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SC Court of Appeals

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.

FINAL BRIEF OF RESPONDENT JULIA KEARSE SHARP

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See authorities listed in Respondent Elizabeth Kearse Gooding's Initial Brief adopted by Respondent Julia Kearse Sharp into her Initial Brief.

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XII. Whether the Court should dismiss the appeal because no Individual Respondent who was a party to the agreement opposed the enforcement of the agreement.

COUNTER STATEMENT OF THE CASE

A. Background

G.H. Kearse ["**Decedent**" or "**Mr. Kearse**"] died testate on June 10, 2013. He was 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**"].[1]

B. The Appointment

On October 23, 2013, the Allendale County Probate Court issued "Fiduciary Letters" ["**Fiduciary Letters**"] appointing Morgan as the sole Personal Representative ["**Personal Representative**" or sometimes referred to as "**PR**"]. (R. pp. 736-37).

C. The Will

Mr. Kearse's Last Will & Testament, dated May 16, 2011 ["**Will**"] (R. pp. 730-35), expressed a "wish and desire" that his six children build a house on the Kearse Farm, located in rural Allendale County, to be copied after "Gunston Hall," the historical colonial mansion of founding father James Mason, located in Lorton, Virginia. However, prior to his death, Mr. Kearse had transferred his farm to the Kearse Educational Trust dated November 5, 1992 ["**Trust**"]. (R. pp. 309-26).

D. The Lawsuit

(1) *The Pleadings*

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[1]For ease of understanding, the Circuit Court, the Probate Court, and the parties have referred to the children individually by their first names (Respondent Beth has employed the given names of the Represented Respondents, i.e. Elizabeth rather than Beth and Julia rather than Julie).

On April 8, 2016, "J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse," filed a Summons and Petition for Instructions in the Probate Court ["**Lawsuit**"] (R. pp. 46-52). Morgan executed the Summons as the sole attorney for the Personal Representative. Morgan executed the Petition as "J. Morgan Kearse, PR/Petitioner" ["**PR/Petitioner**"] (R. p. 52).

Contrary to the PR/Petitioner's later representation that he was simply seeking instructions as to what to do, he specifically asked the Probate Court to find that "the construction of the home is a major requirement of the Decedent's will," and that "sufficient funds are available to construct the home." (R. p. 52). The PR/Petitioner's unequivocal prayer was that the Probate Court issue an Order "directing the Personal Representative to proceed with the construction of the house in accordance with the Decedent's intent as expressed in the Will. (R. p. 52).

The PR/Petitioner named all six children – including himself individually – as Respondents. Beth previously had hired Slotchiver & Slotchiver, LLP (Stephen M. Slotchiver) to represent her in the estate, and Mr. Slotchiver proceeded to represent her with respect to the Petition for Instructions as well. Julie hired Speights & Solomons, LLC (Daniel A. Speights) to represent her in the lawsuit. The other four siblings (Gordon, Rachael, Joseph, *and Morgan*) [collectively "**Unrepresented Respondents**"] did not then nor at anytime thereafter hire counsel to represent them in the lawsuit or file a response to the Petition despite two of these children being attorneys.

On June 6, 2016, the Allendale County Probate Judge (The Honorable Keith Smith) recused himself from the litigation and requested the appointment of a special Probate Court Judge because his Clerk was the wife of the Personal Representative. (R. pp. 5-6). Thereafter, on June 16, 2016, the Supreme Court appointed the Honorable Sheila Odom, Judge of Probate for Hampton County, as "special probate court judge" to preside in the matter ["**Probate Judge**"]. (R. p. 7).

In response to Julie's Motion to Dismiss, the PR/Petitioner filed an Amended Petition for Instructions in which he added the Kearse Educational Trust and the six children (including Morgan) as its Trustees. (R. pp. 88-95). The pleadings were then joined with Julie's Answer to the Amended Petition on July 5, 2016. (R. pp. 101-106).

At that point, in addition to being a beneficiary and an individual Respondent in the lawsuit, Morgan wore at least five fiduciary hats: Personal Representative; Attorney for Personal Representative; Petitioner; Attorney for Petitioner; and Trustee. None of the pleadings reflected that Morgan had outside counsel in any capacity.

(2) *Discovery*

Beth (through Mr. Slotchiver) and Julie (through Mr. Speights) (collectively "**Represented Respondents**") propounded initial discovery in the lawsuit against the PR/Petitioner, including the service of written discovery and a Notice of Deposition of Morgan. The discovery went forward on September 7, 2016. Messrs. Slotchiver and Speights preliminarily reviewed a large number of documents which the PR/Petitioner produced for the first time that morning. Sweeny, Wingate & Barrow, P.A. (Mr. Wingate) appeared for the first time and defended Morgan's deposition that afternoon. Mr. Slotchiver completed his examination that evening. The parties then agreed that the deposition would resume on a mutually convenient date with Mr. Speights' examination as the next item of discovery.

Importantly, during his deposition, Mr. Slotchiver asked Mr. Wingate who his firm represented in this matter. In response, Mr. Wingate stated on the Record that his law firm represented Morgan in his fiduciary capacity as the Personal Representative and did not represent Morgan individually (neither Morgan nor his counsel has ever suggested that Mr. Wingate or any

members of his firm have represented Morgan individually). (R. p. 764 at p. 66). Appellant has confirmed to this Court that Mr. Wingate and Mr. Myers have never represented Morgan individually. (App. Brief p. 38).

(3) *The Motions*

Additionally, during the deposition, Morgan testified that he had consulted with Mr. Wingate and his sister Rachael (who is an attorney) in the preparation of the lawsuit. Julie was not aware of the lawsuit until it was served on her, and she was not aware that Mr. Wingate or Rachael had participated in its preparation until Morgan's deposition. This is particularly relevant because the lawsuit alleged that the estate should construct the Mason mansion favored by Morgan and Rachael but opposed by Beth and Julie.

