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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

S.C. Supreme Court

Op. No. 2011-UP-383
(S.C. Ct. App. filed August 4, 2011)

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, Petitioner,

v.

Linda B. Harris, Individually and as Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9-17-07 and in all alleged fiduciary capacities,
Bibco, Inc., Dewey M. Houser, Carolina Pre-owned, LLP,
Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Bibco, Inc., Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), Patricia B. Schmid
and Ida Mae Belk are, Respondents.

APPENDIX

Volume 1

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Gene C. Belk, Individually and
as Co-Personal Representative
of the Estate of Robert D. Belk, Appellant,

v.

Linda B. Harris, Individually
and as Trustee of the Ida Mae
K. Belk Irrevocable Trust dated
9-17-07 and in all alleged
fiduciary capacities, Bibco,
Inc., Dewey M. Houser,
Carolina Preowned, LLP,
Michael D. "Mickey" Lyles, Jr.,
and M.M. Weinberg, Jr.,
Defendants and Cheryl Ann
Harrison, Patricia B. Schmid,
Robert M. Belk, and Ida Mae
Belk, Stakeholders,

Of whom Bibco, Inc., Mary B.
Weinberg (substituted for M.M.
Weinberg, Jr., deceased)
Patricia B. Schmid and Ida Mae
Belk are Respondents.

Appeal From Sumter County
James R. Barber, Circuit Court Judge

Unpublished Opinion No. 2011-UP-383
Submitted June 7, 2011 – Filed August 4, 2011

AFFIRMED

Andrew F. Lindemann and Thomas E. Lydon, both of
Columbia, for Appellant.

Pope D. Johnson, III, of Columbia and William H.
Johnson, of Manning, for Respondents.

PER CURIAM: This case involves family disputes stemming from the father's probate estate. The surviving siblings disagreed about who should serve as personal representative, seeking both formally and informally to remove each other or appoint an alternative sibling. The probate court removed the motions to remove and appoint a personal representative to circuit court. One sibling, Gene Belk, also filed an action in circuit court complaining about a trust created for his mother after his father's death by the same attorney who drafted his father's will, M.M. Weinberg. Weinberg filed a motion to dismiss the complaint and attached two affidavits. The circuit court retained Gene and his sister, Linda Harris, as co-personal representatives and appointed a third sibling, Patricia Schmid, as special administrator. The court granted Weinberg's motion to dismiss, treating it as a summary judgment motion. The court denied Gene's post-trial motions.

Gene appeals arguing the circuit court (1) lacked subject matter jurisdiction to appoint a special administrator, (2) erred in converting the Rule 12(b)(6), SCRCP motion into a Rule 56, SCRCP summary judgment motion, (3) should have heard a motion to compel discovery before the

motion to dismiss, and (4) erred in granting the motion to dismiss.¹ We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

As to whether the circuit court lacked subject matter jurisdiction: S.C. Code Ann. § 62-1-302(d)(1) (Supp. 2010) (allowing removal from probate to circuit court of "formal proceedings for the probate of wills and for the appointment of general personal representatives" (emphasis added)); Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009) ("Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.").

As to conversion of motion to dismiss into a summary judgment motion and the order in which the court addressed the motions: Chastain v. Hiltabidle, 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009) ("It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless it was raised to and ruled upon by the trial court.").

As to whether the circuit court properly granted the motion to dismiss: Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986) ("[A]n attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client."); Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) ("[A]n attorney may be held liable for conspiracy where, in addition to representing his client, he [1] breaches some independent duty to a third person or [2] acts in his own personal interest, outside the scope of his representation of the client."); Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions, 388 S.C. 394, 405, 697 S.E.2d 551, 556 (2010) (declining to "extend an attorney's liability to those in privity with his or her client").

AFFIRMED.

FEW, C.J., PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate of
Robert D. Belk,

Appellant,

v.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9-17-07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M.M. Weinberg, Jr.,
Defendants and Cheryl Ann Harrison,
Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of whom Bibco, Inc., Mary B.
Weinberg (substituted for M.M.
Weinberg, Jr., deceased), Patricia B.
Schmid and Ida Mae Belk are

Respondents.

The Honorable James R. Barber
Sumter County
Trial Court Case No. 2008-CP-43-00347

ORDER DENYING PETITION FOR REHEARING

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

It is, therefore, ordered that the Petition for Rehearing be denied.

John Cannon Jr C.J.
Daniel G. Pieper J.
James E. Hoff

Columbia, South Carolina

cc: Andrew F. Lindemann
Thomas E. Lydon
Pope D. Johnson, III
William H. Johnson

FILED
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

Civil Action No. 2008-CP-43-0347

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AUG 19 2011
SC Court of Appeals

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, Appellant,

v.

Linda B. Harris, Individually and as Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9-17-07 and in all alleged fiduciary capacities,
Bibco, Inc., Dewey M. Houser, Carolina Preowned, LLP,
Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants;
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), and Patricia B. Schmid are, Respondents.


PETITION FOR REHEARING

The Appellant Gene C. Belk, individually and as Co-Personal Representative of the Estate of Robert D. Belk, petitions the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *Belk v. Harris*, Op. No. 2011-UP-383 (S.C. Ct. App. filed August 4, 2011).

The grounds for the Appellant's petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Appellant's petition for rehearing is based on the Court's decision in *Belk v. Harris*, Op. No. 2011-UP-383 (S.C. Ct. App. filed August 4, 2011).the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

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the Estate of Robert D. Belk*

Columbia, South Carolina

August 19, 2011

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

Civil Action No. 2008-CP-43-0347

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, Appellant,

v.

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Irrevocable Trust dated 9-17-07 and in all alleged fiduciary capacities,
Bibco, Inc., Dewey M. Houser, Carolina Preowned, LLP,
Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants;
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), and Patricia B. Schmid are,..... Respondents.

**MEMORANDUM IN SUPPORT OF
APPELLANT'S PETITION FOR REHEARING**

The Appellant Gene C. Belk, individually and as Co-Personal Representative of the
Estate of Robert D. Belk, has petitioned this Court for a rehearing of the recent decision in *Belk v.
Harris*, Op. No. 2011-UP-383 (S.C. Ct. App. filed August 4, 2011). The Appellant respectfully
submits that the following points were overlooked or misapprehended by this Court:

I.

This Court erred in its summary disposition of the subject matter jurisdiction issue. By Order filed November 7, 2008, the Circuit Court appointed Patricia Schmid as a Special Administrator for the Estate of Robert D. Belk. The Appellant contends that the Circuit Court lacked subject matter jurisdiction to appoint a special administrator, and as a result, the order and the appointment of Schmid by the Circuit Court is null and void. In addition, there was no application or petition even filed, let alone removed from Probate Court, seeking the appointment of a special administrator. This Court failed to consider or address the merits of this threshold issue. The Court's citation of a single statute and case are not dispositive of the issue.

This Court overlooked and failed to recognize that the Circuit Court clearly lacked subject matter jurisdiction over the appointment of a special administrator on several bases.

First, the Circuit Court lacked the authority to appoint a special administrator because no application or petition as required by Section 62-3-614 of the Probate Code was ever filed. The Respondents never even addressed this issue in their briefs. Clearly, there was no application or petition filed in Probate Court for a special administrator, and certainly there was no application or petition removed to the Circuit Court.

Second, the Circuit Court lacked subject matter jurisdiction to consider any issue relating to the administration of the Estate of Robert D. Belk because it is subject to the Order of Informal Probate which was issued by the Sumter County Probate Court on May 7, 2004. (R. 741). Section 62-1-302(d) of the Probate Code allows for the removal of causes of action or claims to the Circuit Court relating only to six subject matters as enumerated in the statute. The appointment or removal of a personal representative and the appointment of a special administrator in an *informal* probate proceeding do not fall within any of the six subject matters.

As indicated, the Estate of Robert K. Belk is subject to the Order of Informal Probate. Because the Estate is being probate informally, Section 62-1-302(d)(1) has no application. As such, the probate of the Estate of Robert K. Belk, including the appointment or removal of personal representatives and special administrators, are by statute within the exclusive jurisdiction of the Probate Court and are *not subject to removal to the Circuit Court.*¹

This Court's reasoning is unknown due to the summary disposition. However, the Court cites Section 62-1-302(d)(1) and highlights the word "formal." But the Court overlooked and/or failed to explain how Section 62-1-302(d)(1) allows for removal in this case when the Estate of Robert K. Belk is subject to the Order of Informal Probate. Throughout this litigation, the Order of Informal Probate remained in effect. It was not altered, amended, revised or vacated. A change from an informal probate process to a formal probate process must come from the Probate Court. The Circuit Court did not vacate or amend the Order of Informal Probate nor would it have had the authority or jurisdiction to do so. In short, there was no formal proceeding filed in Probate Court or removed to Circuit Court, and thus, this Court's emphasis of the word "formal" in its cite to Section 62-1-302(d)(1) has no bearing.

Finally, the Appellant argues that Judge James Barber improperly addressed issues involving the administration of the Estate of Robert D. Belk as part of Civil Action Number 08-CP-43-0347, which is the civil action commenced by the Appellant on behalf of the Estate. As the Appellant points out, *only* Civil Action Number 2008-CP-43-0347 was assigned to Judge L.

¹ In addition, unless a matter has been first brought in Probate Court and then properly removed under Section 62-1-302(d), the Circuit Court lacks subject matter jurisdiction over that matter. *Cotty v. Yartzeff*, 309 S.C. 259, 422 S.E.2d 100 (1992). Under the Probate Code, "each proceeding before the court is independent of any other proceeding involving the same estate." S.C. Code Ann. § 62-3-107. Citing Section 62-3-107, the Supreme Court in *Cotty* explained that "removal applies only to the particular proceeding removed. Upon removal, the probate court retains exclusive jurisdiction over the administration of the estate." *Cotty*, 422 S.E.2d at 102.

Casey Manning for adjudication by the order of Chief Justice Jean H. Toal dated September 15, 2008. (R. 2). There was no subsequent order by the Chief Justice authorizing Judge Manning or Judge Barber to assume jurisdiction over the probate matters that were ultimately adjudicated by Judge Barber in his November 7, 2008 Order. This Court overlooked and failed to issue any ruling on this issue. The Appellant submits that it is clear from the record that Judge Barber acted beyond the authority or scope of the Chief Justice's order, and for that additional reason, the appointment of Patricia Schmid as the Special Administrator is null and void. The Court is respectfully requested on rehearing to address this issue.

For each of the foregoing reasons, the Appellant submits that the Order Appointing Special Administrator issued by Judge Barber on November 7, 2008, was without the requisite jurisdiction, and thus, that order must be vacated as null and void. The Court is requested to rehear this issue and fully address the Appellant's arguments.

II.

This Court also overlooked or misapprehended the issues pertaining to the dismissal of the Appellant's causes of action against the Respondent M.M. Weinberg, Jr., the attorney who had prepared the Will of Robert D. Belk which was in probate, who had represented Mr. Belk in numerous business matters before his death, who had represented the Estate, and who later represented Linda Harris and Ida Mae Belk in the present litigation.² The Court's citation of three cases is not dispositive of the issues presented. The Court on rehearing is requested to consider and address the merits of the Appellant's position.

Specifically, the Appellant maintains that the Circuit Court erred in dismissing two of the

² During the pendency of this appeal, M.M. Weinberg, Jr. died, and Mary Weinberg, the Personal Representative of his estate, has been substituted. For ease of presentation, the Appellant will refer to M.M. Weinberg as the party throughout this brief.

causes of action alleged against Weinberg. The Appellant contends that the causes of action for civil conspiracy and tortious interference with a contract should have survived Weinberg's converted motion to dismiss.

In summarily addressing these claims, this Court cites to prior precedent holding that "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 339 S.E.2d 887, 889 (Ct. App. 1986). This Court also recognized the exception to the immunity defense to the extent that "an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person." *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740, 750 (Ct. App. 2007), *citing Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601, 602 (1995). However, this Court did not correctly apply that immunity defense, particularly given the fact that the dismissal was on a converted motion to dismiss. The Appellant respectfully submits it is necessary to focus on and address the issue of an "independent duty," which this Court did not reconsider and/or address in its opinion.

Judge Barber erred in dismissing the claims against Weinberg on the basis that an "independent duty" was not pled. This Court does not address that issue. Nonetheless, it is important to recognize that the Amended Complaint did include a number of factual *and verified* allegations that raise a breach of an independent duty by the Weinberg. (R. 169-172). Consequently, Judge Barber erred in dismissing the claims against Weinberg on the basis that an "independent duty" was not pled. There are certainly facts alleged that would give rise to an "independent duty," that is, assuming such a duty – as an exception to an immunity defense – needed to be anticipated and pled in the Amended Complaint. Indeed, under South Carolina law, it is well established that immunity is an affirmative defense on which the defendant – not the plaintiff

-- bears the ultimate burden of proof. See, *Rayfield v. South Carolina Dept. of Corrections*, 297 S.C. 95, 374 S.E.2d 910, 916 (1988) ("Immunity is an affirmative defense which must be pleaded"); *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994) (same). Thus, it is erroneous to require a plaintiff to plead an exception to an immunity defense in a complaint when the defendant has not even raised the defense by answer. Here, Weinberg has not yet even filed an answer to the Amended Complaint and affirmatively pled the immunity defense.³

Furthermore, this record clearly includes a scintilla of evidence to support the claims asserted against Weinberg. See, *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009) (holding that "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment"). The Appellant has presented at least a scintilla of evidence that Weinberg has acted in an attorney-client relationship with Robert D. Belk prior to his death, as counsel for the Estate post-mortem, and as counsel for Linda Harris in her capacity as Co-Personal Representative. The Appellant has also presented at least a scintilla of evidence that Weinberg was directly involved in efforts to obtain the breach or at least interfere with the post-mortem plan agreed to by all interested persons, including the Family Settlement Agreement executed on June 28, 2005, and the Memorandum of Understanding Regarding Future Transactions executed on June 30, 2005. The post-mortem plan was prepared in order to correct defects in Mr. Belk's will as drafted by Weinberg, and without that plan, the evidence demonstrates

³ The Appellant has also pointed out that an "independent duty" did not need to be pled because, unlike a negligence cause of action, the existence of a duty of care is not an element of either a civil conspiracy or a tortious interference with contract claim. Weinberg has not refuted this point. Instead, she argues only "this is the law" as set forth in *Gaar* and subsequent cases. But, *Gaar* recognizes an immunity defense – which without any reasonable dispute is an affirmative defense or avoidance. *Gaar* and its progeny did not create a new cause of action or create new elements for the existing causes of action for civil conspiracy or tortious interference with contract.

that the Estate would be harmed by substantial tax exposure and the testator's intentions (as agreed by all interested parties) would be impeded.⁴

Finally, the Appellant disagrees with any suggestion that the Supreme Court's recent decision in *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E.2d 551 (2010), is dispositive or precludes the Appellant's claims against Weinberg.⁵ In *Argoe*, the Supreme Court held that a mother did not have an attorney-client relationship with the attorney retained by her son who was acting under a durable power of attorney. This case presents an entirely different and distinguishable scenario. Here, the Appellant brought suit against Weinberg in his capacity as the Co-Personal Representative of the Estate of Robert D. Belk. Hence, he is suing on behalf of the Estate for harm committed to the Estate. In the Amended Complaint, the Appellant specifically alleged that Weinberg conspired with others "to do harm to the [E]state of Robert D. Belk." See, Amended Complaint, para. 77. (R. 178). Weinberg owed an independent duty to the Estate. Weinberg had a longstanding attorney-client relationship with the testator Robert D. Belk, and it was Weinberg who prepared the will that is being informally probated. Weinberg, therefore, continued to owe a duty to the testator and the Estate to ensure that the wishes of Mr. Belk were carried out. At the very least, he owed a duty not to interfere with the Estate's attempts to

⁴ Weinberg argued in her brief that the Family Settlement Agreement alters the will of Robert D. Belk and does not express his testamentary intent. At the very least, that is an issue of fact in dispute that should preclude summary judgment. The Family Settlement Agreement was prepared to correct a drafting error committed by Weinberg, and the beneficiaries agreed that the language agreed to did carry out the testator's intent. (R. 655-657).

⁵ The *Argoe* decision was issued after the briefing stage in the present appeal was completed. As a result, the Appellant did not have the chance to discuss the impact of *Argoe*, particularly in light of the fact that the oral argument was not scheduled. Contrary to what has been typical procedure in the Court of Appeals, the parties were never advised that oral argument would not be scheduled or that the appeal would be decided solely on the briefs and written record. If the Appellant had been so notified, he would have filed a motion requesting that oral argument be set.

carry out the wishes of the Mr. Belk.

Furthermore, Weinberg owed an independent duty of care to the Estate through his representation of the Estate after Mr. Belk's death. In his affidavit dated August 26, 2008, the Appellant Gene Belk testifies in detail as to the factual background of this litigation including consultations with Weinberg and advice that Weinberg provided as counsel for the Estate. (R. 764-766).⁶ That affidavit, which is uncontradicted, is further evidence of an independent duty owed by Weinberg. In short, the Supreme Court's decision in *Argoe* is inapposite.

Moreover, *Argoe* does not address the existence of the duty of care owed by a lawyer to a testator and later his estate. *Argoe* is not contrary to *Henkel v. Winn*, 346 S.C. 14, 550 S.E.2d 577 (Ct. App. 2001), where this Court suggested without expressly deciding that a duty of care is owed to a testator and subsequently his estate by the testator's attorney with respect to the drafting of estate planning documents.⁷ The Appellant submits that an attorney owes a duty of care to carry out and not impede the testamentary intent of the testator. *See also*, Max N. Pickelsimer, Comment, *Attorney Malpractice in Will Drafting: Will South Carolina Expand Privity to Impose a Duty to Intended Beneficiaries of a Will?*, 58 S.C. L. Rev. 581, 585 (2007) (recognizing that "testators and, more commonly, their personal representatives had standing to

⁶ This affidavit was filed in support of the pending Motion for Injunction and Restraining Order. However, Judge Barber has affirmatively stated that he considered this affidavit and an affidavit of Desa Ballard as evidence in opposition to Weinberg's converted motion to dismiss. (R. 4).

⁷ In Max N. Pickelsimer, Comment, *Attorney Malpractice in Will Drafting: Will South Carolina Expand Privity to Impose a Duty to Intended Beneficiaries of a Will?*, 58 S.C. L. Rev. 581, 585 (2007), the commentator cites the briefs in the *Henkel* case to show that the defendant law firm admitted that it owed a duty of care to the testator. 58 S.C. L. Rev. at 584, n. 28. This Court in *Henkel* questioned only whether a wife has standing to assert a legal malpractice claim against the attorney who prepared her deceased husband's will. This Court, however, did not question whether the estate had standing to assert such a claim.

bring a legal malpractice action against attorneys for negligent will drafting"); *Ventura County Humane Society v. Holloway*, 40 Cal.App.3d 897, 115 Cal. Rptr. 464, 469 (1974) ("[t]he primary duty is owed to the testator-client and the attorney's paramount obligation is to serve and carry out the intention of the testator"); *DeMaris v. Asti*, 426 So.2d 1153 (Fla. App. 3 Dist. 1983) (recognizing that an attorney preparing a will has a duty to the testator-client and a claim may arise where the testamentary intent is frustrated due to the attorney's negligence).

In sum, summary judgment – which the Supreme Court has recognized as a "drastic remedy"⁸ – was improvidently granted in this case. The Appellant sufficiently pled and presented evidence to support the civil conspiracy and tortious interference with contract claims against Weinberg. The lower court's order granting summary judgment to Weinberg should be reversed. The Court is respectfully requested to consider and address these issues on rehearing.

III.

Finally, as an alternative position, in the event the Court concludes (as it has subject to rehearing) that the Circuit Court did enjoy subject matter jurisdiction to appoint a special administrator, the Appellant argued that Judge Barber erred in the appointment of Patricia Schmid. The Court clearly did not address this issue in its opinion.

The appointment of the special administrator is equitable in nature. *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993); *Blackmon v. Weaver*, 366 S.C. 245, 621 S.E.2d 42 (Ct. App. 2005). As such, this Court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence. On rehearing, the Court is respectfully

⁸ See e.g., *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813, 818 (2009) ("[b]ecause it is a drastic remedy, summary judgment should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues").

requested to address this alternative position – again assuming the Court continues to conclude that subject matter jurisdiction existed for the appointment of a special administrator.

As the Appellant has previously argued, the Circuit Court in its order did not address Schmid's qualifications to serve as Special Administrator nor did the Court offer any explanation for its appointment. Moreover, the Court failed to address the Appellant's specific objections to the appointment of Schmid.

The Appellant submits that the Circuit Court erred in appointing Schmid and should have appointed someone with the appropriate qualifications and expertise to handle a complex estate and in particular someone who did not have any conflicts of interest. Specifically, the Circuit Court did not take into consideration that the appointment of Patricia Schmid as Special Administrator is improper because her counsel, William H. Johnson, represents both Schmid and another beneficiary of the Estate which in itself presents an inherent and irreconcilable conflict of interest between Schmid and the interests of the other beneficiaries. The Circuit Court further did not take into consideration that based upon the record, Patricia Schmid has other inherent and irreconcilable conflicts of interest. For example, the Circuit Court action seeking injunctive relief alleges irrefutable disputes with regard to the ownership and entitlement to monies and properties owned by the Estate, but moved into accounts in the name of Ida Mae Belk, Bibco, and the Ida Mae Belk Trust. Pursuant to the terms of the Ida Mae K. Belk Trust dated September 17, 2007, which is subject to Appellant's civil action to be set aside, Ida Mae Belk provides in paragraph three of page one that she intends to prepare a will to "authorize dissolution of the irrevocable trust and distribute all proceeds to my children." (R. 98). Mrs. Belk then signed a Will dated October 16, 2007 wherein stated on page one that she had created an Irrevocable Trust of all of her assets and "one condition of the Trust is that upon my death, the proceeds of

said Trust shall be distributed according to this my Will." (R. 433). This Will names Patricia Schmid as alternate Trustee (R. 436), but names no Personal Representative. Since there is a genuine dispute regarding the ownership of Estate funds that have been deposited into accounts of Mrs. Belk, and since Schmid was appointed as a fiduciary by her mother and would benefit if she did not require improperly taken funds to be returned to the Estate, Patricia Schmid has inherent and irreconcilable conflicts of interest.

The Circuit Court likewise did not take into consideration that since the beneficiaries under the Ida Mae Belk Irrevocable Trust and Will (not to mention accounts in the name of Ida Mae Belk) differ from the beneficiaries mandated by the Family Settlement Agreement and Memorandum Regarding Future Transactions, Patricia Schmid has inherent and irreconcilable conflicts of interest as a beneficiary closely aligned with her mother, Ida Mae Belk, and her sister, Linda Belk Harris.

Moreover, the Circuit Court did not consider that the appointment of Patricia Schmid as Special Administrator is inappropriate based upon the sworn testimony she gave at the hearing on October 2, 2008, wherein she hesitated when asked whether she would be able to bring a suit against her own mother for the return of property, especially based on her testimony of her close relationship with her mother. (R. 609-622). By appointing Patricia Schmid, the Circuit Court placed the proverbial fox in charge of the hen house, especially when, according to the record, more than \$1.1 million dollars were distributed to Ida Mae Belk in addition to more than \$300,000.00 (as of August 2008) that has been taken from Estate via Linda Harris and Ida Mae Belk and deposited into Ida Mae Belk accounts. (R. 453).

In addition to not considering the inherent conflicts, the Circuit Court did not consider that based upon the complex nature of the Estate and these proceedings, Schmid lacks the

education and experience to handle such a complex estate. The record reflects that Schmid did not graduate from high school and has only recently received her GED, and based upon the fact that there are significant income tax issues, these proceedings are far beyond her abilities and experience. (R. 610-611).

In sum, on rehearing, this Court is requested to review the propriety of naming Patricia Schmid as the Special Administrator. The Court is further requested to vacate the appointment of Schmid and return the authority of administering the Estate to the Co-Personal Representatives.

CONCLUSION

Based on the foregoing discussion, the Appellant respectfully requests that the Court rehear its decision in this case. The Appellant renews his request that this Court reverse all Orders of Judge James R. Barber, III, including the Order Appointing Special Administrator filed November 7, 2008; the Order granting summary judgment to the Respondent Weinberg filed October 31, 2008; and the two subsequent Orders denying Rule 59(e) motions.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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*Counsel for Appellant Gene C. Belk,
Individually and as Co-Personal Representative of
the Estate of Robert D. Belk*

Columbia, South Carolina

August 19, 2011



18396

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
James R. Barber, III, Circuit Court Judge

Civil Action No. 2008-CP-43-0347

Gene C. Belk, Individually and as Co-Personal
Representative of the Estate of Robert D. Belk, Appellant,

v.

Linda B. Harris, Individually and as Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9-17-07 and in all alleged fiduciary capacities,
Bibco, Inc., Dewey M. Houser, Carolina Pre-owned, LLP,
Michael D. "Mickey" Lyles, Jr., and M.M. Weinberg, Jr., Defendants
and Cheryl Ann Harrison, Patricia B. Schmid, Robert M. Belk,
and Ida Mae Belk, Stakeholders,

Of Whom Bibco, Inc., Mary B. Weinberg (substituted for
M.M. Weinberg, Jr., deceased), Patricia B. Schmid
and Ida Mae Belk are, Respondents.

RECORD ON APPEAL - VOLUME I

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SCANNED

OCT 3 5 2011

Davidson & Lindemann

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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

CASE NUMBER: 2004-ES-43-225

DALE ATKINSON
PROBATE COURT JUDGE

2008 SEP 16 AM 10:30

SUMTER COUNTY, S.C.

PROBATE COURT

ORDER OF REMOVAL

This matter comes before this Court upon motion of Patricia B. Schmid seeking the removal of the actions commenced by the filing of the Petitioner's Petition for Removal of Co-Personal Representatives, Petition for Review of Compensation, and the Petition for Appointment of Patricia B. Schmid as Personal Representative. It appearing that removal of these actions is appropriate, it hereby ORDERED that the Petition to Remove Co-Personal Representatives filed by Patricia B. Schmid and Robert M. Belk, the Petition for Review of Compensation filed by Patricia B. Schmid and Robert M. Belk. and the Petition for Appointment of Patricia B. Schmid as Personal Representative of the Estate of Robert D. Belk, and all responsive pleadings filed thereto, are hereby removed to the Court of Common Pleas for Sumter County, South Carolina.


Betty P. Brown
Probate Judge, Sumter County

Date: September 16, 2008

The Supreme Court of South Carolina

Gene C. Belk, individually and as personal representative of the Estate of Robert D. Belk,

Plaintiff,

v.

Linda B. Harris, individually and as Trustee of the Ida Mae K. Belk Irrevocable Trust dated 9/17/07,

Defendant.

Sumter County

2008-CP-43-0347

ORDER

RECORDED
2008 SEP 17 AM 9:51
JAMES S. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

The above matter is pending in Sumter County. The Honorable George C. James, Jr. has recused himself and cannot act as Chief Judge for Administrative Purposes to administer this case. Therefore,

IT IS ORDERED that the Honorable L. Casey Manning be assigned as Chief Judge for Administrative Purposes in the Third Judicial Circuit for the sole purpose of administering this case and preparing it for trial.

S/Jean Hoefler Toal

Jean Hoefler Toal
Chief Justice

September 15, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE PROBATE COURT

DALE ATKINSON
PROBATE COURT JUDGE

2008 SEP 29 PM 3:13

SUMTER COUNTY, S.C.

IN THE MATTER OF THE ESTATE OF ROBERT K. BELK

CASE NUMBER: 2004-ES-43-225

ORDER OF REMOVAL

This matter comes before this Court upon motion of Ida Mae K. Belk seeking the removal of the actions commenced by the filing of the Petitioner's Petition for Removal of Co-Personal Representatives, Petition for Review of Compensation, and the Petition for Appointment of Linda B. Harris as Personal Representative. It appearing that removal of these actions is appropriate, it is hereby ORDERED that the Petition to Remove the Co-Personal Representative filed by Ida Mae K. Belk, the Petition for Review of Compensation filed by Ida Mae K. Belk and the Petition for Appointment of Linda B. Harris as Personal Representative of the Estate of Robert D. Belk, and all responsive pleadings filed thereto, are hereby removed to the Court of Common Pleas for Sumter County South Carolina.

Beth P. Brown Casser
Probate Judge, Sumter County

September 29, 2008,

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Civil Action No. 08-CP-43-0347

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

ORDER

RECORDED
2008 OCT 31 AM 11:54
JAMES H. BELL
CLERK OF COURT
SUMTER COUNTY, S.C.

RECEIVED
2008 NOV -7 AM 11:45
J.P. & B. LLP
-LUENGLAY SERVICES
OF SC, PA

This action came before the Court on October 2, 2008 for a hearing on a motion of Defendant M. M. Weinberg, Jr. ("Weinberg") to dismiss the complaint against him. The motion was made pursuant to Rule 12(b)(6), SCRCP, and was supported by the affidavits of Weinberg and Defendant Linda B. Harris, as Personal Representative and Trustee, and Ida Mae Belk. The plaintiff submitted his affidavit in opposition to the motion. These affidavits were not excluded by the Court. Pursuant to Rule 12(b), SCRCP, the motion was treated as a motion for summary judgment.

Upon considering the arguments of counsel, the affidavits before the Court, and the

memorandums submitted by the plaintiff and Weinberg, I find that Weinberg is entitled to judgment in his favor as a matter of law for the reasons set forth below.

The plaintiffs and Defendant Harris are brother and sister and are Co-Personal Representatives of their father's estate. The dispute here arises out of matters related to the estate. Weinberg, who represented the deceased Robert D. Belk for many years prior this death, has represented his widow, Ida Mae Belk, his daughter, Linda B. Harris in her capacity as Trustee of the Ida Mae Belk Irrevocable Trust dated September 17, 2007 and as Co-Personal Representative of the Estate of Robert D. Belk and Bibco, Inc., a corporation owned by the widow.

Weinberg was joined as a party to this action by the Amended Complaint. The Amended Complaint asserts four causes of action against Weinberg. The causes of action against Weinberg are to set aside influenced transactions, civil conspiracy, tortious interference with a contract, and breach of contract accompanied by a fraudulent act.

Weinberg asserts that he is not a party to any contract referenced in the complaint and that he cannot be sued to set aside agreements to which he is not a party. Weinberg asserts that he is immune from suit for civil conspiracy and tortious interference with a contract since he was at all times acting as attorney for his clients, within the scope of his representation of his clients. Further, Weinberg maintains that he does not owe any independent duty to plaintiff and that he has not breached any duty owed to the plaintiff. Finally, Weinberg maintains that he is not a party to any contract with the plaintiff and therefore cannot be liable for breach of contract accompanied by a fraudulent act.

Weinberg, pointing to a pending motion to disqualify him as an attorney in this action, maintains that his joinder to the action was an effort to prevent him from representing his clients in the action.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg is a party to any agreement sought to be set aside as having been subject to undue influence. I find that Weinberg cannot be sued to set aside an agreement to which he is not a party.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg has breached some independent duty to the plaintiff or that Weinberg acted in his own personal interest, outside the scope of his representation of his clients.

"Generally, 'an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.' *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). In *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995), this Court held 'an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006).

The affidavits of Weinberg, Defendant Harris, and Ida Mae Belk establish that Weinberg acted only in the capacity as an attorney for his clients, pursuant to their instructions and directions. Although plaintiff's counsel asserted that Weinberg had acted in his own personal interest because he had received attorney's fees, this argument fails. If mere receipt of attorney fees were sufficient to cause a lawyer to lose his immunity, the lawyer would never have immunity unless the services were rendered without a fee being charged. For the loss of immunity to occur, there must be evidence that the lawyer breached an independent duty owed to a third party or that the lawyer has acted in his own personal interest, outside the scope of his representation of his client. Here, I find that Weinberg owed no duty to the plaintiff. There is no evidence that Weinberg has acted in his own personal interest, outside the scope of his representation of his clients. Weinberg

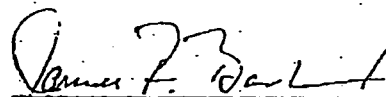
is therefore entitled to summary judgment as to the causes of action for civil conspiracy and tortious interference with a contract.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg was a party to a contract with the plaintiff. In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish that there is a contract with the adverse party. The plaintiff must then establish three elements: (1) breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) fraudulent act accompanying the breach. *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). Since there is no contract between the plaintiff and Weinberg, Weinberg is entitled to summary judgment as to the cause of action for breach of contract accompanied by a fraudulent act.

ACCORDINGLY,

IT IS ORDERED that judgment be and hereby is entered in favor of Defendant M. M. Weinberg, Jr. with respect to the plaintiff's Amended Complaint against him in the above-referenced action.

AND IT IS SO ORDERED.



James R. Barber, III
Circuit Court Judge

Colleton, South Carolina

October 25, 2008

STATE OF SOUTH CAROLINA
COUNT OF SUMTER

RECORDED
2008 NOV -5 PM 1:29
CIVIL ACTION NO.: 2008-CP-43-0347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the)
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco Inc)
Dewey M. Houser, Carolina Pre-Owned, LLC &)
Michael D. "Micky" Lyles, Jr. and M. M.)
Weinberg, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmid,
Robert M. Belk, and Ida Mae Belk

Stakeholders

ORDER APPOINTING SPECIAL
ADMINISTRATOR

RECEIVED
2008 NOV -7 AM 11:49
W.P. & B.L.P.
LAW SERVICES
OF SC, PA

IDENTIFIED TRUE COPY
OF ORIGINAL FILED
[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter came before me for a hearing on the 2nd day of October 2008 with regard to a number of issues including an application for injunction at Sumter, South Carolina.

Present and appearing were Plaintiff and his attorney, Jan L. Warner; Ida Mae Belk and her attorney, M.M. Weinberg, Jr.; Linda Harris and her attorney, S. Jahue Moore; Dewey Houser and his attorney Donald W. Tyler, Jr. (Mr. Tyler also appeared on behalf of Michael D. "Micky" Lyles, who was not in attendance); and Patricia B. Schmid and Robert M. Belk and their attorney, William H. Johnson.

Pursuant to Order of the South Caroline Supreme Court, this matter was transferred to the Honorable L. Casey Manning, Chief Administrative Judge of the Fifth Judicial Circuit. Judge Manning, in turn, assigned this matter to me to conduct this hearing.

Robert D. Belk died on April 5, 2004. The Personal Representative under his Last Will and Testament, Carlton R. Davidson, resigned, and Gene C. Belk was named as first alternate Personal Representative.

By Order of the Probate Court dated May 7, 2004, Gene C. Belk and Linda Harris, two (2) of the five (5) children of Robert D. Belk and Ida Mae Belk, were appointed as Co-Personal Representatives.

Applications to remove the Personal Representatives have been properly filed in the Probate Court and removed to this Court, thus vesting this Court with subject matter jurisdiction to enter this Order (§62-1-302, SC Code Ann.).

After beginning to take testimony with regard to removal of the Personal Representatives for the estate of Robert D. Belk, an agreement was reached to appoint a special administrator.

After due consideration of the testimony and the evidence, and having heard the preferences of the beneficiaries of the estate, I find and conclude that Patricia Schmid should be appointed as Special Administrator subject to the terms and conditions of this Order. In addition to the statutory duties vested in the Special Administrator, I hereby make the following additional requirements of service:

1. The Special Administrator shall provide regular accountings and updates to all attorneys on at least on quarterly basis. Both Co-Personal Representatives shall cooperate in turning over to the Special Administrator copies of all records, bank accounts, and other documents into which funds have been deposited in order to aid the Special Administrator in appropriately determining the assets, accounts, and accounts receivable of the Estate; the whereabouts of Estate income and assets; and then making appropriate disbursement and funding of the appropriate trusts.

2. Records of deposits into and expenditures from all accounts (including the Sumter Mortgage Company, Ida Mae Belk Irrevocable Trust, I.M. Belk, Bibco, and all other entities), shall be turned over to the Special Administrator who shall marshal all Estate assets, establish an appropriate estate account, assure appropriate estate expenses are paid and, where necessary, make such demands or bring such actions as may be necessary to return to the Estate any funds or assets that may have been misapplied, whether intentionally or otherwise.

3. That the Special Administrator, upon written request, shall provide the co-trustees copies of monthly bank statements, checks, and deposit details of all accounts referred to in Paragraph 2 above.

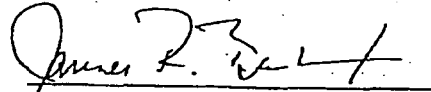
4. Based upon the Parties desire to minimize costs, anytime during the Special Administrator's service, the parties, by agreement may resolve this matter which would thereby relieve the Special Administrator of any further duties.

5. Input from the beneficiaries of the Estate may be directed to the Special Administrator, or through counsel employed by the Special Administrator to assist in the administration of the estate.

6. Any fees and expenses charged by the Special Administrator and counsel shall be approved by the Court. All beneficiaries shall receive notice of any hearing related to fees and costs.

7. All pertinent records shall be provided to a Certified Public Accountant(s) employed by the Special Administrator, so the CPA can bring current the bookkeeping of Sumter Mortgage and file completed Estate tax returns which are currently under an extension.

AND IT IS SO ORDERED.



James Barber III, Presiding Judge
Third Judicial Circuit

At Chambers
Columbia, South Carolina
October 2008
Columbia 31

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED

2009 FEB 19 AM 11:40

IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT

Gene C. Belk, Individually and as
Personal Representative of the Estate
of Robert D. Belk,

Plaintiff,

Civil Action No. 08-CP-43-0347

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants,

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER,
VACATE, SET ASIDE, ALTER
AND/OR AMEND OR CLARIFY
ORDER DATED OCTOBER 25, 2008**

This action came before the Court on January 29, 2009 for a hearing on the Plaintiff's Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend or Clarify Order Dated October 25, 2008. For the reasons stated below, the motion is denied.

BACKGROUND

This action came before the Court on October 2, 2008 for a hearing on Weinberg's motion to dismiss the complaint against him. The motion was made pursuant to Rule 12(b)(6), SCRPC, and was supported by the affidavits of Weinberg, Defendant Linda B. Harris, as Personal Representative and Trustee, and Ida Mae Belk. Both defendants

submitted Memorandums to the Court, and the plaintiff submitted his affidavit and the Affidavit of Desa Ballard. These affidavits were not excluded by the Court. Without objection and pursuant to Rule 12(b), SCRCP, the Court treated the motion as a motion for summary judgment.

The Court found that: (1) Weinberg could not be sued to set aside an agreement to which he was not a party; (2) the Amended Complaint did not allege and the plaintiff's affidavit did not assert that Weinberg had breached some independent duty to the plaintiff or that Weinberg acted in his own personal interest, outside the scope of the representation of this clients; (3) Weinberg owned no duty to the plaintiff; and (4) Weinberg was not a party to a contract with the plaintiff and since there was no contract, Weinberg was entitled to summary judgment as to the cause of action for breach of contract accompanied by a fraudulent act. The Court granted judgment in favor of Weinberg with respect to the plaintiff's Amended Complaint against him.

By a motion dated November 10, 2008, the plaintiff moved to have the order reconsidered, vacated, set aside, altered and/or amended or clarified and for relief pursuant to Rule 60(b), SCRCP.

ANALYSIS

The plaintiff, in his motion, has asserted numerous grounds, the majority of which relate to the Court's having heard the motion, having heard it out of order, and having converted the motion to dismiss to a motion for summary judgment. However, I find that these grounds are factually and legally insufficient to sustain the motion.

Weinberg's motion was made pursuant to Rule 12(b)(6), SCRCP. Rule 12(b) specifically provides that matters outside the pleading that are presented to and not

excluded by the court, the court shall treat the motion as one for summary judgment and dispose of it as provided in Rule 56 and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56. Here, Weinberg supported his motion with affidavits filed with the motion. As the record reflects, the plaintiff submitted affidavits from Desa Ballard and himself in opposition to the motion. No objection was made to the Court converting the motion to a summary judgment motion. No request was made to postpone the hearing for further discovery. No request was made to hear the pending motions in some different order. Furthermore, no affidavit was filed by the plaintiff pursuant to Rule 56(f) asserting any reasons why the plaintiff was unable to present facts essential to justify his opposition to the motion.

I find that these grounds cannot constitute a basis for granting a motion to reconsider because these issues were not raised at the hearing. It is well settled that an issue may not be raised for the first time in a motion to reconsider. *Johnson v. Sonoco Products Company and GAB Robins, Inc.*, Opinion No. 26584, filed January 20, 2009. The plaintiff, at the hearing, did not raise or object to the motion being converted to a motion for summary judgment or to the motion being heard first. The plaintiff did not seek a continuance or a postponement of the motion to allow for further discovery. The plaintiff did not object to the hearing going forward without the plaintiff having the opportunity to depose Weinberg, nor did the plaintiff ever request that he be allowed to re-plead his complaint. Since the plaintiff did not raise these issues at the hearing, they cannot constitute a basis for reconsidering or altering the order.

Although the plaintiff has also asserted that the Court failed to address whether Weinberg owed a fiduciary duty to plaintiff as personal representative of the estate, this is

simply incorrect. The Court specifically found that the Amended Complaint and the plaintiff's affidavit did not assert that "Weinberg breached some duty independent to the plaintiff or that Weinberg acted in his own personal interest, outside the scope of his representation of his clients". The Court specifically found that "Weinberg owed no duty to the plaintiff". Therefore, the Court did not overlook or fail to address this issue.

Although the plaintiff has also made a Rule 60(b) motion, the plaintiff has pointed to no basis for relief under Rule 60(b) from the Order dated October 25, 2008. The plaintiff cannot seek relief from the order based upon mistake, inadvertence, surprise or excusable neglect, where Weinberg's motion was supported with affidavits which provided clear notice that matters outside the pleadings would be submitted and where the plaintiff sought no postponement or continuance, but instead argued the motion on the merits, supported by his own affidavits. The plaintiff has not pointed to any newly discovered evidence pursuant to Rule 60(b) nor has the plaintiff pointed to any fraud, misrepresentation or other misconduct of an adverse party. Accordingly, I find that there is no basis for relief under Rule 60(b).

Here, the plaintiff argued Weinberg's motion on the merits. The plaintiff did so supporting his position with affidavits. The plaintiff never sought a postponement or continuance or raised any objection to the motion being converted to a motion for summary judgment. Having lost on the merits, the plaintiff is not entitled to have the Order reconsidered and is not entitled to relief from the Order based upon Rule 60(b). Accordingly,

IT IS ORDERED that the Plaintiff's Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend or Clarify Order Dated October 25, 2008 be and hereby is denied.

AND IT IS SO ORDERED.



James R. Barber
Presiding Judge

Columbia, South Carolina

February 12, 2009

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2009 FEB 19 AM 11:10

IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY

Gene C. Belk, Individually and as
Personal Representative of the Estate
of Robert D. Belk,

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants,

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

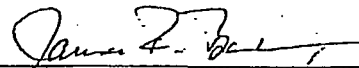
ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER,
VACATE, SET ASIDE, ALTER
AND/OR AMEND OR CLARIFY
ORDER APPOINTING SPECIAL
ADMINISTRATOR DATED
NOVEMBER 3, 2008

This action came before the Court on January 29, 2009 for a hearing on the Plaintiff's Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend or Clarify Order Appointing Special Administrator Dated November 3, 2008. Upon the call of the motion, counsel for the plaintiff advised that he would submit the motion and exhibits for consideration by the Court without argument. The Court has reviewed the motion and exhibits and the grounds of the motion and finds no basis for reconsidering, altering or amending the Order dated November 3, 2008. Accordingly

IT IS ORDERED that the Plaintiff's Motion to Reconsider, Vacate, Set Aside, Alter

and/or Amend or Clarify Order Appointing Special Administrator Dated November 3, 2008
be and hereby is denied.

AND IT IS SO ORDERED.



James R. Barber
Presiding Judge

Columbia, South Carolina

February 12, 2009.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE PROBATE COURT

ESTATE OF ROBERT D. BELK
CASE NO.: 2004-ES-43-0225

DALE ATKINSON
PROBATE COURT JUDGE
2007 APR 24 AM 9 55
SUMTER COUNTY, S.C.


SUMTER COUNTY, S.C.

RULE TO SHOW CAUSE

TO: Gene C. Belk and Linda B. Harris, Personal Representatives of the Estate of Robert D. Belk:

Pursuant to the Petition of Ida Mae K. Belk attached hereto, **YOU ARE HEREBY ORDERED** to appear before me in the Probate Court courtroom, 141 N. Main Street, Sumter, SC 29150 on the 23 day of May, 2007 at 10:00 o'clock A. M. to **SHOW CAUSE** why you should not be ordered forthwith to prepare and file with this Court a full account in writing of your administration, a proposal for distribution of all assets not yet distributed and a petition for settlement of this Estate.

AND IT IS SO ORDERED.


Dale Atkinson
Sumter County Probate Judge

Sumter, SC
April 24, 2007.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2008-CP-43-____
)

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

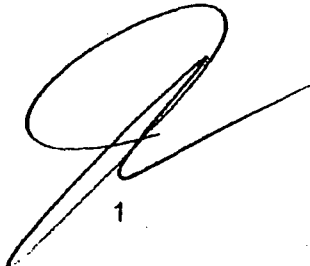
Stakeholders

COMPLAINT

Plaintiff, for a Complaint against Defendants, alleges:

PARTIES AND JURISDICTION

1. Plaintiff and Defendants are residents Sumter County, South Carolina; the acts alleged herein occurred in Sumter County, South Carolina; this Court has jurisdiction over the parties and the subject matter; and venue is appropriate in this Court. The Stakeholders are the beneficiaries of the Estate of Robert D. Belk whose rightful interests in said estate and other assets have been adversely affected by the acts of Defendants as alleged herein. The issues herein are, for the most part, equitable in nature.



