereon 100 feet, more or less.

This being the same property conveyed to G. H. Kearse by Deed in lieu of foreclosure of Donna Mae Oliver dated June 6, 2001 and recorded in Office of the Clerk of Court for Allendale County, South Carolina on June 8, 2001 in Book 143 at Page 84.

TMS No.: 105-11-01-045

Parcel Four:

ALL that certain piece, parcel or tract of land, situate, lying and being on the East and West sides of Old Orangeburg Road, two (2) miles North of the Town of Fairfax, Allendale County, South Carolina. Said tract contains Twelve and One-Half (12 ½) acres, more or less. Said tract is more particularly designated as Parcel "A" and Parcel "B" as shown on a plat prepared by Richard L. All, PLS 16497, dated September 30, 2009 and recorded in the Office of the R.M.C. Clerk of Court for Allendale County, South Carolina in Plat Book 23, Page 14 on June 8, 2018. For a more detailed description as to metes and bounds, courses and distances, reference is craved to the above referenced plat of record.

This is the same property conveyed to G. H. Kearse by Deed of Mary B. Wright, William U. Bowers, Clarence M. Bowers, and Dorothy B. Sewell, dated December 15, 1981, and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Book 64 at Page 301 on December 15, 1981; and also by Deed of J. T. Bowers, Jr., dated November 27, 1981, and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Book 64 at Page 305 on December 15, 1981.

TMS No.: 122-00-00-026

Parcel Five:

ALL that certain piece, parcel or lot of land, situate, lying and being near Martin's Station in Allendale County, State of South Carolina, and containing one (1) acre, more or less. Said tract is a portion of the property shown as Tract 8 on plat of division of David Rhodes Estate as prepared by John B. McPherson, R.L.S., dated February 16, 1980, and recorded in Plat Book 12 at Page 222 in the Office of the Clerk of Court for Allendale County. Said one (1) acre tract is bounded as follows, now or formerly, to wit: On the North by lands of James Kearse for a distance of 210 feet; on the East by lands of Mary Callender for a distance of 210 feet; on the South by other lands of Rosella Yardborough for a distance of 210 feet; and on the West by other lands of Rosella Yardborough for a distance of 210 feet.

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Being the same property set aside to Rozella R. Yarborough by Amended Decree in partition, signed by the Honorable W. J. McLeod, presiding Judge of the Fourteenth Judicial Circuit, dated November 23, 1981, recorded in the Judgment Rolls of Allendale County in a partition action brought by Frances R. Frederick, et al., vs. Rozella R. Yarborough, et al. Said property was thereafter deeded to Rozella R. Yarborough by deed of Rozella R. Yarborough, and recorded October 31, 1995, in Deed Book 103 at Page 258, in the Office of the Clerk of Court for Allendale County.

This being the same lot of land sold at the Delinquent Tax Sale on October 4, 1999, for delinquent taxes in the name of Rosella R. Yardborough a/k/a Rozella R. Yarborough, shown on Tax Map # 019-00-00-048 (split from 019-00-00-034) and conveyed to G. H. Kearse by Deed of Elaine S. Ferguson, Tax Collector for Allendale County, dated November 1, 2000 and recorded in Office of the Clerk of Court for Allendale County, South Carolina on November 2, 2000 in Book 138 at Page 140.

TMS No.: 019-00-00-048

Parcel Six:

ALL that certain piece, parcel or lot of land with buildings and improvements thereon, situate, lying and being in the Town of Allendale, County of Allendale, State of South Carolina. Said lot is bounded, now or formerly, as follows to wit: On the North by lands of G. H. Kearse; on the East by Jackson Street; on the South by Johns Street; on the West by lands of Calvin Brantley, et al.

Being the same property conveyed unto Dwight Roberson by Deed of G. H. Kearse dated May 1, 1995, recorded May 9, 1995, in Deed Book 100 at Page 262 in the Office of the Clerk of Court for Allendale County.

This is the same land sold at the Delinquent Tax Sale on November 3, 2003, for delinquent taxes in the name of Dwight Roberson, shown on Tax Map # 105-11-01-027 and conveyed to G. H. Kearse by Deed of Elaine S. Ferguson, Tax Collector for Allendale County, dated January 25, 2006 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina on January 25, 2006 in Book 179 at Page 233.