Suffice it to say that the discovery did not go well for Morgan. (R. p. 134, ¶ 3; R. pp. 138-143). After receipt and review of the deposition and a full review of the documents, Beth (Mr. Slotchiver) filed a number of pleadings against the PR/Petitioner, including a Summons and Petition for Removal of the Petitioner as the Personal Representative and a Motion for Restraining Order against the PR. (R. pp. 107-115, 129-131). These pleadings alleged serious improprieties against Morgan and were supported by Beth's detailed sworn Affidavit. Among other things, Beth alleged that Morgan had mismanaged the estate for his personal gain. (R. pp. 109-115).

Notwithstanding these problems, Appellant continued to incur attorney's fees prosecuting the action, and required Beth and Julie to incur attorney's fees defending the action until the time of the February 2 hearing (and afterward). Julie just wanted to be out of the lawsuit and the estate not to pay for attorney's fees and expenses involved in the spurious lawsuit.

In addition, Beth (Mr. Slotchiver) filed a Motion for Summary Judgment as to the PR/Petitioner's Petition for Instructions. (R. pp. 116-118). The Motion for Summary Judgment asserted, *inter alia*, that the PR/Petitioner had no legal control over the property where the Will suggested a house should be built because the estate did not own that property, and that the Petitioner had no authority to direct the building of a house on that property. In addition, Beth pointed out that the PR/Petitioner had not made any determination as to the cost to build this structure, asserted that the estate had no funds earmarked for building the house, and challenged whether there were sufficient assets to construct the house.

Two days after Beth filed these motions, the PR/Petitioner (Mr. Wingate) filed a Motion to Dismiss his client's Petition for Instructions "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." (R. pp. 160-166).

On January 20, 2017, Beth (Mr. Slotchiver) filed a Motion for Restraining Order. Beth asserted 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)," and has committed "additional acts of misappropriation of Estate funds and negligence on the part of the Personal Representative." (R. pp. 129-131).

The foregoing motions were scheduled to be heard on February 2, 2017. The day before the scheduled hearing, Beth (Mr. Slotchiver) filed a Memorandum in Support of Motion for Summary Judgment (dated January 31, 2017). (R. pp. 133-144). As to the PR/Petitioner's Petition for Instructions, Beth asserted that "The Decedent did not own the real estate on which Decedent

requested the building of the house described in his Will" and was "without authority to compel such an action on land owned by another;" that there "are no specific funds earmarked by Decedent for the building of the house" and "no funding to fulfill this directive;" and that "Petitioner made assertions, totally unsupported, that the estate has sufficient funds to build the house." (R. p. 143).

E. <u>The Settlement (February 1, 2017)</u>

Unlike Morgan and two of her sisters (Beth and Rachael), Julie is not a lawyer. After Morgan was appointed as the Personal Representative, she looked to him to competently and impartially administer her father's estate. Suddenly and without warning, however, Julie's brother sued her, and she was forced to hire counsel.[2] As a result of discovery in that lawsuit, she was distressed to learn that her father's estate was being wasted.

While she has strong views on a number of issues, Julie was summoned into this lawsuit by the PR/Petitioner, who chose to name her as a Respondent. As reflected in the settlement, Julie's primary interest from the outset was that her father's estate should not pay any of the attorney's fees in this matter incurred by the PR/Petitioner's baseless lawsuit instead of going to the Educational Trust which was obviously near and dear to Mr. Kearse's heart. (R. pp. 463-485). Julie was particularly adamant that her father's estate should not pay her counsel fees. (R. p. 480, ¶ 3).

Julie supported Beth's motions, but in addition, her counsel (Mr. Speights) invested a substantial amount of time attempting to negotiate a resolution of this unfortunate family dispute. Julie's counsel (Mr. Speights) and PR/Petitioner's counsel (Mr. Wingate) ultimately negotiated a

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[2] Julie (Mr. Speights) was not informed of the involvement of the law firm of Sweeny, Wingate & Barrow, PA (Kenneth B. Wingate and subsequently Matthew J. Myers) until at least five months after the firm began to work with the Personal Representative and another sibling (Rachael) in preparing the lawsuit against Julie and the other siblings. (J. Morgan Kearse deposition taken 9/7/16).

peace treaty. It is undisputed that on February 1, 2017, the day before the foregoing motions were scheduled to be heard, the parties agreed to a final written settlement ["**Term Sheet**"]. (R. pp. 463-485).

The Term Sheet was essentially a settlement among the six children, who were named individually as Respondents in the lawsuit. Among other things, the Term Sheet required Morgan individually – not as the PR/Petitioner – to pay certain attorney's fees. The Term Sheet did not impose any conditions on the PR/Petitioner.

F. <u>The Settlement Confirmation (February 1, 2017)</u>

There is no question that all of the parties and their counsel reached an agreement on February 1, 2017. There is no question that PR/Petitioner's counsel (Mr. Wingate) informed the Probate Court in writing that afternoon that the parties had reached an agreement which Julie's attorney (Mr. Speights) would read into the Record the next day. There is no question that no one notified the Court, Beth (Mr. Slotchiver) or Julie (Mr. Speights) of any problems with the settlement before the hearing the following day.

Importantly, the Appellant has never attempted to refute any of the findings of fact about the negotiation of the Term Sheet as set forth by the Probate Court in its written Order upholding the settlement:

- "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.]." (R. p. 793)(emphasis added). (R. p. 9).
- "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.'" (R. p. 9)(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.**'" (R. p. 9)(emphasis added).

It is undisputed that when the sun set in the lowcountry on February 1, 2017, all Mr. Kearse's children had agreed to the Term Sheet. However, after his resignation, Appellant offered evidence – which the Probate Court rejected – in which he averred that sometime that evening, he decided to "back out" of the Term Sheet. (R. p. 23, ¶ 2).

It is undisputed that unknown to Beth and Julie, Morgan decided to renege from the settlement on the ground that another sibling allegedly would not agree to a "side deal" among the Unrepresented Siblings, which would give Morgan, as an individual – the right to have the support of a majority of his siblings (for whom Morgan had a fiduciary duty) for the estate to pay his attorney's fees.