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2 Defendant Harris is the sister of Plaintiff, the daughter of Stakeholder Ida Mae Belk, and a fiduciary who has continuously and repetitively breached her duties as set forth herein; Bibco, Inc. is an entity owned by Ida Mae Belk, but is being wrongfully controlled by Defendant Harris to benefit herself, her family members, and love interests; Defendant Houser is Defendant Harris' love interest whom she has placed in positions of trust to assist her in the wrongful acts complained of herein; Carolina Preowned, LLP, is a South Carolina limited liability partnership that owes the Estate of Robert D. Belk Two Hundred Thousand Dollars (\$200,000.00) plus interest and has been used for self-serving reasons to benefit Defendant Harris, Defendant Lyles, and Defendant Houser at the expense of the Estate and other entities; and Defendant Lyles is the son of Defendant Harris and is the managing partner of Carolina Preowned, LLP who has engaged in self-serving acts that have benefitted him, Defendant Harris, and Defendant Houser and have been detrimental to the Estate.

FACTUAL ALLEGATIONS

3. Robert D. Belk died on April 5, 2004. His Estate is being probated in the Probate Court for Sumter. Plaintiff and Defendant Linda B. Harris are acting as Co-Personal Representatives of said Estate.

4. Simultaneously with the commencement to this action, Plaintiff has filed an action in the Sumter County Probate Court seeking the removal of Linda B. Harris as Co-Personal Representative and, when removed, Plaintiff will seek consolidation of these actions as they are based upon the same factual allegations.

5. When Robert D. Belk was diagnosed with a life threatening condition in the year 2000, he was married to Stakeholder Ida Mae Belk. Mr. Belk and Mrs. Belk



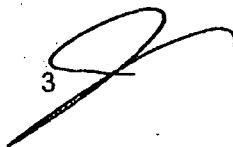
had five (5) children, Plaintiff, Defendant Harris, and Stakeholders Cheryl Ann Hanlon, Robert M. Belk, and Patricia B. Schmit. They had a number of grandchildren, some of whom are minors.

6. Knowing that his father was diagnosed with a life-threatening condition, and being aware that his father's estate was substantial and complicated, and knowing that his mother, Ida Mae Belk, was neither involved in the day-to-day operations of his father's various businesses nor possessed of the business acumen to handle the same, Plaintiff secured an appointment for his father, mother, and sister, Defendant Harris, with David C. Sojourner, Jr. an estate-planning specialist in Columbia, South Carolina.

7. After meeting with Mr. and Mrs. Belk, Plaintiff, and Defendant Harris, Mr. Sojourner wrote to Mr. and Mrs. Belk on June 20, 2000 setting forth a detailed plan by which Mr. and Mrs. Belk could avoid estate taxes based upon Mr. Belk's assets. Copies of this letter were sent to Plaintiff and Defendant Harris with their parents' permission.

(Exhibit 1)

8. During his lifetime, Mr. Belk handled all aspects of the family finances, including buying and selling real estate and other properties in his own name, in the name of Sumter Mortgage Company, (an unincorporated entity), and otherwise. At his death, he owned substantial assets and was the payee on a number of promissory notes and contracts of sale in various capacities which continue to bring ongoing monthly income. Among other entities, Mr. Belk formed in the name of his wife Bibco, Inc. (Bob Ida Belk Company) for her protection. Mrs. Belk, who will be 80 years of age in May 2008, was not knowledgeable about her husband's business dealings and because of that and her vulnerability, Mr. Sojourner's plan dealt not only with estate



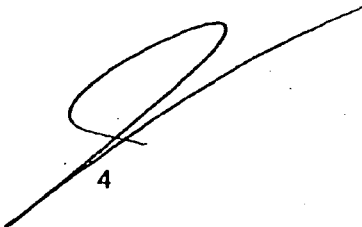
taxes, but also with ways in which Mrs. Belk would be protected; and, at the second death, the children would benefit as Mr. and Mrs. Belk intended, with special attention to issues affecting Stakeholders Hanlon and Robert M. Belk.

9. During his life, Robert D. Belk and Plaintiff were involved in several business relationships.

10. At the time of his death, in addition to being the payee on valuable installment sale contracts and notes, Robert D. Belk owned real estate and subdivisions in his name, in the name of Sumter Mortgage Company, and otherwise.

11. For reasons presently unknown to Plaintiff, Robert D. Belk executed a Will on the 5th day of March 2004, only a month before his death, which was not prepared by Mr. Sojourner, but by M. M. Weinberg, Jr. who had been told about Mr. Sojourner's recommendations.

12. Unknown to Plaintiff at that time, the executed Will does not contain appropriate tax planning language and did not follow the plan suggested by Mr. Sojourner nearly four years earlier. Due to errors and omissions contained in said Will, including failure to include proper generation skipping and special needs language, without substantial and expensive post-mortem planning and assistance from lawyers specializing in the field of taxes and estate planning, Mr. Belk's estate would have been a fiasco and would have cost the beneficiaries of the Estates of Mr. and Mrs. Belk significant estate taxes. The cost of post-mortem representation was significantly greater than would have been spent had the Will been prepared correctly in the first place.



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13. Pursuant to the terms of said Will, Robert D. Belk, who died on April 5, 2004, named Carlton R. Davidson as Personal Representative and appointed Plaintiff alone to act solely as successor or alternate Personal Representative. The Will named Plaintiff and Defendant Harris as Co-Trustees of all Trusts created there under for Mrs. Belk, Cheryl Ann Hanlon, and Robert M. Belk. On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. Even though Plaintiff was under no obligation to do so, in an effort to preserve family unity, he allowed the nomination of his sister, Defendant Harris, to serve with him as Co-Personal Representative.

14. Thereafter, on May 7, 2004, Plaintiff and Defendant Harris petitioned for probate of the Will and appointment as co-personal representatives, and the Probate Court for Sumter County approved the same.

15. Upon reviewing Mr. Belk's Will and determining that the same was deficient and contrary to appropriate estate planning, Mrs. Belk, Plaintiff and Defendant Harris again communicated with the firm of David C. Sojourner to handle the post-mortem planning and probate in December 2004.

16. As a result of that communication, the firm of Ellis & Lawhorne (David Sojourner and Karen Thomas) determined that in order to attempt to avoid estate taxes at the second death, had Sumter Mortgage Company had been a joint venture with Ida Mae Belk, there would be favorable taxation treatment. They also saw the need to engage in appropriate special needs planning for Stakeholders Hanlon and Robert M. Belk, to protect Mrs. Belk, and to simplify accounting, Therefore, a comprehensive post-mortem plan was created and agreed to by Mrs. Belk, Plaintiff, and Defendant Harris

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whereby 1) maximum annual exclusion gifts would be made annually by Ida Mae Belk as set forth within the written documents; 2) the gifts to Cheryl Ann Hanlon and Robert M. Belk would be paid to appropriate Trusts that were created for them; and 3) Ida Mae Belk would disclaim, renounce, reject, and refuse to accept certain interests in disclaimed property improperly left to her under the Will of Robert D. Belk. Mrs. Belk signed the disclaimer on December 29, 2004 as part of this coordinated post mortem estate and future transaction plan that was agreed to by Plaintiff, Mrs. Belk, and Defendant Harris. As part and parcel of this agreement and plan, Plaintiff and Defendant would be co-trustees and joint managers of not only assets of the estate, but also of Bibco and other assets held by Mrs. Belk, including the ability to create such family business entities as were appropriate prior to funding the new trusts. In consideration of the Estate agreeing that Mrs. Belk and Mr. Belk were involved in a Sumter Mortgage Company joint venture and transferring a one-half interest to her and for other valuable consideration, the family settlement agreement referred to herein was entered by Plaintiff, Mrs. Belk, and Defendant Harris.

17. On the same day, as part and parcel of said plan, Ida Mae Belk as Grantor created Trusts for Robert M. Belk and Cheryl Ann Hanlon with Plaintiff and Defendant Harris as co-Trustees. Mrs. Belk was billed by Mr. Sojourner to create these trusts and for advice regarding gifting.

18. On May 24, 2005, Karen H. Thomas, acting as attorney for the co-personal representatives of Estate, wrote Plaintiff and Defendant Harris setting forth all the estate tax issues and confirming the plan in connection therewith that began on December 29, 2004 when Mrs. Belk disclaimed certain interests in said Estate for tax

purposes. A copy of Karen Thomas' May 24, 2005 letter and attachment are attached and incorporated herein by reference as **Exhibit 2**.

19. Thereafter, as part and parcel of the plan and agreement among Mrs. Belk, Plaintiff, and Defendant Harris, a Family Settlement Agreement was executed by Plaintiff, Defendant Harris, Mrs. Belk and other interested persons on June 28, 2005 and filed in the office of the Judge of Probate for Sumter County on the 30th day of June 2005. A copy of said Family Settlement Agreement is attached hereto and incorporated herein by reference as **Exhibit 3**.

20. On June 30, 2005, Plaintiff, Defendant Harris, and Defendant Ida Mae Belk, individually and d/b/a Sumter Mortgage Company and Sumter Finance Company, also signed a **Memorandum of Understanding Concerning Future Transactions (Exhibit 4)** which confirmed, in writing, the manner in which all future transactions with regard to both the Estate and Mrs. Belk would be handled in order to carry out the testamentary intent of Robert D. Belk, to protect Mrs. Belk, and to place Plaintiff and Defendant Harris in fiduciary positions in charge of both said Estate and the ongoing business dealings of Mrs. Belk who, as aforesaid, was not involved in the business throughout the marriage. Had not this agreement been reached that Mrs. Belk's assets would be jointly managed by Plaintiff and Defendant in the same manner as was intended by Mr. Belk, there would have no compromise or agreement, and a different tact would have been taken in filing the Form 706.

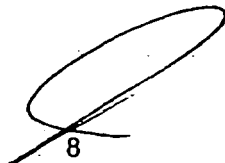
21. Pursuant to the plan and agreement that had been implemented and partially performed, Mrs. Belk was required to assign her fifty percent (50%) interest in Sumter Mortgage Company (including Sumter Mortgage Finance) and all other assets

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to Plaintiff and Defendant Harris as co-Trustees of a Trust to be created for Mrs. Belk's benefit during her lifetime. This Trust was to contain substantially the same provisions as Trust C under Mr. Belk's Will to benefit Mrs. Belk during her life, but would include correct and appropriate language relating to tax and Medicaid issues that was wrong in Mr. Belk's testamentary trust. At Mrs. Belk's death, the corpus and remaining income would be distributed in five (5) equal shares to and for the benefit of the five Belk children, just as had been set forth in Mr. Belk's Will. In addition, Mrs. Belk's Trust would also provide for her to withdraw five percent (5%) of the principle each year in order to for the purpose make gifts in equal shares among family members. This Trust was to own Mrs. Belk's interest in the unincorporated Sumter Mortgage Company and other assets that would be transferred to one or more family business entities to be owned by this new trust.

22. Pursuant to this Agreement, Mrs. Belk would also sign paper work allowing Plaintiff and Defendant Harris to transfer the assets of Sumter Mortgage Company to this new trust. It was the intention of Mrs. Belk, Plaintiff, and Defendant Harris that this trust and the various family business entities would be completed within sixty (60) days. On the same day, Mrs. Belk signed a Durable Power of Attorney appointing Plaintiff and Defendant Harris as Co-Attorneys-in-Fact. A copy of said Durable Power of Attorney dated June 30, 2005 being attached hereto and incorporated herein by reference as **Exhibit 5**.

23. On June 30, 2005, a Trust Severance Agreement was signed by Gene C. Belk and Linda B. Harris as Co-Personal Representatives and notice thereof was



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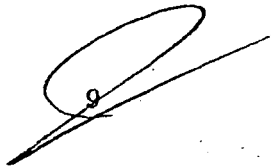
submitted to the appropriate officials in order to correct the faulty drafting of Mr. Belk's Will of March 5, 2004.

24. In addition, Karen Thomas drafted a revocable living trust for Mrs. Belk for review by Mrs. Belk's attorney and sought input from Plaintiff and Defendant Harris regarding the establishment of entities to own the family business and the funding of the trusts created under the plan referred to hereinabove. (Exhibit 6 - Letter of July 20, 2005).

25. Defendant Harris took her mother, Mrs. Belk, to William B. (Bert) Brannon (whom Defendant Harris had initially identified as her attorney) to review the trust drafted by Karen Thomas on behalf of Mrs. Belk. Mr. Brannon made modifications consistent with the family agreement, reprepared Mrs. Belk's trust with Plaintiff and Defendant Harris as co-trustees, and prepared a will for Mrs. Belk. Upon information and belief, Mrs. Belk never signed this Trust

26. Pursuant to the family Agreement, Mrs. Belk made gifts during the years 2004, 2005, and 2006. Pursuant to communications from Karen Thomas dated November 17, 2005, continuing efforts were made to work toward completing the documents called for under the Family Settlement Agreement and Memorandum Concerning Future Acts. (Exhibit 7 - Karen Thomas correspondence)

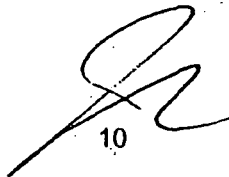
27. As a result of the family agreement that had been partially performed, on February 28, 2006, a closing letter from the Internal Revenue Service was received. Without performing under the agreements reached by Plaintiff, Defendant Harris, and Mrs. Belk as set forth within the relevant documents, there would have been significant estate taxes at the second death and Mr. Belk's intent would not have been carried out.

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28. Beginning after receipt of the closing letter, Defendant Harris then began a course of conduct designed to renege upon the partially performed family agreement among Mrs. Belk, Plaintiff, and herself. In addition to taking control of Mrs. Belk, without the knowledge of Plaintiff, Defendant Harris who is sleeping with Defendant Houser, placed Houser in fiduciary positions with Sumter Mortgage Company and Bibco to act as the agent for these entities when he did not have the authority to do so. She allowed Houser to sign documents on behalf of Estate and Bibco property as if he had a real estate license and as fiduciary when he was neither. In these regards, Defendant Houser has been allowed to sign legal transfer documents as an agent of Sumter Mortgage Company (an estate asset) and for Bibco on real estate and mobile home transactions, including conditional installment sales contracts, which were recorded in the Office of the Register of Deeds for Sumter County. A copy of June 2, 2006 document is attached hereto and incorporated herein by reference as **Exhibit 8**.

29. At the same time, in an effort to sidetrack Plaintiff, Defendant Harris wrote Plaintiff on June 26, 2006 about completing the Family Settlement Agreement, Trust, and Mrs. Belk's Will to follow the terms of Robert D. Belk's Will. A copy of her June 26, 2006 correspondence is attached hereto and incorporated herein by reference as **Exhibit 9**.

30. At the same time, without the knowledge or consent of Plaintiff, Defendant Harris continued to allow Defendant Houser – who was being paid cash without withholding by Sumter Mortgage and was being paid commissions for real estate sales even though he was not a realtor – to sign bills of sale on behalf of Sumter Mortgage



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Company, an Estate asset. Copies of the same are attached hereto and incorporated herein by reference as **Exhibit 10**.

31. In 2006, Defendant Harris came to Plaintiff seeking for him to agree for the Estate (Sumter Mortgage Company) to loan Two Hundred Thousand Dollars (\$200,000.00) for her son, Michael D. (Mickey) Lyles, to allow him to start up Carolina Preowned, LLC, in order to sell used cars. The LLC, owned in four equal shares by Defendant Lyles, Defendant Houser, Defendant Harris, and Plaintiff, has used all of the capital to pay Defendant Lyles salary and to give Defendant Houser the use of an expensive automobile, but the loan to the Estate has not been repaid. This is another example of the self-serving fashion in which Defendant Harris has bestowed self-serving benefits on Defendants Lyles and Houser which should be disgorged and returned to the Estate.

32. Then, in late 2006, without the knowledge of Plaintiff, Defendant Harris took her mother Mrs. Belk to yet another attorney, John Chase of Florence, South Carolina, as part of Defendant Harris' continuing efforts to undermine and renege on the Family Settlement and other Agreements referred to herein. Mr. Chase prepared a revocable trust and a family LLC that was filed with the Secretary of State. He purportedly acted for Mrs. Belk, but Plaintiff is informed and believes that he, in fact, acted on Defendant Harris' instructions when he prepared and served a Rule to Show Cause in April 2007 seeking to distribute all assets from Mr. Belk's Estate and attempting to close that estate. During this same time, upon information and belief, Defendant Harris tried to have Mr. Chase prepare unilateral documents to be signed by Mrs. Belk that were inconsistent with the partially performed family agreement referred

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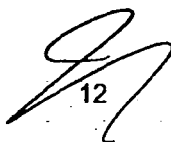
to above. These baseless actions required the expenditure of additional estate funds that otherwise could have been saved. In fact, shortly after Mr. Chase met with Karen Thomas and reported that progress had been made toward resolution, Defendant Harris terminated Mr. Chase and took her mother, Mrs. Belk, to Mr. Weinberg in an attempt to renege on the family agreement and place herself in control of her mother's assets.

33. John Chase and his firm submitted a bill dated September 7, 2007 for "estate planning" which reflects substantive communications with Defendant Harris rather than Ida Mae Belk, with regard to preparation of documents for the purpose of undermining and renegeing on the Agreement with the assistance of Defendant Houser and others to renege on the family agreement. (Exhibit 11)

34. During this entire period of time, Defendant Harris has exercised dominion and control over her vulnerable mother who did not understand what she was signing and Linda Harris was a fiduciary for her and continued to act in a self-serving fashion.

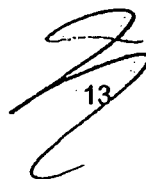
35. Defendant Harris refused to pay the bills due to Ms. Thomas, attorneys for the estate, which were paid personally by Plaintiff, but caused checks to be issued that benefitted her son and boyfriend. She continued to exercise dominion and control over her vulnerable mother to take actions contrary to the terms of the Settlement Agreement which Plaintiff herein seeks to enforce.

36. During the same period of time, without Plaintiff's knowledge or consent, at Defendant Harris' direction, Defendant Houser continued to act as an agent for Sumter Mortgage Company and BIBCO, executing bills of sales and other documents and holding himself out as a realtor when he was not one.


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37. Even though Bibco had been reorganized, and even though Defendant Harris had involved the Estate in financing her son's automobile's business under the name Carolina Preowned, Defendant Harris terminated Plaintiff's compensation that was paid to him previously. Therefore, even though Plaintiff is a vice president of Bibco. Defendant Harris has withheld all Bibco financial records from him since December 2007 because she is making inappropriate payments therefrom that are violative of Bibco's minutes and the family agreement referred to herein.

38. When Defendant could not get John Chase to perform the acts she wanted performed for her mother so she could unilaterally control the assets, including preparation of an Irrevocable Trust, on or about September 17, 2007, Defendant Harris took her mother back to M.M. Weinberg, Jr., the same attorney who had prepared the defective Robert D. Belk Will. Without any investigation and without review of the family agreements that had been partially performed, Mr. Weinberg prepared an Irrevocable Trust naming Defendant Harris as sole Trustee that was signed by Mrs. Belk on September 17, 2007, the same day he called the probate court to announce that Mr. Chase had been fired and he represented Mrs. Belk. This irrevocable trust was recorded in the Office of the Register of Deeds for Sumter County on October 30, 2007. By its terms, Mrs. Belk transferred Bibco Corporation and an undivided interest in Sumter Mortgage to Defendant Harris as sole trustee contrary to the Agreement of Mrs. Belk, Plaintiff, and Defendant Harris that had been partially performed. Upon information and belief, this Trust should be set aside A copy of said Trust is attached hereto and incorporated herein by reference as **Exhibit 12**.


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39. Mr. Weinberg also prepared a Will for Mrs. Belk on the 16th day of October 2007 naming Defendant Harris as the sole fiduciary, again being contrary to the terms of the Agreement, which Agreement was well know to Mr. Weinberg who also took his marching orders from Defendant Harris and Defendant Houser.

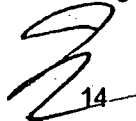
40. Upon information and belief, said trust could well have caused substantial gift taxes that were unintended under the terms of the family agreement.

41. Defendant Harris has given instructions to the Sumter Mortgage Company bookkeeper, Linda Garrett, to deposit one-half (1/2) of all Sumter Mortgage gross receipts into a new entity created by Defendant Harris for Mrs. Belk -- IMBelk Company -- not taking into consideration the expenses of Sumter Mortgage Company which were to be paid first and detriment the estate.

42. After her son, Mitch Harris, lost his job and became involved in a divorce, in order to help him financially, Defendant Harris tried to get him on as an employee of Carolina Preowned; however, because this partnership did not have any money, Defendant Harris caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, who was not authorized to do anything for Sumter Mortgage, which Plaintiff refused to sign (Exhibit 13). These self-serving and fraudulent acts are not only contrary to the family agreement, but also show the devious actions of Defendant Harris and efforts to avoid performance under the Family Settlement Agreement.

43. Recent checks to Defendant Houser authorized by Defendant Harris are also fraudulent.

44. Mr. Weinberg and Plaintiff have had several communications since Mr. Weinberg assisted Defendant Harris in renegeing on the family agreement, copies of



these communications being attached hereto and incorporated herein by reference as **Exhibit 14.**

45. All Defendants, and others not yet named, have conspired with Defendant Harris to disrupt the agreed estate plan which is the basis of this action. Defendant Harris has also reneged on authorizations to settle an estate controversy regarding Williamsburg Subdivision which have also caused undue expense and risk to the estate. She has also sought to have the books of Sumter Mortgage and Bibco given to one, Roger Long, when the books and records have been handled appropriately for years by Wilson M. MacEwen, still another effort to disrupt the administration of the estate and cause duplication of efforts and confusion.

46. Based upon a February 2, 2008 conversation with Mrs. Belk, Plaintiff determined that a) she was unaware where the 2007 gifts for Stakeholders Hanlon and Belk were deposited as that was handled by Defendant Harris; b) Defendant Harris had met with Mr. Weinberg on numerous occasions without her being present; c) she did not know what's been done because she did not do it; d) Defendant Harris had repeatedly told her things about Plaintiff that had caused her concern, but after talking with Plaintiff, she had a clearer picture. Upon information and belief, Mrs. Belk has or intends to instruct Mr. Weinberg to prepare documents making Plaintiff and Defendant Harris joint managers of all assets, but Defendant Harris and those assisting her will not heed to Mrs. Belk's requests.

47. Upon information and belief, the annual gifts that were to be made have not been deposited into the appropriate trust accounts as, upon information and belief,



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Defendant Harris had Mrs. Belk mother sign new trust accounts that were prepared for Mrs. Belk that are contrary to the family agreements.

48. Defendant Harris has told Mrs. Belk untruths about Plaintiff in her efforts to not comply with the family agreement, and has taken over her mother's legal representation for her own self-serving purposes.

FOR A FIRST CAUSE OF ACTION
(FRAUD AND FRAUDULENT INDUCEMENT)
AS TO DEFENDANT HARRIS

49. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

50. Defendant Harris made numerous representations of fact to Plaintiff, individually and as co-personal representative of the Estate of Robert D. Belk, as a Trustee, and as a fiduciary to Plaintiff, including:

- A. That she would honor the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions;
- B. That she would honor the terms of the June 30, 2005 Trust Severance Agreement;
- C. That on June 26, 2006, she was attempting to complete the trust documents as required by the Family Settlement Agreement and the Memorandum of Understanding;
- D. That securing a loan from Sumter Mortgage Company in the amount of \$200,000.00 as startup capital from Carolina Preowned, LLC would be repaid to the estate, and that she would not engage in actions that benefitted herself, her children, and those with whom she was engaged in a romantic relationship to the detriment of the estate, and beneficiaries thereof;
- E. That, by agreeing to the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions, Defendant Harris promised that she would assure that all trust and other necessary documents would be



prepared in accordance with the terms of those agreements, that she and Plaintiff would jointly manage and control all assets of the Estate and of Mrs. Belk as Trustees in accordance therewith, and that she would not take Mrs. Belk to attorneys chosen by her to execute documents that would override said agreements, benefit herself, or renege on said agreements.

51. The forgoing representations were false and are material to not only the Plaintiff and Plaintiff Estate, and violate the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions.

52. Defendant Harris knew that the forgoing representations were false, or showed a reckless disregard for the falsity of the forgoing, and intended that the representations be acted upon by Plaintiff.

53. Plaintiff was ignorant of the falsity of the forgoing representations, relied upon the forgoing representations, and had a right to rely upon the forgoing representations.

54. Based upon the forgoing, Plaintiff and the Estate have suffered consequential and proximate injury, and this Court should award relief designed to make Plaintiff and said Estate whole, together with such other equitable relief as the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION)
AS TO DEFENDANT HARRIS

55. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

56. Plaintiff specifically incorporates herein the allegations set forth in paragraphs 51 A through E as if the same are set forth herein verbatim.



57. Defendant Harris had an ulterior and pecuniary interest in making the forgoing misrepresentations, and she owed Plaintiff and the Estate a duty of care to assure that she communicated truthful information. Defendant Harris breached this duty by failing to be honest and truthful.

58. Plaintiff and the Estate justifiably relied upon the representations of Defendant Harris, and as a result, Plaintiff and the estate suffered a pecuniary losses and injuries as the proximate result of the false representations of Defendant Harris.

59. Based upon the forgoing this Court should award relief to make Plaintiff and said Estate whole, together with such other equitable relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
AS TO DEFENDANT HARRIS

60. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

61. Defendant Harris, as co-personal representative of the Estate of Robert D. Belk, owed a fiduciary duty to Plaintiff both as co-personal representative and as a beneficiary of the estate, as well as a fiduciary to all beneficiaries of the estate, not to mention as a fiduciary to Plaintiff as his sister. Her responsibilities are defined by statute and case law.

62. As set forth herein above, Harris breached these fiduciary duties and, as a result, Plaintiff, the Estate, and the beneficiaries have suffered both injuries.


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63. Defendant Harris has also allowed Defendant Houser, Defendant Carolina Pre-Owned, and Defendant Lyles to become unjustly enriched to the detriment of the Estate of Robert D Belk, its beneficiaries, and Plaintiff.

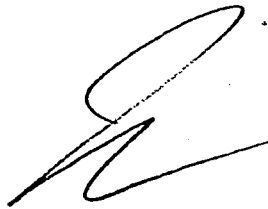
64. Based upon the forgoing, this Court should award such legal and equitable relief as the court deems just and proper based upon the evidence.

FOR A FOURTH CAUSE OF ACITON
(SETTING ASIDE INFLUENCED TRANSACTIONS)
AS TO DEFENDANT HARRIS AND MRS. BELK AS AN INTERESTED PARTY

65. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

66. The "irrevocable" trust dated September 17, 2007 was the product of undue influence upon Mrs. Belk by Defendant Harris as are all other documents executed by Mrs. Belk and entities that have been formed by or on behalf of Mrs. Belk that are contrary to the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions.

67. Based upon the forgoing, the irrevocable trust dated September 17, 2007, all other documents executed by Mrs. Belk, and all entities formed by Mrs. Belk that violate the above agreements should be set aside as influenced transactions, and this Court should award such other legal and equitable relief as the Court deems just and proper.

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FOR A FIFTH CAUSE OF ACTION
SPECIFIC PERFORMANCE AND
ENFORCEMENT OF THE FAMILY SETTLEMENT AGREEMENT AND
THE MEMORANDUM OF UNDERSTANDING
(AS TO DEFENDANT HARRIS AND MRS. BELK AS PARTY IN INTEREST)

68. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

69. Pursuant to the terms of the Family Settlement Agreement and Memorandum of Understanding referred to above: 1) maximum annual exclusion gifts would be made annually by Ida Mae Belk as set forth within the written documents; 2) the gifts to Cheryl Ann Hanlon and Robert M. Belk would be paid to appropriate Trusts that were created for them; and 3) Ida Mae Belk would disclaim, renounce, reject, and refuse to accept certain interests in disclaimed property improperly left to her under the Last Will and Testament of Robert D. Belk; 4) Plaintiff and Defendant Harris would be co-trustees and joint managers of not only assets of the estate, but also of Bibco and other assets held by Mrs. Belk, including the ability to create such family business entities as were appropriate prior to funding the new trusts.

70. There has been part performance of the Family Settlement Agreement and of the Memorandum of Understanding by Plaintiff and the Estate, and valuable consideration has been given by the Plaintiff and the Estate, and, after securing the benefits thereof, Defendant Harris has reneged on all other provisions thereof for her benefit and the benefit of others who are not beneficiaries of said estate to the detriment of the Estate, its beneficiaries, and Plaintiff.

71. Based upon the forgoing, this Court should enforce the Family Settlement Agreement and the Memorandum of Understanding, vacate any and all transactions to

the contrary, and should award such other legal and equitable relief as the Court deems just and proper.

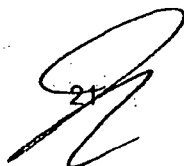
FOR A SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT AND ACCOUNTING
(AS TO DEFENDANTS HARRIS, BIBCO, HOUSER, LYLES, AND
CAROLINA PREOWNED, LLC)

72. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

73. Defendants Harris, Bibco, Houser, Lyles, and Carolina Preowned have been unjustly enriched at the expense of the Estate based upon Defendant Harris actions including taking estate assets and having them deposited into Bibco and other accounts without taking into consideration expenses in connection therewith; Houser's use of vehicles and receiving insurance and gasoline; Houser receiving cash without withholding; Houser receiving commissions on sales when he is not a realtor and not allowed to act; Lyles drawing salaries and benefits using estate funds that have not been repaid; Carolina Preowned not repaying obligations due to the Estate and using said funds to benefit Lyles and Houser, and other acts as will be shown by the evidence.

74. The forgoing has all been to the detriment of the Plaintiff, the Estate, and the intended beneficiaries of the Robert D. Belk estate, all of which violates the family agreements referred to hereinabove. Plaintiff and the Estate are entitled to a full accounting from all Defendants and then disgorgement of ill-gotten gains.

75. Based upon the forgoing, this Court should find that these Defendants have been unjustly enriched, should order that the funds and benefits received by these

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Defendants be disgorged and repaid to the estate, plus interest, and award such other legal and equitable relief as the Court deems just and proper.

FOR A SEVENTH CAUSE OF ACTION
CONSPIRACY
(AS TO DEFENDANTS HARRIS, LYLES, AND HOUSER)

76. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

77. As set forth herein above, Defendants Harris, Lyles, and Houser have conspired to do harm to the estate of Robert D. Belk, to subvert the Family Settlement Agreement, and to avoid said family settlement agreement which should be enforced by this Court. Defendant Houser has interfered with the family agreement by communicating with counsel retained by Defendant Harris for Mrs. Belk.

78. As set forth herein above, Defendants conspired together for the purpose of injuring Plaintiff.

79. As a result, the Plaintiff has suffered special damages, both present and expected, and this Court should award such legal and equitable relief as it deems just and proper.

FOR AN EIGHT CAUSE OF ACTION
EQUITABLE ESTOPPEL
(AS TO DEFENDANT HARRIS)

80. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

81. Defendant Harris, individually and in all capacities, is equitably estopped from taking any position inconsistent with the terms of the June 28, 2005 Family


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Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions that was signed by her, Plaintiff, and Mrs. Belk.

82. Plaintiff and the Estate of Robert D. Belk relied upon the representations of Defendant Harris to their detriment, have changed their positions as a result of said representations, have preformed based upon said agreement to their detriment, and had no knowledge that Defendant Harris would, after receipt of said benefits, act contrary to the terms of the agreements and cause Mrs. Belk to do so.

83. Based upon the forgoing, Defendant Harris is equitably estopped from taking any position contrary to the positions she took in the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions as Plaintiff and said Estate have changed their positions significantly in reliance thereon.

FOR AN NINTH CAUSE OF ACTION
COLLECTION OF NOTES DUE TO ESTATE RE: SUMTER MORTGAGE COMPANY
(AS TO DEFENDANTS CAROLINA PREOWNED, LYLES, HARRIS, AND HOUSER)

84. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

85. Defendant Lyles, on behalf of Carolina Preowned, heretofore executed a "Promisary Note" to Sumter Mortgage Company, an asset of the estate, on March 8, 2005 payable March 8, 2006 in the principle amount of \$100,000.00 plus interest at the rate of 7% per annum.

86. Thereafter, Defendant Lyles, on behalf of Capital Finance, Inc., a non-existent or non-operating entity, executed a "Promisary Note" to Sumter Mortgage Company, an asset of the estate, on September 30, 2005, payable September 30, 2006



in the principle amount of \$100,000.00 plus interest at the rate of 7% per annum. Both Notes are attached hereto and incorporated herein by reference as Exhibit 15.

87. Defendants Lyles and Houser, upon information and belief, used the much of the foregoing amounts for personal benefits such as salaries, draws, use of automobiles, gasoline, insurance, and the like. Defendant Harris knew that the funds were being dissipated, but did nothing about it.

88. Plaintiff, as personal representative of the Estate, seeks judgment against Carolina Preowned, LLC for said notes plus interest and, as to funds that have been dissipated, seeks judgment against Defendants Harris, Houser, and Lyles for any shortfalls.

WHEREFORE Plaintiff prays for judgment upon each of the foregoing causes of action against Defendants as stated above, together with such other relief as the Court may deem fit and proper.

February 5, 2008
Columbia, South Carolina

WARNER PAYNE & BLACK, LLP

BY: 

Jan L. Warner, Bar No. 5947
POBox 2626
Columbia, South Carolina 29202
1122 Lady Street, Suite 1200 (29201)
803-799-0554-Tel
803-799-2517-Fax
jlw@janwarner.com

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly sworn, says that he is the co-Personal Representative of the Estate of Robert D. Belk; that he has read the foregoing complaint; that the allegations contained therein are true and correct based upon his best information except those matters that are alleged upon information and belief and, as to those, he believes the same to be true.

Sworn to before me this 5th day of
February, 2008

Gene C. Belk

Haym M. Moore
Notary Public for South Carolina
Commission Expires: 6/18/2011

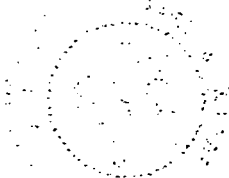


EXHIBIT 1

ELLIS, LAWHORNE & SIMS, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

F. EARL ELLIS, JR.
ERNEST G. LAWHORNE
LANA H. SIMS, JR.
DAVID C. SOJOURNER, JR.*†
W. CLIFF MOORE, III
WILLIAM P. MCELVEEN, JR.
JOHN L. MCCANTS
RITA BRAGG CULLUM†
KAREN HUDSON THOMAS*†
TIMOTHY D. ST. CLAIR
JOHN T. LAY, JR.
LOUIS T. RUNGE, JR.

1330 LADY STREET
FOURTH FLOOR
POST OFFICE BOX 2285
COLUMBIA, SOUTH CAROLINA 29202
TELEPHONE (803) 254-4190
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CATHERINE LEIGH BOYD
ALFRED JOHNSTON COX
ARTHUR E. MOREHEAD, IV
ROBERT P. BETHEA, JR.
DANIEL W. HAYES
DAVID M. WILKERSON
EDWARD B. DAVIS
JOHN M. SCOTT, III

* CERTIFIED TAXATION SPECIALIST
† CERTIFIED ESTATE PLANNING &
PROBATE SPECIALIST

June 20, 2000
EP-3230

COPY

Mr. and Mrs. Robert D. Belk
P.O. Box 1853
Sumter, South Carolina 29150

Dear Mr. and Mrs. Belk:

I enjoyed meeting with you on Tuesday to discuss your estate plan. I have enclosed a summary of the asset information that you provided and I am writing this letter to outline the issues that we discussed.

Basic Estate Tax Planning. We have estimated the value of your estate at \$10,500,000. You have told me that you currently have simple wills (all to my spouse). Under the current arrangement there would be no tax due at the first death since you can leave an unlimited amount to your spouse tax free. However, after both of your deaths there would be a tax of approximately \$5,070,000. In estimating this tax, I have assumed that you would die in the year 2006 or later when the federal estate tax exemption has increased from the current level (\$675,000) to \$1 million.

The simple wills that you currently have only allow the use of one of your exemptions. I would propose that you structure your estate plan so that we get the benefit of both exemptions. This would allow you to shelter \$2 million from estate taxes and would lower the tax due at the second death to approximately \$4,520,000.

In order to accomplish this I would prepare wills and trusts for both of you. After Mr. Belk dies, an amount equal to the maximum federal estate tax exemption at the time of his death would be held in a trust with Mrs. Belk as trustee. The trust would provide that all of the income from the trust would be distributed to Mrs. Belk each year and that the trustee could make additional distributions to Mrs. Belk for health care or reasonable living expenses. At Mrs. Belk's death, she has the right to direct how this trust would continue for the children. Mrs. Belk's will and trust would be identical to Mr. Belk's.

I would structure this as a living trust to avoid probate court fees. The probate court charges a fee of $\frac{1}{4}$ of 1% of any assets passing through the will. By establishing a trust and re-titling your assets in the trust name, you would save over \$25,000 in

probate fees. This would also provide some privacy as the living trust would not be recorded in the probate court records.

Estate Equalization. In addition to preparing these documents, I have told you that we may need to transfer some assets from Mr. Belk to Mrs. Belk in order to equalize the estates. Mrs. Belk currently has around \$500,000 in assets in her name. If she is the first to die, we need to have approximately \$1 million in her name to fully use her federal estate tax exemption. You may want to consider transferring some of the real estate, investments or the family partnership described below into her name as a part of this planning.

Distribution to Children. I have asked you to consider how the assets will be distributed to the children after both of your deaths. One option is to divide the assets equally and distribute them outright to the children after both deaths. However, you may decide that it is appropriate to use trusts as a part of the plan. You may want to use an asset-management trust to provide a mechanism for controlling a child's inheritance after your deaths. You could designate the trustee and give the trustee broad powers to use income and principal for a child's health care, education or reasonable living expenses. There is no limitation on the amount that may be placed in an asset-management trust for a child's benefit.

You may also decide to use a generation-skipping trust for some or all of the children. A generation-skipping trust is a trust that allows a child to use and control his or her share of the estate without having it included in the child's estate at the time of the child's death. For example, a portion of Gene's share could be distributed to the Gene Belk trust at your death. Gene could serve as the trustee of the trust and he could have the power to use income and principal for himself or his children for health care, education or reasonable living expenses. At Gene's death, the trust would be distributed to his children and would not be taxed as a part of Gene's estate. The maximum amount that the two of you may leave to generation-skipping trusts is \$2 million. Accordingly, if you want to use this for all children, the first \$400,000 (\$2 million divided by five) of each child's share could be held in a generation-skipping trust and the balance of each child's share would be distributed to the child outright or distributed to an asset management trust for the child.

Powers of Attorney. I have also recommended that you allow me to prepare durable powers of attorney and health care powers of attorney. While the wills and trusts control how the assets will be maintained and distributed after your deaths, the powers of attorney allow you to appoint someone as your agent to make financial and health care decisions in the event of your incapacity. I am assuming that you would both want to designate your spouse as your primary agent, but I need for you to consider who would serve as an alternate agent.

As I told you when we met, I would like to quote you a flat fee for this work. The fee for this first step (wills, trusts, durable powers of attorney and health care powers of attorney) would be \$2,500. This includes all legal fees, costs and expenses.

Family Partnership. A substantial portion of your estate consists of Sumter Mortgage, a sole proprietorship. In order to provide some liability protection, provide a structure for future management and to establish a mechanism for making gifts, I have recommended that you establish a family partnership. The partnership would be formed using the Sumter Mortgage assets.

Initially, Mr. Belk, Mrs. Belk and some or all of the children would be the voting partners. I would likely have the partnership issue six voting shares each to Mr. and Mrs. Belk and each of the children would have one voting share. This would allow the children to begin participating in the management of the assets, however, you would maintain control. You would also have limited or non-voting shares. If you decide to make gifts to the children and grandchildren, these non-voting shares could be transferred each year. You could give \$20,000 of non-voting shares to each child, grandchild, son-in-law and daughter-in-law (23 total recipients). This would reduce your estate by \$460,000 per year and reduce your estate tax by \$253,000 per year.

The partnership format also provides an excellent mechanism to protect the children from creditor's claims or claims by a spouse in a divorce action. The agreement may also include transfer restrictions that prohibit a partner from transferring his or her interest outside of the family and arbitration provisions to provide a method of resolving family disputes without a court proceeding.

If you proceed with this type of planning, we would establish the partnership and then transfer the real estate into the partnership's name. If you decide to make gifts of the partnership interests in the future, we would have to retain an appraiser to determine the value of the partnership units. The value of the partnership units may be different than then pro-rata value of the partnership's underlying assets.

Second-to-die Life Insurance. Under the structure that I have proposed, no taxes would be due until you both die. Even though you have had some health problems, I think you should investigate purchasing a second-to-die life insurance policy to help with the tax problem. If this type of policy is affordable, the children or a trust for the children would be the initial owner and beneficiary. Each year, you would gift cash to the children that would be used to pay the premium. Since you are not the owner, the policy is not included in your estate. After both of your deaths, the children will receive the policy proceeds without income tax or estate tax and the proceeds can be used to pay the taxes.

Please give me a call after you have had the opportunity to consider these issues. If you want to proceed with this planning, I think we need to set a time for

second meeting to discuss these issues in more detail. We may want to have your accountant participate in the next meeting. I look forward to hearing from you.

Sincerely,

ELLIS, LAWHORNE & SIMS, P.A.



David C. Sojourner, Jr.

DCS/tj
Enclosure (Asset Summary)

cc: Gene C. Belk, Esquire
Linda G. Harris

Asset Summary

Robert and Ida Mae Belk
EP-3230

June 20, 2000

ASSET	HUSBAND	WIFE	JOINT
2795 Powhatan Drive	145,000	0	0
Mortgage	-49,716	0	0
2405 Hwy. 261 South	27,000	0	0
2415 Hwy 261 South	27,000	0	0
2425 Hwy 261 South	27,000	0	0
2435 Swy 261 South	27,000	0	0
118 acres on Tillman Nursery Road	500,000	0	0
1670 Stamey Livestock Road	37,500	0	0
GTE group life insurance policy	0	?	0
GTE stock	0	15,823	0
NBSC account	274,480	1,000	0
BIBCO, Inc. (100% interest)	0	363,277	0
The Sun Co. (50% interest)	0	96,036	0
Sumter Mortgage Co. (100% interest)	9,143,621	0	0
Sales, Inc. (50% interest)	492	0	0
A,B & G (1/3 Interest)	19,914	0	0
Personal property	35,230	0	0
Accounts Receivable	109,733	0	0
Subtotal	10,324,254	476,136	0
½ of Joint Assets	0	0	
Total	10,324,254	476,136	

EXHIBIT 2

ELLIS LAW HORNE

KAREN H. THOMAS
KTHOMAS@ELLISLAWHORNE.COM

May 24, 2005

VIA FAX (803) 775-4546
Mr. Gene Belk
P.O. Box 1208
Sumter SC 29151

VIA FAX (803) 773-6951
Ms. Linda B. Harris
P.O. Box 3610
Sumter SC 29151

RE: Estate of Robert D. Belk
Issues for Estate

Dear Gene and Linda:

We have begun the review of the assets and issues of the Estate. At this first step we see the following issues that need to be addressed immediately:

(1) **Identify all assets that are owned by your parents.** It is my understanding that you have identified all the assets that your parents own. If you have not, please let me know immediately. It is important for us to know how the asset was owned: was it joint, with an "and" or an "or", did it have a beneficiary designation or was it paid on the death of a beneficiary? I understand that you are waiting for the accountant's paperwork for you to review and work on before you can finalize this list.

(2) **Determine the Owner of the Asset:** Once the assets are identified and the title of each asset determined, we need to determine the true owner of each asset. The title should control the ownership of the asset unless the asset was held as being a part of a "d/b/a" such as Sumter Mortgage or in a general partnership. If the title shows it owned by your mother or father or one of the companies, that is the owner of the asset. If the title is unclear and your parents took a position that the asset was owned by one of them, that position should control. Where it may be difficult is when the title is clear but the position of ownership taken by your parents is the opposite of the title. We need to discuss the questionable assets. I look forward to talking with you about this on Thursday morning.

(3) **Value the assets.** The most time sensitive assets to value are your father's assets. It would be my preference to not only value the real estate by a professional appraiser, but also to have another appraiser look at the installment notes and the assets to determine if an argument can be made to value them less for any underlying issues. Today I will talk to some appraisers in Florida that we often use in difficult cases to determine if there is an opportunity to value any

Ms. Linda B. Harris
Mr. Gene Belk
File No. PR-834
May 24, 2005
Page 2 of 4

asset lower for any reason, and if they have time left before the deadline to determine the reduced value. All of this needs to be done and delivered to our office no later than June 20th.

(4) **Tax issues: Pecuniary Formula:** The Will has a number of difficult hurdles to get over. The first is that it contains distributions based on a pecuniary marital formula. This means that the amount of the marital deduction (the amount going into the marital trust called Trust C for your mother's benefit) is fixed as of date of death. Anything that is used to fund the Trust C will generate a gain or loss between the date of funding value and the date of death value. Of particular significance is the gain on the notes. Any installment note used to satisfy this formula for funding the Trust C will cause the income taxes that are being postponed and paid over time as payments are received to be due in full at the time of funding of the Trust C. While this is a significant tax issue, the final resolution does not need to be made before the filing of the estate tax return. This is something we can determine how best to deal with after the return is filed while preparing to fund the Trust C. However, we will need to know the basis of each of the assets sold under each installment note so that we may calculate the inherent gain that will be generated in the event not all of the installment notes may be used to fund Trust C; if the appraisers in Florida can help us with this, it is information we need to have immediately.