TMS No.: 105-11-01-027

Parcel Seven:

ALL that triangular piece, parcel or lot of land, with buildings and improvements thereon, situate, lying and being in the Town of Allendale, County of Allendale, State of South Carolina bounded and measuring, as follows, to-wit: On the Northwest by the right of way of the Southern Railway Company, this boundary commencing at a point four hundred sixty-six and one-half (466½) feet, more or less, from the apex of the triangle and running in a northerly direction along the right of way of the Southern Railway Company for that distance to the said apex; on the East by the right of way of South Carolina State Highway No. 278, said boundary commencing at the apex of the said triangle and running in a southerly direction along the right of the said Highway a distance of a little more than four hundred sixty-six and one-half (466½) feet; on the South by lands of Sadie H. Warren, this boundary running from the southern extremity of the last mentioned boundary in a straight line perpendicular to the northwest boundary, a distance of a little more than one hundred twenty (120) feet.

This being the same property conveyed to G. H. Kearse by Deed of William W. Bishop dated August 21, 1980 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina on August 21, 1980 in Book 61 at Page 460.

TMS No.: 105-02-06-018

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Parcel Eight:

ALL that certain piece, parcel or lot of land located on the Northwest side of the Old Sycamore Road approximately three miles Northeast of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and delineated on a plat made for Edward Williams by Samuel B. Solomons, R.L.S., on the 31st day of May, 1968, and recorded in Plat Book 9 at Page 264 in the Office for the Clerk of Court for Allendale County. Said lot is bounded and measures as follows, now or formerly, to wit: On the Northeast by lands of Henry Williams and measuring thereon 100 feet; on the Southeast by the said Old Sycamore Road and measuring thereon 200 feet; on the Southwest by lands of Henry Williams and measuring thereon 100 feet; and on the Northwest by lands of Henry Williams and measuring thereon 200 feet.

Being the same property conveyed to Edward Williams by deed of Henry Williams recorded on June 13, 1968, in Deed Book 41, Page 60, in the Office of the Clerk of Court for Allendale County.

This is the same lot of land sold at the Delinquent Tax Sale on October 4, 1999, for delinquent taxes in the name of Edward Williams, shown on Tax Map # 120-00-00-034 and conveyed to G. H. Kearse by Deed of Elaine S. Ferguson, Tax Collector for Allendale County, dated November 1, 2000 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina on November 2, 2000 in Book 138 at Page 137.

TMS No.: 120-00-00-034

Parcel Nine:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the East side of Jackson Street in the Southeast Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 51 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972, in the Office of the Clerk of Court for Allendale County in Plat Book 10 at Page 52.

Said lot is bounded, now or formerly as follows, to-wit: On the North by Lot No. 50 of said subdivision and measuring thereon 150 feet; On the East by Robert E. Connelly, Jr. and William Mark Connelly and measuring thereon 100 feet, more or less; On the South by Lot No. 52 of said subdivision and measuring thereon 150 feet; On the West by Jackson Street and measuring thereon 100 feet, more or less.

Being a portion of the property conveyed unto G. H. Kearse by deed of W. Gordon Kearse dated the 27th day of May, 1997, and recorded the 6th day of June, 1997, in the Office of the Clerk of Court for Allendale County in Deed Book 114 at page 157.

The above described lots being subject to the restrictive covenants recorded in the Office of the Clerk of Court for Allendale County in Deed Book 46 at page 302.

As a condition of the above conveyance the owner will observe a 40 foot set back line measured from the front property line. Also the structure placed on the lot will be centered in relation to the side parallel property lines. That is to say, there will be an equal distance to the property line on each side of the structure.

This is the same property conveyed to G. H. Kearse by Special Referee's Deed of William E. Myrick, Jr., as Special Referee for the County of Allendale, recorded in the Office of the Clerk of Court for Allendale County, South Carolina on September 23, 2005 in Book 177 at Page 81.

TMS No.: 105-11-01-035

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Parcel Ten:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the West side of Jackson Street in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 36 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972, in the Office of the Clerk of Court for Allendale County in Plat Book 10 at page 52.