G. Morgan's Sworn Resignation (February 2, 2017)

Early on February 2, 2017 – the morning after Morgan decided to "back out" of the Term Sheet – Morgan executed a "Statement of Resignation" before a notary public in his office in Allendale (which Mr. Wingate later filed in the Hampton Courthouse) ["**Sworn Resignation**"]. The Sworn Resignation provided as follows:

> 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. (R. p. 145).[3]

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[3]For the protection of the estate – not the former Personal Representative – the Sworn Resignation (a standard Court form) provided that Morgan would not be relieved of his liability for transactions or omissions occurring before termination, or relieve him from his duty to preserve assets. Additionally, in order to protect the estate and all other parties, the resignation would only be effective upon the qualification of a Successor Personal Representative. That

The Resignation was not linked to any other matters, including the pending motions or the approval of the proposed settlement. Neither Beth nor Julie (nor their counsel) had any knowledge of the Resignation until they arrived at the Court hearing the following day.

H. The Announcement (February 2, 2017)

The Probate Court commenced what it thought would be the hearing on the approval of the Term Sheet. Morgan did not appear for the hearing individually or as the Personal Representative, although he executed his Resignation that morning in Allendale (15 miles from the Hampton Probate Court).[4] He knew that both the request to approve the settlement and the various Motions were still scheduled to go forward, but he chose not to attend. Morgan simply had his lawyer announce "no más."

When the Probate Court started the hearing, Mr. Wingate grabbed the podium before any of the outstanding motions, including the Motion to Enforce the Settlement, was called for hearing. After informing the Probate Court that, "I represent Morgan Kearse in his capacity as Personal Representative of the Estate (R. p. 592), he informed the Probate Court that his client would like to take a "unilateral step" and submit – ". . . a pleading announcing his resignation as Personal Representative." (R. pp. 593-594).

Again, Appellant has not attempted to refute any of the findings of fact made by the Probate Court, including the following:

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standard provision was not to protect Morgan, but to impose upon Morgan – as the Probate Court pointed out at the hearing – that he was not relieved from responsibilities until he complied with his statutory duties. It was not an authorization for him to continue as the Personal Representative until he had fulfilled his duties of termination.

[4]The hearing started in Hampton at 11.17 a.m., and Mr. Wingate had the Statement of Resignation when he arrived that morning. (R. p. 589).

- "Mr. Wingate then took what he described as a 'unilateral step' and submitted Petitioner's resignation as Personal Representative '**irrevocably**.'" (R. p. 10)(emphasis added).

Mr. Wingate then explained his view that "such resignation is not effective until one of two things happen," to wit: "at least 20 days after all parties have been given notice" (which occurred that day) or "until the Court appoints a successor Personal Representative or Special Administrator," but that

> **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.**

(R. pp. 594-595)(emphasis supplied).

In summary, Morgan's resignation had nothing whatsoever to do with the other issues pending before the Court, including the motion to enforce the settlement. In Mr. Wingate's words, it was not only irrevocable, but it was unilateral and unconditional. It had nothing whatsoever to do with the Term Sheet which was later approved by the Court. The resignation he submitted was the document which led to the March 20, 2017 appointment of Harley Ruff as the Successor.

Mr. Wingate continued that while he recognized that his action "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." (R. p. 595).

Finally, Mr. Wingate acknowledged to the Court that:

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. (R. p. 595).

Julie (Mr. Speights) – with Mr. Wingate still in attendance[5] – then addressed the Court, and at the outset explained that:

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. (R. p. 596)(emphasis supplied).

I. The Settlement Hearing (February 2, 2017)

The following motions were scheduled to be heard before the parties entered into the Term Sheet: Beth's Summons & Petition for Removal of the Petitioner; Beth's Motion for Summary Judgment; Petitioner's Motion to Dismiss his client's Petition for Instructions; and Beth's Motion for Restraining Order. (R. p. 591). To this list, was added the Motion to Enforce the Settlement.

At that point, after Morgan had executed his Sworn Resignation and after Morgan's counsel drove to Hampton and told the Probate Court that Morgan had unequivocally resigned as the Personal Representative, the Court addressed the settlement issue as follows:

- "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)].

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[5]At this point, Mr. Wingate already had handed the Court his client's Sworn Resignation, although it would be the end of the hearing that the Court would rule on the record that it accepted the Sworn Resignation.

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

(R. p. 21).

Consistent with his client's prior Resignation as PR, Mr. Wingate did not present any arguments or evidence of any kind. Again, Appellant has not attempted to refute any of the findings of fact made by the Probate Court, including the following:

- "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).[6] (R. p. 21).

Finally, Mr. Wingate also advised the Court that, "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." (R. p. 605).

After studying the exhibits, the Court then ruled as follows from the Bench:

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[6]When he began to offer some explanation, Mr. Speights objected, and Mr. Wingate immediately told the Court that:

> 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.

(R. p. 607).

> [T]he 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.

(R. pp. 608-609)(emphasis supplied).[7]

J. <u>The Filing of the Resignation</u>

Once Morgan executed the resignation before the notary public, and certainly no later than when his counsel announced his actions in open Court and filed the Resignation, and absolutely no later than when the Court accepted the Resignation, Morgan was no longer the Personal Representative. Consequently, from this point on, he will usually be referred to as the Appellant.

K. <u>The Term Sheet</u>

The Term Sheet in its entirety is set forth below and demonstrates that it was essentially an agreement among the six children to settle the Petition for Instructions and the related motions which had been filed and were scheduled to be heard that day. It should be read in context of the motions pending for hearing dealing with the plethora of allegations against Morgan. It did not impose any

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[7]A. G. Solomons, Jr. of the firm of Solomons & Lawton in Estill, S.C., who was nominated by the Appellant, declined to serve. The Probate Court then appointed Mr. Ruff.

obligations upon the Estate or the PR/Petitioner acting as the fiduciary. It resolved all outstanding fee issues.

Because Appellant inaccurately summarizes the Term Sheet – including the omission of the statement setting forth Julie's fundamental condition – (App. Brief p. 4), Julie exactly quotes the 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.**[8]
>
> 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**.
>
> 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

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[8] After lengthy negotiations, Julie agreed not to object to Morgan retaining previously paid fees provided he would not be entitled to any additional payments, and would personally pay all other fees. However, in the last compromise that sealed the deal, Julie reluctantly agreed that she would not object if the majority of the other siblings (Gordon, Beth, Rachael, and Joseph) did not object to the estate (under the new administrator) reimbursing some or all of the fees incurred by counsel for Petitioner and/or Beth. Julie remained steadfast that the Estate should not pay any of her fees for defending a lawsuit which never should have been brought.

the building from decay and depreciation, pays taxes, and carries hazard insurance to insure full replacement in the event of destruction.[9]

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).