(5) **Tax Issues: Disclaimer:** Your mother is the beneficiary of both the Trust C and the residual trust called Trust B. This would mean more income will come back into her name and estate and she must spend or gift away that income or it will generate an estate tax at her death. We addressed the income for the Trust B last year by having her disclaim her interest in the Trust B. We will look into what, if anything, we can do to reduce her income from the Trust C assets and her other assets.

(6) **Tax Issues: Generation Skipping Tax:** One of the most significant issues is the generation skipping tax. Each person has an exemption to the generation skipping tax (an additional tax to the estate tax at the estate taxes' highest rate - 45%-48%). There are generation skipping transfers in both Trust C and Trust B because some of each trust goes to a trust for a child for life then to the grandchildren. At this time since portions of the disclaimed Trust B go outright to a child and portions go to trusts for children and grandchildren, it is a waste of the valuable generation skipping exemption to leave the terms of Trust B as they are at this time. At the death of Mrs. Belk, the assets in Trust C go into trusts for the children and grandchildren or outright to children as set forth in Trust B, but based upon who is living at the date of Mrs. Belk's death. This, too, will waste generation skipping exemption for those children who survive Mrs. Belk and receive an outright distribution. This is a very expensive waste of exemption. It can only be partly fixed and only by a fairly complex formula and division of Trust B and Trust C prior to the filing of the estate tax return on July 5th. We will work diligently on this issue, but again it must be resolved by July 5th by having a division of the trusts and a plan for reallocating the generating skipping taxes. But for the problems with the distribution language in Trust B discussed below, this could be done without probate court involvement, as long as the plan is entered into and signed up before the July 5th deadline. This will be a very complicated division of trusts and allocation of generation skipping exemption. It must be started by the July 5th

Ms. Linda B. Harris
Mr. Gene Belk
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Page 3 of 4

deadline, but significant decisions will need to be made in the future after the July 5th deadline when distributing the assets to the different trusts. It should, however, save at least \$1,000,000 in generation skipping taxes.

(7) **Family Agreement and/or Court Approval Regarding Distribution Language on the Death of Mrs. Belk:** If you recall the Will is missing (we assume) language in Trust B in that it provides for division of the assets only among the deceased children's family members. This appears to be incorrect and a Family Agreement needs to be entered into. Ordinarily we would do this without court approval, but with the significant tax issues posed in paragraph 6 above and 8 below, I hesitate to do this without a court order. We will work on a Family Agreement that all will need to review and sign that says the language in Trust B meant to create shares for all children.

(8) **Family Agreement and/or Court Approval Regarding Distribution of the Assets to trusts for Cheryl and Robbie.** As we discussed last December, the plan entered under the terms of Trust B and Trust C will disqualify Cheryl's children from Medicaid and cause a conservator to be appointed and monitored by the Probate Court for the remainder of the lives of Cheryl's children. The court then will monitor the investments of the family and distributions to Cheryl's children. Therefore, we discussed that the language in the Will related to Trust B and Trust C distributions to Cheryl and her children need to be changed to continue to hold the assets in a special needs trusts instead of giving the assets to Cheryl's children. Again, this all relates to the problems set forth in 5, 6, and 7 above; we need to research how many terms can be changed in a plan under a Will and still achieve the generation skipping tax savings of paragraph (6) above. We need to have a Family Agreement and court approval. At this point I feel that the Family Agreement should be completed by July 5th and a petition filed with the Probate Court regarding the same by the July 5th deadline.

(9) **Distribution to Robbie:** The distribution to Robbie also needs to be addressed because of the generation skipping issues. He will need to have new trusts as well; the trust established in December will only be used for his annual gifts.

(10) **Funding the new division of trusts:** Once the above is completed I believe that there will be at least seven new trusts created. The two created for gifts in December will continue to be used for annual gifts from Mrs. Belk. The division of the trusts set forth above will create at least one new trust for Cheryl under Trust B and maybe two new trusts under Trust C, probably one new trust for Robbie under Trust B and maybe two under Trust C, and perhaps one new trust for predeceased grandchildren. There are different goals and tax issues for most of them and we need to do further research into which provisions we can change and still obtain the generation skipping tax savings and the Medicaid protection discussed above. Because of the significance of the issues and the amount of money and lack of time involved, there will be at least three tax lawyers in our office working on these issues and I would like to involve at least two other lawyers outside our firm if they can work within the time frame: a Medicaid specialist to review the plan and tax specialist to review the formula and petition for division.

Ms. Linda B. Harris
Mr. Gene Belk
File No. PR-834
May 24, 2005
Page 4 of 4

Most of the above needs to be analyzed and started quickly. There will be complex funding and restructuring of the entity issues after the July 5th deadline to discuss. If, however, your parents have five children and a combined estate of \$10,000,000 (just an estimate for purposes of this example of tax issues), then each child in a best case scenario would inherit \$2,000,000. With estate taxes, though, the estate would be reduced to approximately \$6,850,000, or \$1,370,000 per child. Income taxes on the installment notes may need to be paid in full. At least another \$1,000,000 in generation skipping taxes would also need to be paid, and the current resulting inheritance by Cheryl's children will cause them to have the probate court be involved in their finances for their lifetimes and loss of Medicaid until they spend their inheritance. By the plan outlined above (which must seriously begin by the July 5th deadline) our goal is to minimize the future \$3,150,000 or more in estate taxes, the very near income tax hit on the installment notes, the \$1,000,000 or more in generation skipping taxes, and minimize or eliminate the probate court involvement and Medicaid loss for Cheryl's children. There is so much work to do on this file in such a short time before the July 5th deadline, I have not taken the time to calculate a fixed fee for the estate, but I imagine it will be in the range of \$125,000 to \$175,000 to do all of this in the next year. Part of this will include a possible restructuring of Sumter Mortgage in order to manage the funding and monitoring of all the new trusts.

In the near future (not prior to the July 5th deadline) we will need all deeds into Mr. Belk or to the d/b/a or partnership, copies of all notes and amortization schedule and the basis of those assets in order to calculate the built in gains for the notes so that we can better advise the family on the funding. The most time sensitive is the copy of all notes and amortization schedules and detailed list of the cost basis or built in gains for the properties.

I look forward to discussing these issues with you on Thursday, but until that time we are proceeding with the research for the trust division as that is extremely time sensitive.

Sincerely,

ELLIS, LAWHORNE & SIMS, P.A.



Karen H. Thomas

KHT/jhc

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

DISCLAIMER

This is a Disclaimer of property passing under the Last Will and Testament of Robert D. Belk (the "Decedent").

WHEREAS, the Decedent died on April 5, 2004, leaving a will (the "Will") which was duly admitted to probate in the Sumter County Probate Court and is there on file in file number 2004-ES-19-00135225; and

WHEREAS, the Will provides in Item V a formula for distributing a certain amount of the estate to a marital trust called Trust C; and

WHEREAS, the Will provides in Item VI that the residue of the estate shall be distributed to Trust B; and

WHEREAS, the Will provides in Item VII that Ida Mae Belk shall be the beneficiary of Trust B during her lifetime; and

WHEREAS, the undersigned Ida Mae Belk survived the Decedent and is entitled to receive such benefits under Trust B; and

WHEREAS, the undersigned desires to disclaim her interest in Trust B and the property to be distributed to Trust B (such property and her interest in Trust B being referred to as the "Disclaimed Property"); and

WHEREAS, the undersigned has not accepted the Disclaimed Property or any of its benefits.

NOW, THEREFORE, the undersigned makes the following disclaimer of the Disclaimed Property:

WITNESSETH:

The undersigned, for undersigned and the undersigned's heirs, devisees and assigns, without receipt of any consideration of any kind therefor, hereby renounces, rejects, forever disclaims and absolutely refuses to accept all interest of all and every kind in the Disclaimed Property and every benefit thereunder, such renunciation, rejection, disclaimer and refusal to accept being made irrevocably, without qualification, and prior to the acceptance of the Disclaimed Property and/or any of its benefits. This disclaimer of the Disclaimed Property is applicable to all provisions of Trust B related to the Disclaimed Property (and to any interest of the undersigned to the Disclaimed Property under the laws of descent and distribution of this state.)

IN WITNESS WHEREOF, the undersigned, for herself and her heirs, has made, executed and delivered this Disclaimer to the Decedent's Personal Representative and co-Trustees of Trust B this 29 day of December, 2004.

WITNESSES:

David C. Searcy
Karen Thomas

Ida Mae Belk
Ida Mae Belk

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me David C. Searcy, Jr and made oath that he/she saw the within named Ida Mae Belk sign, seal, and as her act and deed, deliver the within written Disclaimer, and that he/she with Karen Thomas witnessed the execution thereof.

SWORN to before me this 29th day of December, 2004.

Karen Thomas
Notary Public for South Carolina
My Commission Expires: 2-29-2012

David C. Searcy
Witness

EXHIBIT 3

STATE OF SOUTH CAROLINA)
)
) FAMILY SETTLEMENT AGREEMENT
COUNTY OF SUMTER)

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.
JUN 30 PM 20

WHEREAS, Robert D. Belk (the "Decedent") died on April 5, 2004; and

WHEREAS, the Estate of Robert D. Belk (the "Estate") is being administered in the Probate Court for Sumter County, South Carolina, in Case No. 2004-ES-43-00225; and

WHEREAS, Gene C. Belk and Linda B. Harris were appointed as Co-Personal Representatives of the Estate pursuant to the Last Will and Testament of Robert D. Belk (the "Decedent's Will"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, under the terms of the Decedent's Will, the assets of the residuary estate are to be divided into two separate trusts, the QTIP Trust (the "QTIP Trust") and Trust B ("Trust B"), of which Gene C. Belk and Linda B. Harris are designated as Co-Trustees; and

WHEREAS, Paragraph (4) of Item VII of the Decedent's Will, entitled "Division Into Shares for Children," provides for the distribution of assets of Trust B upon the death of the Decedent's surviving spouse; and

WHEREAS, said Paragraph (4) of Item VII of the Decedent's Will provides that the assets of Trust B will be divided into shares, "so as to provide One (1) share for each deceased child of mine who shall leave issue then living", but does not provide for the creation of shares for the Decedent's then-living children; and

WHEREAS, the very next sentence in said Paragraph (4) of Item VII of the Decedent's Will states that "Each share for a living child of mine shall be distributed outright to such child" (subject to restrictions in later paragraphs of Item VII concerning the shares created for Robert M. Belk and Cheryl Ann Hanlon), thereby evidencing the Decedent's intent to create a share of Trust B for each of his then living children;

WHEREAS, Paragraph (6) of Item VIII of the Decedent's Will, entitled "Division Into Shares for Children," provides for the distribution of the assets of the QTIP Trust upon the death of the Decedent's surviving spouse and therefore is the functional equivalent of Paragraph (4) of Item VII of Decedent's Will; and

WHEREAS, said Paragraph (6) of Item VIII of the Decedent's Will provides that the assets of the QTIP Trust will be divided into equal shares "so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living," supplying further evidence that the Decedent intended to create a share of Trust B for each of this then living children; and

WHEREAS, the parties to this Agreement acknowledge that the language in Item VII, Paragraph (4) contains a drafting error, and that the Decedent intended to provide for a division into shares for the living children identical to the provision in Paragraph (6) of Item VIII;

NOW, THEREFORE, THE UNDERSIGNED, BEING THE PERSONAL REPRESENTATIVES OF THE ESTATE, THE SURVIVING SPOUSE, ALL THE CHILDREN OF ROBERT D. BELK AND ALL INTERESTED GRANDCHILDREN OF ROBERT D. BELK HEREBY ENTER INTO THIS AGREEMENT TO CONSTRUE THE ABOVE-REFERENCED LAST WILL AND TESTAMENT:

1. Construction of Item VII, Paragraph (4). The undersigned hereby agree that the Co-Trustee's of the Trust B shall construe Trust B, Item VII, Paragraph (4) as though it read:

(4) Division Into Shares for Children. Upon or after the death of the survivor of my wife and me, my Trustee shall divide this Trust as then constituted into equal separate shares so as to provide One (1) share for each then living child of mine and One (1) share for each deceased child of mine who shall leave issue then living. Each share for a living child of mine shall be distributed to such child except as provided in (5), (6) and (7) below.

2. Probate Court Approval. The undersigned agree to that the Co-Personal Representatives of the Estate shall Petition the Sumter County Probate Court for an Order approving the terms of this Agreement.

3. Integration. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.

4. Severability. If any provision of this Agreement or the application thereof to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

5. Binding Agreement. This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives, and assigns.

6. Controlling Law. This Agreement is entered into in South Carolina and shall be enforced and construed in accordance with the laws thereof.

7. Counterparts. This Agreement may be executed, ~~in any number of counterparts with the same effect as if all parties hereto had all signed the same document.~~ All counterparts shall be construed together and shall constitute one agreement.

*we hereby agree to sign this document,
and any other future documents that
we have read and agree to beforehand.*

JFS.

PR.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
29th day of June, 2005.

Patricia B. Schmit

Patricia B. Schmit

WITNESS:

Peter Schmit

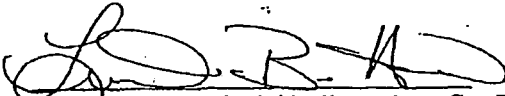
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
21 day of JUNE, 2005.

Gene C. Belk
Gene C. Belk, Individually and as Co-Personal
Representative and Co-Trustee

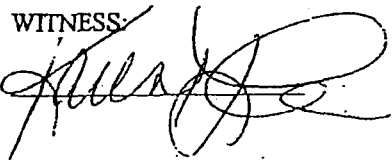
WITNESS:

Gene A. Cook

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
23rd day of June, 2005.



Linda B. Harris, Individually and as Co- Personal
Representative and Co-Trustee

WITNESS:


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

23 day of June, 2005.

Ida Mae K. Belk
Ida Mae K. Belk

WITNESS:

[Signature]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

24th day of June, 2005.

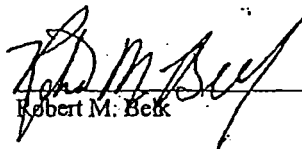
Cheryl A. Hanlon
Cheryl Ann Hanlon

WITNESS:

John P. Stodard

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

24th day of June, 2005.


Robert M. Beck

WITNESS:

Lillian B. Moore

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the
23rd day of June, 2005.

Patricia Schmit
Patricia Schmit, as guardian for
Jessica Belk

WITNESS:
Peter Schmit

Patricia Schmit
Patricia Schmit, as guardian for
~~REDACTED~~

WITNESS:
Ryan Callaway

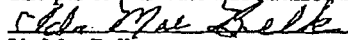
EXHIBIT 4

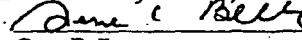
**MEMORANDUM OF UNDERSTANDING REGARDING FUTURE
TRANSACTIONS**

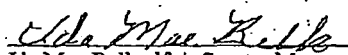
The following is a Memo of Understanding Regarding Future Transactions between the undersigned parties. This Memorandum is intended to be binding on the parties and to document the intent of the parties as to future transactions on behalf of Ida Mae Belk and Sumter Mortgage Company and Sumter Mortgage Finance.

- (1) Ida Mae Belk will assign her fifty percent interest in Sumter Mortgage Company (including Sumter Mortgage Finance) to Linda Harris and Gene Belk as Trustees of a Trust to be created for her benefit for her lifetime.
- (2) Linda, Gene, Mrs. Belk, and their counsel shall analyze the provisions of the Trust C under the Last Will and Testament of Robert Belk and shall prepare a Trust for Mrs. Belk with substantially the same provisions (the "New Trust C").
- (3) The New Trust C will differ from the Trust C under the Last Will and Testament of Robert Belk as it relates to certain tax and Medicaid issues. Other details may be different in the discretion of the undersigned, but the provisions of the New Trust C will be materially the same: It will benefit Mrs. Belk for her lifetime and will be distributed in five equal shares at her death.
- (4) The New Trust C will contain the same ability of Mrs. Belk to withdraw five percent each year from the trust, the purpose for the withdrawal will be to make gifts of the assets in five equal shares among the family members.
- (5) The New Trust C will own Mrs. Belk's interest in the unincorporated Sumter Mortgage Company, which may subsequently be transferred to one or more entities which will be owned by the New Trust C.
- (6) Mrs. Belk will sign paperwork directing Linda and Gene to transfer the assets of Sumter Mortgage Company to New Trust C and they will be given the authority to complete such transfers. They will also be given the authority and the documents necessary to exercise the withdrawal right from New Trust C and Trust C and make gifts of those and/or other assets in five equal shares to the family members.
- (7) It is the intention of the parties to work diligently on the issues of New Trust C and the related documents and to complete New Trust C and the transfers within the next sixty (60) days.

The parties execute this Memorandum of Agreement the 30th day of June, 2005.


Ida Mae Belk


Gene Belk


Ida Mae Belk, d/b/a Sumter Mortgage Company
and Sumter Finance Company


Linda Belk Harris

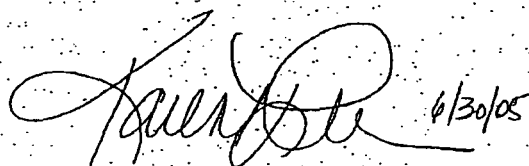
 6/30/05

EXHIBIT 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, Ida Mae Belk, do hereby constitute and appoint Gene Belk and Linda B. Harris to serve as my true and lawful Attorneys (both of whom are collectively referred to herein as my "Attorney") to exercise jointly, by the unanimous vote of both of them, the powers set forth herein. My Attorney is hereby authorized to set in, manage, and conduct all my estate and all my affairs for me and in my name, place and stead, for my use and benefit, and as my act and deed, to do and execute, or to concur with persons jointly interested with myself therein in the doing and executing, with the full power to have and to exercise the following powers in a fiduciary capacity, without authorization of any court and in addition to any other rights, powers, or authority granted by statute or general rule of law. In the event that one of my named Attorneys should die, resign or become incapacitated, then the remaining Attorney shall continue to serve without the need to appoint a successor.

REVOCATION OF PRIOR POWERS

I hereby revoke all powers of attorney, general and/or limited, heretofore granted by me as principal and terminate all agency relationships created thereunder, including those of all successor Agents named therein, if any, except that powers granted by me on forms provided by financial institutions granting the right to write checks or deposit funds to and withdraw funds from accounts to which I am a signatory or granting access to a safe deposit box and any health care power of attorney that I may have executed shall not be revoked, but shall continue in full force and effect.

POWERS IN GENERAL

1. To sell or exchange, mortgage, convey, lease, contract with respect to, or option any property of mine, whether real, personal or mixed, which I may now own or hereafter acquire, specifically including, but not limited to real estate, stocks, bonds or other securities, upon such terms and conditions (including credit) as my Attorney shall deem best in the Attorney's absolute discretion;
2. To sign checks withdrawing or transferring funds or money from any financial institutions, including banks or savings and loan associations, in which money may be deposited in my name alone or in joint name with someone else, and to accept, sign, seal, negotiate, acknowledge, collect and endorse any checks, drafts or other instruments for the payment of money, including Social Security and other United States Government checks and any state government checks;
3. To borrow money and execute notes or other instruments securing the repayment and to pledge as security therefor any stocks, bonds securities, or property which I may own, and/or to mortgage any real or personal property which I may own, in order to secure said loan;
4. To receive, take, hold, possess, invest, manage and/or collect any monies or other property which may become due me and to give receipts therefor;
5. To maintain, protect, preserve, remove, store, transport, repair, build on, rebuild, alter, modify

or improve any property of mine or any part thereof;

6. To be my lawful proxy and to vote any stock or security I may own or hereafter acquire, and to exercise all rights, privileges and options to said stocks and securities, including participation in plan(s) of reorganization, consolidation and/or merger;

7. To invest and reinvest from time to time any funds, money or property which I may own, in the Attorney's absolute discretion in any property of any type;

8. To prepare, file and sign on my behalf such tax and other returns as may be required by any State of the Union and the United States of America, and claims for refund thereto;

9. To initiate or engage in legal proceedings of any nature, including but not limited to legal, equitable or administrative proceedings, on my behalf as either plaintiff, defendant, petitioner, respondent or in any other capacity;

10. To acquire and continue insurance on any of my property or for my benefit and to exercise all options and elections permitted by said contracts of insurance on my behalf;

11. To purchase United States Government bonds redeemable at par in the payment of United States estate taxes imposed at my death upon my estate;

12. To establish trust funds, revocable or irrevocable, funded or unfunded, for the benefit of me and my lineal descendants;

13. To transfer at any time to the trustee of any revocable trust agreement created by me before or after the execution of this Durable Power of Attorney, as to which I am, during my lifetime, a primary income and principal beneficiary, any or all of my cash, property or interests in property;

14. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled and to exercise any right to claim an elective share of any estate;

15. And, generally, to do and perform all and every act, deed, matter, and thing to manage and control my property and affairs and to execute any and all instruments necessary or expedient for that purpose as I might do, if personally present.

ADDITIONAL AUTHORIZATION

1. My Attorney is hereby authorized to have access at any time or times to any safe deposit box rented by me or by me with another, wherever located, in order to remove my original durable power of attorney or to withdraw anything from said safe deposit box; and any institution in which

2.

Durable Power of Attorney
Ida Mae Belk

any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a result of permitting my Attorney to exercise this power. The power is exercisable without (i) any contact with or notice to me or any persons interested in my estate; (ii) any prior court order or authorization; (iii) any knowledge of or any prior determination of my mental or physical capacity or incapacity (unless this Power of Attorney is specifically subject to a "springing power" limitation); (iv) any knowledge as to my whereabouts regardless of whether my whereabouts are known or unknown or (v) any inquiry.

2. My Attorney is hereby authorized to make gifts, grants or other transfers without consideration either outright or in trust (including the forgiveness of indebtedness) to such person or persons as my Attorney shall select subject to the following terms and conditions:

- a. The recipients of any such gifts shall be limited to my lineal descendants and their spouses.
- b. If a gift is made to a descendant of mine or the spouse of a descendant of mine by my Attorney, then my Attorney shall make a gift of substantially equal value to all other descendants of mine or their spouses in the same generation or of that family unit (I have five family units).
- c. My Attorney shall not make any gifts that are not excluded from gift tax by my federal gift tax annual exclusion; this annual right shall be non-cumulative and shall lapse at the end of each calendar year.
- d. In addition to the gifts authorized above, my Attorney is authorized to make any payments of tuition for any descendant of mine that qualify for the exclusion under Section 2503(e) of the Internal Revenue Code, as long as my family units are treated equally.
- e. My Attorney is authorized to prepare, execute and file any gift tax return required by any such gift and pay any gift tax that may arise by reason of any gifts.

GENERAL PROVISIONS

1. AND I, the said Ida Mae Belk, do hereby ratify and confirm all acts of my Attorney, and do declare that all acts and deeds performed under this instrument shall have the same full force and effect as if performed and signed by me in person, and this instrument shall be effective until revoked in writing and filed in the public records of the county first set out above or shall cease by operation of law and shall be binding upon myself, my heirs, devisees, legatees, beneficiaries, legal representatives, and assigns.

2. This instrument is to be construed and interpreted as a general Power of Attorney without limitation or reservation. The enumeration of specific items, rights, acts, or powers herein is not intended to, nor does it limit or restrict, and is not to be construed or interpreted as limiting or

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Durable Power of Attorney
Ida Mae Belk

restricting, the general powers herein granted to my said Attorney.

3. No person who may act in reliance upon the representations of my Attorney for the scope of authority granted to the Attorney shall incur any liability to me or to my estate as a result of permitting the Attorney to exercise this authority; nor is any such person who deals with my Attorney responsible to determine or ensure the proper application of funds or property.

4. This Power of Attorney shall not be affected by the physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate.

5. My Attorney may resign at any time by giving a written resignation to me and filing a copy of said resignation in the public records of the county first set out above.

6. My Attorney is authorized and empowered to appoint a substitute Attorney to act and serve as my Attorney in the event that: (a) my Attorney shall die or become mentally incapacitated or resign prior to my death, and (b) at any of such times there is no successor Attorney named in this instrument who is willing and able to serve as my Attorney. Such appointment shall be made in a written instrument that shall: (a) specify the event or events upon which such substitution shall become effective, (b) be signed by my Attorney, and (c) be attached to this instrument.

7. My Attorney may be removed by me or this Power of Attorney may be amended or revoked by me by my filing a written instrument in the public records of the county first set out above.

8. My Attorney and my Attorney's heirs and assigns are hereby released by me and my heirs and assigns from any liability whatsoever on account of any failure of my Attorney to act pursuant to this Power of Attorney.

9. Notwithstanding any other provision to the contrary, my Attorney's legal obligations shall not be satisfied out of any of the property subject to this Power of Attorney, nor may it be exercised in favor of my Attorney's estate, my Attorney's creditors, or the creditors of my Attorney's estate.

10. My Attorney shall not be required to file an accounting or inventory with any Probate Court, but shall maintain accurate records and/or books of account in order to account to me or my heirs or my personal representatives. I direct that no surety bond or security shall be required of my Attorney, even after my mental disability.

11. Notwithstanding any other provision herein to the contrary, my Attorney shall not have any power with respect (a) to any life insurance policy that I may own on the life of my Attorney, or (b) any trust created by my Attorney as to which I am a trustee.

12. An Attorney acting hereunder shall be deemed "incapacitated" under any one or more of the following circumstances: (i) during any period that the individual is legally incompetent as

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Durable Power of Attorney
Ida Mae Belk

determined by a court of competent jurisdiction; (ii) during any period beginning when two physicians licensed to practice medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs and continuing until two such physicians (whether or not those making the initial determination) certify in writing that, in their opinion, the individual's capacity is restored; or (iii) during any period that a Co-Attorney or successor Attorney has evidence that the individual is absent without explanation or is being detained against his will under circumstances in which he does not have the capacity to act prudently or effectively in financial affairs.

13. Any Attorney acting hereunder shall be entitled to reasonable compensation for services rendered.

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Durable Power of Attorney
Ida Mae Belk

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 30th day of June, 2005.

Ida Mae Belk
Ida Mae Belk, Principal

SIGNED, SEALED, PUBLISHED AND DECLARED by the principal, Ida Mae Belk, as and for her Power of Attorney in the presence of us, who at the principal's request, in the presence of the principal and in the presence of each other, have hereto subscribed our names as witnesses hereto.

[Signature] of Columbia, S.C.
[Signature] of Sumter, S.C.

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF SUMTER)

I, [Signature], do hereby certify that Ida Mae Belk personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 30 day of June, 2005.

[Signature] (Seal)
Notary Public for South Carolina
My Commission Expires: 2/25/2012

Durable Power of Attorney
Ida Mae Belk

EXHIBIT 6

ELLIS LAWHORNE

KAREN H. THOMAS
KTHOMAS@ELLISLAWHORNE.COM

July 20, 2005

Mr. Gene Belk
P.O. Box 1208
Sumter SC 29151

Ms. Linda B. Harris
P.O. Box 3610
Sumter SC 29151

RE: Estate of Robert D. Belk
Our File No. PR-834

Dear Linda and Gene:

Enclosed for your review and payment is our bill for services through the filing of the estate tax return. Depending upon the lengths of discussions regarding the new Trust C, the new entities to be created and funded, and then audit, if any, by the IRS, I think we are at least half the way through with the legal work.

I look forward to working with you as efficiently as possible to conclude the drafting of the new Trust C, the creation of entities to own the family business, and the funding of the trusts which have been created in this plan.

Sincerely,

ELLIS, LAWHORNE & SIMS, P.A.

COPY

Karen H. Thomas

KHT/jhc

Enclosure

Ellis, Lawhorne & Sims, P.A., Attorneys at Law

1501 Main Street, 5th Floor - PO Box 2285 - Columbia, South Carolina 29202 - 803 254 4190 - 803 779 4749 Fax - ellislawhorne.com

EXHIBIT 7

ELLIS:LAWHORNE

KAREN H. THOMAS
KTHOMAS@ELLISLAWHORNE.COM

November 17, 2005

Mr. Gene Belk
P.O. Box 1208
Sumter SC 29151

Ms. Linda B. Harris
P.O. Box 3610
Sumter SC 29151

RE: Estate of Robert D. Belk
Our File No. PR-834

Dear Linda and Gene:

I enjoyed seeing you again. We decided that you two will take care of the gifting issues this year for your mother. Please let me know if the contributions will be made to the trusts for your brother and sister and whether we can provide the Crummey withdrawal notices or if you will do those.

Also, we discussed that prior to funding the Trusts under the will and the new Trust C (to be drafted for your mother's interest in Sumter Mortgage assets), all assets should be reviewed and categorized. Enclosed is a list of assets and the values reported on the estate tax return. You will note the headings of the columns, starting from the left: the first column has the 706 schedule number, then a description of the asset, then whether it was a Sumter Mortgage asset, and the value in your father's estate (so for Sumter Mortgage assets this is one-half of the total value). There are three empty columns, two of which are for you to complete. I need for you to provide a label in the "Type" column for each asset: "T" for income-producing, "G" for substantially growth oriented, little income, and "N" for neutral. You may provide comments in the Comment column.

Also, if you know that an asset has been sold or the value changed substantially, please mark this. Also, if an asset has been purchased by the estate, please add that information as well.

Finally, if you will complete the enclosed and send it back to me in the next week or two I will study the information and complete the "entity" column with my suggestions as to how to go forward.

Sincerely,
ELLIS LAWHORNE & SIMS, P.A.

Karen H. Thomas

Ellis, Lawhorne & Sims, P.A., Attorneys at Law

1501 Main Street, 5th Floor = PO Box 2285 = Columbia, South Carolina 29202 = 803 254 4190 = 803 779 4749 Fax = ellislawhorne.com

EXHIBIT 8

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

CONDITIONAL INSTALLMENT
CONTRACT/ LEASE TO OWN

THIS INDENTURE made and entered into by and between hereinafter
Sharon Evans AND Larry B. Moten referred to as PURCHASER; and SUMTER
MORTGAGE CO. hereinafter referred to as SELLER; ON 2ND Day of,
JUNE, 2006.

WHEREAS, the SELLER, in consideration of the covenants hereinafter
contained on the part of the PURCHASER, hereby sells and agrees to convey to the
PURCHASER the following described property upon the prompt and full performance
by the PURCHASER of
The terms of this agreement:

DESCRIPTION: LOT 1... 3675 BONANZA COURT, REMBERT, SC 29128.
TAX NO # 138-00-01-040

NOW THEREFORE, in consideration of the recitals and the property set out
hereinabove, the SELLER hereby agrees to sell and convey to PURCHASER, who
hereby Agrees to purchase, the above described property according to the terms and
conditions set out Hereinbelow, to wit:

1. PURCHASE PRICE: The purchase price is...
\$ 8,500.00 Payable as Follows:
\$ 500.00 Cash Down Payment, receipt of which is hereby acknowledged.
\$ 8,000.00 UNPAID BALANCE. Shall be Payable in 84
equal consecutive monthly installments of
\$ 163.49 payable on or before the 15th day of each month.
INTEREST at 17%
JULY 15, 2006 DATE OF FIRST INSTALLMENT.
\$ 20.00 to be added to any payment received after the 20TH of the month due.

BOOK=1075 PAGE=00134

FILED: RECORDED, INDEXED
04/26/2007 12:55:12 PM
REC. FEE: 10.00 CO FEE: .00
STATE FEE: .00 TOTAL FEES: 10.00
PAGES: 3
VICKI M. MCCARTHY - REGISTER OF DEEDS
SUMTER COUNTY BY: R. Carter

Refer TO:
Bibas Inc / Sumter Mortgage Co.
P.O. Box 1853
Sumter, SC 29157

2. **PROMPT PAYMENT:** Purchaser shall make all monthly payments owed to the SELLER promptly and agrees to make timely payments as specified in ITEM 1 hereinabove and the payments made then credited, first to the discharge of the interest accrued and the balance to the reduction of the principal. Past due interest and principal shall bear interest at the rate stated above from maturity until paid. In the event default is made in the prompt payment of said indebtedness and the same is placed in the hands of the attorney for collection. PURCHASER agrees to pay a reasonable attorney's fee. PURCHASER will be assessed a late charge of 20.00 on the installment when payment is 6 days or more after the due date.

3. **CONDITION:** Purchaser covenants and agrees to keep the property in good condition. Any damage occurring during PURCHASER'S possession will be the responsibility and expense of the PURCHASER to correct, and to permit SELLER, SELLER's agent or representative to enter said property at all reasonable times for the purpose of inspection thereof.

4. **DEED AND TITLE:** Upon payment of all sums due hereunder, SELLER shall convey deed and title to the above property, clear of any and all liens or encumbrances. PURCHASER shall be responsible for all costs associated with obtaining this transfer in his or her name.

5. **TAXES AND ASSESSMENTS:** PURCHASER shall be responsible for the payment of all taxes and assessments levied against the property herein being purchased commencing with the year of purchase.

6. **INSURANCE:** PURCHASER shall be responsible for insuring the property herein being purchased, with SELLER being named as loss payee, and PURCHASER shall furnish SELLER with proof of said insurance, which shall be in an amount not less than the purchase price...

7. **DEFAULT:** Time is of the essence of this agreement, and the failure of the Purchasers to pay any installment of the purchase price due hereunder, to pay the taxes, or to remedy any failure to perform any covenant herein within (5) days from the date of written notice thereof from the Seller to the Purchasers shall, at the option of the Seller, make the entire balance at once due and payable, and failure of the Purchasers to pay the same upon demand shall constitute a default herein. Upon such default on the part of the Purchasers, the Seller shall have the right to the immediate possession of the premises herein described, and the Purchasers shall have no further right, title or interest therein, and all sums theretofore paid by the Purchasers to the Seller shall be forfeited to the Seller as rent for the uses and occupancy of said premises and as liquidated damages for the breach of this contract.

8. **BINDING EFFECT:** This agreement shall be binding upon and shall inure to the benefit of the respective parties hereto, their heirs, assigns, successors, administrators and executors.

9. MODIFICATION: This contract may not be altered, modified, or rescinded except as provided hereinabove or except by a writing signed and accepted by both the PURCHASER and SELLER.

IN WITNESS WHEREOF, we acknowledge that we have read all the terms of this agreement and agree to abide by the terms thereof.

WITNESSES:

Sara Kone
1st Witness

Shida J. Bennett

Sara Kone
1st Witness

Shida J. Bennett

LARRY. Moten
Social Security #

Sharon C. Evans
Social Security # Sharon C. Evans

Dewey Houser
Dewey Houser (Agent)
Sumter Mortgage Company

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

PROBATE

PERSONALLY appeared before me, the undersigned witness, who being duly sworn, deposes and states that s/he saw the within named Dewey Houser ^{Larry B. Hicks} individually for Sumter Mortgage sign, seal and as his/her/their act and deed, deliver the within written CONTRACT and that despondent, together with the undersigned Notary Public, witnessed the execution thereof.

Sara Kone
1st Witness

SWORN to before me
This 2 day of June, 2006
Shida J. Bennett
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4/1/2015

EXHIBIT 9

06/26/06

Dear Gene,

I am sending you this copy of Karen's trust (re-done) to include the change we talked about being able to name a successor. This should be the final copy for the other half of the Sumter Mortgage assets, except that we have not discussed this change with mother, as she wants Patricia named as the successor.

It is my understanding, that we are not including Bibco, in this trust, only because we intend to draw up a family partnership to include those assets. Please, let me know if this incorrect, as we need to meet right away to agree on the terms of this entity and to have it drawn up, along with mother's will to cover the house and her personal belongings. We would like to have the trust signed and filed this week, as it has been a big burden to mother that this has not been done as promised.

Thanks!
I appreciate your cooperation!



Linda

EXHIBIT 10



South Carolina Department of Public Safety

BILL OF SALE
(Must Be Typed or Printed in Black Ink)

FOR DEPARTMENT USE ONLY	
Check One:	
<input type="checkbox"/> Purchase License Plate	
<input type="checkbox"/> Transfer License Plate	

1. Sumter Mortgage Co
3061 Broad St Sumter, SC 29154
 Street City State Zip Code

state that on the 27 day of November Yr. 06 the following vehicle:

MAKE Pioneer MODEL 510 BODY TYPE MBH YEAR 98
 VEHICLE IDENTIFICATION NO. PH1509GA12586 LICENSE NO. _____

was sold to Edward Pate
 _____ Buyer _____
 Street City State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:
N/A
 (List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 6,500.00
 Less trade-in \$ _____
 Taxable Total \$ 6,500.00

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

- ___ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- ___ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Edward Pate 11/27/06
 Signature(s) of Buyer(s) Date

Dorothy M. Housar 11/27/06
 Signature(s) of Seller(s) Date
Sumter Mortgage

Edward Pate
 Hand Print Name(s) of Buyer(s)

Dorothy M. Housar, Sumter Mortgage
 Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Public Safety
 Division of Motor Vehicles
 P.O. Box 1498
 Columbia, S.C. 29216-0024

ANY ALTERATION OR ERASURE VOIDSTHIS DOCUMENT.
 ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.

Form 4031 (Rev. 9-97)

3061 ~~1707~~ Broad Street Ext.
 SUMTER, SOUTH CAROLINA 29154
 Telephone: (803) 494-9600

BUYER(S) <u>Edward Pale</u>		PHONE <u>[REDACTED]</u>		DATE <u>11/27/06</u>	
ADDRESS <u>[REDACTED]</u>					
DELIVERY ADDRESS <u>[REDACTED]</u>					
MAKE & MODEL <u>Pioneer</u>		YEAR <u>98</u>	BD. ROOMS <u>3</u>	FLOOR SIZE <u>60</u> <u>W</u> <u>16</u>	HITCH SIZE <u>W</u>
SERIAL NUMBER		<input type="checkbox"/> NEW <input checked="" type="checkbox"/> USED		COLOR	PROPOSED DELIVERY DATE
LOCATION	R-VALUE	THICKNESS	TYPE OF INSULATION	BASE PRICE OF UNIT	\$ <u>4800.00</u>
CEILING				OPTIONAL EQUIPMENT	
EXTERIOR					
FLOORS				SUB-TOTAL	\$
THIS INSULATION INFORMATION WAS FURNISHED BY THE MANUFACTURER AND IS DISCLOSED IN COMPLIANCE WITH THE FEDERAL TRADE COMMISSION RULE 16CRF, SECTION 460.16				SALES TAX	\$ <u>300.00</u>
OPTIONAL EQUIPMENT, LABOR AND ACCESSORIES				NON-TAXABLE ITEMS	
"As Is" No warranties				VARIOUS FEES AND INSURANCE	
Approved Cost for Delivery & Setup - \$2500.00				1. CASH PURCHASE PRICE	\$ <u>6500.00</u>
"Not Included in Sales Price"				TRADE-IN ALLOWANCE	\$
				LESS BAL. DUE on above	\$
				NET ALLOWANCE	\$
				CASH DOWN PAYMENT	\$
				CASH AS AGREED (REMARKS)	\$
				2. LESS TOTAL CREDITS	\$
				SUB-TOTAL	\$
				SALES TAX (If Not Included Above)	\$
				1. Unpaid Balance of Cash Sale Price	\$ <u>6500.00</u>
REMARKS:				If home is a used or repossessed home: (Check One)	
				<input type="checkbox"/> This home meets minimum habitability requirements.	
				<input type="checkbox"/> This home is purchased for the purpose of repair only and not for habitation until the standards of minimum habitability are met.	
				If a new home, the manufacturer of this home: (Check One)	
				<input type="checkbox"/> is in business.	
				<input type="checkbox"/> is no longer in business.	
BALANCE CARRIED TO OPTIONAL EQUIPMENT \$				Dealer and Buyer certify that the additional terms and conditions printed on the other side of this contract are agreed to as a part of this agreement, the same as if printed above the signatures. Buyer is purchasing the above described trailer, manufactured home or vehicle; the optional equipment and accessories; the insurance as described has been voluntary; that Buyer's trade-in is free from all claims whatsoever, except as noted.	
DESCRIPTION OF TRADE-IN		YEAR	SIZE	SALESPERSON INFORMATION	
MAKE	MODEL		BD. ROOMS	NAME: <u>Dewey House</u>	
TITLE NO.	SERIAL NO.		COLOR	Print Name	
AMOUNT OWING TO WHOM				Signature	
ANY DEBT BUYER OWES ON TRADE-IN IS TO BE PAID BY <input type="checkbox"/> DEALER <input checked="" type="checkbox"/> BUYER.				License Number:	
DESCRIPTION OF ASSETS PURCHASED FOR DEPOSIT OR DOWN PAYMENT					
NOTE: WARRANTY AND EXCLUSIONS AND LIMITATIONS OF DAMAGES ON THE REVERSE SIDE.					
THIS AGREEMENT CONTAINS THE ENTIRE AGREEMENT BETWEEN DEALER AND BUYER AND NO OTHER REPRESENTATION OR AGREEMENT VERBAL OR WRITTEN HAS BEEN MADE WHICH IS NOT CONTAINED IN THIS CONTRACT. BUYER(S) ACKNOWLEDGE RECEIPT OF A COPY OF THIS ORDER AND THAT BUYER(S) HAVE READ AND UNDERSTAND THE BACK OF THIS AGREEMENT.					
Sumter Mortgage Co. DEALER			SIGNED <u>Edward Pale</u> BUYER		
Not Valid Unless Signed and Accepted by an Officer of the Company or an Authorized Agent			SOCIAL SECURITY NO. <u>[REDACTED]</u>		
By _____ Approved			SIGNED X _____ BUYER		
PRINT NAME			SOCIAL SECURITY NO.		

FORM 500SC

A PLAIN LANGUAGE PURCHASE AGREEMENT Rev 02/01
 Copyright © 1993 JENKINS BUSINESS FORMS MASCOUTAH, IL 62258



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

BILL OF SALE
(Must Be Typed or Printed in Black Ink)

Check One:
 Purchase License Plate
 Transfer License Plate

I, Sumter Mortgage Co
3061 Broad St. Seller Sumter, SC 29154
Street City State Zip Code

state that on the 27 day of June Yr. 07 the following vehicle:

MAKE Belmont MODEL PM245 BODY TYPE MBH YEAR 96

VEHICLE IDENTIFICATION NO. MSB961680SN24610 LICENSE NO. -

was sold to Jonathan T. Kelly
Buyer
[Redacted] [Redacted] [Redacted]
Street State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

N/A

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 3500.00
Less trade-in \$ -
Taxable Total \$ 3500.00

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

- 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Jonathan T. Kelly, 4/27/07
Signature(s) of Buyer(s) Date

Dewey Houser, 4/27/07
Signature(s) of Seller(s) Date

Jonathan T. Kelly
Hand Print Name(s) of Buyer(s)

Sumter Mortgage Co
(Dewey Houser)
Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Public Safety
Division of Motor Vehicles
P.O. Box 1498
Columbia, S.C. 29216-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.

Form 4031 (Rev. 9-97)

Sumter Mortgage Co.
 4166 Broad Street Ext.
 SUMTER, SOUTH CAROLINA 29154
 Telephone: (803) 494-9600

BUYER(S) <u>Jonathan T. Kelly</u>		PHONE <u>(803) [REDACTED]</u>		DATE <u>6/27/07</u>	
ADDRESS [REDACTED]					
DELIVERY ADDRESS [REDACTED]					
MAKE & MODEL <u>Belmont</u>		YEAR <u>96</u>	NO. ROOMS <u>3</u>	FLOOR SIZE <u>80</u>	HITCH SIZE <u>W</u>
SERIAL NUMBER <u>MSB961680SN24610</u>		<input type="checkbox"/> NEW <input checked="" type="checkbox"/> USED		STOCK NUMBER	
LOCATION		R-VALUE:THICKNESS		TYPE OF INSULATION	
CEILING				BASE PRICE OF UNIT \$ <u>3500.00</u>	
EXTERIOR				OPTIONAL EQUIPMENT	
FLOORS				SUB-TOTAL \$	
THIS INSULATION INFORMATION WAS FURNISHED BY THE MANUFACTURER AND IS DISCLOSED IN COMPLIANCE WITH THE FEDERAL TRADE COMMISSION RULE 16CFR, SECTION 460.16.				SALES TAX	
OPTIONAL EQUIPMENT, LABOR AND ACCESSORIES			NON-TAXABLE ITEMS		
<u>Sold "As Is"</u>			VARIOUS FEES AND INSURANCE		
			1. CASH PURCHASE PRICE \$ <u>3500.00</u>		
			TRADE-IN ALLOWANCE \$		
			LESS BAL. DUE on above \$		
			NET ALLOWANCE \$		
			CASH DOWN PAYMENT \$		
			CASH AS AGREED (SEE REMARKS) \$		
			2. LESS TOTAL CREDITS \$		
			SUB-TOTAL \$		
			SALES TAX (if Not Included Above)		
			3. Unpaid Balance of Cash Sale Price \$		
REMARKS:					
If home is a used or repossessed home: (Check One)					
<input type="checkbox"/> This home meets minimum habitability requirements.					
<input type="checkbox"/> This home is purchased for the purpose of repair only and not for habitation until the standards of minimum habitability are met.					
If a new home, the manufacturer of this home: (Check One)					
<input type="checkbox"/> is in business.					
<input type="checkbox"/> is no longer in business.					
Dealer and Buyer certify that the additional terms and conditions printed on the other side of this contract are agreed to as a part of this agreement, the same as if printed above the signatures. Buyer is purchasing the above described trailer, manufactured home or vehicle; the optional equipment and accessories, the insurance as described has been voluntary; that Buyer's trade-in is free from all claims whatsoever, except as noted.					
BALANCE CARRIED TO OPTIONAL EQUIPMENT \$			SALESPERSON INFORMATION		
DESCRIPTION OF TRADE-IN		YEAR	SIZE	NAME: <u>Dewey Houser</u>	
MAKE	MODEL	BEDROOMS		Print Name	
TITLE NO.	SERIAL NO.	COLOR		<u>Dewey Houser</u>	
				Signature	
AMOUNT OWING TO WHOM			License Number: <u>35613</u>		
ANY DEBT BUYER OWES ON TRADE-IN IS TO BE PAID BY <input type="checkbox"/> DEALER <input type="checkbox"/> BUYER					
DESCRIPTION OF ASSETS PURCHASED FOR DEPOSIT OR DOWN PAYMENT					
NOTE: WARRANTY AND EXCLUSIONS AND LIMITATIONS OF DAMAGES ON THE REVERSE SIDE					
BUYER(S) ACKNOWLEDGE RECEIPT OF A COPY OF THIS ORDER AND THAT BUYER(S) HAVE READ AND UNDERSTAND THE BACK OF THIS AGREEMENT.					
Sumter Mortgage Co. DEALER			SIGNED X <u>Jonathan T. Kelly</u> BUYER		
Not Valid Unless Signed and Accepted by an Officer of the Company or an Authorized Agent			SOCIAL SECURITY NO. _____		
By <u>Dewey Houser</u> Approved			SIGNED X _____ BUYER		
PRINT NAME			SOCIAL SECURITY NO. _____		

6-20-2007

DEWEY WENT TO UNIT AND NO ONE WAS THERE.... HE THOUGHT IT LOOKED LIKE THERE WAS SOMEONE STILL LIVING IN UNIT.....