Said lot is bounded, now or formerly, as follows, to wit: On the North by lot. No. 37 in said subdivision and measuring thereon 150 feet, more or less; on the East by Jackson Street and measuring thereon 100 feet, more or less; on the South by Lot No. 35 and measuring thereon 150 feet, more or less; and on the West by Lot No. 18 in said subdivision and measuring thereon 150 feet, more or less.

AND ALSO:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the North side of Razor Road, formerly known as Roosevelt Drive, in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 43 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972, in the Office of the Clerk of Court for Allendale County in Plat Book 10 at page 52.

Said lot is bounded, now or formerly, as follows, to wit: On the North by lands of Robert E. Connelly, Jr. and William Mark Connelly and measuring thereon 100 feet, more or less; on the East by Lot No. 44 in said subdivision and measuring thereon 150 feet, more or less; on the South by Razor Road, formerly known as Roosevelt Drive, and measuring thereon 100 feet, more or less; and on the West by Lot No. 42 in said subdivision and measuring thereon 100 feet, more or less.

AND ALSO:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the North side of Razor Road, formerly known as Roosevelt Drive, in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 44 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972, in the Office of the Clerk of Court for Allendale County in Plat Book 10 at page 52.

Said lot is bounded, now or formerly, as follows, to wit: On the North by lands of Robert E. Connelly, Jr. and William Mark Connelly and measuring thereon 100 feet, more or less; on the East by Jackson Street and measuring thereon 150 feet, more or less; on the South by Razor Road, formerly known as Roosevelt Drive, and measuring thereon 100 feet, more or less; and on the West by Lot No. 43 in said subdivision and measuring thereon 100 feet, more or less.

AND ALSO:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the East side of Jackson Street, in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 46 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E., L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972, in the Office of the Clerk of Court for Allendale County in Plat Book 10 at page 52.

Said lot is bounded, now or formerly, as follows, to wit: On the North by Razor Road, formerly known as Roosevelt Drive, and measuring thereon 150 feet, more or less; on the East by lands of Robert E. Connelly, Jr. and William Mark Connelly and measuring thereon 150 feet, more or less; on the South by Lot No. 47 and measuring thereon 150 feet, more or less; and on the West by Jackson Street and measuring thereon 150 feet, more or less.

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The above described lots being subject to the restrictive covenants recorded in the Office of the Clerk of Court for Allendale County in Deed Book 46 at page 302.

Said lots being a portion of the property conveyed to G. H. Kearse by Deed of W. Gordon Kearse dated May 27, 1997 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Deed Book 114 at Page 157 on June 6, 1997.

TMS No.: 105-11-01-010

Parcel Eleven:

ALL those certain pieces, parcels or lots of land located on the West side of U.S. Highway 278 in the Town of Allendale, County of Allendale, State of South Carolina.

Said lot is bounded, now or formerly, as follows, to wit: On the North by lands of G. H. Kearse, measuring thereon One Hundred (100) feet, more or less; on the East by said U.S. 278, measuring thereon Two Hundred Five (205) feet, more or less; on the South by lands of Allendale County, measuring thereon one Hundred Ninety (190) feet, more or less; and on the West by lands of CSX Railroad, measuring thereon Two Hundred Ten (210) feet, more or less.

This being the same property conveyed to G. H. Kearse by Deed of Mary W. Riley, Anne B. Gustin, Sally W. Stone, and Donna S. Latremouille by their attorney-in-fact, Mary Lee S. McGregor and by Mary Lee S. McGregor, individually, dated September 17, 1993 and recorded in the Office of the Clerk of Court for Allendale County, South Carolina in Deed Book 95 at Page 606 on September 17, 1993.

TMS No.: 105-02-06-023

Parcel Twelve:

ALL that certain piece, parcel or lot of land situate, lying and being in John's Subdivision on the East side of Jackson Street, in the Southeastern Section of the Town of Allendale, County of Allendale, State of South Carolina. Said lot is shown and designated as Lot No. 38 on a plat of John's Subdivision made by Joe P. Miley, Reg., C.E. L.S., dated the 20th day of February, 1971, and recorded the 18th day of February, 1972 in the Office of the Clerk of Court for Allendale County in Plat Book 10 at Page 52.