(R. pp. 463-485)(emphasis supplied).

L. Probate Court Order (February 27, 2017)

At the Court's direction, Mr. Speights transmitted a proposed Order to the Probate Court on February 23, 2017, with a copy to Appellant (Mr. Wingate) and the Unrepresented Respondents, including Morgan Individually. (R. pp. 794-800). No one objected or suggested that the proposed Order did not accurately reflect what the Court had ruled from the Bench.

Based upon the foregoing undisputed facts, the Probate Court memorialized the rulings which it made at the February 2, 2017 hearing as follows:

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

(2) All parties shall comply with the Term Sheet. February 23, 2017

(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).**

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[9]Mr. Kearse practiced law in Allendale, South Carolina, for over fifty years. In 1972, Mr. Kearse conveyed his law office to his wife, Jacqueline W. Kearse. Thereafter, in 2005, Mrs. Kearse in a deed prepared by Mr. Kearse, conveyed his office to "Julia Ann K. Sharp as Trustee, her successors in office." Deed from Jacqueline W. Kearse to Julia Ann K. Sharp as Trustee, dated May 11, 2005, and recorded on October 5, 2005, in Book 177 at Page 127. (R. pp. 727-729).

(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 tees 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.

(R. pp. 11-12)(emphasis supplied).

Finally, it should be emphasized that the Probate Court's Order, consistent with the Term Sheet, provides that "Morgan shall pay Julie's legal fees and expenses and Beth's fees and expenses and reimburse the estate for all legal fees and expenses paid to Mr. Wingate within seven (7) days of the date of this Order. However, there are two distinctions between the payment of Julie's legal fees and expenses and Morgan's obligation to pay Beth's legal fees and to reimburse the estate for

legal fees and expenses paid to Mr. Wingate. Unlike the other fees, Morgan may not seek reimbursement of Julie's legal fees from the estate. Secondly, Julie's legal fees and expenses are limited to those incurred in connection with the defense of the lawsuit, while other fees and expenses deal with both the law suit and the administration of the estate in general.

M. March 16, 2017 Motion to Alter or Amend and Morgan's Affidavit

(1) *Motion to Alter or Amend*

Morgan had not been the PR/Petitioner since his Sworn Resignation early on February 2, 2017 (R. p. 145), and the PR/Petitioner's subsequent confirmation in open Court that day before the Probate Court later that day, the approval of the resignation by the Probate Court on the record that day, and the filing of the Sworn Resignation later that day. The Sworn Resignation was not linked to anything else.

Although the Probate Court ruled that the Resignation was effective on February 2, 2017 and Mr. Wingate told the Court that the PR/Petitioner's resignation was effective immediately, the standard twenty days notice was on the form. Appellant did not take any additional action during that period of time. Consequently, clearly Appellant was not the Personal Representative after February 22, 2017.

Nevertheless, forty-two days later, on March 16, 2017, "Petitioner, John Morgan Kearse, **in his capacity as Personal Representative of the Estate of G.H. Kearse**," filed a Notice of Motion and Motion to Alter or Amend or, in the Alternative, For a New Hearing ["**Motion to Alter or Amend**"]. Importantly, no one other than Morgan "in his capacity as Personal Representative" joined in the Motion to Alter or Amend or filed his or her own Motion to Alter or Amend, not even Morgan Individually. (R. pp. 147-159).

The Motion to Alter or Amend was directed to the February 27, 2017 Order. It had nothing to do with Appellant's Sworn Resignation. Moreover, the PR/Petitioner's Sworn Resignation had nothing to do with the Term Sheet which was later presented to the Court and approved by the Court from the Bench and in the February 27, 2017 Order memorializing that ruling. (R. p. 11; R. p. 609).

The Term Sheet, which was prepared (but not approved) before the PR/Petitioner resigned, did have a provision that the PR/Petitioner would resign. By the time the Term Sheet was presented to the Court, Appellant had already resigned unconditionally and unequivocally.

Importantly, Appellant did not contest his resignation in his Motion to Alter or Amend the February 27, 2017 Order. It not only did not challenge the earlier Order, but it did not challenge the provision of the Term Sheet which recognized Appellant's removal. Specifically, the Motion to Alter or Amend was based on two grounds: the parties did not reach a binding settlement; and the particulars of the Final Term Sheet were not otherwise before the Court. Assuming both of those grounds were correct – they were not – they had nothing whatsoever to do with Appellant's earlier Sworn Resignation.

Moreover, in discussing his Motion to Alter or Amend the February 27, 2017 Order, Appellant (Mr. Myers) made it plain that he was not contesting the earlier drafted provision of the Term Sheet calling for Appellant to resign. (R. pp. 154, 155).

Finally, Appellant's Motion to Alter or Amend the February Order explained that his interest was in the provision of the Term Sheet which required him to pay fees and expenses.

> 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).

(R. p. 155)(emphasis in original).

In summary, Appellant was bound by his Sworn Resignation – which was on the Resignation Train – but did not even question the resignation provision in his Motion to Alter or Amend the February 27, 2017 Order. The standing issue was not on his radar screen.

However, as noted below, Respondent Julie (Mr. Speights) raised the specter of standing at the hearing on this Motion to Alter or Amend. On March 20, 2017, four days after Appellant filed his Motion to Alter or Amend, the Probate Court appointed Mr. Ruff as the Successor Personal Representative. (R. p. 14). From that date until today – more than three years – Mr. Ruff has been the only Personal Representative of the estate.

(2) *Morgan's March 15, 2017 Affidavit*

The Motion to Alter or Amend was based upon Morgan's Affidavit dated March 15, 2017, over six weeks after the hearing where Mr. Wingate made his startling announcement. (R. pp. 157-159). Appellant has never contested the Probate Court's subsequent finding below that all of the allegations set forth in Morgan's Affidavit were known to him at the time of the February 2, 2017 hearing. (R. p. 23).