6-21-2007

WENT TO MAGISTRATES OFFICE IN LEE COUNTY TO GET PROPER PAPERWORK TO DO EVICTION.....
WENT BY HOUSE AGAIN,... COULD NOT GET IN, BUT STILL THOUGHT SOMEONE STILL LIVING THERE....

6-21-2007

SAMBO CALLED.... [REDACTED] [REDACTED] [REDACTED]
MOBILE HOME HE WAS INTERESTED IN PURCHASING UNIT.... I TOLD HIM WE WEREN'T SURE YET WHETHER THEY HAD ABANDONED THE UNIT OR NOT.... HE SAID THE PERSON ACROSS THE STREET KNEW THEM AND SAID THEY HAD MOVED OUT A WHILE BACK.... I TOLD HIM THAT WE HADN'T FINALIZED THE PROPER PROCEDURE TO REPO THE UNIT.....

6-22-2007

DEWEY WENT AND LOOKED AT THE UNIT..... DOES NEEDED SOME WORK.....

6-25-2007

DEWEY CALLED HIM BACK AND TOLD HIM THAT WE WOULD TAKE \$5000.00 FOR THE UNIT AS IS.... SAMBO STATED THAT HE'D GO LOOK AT IT AND GET BACK WITH US ON IT.....

6-26-2007

SAMBO CALLED BACK STATED THAT THERE WERE HOLES IN THE FLOORS, THE HOT WATER HEATER HAD BEEN PROPED UP AND THE FLOOR IN THE BATHROOM WAS FALLING THRU, THE TOLIET WAS GOING TO FALL THRU AS WELL. THE REFRIGERATOR WAS BLACK WHERE THEY LEFT FOOD IN IT... NEIGHBORS SAID THE A/C DIDN'T WORK. CARPET & TILE NEEDED TO BE REPLACED.... AND THERE WAS ALMOST \$500.00 IN BACK TAXES OWED TO LEE COUNTY... HE SAID HIS GRANDSON JONATHAN WAS OFFERING TO PAY \$3,500.00 AND THE BACK TAXES TO BUY IT AS IS NOW.... DEWEY TOLD ME TO CALL HIM AND LET HIM KNOW THAT WE WOULD ACCEPT THE OFFER.... I CALLED AND HE STATED HE WOULD GET IN TOUCH WITH HIS GRANDSON TO COME DO PAPERWORK.

EXHIBIT 11

05.0001

September 7, 2007

State Planning

Invoice No. 1354049

TIMEKEEPER SUMMARY

Timekeeper	Hours	Rate	Amount
John R. Chase - Shareholder	12.50	325.00	4,062.50
Judy Moody - Paralegal	2.40	125.00	300.00
Judy Moody - Paralegal	1.10	115.00	126.50
John R. Chase - Shareholder	1.40	0.00	0.00
Total All Staff	17.40		\$4,489.00

SEE DETAIL

Date	Atty	Description	Hours	Amount
12/01/06	JRC	Travel to Sumter; office conference with client to review and attend to the execution of Will, Revocable Trust and LCC formative documents	3.00	975.00
12/01/06	JRC	Receipt and review of faxed letter from Gene Belk regarding protest over Trust and Will; telephone conference with Boone Aiken regarding the same	0.30	97.50
12/01/06	JNM	Letter to South Carolina Secretary of State transmitting Articles; Check Request; Miscellaneous work on file	0.60	69.00
12/04/06	JRC	Letter to client regarding son's December 1, 2006 correspondence	0.20	65.00
12/08/06	JRC	Telephone conference with client regarding status and recommendation for meeting with son and daughter	0.30	97.50
12/12/06	JRC	Telephone conference with Linda Harris regarding status, funding of trust and potential for meeting	0.30	97.50
12/13/06	JNM	Review of file; Application for EIN; Miscellaneous work on file	0.50	57.50
12/20/06	JRC	Telephone conference with Karen Thomas regarding status of probate of estates	0.30	97.50
01/31/07	JNM	Review of faxes regarding federal EIN for Belk Family Holdings, LLC;	0.10	12.50
02/02/07	JNM	Office conference with John Chase regarding SS-4 form; Receipt and review of e-mail from John Chase	0.20	25.00
02/14/07	JNM	Review of file; Drafting of letter; Research regarding corrective SS-4	0.90	112.50
02/15/07	JRC	Telephone conference with client's daughter regarding status, desire for conference regarding closing of Estate, procedure	0.20	65.00
02/15/07	JNM	Revisions to SS-4; Revisions to Letter to Linda Harris; Drafting of Power of Attorney; Miscellaneous work on file	1.20	150.00
02/20/07	JRC	Travel to client's daughters residence in Sumter for conference	1.40	N/C
02/20/07	JRC	Conference with client and daughter at daughter's residence, regarding estate status, alternatives for forcing closure	0.80	260.00
02/20/07	JRC	Preparation of trustee resignation certificate	0.40	130.00
04/15/07	JRC	Review SC Code Section 62-3-1001; preparation of Petition for Rule to Show Cause, proposed Order for same; Letter to Probate Court	0.50	162.50
04/23/07	JRC	Return call to Probate Court regarding issues in need of hearing, request scheduling of same	0.20	65.00

.2105.0001

September 7, 2007

Estate Planning

Invoice No. 1354049

Date	Client	Description	Hours	Rate	Amount
05/17/07	JRC	Telephone conference with Ken Young regarding representation, requested continuance; telephone conference with Karen Thomas regarding same, status	0.40	325.00	130.00
05/17/07	JRC	Telephone conference with Linda Harris regarding status, hearing continuance requested by Attorney Ken Young	0.30	325.00	97.50
07/15/07	JRC	Review file status; letter to Probate Court to request rescheduling of hearing	0.30	325.00	97.50
07/29/07	JRC	Letter to Client regarding status	0.20	325.00	65.00
08/08/07	JRC	Telephone conference with Linda Harris regarding status	0.30	325.00	97.50
08/28/07	JRC	Receipt/review of miscellaneous emails from John Scott, Karen Thomas; reply to same	0.30	325.00	97.50
08/31/07	JRC	Review file, background, prepare for conference	1.00	325.00	325.00
08/31/07	JRC	Office conference with Mr. Scott, Ms. Thomas, regarding potential settlement, funding issues	3.00	325.00	975.00
08/31/07	JRC	Letter to Probate Court (Sumter County) re continuance request concerning Rule to Show Cause hearing	0.20	325.00	65.00
Total Hours and Fees			17.40		\$ 4,489.00

EXPENSE RECAP

Date	Description	Amount
12/01/06	Filing Fee - Filing Fee; VENDOR: SC Secretary of State; INVOICE#: 120106JNM; DATE: 12/1/2006	\$ 110.00
12/01/06	Courier Service - Courier mileage to 1205 Pendleton St.	5.89
12/05/06	Mileage - 12/1/06 Mileage to and from Sumter to meet with client to execute Will/90mls @ .445ml VENDOR: CHASE, JOHN, R.; INVOICE#: 12052006; DATE: 12/5/2006	40.05
02/22/07	Mileage - 2/20/07 Mileage to and from Sumter for meeting with client/80mls @ 485ml VENDOR: CHASE, JOHN, R.; INVOICE#: 02222007; DATE: 2/22/2007	38.80
04/16/07	Filing Fee - Filing fee; VENDOR: Sumter County Probate Court; INVOICE#: 041607TWC; DATE: 4/16/2007	150.00
	Photocopies - 54 pages @ 0.10	5.40
	Long Distance Telephone	2.43
	Online Research - Lexis - 4 @ 15.00	60.00
	Postage	11.30
Total Expenses		\$ 423.87

DISBURSEMENT SUMMARY

Description of Expenses	Amount
Courier Service	5.89
Filing Fee	260.00
Long Distance Telephone	2.43
Mileage	78.85
Online Research - Lexis	60.00
Photocopies	5.40

EXHIBIT 12

FILED, RECORDED, INDEXED
10/30/2007 11:20:24 AM
REC. FEE: 15.00 CO FEE: .00
STATE FEE: .00 TOTAL FEES: 15.00
PAGES: 9
VICKI H. MCCARTHY - REGISTER OF DEEDS
SUMTER COUNTY BY: R. Carter

STATE OF SOUTH CAROLINA)
) IDA MAE K. BELK
COUNTY OF SUMTER) IRREVOCABLE TRUST

This Agreement made this 17th day of Sept. 2007, between Ida Mae K. Belk (hereinafter referred to as Grantor) and Linda Belk Harris as Trustee (hereinafter referred to as Trustee). This Trust shall be known as the Ida Mae K. Belk Irrevocable Trust.

ARTICLE I

Creation And Disposition Of Trust

1. Creation, Name of Trust. I am the owner of the Bibco Corporation and an undivided one-half (1/2) interest and all assets of the above mentioned property known as Sumter Mortgage, an unincorporated entity.

I hereby transfer all of the above mentioned assets to the Ida Mae K. Belk Irrevocable Trust dated 17th day of Sept., 2007.

2. Trust During Lifetime. During my lifetime, my Trustee shall pay the income and principal of the trust as I may direct. If at any time, in the opinion of my Trustee, I am unable to so direct, my Trustee may pay income or principal as my Trustee may deem necessary to provide for my support and health and to pay my obligations. My Trustee is also authorized to continue to its conclusion any estate planning program which I have instituted during my lifetime but which remains incomplete as a result of my incapacity and shall annually add any undistributed income to principal.

3. Disposition at Death. It is my intention to prepare a Will which will authorize dissolution of the irrevocable trust and distribute all proceeds to my children.

Return To:
Linda Harris
PO Box 3610
Sumter, SC 29151-3610

I HEREBY CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL FILED
IN THIS OFFICE.
Calvin D. Semmes Deputy
REGISTER OF DEEDS
SUMTER COUNTY, S. C.

ARTICLE II

Debts, Taxes, And Other Charges

At my death, my Trustee may pay to or upon the order of my Personal Representative funds needed to pay my debts, funeral and burial expenses, costs of administration, transfer taxes, charitable pledges and specific bequests under my Will. My Trustee may rely upon my Personal Representative as to the amount of the charges. The decision of my Trustee about whether to provide funds shall be final. Assets that are not included in my gross estate shall not be used for such payments. The payments shall not be charged against any trust established herein or the share of any beneficiary.

ARTICLE III

Fiduciaries

1. Successor Trustee. If Linda B. Harris should fail or cease to serve as Trustee for any reason, I direct that my children select the Trust Department of a federally insured bank to serve as Successor Trustee.

2. Actions of Predecessor; Waiver of Board. No successor Trustee shall be responsible for or required to inquire into the actions of any Trustee occurring before the successor's appointment. My Trustee shall only be responsible for assets of this Trust upon receipt of such assets and during the period for which it retains such assets. These provisions shall survive the period during which a Trustee shall be acting as Trustee of any trust established hereunder. My Trustee shall not be required to post bond in any jurisdiction of the faithful performance of its duties hereunder or for the return of any payment on account of commissions.

3. Compensation. Any Trustee shall be entitled to receive reasonable compensation for fiduciary services; and if it maintains a published schedule of fees, then my Trustee

shall be entitled to compensation in conformity therewith at the time at the time such services are rendered, without judicial authorization; provided, however, that no Trustee shall be entitled to an acceptance fee on account of its succession to fiduciary duties following service by a prior Trustee; and provided, further, that no Trustee shall be entitled to a fee for or on account of a distribution of principal, or on account of the termination of its services as Trustee, commonly referred to as a "termination fee," except for reimbursement of reasonable expenses actually incurred. Any fees payable from income to which my Trustee is entitled may be made from current or accumulated income.

3. **Fiduciary Powers.** In addition to the powers granted by law, I grant my Trustee the powers set forth in the following subparagraphs:

a. My Trustee may sell, exchange, lease, or encumber any trust assets upon such terms as my Trustee may deem appropriate.

b. My Trustee may borrow money, grant security interests and execute mortgages, deeds of trust, and other instruments creating security interests upon such terms as my Trustee may deem appropriate.

c. My Trustee may compromise and adjust any claims against or on behalf of any trust upon such terms as my Trustee may deem appropriate.

d. My Trustee may make distributions to beneficiaries in cash or kind.

e. My Trustee may invest and reinvest all or any part of the Trust Assets in any property an undivided interests in property, wherever located, and participate in proprietary mutual funds, common collective or pooled trust funds of my Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning

investments by fiduciaries. I further empower my Trustee to invest in any type of investment that plays an appropriate role in achieving the investment goals of any trust established herein, which investment shall be considered as a part of the total portfolio. It is my specific direction that no category or type of investment shall be prohibited. I specifically do not wish to limit the universe of trust investments in any way other than as is dictated by Trustee's exercise of reasonable care, skill and caution. In connection with my Trustee's investment and management decisions with respect to any trust established hereunder, my Trustee is specifically entitled to take into account general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies, the role that each investment or course of action may play within the overall trust portfolio that may include financial assets, tangible and intangible personal property, and real estate, the expected total return from income and the appreciation of capital, other resources of the beneficiaries, the Trust's needs for liquidity, regularity of income and preservation or appreciation of capital, and the particular relationship or special value, if any, which the Trust's asset or assets bear to its beneficiary or beneficiaries. My Trustee shall not be limited to any one investment strategy or theory, including without limitation modern portfolio theory, the efficient market theory or otherwise, but shall be free to consider any appropriate investment strategy or theory under all the circumstances.

f. My Trustee may sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Assets, on such terms as to my Trustee shall seem best, and no person dealing with my Trustee shall be bound to see

to the application of any monies paid.

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

h. My Trustee may employ agents, assistants and other advisors deemed by it needful for the proper administration and day to day management of the Trust Assets, and it may do so without liability for any neglect of such agent or representative, provided he was selected and retained with reasonable care.

i. My Trustee may determine, irrespective of statute or rule of law, what shall be fairly charged or credited to income and what to principal and whether or not to establish depreciation reserves.

j. My Trustee may, in its discretion, retain any shares of stock in itself or in any closely held business, or any affiliate, parent, subsidiary or successor corporation thereof (hereinafter called "Company"), and such retention shall not be deemed a violation of its duty of undivided loyalty or of its duty with respect to the diversification of investments. It may further exercise the same discretion, rights and powers with respect to the shares of stock in the Company, both as to those shares originally received and those acquired thereafter, as is conferred upon it by this instrument with respect to all the Trust Assets, and be subject to no greater liability as to the shares its own stock so held than as to any other securities which may form a part of the Trust Assets.

k. My Trustee shall have the following rights and powers with regard to any real property forming a part of the corpus of this Trust, with regard to environmental

matters:

(1) To deal with matters involving the actual or threatened contamination of trust property (including interests in sole proprietorships, partnerships or corporations and any assets owned by such business entities) by hazardous substances, or involving compliance with environmental laws. In particular, my Trustee is empowered:

(a) To inspect and monitor any such property periodically, as it deems necessary, to determine compliance with any environmental law affecting such property, with all expenses of such inspection and monitoring to be paid from the income or principal of the trust;

(b) To respond (or take any other action necessary to prevent, abate, or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;

(c) To refuse to accept property as a trust asset if it determines that such property is contaminated by any hazardous substances or that such property is being used or has been used for any activities directly or indirectly involving hazardous substances which could result in liability to the trust or otherwise impair the value of trust assets;

(d) To settle or compromise at any time any claim against this trust related to any such matter asserted by any governmental body or

private party;

(e) To disclaim any power which it determines may cause it to incur personal liability as a result of any such matters, whether such power is set forth in this document, incorporated by reference herein, or granted or implied by any statute or rule of law;

(f) To decline to serve as Trustee or, having undertaken to serve, resign at any time it believes there is or may be a conflict between it in its fiduciary capacity and its individual capacity because of potential claims or liabilities which might be asserted against this trust because of the type or condition of trust assets.

(2) My Trustee shall not be personally liable to any beneficiary or other party interested in this trust, or to any third parties, for any clam against the trust for the diminution in value of trust property resulting from such matters, including any reporting of or response to (1) the contamination of trust property by hazardous substances, or (2) violations of environmental laws related to my trust; provided that my Trustee shall not be excused from liability for its own negligence or wrongful or willful acts;

(3) When used in this document the term "hazardous substance" shall mean any substance defined as hazardous or toxic or otherwise regulated by federal law otherwise regulated by any federal, state or local law, rule or regulation relating to the protection of the environment or human health ("environmental law");

reasonable attorney's fees) attributable to any such accounting and approval shall be paid by this trust.

WITNESS my signature and seal:

Ida Mac K. Belk
Ida Mac K. Belk, Settlor and Trustee

The Settlor and Trustee signed, sealed and declared this as her trust instrument in our presence on the date indicated. At her request, we have signed our names as witnesses, and she and we were present together throughout.

M. W. Woodruff of Greenville, SC
Reborah A. Meeks of Sumter, SC

I accept and agree to be bound by all conditions.

M. W. Woodruff
Witness

Linda Belk Harris
Linda Belk Harris

Reborah A. Meeks
Witness

[Signature] Notary
Commission Expires 2/04/2012

AFFIDAVIT OF SUBSCRIBING WITNESS (PROBATE)

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named:

NAME OR NAMES OF GRANTORS OR EXECUTORS OF THE DOCUMENT sign, seal, and as his (her) or (their) ACT and DEED, deliver the attached document for the uses and purposes therein stated, and that (s)he, with the other witness(es) whose name is subscribed thereon, witnessed the due execution thereof.

SWORN to before me this _____ day of _____ 19____

SIGNATURE OF WITNESS

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

**SOUTH CAROLINA ACKNOWLEDGMENT
FROM GRANTOR OR MAKER OF THE INSTRUMENT
(CAN BE USED IN LIEU OF THE ABOVE PROBATE)**

THE STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

I LINDA B. HARRIS, do hereby certify that
NAME OF OFFICIAL AND OFFICIAL TITLE

IDA MAE BELK, personally appeared
NAME OF GRANTOR OR MAKER

before me this 17th day of September, 2007

and acknowledged the due execution of the foregoing instrument.

[Signature]
SIGNATURE OF OFFICIAL OR NOTARY PUBLIC

My Commission Expires: 2/4/2012

THIS FORM WAS PREPARED IN ACCORDANCE WITH S. C. STATUTE 36-5-30

EXHIBIT 13

31649


SUMTER MORTGAGE
P.O. BOX 1853 803-494-8600
SUMTER, SC 29151-1853

DATE 12/28/07 07-66/632

PAY TO THE ORDER OF Mitch Harris \$ 250.⁰⁰

Two hundred fifty dollars & ⁰⁰/₁₀₀ DOLLARS

NBS
THE NATIONAL BANK OF SOUTH CAROLINA
SUMMER, SOUTH CAROLINA
A Provider of Superior Financial Services

(Faber) 

⑆03 1649⑆ ⑆053 200666⑆

Linda Harris took to
get cashed.
Gene did not sign

SUMTER MORTGAGE
P.O. BOX 1853 - 803-494-8800
SUMTER, SC - 29151-1853

31704

DATE Yul 08

67-68/832

PAY TO THE ORDER OF

Mitch Harris

\$ 250.00

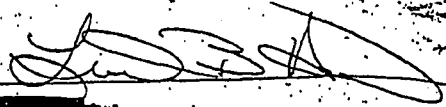
Two hundred fifty & 00/100

DOLLARS

NBSC

THE NATIONAL BANK OF SOUTH CAROLINA
SUMTER, SOUTH CAROLINA
A Member of Sunbelt Financial Services

FOR



⑈03 1704⑈ ⑈4053 200666⑈

EXHIBIT 14

WEINBERG & BROWN, L.L.P.

ATTORNEYS AT LAW
109 NORTH MAIN STREET
P.O. BOX 1289
SUMTER, SOUTH CAROLINA
29151-1289

M.M. WEINBERG, JR.
ROBERT W. BROWN

PHONE (803) 775-1274
FAX (803) 775-0389
E-MAIL weinbergfirm@ffc-i.net
NOT FOR CONFIDENTIAL COMMUNICATION

April 20, 2004

Gene C. Belk, Esquire
P.O. Box 1208
Sumter, SC 29151-1208

RE: My File No.: Z-494

Dear Gene:

As I told Lillian on the phone yesterday I have a list of what Bob thought to be all of the property that he owned together with all of the debts due to him.

I see no real benefit in not going forward with filing the Will for Probate to get started.

However, that is up to you and Mr. Davidson who is receiving a copy of this letter. Please let me know what, if anything, I can do to assist you in this matter.

With kindest regards, I am,

Yours very truly,


M.M. WEINBERG, JR.

MMW, JR./ac

cc: Mr. Carlton Davidson

June 20, 2005

M. M. Weinberg, Jr.
Weinberg, Brown and Curtis, L.L.P.
Attorneys at Law
109 North Main Street
Sumter, South Carolina 29150

RE: Former File Z-98

Dear Rusty:

I need you to pull two (2) previous real estate files you handled for R. D. Belk.

1. **Sale of 07/14/99 whereby Fred Hatfield, Jr. sold R. D. Belk the land and building located at 3289 Broad Street.**
2. **Sale of 03/30/00 whereby Fred Hatfield, Jr. sold R. D. Belk, d/b/a Sumter Mortgage, the land and building located at 3177 Broad Street.**

I need copies of the purchaser's disbursement statement for each transaction. Also, I may need to review each file.

This is necessary for estate reporting purposes.

Sincerely,

Gene C. Belk
Personal Representative for the Estate of R. D. Belk

GCB/jps

9-14-09
Mr. Weir called
He said it's attorney
for Ida Mae Bell
Princess Att. has
been advised
BB
04-25



GENE C. BELK, L.L.C.

ATTORNEY AT LAW

115 BROAD STREET
POST OFFICE BOX 1208
SUMTER, SOUTH CAROLINA 29151
(803) 775-4444
FAX: (803) 775-4546
E-MAIL: GCBELK@ADL.COM

November 14, 2007

M. M. Weinberg, Jr.
Weinberg, Brown and Curtis
109 N. Main
Sumter, South Carolina 29151

Re: Williamsburg Subdivision, LLC

Dear Rusty:

I am forwarding to you the following documents:

1. Itemized bill of Ellis, Lawhorne and Sims (per Linda Harris' request).
2. Family Agreement as to creation of Ida Belk's Trust.
3. Settlement offer from Russ Jeter as to Williamsburg Subdivision.

I would be happy to discuss these with you at your convenience.

Sincerely,

Gene C. Belk

Gene C. Belk

GCB/jps
Enclosure

WEINBERG & BROWN, L.L.P.
ATTORNEYS AT LAW
109 NORTH MAIN STREET
P.O. BOX 1289
SUMTER, SOUTH CAROLINA
29151-1289

M.M. WEINBERG, JR.
ROBERT W. BROWN

January 3, 2008

PHONE (803) 775-1274
FAX (803) 775-0399
E-MAIL ADDRESSES:
mmweinbergjr@sc.rr.com
rwbrown@sc.rr.com

Mr. Gene C. Belk
Gene C. Belk, LLC
Post Office Box 1208
Sumter, SC 29151-1208

Dear Gene:

Your mother has directed me to write you pursuant to the sale at Williamsburg.

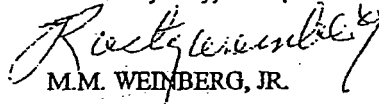
As I understand it, she is the owner of this property and she is requesting that I direct you as her agent to sell this property for five hundred thousand dollars (\$500,000) and to get the money and walk away from the Williamsburg project entirely.

This is her wish since she is the owner of the property, I am sure that you and Mr. Dixon who is receiving a copy of this letter will abide by the same.

If for any reason, you do not care to do that please let me know as your mother intends to take appropriate action.

Want you please advise,

Yours very truly,


M.M. WEINBERG, JR.

MMW, JR/ks
cc: Gus Dixon

Gene Belk
POBox 1208
Sumter, SC 29151

January 5, 2008

M. M. Weinberg, Jr.

Sent by fax 803-775-0399
Sent by email mmweinbergjr@sc.rr.com

Dear Rusty,

I was shocked to receive your letter of January 3rd on Friday.

Nothing personal, but for the reasons herein, you and I should have no further oral communications:

First, when my father was ill, you encouraged him let you prepare the will rather than allow a competent estate planner well-versed in taxation to complete. As a result, the will you prepared for my father was so deficient that it cost the estate untold tens of thousands of dollars, not to mention my time in attempting to resolve what was botched by you.

Second, in order to attempt to "fix" what you had botched, the estate lawyer in Columbia created another plan that included my mother signing a disclaimer based upon a family settlement agreement among me, my sister, and my mother that you never bothered to read before you again began preparing documents for my mother that violate that agreement.

Third, you had my mother sign what you call an "irrevocable trust" on the same day she came to see you for the first time without investigating the background at all. This "trust" not only violates the family agreement, but also may well cost my mother significant taxes because you continue to practice law "from the hip" rather than leaving complicated matters like this to people who know what they are doing. You told me just weeks ago it had not been recorded and you could change it even though it is irrevocable and transfers all my mother's property into the trust. Well, for your information, my sister, the Trustee, recorded the trust on October 30th. In addition to breaching our agreement, the trust beneficiaries are not the same people you specifically put in my father's will as certain individuals were to be left out.

Fourth, I don't know who you represent. If the "trust" you had my mother sign is valid and really holds the assets, then the trustee (my sister, Linda) was given the right to conclude the estate matters, not my mother. So I guess you represent Linda as trustee. Or do you also now represent her as co-personal representative of the estate? Or do you also represent her personally? In any case, I believe you have deep conflicts of interest.

Fifth, based on the estate tax return filed and accepted by the IRS and SC Department of Revenue, my mother owns an undivided one-half interest in all Sumter Mortgage Company assets which includes Williamsburg Subdivision, LLC. Therefore, my mother owns an undivided half interest in the estate's 50% interest in this LLC. If the "trust" you prepared for my mother in September is valid, then the trust owns this undivided interest. So when you "understand" that my mother owns this asset in your letter, you are wrong again.

Sixth, my sister, as co-personal representative of the estate, was involved in discussions with Gus Dixon at Nelson Mullins before Mr. Dixon accepted the Gainey offer regarding Williamsburg LLC of \$450,000.00 plus a deed to Phase III on December 19th. You told Russ Jeter that you represented my mother in September 2007, but never told him you had prepared a "trust" for my mother or that you purported to transfer all assets owned by my mother from the estate into that trust. My sister, as co-personal representative, also attended a part of the mediation in Sumter. You were sent a copy of Mr. Dixon's email on December 19th and no one heard a word from you that "my mother" had changed her mind. You called me twice about the emails you had received, and it was obvious to me that you never read, much less understood, the contract or negotiations that have cost the estate tens of thousands of dollars in attorney's fees with Nelson Mullins since this matter commenced in December 2006. So you waited until January 3rd to let me and Mr. Dixon know that my mother does not want the offer my sister and I as co-personal representatives agreed to accept as per Mr. Dixon's email of December 19th.

Seventh, since my sister is "trustee" under the "trust" you prepared for my mother, and since my sister as "trustee" has the right and obligation under that "trust" to conclude estate matters, I assume you also represent Linda. I also assume that you know that if this case goes to trial, the estate will be on the hook for much more attorney's fees with the potential of a poor result given the one-sided contract my father signed.

Eighth, I believe you have conflicts of interest because you are now trying to sink a deal that my sister as co-personal representative approved, but as "trustee" apparently does not like. This puts you at complete odds as my mother and the estate will suffer if this deal does not go through because of you.

If you are truly representing my mother and her alone, I don't believe you can give her competent advice because you know little, if anything about the litigation and have not prepared reasonably to even give her advice.

You are interfering with the administration of this estate and, unless you represent my sister as co-personal representative, you have no right to do so. If Mr. Dixon is not allowed to complete the settlement based upon his acceptance of the offer with the consent of my sister and I, the estate will hold you personally responsible for the resulting costs.

De B

Again, nothing personal here, but you have overstepped your bounds.

Gene
Gene

Cc: Gus M. Dixon, Esquire.

WEINBERG, BROWN & CURTIS, L.L.P.
ATTORNEYS AT LAW
109 NORTH MAIN STREET
P.O. BOX 1289
SUMTER, SOUTH CAROLINA
29151-1289

M.M. WEINBERG, JR.
ROBERT W. BROWN
WARREN S. CURTIS

January 9, 2008

PHONE (803) 775-1274
FAX (803) 775-0399
E-MAIL ADDRESSES:
mmweinberg@sc.rr.com
rwbrown@sc.rr.com
wscurtis@sc.rr.com

Mr. Gene C. Belk
Gene C. Belk, LLC
Post Office Box 1208
Sumter, SC 29151-1208

RE: Revocable Declaration of Trust

Dear Mr. Belk:

This is to acknowledge receipt of your letter of January 5.

In reviewing the letter, I have decided not to make an answer.

My decision is based primarily upon the fact that most of the information concerning me is wrong and not based on the actual facts and is showing resentment for what I did for your mother, which I did on her expressed instructions.

I trust that this answer is satisfactory. I do not intend to reply any further.

With kindest regards, I am,

Yours very truly,


M.M. WEINBERG, JR.

MMW, JR/dam

WEINBERG & BROWN, L.L.P.
ATTORNEYS AT LAW
109 NORTH MAIN STREET
P.O. BOX 1989
SUMTER, SOUTH CAROLINA
29151-1289

January 14, 2008

M.M. WEINBERG, JR.
ROBERT W. BROWN

PHONE (803) 775-1274
FAX (803) 775-0399
E-MAIL ADDRESSSES:
mmweinbergjr@sc.rr.com
rwbrown@sc.rr.com

Mr. Gene C. Belk
Gene C. Belk, LLC
Post Office Box 1208
Sumter, SC 29151-1208

Dear Gene:

I am in receipt of your letter dated January 5, 2008.

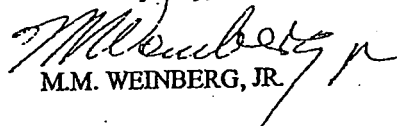
In view of the fact that you intend to sue me, I do not intend to make a detailed reply. I can simply tell you that you have a number of your facts completely wrong and the conclusions that you have drawn are just as wrong.

So there will be no misunderstanding, be advised of this, I represent your mother. I do not represent Linda and in the event that there is any conflict of course I cannot.

I intend to take this matter up with Wilson MacEwen forthwith, I soon as I have talked to him I may make another reply but it is doubtful.

I have made my position clear.

Yours very truly,


M.M. WEINBERG, JR.

MMW, JR/dam

WEINBERG, BROWN & CURTIS, L.L.P.

ATTORNEYS AT LAW
109 NORTH MAIN STREET
P.O. BOX 1288
SUMTER, SOUTH CAROLINA
29151-1289

January 25, 2008

M.M. WEINBERG, JR.
ROBERT W. BROWN
WARREN S. CURTIS

PHONE (803) 775-1274
FAX (803) 775-0399
E-MAIL ADDRESSES:
mmweinberg@sc.rr.com
rwbrown@sc.rr.com
wscurtis@sc.rr.com

Mr. Gene C. Belk
Gene C. Belk, LLC
Post Office Box 1208
Sumter, SC 29151-1208

RE: Revocable Declaration of Trust

Dear Mr. Belk:

Please be advised that I have discussed the R.D. Belk Estate with your Mother at some length.

She has requested that I advise you of the following:

Because of your activities, both in actions and inactions, concerning the Estate, she is considering moving before the Probate Court to have you removed as the Personal Representative.

I need not enumerate the reasons since I am sure you are familiar with them.

She has asked me to advise you that she wants to have the deeds of the Sumter Mortgage property delivered to my office as well as the Bibco deeds. Further, that she wants one-half (1/2) of the income from Sumter Mortgage to be paid directly to her as she owns it.

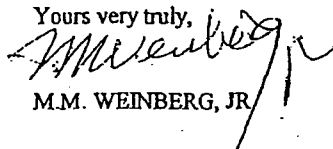
She has instructed me to wait for ten (10) days before I start this action in order that you can contact her so that you and she can try to thrash this matter out.

I would not give you any advise in this matter, but I feel that your Mother is adamant about putting this Estate in the situation where it can be handled in a business-like way rather than the problems that have been met by your refusing to sign checks and other matters.

If you do not take advantage of the opportunity to discuss this matter with your Mother, I will make the motion no later than February 10th. I trust that I have made your Mother's position very clear.

With kindest regards, I am,

Yours very truly,



M.M. WEINBERG, JR.

MMW, JR/dam

EXHIBIT 15

Promisary Note

This note is a debt obligation between Capital Finance, Inc. and Sumter Mortgage Co. The note is to be \$100,000.00 (One hundred thousand dollars) payable in one year with a per annum interest of 7%.

Dated in Sumter, SC on September 30, 2005 and due on September 30, 2006.

Capital Finance, Inc.

By: *M. D. Lytle*

PROMISARY NOTE

This note is a debt obligation between Carolina Pre-Owned LLC to Sumter Mortgage Co. The note amount is to be \$100,000 payable in one year with a annual interest rate of 7% per annum.

Dated in Sumter, SC on March 8, 2005 and due on March 8, 2006.

Witness

Charles E. Lee

Carolina Pre-Owned LLC

By: M. D. Dyer

Managing Partner

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SUMTER

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.

CASE NUMBER: 04-ES-43-0225

RECEIVED FEB 06 2008

MOTION FOR REMOVAL FROM PROBATE COURT TO CIRCUIT COURT

YOU WILL PLEASE TAKE NOTICE that Petitioner Gene C. Belk, Co-
Personal Representative of the above Estate, hereby moves for an Order of the Sumter
County Probate Court removing this action to Court of Common Pleas for the Third
Judicial Circuit. This Motion is made pursuant to S.C. Code § 62-1-302(d), as well as
any other law as may be supported by the pleadings, filings, and such other evidence or
argument as the Court may allow, and any memorandum filed in support of this Motion.

WARNER, PAYNE & BLACK, L.L.P.

Jan L. Warner
Post Office Box 2628
Columbia, SC 29202
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorney for Petitioner Gene C. Belk

PROBATE
JUDICIAL SERVICES
OF
PA

2008 FEB 21 PM 1:22

RECEIVED

Columbia, South Carolina
February 6, 2007

ORDER OF REMOVAL

It appearing that removal is appropriate

IT IS SO ORDERED!

February 19, 2008

Boyd P. Brown
Probate Judge, Sumter County

CERTIFIED TRUE COPY OF ORIGINAL
FILED IN THIS OFFICE
Boyd P. Brown
ASSOC. JUDGE OF PROBATE
SUMTER COUNTY SC

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

Gene C. Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

Defendants,)

And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders.)

RECORDED
IN THE COURT OF COMMON PLEAS
2008 FEB 20 JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

B. Belk
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ANSWER AND COUNTERCLAIM

The Defendants, Ida Mae Belk, Linda B. Harris as Trustee for the Ida Mae Belk Irrevocable Trust and Bibco, Inc. for an answer to the Complaint allege and state that:

FOR A FIRST DEFENSE

1. These Defendants deny each and every allegations in the Complaint contained save and except those herein after specifically admitted.
2. That Defendant Ida Mae Belk, although listed as a Stakeholder, is the sole beneficiary of the Ida Mae Belk Irrevocable Trust and under the terms and conditions of said Trust is the beneficial owner of all income coming from the Trust, if she so desires and, therefore, has a right to

make an Answer to the allegations of the Complaint.

FOR A SECOND DEFENSE

3. The allegations of the First Defense are hereby adopted and made a part of this Defense through incorporation by reference.

4. These Defendants admit Paragraphs 3, 5, 9, 10 and 14.

5. In answering Paragraph 13, these Defendants admit the bulk of it, but, add that the action of Gene Belk relating the appointment of Defendant Harris to serve with him as Co-Personal Representative was done solely in order to get the Defendant Harris' agreement to discharge the nominated Personal Representative Trust herein.

6. In answering Paragraphs 22 through 29, these Defendants allege that the agreement referred to therein was never implemented because the Plaintiff Gene Belk would not execute it as Trustee.

7. In answering Paragraph 31, these Defendants are informed and believe that the loan of Two Hundred Thousand and 00/100ths (\$200,000.00) Dollars from Sumter Mortgage to Carolina Preowned, LLP was instituted and perfected by the Plaintiff, Gene Belk, when, in fact, the other partners wanted to borrow the money from a bank in order to operate the business. Further, these Defendants are informed and believe that the floor plan is guaranteed by Gene Belk and that the Plaintiff has been fully aware of the entire operation involving Carolina Preowned, LLP.

8. This loan was not guaranteed by the stockholders of the Corporation, who will at a later time move before the Court, that Gene Belk be required to reimburse this Corporation his portion and share of the Two Hundred Thousand and 00/100ths (\$200,000.00) Dollars obtained through his instigation from this Defendant Bibco, Inc. and/or from the Trust and/or Sumter Mortgage.

9 These Defendants specifically deny Paragraph 36 alleging that all of the operations, so these Defendants are informed and believe, of Defendant Houser were acts on behalf of the Plaintiff Belk and were fully known to the Plaintiff Belk. This being the original proposal made by the Plaintiff.

10 In answer Paragraph 38, these Defendants allege that the Trust, as prepared, was done precisely according to the directions of Mrs. Belk and that it was done as she instructed and that she was satisfied with the operation creating the Trust in question, and deny the balance of said Paragraph.

11. In answering Paragraph 44, these Defendants would show that all actions by Mr. Weinberg were done at the specific request and with the approval of Ida Mae Belk and that Linda Harris had no input in the instruments prepared by the attorney.

12. In answering Paragraph 46, Ida Belk would show that, in fact, she had instructed Mr. Weinberg to prepare documents making the Plaintiff and the Defendant Harris joint managers of all of these assets and Co-Trustee of a new Trust for her and, that before the instruments could be prepared, this suit was brought. Upon receipt of this suit, Ms. Belk, acting for the Defendant Trust, called and had the preparation of the papers stopped because of the actions of the Plaintiff Belk in bringing this lawsuit after he had promised that he would not do so.

13. In answering the First Cause of Action, specifically Paragraph 50, the Defendant Harris is Co-Personal Representative of the State denies the allegations A through C stating that it was impossible to perform because of the fact that the Plaintiff refused to execute the Trust necessary to implement the Family Settlement Agreement as well as the Memorandum of Understanding, thereby rendering the same useless and impossible to perform.

14. In answering Paragraph 50D, the Defendant alleges the loan was secured by the Plaintiff rather than by the Defendant and denies the balance of said Paragraph.

15. In answering Paragraph 50E, the Defendant would show it was impossible for her to perform since Plaintiff refused to execute the necessary instrument in order to perfect the agreement. The Defendant specifically denies the balance of said cause of action stating affirmatively that the failure of the Plaintiff to execute the necessary papers rendered the actions the Plaintiff seek impossible.

16. As to the Second Cause of Action, the Defendant denies the same in its entirety.

17. As to the Third Cause of Action, the Defendant Harris as Co-Personal Representative of the Estate admits that she owes a duty to the Plaintiff as well as to her siblings, stating further that the same duty was owed by the Plaintiff who violated the same immediately upon the death of his father and continues to do so therefore.

18. As to the Forth Cause of Action, the same is denied.

19. As to the Fifth Cause of Action, the relief sought by the Plaintiff was impossible to perform primarily because of the Plaintiff's refusal to sign the necessary papers to implement the matters agreed upon by the parties rendering the said agreement null and void and the Defendant specifically denies the allegations contained therein.

20. As to the Sixth Cause of Action, concerning Carolina Preowned, this matter has been treated herein above and the entire cause of action, as written, is denied.

21. As to the Seventh Cause of Action, the same is denied.

22. As to the Eighth Cause of Action, these answering Defendants deny each and every allegation therein contained for the reasons set out herein above and demand strict proof.

23. As to the Ninth Cause of Action insofar as the Defendant Harris is concerned, this matter has been treated about and fully answered, therefore, each allegation contained therein is denied.

WHEREFORE, having fully answered the Complaint, the Defendants Ida Mae Belk the Irrevocable Trust and Bibco, Inc. pray that Complaint be dismissed un its entirety as to them and that they be awarded costs.

**FOR A THIRD DEFENSE AND
BY WAY OF COUNTERCLAIM**

24. The allegations of the preceding Defenses are hereby adopted and made a part of this Defense through incorporation by reference.

25. These Defendants would allege that Gene C. Belk is a practicing attorney in the State of South Carolina and has been so for an excess of ten (10) years and is thoroughly familiar with the laws of the State of South Carolina and able to advise non-lawyer personnel as to the effects of joint acts.

26. Carolina Preowned, LLC was formed by the Plaintiff Gene C. Belk for the sole purpose of selling automobiles for the benefit of himself, Linda Harris, Mickey Lyles, and Dewey Houser, all of whom participated in the matter based upon the advise received from the Plaintiff Gene C. Belk.

27. Gene C. Belk caused loans to be made to Carolina Preowned, LLC, when he knew or should have known that it was inappropriate to do so, in that, the risk of loss was greater than the chance of recovery and, further, the Plaintiff Gene C. Belk dissuaded the other stockholders of Carolina Preowned, LLC from borrowing money from a bank, which they had every intention to do,

and persuaded them to obtain the money from Sumter Mortgage and/or Bibco, LLC in order that the interest could be made by these entities rather than by a bank.

28. Further, the Plaintiff Belk has guaranteed the floor plan, which is the only thing that will allow the Corporation to continue in business and if he removes his guarantee, the Corporation will close and this would damage these answering Defendants because of the loan engineered by the Plaintiff.

29. As to the actions of Dewey Houser, these Defendants would show that each and every action of Dewey Houser was planned prior to said action by Gene C. Belk as an attorney for Carolina Preowned, LLC and as an attorney for the Personal Representative of the Estate in order to dispose of certain mobile homes that had outlived their usefulness and to sell the automobiles as set out above and to act for Premier Properties, and partnership composed of the Plaintiff and Linda Harris.

30. These Defendants are informed and believe that nothing that the Defendant Dewey Houser did was unknown by Plaintiff Gene C. Belk, even to the extent of the Plaintiff furnishing Dewey Houser with a credit card to buy gas which he now complains of in his Complaint. All of these actions have greatly damaged the financial structure of these answering Defendant and these Defendants would show that these damages are entirely the fault of Gene C. Belk upon whom the other members of the Corporation had every right to rely, based upon his assertion of his legal knowledge and his many years of practicing law in the State of South Carolina.

31. As to the assertions that the family Trust was never operative because of the actions of Defendant Linda Harris, these Defendants are informed and believe that the only reason that this Trust did not become operative is because that Gene Belk refused to accept a position as Co-Trustee on said Trust and refused to execute said Trust to act as Co-Trustee with Linda Harris. That if, as it alleges in the Complaint, the failure to implement this family Trust has caused any damage to the

Estate or to these answering Defendants, these Defendants seek damages against Gene C. Belk for each and every dollar lost as a result of his activities.

32. As to Plaintiff's handling of the Williamsburg Subdivision matter, which is owned fifty (50%) percent by Bibco and fifty (50%) percent by Sumter Mortgage, Mr. Belk has cost these Defendants an appreciable amount of money in that, at one time, he had an offer to settle the same for a good price and even though Mrs. Belk and Ms. Harris requested the settlement be done, he refused to settle, and thereafter, he spent great sums of these Defendants funds on attorney's fees and wound up settling the matter for Five Hundred Twenty-five Thousand and no/100ths (\$525,000.00) Dollars, which as of this date, has not been received. That as a direct and proximate result, the above set out actions of Mr. Belk, these Defendants have been damaged in the sum of Two Hundred Fifty Thousand and no/100ths (\$250,000.00) Dollars.

33. The Plaintiff, without consulting any other interested person, sold a lot on Broad Street for less than its worth and, in addition, waived five (5) months rent in the amount of Two Thousand Five Hundred and no/100ths (\$2,500.00) Dollars per month. The lot and its value would have enured to the assets of these answering Defendants.

34. The Plaintiff has refused to co-sign checks to pay employees, requiring the Defendant Bibco to pay the salaries to avoid litigation.