Said lot is bounded, now or formerly, as follows, to wit: On the North by Lots. No. 15 and 39 in said subdivision and measuring thereon 150 feet, more or less; on the East by Jackson Street and measuring thereon 100 feet, more or less; on the South by Lot No. 37 and measuring thereon 100 feet, more or less; and on the West by Lot No. 16 in said subdivision and measuring thereon 100 feet, more or less.

The above described lot being subject to the restrictive covenants recorded in the Office of the Clerk of Court for Allendale County in Deed Book 46 at Page 302.

As a condition of the above conveyance the owner will observe a 40 foot set back line measured from the front property line. Also, the structure placed on the lot will be centered in relation to the side parallel property lines. That is to say, there will be an equal distance to the property lines on each side of the structure.

This is the same property conveyed to George H. Kearse by Master Deed of Walter H. Sanders, Jr., as Master-in-Equity for the County of Allendale, recorded in the Office of the Clerk of Court for Allendale County, South Carolina on July 15, 2002 in Deed Book 151 at Page 296.

TMS No.: 105-11-01-037

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Parcel Thirteen:

ALL that certain piece, parcel or tract of land, situate, lying and being on the East side of Pickens Avenue (Hwy. S-3-79) and the North side of Tenth Street, in the Southern section of the Town of Fairfax, Allendale County, South Carolina. Said tract contains 0.108 acres, more or less. Said tract is more particularly designated as "Lot 1" and "Lot 2" of Block 73 as shown on a plat prepared by C. Lawton Maner, R.L.S. # 8370, dated July 3, 2018 and recorded in the Office of the R.M.C. Clerk of Court for Allendale County, South Carolina in Plat Book 20, Page 292 on July 17, 2018. For a more detailed description as to metes and bounds, courses and distances, reference is craved to the above referenced plat of record.

This being the same property conveyed to W.G. Kearse by Deed of Mary Brooks dated March 10, 1932 and recorded in Allendale County in Deed Book 7 at Page 31; after the death of W. G. Kearse in 1933 and pursuant to his Will as probated in Allendale County, then held jointly by his wife, Sadie Elizabeth Kearse, and his daughter, Sadie Maxwell Kearse; after the death of Sadie Elizabeth Kearse in 1954, this property reverted back to Sadie Maxwell Kearse and her heirs; after the death of Sadie Maxwell Kearse in 1988, who died having no children, this property reverted back to the Estate of W.G. Kearse and was distributed to Joan Kearse and G.H. Kearse, the living beneficiaries of the Estate of W.G. Kearse.

TMS No.: 123-07-05-035

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ELECTRONICALLY FILED - 2018 Nov 28 3:46 PM - ALLENDALE - COMMON PLEAS - CASE#2017CP030244

THE STATE OF SOUTH CAROLINA
In The Circuit Court

APPEAL FROM ALLENDALE COUNTY
Probate Court
Sheila B. Odom, Probate Court Judge

Probate Case No. 2013-ES-03-00063
Circuit Court Case No. 2017-CP-03-00244

J. Morgan Kearse, Personal Representative
of the Estate of G.H. Kearse, ... Appellant,

v.

The Kearse Family Education Trust,
William Gordon Kearse, Elizabeth Kearse Gooding,
Julia Kearse Sharp, Rachael Kearse Best,
Joseph Weber Kearse, and John Morgan Kearse,
of which all are named individually and as
Trustees of the Kearse Family Education
Trust U/AID Nov. 05, 1992 ..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served the pro se parties with a copy of the *Affidavit of Elizabeth Gooding* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Rachael Kearse Best 5055 Lakeshore Drive Columbia, SC 29206	Joseph Weber Kearse 6620 Merrill Rd. Columbia, SC 29209	William Gordon Kearse PO Box 221 264 6th Street West Fairfax, SC 29827

November 28, 2018

s/Erin Bridges
Erin Bridges

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

SWEENY, WINGATE & BARROW, P.A.

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Columbia, South Carolina
May 5, 2020

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