There is no question that the Probate Court refused to consider the Affidavit because it provided nothing new. There is no question that the Probate Court recognized Julie's right to examine Morgan on the Affidavit, but the Probate Court refused to consider the Affidavit because she denied the Motion on other grounds (specifically, the former Petitioner could not raise anything new). There is no question that the Circuit Court did not consider the Affidavit on the appeal. Likewise, Appellant should not be able to refer to the Affidavit in this matter. As discussed below,

the Affidavit should be stricken or the case should be remanded if the Court feels it has any relevancy to the current proceedings.

N. <u>March 20, 2017 Order Appointing Harley Ruff</u> ["Appointment Order"]

On March 20, 2017, the Probate Court appointed Harley Ruff as Successor Personal Representative in this Estate. (R. p. 14). The Order was executed by the Probate Court on the bottom of the Sworn Resignation which the former Personal Representative executed in the early morning of February 2, 2017, and which he submitted to the Probate Court at the hearing later that morning and filed at the conclusion of that hearing.

As the Probate Court later found in its Order of September 15, 2017, denying the Motion to Alter or Amend, no party, including Appellant, objected to this Order appointing Mr. Ruff. Appellant did not challenge this Order. Appellant did not file a Motion to Alter or Amend this Order. Appellant did not appeal this Order.

In fact, Appellant complied with this Order. When Mr. Ruff proceeded to administer the Estate without objection by Appellant or any other party, Appellant worked with Mr. Ruff and transferred realty and personal property to the new fiduciary.

In summary, at no time did the former PR/Petitioner/Appellant attempt to withdraw his Sworn Resignation or move to alter or amend the March 20, 2017 Order, or appeal the March 20, 2017 Order. Beginning on March 20, 2017, Mr. Ruff has served as the Personal Representative in this matter. (R. p. 14). If Appellant has done anything as the alleged Personal Representative, he has done so ultra vires.

O. <u>Additional Motion (July 27, 2017)</u>

On July 27, 2017, "J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse," [*sic*] (Messrs. Wingate and Myers) filed a Motion to Dismiss Petition for Instruction, Confirm Resignation of Personal Representative and Appointment of Special Administrator, and Direct Payment of Legal Fees and Costs." (R. pp. 160-166). As indicated above, however, Morgan had resigned as the Personal Representative on February 1, 2017 (R. p. 145); the Court had accepted the resignation on February 2, 2017; the Probate Court had dismissed the Petition for Instruction on February 27, 2017 (R. p. 11); the Probate Court had instructed Morgan to pay certain fees when it enforced the Term Sheet on February 27, 2017. (R. pp. 11-12); and the Probate Court had appointed Harley Ruff as the Successor Representative on March 20, 2017 (R. p. 14). Additionally, on March 16, 2017, Morgan (Mr. Myers), had filed a Motion to Alter or Amend the February 27, 2017 Order. (R. pp. 147-159).

In his Conclusion, the Appellant (the former Petitioner) prayed for 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.

(R. p. 165).

In this pleading, Appellant stated that "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" (R. p. 162). The former Petitioner also asked that the Petition for Instructions be dismissed but that "Petitioner's legal fees and costs as Personal Representative" be paid for by the Estate. (R. p. 163). As discussed below, in this document, which upon information and belief was not discussed by Appellant in the Circuit Court, the Appellant who raised questions about the appointment of Harley Ruff as the Personal Representative in the Federal Court, specifically asked the Probate Court to appoint him as the Personal Representative seven days after the Probate Court made that appointment. (Nevertheless, Appellant has continued to intermittently suggest that Mr. Ruff is not the Special Administrator).

On August 15, 2017, Beth (Mr. Slotchiver) filed a Memorandum In Opposition To Petitioner's Motion To Dismiss Petition For Instructions And For Other Relief dated July 27, 2017. (R. pp. 169-173). The following day, on August 16, 2017, Beth (Mr. Slotchiver) filed a Memorandum in Opposition to Petitioner's Motion To Alter Or Amend Or, In The Alternate, For A New Trial dated March 16, 2017. (R. pp. 174-182).

At the August 17, 2017 hearing, the Probate Court sustained an objection that this matter was not properly before the Court. Appellant did not pursue the matter.[10]

P. <u>August 17, 2017 Hearing on Motion to Alter or Amend</u>

On August 17, 2017, the Probate Court conducted a full hearing on Appellant's (the former PR/Petitioner) Motion to Alter or Amend the February 27, 2017 Order. Five out of the six children were present throughout the hearing. (R. p. 18).

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[10]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. (R. p. 19).

Mr. Myers argued the Motion and Messrs. Slotchiver and Speights argued in opposition. (R. pp. 643-661). During his argument, Mr. Myers admitted that "Mr. Wingate unequivocally came to that [February 2] hearing and stated **Morgan Kearse had backed out of the settlement.**" (R. p. 644 at p. 8)(emphasis supplied).

Appellant did not call any witnesses. Mr. Myers relied exclusively on Morgan's Affidavit in support of his position. There is no question that Julie (Mr. Speights) objected to the use of the Affidavit until he could examine Morgan, who was in the courtroom at counsel table. The Court advised the parties that it would deal with that issue at the end of the presentation.

While it is not Respondents' job to represent Appellant, in response to Appellant's presentation, Julie (Mr. Speights) immediately argued that:

> **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 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.

(R. p. 646 at pp. 14-15).

Furthermore, Mr. Speights did not hide the ball. He pointed out that any of the Respondents – including Morgan individually – could appeal.

> 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. (R. p. 646 at p. 15).

Messrs. Speights and Slotchiver then proceeded to argue the motion itself, particularly emphasizing the high burden under Rule 59, Appellant had in trying to reverse or reconsider the decision that was made after a full record in the absence of any change whatsoever. (R. p. 646 at pp. 15-16).

The Probate Court denied the Motion and stated the following on the record:

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 going back and forth with this accurate styling.

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 continuation. 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 continuation asked for.

No. 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 inpart 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.

(R. pp. 651-652 at pp. 33-35).

Q. <u>September 15, 2017 Probate Court Order Denying Motion to Alter or Amend</u>

On September 15, 2017, the Probate Court memorialized its Order denying the Motion to Alter or Amend. Importantly, despite Mr. Speights' statement at the hearing, no individual party – not even Morgan as an Individual Respondent, appealed this Order.[11]

Unlike the February 2, 2017 hearing, Appellant attended and his counsel was fully heard. Consequently, the record on this matter provided an opportunity for the Probate Court to even more fully provide the history of this matter and her rulings on the issues before her.