**FOR A FOURTH DEFENSE AND
BY WAY OF COUNTERCLAIM**

35. These answering Defendants incorporate the first three defenses as fully as if set out here verbatim.

36. A real estate agent came to the Plaintiff and to the Defendant Linda Harris with an offer to sell the Estate twenty-four (24) acres on Broad Street in Sumter.

37. Without consulting any of the Belk family, the Plaintiff obtained other partners and purchased this property, excluding all family members and trusts from the opportunity to make an outstanding investment. This resulting in a loss of potential profits to the Estate.

38. Those actions were such that the Plaintiff has placed his own interests first at the expense of those to whom he has fiduciary duties for his own profit to the detriment to Bibco and Sumter Mortgage in the amount of One Million and no/100ths (\$1,000,000.00) Dollars.

39. A motion to discharge the Plaintiff as Co-Representative and Trustee will be filed in the Probate Court.

**FOR A FIFTH DEFENSE AND
BY WAY OF COUNTERCLAIM**

40. The answering Defendants incorporate the first four defenses as fully as if set out here verbatim.

41. The Plaintiff Belk has failed and refused to discharge his duties by signing checks to pay employees, pay expenses and to handle the business of the Estate, all to the detriment of the Estate. This has been done for no reason other than to inconvenience the answering Defendants and others and has caused the Estate and corporations to undergo additional expense.

WHEREFORE, having answered fully answered the Complaint herein, the Defendants pray the same be dismissed and that the Irrevocable Trust and Bibco, Inc. be awarded judgment against Gene C. Belk in the amount of Seven Hundred Thousand and no/100ths (\$700,000.00) Dollars with the costs and disbursements taxed to the Plaintiff.

WEINBERG & BROWN, L.L.P.

BY: 

M.M. WEINBERG, JR.
109 North Main Street
Post Office Box 1289
Sumter, South Carolina 29151-1289
Telephone: (803) 775-1274
Facsimile: (803) 775-0399

Attorney for Defendants, Linda Harris as Trustee
of the Ida Mae Irrevocable Trust, Bibco, Inc.,
and Ida Mae K. Belk.

Sumter, South Carolina
February 22, 2008.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

2008 FEB 29 PM 1:53

Case NO.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

**NOTICE OF MOTION AND
MOTION TO REMOVE
COUNSEL OF RECORD**

Defendants.

And Cheryl Ann Harlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

**TO: M.M. WEINBERG, JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN
HER CAPACITIES AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE
OF ROBERT D. BELK AND TRUSTEE OF THE IDA MAE BELK
IRREVOCABLE TRUST:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Third Judicial Circuit for Sumter County on the tenth day after service of this Notice upon you at 10:00 a.m., or at such time and place as may be established by the Court for the issuance of an Order relieving M.M. Weinberg, Jr. and his firm as counsel for the Linda B. Harris in her capacities as Co-Personal Representative of the Estate of Robert D. Belk and Trustee of the Ida Mae Belk Irrevocable Trust.

The grounds for this Motion are as follows:

1. M.M. Weinberg, Jr. prepared the Last Will and Testament of Robert D. Belk that was admitted to Probate on May 7, 2004, and M.M. Weinberg, Jr. represented Mr. Belk individually and Sumter Mortgage for years

2. The Will prepared by Mr. Weinberg was defective and deficient, exposing the Estate to significant estate taxes.

3. In an effort to attempt to rectify the defects and deficiencies in said Will, Plaintiff, Defendant Linda B. Harris, and their mother, Ida Mae Belk, sought the counsel of David C. Sojourner and Karen Thomas, attorneys at law, Columbia, South Carolina to represent the Estate.

4. As a result, a post-mortem plan was developed by said attorneys that resulted in not only a Family Settlement Agreement executed by Linda Harris, Ida May Belk, and this Plaintiff, but also a Memorandum as to Future Transactions was executed.

5. After receiving the benefits that were bargained for, Defendant Linda Harris, individually being named as Co-Personal Representative, began to renege on the Family Settlement Agreement and Memorandum, and took her mother, Ida May Belk, to two attorneys in her efforts to do so.

6. Linda Harris then took her mother to Mr. Weinberg who, on the first visit, prepared a purported Irrevocable Trust which assisted Defendant Linda Harris which violated the terms of the Family Settlement Agreement and the Memorandum with regard to Future Transactions. When apprised of this by Plaintiff, Mr. Weinberg told Plaintiff that since the Trust was not recorded, he could, and would, change it. But Defendant Linda Harris had recorded the Trust in her efforts to close.

7. By preparing said Irrevocable Trust and by purportedly making transfers into said Trust, Mr. Weinberg has potentially caused significant gift tax issues which otherwise would not be involved.

8. Plaintiff, individually and through his counsel, previously warned Mr. Weinberg not to become involved in this case because he was a material witness (Exhibit 1); however, despite that, Mr. Weinberg has become involved and has filed an Answer and Counterclaim.

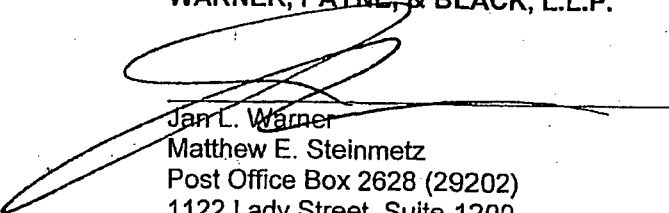
9. Mr. Weinberg also became involved in the negotiation of a complex property negotiation, purportedly representing Linda Harris as Co-Personal Representative of said Estate, interfered with the amicable adjustment of that action.

10. Mr. Weinberg is a material witness to the allegations contained in the Complaint, and has significant conflicts of interest which require his removal as attorney for any party to this action.

11. Even though fair warning was given to Mr. Weinberg, he still filed an Answer and Counterclaim in connection with this action, and Plaintiff should be awarded attorney's fees and costs for proceeding on this Motion which is made in good faith.

This Motion shall be based upon the attached affidavit and exhibits, together with such other affidavits and exhibits as may be submitted to the Court at a hearing on this Motion.

WARNER, PAYNE, & BLACK, L.L.P.



Jan L. Warner

Matthew E. Steinmetz
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
February 21, 2008

WARNER, PAYNE & BLACK, L.L.P.
ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.

JAN L. WARNER
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CHARLES M. BLACK, JR.
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CARRIE A. WARNER
B.S., J.D.
CARRIEWARNER@WPB-LAW.NET

February 18, 2008

M.M. Weinberg, Jr., Esq.
P.O. Box 1289
Sumter, SC 29151-1289

RE: Gene Belk, Individually and as Co-Personal Representative of the Estate of
Robert D. Belk vs. Linda B. Harris, et al.
Case No.: 2008-CP-43-00347

Dear Rusty,

You indicated you represented Mrs. Belk and the Trust; however, if this is an Irrevocable Trust, then the Trustee, not Mrs. Belk, is the appropriate party in interest. Therefore, I assume that you represent Linda Harris.

While I have no problem granting an extension of time in which to file responsive pleadings until March 10, 2008, I did want to put you on notice that based on my review of the file, you appear to be not only a material witness in this matter, but also to have certain conflicts of interest that will prevent you from representing any party to this litigation.

I would appreciate very much you reviewing your files thoroughly before you make an appearance as counsel of record for anyone in this action as, if you do, we will move before the Court to have you removed as counsel of record.



1122 LADY STREET, SUITE 1200 (29201)
POST OFFICE BOX 2628(29202)
COLUMBIA, SOUTH CAROLINA
TELEPHONE (803) 799-0554
FACSIMILE (803) 799-2517

131 CALDWELL STREET
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FACSIMILE (803) 325-2973

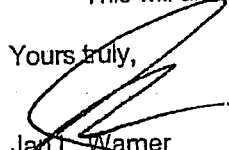
PLEASE REPLY TO:
COLUMBIA OFFICE
POST OFFICE BOX 2628
COLUMBIA, SOUTH CAROLINA 29202

M.M. Weinberg, Jr., Esq.
February 18, 2008
Page 2

Based upon the documents that I have received, I believe it is very straightforward that you do have conflicts here and should not be representing anyone. Should you or whoever you deem you represent take a contrary position, we will seek counsel fees for the time it will take to take this matter before the Court.

This will also confirm that we will begin serving discovery this week.

Yours truly,



Jan L. Warner
JLW/sf

cc: Gene Belk

Gene Belk
POBox 1208
Sumter, SC 29151

January 5, 2008

M. M. Weinberg, Jr.

Sent by fax 803-775-0399
Sent by email mmweinbergjr@sc.rr.com

Dear Rusty,

I was shocked to receive your letter of January 3rd on Friday.

Nothing personal, but for the reasons herein, you and I should have no further oral communications:

First, when my father was ill, you encouraged him let you prepare the will rather than allow a competent estate planner well-versed in taxation to complete. As a result, the will you prepared for my father was so deficient that it cost the estate untold tens of thousands of dollars, not to mention my time in attempting to resolve what was botched by you.

Second, in order to attempt to "fix" what you had botched, the estate lawyer in Columbia created another plan that included my mother signing a disclaimer based upon a family settlement agreement among me, my sister, and my mother that you never bothered to read before you again began preparing documents for my mother that violate that agreement.

Third, you had my mother sign what you call an "irrevocable trust" on the same day she came to see you for the first time without investigating the background at all. This "trust" not only violates the family agreement, but also may well cost my mother significant taxes because you continue to practice law "from the hip" rather than leaving complicated matters like this to people who know what they are doing. You told me just weeks ago it had not been recorded and you could change it even though it is irrevocable and transfers all my mother's property into the trust. Well, for your information, my sister, the Trustee, recorded the trust on October 30th. In addition to breaching our agreement, the trust beneficiaries are not the same people you specifically put in my father's will as certain individuals were to be left out.

Fourth, I don't know who you represent. If the "trust" you had my mother sign is valid and really holds the assets, then the trustee (my sister, Linda) was given the right to conclude the estate matters, not my mother. So I guess you represent Linda as trustee. Or do you also now represent her as co-personal representative of the estate? Or do you also represent her personally? In any case, I believe you have deep conflicts of interest.

Fifth, based on the estate tax return filed and accepted by the IRS and SC Department of Revenue, my mother owns an undivided one-half interest in all Sumter Mortgage Company assets which includes Williamsburg Subdivision, LLC. Therefore, my mother owns an undivided half interest in the estate's 50% interest in this LLC. If the "trust" you prepared for my mother in September is valid, then the trust owns this undivided interest. So when you "understand" that my mother owns this asset in your letter, you are wrong again.

Sixth, my sister, as co-personal representative of the estate, was involved in discussions with Gus Dixon at Nelson Mullins before Mr. Dixon accepted the Gainey offer regarding Williamsburg LLC of \$450,000.00 plus a deed to Phase III on December 19th. You told Russ Jeter that you represented my mother in September 2007, but never told him you had prepared a "trust" for my mother or that you purported to transfer all assets owned by my mother from the estate into that trust. My sister, as co-personal representative, also attended a part of the mediation in Sumter. You were sent a copy of Mr. Dixon's email on December 19th and no one heard a word from you that "my mother" had changed her mind. You called me twice about the emails you had received, and it was obvious to me that you never read, much less understood, the contract or negotiations that have cost the estate tens of thousands of dollars in attorney's fees with Nelson Mullins since this matter commenced in December 2006. So you waited until January 3rd to let me and Mr. Dixon know that my mother does not want the offer my sister and I as co-personal representatives agreed to accept as per Mr. Dixon's email of December 19th.

Seventh, since my sister is "trustee" under the "trust" you prepared for my mother, and since my sister as "trustee" has the right and obligation under that "trust" to conclude estate matters, I assume you also represent Linda. I also assume that you know that if this case goes to trial, the estate will be on the hook for much more attorney's fees with the potential of a poor result given the one-sided contract my father signed.

Eighth, I believe you have conflicts of interest because you are now trying to sink a deal that my sister as co-personal representative approved, but as "trustee" apparently does not like. This puts you at complete odds as my mother and the estate will suffer if this deal does not go through because of you.

If you are truly representing my mother and her alone, I don't believe you can give her competent advice because you know little, if anything about the litigation and have not prepared reasonably to even give her advice.

You are interfering with the administration of this estate and, unless you represent my sister as co-personal representative, you have no right to do so. If Mr. Dixon is not allowed to complete the settlement based upon his acceptance of the offer with the consent of my sister and I, the estate will hold you personally responsible for the resulting costs.

De B.

Again, nothing personal here, but you have overstepped your bounds.

Gene
Gene

Cc: Gus M. Dixon, Esquire.

STATE OF SOUTH CAROLINA RECORDED) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2008 FEB 29 PM 1:53) FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL Case NO.: 2008-CP-43-00347
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk)

Plaintiff,)

vs.)

Linda B. Harris, Individually & as Trustee of the)
Ida Mae Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.)

And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders)

**AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO REMOVE
COUNSEL OF RECORD**

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly

sworn, says:

1. I am the Plaintiff in this action.
2. M.M. Weinberg, Jr. represented my father individually, and at times Robert D. Belk d/b/a Sumter Mortgage over a period of 40 years in legal matters and business transactions.
3. Mr. Weinberg prepared the Last Will and Testament of my father, Robert D. Belk, that was admitted to Probate on May 7, 2004.
4. The Will prepared by Mr. Weinberg was defective and deficient, exposing certain beneficiaries of the Estate to significant taxes and disqualification from Medicaid benefits.

5. In an effort to attempt to rectify the defects and deficiencies in said Will, my sister, Defendant Linda B. Harris, my mother, Defendant Ida Mae Belk, and I sought the counsel of attorneys David C. Sojourner and Karen Thomas in Columbia, South Carolina to represent the Estate.

6. As a result, a post-mortem plan was developed by Mr. Sojourner and Ms. Thomas in an attempt to minimize taxes. Under that plan, Mrs. Belk signed a Disclaimer and also created two Trusts for the special needs planning of Stakeholders Cheryl Hanlon and Robert M. Belk. This plan included a Family Settlement Agreement that was executed by my sister, my mother, and myself, and the signing of a Memorandum as to Future Transactions.

7. After receiving the benefits that were bargained for, my sister, Defendant Harris, individually being named as Co-Personal Representative, began to renege on the Family Settlement Agreement and Memorandum, and took our mother to two attorneys in her efforts to do so.

8. My sister then took my mother to Mr. Weinberg who, on the first visit, prepared a purported Irrevocable Trust which assisted her in violating the terms of the Family Settlement Agreement and the Memorandum with regard to Future Transactions. When I informed Mr. Weinberg of the situation, he told me that since the Trust was not recorded, he could, and would, change it. However, my sister, Defendant Harris had recorded the Trust.

9. By preparing said Irrevocable Trust and by purportedly making transfers into said Trust, Mr. Weinberg has potentially caused significant gift tax issues which otherwise would not be involved.

10. I have had numerous conversations with Mr. Weinberg prior to the preparation of my father's Will subsequent to my father's death and after his

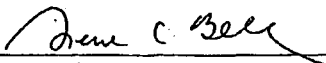
preparation of an Irrevocable Trust for my mother and Mr. Weinberg has made statements to me that would be relevant to the allegations contained in the Complaint.

11. I have previously warned Mr. Weinberg, individually and through my counsel, that he should not to become involved in this case because he was a material witness (Exhibit 1). However, despite my efforts and the efforts of my attorney, Mr. Weinberg has become involved and has filed an Answer and Counterclaim.

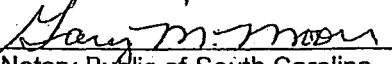
12. Mr. Weinberg also became involved in a complex property negotiation, purportedly representing Linda Harris as Co-Personal Representative of said Estate, and interfered with the amicable adjustment of that action.

13. Mr. Weinberg is a material witness to the allegations contained in the Complaint, and has significant deep conflicts of interest which require his removal as attorney for any party to this action.

14. Even though fair warning was given to Mr. Weinberg, he still filed an Answer and Counterclaim in connection with this action, and I request attorney's fees and costs for proceeding on this Motion.


Gene C. Belk

SWORN to before me this 29
day of February, 2008


Notary Public of South Carolina
My Commission Expires: 6/18/11

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2008 MAR 24 AM 11:32

Case NO.: 2008-CP-43-00347

JAMES C. HARRIS)
Gene C. Belk, Individually and as)
Co-Personal Representative of the Estate)
of Robert D. Belk)

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the)
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders)

**NOTICE OF MOTION AND
MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA**

**TO: M.M. WEINBERG, JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN
HER CAPACITIES AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE
OF ROBERT D. BELK AND TRUSTEE OF THE IDA MAE BELK
IRREVOCABLE TRUST:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Third Judicial Circuit for Sumter County on the tenth day after service of this Notice upon you at 10:00 a.m., or at such time and place as may be established by the Court for the issuance of an Order compelling M.M. Weinberg, Jr. to produce records pursuant to subpoena dated February 29, 2008 and personally served upon him on February 29, 2008.

The grounds for this Motion are as follows:


1

1. On February 29, 2008 Mr. Weinberg was personally served with a subpoena to appear at a deposition on March 26, 2008, and to produce records prior to the deposition on March 14, 2008 (Exhibit 1 – Subpoena and Affidavit of Service).

2. On March 19th, five days after the records were due, Plaintiff received Mr. Weinberg's untimely Motion to Quash Subpoena dated February 29, 2008 regarding his appearance and attendance on the ground that: (1) He is actively engaged as counsel for a party that has an extremely large equitable interest in this matter as well as Linda Belk as Personal Representative of the Estate of Robert D. Belk, (2) the deposition is an attempt to preclude him from representation in this matter, and (3) the records requested are either protected and privileged, impossible to pull together, he does not have them, and/or Plaintiff already had them.

3. Mr. Weinberg is and has been a material witness in this action, and he was made aware of this before he filed the responsive pleading because he was directly involved in transactions that violate a contract among the parties. Mr. Weinberg's deposition can't be taken without the production of the records that were subpoenaed.

4. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

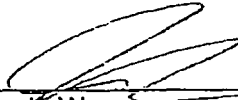
5. Subsequent thereto, Mr. Weinberg, who had represented Plaintiff's father for years, took on the representation of Plaintiff's mother and sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

6. Plaintiff requests an Order requiring Mr. Weinberg to immediately produce the records pursuant to the terms of the subpoena.

This Motion shall be based upon the attached affidavit and exhibits, together with such other affidavits and exhibits as may be submitted to the Court at a hearing on this Motion.

Pursuant to Rule 11, SCRCP, based upon the nature of this motion, consultation with opposing counsel would serve no useful purpose.

WARNER, PAYNE, & BLACK, L.L.P.



Jan L. Warner
Matthew E. Steinmetz
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
March 21, 2008

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

)

Case NO.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

)

)

)

)

Plaintiff,

)

vs.

)

**AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO COMPEL**

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

)

)

)

)

)

)

Defendants.

)

)

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

)

)

)

)

Stakeholders

)

)

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly

sworn, says:

1. I am the Plaintiff in this action and Co-Personal Representative of my
father's Estate, Robert E. Belk.

2. I have previously filed and served a Motion to Disqualify M.M. Weinberg,
Jr. from participating as counsel in this case due to the fact that he is a material witness,
has substantial conflicts of interest and, in fact, is attempting to disrupt a plan that was
put in place based upon his preparation of a faulty Will of my father.

3. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

4. Subsequent thereto, Mr. Weinberg, who had represented my father for years, took on the representation of my mother and my sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

5. A production subpoena was served on Mr. Weinberg on February 29, 2008.

6. On March 19th, five days after the records were due, Mr. Weinberg served Motion to Quash Subpoena as to his appearance and attendance at his deposition.

7. Mr. Weinberg is a material witness to the allegations contained in the Complaint. His deposition is scheduled for March 26, 2008 and cannot be taken without the production of the records that were subpoenaed.

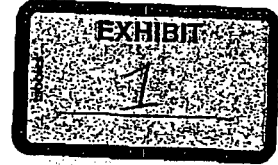
8. I request an Order of the Court enforcing the subpoena, and further request an award of attorney's fees and costs for bringing this matter before the Court.

Gene C. Belk
Gene C. Belk

SWORN to before me this 21st
day of March 2008

William C. Herman
Notary Public of South Carolina
My Commission Expires: 5/20/2017

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT FOR SUMTER COUNTY
EIGHTH JUDICIAL CIRCUIT



Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.
Dewey M. Houser, Carolina Preowned, LLP, &
Michael D. "Mickey" Lyles, Jr.,

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

SUBPOENA IN A COMMON PLEAS CASE

Case Number: 2008-CP-43-00347

Pending in Sumter County

TO: M.M. Weinberg, Jr.
P.O. Box 1289
Sumter, South Carolina 29151

YOU ARE COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Young Reiter Keffer & Donald, PA 23 W. Calhoun Street Sumter, SC 29150	DATE AND TIME March 26, 2008 at 9:30 a.m.
---	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE ATTACHMENT**

PLACE WARNER, PAYNE, & BLACK, L.L.P. P. O. BOX 2628 COLUMBIA, SOUTH CAROLINA 29202	DATE AND TIME March 14, 2008 by 5:00 p.m.
---	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

ANY ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 50(B)(1), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRESENT DOCUMENTS OR THINGS. THE PERSON SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Jan L. Warner, Attorney for Plaintiff

DATE

February 29, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Jan L. Warner, Esquire, Post Office Box 2628 Columbia, SC 29202, (803) 799-0554

SDCA FORM 204 (7/83)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS	
	February 29, 2008	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
	PLACE	AMOUNT \$ 30.05	
	Sumter, South Carolina		
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
		Personal	
SERVED BY (PRINT NAME)		TITLE	
Gary Moore			

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Post Office Box 2628
Columbia, South Carolina 29202

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designate in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time to the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance, or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (i)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (j) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (k) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (l) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCCA Form 2d (7/90) Cont'd.

ATTACHMENT

Please deliver the following records to Warner, Payne & Black, L.L.P., P.O. Box 2628, Columbia, South Carolina, 29202:

1. Copies of all documents prepared by you, or at your request, since 9/17/07 for Ida Belk, Bibco Inc., Ida Mae K. Belk Trust, to include, but not be limited to, trusts, business formations, Wills or any other tangible documents.
2. Copies of all records relating to your representation of Robert Belk and Sumter Mortgage Company for ten (10) years prior to his death.
3. Copies of all time and billing records from January 1, 2001 through current date with regard to representation of Robert D. Belk in connection with, and in preparation of the Will, and all other representation of Robert D. Belk, records should include but not be limited to all time and billing to justify the bill of \$5600 to Mrs. Belk.
4. Copies of all communications to and from with David Sojourner and/or Karen Thomas regarding Robert D. Belk.
5. Copies of all conflicts letters with regard to your representation of Mr. Belk, Mrs. Belk, and Ms. Harris.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE ✓ COURT OF COMMON PLEAS
FAMILY COURT

Gene Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk)
Plaintiff (s))

THIRD JUDICIAL CIRCUIT

vs)
Linda B. Harris, et al)
Defendant (s))

FILE NO. 2008-CP-43-00347

AFFIDAVIT OF SERVICE

RECORDED
2008 HR-5 PH12-32
JANIE L. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that he served the Notice of Motion and Motion to Remove Counsel of Record with Supporting Affidavits and Exhibits, Reply to Answer and Counterclaim, Notice of Deposition, Subpoena and Check for Witness Fee and Mileage

on M. M. Weinberg, Jr., Esq. by delivery to

M. M. Weinberg, Jr. personally;

() _____ the _____ of the party served,
and a person of suitable age and discretion then residing at the residence of the party served;

() _____ the _____ of/for _____

and leaving with him () her one copy of the same at 109 N. Main St
in Sumter, Sumter County, South Carolina, 29151
on February 29, 2008 at 2:05 (a.m.) (p.m.).

That deponent knows the person so served, is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed Before Me,)
This 29th Day of February 2008)
[Signature])
Notary Public for South Carolina)
My Commission Expires: 11/21/15)

[Signature]
Signature of Deponent

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2008 APR 14 PM 4:35
CIVIL ACTION NO.: 2008-CP-43-0347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr. and M.M.)
Weinberg, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk


Stakeholders

AMENDED
COMPLAINT

Plaintiff, by way of Amended Complaint as a matter of right, alleges:

PARTIES AND JURISDICTION

1. Plaintiff and Defendants are residents Sumter County, South Carolina; the acts alleged herein occurred in Sumter County, South Carolina; this Court has jurisdiction over the parties and the subject matter; and venue is appropriate in this Court. The Stakeholders are the beneficiaries of the Estate of Robert D. Belk whose rightful interests in said estate and other assets have been adversely affected by the acts of Defendants as alleged herein. The issues herein are, for the most part, equitable in nature.


1

2 Defendant Harris is the sister of Plaintiff, the daughter of Stakeholder Ida Mae Belk, and a fiduciary who has continuously and repetitively breached her duties as set forth herein; Bibco, Inc. is an entity owned by Ida Mae Belk, but is being wrongfully controlled by Defendant Harris to benefit herself, her family members, and love interests; Defendant Houser is Defendant Harris' love interest whom she has placed in positions of trust to assist her in the wrongful acts complained of herein; Carolina Preowned, LLP, is a South Carolina limited liability partnership that owes the Estate of Robert D. Belk Two Hundred Thousand Dollars (\$200,000.00) plus interest and has been used for self-serving reasons to benefit Defendant Harris, Defendant Lyles, and Defendant Houser at the expense of the Estate and other entities; and Defendant Lyles is the son of Defendant Harris and is the managing partner of Carolina Preowned, LLP who has engaged in self-serving acts that have benefitted him, Defendant Harris, and Defendant Howser and have been detrimental to the Estate; Defendant Weinberg is a practicing attorney who represented Plaintiff's deceased for many years and who now takes positions adverse to the intent of Plaintiff's deceased, has taken on representation of individuals having interests adverse to the Estate, and has interfered with contracts that have been executed and performed to the detriment of Plaintiff and said Estate.

FACTUAL ALLEGATIONS

3. Robert D. Belk died on April 5, 2004. His Estate is being probated in the Probate Court for Sumter. Plaintiff and Defendant Linda B. Harris are acting as Co-Personal Representatives of said Estate.

4. Simultaneously with the commencement to this action, Plaintiff has filed an action in the Sumter County Probate Court seeking the removal of Linda B. Harris as



Co-Personal Representative and, when removed, Plaintiff will seek consolidation of these actions as they are based upon the same factual allegations.

5. When Robert D. Belk was diagnosed with a life threatening condition in the year 2000, he was married to Stakeholder Ida Mae Belk. Mr. Belk and Mrs. Belk had five (5) children, Plaintiff, Defendant Harris, and Stakeholders Cheryl Ann Hanlon, Robert M. Belk, and Patricia B. Schmit. They had a number of grandchildren, some of whom are minors.

6. Knowing that his father was diagnosed with a life-threatening condition, and being aware that his father's estate was substantial and complicated, and knowing that his mother, Ida Mae Belk, was neither involved in the day-to-day operations of his father's various businesses nor possessed of the business acumen to handle the same, Plaintiff secured an appointment for his father, mother, and sister, Defendant Harris, with David C. Sojourner, Jr. an estate-planning specialist in Columbia, South Carolina.

7. After meeting with Mr. and Mrs. Belk, Plaintiff, and Defendant Harris, Mr. Sojourner wrote to Mr. and Mrs. Belk on June 20, 2000 setting forth a detailed plan by which Mr. and Mrs. Belk could avoid estate taxes based upon Mr. Belk's assets. Copies of this letter were sent to Plaintiff and Defendant Harris with their parents' permission.

8. During his lifetime, Mr. Belk handled all aspects of the family finances, including buying and selling real estate and other properties in his own name, in the name of Sumter Mortgage Company, (an unincorporated entity), and otherwise. At his death, he owned substantial assets and was the payee on a number of promissory notes and contracts of sale in various capacities which continue to bring ongoing monthly income. Among other entities, Mr. Belk formed in the name of his wife Bibco,


Inc. (Bob Ida Belk Company) for her protection. Mrs. Belk, who will be 80 years of age in May 2008, was not knowledgeable about her husband's business dealings and because of that and her vulnerability, Mr. Sojourner's plan dealt not only with estate taxes, but also with ways in which Mrs. Belk would be protected; and, at the second death, the children would benefit as Mr. and Mrs. Belk intended, with special attention to issues affecting Stakeholders Hanlon and Robert M. Belk. At all times herein alleged during his life, Mr. Belk was represented by Defendant Weinberg in business transactions involving him individually and in all business capacities.

9. During his life, Robert D. Belk and Plaintiff were involved in several business relationships.

10. At the time of his death, in addition to being the payee on valuable installment sale contracts and notes, Robert D. Belk owned real estate and subdivisions in his name, in the name of Sumter Mortgage Company, and otherwise, the vast majority of which were handled by Defendant Weinberg.

11. For reasons presently unknown to Plaintiff, Robert D. Belk executed a Will on the 5th day of March 2004, only a month before his death, which was not prepared by Mr. Sojourner, but by Defendant Weinberg who had been told about Mr. Sojourner's recommendations.

12. Unknown to Plaintiff at that time, the executed Will does not contain appropriate tax planning language and did not follow the plan suggested by Mr. Sojourner nearly four years earlier. Due to errors and omissions contained in said Will, including failure to include proper generation skipping and special needs language, without substantial and expensive post-mortem planning and assistance from lawyers



specializing in the field of taxes and estate planning, Mr. Belk's estate would have been a fiasco and would have cost the beneficiaries of the Estates of Mr. and Mrs. Belk significant estate taxes. The cost of post-mortem representation was significantly greater than would have been spent had the Will been prepared correctly in the first place,

13. Pursuant to the terms of said Will, Robert D. Belk, who died on April 5, 2004, named Carlton R. Davidson as Personal Representative and appointed Plaintiff alone to act, solely as successor or alternate Personal Representative. The Will named Plaintiff and Defendant Harris as Co-Trustees of all Trusts created there under for Mrs. Belk, Cheryl Ann Hanlon, and Robert M. Belk. On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. Even though Plaintiff was under no obligation to do so, in an effort to preserve family unity, he allowed the nomination of his sister, Defendant Harris, to serve with him as Co-Personal Representative.

14. Thereafter, on May 7, 2004, Plaintiff and Defendant Harris petitioned for probate of the Will and appointment as co-personal representatives, and the Probate Court for Sumter County approved the same.

15. Upon reviewing Mr. Belk's Will and determining that the same was deficient and contrary to appropriate estate planning, Mrs. Belk, Plaintiff and Defendant Harris again communicated with the firm of David C. Sojourner to handle the post-mortem planning and probate in December 2004.

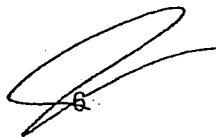
16. As a result of that communication, the firm of Ellis & Lawhorne (David Sojourner and Karen Thomas) determined that in order to attempt to avoid estate taxes



5

at the second death, had Sumter Mortgage Company had been a joint venture with Ida Mae Belk, there would be favorable taxation treatment. They also saw the need to engage in appropriate special needs planning for Stakeholders Hanlon and Robert M. Belk, to protect Mrs. Belk, and to simplify accounting, Therefore, a comprehensive post-mortem plan was created and agreed to by Mrs. Belk, Plaintiff, and Defendant Harris whereby 1) maximum annual exclusion gifts would be made annually by Ida Mae Belk as set forth within the written documents; 2) the gifts to Cheryl Ann Hanlon and Robert M. Belk would be paid to appropriate Trusts that were created for them; and 3) Ida Mae Belk would disclaim, renounce, reject, and refuse to accept certain interests in disclaimed property improperly left to her under the Will of Robert D. Belk. Mrs. Belk signed the disclaimer on December 29, 2004 as part of this coordinated post mortem estate and future transaction plan that was agreed to by Plaintiff, Mrs. Belk, and Defendant Harris. As part and parcel of this agreement and plan, Plaintiff and Defendant would be co-trustees and joint managers of not only assets of the estate, but also of Bibco and other assets held by Mrs. Belk, including the ability to create such family business entities as were appropriate prior to funding the new trusts. In consideration of the Estate agreeing that Mrs. Belk and Mr. Belk were involved in a Sumter Mortgage Company joint venture and transferring a one-half interest to her and for other valuable consideration, the family settlement agreement referred to herein was entered by Plaintiff, Mrs. Belk, and Defendant Harris.

17. On the same day, as part and parcel of said plan, Ida Mae Belk as Grantor created Trusts for Robert M. Belk and Cheryl Ann Hanlon with Plaintiff and Defendant

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Harris as co-Trustees. Mrs. Belk was billed by Mr. Sojourner to create these trusts and for advice regarding gifting.

18. On May 24, 2005, Karen H. Thomas, acting as attorney for the co-personal representatives of Estate, wrote Plaintiff and Defendant Harris setting forth all the estate tax issues and confirming the plan in connection therewith that began on December 29, 2004 when Mrs. Belk disclaimed certain interests in said Estate for tax purposes.

19. Thereafter, as part and parcel of the plan and agreement among Mrs. Belk, Plaintiff, and Defendant Harris, a Family Settlement Agreement was executed by Plaintiff, Defendant Harris, Mrs. Belk and other interested persons on June 28, 2005 and filed in the office of the Judge of Probate for Sumter County on the 30th day of June 2005.

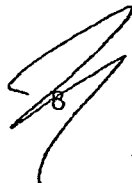
20. On June 30, 2005, Plaintiff, Defendant Harris, and Defendant Ida Mae Belk, individually and d/b/a Sumter Mortgage Company and Sumter Finance Company, also signed a **Memorandum of Understanding Concerning Future Transactions** which confirmed, in writing, the manner in which all future transactions with regard to both the Estate and Mrs. Belk would be handled in order to carry out the testamentary intent of Robert D. Belk, to protect Mrs. Belk, and to place Plaintiff and Defendant Harris in fiduciary positions in charge of both said Estate and the ongoing business dealings of Mrs. Belk who, as aforesaid, was not involved in the business throughout the marriage. Had not this agreement been reached that Mrs. Belk's assets would be jointly managed by Plaintiff and Defendant in the same manner as was intended by Mr. Belk,

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there would have no compromise or agreement, and a different tact would have been taken in filing the Form 706.

21. Pursuant to the plan and agreement that had been implemented and partially performed, Mrs. Belk was required to assign her fifty percent (50%) interest in Sumter Mortgage Company (including Sumter Mortgage Finance) and all other assets to Plaintiff and Defendant Harris as co-Trustees of a Trust to be created for Mrs. Belk's benefit during her lifetime. This Trust was to contain substantially the same provisions as Trust C under Mr. Belk's Will to benefit Mrs. Belk during her life, but would include correct and appropriate language relating to tax and Medicaid issues that was wrong in Mr. Belk's testamentary trust. At Mrs. Belk's death, the corpus and remaining income would be distributed in five (5) equal shares to and for the benefit of the five Belk children, just as had been set forth in Mr. Belk's Will. In addition, Mrs. Belk's Trust would also provide for her to withdraw five percent (5%) of the principle each year in order to for the purpose make gifts in equal shares among family members. This Trust was to own Mrs. Belk's interest in the unincorporated Sumter Mortgage Company and other assets that would be transferred to one or more family business entities to be owned by this new trust.

22. Pursuant to this Agreement, Mrs. Belk would also sign paper work allowing Plaintiff and Defendant Harris to transfer the assets of Sumter Mortgage Company to this new trust. It was the intention of Mrs. Belk, Plaintiff, and Defendant Harris that this trust and the various family business entities would be completed within sixty (60) days. On the same day, Mrs. Belk signed a Durable Power of Attorney appointing Plaintiff and Defendant Harris as Co-Attorneys-in-Fact on June 30, 2005.

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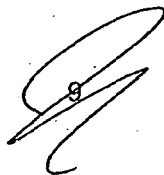
23. On June 30, 2005, a Trust Severance Agreement was signed by Gene C. Belk and Linda B. Harris as Co-Personal Representatives and notice thereof was submitted to the appropriate officials in order to correct the faulty drafting of Mr. Belk's Will of March 5, 2004.

24. In addition, Karen Thomas drafted a revocable living trust for Mrs. Belk for review by Mrs. Belk's attorney and sought input from Plaintiff and Defendant Harris regarding the establishment of entities to own the family business and the funding of the trusts created under the plan referred to hereinabove on July 20, 2005.

25. Defendant Harris took her mother, Mrs. Belk, to William B. (Bert) Brannon (whom Defendant Harris had initially identified as her attorney) to review the trust drafted by Karen Thomas on behalf of Mrs. Belk. Mr. Brannon made modifications consistent with the family agreement, reprepared Mrs. Belk's trust with Plaintiff and Defendant Harris as co-trustees, and prepared a will for Mrs. Belk. Upon information and belief, Mrs. Belk never signed this Trust

26. Pursuant to the family Agreement, Mrs. Belk made gifts during the years 2004, 2005, and 2006. Pursuant to communications from Karen Thomas dated November 17, 2005, continuing efforts were made to work toward completing the documents called for under the Family Settlement Agreement and Memorandum Concerning Future Acts. Upon information and belief, Defendant Weinberg knew about all of the foregoing and communicated with all parties to this action.

27. As a result of the family agreement that had been partially performed, on February 28, 2006, a closing letter from the Internal Revenue Service was received. Without performing under the agreements reached by Plaintiff, Defendant Harris, and

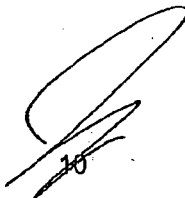
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Mrs. Belk as set forth within the relevant documents, there would have been significant estate taxes at the second death and Mr. Belk's intent would not have been carried out.

28. Beginning after receipt of the closing letter, Defendant Harris then began a course of conduct designed to renege upon the partially performed family agreement among Mrs. Belk, Plaintiff, and herself. In addition to taking control of Mrs. Belk, without the knowledge of Plaintiff, Defendant Harris who is sleeping with Defendant Houser, placed Houser in fiduciary positions with Sumter Mortgage Company and Bibco to act as the agent for these entities when he did not have the authority to do so. She allowed Houser to sign documents on behalf of Estate and Bibco property as if he had a real estate license and as fiduciary when he was neither. In these regards, Defendant Houser has been allowed to sign legal transfer documents as an agent of Sumter Mortgage Company (an estate asset) and for Bibco on real estate and mobile home transactions, including conditional installment sales contracts, which were recorded in the Office of the Register of Deeds for Sumter County in June 2006.

29. At the same time, in an effort to sidetrack Plaintiff, Defendant Harris wrote Plaintiff on June 26, 2006 about completing the Family Settlement Agreement, Trust, and Mrs. Belk's Will to follow the terms of Robert D. Belk's Will.

30. At the same time, without the knowledge or consent of Plaintiff, Defendant Harris continued to allow Defendant Houser – who was being paid cash without withholding by Sumter Mortgage and was being paid commissions for real estate sales even though he was not a realtor – to sign bills of sale on behalf of Sumter Mortgage Company, an Estate asset.

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31. In 2006, Defendant Harris came to Plaintiff seeking for him to agree for the Estate (Sumter Mortgage Company) to loan Two Hundred Thousand Dollars (\$200,000.00) for her son, Michael D. (Mickey) Lyles, to allow him to start up Carolina Preowned, LLC, in order to sell used cars. The LLC, owned in four equal shares by Defendant Lyles, Defendant Houser, Defendant Harris, and Plaintiff, has used all of the capital to pay Defendant Lyles salary and to give Defendant Houser the use of an expensive automobile, but the loan to the Estate has not been repaid. This is another example of the self-serving fashion in which Defendant Harris has bestowed self-serving benefits on Defendants Lyles and Houser which should be disgorged and returned to the Estate.

32. Then, in late 2006, without the knowledge of Plaintiff, Defendant Harris took her mother, Mrs. Belk to yet another attorney, John Chase of Florence, South Carolina, as part of Defendant Harris' continuing efforts to undermine and renege on the Family Settlement and other Agreements referred to herein. Mr. Chase prepared a revocable trust and a family LLC that was filed with the Secretary of State. He purportedly acted for Mrs. Belk, but Plaintiff is informed and believes that he, in fact, acted on Defendant Harris' instructions when he prepared and served a Rule to Show Cause in April 2007 seeking to distribute all assets from Mr. Belk's Estate and attempting to close that estate. During this same time, upon information and belief, Defendant Harris tried to have Mr. Chase prepare unilateral documents to be signed by Mrs. Belk that were inconsistent with the partially performed family agreement referred to above. These baseless actions required the expenditure of additional estate funds that otherwise could have been saved. In fact, shortly after Mr. Chase met with Karen



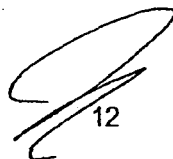
Thomas and reported that progress had been made toward resolution, Defendant Harris terminated Mr. Chase and took her mother, Mrs. Belk, to Defendant Weinberg in an attempt to renege on the family agreement and place herself in control of her mother's assets.

33. John Chase and his firm submitted a bill dated September 7, 2007 for "estate planning" which reflects substantive communications with Defendant Harris rather than Ida Mae Belk, with regard to preparation of documents for the purpose of undermining and renegeing on the Agreement with the assistance of Defendant Houser and others to renege on the family agreement.

34. During this entire period of time, Defendant Harris has exercised dominion and control over her vulnerable mother who did not understand what she was signing and Linda Harris was a fiduciary for her and continued to act in a self-serving fashion.

35. Defendant Harris refused to pay the bills due to Ms. Thomas, attorneys for the estate, which were paid personally by Plaintiff, but caused checks to be issued that benefitted her son and boyfriend. She continued to exercise dominion and control over her vulnerable mother to take actions contrary to the terms of the Settlement Agreement which Plaintiff herein seeks to enforce with the advice to both of them by Defendant Weinberg who represented them both in matters adverse to Estate interests and contractual rights in place. Upon information and belief, Defendant Weinberg also represents Defendant Houser.

36. During the same period of time, without Plaintiff's knowledge or consent, at Defendant Harris' direction, Defendant Houser continued to act as an agent for



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Sumter Mortgage Company and BIBCO, executing bills of sales and other documents and holding himself out as a realtor when he was not one.

37. Even though Bibco had been reorganized, and even though Defendant Harris had involved the Estate in financing her son's automobile's business under the name Carolina Preowned, Defendant Harris terminated Plaintiff's compensation that was paid to him previously. Therefore, even though Plaintiff is a vice president of Bibco. Defendant Harris has withheld all Bibco financial records from him since December 2007 because she is making inappropriate payments therefrom that are violative of Bibco's minutes and the family agreement referred to herein.

38. When Defendant could not get John Chase to perform the acts she wanted performed for her mother so she could unilaterally control the assets, including preparation of an Irrevocable Trust, on or about September 17, 2007. Defendant Harris then took her mother back to Defendant Weinberg, the same attorney who had prepared the defective Robert D. Belk Will. Without any investigation and without review of the family agreements that had been partially performed or by ignoring the same, Defendant Weinberg prepared an Irrevocable Trust for Mrs. Belk naming Defendant Harris as sole Trustee that was signed by Mrs. Belk on September 17, 2007, the same day Defendant Weinberg called the probate court to announce that Mr. Chase had been fired and he represented Mrs. Belk. This irrevocable trust was recorded in the Office of the Register of Deeds for Sumter County on October 30, 2007. By its terms, Mrs. Belk transferred Bibco Corporation and an undivided interest in Sumter Mortgage to Defendant Harris as sole trustee contrary to the Agreement of Mrs. Belk, Plaintiff, and Defendant Harris that had been partially performed. Upon information and belief, this



Trust should be set aside. While Defendant Weinberg told Plaintiff that he could vacate and set aside said trust, it is Plaintiff's information and belief that a court order will be required to do so.

39. Defendant Weinberg also prepared a Will for Mrs. Belk on the 16th day of October 2007 naming Defendant Harris as the sole fiduciary, again being contrary to the terms of the Agreements, which Agreements were well know to Defendant Weinberg who also took marching orders from Defendant Harris and Defendant Houser.

40. Upon information and belief, said trust could well have caused substantial gift taxes that were unintended under the terms of the family agreement and other contract entered into.

41. Defendant Harris has given instructions to the Sumter Mortgage Company bookkeeper, Linda Garrett, to deposit one-half (1/2) of all Sumter Mortgage gross receipts into a new entity created by Defendant Harris for Mrs. Belk -- IMBelk Company -- not taking into consideration the expenses of Sumter Mortgage Company which were to be paid first and detriment the estate. Upon information and belief, Defendant Weinberg has been instrumental in establishing entities and drafting documents in violation of the agreements set forth herein.

42. After her son, Mitch Harris, lost his job and became involved in a divorce, in order to help him financially, Defendant Harris tried to get him on as an employee of Carolina Preowned; however, because this partnership did not have any money, Defendant Harris caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, who was not authorized to do anything for Sumter Mortgage, which Plaintiff refused to sign. These self-serving and fraudulent acts are not only contrary to



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the family agreement, but also show the devious actions of Defendant Harris and efforts to avoid performance under the Family Settlement Agreement.

43. Recent checks to Defendant Houser authorized by Defendant Harris are also fraudulent.

44. Defendant Weinberg and Plaintiff have had several communications since Defendant Weinberg assisted Defendant Harris in renegeing on the family agreement, copies of these communications being attached to the initial complaint as Exhibit 14.

45. All Defendants, and others not yet named, have conspired with Defendant Harris to disrupt the agreed estate plan which is the basis of this action. Defendant Harris has also reneged on authorizations to settle an estate controversy regarding Williamsburg Subdivision which have also caused undue expense and risk to the estate. She has also sought to have the books of Sumter Mortgage and Bibco given to one, Roger Long, when the books and records have been handled appropriately for years by Wilson M. MacEwen, still another effort to disrupt the administration of the estate and cause duplication of efforts and confusion. Upon information and belief, Defendant Weinberg has inserted himself in this situation and has interfered with the completion of the settlement that was being handled by another law firm representing said Estate.

46. Based upon a February 2, 2008 conversation with Mrs. Belk, Plaintiff determined that a) she was unaware where the 2007 gifts for Stakeholders Hanlon and Belk were deposited as that was handled by Defendant Harris; b) Defendant Harris had met with Defendant Weinberg on numerous occasions without her being present; c) she did not know what's been done because she did not do it; d) Defendant Harris had repeatedly told her things about Plaintiff that had caused her concern, but after talking

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with Plaintiff, she had a clearer picture. Upon information and belief, Mrs. Belk has or intends to instruct Defendant Weinberg to prepare documents making Plaintiff and Defendant Harris joint managers of all assets, but Defendant Harris and those assisting her will not heed to Mrs. Belk's requests.

47. Upon information and belief, the annual gifts that were to be made have not been deposited into the appropriate trust accounts as, upon information and belief, Defendant Harris had Mrs. Belk mother sign new trust accounts that were prepared for Mrs. Belk that are contrary to the family agreements.

48. Defendant Harris has told Mrs. Belk untruths about Plaintiff in her efforts to not comply with the family agreement, and has taken over her mother's legal representation for her own self-serving purposes.

FOR A FIRST CAUSE OF ACTION
(FRAUD AND FRAUDULENT INDUCEMENT)
AS TO DEFENDANT HARRIS

49. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

50. Defendant Harris made numerous representations of fact to Plaintiff, individually and as co-personal representative of the Estate of Robert D. Belk, as a Trustee, and as a fiduciary to Plaintiff, including:

- A. That she would honor the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions;
- B. That she would honor the terms of the June 30, 2005 Trust Severance Agreement;
- C. That on June 26, 2006, she was attempting to complete the trust documents as required by the Family Settlement Agreement and the Memorandum of Understanding;


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- D. That securing a loan from Sumter Mortgage Company in the amount of \$200,000.00 as startup capital from Carolina Preowned, LLC would be repaid to the estate, and that she would not engage in actions that benefitted herself, her children, and those with whom she was engaged in a romantic relationship to the detriment of the estate, and beneficiaries thereof;
- E. That, by agreeing to the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions, Defendant Harris promised that she would assure that all trust and other necessary documents would be prepared in accordance with the terms of those agreements, that she and Plaintiff would jointly manage and control all assets of the Estate and of Mrs. Belk as Trustees in accordance therewith, and that she would not take Mrs. Belk to attorneys chosen by her to execute documents that would override said agreements, benefit herself, or renege on said agreements.

51. The forgoing representations were false and are material to not only the Plaintiff and Plaintiff Estate, and violate the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions.

52. Defendant Harris knew that the forgoing representations were false, or showed a reckless disregard for the falsity of the forgoing, and intended that the representations be acted upon by Plaintiff.

53. Plaintiff was ignorant of the falsity of the forgoing representations, relied upon the forgoing representations, and had a right to rely upon the forgoing representations.

54. Based upon the forgoing, Plaintiff and the Estate have suffered consequential and proximate injury, and this Court should award relief designed to make Plaintiff and said Estate whole, together with such other equitable relief as the Court deems just and proper.



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FOR A SECOND CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION)
AS TO DEFENDANT HARRIS

55. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

56. Plaintiff specifically incorporates herein the allegations set forth in paragraphs 51 A through E as if the same are set forth herein verbatim.

57. Defendant Harris had an ulterior and pecuniary interest in making the forgoing misrepresentations, and she owed Plaintiff and the Estate a duty of care to assure that she communicated truthful information. Defendant Harris breached this duty by failing to be honest and truthful.

58. Plaintiff and the Estate justifiably relied upon the representations of Defendant Harris, and as a result, Plaintiff and the estate suffered a pecuniary losses and injuries as the proximate result of the false representations of Defendant Harris.

59. Based upon the forgoing this Court should award relief to make Plaintiff and said Estate whole, together with such other equitable relief as the Court deems just and proper.

FOR A THIRD CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
AS TO DEFENDANT HARRIS

60. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

61. Defendant Harris, as co-personal representative of the Estate of Robert D. Belk, owed a fiduciary duty to Plaintiff both as co-personal representative and as a beneficiary of the estate, as well as a fiduciary to all beneficiaries of the estate, not to

mention as a fiduciary to Plaintiff as his sister. Her responsibilities are defined by statute and case law.

62. As set forth herein above, Harris breached these fiduciary duties and, as a result, Plaintiff, the Estate, and the beneficiaries have suffered both injuries.

63. Defendant Harris has also allowed Defendant Houser, Defendant Carolina Pre-Owned, and Defendant Lyles to become unjustly enriched to the detriment of the Estate of Robert D Belk, its beneficiaries, and Plaintiff.

64. Based upon the forgoing, this Court should award such legal and equitable relief as the court deems just and proper based upon the evidence.

FOR A FOURTH CAUSE OF ACTION
(SETTING ASIDE INFLUENCED TRANSACTIONS)
AS TO DEFENDANT HARRIS, DEFENDANT WEINBERG, AND MRS. BELK AS AN
INTERESTED PARTY

65. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

66. The "irrevocable" trust dated September 17, 2007 was the product of undue influence upon Mrs. Belk by Defendant Harris and was prepared by Defendant Weinberg who prepared all other documents executed by Mrs. Belk and assisted in the formation entities that have been formed by or on behalf of Mrs. Belk that are contrary to the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions.

67. Based upon the forgoing, the irrevocable trust dated September 17, 2007, all other documents executed by Mrs. Belk, and all entities formed by Mrs. Belk that violate the above agreements should be set aside as influenced transactions, and this


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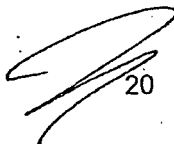
Court should award such other legal and equitable relief as the Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION
SPECIFIC PERFORMANCE AND
ENFORCEMENT OF THE FAMILY SETTLEMENT AGREEMENT AND
THE MEMORANDUM OF UNDERSTANDING
(AS TO DEFENDANT HARRIS AND MRS. BELK AS PARTY IN INTEREST)

68. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

69. Pursuant to the terms of the Family Settlement Agreement and Memorandum of Understanding referred to above: 1) maximum annual exclusion gifts would be made annually by Ida Mae Belk as set forth within the written documents; 2) the gifts to Cheryl Ann Hanlon and Robert M. Belk would be paid to appropriate Trusts that were created for them; and 3) Ida Mae Belk would disclaim, renounce, reject, and refuse to accept certain interests in disclaimed property improperly left to her under the Last Will and Testament of Robert D. Belk; 4) Plaintiff and Defendant Harris would be co-trustees and joint managers of not only assets of the estate, but also of Bibco and other assets held by Mrs. Belk, including the ability to create such family business entities as were appropriate prior to funding the new trusts.

70. There has been part performance of the Family Settlement Agreement and of the Memorandum of Understanding by Plaintiff and the Estate, and valuable consideration has been given by the Plaintiff and the Estate, and, after securing the benefits thereof, Defendant Harris has reneged on all other provisions thereof for her benefit and the benefit of others who are not beneficiaries of said estate to the detriment of the Estate, its beneficiaries, and Plaintiff.


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71. Based upon the forgoing, this Court should enforce the Family Settlement Agreement and the Memorandum of Understanding, vacate any and all transactions to the contrary, and should award such other legal and equitable relief as the Court deems just and proper.

FOR A SIXTH CAUSE OF ACTION
UNJUST ENRICHMENT AND ACCOUNTING
(AS TO DEFENDANTS HARRIS, BIBCO, HOUSER, LYLES, AND
CAROLINA PREOWNED, LLC)

72. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

73. Defendants Harris, Bibco, Houser, Lyles, and Carolina Preowned have been unjustly enriched at the expense of the Estate based upon Defendant Harris actions including taking estate assets and having them deposited into Bibco and other accounts without taking into consideration expenses in connection therewith; Houser's use of vehicles and receiving insurance and gasoline; Houser receiving cash without withholding; Houser receiving commissions on sales when he is not a realtor and not allowed to act; Lyles drawing salaries and benefits using estate funds that have not been repaid; Carolina Preowned not repaying obligations due to the Estate and using said funds to benefit Lyles and Houser, and other acts as will be shown by the evidence.

74. The forgoing has all been to the detriment of the Plaintiff, the Estate, and the intended beneficiaries of the Robert D. Belk estate, all of which violates the family agreements referred to hereinabove. Plaintiff and the Estate are entitled to a full accounting from all Defendants and then disgorgement of ill-gotten gains.


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75. Based upon the forgoing, this Court should find that these Defendants have been unjustly enriched, should order that the funds and benefits received by these Defendants be disgorged and repaid to the estate, plus interest, and award such other legal and equitable relief as the Court deems just and proper.

FOR A SEVENTH CAUSE OF ACTION
INTERFERENCE WITH CONTRACTS AND CONSPIRACY
(AS TO DEFENDANTS HARRIS, WEINBERG, LYLES, AND HOUSER)

76. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth verbatim.

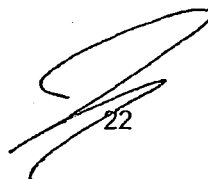
77. As set forth herein above, Defendants Harris, Lyles, Houser, and Weinberg have conspired to do harm to the estate of Robert D. Belk, to subvert the Family Settlement Agreement, and to avoid said family settlement agreement which should be enforced by this Court. Defendant Houser has interfered with the family agreement by communicating with counsel retained by Defendant Harris for Mrs. Belk.

78. As set forth herein above, Defendants conspired together for the purpose of injuring Plaintiff.

79. As a result, the Plaintiff has suffered special damages, both present and expected, and this Court should award such legal and equitable relief as it deems just and proper.

FOR AN EIGHT CAUSE OF ACTION
EQUITABLE ESTOPPEL
(AS TO DEFENDANT HARRIS)

80. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.


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81. Defendant Harris, individually and in all capacities, is equitably estopped from taking any position inconsistent with the terms of the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions that was signed by her, Plaintiff, and Mrs. Belk.

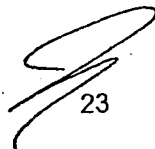
82. Plaintiff and the Estate of Robert D. Belk relied upon the representations of Defendant Harris to their detriment, have changed their positions as a result of said representations, have preformed based upon said agreement to their detriment, and had no knowledge that Defendant Harris would, after receipt of said benefits, act contrary to the terms of the agreements and cause Mrs. Belk to do so.

83. Based upon the forgoing, Defendant Harris is equitably estopped from taking any position contrary to the positions she took in the June 28, 2005 Family Settlement Agreement and the June 30, 2005 Memorandum of Understanding Concerning Future Transactions as Plaintiff and said Estate have changed their positions significantly in reliance thereon.

FOR AN NINTH CAUSE OF ACTION
COLLECTION OF NOTES DUE TO ESTATE RE: SUMTER MORTGAGE COMPANY
(AS TO DEFENDANTS CAROLINA PREOWNED, LYLES, HARRIS, AND HOUSER)

84. Plaintiff incorporates herein by reference the forgoing paragraphs as if the same were set-forth herein verbatim.

85. Defendant Lyles, on behalf of Carolina Preowned, heretofore executed a "Promisary Note" to Sumter Mortgage Company, an asset of the estate, on March 8, 2005 payable March 8, 2006 in the principle amount of \$100,000.00 plus interest at the rate of 7% per annum.


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86. Thereafter, Defendant Lyles, on behalf of Capital Finance, Inc., a non-existent or non-operating entity, executed a "Promisary Note" to Sumter Mortgage Company, an asset of the estate, on September 30, 2005, payable September 30, 2006 in the principle amount of \$100,000.00 plus interest at the rate of 7% per annum. Both Notes are attached hereto and incorporated herein by reference as **Exhibit 15**.

87. Defendants Lyles and Houser, upon information and belief, used the much of the foregoing amounts for personal benefits such as salaries, draws, use of automobiles, gasoline, insurance, and the like. Defendant Harris knew that the funds were being dissipated, but did nothing about it.

88. Plaintiff, as personal representative of the Estate, seeks judgment against Carolina Preowned, LLC for said notes plus interest and, as to funds that have been dissipated, seeks judgment against Defendants Harris, Houser, and Lyles for any shortfalls.

FOR A TENTH CAUSE OF ACTION
(Tortious Interference with Contract)
(AS TO DEFENDANTS HARRIS AND WEINBERG)

89. Plaintiff incorporates herein by reference the forgoing allegations as if the same were set forth herein verbatim.

90. Defendants acted together and concertedly to intentionally interfere with the contracts entered into by and between Plaintiff, Defendant Harris, and Ida Mae Belk through tortuous conduct, and said contracts would have been complied with but for the interference of these Defendant and the influenced transactions alleged herein.

91. Through the concerted actions as alleged herein, these Defendants knew that said contracts would be destroyed or significantly altered based upon their conduct.


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92. The actions these Defendants have caused irreparable harm and damages to Plaintiff as Personal Representative of the Estate, and Plaintiff is entitled to actual and punitive damages and equitable relief to return the parties to their positions prior to the acts complained of herein.

FOR AN ELEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)
(AS TO DEFENDANTS HARRIS AND WEINBERG)

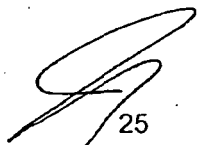
93. Plaintiff incorporates herein by reference the above allegations as if the same were set forth herein verbatim.

94. Plaintiff, Defendant Harris, and Ida Mae Belk entered into contracts signed by them and the family settlement agreement referred to above whereby Plaintiff and Defendant Harris would jointly manage the Ida Mae Belk assets and jointly handle the estate.

95. Plaintiff has performed his obligations under said contracts, but said contracts has been breached by Defendant Harris, as assisted by Defendant Weinberg, by means of fraudulent acts undertaken with fraudulent intent.

96. Based upon the forgoing, Plaintiff is entitled to actual and punitive damages, the interest thereon, together with such other legal and equitable relief as the Court deems just and proper.

WHEREFORE Plaintiff prays for judgment upon each of the foregoing causes of action against Defendants as stated above, together with such other legal and equitable relief as the Court may deem fit and proper.


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April 4, 2008
Columbia, South Carolina

WARNER PAYNE & BLACK, LLP

BY: 

Jan L. Warner, Bar No. 5947
PO Box 2626
Columbia, South Carolina 29202
1122 Lady Street, Suite 1200 (29201)
803-799-0554-Tel
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STATE OF SOUTH CAROLINA

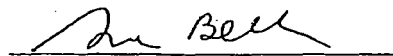
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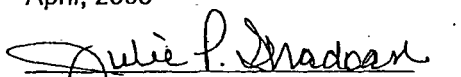
COUNTY OF SUMTER

2008 APR -4 PM 4: 39

PERSONALLY APPEARED BEFORE ME ~~JAMES C. CAMPBELL~~ ^{JAMES C. CAMPBELL} who, being duly sworn, says that he is the co-Personal Representative of the Estate of Robert D. Belk; that he has read the foregoing complaint; that the allegations contained therein are true and correct based upon his best information except those matters that are alleged upon information and belief and, as to those, he believes the same to be true.

Sworn to before me this 4th day of
April, 2008




Notary Public for South Carolina
Commission Expires: 02/04/2015

STATE OF SOUTH CAROLINA

RECORDED

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

JAMES C. CAMPBELL
CLERK OF COURT

Gene C. Belk, Individually and as Trustee of the Estate of Robert D. Belk,
Personal Representative of the Estate of Robert D. Belk,

Plaintiff,

vs.

Linda B. Harris, Individually and as Trustee of the Ida Mae K. Belk Irrevocable Trust dated 9/17/07 and in all alleged fiduciary capacities, Bibco, Inc., Dewey M. Houser, Carolina Preowned, LLP, Michael D. "Mickey" Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B. Schmit, Robert M. Belk, and Ida Mae Belk,

Stakeholders.

NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANT M. M. WEINBERG, JR.

TO: THE PLAINTIFF and his attorney, JAN L. WARNER

YOU WILL PLEASE TAKE NOTICE that Defendant M. M. Weinberg, Jr. will move before the Court at such time and place as the Court may determine to dismiss the Amended Complaint against him pursuant to Rule 12(b)(6), SCRCP, upon the following grounds:

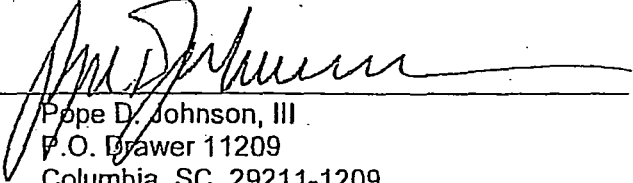
1. The Fourth Cause of Action for alleged undue influence fails to state facts sufficient to constitute a cause of action against this defendant upon the grounds that there is no allegation that this defendant unduly influenced Ms. Belk and further, Defendant Weinberg is not a party or a beneficiary to the Trust Agreement referred to in the Amended Complaint, and the claim to set it aside as an influenced transaction cannot lie against him and, as a result thereof, the Fourth Cause of Action therefore fails to state facts sufficient to constitute a cause of action against him;

2. The Complaint alleges that this defendant acted as an attorney and provided legal services to a client in connection with matters in dispute, which is confirmed by the attached affidavit of this defendant, and this defendant cannot be liable to the plaintiff for civil conspiracy for the representation of his client and, as a result thereof, the Seventh Cause of Action fails to state facts sufficient to constitute a cause of action against this defendant;
3. The Complaint fails to allege that this defendant intentionally procured the breach of the contracts referred to in the Complaint and, as a result thereof, the Tenth Cause of Action therefore fails to state facts sufficient to constitute a cause of action against this defendant; _____
4. The Complaint fails to allege that there is a contract between the plaintiff and this defendant which has been breached and, as a result thereof, this defendant cannot be liable for breach of contract accompanied by a fraudulent act; and
5. This defendant has acted only as attorney for Ida Mae Belk and as attorney for Linda B. Harris as Co-Personal Representative within the scope or his representation, as is shown by his attached affidavit, and he is therefor immune from liability to the plaintiff arising from the performance of his professional activities as attorney on behalf and with the knowledge of his said clients and the Complaint fails to state facts sufficient to constitute a cause of action against him.

The Affidavits of M. M. Weinberg, Jr., Linda B. Harris, and Ida Mae K. Belk are submitting in support of this motion.

MCCUTCHEN BLANTON JOHNSON & BARNETTE, LLP

By: _____


Pope D. Johnson, III
P.O. Drawer 11209
Columbia, SC 29211-1209
(803) 799-9791
(803) 253-6084 (fax)
pdjohnson@mbjb.com

Attorneys for Defendant M. M. Weinberg, Jr.

Columbia, South Carolina
June 2, 2008

RECORDED

2008 JUN -3 AM 10:46

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-43-0347

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Plaintiff,

vs.

AFFIDAVIT OF M. M. WEINBERG, JR.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

PERSONALLY APPEARED BEFORE ME, M. M. Weinberg, Jr., who being duly
sworn, deposes and says:

1. I am M. M. Weinberg, Jr. I am a licensed, practicing attorney in the State
of South Carolina. I make this affidavit based upon personal knowledge.
2. I represented Robert D. Belk for a number of years prior to his death on
certain matters. I prepared his Last Will and Testament based upon his instructions and
directions.
3. Since the death of Robert D. Belk, I have represented his widow, Ida Mae

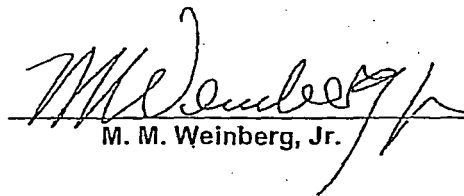
Belk, in certain matters. I have also represented Linda B. Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust dated September 17, 2007 and as Co-Personal Representative of the Estate of Robert D. Belk. I have not represented by plaintiff or any of the other defendants or stakeholders in this action. Any and all actions which I have undertaken since the death of Robert D. Belk as to any matters alleged in the Complaint have been as attorney on behalf of and with the knowledge of Ida Mae Belk and Linda B. Harris in her aforesaid fiduciary capacities..

SWORN TO AND SUBSCRIBED BEFORE ME

this 29th day of May, 2008

Deborah K. Meeks
Notary Public for South Carolina

My Commission Expires: 4/22/2015


M. M. Weinberg, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347

RECORDED

2008 JUN -3 AM 10:46

Gene C. Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk,)

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

AFFIDAVIT OF LINDA B. HARRIS

Defendants,)

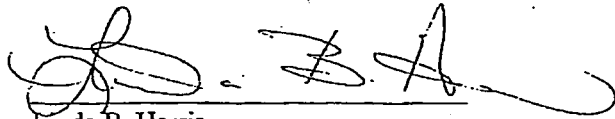
And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders.)

NOW COMES Linda B. Harris who first being duly sworn states that:

1. I am a Defendant, Individually, and as Trustee of the Ida Mae K. Belk Irrevocable Trust.
2. I am also Co- Personal Representative of the Estate of my father R. D. Belk.
3. I have been sued individually, as the Trustee of the Ida Mae K. Belk Trust and in all alleged fiduciary capacities, which in my opinion would include my position as Co- Personal Representative of the Estate of R. D. Belk.
4. I engaged the services of M.M. Weinberg, Jr., Attorney of Sumter, South Carolina to represent me in the matter of my position as Trustee of my mothers Irrevocable Trust, dated September 17, 2007, as well as my position as Co- Personal Representative Estate of R. D. Belk, my father.

5. Mr Weinberg, Jr., does not represent me individually.
6. I am aware of the activities of Mr. Weinberg, Jr., and he has done nothing in the handling of the matters for me that I have not authorized and which were not necessary in my opinion to properly represent me and to implement the wishes of R. D. Belk in his Will.
7. I was made aware by Mr. Weinberg, Jr., of the possibility of a claim of conflict of interest by the adverse party in this matter.
8. I am willing for Mr. Weinberg, Jr., to continue to represent my mother, Ida Mae K. Belk and represent me as set out above.
9. No action has taken place in this matter in as so far as I am concerned without my request and or permission.
10. Mr. Weinberg, Jr., has done nothing in this matter but represent my mother, Ida Mae K. Belk and myself and to protect the interests of my mother and the children of Ida Mae K. Belk and R. D. Belk.


Linda B. Harris

SWORN to before me this 27th
day of May, 2008.

Delorah D. Meek
Notary Public, State of South Carolina
My Commission Expires: 4/22/2015

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF SUMTER 2008 JUN -3 2008 JUN -3 2008 JUN -3
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO: 2008-CP-43-00347

Gene C. Belk, Individually and as
 Co-Personal Representative of
 Estate of Robert D. Belk,

Plaintiff,

vs.

Linda B. Harris, Individually and as
 Trustee of the Ida Mae K. Belk
 Irrevocable Trust dated 9/17/07
 and in all alleged fiduciary
 capacities, Bibco, Inc., Dewey
 Houser, Carolina Preowned, LLP
 and Michael D. "Mickey" Lyles, Jr.,

Defendants,

And Cheryl Ann Hanlon, Patricia B.
 Schmidt, Robert M. Belk, and Ida
 Belk,

Stakeholders.

AFFIDAVIT OF IDA MAE K. BELK

NOW COMES Ida Mae K. Belk who first being duly sworn states that:

1. I am the sole owner of Bibco, Inc., and the widow of R. D. Belk.
2. I have been identified as a stake holder in the above titled cause of action.
3. I am familiar with R. D. Belk's Will and also familiar with his desires, pertaining to the disposition of his property.
4. I engaged the services of M.M. Weinberg, Jr., Attorney of Sumter, South Carolina to assist me in the handling of this matter to implement my husband's wishes.
5. I am aware of the actions that he has taken in this matter, and each action he has done has been at my request for the for the purpose of carrying out my husband's desires.
6. He has represented me as I have requested and has represented Linda Belk Harris, solely as Personal Representative of the Estate of R. D. Belk, and as Trustee of my

Irrevocable Trust. Which I created to enable me to carry out the wishes of R. D. Belk.

7. I was advised at the time he was engaged by both me and my daughter, that there would be a question of conflict raised by opposing counsel.
8. I do not feel there is any conflict between my daughter as Personal Representative as Trustee, who I appointed, and myself in handling this matter. I am perfectly content for Mr. Weinberg to continue to representing me and Linda B. Harris under these circumstances.

Ida Mae K. Belk
Ida Mae K. Belk

SWORN to before me this 27th
day of May, 2008.

Deborah A. Meeks
Notary Public, State of South Carolina

My Commission Expires: 4/22/2015

STATE OF SOUTH CAROLINA)
COUNT OF SUMTER)

RECORDED
2008 SEP -9 AM 11:34
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2008-CP-43-0347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk)
Plaintiff,)

vs.)

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco Inc)
Dewey M. Houser, Carolina Pre-Owned, LLC &)
Michael D. "Mickey" Lyles, Jr. and M. M.)
Weinberg, Jr.)
Defendants.)

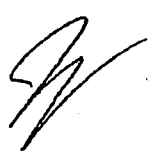
And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk)
Stakeholders)

NOTICE OF MOTION AND
MOTION FOR AN EXPEDITED
HEARING ON MOTION FOR
INJUNCTION AND RESTRAINING
ORDER

TO: S. JAHUE MOORE, JOHN E. MILES, SR., ATTORNEY FOR LINDA B. HARRIS, INDIVIDUALLY, BIBCO INC., DEWEY M. HOUSER, CAROLINA PREOWNED, LLC, AND MICHAEL D. LYLES JR.; AND TO M.M. WEINBERG, JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN HER CAPACITIES AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT D. BELK AND TRUSTEE OF THE IDA MAE BELK IRREVOCABLE TRUST; POPE D. JOHNSON, ATTORNEY FOR M. M. WEINBERG, JR.

Plaintiff, Co-Personal Representative of Estate of Robert D. Belk hereby moves for an Order setting an expedited hearing on shortened notice to hear and consider Plaintiff's motion for an injunction and temporary restraining order pursuant to Rule 65, SCRCivP.

This motion is brought because hundreds of thousands of dollars have been diverted from the Estate of Robert D. Belk by Defendant Harris and Defendant Weinberg to Defendant Bibco and to Stakeholder Ida Belk and irreparable damage is being done to the estate.



1. Robert D. Belk died on April 5, 2004 and this Estate is being probated in the Probate Court for Sumter.

2. On May 7, 2004, Plaintiff and Defendant Harris probated their father's Will and were appointed as Co-Personal Representatives by the Probate Court for Sumter County

3. On the same day, Plaintiff and Defendant Harris opened an estate account and took over the existing Sumter Mortgage accounts at the National Bank of South Carolina that are and were estate assets.

4. For more than twenty (20) years, Wilson MacEwen and Company, certified public accountants firm in Sumter has handled the bookkeeping, tax preparation and all accounting responsibilities for Mr. Belk and all business entities before his death, and then for the Estate of R. D. Belk, his unincorporated company Sumter Mortgage, and Bibco, Inc., thereafter.

5. Since the estate was open, four (4) years ago, Plaintiff and Defendant Harris, as Co-Personal Representatives, have used estate-owned Sumter Mortgage accounts as the general operating business accounts from which employees and normal operating expenses were paid with accountings submitted to Mr. MacEwen by Linda Garrett, Mr. Belk's long-time bookkeeper.

6. In the latter part of December 2007 at which time the Defendant Harris began diverting estate income to separate accounts, including Bibco, Inc. and perhaps other unknown accounts, thereby depriving the estate of cash flow and the ability to properly make accountings and file tax returns.

7. Stakeholder Ida Mae Belk has been unjustly enriched by acts of Defendants Harris and Weinberg by more than \$1,000,000.00 over the past four (4) years, and

hundreds of thousands of dollars have been diverted from the estate since December 2007.

8. Defendant Harris, with the assistance of Defendant Weinberg, has failed to perform her fiduciary duties as co-personal representative of the estate by diverting funds from the estate, and withholding financial information from Plaintiff and Mr. MacEwen, making it impossible to file proper accountings with the Probate Court and to timely file annual estate income tax returns.

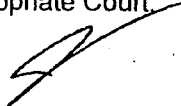
9. Plaintiff seeks immediate relief and prevent further irreparable harm to the estate by issuance of injunctions and restraining orders preventing Defendants Harris and Weinberg from interfering with estate administration and requiring the return of all assets to the estate so as to preserve estate assets until such time as this proceeding is resolved, and to specifically enjoin Defendants Harris, Weinberg, Bibco, and Stakeholder Ida Belk as follows:

A. To enjoin these Defendants and the Stakeholders from interfering with estate assets and from diverting income of Sumter Mortgage, an estate asset, to other accounts including I. M. Belk Co., Bibco, Inc., and the Ida Belk Trust.

B. To require Defendant Harris and Stakeholder Belk to return to the estate all sums diverted to such other accounts.

C. To require Defendant Harris to provide to Wilson MacEwen, C.P.A., all financial information regarding estate income so that proper estate accountings and income tax returns can be prepared.

D. To enjoin Defendants Harris, Weinberg and Bibco, Inc. from depositing any monthly checks and cash received from all savings into any account other than Sumter Mortgage pending final Order of the appropriate Court.



E. To enjoin Defendants Harris, Weinberg and Stakeholder Belk from withholding and conspiring to withhold pertinent financial information on Sumter Mortgage and Bibco, Inc. from Plaintiff and from Wilson MacEwen, CPA.

F. To enjoin Defendants Harris and Stakeholder Ida Belk from funding the Ida Belk Trust until final hearing on the merits.

G. To require Defendant Harris and/or Stakeholder Ida Belk to return to the estate tax refund checks of approximately \$110,000.00 which represent taxes paid for Stakeholder Ida Belk by Sumter Mortgage.

H. To allow Plaintiff to deposit more than \$500,000.00 in Sumter Mortgage funds now being held at Nelson, Mullins, Riley and Scarborough into an interest bearing account in the name of the estate at the National Bank of South Carolina until final Order of the appropriate Court.

I. To enjoin Defendant Harris from making any additional distributions to Ida M. Belk until Trust B and C under Mr. Belk's Will have been fully funded or, in the alternative, until final Order of the appropriate Court.

J. To enjoin Defendant Weinberg from participating as counsel in this matter and/or communicating with Defendant Harris and Stakeholder Belk until a hearing on Plaintiff's Motion to Relieve his Firm as Counsel in this matter is heard.

K. To enjoin Defendant Harris from acting in the capacity of co-personal representative until final hearing on merits based upon her conduct.

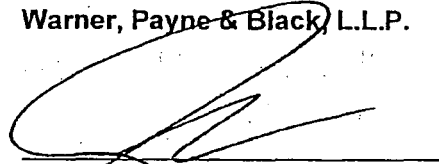
L. To enjoin Defendants Harris, Houser and Lyles from going about the premises of Sumter Mortgage Company office located at 361 Broad Street, Sumter, and in any way interfering with the administration of the estate or attempting to act as agent for Sumter Mortgage and Bibco.



The grounds for this Motion are:

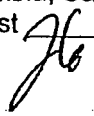
1. Plaintiff's Affidavit and attached exhibits that irreparable harm will be done to the Estate of Robert D. Belk if such Orders do not issue, that far outweigh the inconvenience or potential damage to Defendants. **(Exhibit 1)**.
2. Affidavit of Wilson MacEwen and attachment **(Exhibit 2)**.
3. Such other affidavits and exhibits as may be presented at the hearing in this matter.

Warner, Payne & Black, L.L.P.



Jan E. Warner
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone No.: (803) 799-0554
Facsimile No.: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
August 2008



The July 31, 2008 statement of Sumter Mortgage general operating checking account, an estate asset, has a reconciled balance of \$10,228.36. In January 1, 2007, this account had a beginning balance of \$300,385.24. Therefore, \$290,000 plus has been spent from this account, and there have been no deposits since mid-February 2008 per the instructions of my sister and Mr. Weinberg.

From June 2008 to this date, the only monies received by me have been deposited into the estate Sumter Mortgage account.

I am a duly licensed and practicing attorney in good standing. I also am a licensed real estate agent and broker in good standing. I have a good working knowledge of real estate and accounting.

It is believed that this money has been deposited to an account known as I. M. Belk Company. Mr. MacEwen has previously prepared a spreadsheet showing that my mother has received gross distributions of \$1,138,829.00 between April 5, 2004, and June 30, 200~~7~~⁰⁸. If you add the additional monies that have been diverted from Sumter Mortgage Company indicated hereinabove, Ida Belk has conservatively received gross distributions in of \$1,418,392.16. I submit this affidavit in support of my application for an injunction to prevent further irreparable damage from being done to the Estate. ACB

RELATIONSHIP WITH MY FATHER

During my father's life, he and I were involved in several business relationships. My father had a lot of confidence in me. I was his firstborn son and his only child to graduate from college and obtain a professional degree. Our most recent business relationship was a 50/50 business venture which began in June of 2002 in which I was

the managing partner of a 40 lot mobile home park. In that capacity, I handled all the cash receipts, deposits, bookkeeping and tax preparation.

After my father died on April 5, 2004, I individually and on behalf of his Estate sold the mobile home park to Jessie McLeod in June 2004 under an owner financing arrangement, and I remit the Estate's portion of the accounts receivable to the Estate each month.

HISTORICAL FACTS

In the year 2000, when my father was diagnosed with a life-threatening condition, he consulted with a noted estate planner Dave Sojourner, of Columbia, at which time he reported that he was the 100% owner of Sumter Mortgage, a sole proprietorship, and that substantially all of the assets were titled R. D. Belk, d/b/a Sumter Mortgage Company.

On March 4, 2004, M. M. Weinberg, Jr., of Weinberg and Brown prepared a Will for my father who died on April 5, 2004. His estate is being probated in the Sumter County Probate Court. dcb

According to my father's will, Carlton R. Davidson was named as Personal Representative, and I was named as sole Successor or Alternate Personal Representative.

On or about, April 12, 2004, my sister, Linda Harris, and I jointly consulted Mr. Weinberg as we had been designated as co-trustees under the Will. Mr. Weinberg had my father's original Will in his possession, and reviewed the terms with my sister and me. Among other things, the three of us discussed the fact that during my father's lifetime, he had handled all aspects of the family finances including buying and selling

real estate and other properties in his name, and in the name of Sumter Mortgage Company, an unincorporated entity.

In our presence, Mr. Weinberg called my father's longstanding certified public accountant, Wilson MacEwen, to discuss estate assets and existing business interests. Mr. Weinberg provided us legal advice about the probate of the Will; made recommendations to us about what we would do as trustees; and how the Estate should take control over the assets and business interests in accordance with his Will.

Acting on Mr. Weinberg's advice, my sister and I contacted the National Bank of South Carolina and had them freeze my father's personal checking account and three (3) Sumter Mortgage business accounts -- a General Business Operating Account; a Finance Accounts; and a Money Market Account -- until the Will could be submitted to probate.

On or about, April 16, 2004, I again met with Mr. Weinberg at his office and discussed with him that my mother, Ida Belk, was not pleased my father disinheriting two (2) of his grandchildren and giving his long-term employee, Linda Garrett, an immediate bequest of \$100,000.00 while his natural children were not getting any immediate benefit. Dec

On, or about, April 20, 2004, I again met with Mr. Weinberg at his office, this time to discuss my father's assets and business interests at which time Mr. Weinberg showed me four (4) different lists of assets prepared by my father and wrote me concerning the same.

On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. I alone was to act as solely as successor or alternate Personal

Representative but in an effort to preserve family unity, I allowed my sister, Linda Harris, to serve with me as Co-Personal Representative:

On May 7, 2004, my sister and I were appointed as Co-Personal Representatives of the estate and, on the same day, per Mr. Weinberg's advice, we went to NBSC and took control over the three (3) existing Sumter Mortgage business accounts.

Based upon Mr. Weinberg's advice, Sumter Mortgage been a part of the Estate administration for four (4) years from May 7, 2004 through the present date. During this four years (except as stated below and the reason for this application to the Court), my sister and I as co-personal representatives handled the daily business of our father's estate and jointly cosigned all Sumter Mortgage checks as Personal Representatives of his Estate.

To simplify bookkeeping, my sister and I closed the Sumter Mortgage Finance account and transferred the proceeds to the general operating account. Currently, we have two accounts: the general operating account and the money market account which is a savings account and is inactive except to accumulate interest.

The general operating business checking account is the account into which all accounts payable to Sumter Mortgage were to be deposited and from which were paid normal operating expenses of the ongoing Sumter Mortgage business. This was the account that was turned over the Wilson MacEwen each year so he could prepare the estate income tax returns from May 7, 2004 until February 2008 when my sister and Mr. Weinberg had these funds deposited elsewhere, which is one of the reasons for this application to the Court.

My father's personal checking account was closed, and new checking account at NBSC opened in the name of The Estate of R. D. Belk with my sister and me co-signing these checks as co-personal representatives.

Due to errors and omissions contained in the Will prepared by Mr. Weinberg that we learned about after it was probated, my mother, my sister, and I went back to Mr. Sojourner and were represented by Karen Thomas, Esquire, who prepared a comprehensive postmortem plan that was agreed to by myself and Defendant Linda Harris as Co-Representatives of the Estate and by my mother.

As part of our agreement, my sister and I would be co-trustees and joint managers of not only the Estate assets but also other assets held by our mother, including stock in Bibco, Inc. These agreements were written, signed, acted upon, and partially performed.

As part of the postmortem agreements, we signed a compromise agreement dated June 30, 2005 known as Memorandum of Understanding Regarding Future Transactions. Under the terms of this agreement, our mother agreed to create a new trust identical to the trust created by our father naming my sister and me as co-trustees. In consideration thereof, the Estate arbitrarily assigned our mother, Ida Belk, a 50% undivided interest in Sumter Mortgage so that she would correct the defects in the will prepared for our father by Mr. Weinberg.

After the above documents were signed, on the same day, a Trust Severance Agreement was signed by me and my sister as co-Personal Representatives of our father's estate to correct the faulty drafting of the Will by Mr. Weinberg.

in accordance with our oral and written agreements, my sister and I jointly handled the day-to-day management of Bibco and Sumter Mortgage for years. We both

were designated as vice-presidents of Bibco, and agreed that Bibco would not conduct future sales of used mobile homes due to unreasonable exposures for liability and risk.

Bibco, a C Corporation set up for my father by Mr. Weinberg, was a "holding company", and its only legitimate business was to manage its assets, collect outstanding notes receivables, and to wind down the business entity. Because this was an unfavorable way of currently doing business because C Corp's have double taxation – the corporation itself is taxed and then any dividends to stockholders are also taxed.

In December 2007, Bibco only had two (2) employees, me and my sister, and we were paid an annual management fee for three (3) years immediately following my father's death through June 2007.

Any assets owned by Bibco that required either yard maintenance or building maintenance were serviced by employees of Sumter Mortgage. Bibco occupied office space at 3061 Broad Street, the same office building as Sumter Mortgage Company. And Linda Garrett handled all accounts receivables for Bibco and Sumter Mortgage.

ACB

Linda Garrett is an employee of and is paid by Sumter Mortgage. To my knowledge, Bibco has made no contributions toward Linda Garrett's salary nor has it paid anything toward office operating expenses such as utilities, telephone, water, cleaning, etc.

In December 2007, Linda Harris unilaterally instructed Linda Garrett to withhold the Bibco financial records from me, and from Mr. MacEwen. At that time, she also unilaterally instructed Linda Garrett to transfer Bibco all accounting and bookkeeping service from Wilson MacEwen to her own personal accountant, Roger Long. I have not received any compensation for services since the 2006 fiscal year.

Then, after other lawyers would not do her bidding, my sister took my mother to Mr. Weinberg on September 17, 2007, and Mr. Weinberg, the same person who had prepared my father's defective Will, prepared a Trust for my mother naming my sister as sole trustee that flies in the face and breaches the very agreements that were made necessary by Mr. Weinberg preparing my father's faulty will.

Mr. Weinberg then had my mother transfer into this trust disputed interests in the underlying assets of Sumter Mortgage and Bibco, all contrary to the very agreements made necessary by Mr. Weinberg's errors. These transactions have the potential of triggering gift taxes, not to mention that distribution of certain installment sales accounts receivable titled in Sumter Mortgage and Bibco to this trust will likely trigger acceleration of income on those notes, thereby causing substantial and dire tax consequences.

To make matters worse, in 1999, an attorney in Mr. Weinberg's firm filed an Affidavit in Circuit Court on behalf of my father stating that he (Robert D. Belk) was the sole stockholder of Bibco, Inc. Under the theory of judicial estoppels, Mr. Weinberg and his firm are barred from now taking a contrary position. But he has.

The underlying gravamen of the action I brought is based upon the breaches of the partially performed oral and written agreements referred to above. I have included an cause of action for unjust enrichment and accounting against Bibco because estate assets have been deposited into Bibco. For example, even though Sumter Mortgage is the owner of a note and mortgage from Gem Investment Company, Gem's monthly payment to Sumter Mortgage is being deposited into Bibco.

I also believe that because the Estate has an interest in Westgate Subdivision lots that have been sold on time, but monthly payments are being collected and

deposited into Bibco. In addition, the Estate has interests in unsold lots in this subdivision that are being rented, with rent being deposited into Bibco.

The underlying litigation here is based upon the breach of the partially performed oral and written agreements by my sister, and, on behalf the estate, I am seeking specific performance of these agreements and disputing my mother's legal ownership of Sumter Mortgage based upon her and my sister's breaches of contract.

By letter dated July 31, 2008, Mr. Weinberg acknowledges that my mother's disputed ownership in Sumter Mortgage is based upon the previous agreement that she and my sister reneged on with the help of Mr. Weinberg.

In addition, Mr. Houser has been allowed by my sister to intermeddle in Estate matters and sign legal documents for both Bibco and Sumter Mortgage. He also has a key to the Sumter Mortgage post office box. In late December 2007, unknown to me, Houser put in a bid for a used mobile home that was accepted. When he approached me for funds, I refused. I have just learned that Houser in concert with my sister purchased the mobile home with Bibco funds even though Bibco had no legitimate business interest and was suppose to be winding down its affairs. This is another breach of my sister's fiduciary duties. ACB

On Friday, January 18, 2008, I was informed by Linda Garrett, who is employed by Sumter Mortgage, that my sister instructed her in the late December 2007 not to make any future deposits into the Sumter Mortgage business account for the 2008 calendar year. On the same date, Linda Garret informed me that my sister had further instructed her to make the designated Sumter Mortgage deposits into another bank account known as the I. M. Belk Company and that my sister had actually given her deposit slips for this account. Ms. Garrett also informed me that, not knowing what else

to do, she had not made any deposits into Sumter Mortgage for approximately three (3) consecutive weeks and had a significant amount of cash and checks in excess of \$48,000.00 which had not yet been deposited.

During the estate administration, it has been normal and customary for Sumter Mortgage to pay quarterly estimated taxes for my mother as an accommodation to her. During the 2006 tax year, extraordinary payments were paid for both state and federal taxes, and therefore, large refund checks were issued: in excess of \$90,000.00 by the IRS and in excess of \$20,000.00 by the South Carolina Department of Revenue. My sister intercepted both of these checks from Mr. Houser who picked up the mail, and they were never deposited into the Sumter Mortgage business account.

In addition, a note receivable from Solomon Till was sold, and this check also was intercepted by my sister and never deposited into the Sumter Mortgage account. These acts were done without my knowledge and approval. Both acts resulted in unintended distributions to my mother or my sister during the Estate administration, another breach of fiduciary duty. PCB

On January 21, 2008, I hand delivered a letter to Linda Garrett, expressing my concern and demanding that all funds collected on behalf of Sumter Mortgage be deposited into the Sumter Mortgage business account because said account fell under the administration of the estate.

My sister caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, and also to Mr. Houser during early January 2008 that I refused to sign because her son had never worked for Sumter Mortgage and Mr. Houser is her boyfriend.

When I filed the underlying action on February 5, 2008, I also sought removal of my sister as Co-Personal Representative. My similar motion in the probate court has been removed to this Court.

Then, on February 19, 2008, the same Mr. Weinberg who prepared my father's defective will and helped my mother and sister breach the agreements that were made necessary by his malpractice, wrote a unilateral letter to Linda Garrett instructing her to deposit incoming funds to my mother's account. I was unaware of this letter and was not copied with the letter, nor did my attorneys receive a copy of this letter even though the underlying action had been commenced.

Then on March 18, 2008, Mr. Weinberg sent a unilateral letter to Jessie McLeod instructing him to forward one-half (1/2) of a note receivable arising out of the sale of Cedar Hill Mobile Home Park to my mother. I again was unaware of this letter, was not copied with the letter, and my attorneys did not receive a copy of this letter. The note receivable from Jessie McLeod is owed jointly to me and to the Estate, and this note is not a Sumter Mortgage asset. It is Estate asset. ACB

On June 21, 2008, while reviewing the Sumter Mortgage May bank statement, I discovered that no income had been deposited into the general operating account for Sumter Mortgage for that month. Therefore, on June 25, 2008, I filed a County Incident Report with the sheriff's department reporting missing deposits from Sumter Mortgage Company in an undetermined amount of money.

I made an immediately inquiry to Linda Garrett, the in-house accounts receivable clerk, and she provided me with the income detail of Sumter Mortgage covering the period from February 20, 2008, up through June 20, 2008. I determined that

\$208,563.16 in revenue which should have been deposited to Sumter Mortgage Company has been deposited elsewhere.

The only Sumter Mortgage checks I have refused to sign were those to my sister's son, Mitch Harris, and her romantic interest, Dewey Houser.

Mr. Weinberg has continued to conspire with my sister and others to disrupt the orderly administration of this estate.

As the result of a settlement that I handled on behalf of the estate, a large sum of money is currently held at Nelson Mullins Riley and Scarborough which represented the estate. My attorney prepared an Escrow Agreement to place these funds on interest in a restricted account at NBSC, but it has been ignored, thus causing the estate interest.