Because of the extensive Brief of Appellant, Julie will cite at length from the final Order at the final hearing in the Probate Court so that this Court will have the benefit of the Probate Court's rulings on the issues currently before this Court:

> 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.

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[11]At the Court's direction, on August 28, 2017, counsel forwarded the Probate Court, Appellant's counsel, and all parties the proposed Order. (R. pp. 801-808). Appellant's counsel nor any other party, including Morgan, objected to the Order or otherwise took the position that the Order did not accurately and fairly represent the Probate Court's ruling.

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:

* * *

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]. 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 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.

(R. pp. 18-24)(citations and footnote omitted).

R. <u>Circuit Court Appeal</u>

Appellant, "J. Morgan Kearse, Personal Representative of the Estate of G.H. Kearse," appealed the Probate Court's February 27, 2017 Order approving the Term Sheet and the Probate Court's September 15, 2017 Order denying his Motion to Alter or Amend. (R. pp. 187-190). As set forth above, however, Appellant had no authority to appeal that ruling because he was no longer the Personal Representative (and had not been since February 2, 2017). Because the Circuit Court agreed with Beth and Julie that Appellant did not have standing, Julie will not address Appellant's arguments made in the Circuit Court.[12] Revealingly, however, Appellant argued below that: "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." (App. Brief p. 8). Importantly, even Appellant recognizes that his agreement to pay Julie's fees was not conditional on his side deal.

Julie also would point out that in his briefs in the Circuit Court, Appellant extensively relied upon his excluded Affidavit in Support of his arguments. Specifically, Appellant cited his March 15, 2017 Affidavit twenty-two times as the basis of his arguments. As argued below, in the event Appellant did have standing below, because the Probate Judge did not consider the Affidavit, the case must be remanded so that Julie's counsel can cross-examine Morgan and the lower Court can consider these arguments.

Finally, in a moment of candor, Appellant revealed his true intent in trying to appeal this matter as the Personal Representative when he told the Circuit Court that:

> 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

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[12]As discussed below, in the event that this Court should find that the Circuit Court should have addressed those arguments, the case should be returned to the Circuit Court.

> 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.

(App Brief p. 20).

On July 19, 2018, following unsuccessful efforts to mediate this matter, Respondents Beth and Julie filed a Joint Response to the Brief of Appellant in the Circuit Court. The first issue presented by the Joint Respondents was as follows:

> 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.

Appellant filed a Reply Brief in which he fully briefed that issue to the Court.

The appeal was assigned to Judge R. Lawton McIntosh. Following briefing and oral argument, and the entry of a Form 4 Order, Judge McIntosh dismissed the appeal in a written Order in which he held as follows:

> 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 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.

(R. pp. 32-36).

After Judge McIntosh ruled, Appellant filed a Motion to Alter or Amend and, if Necessary for Ratification, Joinder, or Substitution of a Real Party in Interest on December 27, 2018. (R. pp. 551-584). On May 14, 2019, following another hearing, the Circuit Court denied the Motion to Alter or Amend. After reciting the history of the matter in detail, the Circuit Court ruled as follows:

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).

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) and (R.p.228). 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.

(R. pp. 40-45).

STANDARD OF REVIEW

Julie incorporates and adopts the Standard of Review set forth in Beth's Brief of Respondent.

ARGUMENT

Julie incorporates and adopts the Argument set forth in Beth's Brief of Respondent. The last thing this case needs is unnecessary redundancy. Julie agrees that standing is the fundamental issue before the Court. Judge McIntosh wisely recognized Appellant's insurmountable problem.

Beth has identified a number of other separate and independent reasons why Appellant's appeal is without merit.[13] Julie has provided several supplemental points on the issues raised by Beth, including standing. Julie also has briefly set forth several alternative grounds.

I. The Circuit Court correctly dismissed the appeal because Appellant is not the personal representative of the Estate and lacks standing to appeal as personal representative.

[13]For example, even if Morgan was still the PR, he has no standing because the settlement is among the children individually. No other party has appealed. If Morgan felt aggrieved, he could have done so individually (without seeking to have the estate pay his personal legal fees).

Julie joins in and adopts by reference Beth's first argument and makes the following additional comments.

A. Two Trains

This appeal presents the story of two trains traveling on parallel tracks to the same destination.

The "Litigation Train" originated in Appellant's Allendale law office when on on April 16, 2016, he sued the Decedent's six children (including himself), to make the estate build a mansion on property which the Decedent did not own from funds the estate did not have. That train ultimately led to the Settlement Agreement (Term Sheet) among the six children, which required, *inter alia*, Morgan individually to resign as the Personal Representative and to pay Julie's fees and expenses in defending the lawsuit. The Probate Court enforced the Settlement Agreement at a hearing on February 2, 2017, attended by Appellant's counsel, which the Probate Court memorialized in its February 27, 2017 Order. After Appellant (but no individual Respondent) filed a Motion to Alter or Amend that Order, the Probate Court denied the Motion at a hearing attended by Appellant and all but one of the siblings (Gordon). The Appellant, but no individual sibling (not even himself), unsuccessfully appealed those two Orders to the Circuit Court. Appellant has now appealed these two decisions to this Court. It has now been almost four years since Appellant launched this spurious lawsuit, and even if this Court affirms the decisions below, Appellant will undoubtedly file a Motion for Rehearing (as it did in both the Probate Court and the Circuit Court), and, if not successful, a Petition for Certiorari in the Supreme Court.

The "Sworn Resignation Train" also originated in Appellant's Allendale law office when early on February 2, 2017 – the day the Probate Court was scheduled to hear the Motion to Remove

him as the Personal Representative and the day after the evening he decided to "back out" of the Term Sheet (which also provided that he would resign) Morgan executed his Sworn Affidavit resigning as the Personal Representative. The Statement of Resignation was on a form which also provided an Order for the Probate Judge to fill in the name of his successor. Later that day, Appellant's counsel (Mr. Wingate) appeared before the Probate Court in Hampton. Before the Probate Court heard much less approved any of the outstanding motions, including the Motion to Enforce the Settlement, Mr. Wingate grabbed the podium, handed the Court and counsel for Beth and Julie his client's Sworn Resignation, and announced that Appellant was irrevocably resigning as the Personal Representative, effective immediately. At that point on February 2, 2017, over three years ago, the Sworn Resignation Train reached its destination only several hours after it left the station. Although no further closure was needed, Appellant's Sworn Resignation was further cemented after he filed it with the Probate Court; after the Probate Court accepted it; after twenty days elapsed; after the Probate Court completed his proposed Order and appointed Harvey Ruff as his successor (on March 20, 2017); after Appellant chose not to challenge the appointment of Mr. Ruff; after Appellant complied with Mr. Ruff's requirements; after Appellant filed his own motion asking the Probate Court to appoint Mr. Ruff; and after Appellant chose not to challenge or appeal the Probate Court's Order appointing Mr. Ruff.

Despite all the arguments in support of affirming this appeal, Judge McIntosh identified one insurmountable hurdle that Appellant cannot overcome: he did not appeal the Probate's Order accepting Appellant's Sworn Resignation and appointing Harley Ruff as his substitute. As demonstrated above, Appellant's Resignation Train which led to this Order had nothing to do with the Settlement Agreement. At the point when the Appellant decided to resign irrevocably, the Term

Sheet was not approved, and Appellant had decided that he would attempt to repudiate it. By resigning that morning, Appellant, a practicing attorney in Allendale County, avoided the indignity of a hearing on Beth's Motion to Remove him as the Personal Representative scheduled for that day.

The reality is that while there are a number of issues, Appellant's Resignation Train provides a simple and efficient resolution of this appeal. As of February 2, 2017, Appellant was not the Personal Representative. As of March 20, 2017, Appellant had no authority to appeal the Probate Court's acceptance of the Sworn Resignation and its appointment of Harley Ruff as his successor, and he did not do so. Simply stated, Appellant had no standing in the Circuit Court, and he has no standing here.[14]

B. Waiver

At the last hearing before the Probate Court, Julie (Mr. Speights) stated at the outset in response to Appellant's Motion to Alter or Amend that, "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." (R. p. 646 at p. 14). Mr. Speights then pointed out that any of the Respondents, including Morgan individually, could appeal that ruling. As expressed by Mr. Speights:

> 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

[14]Julie is acutely aware that this is her daddy's estate. At the last hearing in the Probate Court, she pointed out to the Court and her siblings that while the Appellant had resigned as the Personal Representative, the individual respondents, including Morgan, could appeal the Probate Court's decision upholding the settlement. They spoke loudly with their feet when they chose not to do so. Appellant chose to march on, seeking to have the estate pay for all of the fees and expenses which he and his counsel have incurred and continue to incur years after he resigned and was replaced as the Personal Representative.

> 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.

(R. p. 646 at p. 15). At the time he made this fair disclosure to his client's brothers and sisters, Morgan, and all but one of his siblings were present, but none of the Respondents chose to appeal either ruling.

In reality, it was not in the interest of any Individual Respondent, other than possibly Morgan, to appeal the Probate Court's Orders. By that time, everyone had agreed that it made no sense to build the Mason mansion. The primary issue left was Morgan's agreement to pay certain fees and expenses. The only interested party at that time was Morgan individually. Like his siblings, Morgan chose not to appeal.

II. The Circuit Court correctly held the probate court's order appointing a successor personal representative is the unappealed law of the case.

Julie joins in and adopts by reference Beth's second argument.

III. A source of authority other than that as personal representative confers standing to Appellant to act on behalf of the estate.

Julie joins in and adopts by reference Beth's third argument.

IV. There is a real-party-in-interest issue when all of the real parties in interest are named in the action and whether any such issue is untimely when Appellant raised it only after litigating his status to appeal.

Julie joins in and adopts by reference Beth's fourth argument.

V. The probate court correctly held the parties reached a binding settlement.

Julie joins in and adopts by reference Beth's fifth argument. In addition, Julie points out that having announced his resignation, Appellant declined to participate in the February 2, 2017

evidentiary hearing. Appellant did not object to or question the proof or the Term Sheet. Appellant did not offer any evidence at the hearing on the settlement. Finally, Appellant did not intimate, much less disclose, any side deal which he circulated among several (but not all) of his siblings.

The only evidence that Appellant later offered at the hearing on his Motion to Alter or Amend was a March 15, 2017 Affidavit attached to his Motion and served for the first time over six weeks after the hearing. (R. pp. 157-159). Julie (Mr. Speights) objected to the use of the Affidavit unless he could cross-examine Morgan, who was at counsel table at the hearing. The Probate Court understandably advised the parties that she would wait to rule on that after she heard Appellant's presentation. After hearing from Appellant, the Probate Court declined to consider the Affidavit because, *inter alia*, all of the information set forth in the Affidavit was available at the first hearing, when Appellant and his counsel chose not to say anything.

Consequently, the Probate Court recognized there was no reason to cross-examine Morgan and determine the basis for, in his counsel's words at that hearing, "backing out of the agreement." Appellant did not assert before the Probate Court that anything in the February 27, 2017 Order, was inaccurate. Appellant did not appeal the Probate Court's exclusion of the Affidavit to the Circuit Court or this Court.

VI. The Court should affirm on an additional sustaining ground because Appellant did not bring the action in good faith.

Julie joins in and adopts by reference Beth's sixth argument.

VII. The Court should affirm on an additional sustaining ground because the Appellant had no authority to challenge the agreement that Morgan shall individually pay Julie's legal fees and expenses incurred in connection with the Petition for Instructions.[15]

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[15]In consideration for Morgan's agreement, Julie, who was the future Trustee of Morgan's law office, made certain agreements about the use of the law office in the Term Sheet. Mr.

The requirement in the Term Sheet that Morgan should reimburse Julie her fees and expenses is not an obligation of the Appellant or the estate. It is an obligation of Morgan individually. As Appellant told this Court, Morgan individually has never appeared in this case. (App. Brief p. 38).