Even though Wilson MacEwen has been my father's and his companies' certified public accountant for more than 20 years and handled everything until my sister and Mr. Weinberg unilaterally interfered, he has been taken out of the loop.

For example, on August 8, 2008, I spoke with Linda Garrett who told me that financial information for Sumter Mortgage that would normally be provided to account Wilson MacEwen covering the period of January 2008, up through June 30, 2008 was still at her office because my sister had not authorized her to release the Sumter Mortgage financial information, she did not know what to do with it, so she has done nothing.

On August 13, 2008, I spoke with Mr. MacEwen who confirmed that he had not received the Sumter Mortgage Company financial information that he needs to complete the normal and customary bookkeeping for Sumter Mortgage Company and also the 2007 estate income tax return that was due on July 15, 2008.

Because of my sister's refusal to release the financial information, Mr. MacEwen had to request an extension of time for the estate income tax return. Also, the Sumter County Probate Court's annual accounting for the period April 1, 2007, through March 31, 2008 is due but cannot be completed by Mr. MacEwen until he receives the above financial information.

Another example is that the estate has had difficulty collecting a monthly note receivable from Land and Mortgage of South Carolina, Inc. that is due to R. D. Belk d/b/a Sumter Mortgage Company. Debtor, who has gotten behind in the past, has been sending monthly payments directly to my office, and I would send them to Linda Garrett for deposit into the Sumter Mortgage account. I collected the February through June payments and entrusted Linda Garrett to deposit them to the Sumter Mortgage account, but she did not do so. I have now collected the July and August 2008 payments totaling \$28,784.12 and based upon his lack of faith in Linda Garrett, I have deposited funds directly into the Sumter Mortgage operating account.

Based on the unilateral acts of my sister who now has an absolute conflict of interest serving as trustee of the trust Mr. Weinberg prepared for my mother and as co-personal representative of the estate. The financial integrity of the estate and Sumter Mortgage have been seriously jeopardized based on these actions.

Another example: under my father's Will, the personal representatives were required to fund two (2) separate trusts, a Trust B and a Trust C before any significant distributions to my mother. Despite this, according to spreadsheet prepared by Mr. MacEwen, my mother has received gross distributions of \$1,138,829.00 between from April 5, 2004 and June 20, 2008.

Based upon the diversion of Estate/Sumter Mortgage income, and prior distributions to Ida Belk, the ability of the personal representatives to fund Trust B and Trust C are being severely jeopardized.

Importantly, my mother has waived her interest in Trust B, making the beneficiaries of Trust B her five (5) children who are to divide approximately \$1,400,000.00 in equal shares with a distribution of approximately \$280,000.00 to each.

Since filing of this action on February 5, 2008; Houser, Lyles, and Mitch Harris (my sister's sons and boyfriend) all occupy space at my father's former office at 3061 Broad Street in a double wide modular home.

After my father's death and during the administration of the Estate since May 7, 2004, I have been given office space at the above address. In order to carry out my duties and the administration of the Estate, I need to have frequent contact with the accounts receivable clerk and the other employees of Sumter Mortgage and the peaceful possession of an office to do so. Under the current estranged circumstances, I cannot carry out my duties with these individuals occupying the same office as myself.

Based on the foregoing, I seek an the following injunctions which, if not granted, will cause irreparable damage to the estate and its assets: Removal of my sister as co-personal representative; requiring all books and records of all entities be turned over to Wilson MacEwen, CPA, immediately; An Order restraining my sister and Mr. Weinberg from continuing to interfere with the administration of the estate; requiring an audit and accounting; requiring that all funds be deposited into the appropriate estate accounts; An Order removing Mitch Harris, Lyles, and Houser from the estate office.

I make these statements based upon personal knowledge unless otherwise stated. I also rely upon the facts set forth in my Amended Verified Complaint dated April 4, 2008 which, to my knowledge, has not been answered by any Defendant.

Gene C. Belk

Gene C. Belk

SWORN to and subscribed before me

This 26th day of August, 2008.

David B. Jackson
Notary Public for South Carolina

My Commission Expires: 5/27/14

ADDENDUM TO AFFIDAVIT

Plaintiff submits that the following acts also need to be enjoined:

1. Dewey Houser should be enjoined from acting as an "agent," "owner" or in any other capacity for Sumter Mortgage Company. The attached exhibit provides evidence that Mr. Houser is continuing to act as an agent for Sumter Mortgage Company in sales of both mobile homes and real estate.

2. The following entities are operating on properties owned by the Estate of Robert D. Belk without paying rent to the Estate. These entities, as described below, should be enjoined from operating on the property:

- a. Carolina Pre-Owned Car and Trucks
- b. Hospitality Housing
- c. Carolina Pressure Washing

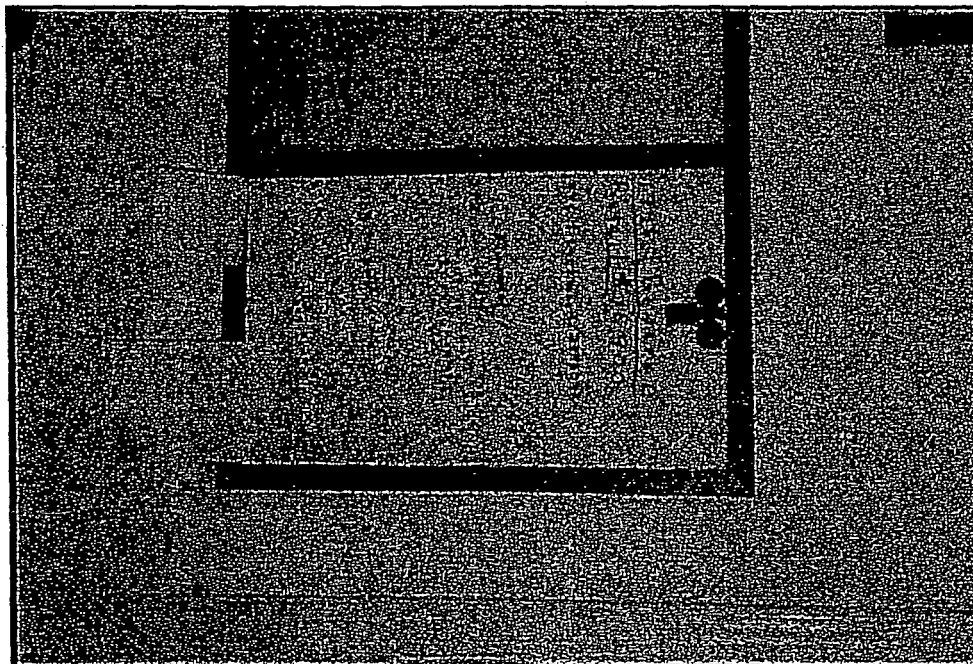
3. Please see the attached exhibit.

Hospitality Housing

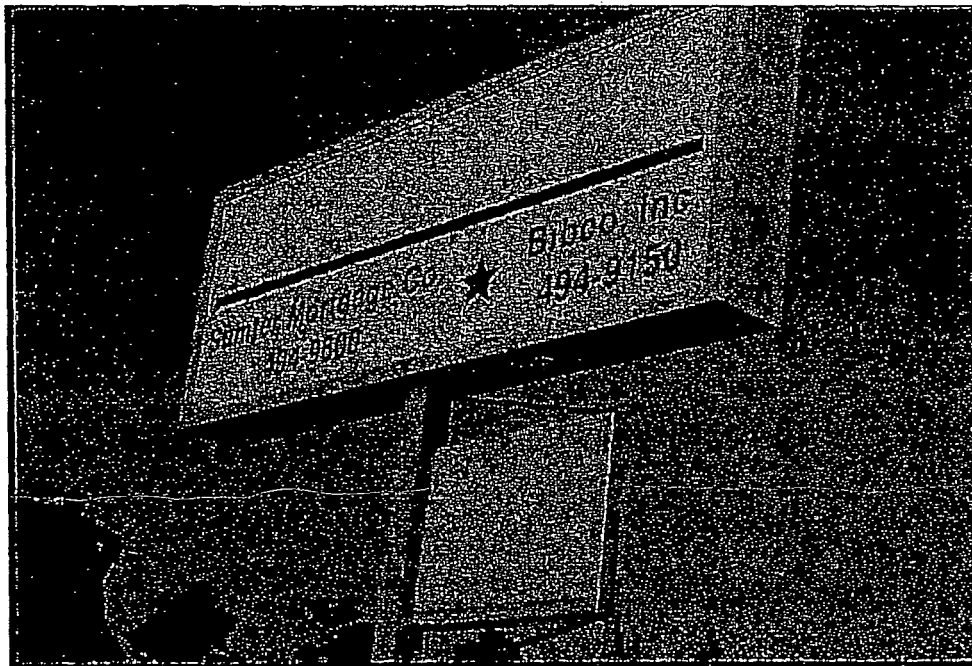
USED HOME SUPERSTORE
"SAVE THOUSANDS"

803-469-4220

PROP FOR SALE BY OWNER
SEE DEWEY HOUSER
4949600
9834826









STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K. Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.
Dewey M. Houser, Carolina Pre-Owned, LLC, &
Michael D. "Mickey" Lyles, Jr. and M. M.
Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

Stakeholders

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) CIVIL ACTION NO.: 2008-CP-43-00347

AFFIDAVIT OF
WILSON MACEWEN

PERSONALLY APPEARED BEFFORE ME Wilson M. MacEwen, who, being
duly sworn, says:

I am the principal of Wilson MacEwen and Company, a certified public
accounting firm in Sumter, South Carolina. I have been a practicing certified public
accountant for more than 30 years.

For many, many years during the life of Robert D. Belk, I served as his certified
public accountant and, in that capacity, handled the bookkeeping and the tax
preparation for Mr. Belk for his personal returns that included his unincorporated
company, Sumter Mortgage, and other entities along with Bibco, Inc.

After Mr. Belk's death, on April 5, 2004, I continued to exclusively provide these same services to Sumter Mortgage Company on behalf of the Estate of R. D. Belk; to Mr. Belk's Estate, including the Estate tax return and annual estate income tax returns; and to Bibco, Inc..

Sumter Mortgage has a tax reporting period based on a calendar year from January 1st through December 31st; Mr. Belk's Estate has a reporting period from April 1st of each year through March 31st of the following year; and Bibco, Inc. reports on a fiscal year basis from July 1st each year through June 30th of the following year.

In dealing with the above businesses and estate over the years, it has been the normal and customary practice for my office to receive complete accounting records for Bibco, Sumter Mortgage, and the Estate of R. D. Belk in a timely fashion from Linda Garrett, Mr. Belk's office assistant who handled the accounts receivable for him and his various entities, and still does so.

I have received none of the information regarding any of these entities from Linda Garrett since December 2007. As of today's date, I have not received the financial information to allow me to complete Sumter Mortgage's bookkeeping, and since the Estate income tax return must include Sumter Mortgage gross income and expense information through March 30, 2008, I have been required to file for an extension of the income tax return of the Estate of R. D. Belk that was due on July 15, 2008.

Without these records, I will not be able to file estate income tax returns which would result in penalties and interest. Sumter Mortgage gross income reported on the last estate income tax return I prepared was \$256,435. The last Bibco, Inc. return I

prepared reflects gross income of \$209,305. This does not include principal collections on sales contracts.

In order to bring the Sumter Mortgage Company bookkeeping current, I must be provided with Sumter Mortgage income and expense records for the period from January 2008 through June 30, 2008, and each month thereafter as it is essential that I be able to file timely and accurate returns and assist in the filing of estate accounting and inventories in the probate court.

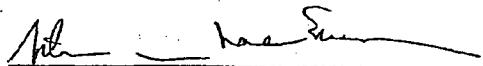
Until June 2007, I also handled Bibco in a similar manner for quite some time when, for reasons unknown to me, Linda Harris directed that my office cease doing the Bibco books and tax returns. In June of 2007, Bibco's only employees were Gene Belk and Linda Harris, both children of Mr. Belk, who were acting as managers of that entity. Since Bibco is a personal holding company that collects on installment sales contracts and accounts receivables, unless bonuses or dividends were paid by June 30, 2008, an accumulated earnings tax would be imposed on Bibco's undistributed personal holding company income. I have been told that a dividend was paid to Mrs. Ida Belk on or before June 30, 2008.

I attended a meeting in my office on June 28, 2008 among Roger Long, the CPA hired by Linda Harris, and lawyers for some of the parties to this action. I have been told that Mrs. Ida Belk created a trust and has transferred her interest in Bibco into that trust. There could be substantial income tax consequences to Mrs. Belk and the estate if assets of Sumter Mortgage were transferred to her trust.

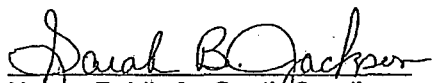
I prepared a spreadsheet from the Sumter Mortgage financial information that has been provided to me which shows that from April 5, 2004 through June 30, 2008,

Ida Mae Belk has received gross distributions from Sumter Mortgage of \$1,138,829.00
(Attached).

Under the terms of Mr. Belk's Will, the personal representatives of his estate are directed and mandated to fund two separate trusts, a Trust B and a Trust C. I am not aware of the status of the funding of these trusts because I do not have the records.


Wilson M. MacEwen

SWORN to and subscribed before me
This 26th day of August, 2008.


Notary Public for South Carolina
My Commission Expires: 5/27/14

SUMTER MORTGAGE COMPANY
 DRAWS
 IDA MAE BELK
 4/5/04 - 6/30/08

	2004	2005	2006	2007	2008	Totals:
MONTHLY BANK DRAFT	9,500	18,000	18,000	23,000	9,000	77,500
TRANSFER - FAMILY GIFTS	220,000	143,000				363,000
AUTO EXPENSES				9,442	288	9,730
HOUSE EXPENSES				3,594	270	3,864
CPA				6,000		6,000
FEDERAL TAX PAYMENTS		160,558 (A)	95,494	101,840	76,380	434,272
CONTRIBUTIONS		3,455	3,020	3,235	1,560	11,270
SC TAX PAYMENTS		38,772 (B)	20,976	21,160	15,360	96,268
SAMBINO'S - ERVIN			123,596			123,596
COLDWELL BANKER - E MONEY OPTION STAMEY LIVESTOCK ROAD (PURCHASED BY BIBCO)			5,000			5,000
Car for R.M.B.			8,329			8,329
	<u>229,500</u>	<u>363,785</u>	<u>274,415</u>	<u>168,271</u>	<u>102,858</u>	<u>1,138,829</u>

(A) Includes \$85,468 Federal Tax on Joint 2004 Individual Return.

(B) S.C. Tax on Joint 2004 Individual Return.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SUMTER

DALE ATKINSON
PROBATE COURT JUDGE

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

2008 SEP 16 AM 10: 29

CASE NUMBER: 2004-ES-43-225

SUMTER COUNTY, S.C.


PETITION FOR REMOVAL OF CO-PERSONAL REPRESENTATIVES

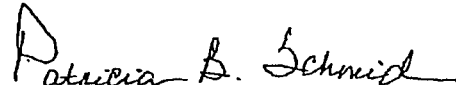
Petitioners: Patricia B. Schmid and Robert M. Belk

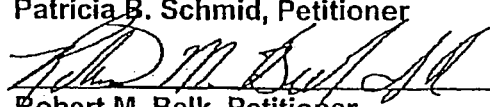
1. Nature of interest of undersigned: Beneficiaries of the Estate of Robert D. Belk, as named in the Last Will and Testament of Robert D. Belk.
2. We request an Order for the removal of Gene C. Belk and Linda B. Harris, Co- Personal Representatives in this estate because:
 - A. The Co-Personal Representatives have failed to provide an accounting of the assets of the Estate since March, 31, 2007, despite having been requested to do so.
 - B. The Co-Personal Representatives have entered into voidable transactions pursuant to S.C. Code Ann. §62-3-713.
 - C. The Co-Personal Representatives are squandering estate assets on unnecessary litigation.
 - D. The Co-Personal Representatives have failed to distribute assets of the Estate to the beneficiaries, despite the elapse of over four (4) years since the death of the decedent.
 - E. The Co-Personal representatives have disregarded their obligations as fiduciaries through the above-stated acts of omission and commission.

Executed this 15 day of September, 2008

SWORN TO BEFORE ME THIS 15
day of September, 2008


Notary Public for South Carolina
My Commission Expires: 10/19/08



Patricia B. Schmid, Petitioner


Robert M. Belk, Petitioner

ORDER FOR HEARING

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

DATE:

TIME:

PLACE:

Pursuant to SCPC Section 3-611, the petitioner is ordered to give notice of this hearing by copy of this petition and order to the Personal Representative, the attorney of record and _____ as follows:

Probate Court Judge

Upon receipt of this notice, the Personal Representative shall not act except to correct maladministration, or to preserve the estate without this Court's approval.

OTHER RESTRICTIONS:

ORDER TO DISMISS PETITION

Upon hearing, IT IS HEREBY ORDERED that the petition for this removal of _____ as Personal Representative in the above estate be dismissed as follows:

Probate Judge

ORDER OF REMOVAL

Upon hearing, IT IS HEREBY ORDERED that _____, the Personal Representative in the above estate, be removed from that appointment as follows:

Probate Judge

Such assets remaining in his/her name or under his/her control shall be distributed as follows:

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

CASE NUMBER: 2004-ES-43-225

DALE ATKINSON
PROBATE COURT JUDGE

2008 SEP 16 AM 10:30

SUMTER COUNTY, S.C.

PROBATE COURT

MOTION FOR REMOVAL FROM PROBATE COURT TO CIRCUIT COURT

YOU WILL PLEASE TAKE NOTICE that the Petitioner, Patricia B. Schmid, moves for an order of the Sumter County Probate Court removing the following to the Court of Commons Pleas for the Third Judicial Circuit:

1. Petition for Removal of Co-Personal Representatives;
2. Petition for Review of Compensation;
3. Petition for Appointment of Patricia B. Schmid as Personal Representative;
4. All pleadings filed in response thereto.

This motion is made pursuant to S. C. Code Ann. Section 62-1-302 (d) as well as any other law as may be supported by the pleadings, filings, and such other evidence or argument as the court may allow, and any memorandum filed in support of this motion.

JOHNSON, MCKENZIE & ROBINSON, LLC

By: 

William H. Johnson
2 North Brooks Street
Manning, SC 29102
Phone: 803-435-0909

Date: September 15, 2008

DALE ATKINSON
PROBATE COURT JUDGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE PROBATE COURT

2008 SEP 29 PM 3:13

SUMTER COUNTY, S.C.

IN THE MATTER OF THE ESTATE OF ROBERT K. BELK

CASE NUMBER: 2004-ES-43-225

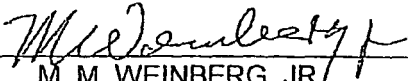
MOTION FOR REMOVAL FROM PROBATE COURT TO CIRCUIT COURT

YOU WILL PLEASE TAKE NOTICE that the Petitioner, Ida Mae K. Belk, moves for an order of the Sumter County Probate Court removing the following to the Court of Commons Pleas for the Third Judicial Circuit:

1. Petition for Removal of Co-Personal Representatives;
2. Petition for Review of Compensation;
3. Petition for Appointment of Linda B. Harris as Personal Representative;
4. All pleadings filed in response thereto.

This motion is made pursuant to S.C. Code Ann. §62-1-302(d) as well as any other law as may be supported by the pleadings, filings, and such other evidence or argument as the court may allow, and any memorandum filed in support of this motion.

WEINBERG & BROWN, L.L.P.

BY: 
M. M. WEINBERG, JR.

109 North Main Street
Post Office Drawer 1289
Sumter, South Carolina 29151-1289
(803) 775-1274

Attorney for Attorneys for Defendants, Linda Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust, Bibco, Inc., and Ida Mae K. Belk

Sumter, South Carolina
September 29, 2008.

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)

RECORDED
 IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO: 2008-CP-43-00347

Gene C. Belk, Individually and as
 Co-Personal Representative of the
 Estate of Robert D. Belk,

JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

Plaintiff,

vs.

Linda B. Harris, Individually and as
 Trustee of the Ida Mae K. Belk
 Irrevocable Trust dated 9/17/07
 and in all alleged fiduciary
 capacities, Bibco, Inc., Dewey
 Houser, Carolina Preowned, LLP
 and Michael D. "Mickey" Lyles, Jr.,

Defendants,

And Cheryl Ann Hanlon, Patricia B.
 Schmidt, Robert M. Belk, and Ida
 Belk,

Stakeholders.

MOTION AND ORDER INFORMATION
 FORM AND COVER SHEET

Plaintiff's Attorney: M.M. Weinberg, Jr.
 Address: P.O. Box 1289
 Sumter, SC 29151
 phone: (803) 775-1274 fax: (803) 775-0399
 email: other:

Defendant's Attorney: Jan L. Warner
 Address: Post Office Box 2628
 Columbia, SC 29202
 phone: (803) 773-8676 fax: (803) 775-3461
 email: other:

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: To Relieve Co-Personal Rep.
 Estimated Time Needed: 1 1/2 hrs.

Court Reporter Needed: YES/ NO

SECTION II: Motion/Order Type

- Written motion amended
- Form Motion/Order

I hereby move for relief for action by the court as set forth in the attached proposed order.

M. J. [Signature]
Signature of Attorney for Plaintiff/ Defendant

2/27/08
Date Submitted

SECTION III: Motion/Order Type

- PAID-AMOUNT: \$ _____
- 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

Date Filed: _____

Collected by: _____

- MOTION FEE COLLECTED _____
- CONTESTED-AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

Gene C. Belk, Individually and as
Co-Personal Representative of the
Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07
and in all alleged fiduciary
capacities, Bibco, Inc., Dewey
Houser, Carolina Preowned, LLP
and Michael D. "Mickey" Lyles, Jr.,)

Defendants,)

And Cheryl Ann Hanlon, Patricia B.
Schmidt, Robert M. Belk, and Ida
Belk,)

Stakeholders.)

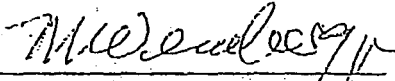
RECORDED
IN THE COURT OF COMMON PLEAS
2008 FEBRUARY 29 AM 10:01
JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

NOTICE OF MOTION AND MOTION

TO: JAN L. WARNER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Linda Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust and Ida Mae K. Belk, the equitable owner of all of the assets of said Trust, will move before the Probate Judge for Sumter County for an Order relieving Gene C. Belk as Co-Personal Representative of the Estate. Said Motion will be based upon acts of maleficence and misconduct on the part of Mr. Belk during his tenure as Co-Personal Representative, all of which acted toward the detriment of the Estate.

WEINBERG & BROWN, L.L.P.

BY: 

M. M. WEINBERG, JR.
109 North Main Street
Post Office Drawer 1289
Sumter, South Carolina 29151-1289
(803) 775-1274

Attorney for Attorneys for Defendants, Linda Harris as
Trustee of the Ida Mae K. Belk Irrevocable Trust,
Bibco, Inc., and Ida Mae K. Belk

Sumter, South Carolina
February 28, 2008.

RECORDED

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER)

CIVIL ACTION NO: 2008-CP-43-00347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the
Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

Defendants,)

And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders.)

CERTIFICATE OF SERVICE

I, Deborah A. Meeks, an employee of WEINBERG & BROWN, L.L.P. attorneys for the Defendants, Linda Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust, Bibco, Inc., and Ida Mae K. Belk, do hereby certify that I have on or about the February 29, 2008, served written MOTION AND ORDER INFORMATION FORM AND COVER SHEET AND NOTICE OF MOTION AND MOTION on behalf of the above referenced Defendants, by depositing same, postage prepaid, addressed as indicated below:

Mr. Jan L. Warner
Warner, Payne & Black, LLP
Post Office Box 2628
Columbia, SC 29202

Deborah A Meeks
Deborah A. Meeks

Sumter, South Carolina.

STATE OF SOUTH CAROLINA
COUNT OF SUMTER

RECORDED
2008 NOV 10 10:21:38
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
ACTION NO.: 2008-CP-43-0347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco Inc
Dewey M. Houser, Carolina Pre-Owned, LLC &
Michael D. "Micky" Lyles, Jr. and M. M.
Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmid,
Robert M. Belk, and Ida Mae Belk

Stakeholders

NOTICE OF MOTION AND
MOTION TO RECONSIDER,
VACATE, SET ASIDE, ALTER,
AND/OR AMEND OR CLARIFY
ORDER DATED OCTOBER 25
2008 NOTICE OF FILING OF
WHICH WAS RECEIVED BY
COUNSEL FOR PLAINTIFF ON
OCTOBER 31, 2008 AND FOR
RELIEF PURSUANT TO RULE
60(b), SCRCivP

TO: THE HONORABLE JAMES R. BARBER, III, PRESIDING JUDGE, COURT OF
COMMON PLEAS, THIRD JUDICIAL CIRCUIT; S. JAHUE MOORE, ATTORNEY FOR
LINDA B. HARRIS, INDIVIDUALLY, BIBCO INC.; DEWEY M. HOUSER, CAROLINA
PREOWNED, LLC, AND MICHAEL D. LYLES JR.; D.J. TYLER; M.M. WEINBERG,
JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN HER CAPACITIES AS CO-
PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT D. BELK AND
TRUSTEE OF THE IDA MAE BELK IRREVOCABLE TRUST; POPE D. JOHNSON,
ATTORNEY FOR M. M. WEINBERG, JR.; AND WILLIAM JOHNSON ATTORNEY
FOR PATRICIA B. SCHMIT;

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned
counsel, will move before the Honorable James R. Barber, III, Presiding Judge, Court of
Common Pleas for the Third Judicial Circuit, Sumter County Courthouse, 141 North Main Street,
Sumter, South Carolina, on the tenth (10th) day after service hereof at 10:00 A.M., or at such
time and place as the Court may deem appropriate, pursuant to the provisions of Rules 52, 59,
and 60, *South Carolina Rules of Civil Procedure*, for an Order setting aside, vacating, altering,
amending, clarifying, or reconsidering Order dated October 25, 2008 (copy attached as Exhibit 1),
notice of filing of which was received by counsel for Plaintiff on October 31, 2008, and for relief



from judgment due to surprise pursuant to Rule 60(b) SCRCivP, upon the following particulars and grounds:

SUMMARY OF GROUNDS

A. Plaintiff was not given notice that Defendant Weinberg's Motion to Dismiss would be converted to a Motion for Summary Judgment until the date of the hearing or that said motion would be heard before Plaintiff's previously filed motions to disqualify Weinberg and to compel his compliance with a properly issued Rule 45 subpoena, neither of which motions were heard or considered by the Court.

B. The Court heard and determined Defendant Weinberg's Motion to Dismiss prior to hearing and ruling on Plaintiff's prior motions and prior to hearing the testimony of Plaintiff and his expert witness, Dessa Ballard.

C. Contrary to said order, Plaintiff did not have the opportunity to submit an affidavit or to complete discovery, and the Court did not consider the affidavits filed by the Plaintiff with regard to his prior motions to disqualify and to compel discovery or attached to his motion for temporary injunction that brought the matters before the Court.

D. The Court did not determine that Weinberg owed a fiduciary duty to Plaintiff as Personal Representative of the estate when, in fact, he did, and the Court failed to address this issue.

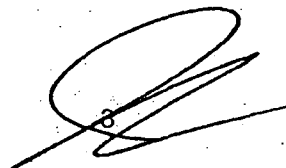
E. The Court determined that Defendant Weinberg owed no duty to Plaintiff individually when the allegations of the Amended Complaint alleged that Defendant Weinberg interfered with the family settlement agreement and the memorandum regarding future transactions which effected Plaintiff individually as a beneficiary of the estate, all as also set forth in the affidavit of Dssa Ballard that was not considered by the Court.

F. At a minimum, Plaintiff should have been allowed to re-plead his Amended Complaint, not have the same dismissed by way of Summary Judgment under these circumstances.



FURTHER GROUNDS

1. A hearing was held before the Honorable James R. Barber, III, on October 2, 2008.
2. As a result of that hearing, the Judge Barber issued an Order granting Summary Judgment and dismissing M.M. Weinberg, Jr. as a Defendant pursuant to Rule 56, *South Carolina Rules of Civil Procedure*, by order dated October 25, 2008, a copy of which was received by counsel for Plaintiff on October 31, 2008. **(Exhibit 1)**
3. The purpose of the October 2, 2008 hearing is set forth in Judge Barber's Order for Expedited Hearing dated September 8, 2008 **(Exhibit 2-Judge Barber's Order)**, namely a hearing on Plaintiff's Motion for Expedited Hearing on his Motion for Injunction and Restraining Order dated August 26, 2008 pursuant to Rule 65, *South Carolina Rules of Civil Procedure*. **(Exhibit 3-Motion for Injunction and Order of Supreme Court)**. The date of the hearing was changed to October 2, 2008 based upon conflicts of some counsel.
4. On September 11, 2008, counsel for Plaintiff was served with Defendant Weinberg's Notice of Motion and Motion to Dismiss pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*. **(Exhibit 4 - Weinberg's Motion to Dismiss)**.
5. Attached to that Motion were affidavits of M.M. Weinberg, Jr., Linda B. Harris, and Ida Mae Belk, all parties to this action.
6. On February 29, 2008, Plaintiff filed and served upon Weinberg a production subpoena and notice of deposition. **(Exhibit 5)** On March 18, 2008, Weinberg sought a protective order **(Exhibit 6)**. Based upon his refusal to comply with discovery, Plaintiff served a motion to compel on March 21, 2008. **(Exhibit 7)**
7. Pursuant to Rule 12, *South Carolina Rules of Civil Procedure*, a Motion to Dismiss for failure to assert facts sufficient to state a cause of action "**shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be**



given reasonable opportunity to present all material made pertinent to such Motion by Rule 56."

8. Contrary to Rule 56, counsel for Plaintiff was never given reasonable notice that the hearing conducted on October 2, 2008 would be converted from a Motion to Dismiss to a Motion for Summary Judgment or that this motion would be heard prior to Plaintiff's previously filed motion or the testimony given by the Plaintiff and Desa Ballard, Plaintiff's expert witness.

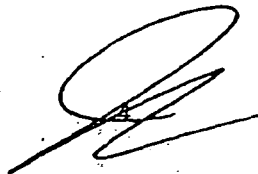
9. Plaintiff was not given notice that Weinberg's 12(b)(6) Motion to Dismiss would be converted to a Motion for Summary Judgment until such was announced for the first time at the hearing on October 2, 2008.

10. The deposition and discovery sought by Plaintiff from M. M. Weinberg, Jr. is relevant to these proceedings, yet M.M. Weinberg, Jr. has been allowed to stonewall discovery and refuse to provide discovery responses in response to Plaintiff's Rule 45 subpoena to appear for deposition.

11. Based upon the forgoing alone, the trial court erred in granting Summary Judgment in favor of Defendant Weinberg without first allowing Plaintiff an opportunity to engage in discovery pursuant to his motion to compel, before testimony was provided, and without giving reasonable notice.

12. The Court heard Defendant Weinberg's Motion to Dismiss out of order, and converted the same to a Motion for Summary Judgment without considering the facts that Defendant Weinberg had stonewalled discovery, had deprived Plaintiff of the ability to secure discovery, and that Plaintiff did not have a reasonable opportunity to present opposing affidavits. The Court also failed to consider affidavits before the Court that created a genuine issue of material fact.

13. By stonewalling discovery and not giving Plaintiff reasonable notice that the Motion to Dismiss would be converted at the hearing to a Motion for Summary Judgment,

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Plaintiff has been denied the reasonable opportunity to engage in full discovery and has been prejudiced.

14. The trial court erred in dismissing Defendant Weinberg because it did not consider the entire record, including affidavits of Plaintiff and of Ms. Ballard that were previously filed with the court, but not reviewed by the Court, and are incorporated herein by reference, including:

a. Affidavit of Gene Belk dated August 26, 2008 in support of injunctive relief; **(Exhibit 8)**

b. Affidavit of Desa Ballard dated April 7, 2008 attached to Plaintiff's Memorandum Regarding Motions to be Heard April 7, 2008; **(Exhibit 9)**

c. Affidavit of Gene Belk dated March 21, 2008 in support of motion to disqualify; **(Exhibit 10)** and

d. Affidavit of Gene Belk dated March 21, 2008 in support of motion to compel. **(Exhibit 11)**

15. Had Plaintiff been given reasonable notice, he would have filed his Responses to Interrogatories and Request for Production on MM Weinberg, Jr. dated September 10, 2008 which were filed with this Court on November 6, 2008, **(Exhibit 12)** wherein counsel for Plaintiff asserts that he cannot adequately respond to Weinberg's discovery until Weinberg complies with the Rule 45 production and deposition subpoena.

16. The Court did not consider the verification of Gene C. Belk as to the allegations and facts set forth in the Amended Summons and Complaint which should have been considered by the Court as being a sworn statement of fact.

17. The Court erred by converting Weinberg's Motion to Dismiss into a Motion for Summary Judgment prior to hearing the testimony of Plaintiff and Ms. Ballard which was presented at the hearing on October 2, 2008 in support of Plaintiff's motion to disqualify wherein

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both testified as to Weinberg's duties that were owed to Gene C. Belk, individually and as Co-Personal Representative of the Estate of Robert D. Belk.

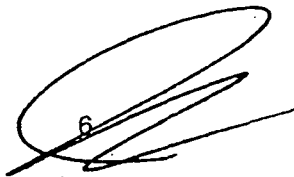
18. The lower court erred by first proceeding with Weinberg's Motion to Dismiss which was served after Plaintiff's Notice of Motion and Motion to Disqualify M.M. Weinberg, Jr. after Plaintiff's Motion to Compel M.M. Weinberg, Jr. to comply with Plaintiff's Rule 45 subpoena for records and deposition, and after Plaintiff's application for injunction. **(Exhibit 7 - Plaintiff's Motion to Compel)**

19. Had the Trial Court heard the matters as set forth in the Order of Judge Barber dated September 8, 2008 as to Plaintiff's Injunction request and Plaintiff's Motions in date order, Plaintiff would had have reasonable opportunity to engage in discovery directly related to M.M. Weinberg, Jr.'s involvement in the facts, circumstances, and allegations set forth in his Amended Complaint. Therefore, the granting of summary judgment was improper due to a failure to afford Plaintiff a reasonable opportunity to engage in discovery, and Plaintiff should have been allowed to amend his pleadings.

20. Had Plaintiff been allowed to proceed with Weinberg's deposition and to receive the records sought in the Rule 45 subpoena, Plaintiff would have been able to ascertain facts relevant to the Motion to Dismiss that was converted to Motion for Summary Judgment at the time of the hearing.

21. The trial court erred in granting Summary Judgment as to M.M. Weinberg, Jr. and should modify, alter, vacate or amend the Order pursuant to Rule 59, SCRCivP, or in the alternative, modify or set aside the order granting summary judgment pursuant to Rule 60, SCRCivP, based upon the surprise, inadvertence, or excusable neglect as set forth above and below.

22. By omission, the trial Court did not find that Defendant Weinberg did not owe a duty to Plaintiff as co-personal representative of the estate.

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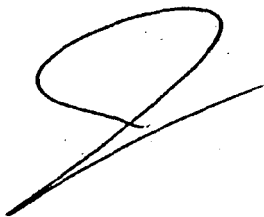
23. Plaintiff sued Defendant Weinberg individually and as Co-Personal Representative of the Estate of R. D. Belk. The Order dated October 25, 2008 finds that Weinberg did not owe a duty to Plaintiff individually which is inaccurate.

24. The court failed to apprehend that Mr. Weinberg had an attorney-client relationship with the decedent R.D. Belk which extends past his death and thereby to the Estate of R.D. Belk. Further, there was an express-implied attorney-client relationship between Gene C. Belk, individually and Mr. Weinberg and his law firm and that Mr. Weinberg and his law firm, owed not only a duty to Gene C. Belk, individually, but also to him as co-personal representative of the Estate of R. D. Belk and the Estate of R. D. Belk.

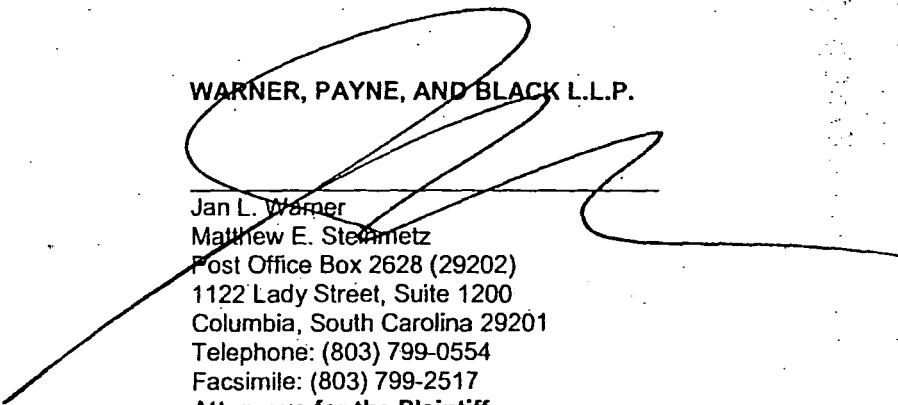
25. The lower court erred in failing to consider or misapprehending the duty owed by Weinberg to the Estate of Robert D. Belk on behalf of whom damages are claimed by and through Gene C. Belk in his capacity of Co-Personal Representative of the Estate as set forth clearly in the Amended Complaint.

26. At a minimum, the Court should have allowed Plaintiff to re-plead his Amended Complaint, and failing to do so constitutes reversible error.

Plaintiff incorporates herein by reference the affidavit of Jan L. Warner dated November 10, 2008 (Exhibit 13), the affidavit of Gene Belk dated November 10, 2008 (Exhibit 14) filed herewith, all arguments as set forth in all pleadings previously filed with this Court, together with all affidavits previously filed and all testimony presented to this Court, together with such other memoranda which may be submitted to the Court at a hearing on this matter.

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WARNER, PAYNE, AND BLACK L.L.P.



Jan L. Warner
Matthew E. Stearnetz
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
November 10, 2008

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Civil Action No. 08-CP-43-0347

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

ORDER

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

W. P. & B. LLP
ATTORNEYS AT LAW
OF SC, PA

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RECEIVED

This action came before the Court on October 2, 2008 for a hearing on a motion of Defendant M. M. Weinberg, Jr. ("Weinberg") to dismiss the complaint against him. The motion was made pursuant to Rule 12(b)(6), SCRPC, and was supported by the affidavits of Weinberg and Defendant Linda B. Harris, as Personal Representative and Trustee, and Ida Mae Belk. The plaintiff submitted his affidavit in opposition to the motion. These affidavits were not excluded by the Court. Pursuant to Rule 12(b), SCRPC, the motion was treated as a motion for summary judgment.

Upon considering the arguments of counsel, the affidavits before the Court, and the

memorandums submitted by the plaintiff and Weinberg, I find that Weinberg is entitled to judgment in his favor as a matter of law for the reasons set forth below.

The plaintiffs and Defendant Harris are brother and sister and are Co-Personal Representatives of their father's estate. The dispute here arises out of matters related to the estate. Weinberg, who represented the deceased Robert D. Belk for many years prior to this death, has represented his widow, Ida Mae Belk, his daughter, Linda B. Harris in her capacity as Trustee of the Ida Mae Belk Irrevocable Trust dated September 17, 2007 and as Co-Personal Representative of the Estate of Robert D. Belk and Bibco, Inc., a corporation owned by the widow.

Weinberg was joined as a party to this action by the Amended Complaint.¹ The Amended Complaint asserts four causes of action against Weinberg. The causes of action against Weinberg are to set aside influenced transactions, civil conspiracy, tortious interference with a contract, and breach of contract accompanied by a fraudulent act.

Weinberg asserts that he is not a party to any contract referenced in the complaint and that he cannot be sued to set aside agreements to which he is not a party. Weinberg asserts that he is immune from suit for civil conspiracy and tortious interference with a contract since he was at all times acting as attorney for his clients, within the scope of his representation of his clients. Further, Weinberg maintains that he does not owe any independent duty to plaintiff and that he has not breached any duty owed to the plaintiff. Finally, Weinberg maintains that he is not a party to any contract with the plaintiff and therefore cannot be liable for breach of contract accompanied by a fraudulent act.

¹Weinberg, pointing to a pending motion to disqualify him as an attorney in this action, maintains that his joinder to the action was an effort to prevent him from representing his clients in the action.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg is a party to any agreement sought to be set aside as having been subject to undue influence. I find that Weinberg cannot be sued to set aside an agreement to which he is not a party.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg has breached some independent duty to the plaintiff or that Weinberg acted in his own personal interest, outside the scope of his representation of his clients.

"Generally, 'an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.' *Gaar v. North Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). In *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995), this Court held 'an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.'" *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006).

The affidavits of Weinberg, Defendant Harris, and Ida Mae Belk establish that Weinberg acted only in the capacity as an attorney for his clients, pursuant to their instructions and directions. Although plaintiff's counsel asserted that Weinberg had acted in his own personal interest because he had received attorney's fees, this argument fails. If mere receipt of attorney fees were sufficient to cause a lawyer to lose his immunity, the lawyer would never have immunity unless the services were rendered without a fee being charged. For the loss of immunity to occur, there must be evidence that the lawyer breached an independent duty owed to a third party or that the lawyer has acted in his own personal interest, outside the scope of his representation of his client. Here, I find that Weinberg owed no duty to the plaintiff. There is no evidence that Weinberg has acted in his own personal interest, outside the scope of his representation of his clients. Weinberg

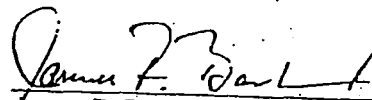
is therefore entitled to summary judgment as to the causes of action for civil conspiracy and tortious interference with a contract.

The Amended Complaint does not allege and the plaintiff's affidavit does not assert that Weinberg was a party to a contract with the plaintiff. In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish that there is a contract with the adverse party. The plaintiff must then establish three elements: (1) breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) fraudulent act accompanying the breach. *Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). Since there is no contract between the plaintiff and Weinberg, Weinberg is entitled to summary judgment as to the cause of action for breach of contract accompanied by a fraudulent act.

ACCORDINGLY,

IT IS ORDERED that judgment be and hereby is entered in favor of Defendant M. M. Weinberg, Jr. with respect to the plaintiff's Amended Complaint against him in the above-referenced action.

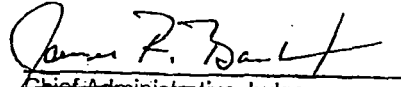
AND IT IS SO ORDERED.


James R. Barber, III
Circuit Court Judge

Columbia, South Carolina

October 25, 2008

AND IT IS SO ORDERED


Chief Administrative Judge
Court of Common Pleas
5th Judicial Circuit

At Chambers

Columbia, South Carolina
8th day of September 2008

STATE OF SOUTH CAROLINA)
COUNT OF SUMTER)

RECORDED

2008 SEP -9 AM 11:34

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CIVIL ACTION NO.: 2008-CP-43-0347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco Inc
Dewey M. Houser, Carolina Pre-Owned, LLC &
Michael D. "Mickey" Lyles, Jr. and M. M.
Weinberg, Jr.

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

Stakeholders

NOTICE OF MOTION AND
MOTION FOR AN EXPEDITED
HEARING ON MOTION FOR
INJUNCTION AND RESTRAINING
ORDER

TO: S. JAHUE MOORE, JOHN E. MILES, SR., ATTORNEY FOR LINDA B. HARRIS, INDIVIDUALLY, BIBCO INC., DEWEY M. HOUSER, CAROLINA PREOWNED, LLC, AND MICHAEL D. LYLES JR.; AND TO M.M. WEINBERG, JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN HER CAPACITIES AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ROBERT D. BELK AND TRUSTEE OF THE IDA MAE BELK IRREVOCABLE TRUST; POPE D. JOHNSON, ATTORNEY FOR M. M. WEINBERG, JR.

Plaintiff, Co-Personal Representative of Estate of Robert D. Belk hereby moves for an Order setting an expedited hearing on shortened notice to hear and consider Plaintiff's motion for an injunction and temporary restraining order pursuant to Rule 65, SCRCivP.

This motion is brought because hundreds of thousands of dollars have been diverted from the Estate of Robert D. Belk by Defendant Harris and Defendant Weinberg to Defendant Bibco and to Stakeholder Ida Belk and irreparable damage is being done to the estate.



1. Robert D. Belk died on April 5, 2004 and this Estate is being probated in the Probate Court for Sumter.

2. On May 7, 2004, Plaintiff and Defendant Harris probated their father's Will and were appointed as Co-Personal Representatives by the Probate Court for Sumter County

3. On the same day, Plaintiff and Defendant Harris opened an estate account and took over the existing Sumter Mortgage accounts at the National Bank of South Carolina that are and were estate assets.

4. For more than twenty (20) years, Wilson MacEwen and Company, certified public accountants firm in Sumter has handled the bookkeeping, tax preparation and all accounting responsibilities for Mr. Belk and all business entities before his death, and then for the Estate of R. D. Belk, his unincorporated company Sumter Mortgage, and Bibco, Inc., thereafter.

5. Since the estate was open, four (4) years ago, Plaintiff and Defendant Harris, as Co-Personal Representatives, have used estate-owned Sumter Mortgage accounts as the general operating business accounts from which employees and normal operating expenses were paid with accountings submitted to Mr. MacEwen by Linda Garrett, Mr. Belk's long-time bookkeeper.

6. In the latter part of December 2007 at which time the Defendant Harris began diverting estate income to separate accounts, including Bibco, Inc. and perhaps other unknown accounts, thereby depriving the estate of cash flow and the ability to properly make accountings and file tax returns.