VIII. All of Appellant's references in this appeal to the Affidavit of the Appellant dated March 15, 2017, should be stricken, or in the alternative, the appeal should be remanded to the Probate Court because the Probate Court declined to consider the Affidavit and Appellant did not appeal that ruling.

Appellant did not appeal the Probate Court's exclusion of Morgan's Affidavit to the Circuit Court or this Court. The Probate Court ruled that all the information proffered by Appellant in the Affidavit was available to Appellant at the first hearing. (R. p. 23, ¶ 3).

Julie's counsel (Mr. Speights) had a plethora of questions which he wanted to ask Morgan at the hearing on the Motion to Alter or Amend. Morgan was sitting at counsel table. If the Court had not excluded the Affidavit, Mr. Speights had every right to call Morgan to the stand and question him about the basis of his Motion.

As set forth above, the Probate Court did not consider Appellant's arguments on the merits because he had intentionally decided to remain silent at the original hearing, and did not offer any justification for his actions at the second hearing. Morgan was at counsel table when Appellant's counsel referred to the Affidavit in support of Appellant's Motion to Alter or Amend. Julie (Mr. Speights) objected to the use of the Affidavit unless he could cross-examine Morgan. (R. p. 648 at p. 19). The Probate Court took the matter under advisement. The Probate Court later ruled at the

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Kearse practiced law in Allendale, South Carolina, for over fifty years. In 1972, Mr. Kearse conveyed his law office to his wife, Jacqueline W. Kearse. Thereafter, in 2005, Mrs. Kearse in a deed prepared by Mr. Kearse, conveyed his office to "Julia Ann K. Sharp as Trustee, her successors in office." Deed from Jacqueline W. Kearse to Julia Ann K. Sharp as Trustee, dated May 11, 2005, and recorded on October 5, 2005, in Book 177 at Page 127. (R. pp. 727-729).

end of the presentations that it would not consider the Affidavit because everything in it was available to Appellant when he declined to offer any evidence at the February 2, 2017 hearing (or even to seek a continuance). (R. pp. 651-652 (pp. 33-34)).

Subsequently, the Probate Court memorialized its ruling in its September 15, 2017 Order. The Court ruled, *inter alia*:

> 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]. 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.

(R. pp. 222-223).[16]

Finally, on appeal, the Circuit Court twice held that Appellant did not have standing to argue the merits.

IX. The Court should remand the action to the Circuit Court or the Probate Court because the Circuit Court specifically held that it had not decided any issue other than standing.

On appeal, the Circuit Court specifically held that it was not going to consider any of the arguments because Appellant had no standing to appeal. In the event that the Court disagrees, the appropriate remedy is to remand this case to the Circuit Court to consider all the arguments that Appellant raised below.

X. The Court should affirm on an additional sustaining ground because the Appellant lacks standing to appeal because the Personal Representative was not a party to the agreement.

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[16]Perhaps most pertinent to the principal issue before the Court, the excluded Affidavit states in Exhibit A that the side deal provides that the Unrepresented Siblings "hereby instruct the Special Administrator of the Estate of G.H. Kearse to make payment from said Estate funds for attorney's fees on behalf of Elizabeth Kearse Gooding and to Sweeny, Wingate & Barrow on behalf of J. Morgan Kearse as Personal Representative." In other words, Morgan recognized that the Successor Administrator (Harley Ruff) had replaced him, and that he had the authority. Nevertheless, in this appeal, Appellant suggests that he is still operating as the Special Representative.

The Personal Representative was not a party to the agreement in general and specifically was not under the obligation to pay Julie. Assuming *arguendo* that Appellant is still the Personal Representative – which he has not been since February 2, 2017 – he still would not have standing. Appellant was not a party to the Term Sheet and the requirement that Morgan must individually pay Julie's fees and expenses. This was an obligation made by Morgan, which was fundamental to the bargain. Indeed, Julie may proceed against Morgan to enforce a judgment that was entered against Morgan by the Probate Court and the Circuit Court.

XI. The Court should confirm on an additional sustaining ground because assuming *arguendo* that Morgan was still the Personal Representative at the motions hearing on February 2, 2017, as he now claims, then the settlement agreement should be enforced because, although his counsel was present throughout the hearing and chose not to argue, or present any evidence, or seek a postponement.

After Appellant unconditionally resigned as the Personal Representative by the execution of his Sworn Resignation, and after Appellant's counsel told the Probate Court on the record that he was resigning irrevocably, Appellant's counsel attended the entire hearing in which Respondents Julie and Beth proceeded to prove that the parties had entered into a binding agreement. Julie did not hide the ball. At the beginning of his presentation, Julie's attorney told the Court and Appellant's counsel that "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.**" (R. p. 596)(emphasis supplied). At no point did Appellant's counsel object to the proceeding.

Additionally, Morgan later said in his excluded Affidavit that the assurance by the other Unrepresented Claimants (Gordon, Rachael and Joseph) "was a necessary condition to any willingness I would otherwise have to accept the Final Term Sheet." Based upon his discussions with the other Unrepresented Claimants, he "informed my counsel that I was willing to assent to the

Final Term Sheet . . ." (R. pp. 157-159). In these two sentences, Morgan again acknowledged that he was acting as an Unrepresented Claimant, and that he informed his own counsel that he was unwilling to assert to the Final Term Sheet. Morgan did not address whether he was acting as the Personal Representative or on behalf of himself when he negotiated the side deal.

XII. The Court should dismiss the appeal because no Individual Respondent who was a party to the agreement opposed the enforcement of the agreement.

Lastly, no party to the Term Sheet opposed the enforcement of the agreement.

CONCLUSION

Julie's fundamental position has been plain and simple since Appellant sued her. She believed then and believes now that it was wrong for her father's estate to pay for an ill-advised lawsuit. As reflected in the Term Sheet, Julie insisted that Morgan and not her father's estate pay her fees and expenses for defending this lawsuit. For Appellant to suggest that he did not really resign, that Morgan can walk away from his agreement to pay her fees and expenses, and can charge her father's estate for all that he has expended since then is unacceptable.

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June 15, 2020

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SC Court of Appeals

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.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies the Final Brief of Respondent complies with Rule 211(b), SCACR.

Dated: June 15, 2020

Respectfully submitted,

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