7. Stakeholder Ida Mae Belk has been unjustly enriched by acts of Defendants Harris and Weinberg by more than \$1,000,000.00 over the past four (4) years, and

hundreds of thousands of dollars have been diverted from the estate since December 2007.

8. Defendant Harris, with the assistance of Defendant Weinberg, has failed to perform her fiduciary duties as co-personal representative of the estate by diverting funds from the estate, and withholding financial information from Plaintiff and Mr. MacEwen, making it impossible to file proper accountings with the Probate Court and to timely file annual estate income tax returns.

9. Plaintiff seeks immediate relief and prevent further irreparable harm to the estate by issuance of injunctions and restraining orders preventing Defendants Harris and Weinberg from interfering with estate administration and requiring the return of all assets to the estate so as to preserve estate assets until such time as this proceeding is resolved, and to specifically enjoin Defendants Harris, Weinberg, Bibco, and Stakeholder Ida Belk as follows:

A. To enjoin these Defendants and the Stakeholders from interfering with estate assets and from diverting income of Sumter Mortgage, an estate asset, to other accounts including I. M. Belk Co., Bibco, Inc., and the Ida Belk Trust.

B. To require Defendant Harris and Stakeholder Belk to return to the estate all sums diverted to such other accounts.

C. To require Defendant Harris to provide to Wilson MacEwen, C.P.A., all financial information regarding estate income so that proper estate accountings and income tax returns can be prepared.

D. To enjoin Defendants Harris, Weinberg and Bibco, Inc. from depositing any monthly checks and cash received from all savings into any account other than Sumter Mortgage pending final Order of the appropriate Court.

E. To enjoin Defendants Harris, Weinberg and Stakeholder Belk from withholding and conspiring to withhold pertinent financial information on Sumter Mortgage and Bibco, Inc. from Plaintiff and from Wilson MacEwen, CPA.

F. To enjoin Defendants Harris and Stakeholder Ida Belk from funding the Ida Belk Trust until final hearing on the merits.

G. To require Defendant Harris and/or Stakeholder Ida Belk to return to the estate tax refund checks of approximately \$110,000.00 which represent taxes paid for Stakeholder Ida Belk by Sumter Mortgage.

H. To allow Plaintiff to deposit more than \$500,000.00 in Sumter Mortgage funds now being held at Nelson, Mullins, Riley and Scarborough into an interest bearing account in the name of the estate at the National Bank of South Carolina until final Order of the appropriate Court.

I. To enjoin Defendant Harris from making any additional distributions to Ida M. Belk until Trust B and C under Mr. Belk's Will have been fully funded or, in the alternative, until final Order of the appropriate Court.

J. To enjoin Defendant Weinberg from participating as counsel in this matter and/or communicating with Defendant Harris and Stakeholder Belk until a hearing on Plaintiff's Motion to Relieve his Firm as Counsel in this matter is heard.

K. To enjoin Defendant Harris from acting in the capacity of co-personal representative until final hearing on merits based upon her conduct.

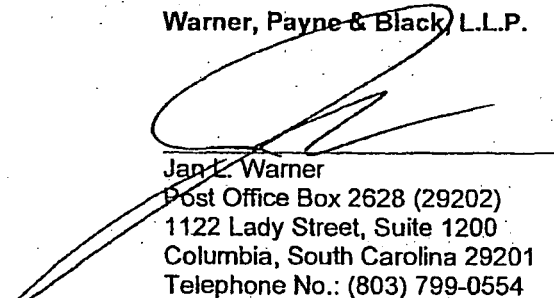
L. To enjoin Defendants Harris, Houser and Lyles from going about the premises of Sumter Mortgage Company office located at 361 Broad Street, Sumter, and in any way interfering with the administration of the estate or attempting to act as agent for Sumter Mortgage and Bibco.



The grounds for this Motion are:

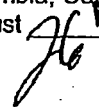
1. Plaintiff's Affidavit and attached exhibits that irreparable harm will be done to the Estate of Robert D. Belk if such Orders do not issue, that far outweigh the inconvenience or potential damage to Defendants. **(Exhibit 1).**
2. Affidavit of Wilson MacEwen and attachment **(Exhibit 2).**
3. Such other affidavits and exhibits as may be presented at the hearing in this matter.

Warner, Payne & Black, L.L.P.



Jan L. Warner
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone No.: (803) 799-0554
Facsimile No.: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
August 14, 2008



The July 31, 2008 statement of Sumter Mortgage general operating checking account, an estate asset, has a reconciled balance of \$10,228.36. In January 1, 2007, this account had a beginning balance of \$300,385.24. Therefore, \$290,000 plus has been spent from this account, and there have been no deposits since mid-February 2008 per the instructions of my sister and Mr. Weinberg.

From June 2008 to this date, the only monies received by me have been deposited into the estate Sumter Mortgage account.

I am a duly licensed and practicing attorney in good standing. I also am a licensed real estate agent and broker in good standing. I have a good working knowledge of real estate and accounting.

It is believed that this money has been deposited to an account known as I. M. Belk Company. Mr. MacEwen has previously prepared a spreadsheet showing that my mother has received gross distributions of \$1,138,829.00 between April 5, 2004, and June 30, 2007 ²⁰⁰⁸ ~~2007~~. If you add the additional monies that have been diverted from Sumter Mortgage Company indicated hereinabove, Ida Belk has conservatively received gross distributions in of \$1,418,392.16. I submit this affidavit in support of my application for an injunction to prevent further irreparable damage from being done to the Estate. 2008

RELATIONSHIP WITH MY FATHER

During my father's life, he and I were involved in several business relationships. My father had a lot of confidence in me. I was his firstborn son and his only child to graduate from college and obtain a professional degree. Our most recent business relationship was a 50/50 business venture which began in June of 2002 in which I was

the managing partner of a 40 lot mobile home park. In that capacity, I handled all the cash receipts, deposits, bookkeeping and tax preparation.

After my father died on April 5, 2004, I individually and on behalf of his Estate sold the mobile home park to Jessie McLeod in June 2004 under an owner financing arrangement, and I remit the Estate's portion of the accounts receivable to the Estate each month.

HISTORICAL FACTS

In the year 2000, when my father was diagnosed with a life-threatening condition, he consulted with a noted estate planner Dave Sojourner, of Columbia, at which time he reported that he was the 100% owner of Sumter Mortgage, a sole proprietorship, and that substantially all of the assets were titled R. D. Belk, d/b/a Sumter Mortgage Company.

On March 4, 2004, M. M. Weinberg, Jr., of Weinberg and Brown prepared a Will for my father who died on April 5, 2004. His estate is being probated in the Sumter County Probate Court. RWB

According to my father's will, Carlton R. Davidson was named as Personal Representative, and I was named as sole Successor or Alternate Personal Representative.

On or about, April 12, 2004, my sister, Linda Harris, and I jointly consulted Mr. Weinberg as we had been designated as co-trustees under the Will. Mr. Weinberg had my father's original Will in his possession, and reviewed the terms with my sister and me. Among other things, the three of us discussed the fact that during my father's lifetime, he had handled all aspects of the family finances including buying and selling

real estate and other properties in his name, and in the name of Sumter Mortgage Company, an unincorporated entity.

In our presence, Mr. Weinberg called my father's longstanding certified public accountant, Wilson MacEwen, to discuss estate assets and existing business interests. Mr. Weinberg provided us legal advice about the probate of the Will; made recommendations to us about what we would do as trustees; and how the Estate should take control over the assets and business interests in accordance with his Will.

Acting on Mr. Weinberg's advice, my sister and I contacted the National Bank of South Carolina and had them freeze my father's personal checking account and three (3) Sumter Mortgage business accounts – a General Business Operating Account; a Finance Accounts; and a Money Market Account – until the Will could be submitted to probate.

On or about, April 16, 2004, I again met with Mr. Weinberg at his office and discussed with him that my mother, Ida Belk, was not pleased my father disinheriting two (2) of his grandchildren and giving his long-term employee, Linda Garrett, an immediate bequest of \$100,000.00 while his natural children were not getting any immediate benefit. Dec

On, or about, April 20, 2004, I again met with Mr. Weinberg at his office, this time to discuss my father's assets and business interests at which time Mr. Weinberg showed me four (4) different lists of assets prepared by my father and wrote me concerning the same.

On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. I alone was to act as solely as successor or alternate Personal

Representative but in an effort to preserve family unity, I allowed my sister, Linda Harris, to serve with me as Co-Personal Representative:

On May 7, 2004, my sister and I were appointed as Co-Personal Representatives of the estate and, on the same day, per Mr. Weinberg's advice, we went to NBSC and took control over the three (3) existing Sumter Mortgage business accounts.

Based upon Mr. Weinberg's advice, Sumter Mortgage been a part of the Estate administration for four (4) years from May 7, 2004 through the present date. During this four years (except as stated below and the reason for this application to the Court), my sister and I as co-personal representatives handled the daily business of our father's estate and jointly cosigned all Sumter Mortgage checks as Personal Representatives of his Estate.

To simplify bookkeeping, my sister and I closed the Sumter Mortgage Finance account and transferred the proceeds to the general operating account. Currently, we have two accounts: the general operating account and the money market account which is a savings account and is inactive except to accumulate interest.

The general operating business checking account is the account into which all accounts payable to Sumter Mortgage were to be deposited and from which were paid normal operating expenses of the ongoing Sumter Mortgage business. This was the account that was turned over the Wilson MacEwen each year so he could prepare the estate income tax returns from May 7, 2004 until February 2008 when my sister and Mr. Weinberg had these funds deposited elsewhere, which is one of the reasons for this application to the Court.

My father's personal checking account was closed, and new checking account at NBSC opened in the name of The Estate of R. D. Belk with my sister and me co-signing these checks as co-personal representatives.

Due to errors and omissions contained in the Will prepared by Mr. Weinberg that we learned about after it was probated, my mother, my sister, and I went back to Mr. Sojourner and were represented by Karen Thomas, Esquire, who prepared a comprehensive postmortem plan that was agreed to by myself and Defendant Linda Harris as Co-Representatives of the Estate and by my mother.

As part of our agreement, my sister and I would be co-trustees and joint managers of not only the Estate assets but also other assets held by our mother, including stock in Bibco, Inc. These agreements were written, signed, acted upon, and partially performed.

As part of the postmortem agreements, we signed a compromise agreement dated June 30, 2005 known as Memorandum of Understanding Regarding Future Transactions. Under the terms of this agreement, our mother agreed to create a new trust identical to the trust created by our father naming my sister and me as co-trustees. In consideration thereof, the Estate arbitrarily assigned our mother, Ida Belk, a 50% undivided interest in Sumter Mortgage so that she would correct the defects in the will prepared for our father by Mr. Weinberg.

After the above documents were signed, on the same day, a Trust Severance Agreement was signed by me and my sister as co-Personal Representatives of our father's estate to correct the faulty drafting of the Will by Mr. Weinberg.

in accordance with our oral and written agreements, my sister and I jointly handled the day-to-day management of Bibco and Sumter Mortgage for years. We both

were designated as vice-presidents of Bibco, and agreed that Bibco would not conduct future sales of used mobile homes due to unreasonable exposures for liability and risk.

Bibco, a C Corporation set up for my father by Mr. Weinberg, was a "holding company", and its only legitimate business was to manage its assets, collect outstanding notes receivables, and to wind down the business entity. Because this was an unfavorable way of currently doing business because C Corp's have double taxation – the corporation itself is taxed and then any dividends to stockholders are also taxed.

In December 2007, Bibco only had two (2) employees, me and my sister, and we were paid an annual management fee for three (3) years immediately following my father's death through June 2007.

Any assets owned by Bibco that required either yard maintenance or building maintenance were serviced by employees of Sumter Mortgage. Bibco occupied office space at 3061 Broad Street, the same office building as Sumter Mortgage Company. And Linda Garrett handled all accounts receivables for Bibco and Sumter Mortgage.

Linda Garrett is an employee of and is paid by Sumter Mortgage. To my knowledge, Bibco has made no contributions toward Linda Garrett's salary nor has it paid anything toward office operating expenses such as utilities, telephone, water, cleaning, etc.

In December 2007, Linda Harris unilaterally instructed Linda Garrett to withhold the Bibco financial records from me, and from Mr. MacEwen. At that time, she also unilaterally instructed Linda Garrett to transfer Bibco all accounting and bookkeeping service from Wilson MacEwen to her own personal accountant, Roger Long. I have not received any compensation for services since the 2006 fiscal year.

Then, after other lawyers would not do her bidding, my sister took my mother to Mr. Weinberg on September 17, 2007, and Mr. Weinberg, the same person who had prepared my father's defective Will, prepared a Trust for my mother naming my sister as sole trustee that flies in the face and breaches the very agreements that were made necessary by Mr. Weinberg preparing my father's faulty will.

Mr. Weinberg then had my mother transfer into this trust disputed interests in the underlying assets of Sumter Mortgage and Bibco, all contrary to the very agreements made necessary by Mr. Weinberg's errors. These transactions have the potential of triggering gift taxes, not to mention that distribution of certain installment sales accounts receivable titled in Sumter Mortgage and Bibco to this trust will likely trigger acceleration of income on those notes, thereby causing substantial and dire tax consequences:

To make matters worse, in 1999, an attorney in Mr. Weinberg's firm filed an Affidavit in Circuit Court on behalf of my father stating that he (Robert D. Belk) was the sole stockholder of Bibco, Inc. Under the theory of judicial estoppels, Mr. Weinberg and his firm are barred from now taking a contrary position. But he has.

ACB

The underlying gravamen of the action I brought is based upon the breaches of the partially performed oral and written agreements referred to above. I have included an cause of action for unjust enrichment and accounting against Bibco because estate assets have been deposited into Bibco. For example, even though Sumter Mortgage is the owner of a note and mortgage from Gem Investment Company, Gem's monthly payment to Sumter Mortgage is being deposited into Bibco.

I also believe that because the Estate has an interest in Westgate Subdivision lots that have been sold on time, but monthly payments are being collected and

deposited into Bibco. In addition, the Estate has interests in unsold lots in this subdivision that are being rented, with rent being deposited into Bibco.

The underlying litigation here is based upon the breach of the partially performed oral and written agreements by my sister, and, on behalf the estate, I am seeking specific performance of these agreements and disputing my mother's legal ownership of Sumter Mortgage based upon her and my sister's breaches of contract.

By letter dated July 31, 2008, Mr. Weinberg acknowledges that my mother's disputed ownership in Sumter Mortgage is based upon the previous agreement that she and my sister reneged on with the help of Mr. Weinberg.

In addition, Mr. Houser has been allowed by my sister to intermeddle in Estate matters and sign legal documents for both Bibco and Sumter Mortgage. He also has a key to the Sumter Mortgage post office box. In late December 2007, unknown to me, Houser put in a bid for a used mobile home that was accepted. When he approached me for funds, I refused. I have just learned that Houser in concert with my sister purchased the mobile home with Bibco funds even though Bibco had no legitimate business interest and was suppose to be winding down its affairs. This is another breach of my sister's fiduciary duties. Acc

On Friday, January 18, 2008, I was informed by Linda Garrett, who is employed by Sumter Mortgage, that my sister instructed her in the late December 2007 not to make any future deposits into the Sumter Mortgage business account for the 2008 calendar year. On the same date, Linda Garret informed me that my sister had further instructed her to make the designated Sumter Mortgage deposits into another bank account known as the I. M. Belk Company and that my sister had actually given her deposit slips for this account. Ms. Garrett also informed me that, not knowing what else

to do, she had not made any deposits into Sumter Mortgage for approximately three (3) consecutive weeks and had a significant amount of cash and checks in excess of \$48,000.00 which had not yet been deposited.

During the estate administration, it has been normal and customary for Sumter Mortgage to pay quarterly estimated taxes for my mother as an accommodation to her. During the 2006 tax year, extraordinary payments were paid for both state and federal taxes, and therefore, large refund checks were issued: in excess of \$90,000.00 by the IRS and in excess of \$20,000.00 by the South Carolina Department of Revenue. My sister intercepted both of these checks from Mr. Houser who picked up the mail, and they were never deposited into the Sumter Mortgage business account.

In addition, a note receivable from Solomon Till was sold, and this check also was intercepted by my sister and never deposited into the Sumter Mortgage account. These acts were done without my knowledge and approval. Both acts resulted in unintended distributions to my mother or my sister during the Estate administration, another breach of fiduciary duty. pcc b

On January 21, 2008, I hand delivered a letter to Linda Garrett, expressing my concern and demanding that all funds collected on behalf of Sumter Mortgage be deposited into the Sumter Mortgage business account because said account fell under the administration of the estate.

My sister caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, and also to Mr. Houser during early January 2008 that I refused to sign because her son had never worked for Sumter Mortgage and Mr. Houser is her boyfriend.

When I filed the underlying action o February 5, 2008, I also sought removal of my sister as Co-Personal Representative. My similar motion in the probate court has been removed to this Court.

Then, on February 19, 2008, the same Mr. Weinberg who prepared my father's defective will and helped my mother and sister breach the agreements that were made necessary by his malpractice, wrote a unilateral letter to Linda Garrett instructing her to deposit incoming funds to my mother's account. I was unaware of the this letter and was not copied with the letter, nor did my attorneys receive a copy of this letter even though the underlying action had been commenced.

Thank on March 18, 2008, Mr. Weinberg sent a unilateral letter to Jessie McLeod instructing him to forward one-half (1/2) of a note receivable arising out of the sale of Cedar Hill Mobile Home Park to my mother. I again was unaware of this letter, was not copied with the letter, and my attorneys did not receive a copy of this letter. The note receivable from Jessie McLeod is owed jointly to me and to the Estate, and this note is not a Sumter Mortgage asset. It is Estate asset. DCA

On June 21, 2008, while reviewing the Sumter Mortgage May bank statement, I discovered that no income had been deposited into the general operating account for Sumter Mortgage for that month. Therefore, on June 25, 2008, I filed a County Incident Report with the sheriff's department reporting missing deposits from Sumter Mortgage Company in an undetermined amount of money.

I made an immediately inquiry to Linda Garrett, the in-house accounts receivable clerk, and she provided me with the income detail of Sumter Mortgage covering the period from February 20, 2008, up through June 20, 2008. I determined that

\$208,563.16 in revenue which should have been deposited to Sumter Mortgage Company has been deposited elsewhere.

The only Sumter Mortgage checks I have refused to sign were those to my sister's son, Mitch Harris, and her romantic interest, Dewey Houser.

Mr. Weinberg has continued to conspire with my sister and others to disrupt the orderly administration of this estate.

As the result of a settlement that I handled on behalf of the estate, a large sum of money is currently held at Nelson Mullins Riley and Scarborough which represented the estate. My attorney prepared an Escrow Agreement to place these funds on interest in a restricted account at NBSC, but it has been ignored, thus causing the estate interest.

Even though Wilson MacEwen has been my father's and his companies' certified public accountant for more than 20 years and handled everything until my sister and Mr. Weinberg unilaterally interfered, he has been taken out of the loop.

For example, on August 8, 2008, I spoke with Linda Garrett who told me that financial information for Sumter Mortgage that would normally be provided to account Wilson MacEwen covering the period of January 2008, up through June 30, 2008 was still at her office because my sister had not authorized her to release the Sumter Mortgage financial information, she did not know what to do with it, so she has done nothing.

On August 13, 2008, I spoke with Mr. MacEwen who confirmed that he had not received the Sumter Mortgage Company financial information that he needs to complete the normal and customary bookkeeping for Sumter Mortgage Company and also the 2007 estate income tax return that was due on July 15, 2008.

DCS

Because of my sister's refusal to release the financial information, Mr. MacEwen had to request an extension of time for the estate income tax return. Also, the Sumter County Probate Court's annual accounting for the period April 1, 2007, through March 31, 2008 is due but cannot be completed by Mr. MacEwen until he receives the above financial information.

Another example is that the estate has had difficulty collecting a monthly note receivable from Land and Mortgage of South Carolina, Inc. that is due to R. D. Belk d/b/a Sumter Mortgage Company. Debtor, who has gotten behind in the past, has been sending monthly payments directly to my office, and I would send them to Linda Garrett for deposit into the Sumter Mortgage account. I collected the February through June payments and entrusted Linda Garrett to deposit them to the Sumter Mortgage account, but she did not do so. I have now collected the July and August 2008 payments totaling \$28,784.12 and based upon his lack of faith in Linda Garrett, I have deposited funds directly into the Sumter Mortgage operating account. DCB

Based on the unilateral acts of my sister who now has an absolute conflict of interest serving as trustee of the trust Mr. Weinberg prepared for my mother and as co-personal representative of the estate. The financial integrity of the estate and Sumter Mortgage have been seriously jeopardized based on these actions.

Another example: under my father's Will, the personal representatives were required to fund two (2) separate trusts, a Trust B and a Trust C before any significant distributions to my mother. Despite this, according to spreadsheet prepared by Mr. MacEwen, my mother has received gross distributions of \$1,138,829.00 between from April 5, 2004 and June 20, 2008.

Based upon the diversion of Estate/Sumter Mortgage income, and prior distributions to Ida Belk, the ability of the personal representatives to fund Trust B and Trust C are being severely jeopardized.

Importantly, my mother has waived her interest in Trust B, making the beneficiaries of Trust B her five (5) children who are to divide approximately \$1,400,000.00 in equal shares with a distribution of approximately \$280,000.00 to each.

Since filing of this action on February 5, 2008, Houser, Lyles, and Mitch Harris (my sister's sons and boyfriend) all occupy space at my father's former office at 3061 Broad Street in a double wide modular home.

After my father's death and during the administration of the Estate since May 7, 2004, I have been given office space at the above address. In order to carry out my duties and the administration of the Estate, I need to have frequent contact with the accounts receivable clerk and the other employees of Sumter Mortgage and the peaceful possession of an office to do so. Under the current estranged circumstances, I cannot carry out my duties with these individuals occupying the same office as myself.

racb

Based on the foregoing, I seek an the following injunctions which, if not granted, will cause irreparable damage to the estate and its assets: Removal of my sister as co-personal representative; requiring all books and records of all entities be turned over to Wilson MacEwen, CPA, immediately; An Order restraining my sister and Mr. Weinberg from continuing to interfere with the administration of the estate; requiring an audit and accounting; requiring that all funds be deposited into the appropriate estate accounts; An Order removing Mitch Harris, Lyles, and Houser from the estate office.

I make these statements based upon personal knowledge unless otherwise stated. I also rely upon the facts set forth in my Amended Verified Complaint dated April 4, 2008 which, to my knowledge, has not been answered by any Defendant.

Gene C. Belk

Gene C. Belk

SWORN to and subscribed before me

This 26th day of August, 2008.

David R. Jackson

Notary Public for South Carolina

My Commission Expires: 5/27/14

ADDENDUM TO AFFIDAVIT

Plaintiff submits that the following acts also need to be enjoined:

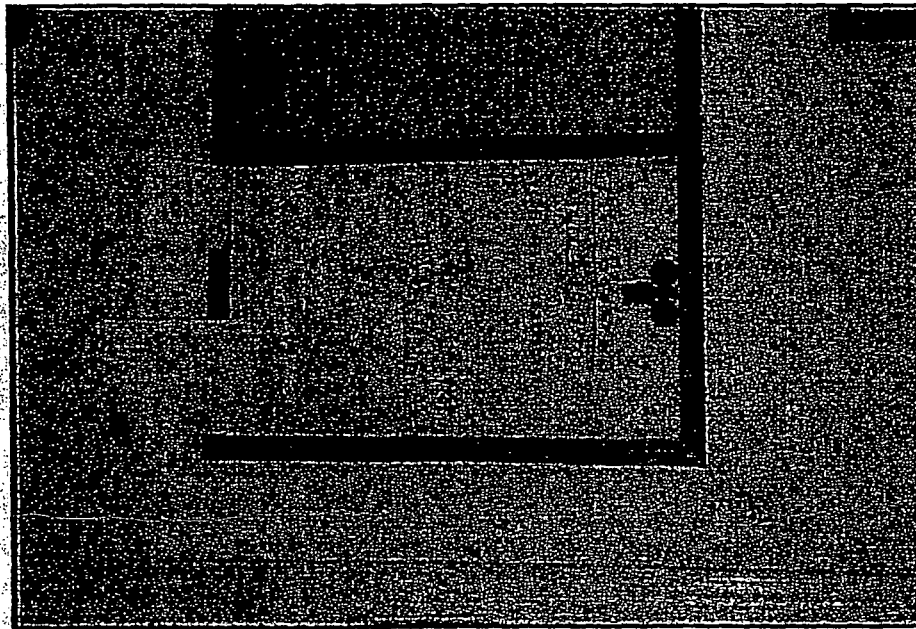
1. Dewey Houser should be enjoined from acting as an "agent," "owner" or in any other capacity for Sumter Mortgage Company. The attached exhibit provides evidence that Mr. Houser is continuing to act as an agent for Sumter Mortgage Company in sales of both mobile homes and real estate.
2. The following entities are operating on properties owned by the Estate of Robert D. Belk without paying rent to the Estate. These entities, as described below, should be enjoined from operating on the property:
 - a. Carolina Pre-Owned Car and Trucks
 - b. Hospitality Housing
 - c. Carolina Pressure Washing
3. Please see the attached exhibit.

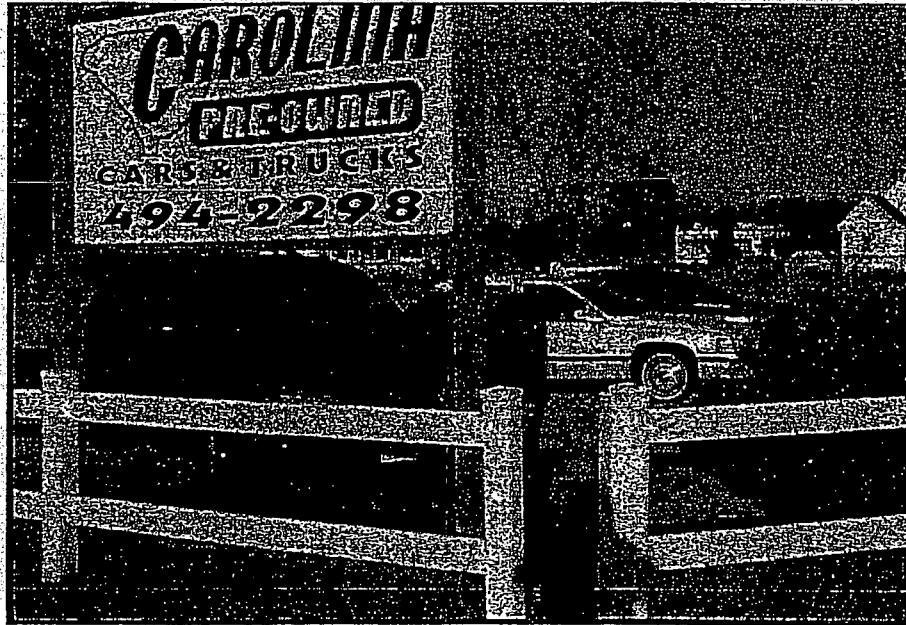
Hospitality Housing

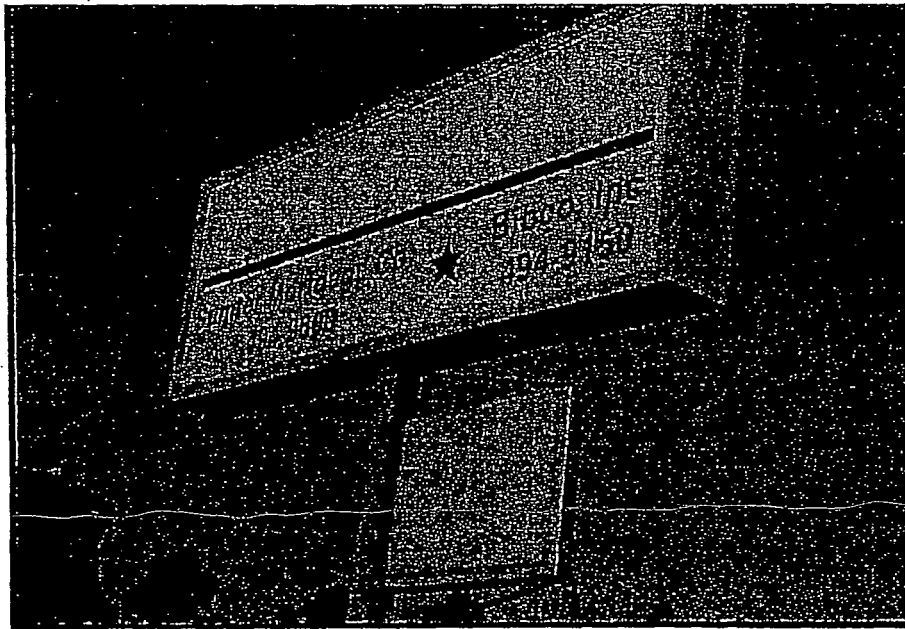
USED HOME SUPERSTORE
"SAVE THOUSANDS"

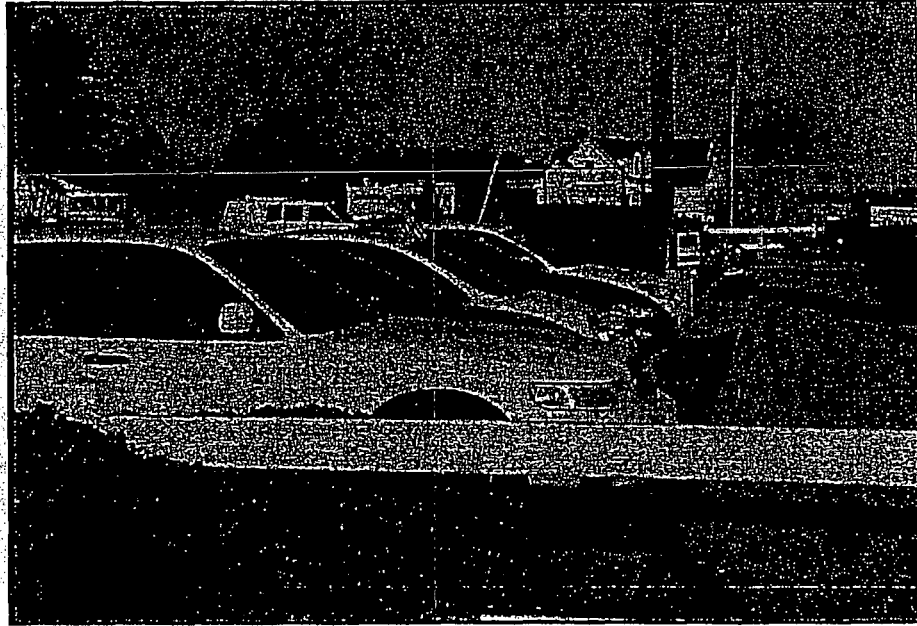
803-469-4220

PROP. FOR SALE BY OWNER
SEE DEWEY HOUSER
4949600
9834826









After Mr. Belk's death, on April 5, 2004, I continued to exclusively provide these same services to Sumter Mortgage Company on behalf of the Estate of R. D. Belk; to Mr. Belk's Estate, including the Estate tax return and annual estate income tax returns; and to Bibco, Inc..

Sumter Mortgage has a tax reporting period based on a calendar year from January 1st through December 31st, Mr. Belk's Estate has a reporting period from April 1st of each year through March 31st of the following year, and Bibco, Inc. reports on a fiscal year basis from July 1st each year through June 30th of the following year.

In dealing with the above businesses and estate over the years, it has been the normal and customary practice for my office to receive complete accounting records for Bibco, Sumter Mortgage, and the Estate of R. D. Belk in a timely fashion from Linda Garrett, Mr. Belk's office assistant who handled the accounts receivable for him and his various entities, and still does so.

I have received none of the information regarding any of these entities from Linda Garrett since December 2007. As of today's date, I have not received the financial information to allow me to complete Sumter Mortgage's bookkeeping, and since the Estate income tax return must include Sumter Mortgage gross income and expense information through March 30, 2008, I have been required to file for an extension of the income tax return of the Estate of R. D. Belk that was due on July 15, 2008.

Without these records, I will not be able to file estate income tax returns which would result in penalties and interest. Sumter Mortgage gross income reported on the last estate income tax return I prepared was \$256,435. The last Bibco, Inc. return I

prepared reflects gross income of \$209,305. This does not include principal collections on sales contracts.

In order to bring the Sumter Mortgage Company bookkeeping current, I must be provided with Sumter Mortgage income and expense records for the period from January 2008 through June 30, 2008, and each month thereafter as it is essential that I be able to file timely and accurate returns and assist in the filing of estate accounting and inventories in the probate court.

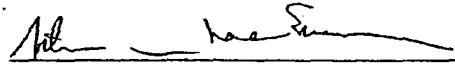
Until June 2007, I also handled Bibco in a similar manner for quite some time when, for reasons unknown to me, Linda Harris directed that my office cease doing the Bibco books and tax returns. In June of 2007, Bibco's only employees were Gene Belk and Linda Harris, both children of Mr. Belk, who were acting as managers of that entity. Since Bibco is a personal holding company that collects on installment sales contracts and accounts receivables, unless bonuses or dividends were paid by June 30, 2008, an accumulated earnings tax would be imposed on Bibco's undistributed personal holding company income. I have been told that a dividend was paid to Mrs. Ida Belk on or before June 30, 2008.

I attended a meeting in my office on June 28, 2008 among Roger Long, the CPA hired by Linda Harris, and lawyers for some of the parties to this action. I have been told that Mrs. Ida Belk created a trust and has transferred her interest in Bibco into that trust. There could be substantial income tax consequences to Mrs. Belk and the estate if assets of Sumter Mortgage were transferred to her trust.

I prepared a spreadsheet from the Sumter Mortgage financial information that has been provided to me which shows that from April 5, 2004 through June 30, 2008,


Ida Mae Belk has received gross distributions from Sumter Mortgage of \$1,138,829.00
(Attached).

Under the terms of Mr. Belk's Will, the personal representatives of his estate are directed and mandated to fund two separate trusts, a Trust B and a Trust C. I am not aware of the status of the funding of these trusts because I do not have the records.



Wilson M. MacEwen

SWORN to and subscribed before me
This 26th day of August, 2008.



Notary Public for South Carolina

My Commission Expires: 5/27/14

SUMTER MORTGAGE COMPANY
 DRAWS
 IDA MAE BELK
 4/5/04 - 6/30/08

	2004	2005	2006	2007	2008	Totals:
MONTHLY BANK DRAFT	9,500	18,000	18,000	23,000	9,000	77,500
TRANSFER - FAMILY GIFTS	220,000	143,000				363,000
AUTO EXPENSES				9,442	288	9,730
HOUSE EXPENSES				3,694	270	3,864
CPA				8,000		6,000
FEDERAL TAX PAYMENTS		180,558 (A)	96,494	101,840	76,380	434,272
CONTRIBUTIONS		3,455	3,020	3,235	1,660	11,270
SC TAX PAYMENTS		38,772 (B)	20,978	21,180	15,360	96,288
SAMBIÑO'S - ERVIN			123,598			123,598
COLDWELL BANKER - E MONEY OPTION STAMEY LIVESTOCK ROAD (PURCHASED BY BIBCO)			5,000			5,000
Car for R.M.B.			8,329			8,329
	<u>229,500</u>	<u>363,785</u>	<u>274,415</u>	<u>168,271</u>	<u>102,858</u>	<u>1,138,829</u>

(A) Includes \$85,468 Federal Tax on Joint 2004 Individual Return.

(B) S.C. Tax on Joint 2004 Individual Return.

6216

RECEIVED JUN 6 2008

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2008 JUN -3 11:10 AM THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT

Gene C. Belk, Individually and as
Personal Representative of the Estate
of Robert D. Belk,
Plaintiff,

SUMTER COUNTY, SC, Action No. 08-CP-43-0347

vs.

NOTICE OF MOTION AND MOTION
TO DISMISS BY DEFENDANT M. M.
WEINBERG, JR.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,
Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,
Stakeholders.

TO: THE PLAINTIFF and his attorney, JAN L. WARNER

YOU WILL PLEASE TAKE NOTICE that Defendant M. M. Weinberg, Jr. will move
before the Court at such time and place as the Court may determine to dismiss the
Amended Complaint against him pursuant to Rule 12(b)(6), SCRCP, upon the following
grounds:

1. The Fourth Cause of Action for alleged undue influence fails to state facts sufficient to constitute a cause of action against this defendant upon the grounds that there is no allegation that this defendant unduly influenced Ms. Belk and further, Defendant Weinberg is not a party or a beneficiary to the Trust Agreement referred to in the Amended Complaint, and the claim to set it aside as an influenced transaction cannot lie against him and, as a result thereof, the Fourth Cause of Action therefore fails to state facts sufficient to constitute a cause of action against him;

2. The Complaint alleges that this defendant acted as an attorney and provided legal services to a client in connection with matters in dispute, which is confirmed by the attached affidavit of this defendant, and this defendant cannot be liable to the plaintiff for civil conspiracy for the representation of his client and, as a result thereof, the Seventh Cause of Action fails to state facts sufficient to constitute a cause of action against this defendant;
3. The Complaint fails to allege that this defendant intentionally procured the breach of the contracts referred to in the Complaint and, as a result thereof, the Tenth Cause of Action therefore fails to state facts sufficient to constitute a cause of action against this defendant;
4. The Complaint fails to allege that there is a contract between the plaintiff and this defendant which has been breached and, as a result thereof, this defendant cannot be liable for breach of contract accompanied by a fraudulent act; and
5. This defendant has acted only as attorney for Ida Mae Belk and as attorney for Linda B. Harris as Co-Personal Representative within the scope or his representation, as is shown by his attached affidavit, and he is therefor immune from liability to the plaintiff arising from the performance of his professional activities as attorney on behalf and with the knowledge of his said clients and the Complaint fails to state facts sufficient to constitute a cause of action against him.

The Affidavits of M. M. Weinberg, Jr., Linda B. Harris, and Ida Mae K. Belk are submitting in support of this motion.

MCCUTCHEN BLANTON JOHNSON & BARNETTE, LLP

By: 

Pope D. Johnson, III
P.O. Drawer 11209
Columbia, SC 29211-1209
(803) 799-9791
(803) 253-6084 (fax)
pdjohnson@mbjb.com

Attorneys for Defendant M. M. Weinberg, Jr.

Columbia, South Carolina
June 2, 2008

- 2 -

#2

RECORDED

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

2008 JUN -3 AM 10:46
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Civil Action No. 08-CP-43-0347

Plaintiff,

vs.

AFFIDAVIT OF M. M. WEINBERG, JR.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Blbco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

PERSONALLY APPEARED BEFORE ME, M. M. Weinberg, Jr., who being duly
sworn, deposes and says:

1. I am M. M. Weinberg, Jr. I am a licensed, practicing attorney in the State
of South Carolina. I make this affidavit based upon personal knowledge.
2. I represented Robert D. Belk for a number of years prior to his death on
certain matters. I prepared his Last Will and Testament based upon his instructions and
directions.
3. Since the death of Robert D. Belk, I have represented his widow, Ida Mae

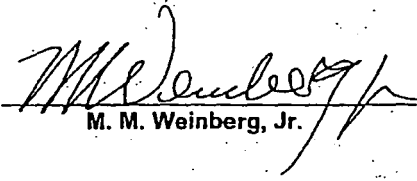
Belk, in certain matters. I have also represented Linda B. Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust dated September 17, 2007 and as Co-Personal Representative of the Estate of Robert D. Belk. I have not represented by plaintiff or any of the other defendants or stakeholders in this action. Any and all actions which I have undertaken since the death of Robert D. Belk as to any matters alleged in the Complaint have been as attorney on behalf of and with the knowledge of Ida Mae Belk and Linda B. Harris in her aforesaid fiduciary capacities..

SWORN TO AND SUBSCRIBED BEFORE ME

this 29th day of May, 2008

Deborah K. Meeks
Notary Public for South Carolina

My Commission Expires: 4/22/2015


M. M. Weinberg, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
RECORDED
2008 JUN -3 AM 10:46

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347

Gene C. Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk)
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

AFFIDAVIT OF LINDA B. HARRIS

Defendants,)

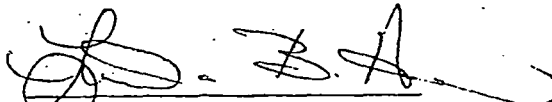
And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders.)

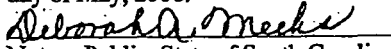
NOW COMES Linda B. Harris who first being duly sworn states that:

1. I am a Defendant, Individually, and as Trustee of the Ida Mae K. Belk Irrevocable Trust.
2. I am also Co- Personal Representative of the Estate of my father R. D. Belk.
3. I have been sued individually, as the Trustee of the Ida Mae K. Belk Trust and in all alleged fiduciary capacities, which in my opinion would include my position as Co- Personal Representative of the Estate of R. D. Belk.
4. I engaged the services of M.M. Weinberg, Jr., Attorney of Sumter, South Carolina to represent me in the matter of my position as Trustee of my mothers Irrevocable Trust, dated September 17, 2007, as well as my position as Co- Personal Representative Estate of R. D. Belk, my father.

5. Mr Weinberg, Jr., does not represent me individually.
6. I am aware of the activities of Mr. Weinberg, Jr., and he has done nothing in the handling of the matters for me that I have not authorized and which were not necessary in my opinion to properly represent me and to implement the wishes of R. D. Belk in his Will.
7. I was made aware by Mr. Weinberg, Jr., of the possibility of a claim of conflict of interest by the adverse party in this matter.
8. I am willing for Mr. Weinberg, Jr., to continue to represent my mother, Ida Mae K. Belk and represent me as set out above.
9. No action has taken place in this matter in as so far as I am concerned without my request and or permission.
10. Mr. Weinberg, Jr., has done nothing in this matter but represent my mother, Ida Mae K. Belk and myself and to protect the interests of my mother and the children of Ida Mae K. Belk and R. D. Belk.


Linda B. Harris

SWORN to before me this 27th
day of May, 2008.


Notary Public, State of South Carolina
My Commission Expires: 4/22/2015

RECORDED
 IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CIVIL ACTION NO: 2008-CP-43-00347

2008 JUN -3 AM 10:46

STATE OF SOUTH CAROLINA)
 COUNTY OF SUMTER)
 JAMES C. CAMPBELL)
 CLERK OF COURT)
 SUMTER COUNTY, S.C.)

Gene C. Belk, Individually and as)
 Co-Personal Representative of the)
 Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
 Trustee of the Ida Mae K. Belk)
 Irrevocable Trust dated 9/17/07)
 and in all alleged fiduciary)
 capacities, Bibco, Inc., Dewey)
 Houser, Carolina Preowned, LLP)
 and Michael D. "Mickey" Lyles, Jr.,)

AFFIDAVIT OF IDA MAE K. BELK

Defendants,)

And Cheryl Ann Hanlon, Patricia B.)
 Schmidt, Robert M. Belk, and Ida)
 Belk,)

Stakeholders.)

NOW COMES Ida Mae K. Belk who first being duly sworn states that:

1. I am the sole owner of Bibco, Inc., and the widow of R. D. Belk.
2. I have been identified as a stake holder in the above titled cause of action.
3. I am familiar with R. D. Belk's Will and also familiar with his desires, pertaining to the disposition of his property.
4. I engaged the services of M.M. Weinberg, Jr., Attorney of Sumter, South Carolina to assist me in the handling of this matter to implement my husband's wishes.
5. I am aware of the actions that he has taken in this matter, and each action he has done has been at my request for the for the purpose of carrying out my husband's desires.
6. He has represented me as I have requested and has represented Linda Belk Harris, solely as Personal Representative of the Estate of R. D. Belk, and as Trustee of my

Irrevocable Trust. Which I created to enable me to carry out the wishes of R. D. Belk.

7. I was advised at the time he was engaged by both me and my daughter, that there would be a question of conflict raised by opposing counsel.
8. I do not feel there is any conflict between my daughter as Personal Representative as Trustee, who I appointed, and myself in handling this matter. I am perfectly content for Mr. Weinberg to continue to representing me and Linda B. Harris under these circumstances.

Ida Mae K. Belk
Ida Mae K. Belk

SWORN to before me this 27th
day of May, 2008.
Deborah A. Ornelas
Notary Public, State of South Carolina
My Commission Expires: 4/22/2015

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-43-0347

CERTIFICATE OF SERVICE

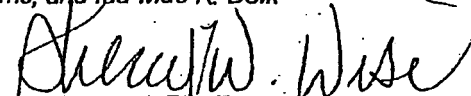
I, Sherry W. Wise, of McCutchen Blanton Johnson & Barnette, LLP, hereby certify that I have served Jan L. Warner, attorney for the Plaintiff, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 2nd day of June, 2008.

COUNSEL SERVED:

*J. Christopher Wilson, Esquire
Wilson Law Firm
P.O. Box 1150
Bamberg, SC 29003*

PLEADINGS:

Notice of Motion and Motion to Dismiss by Defendant M. M. Weinberg, Jr., with supporting Affidavits of M. M. Weinberg, Jr., Linda B. Harris, and Ida Mae K. Belk



Sherry W. Wise

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

IN THE COURT OF COMMON PLEAS

Civil Action No. 08-CP-43-0347

CERTIFICATE OF SERVICE

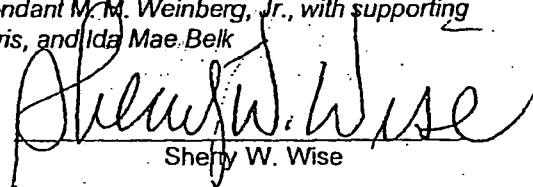
I, Sherry W. Wise, of McCutchen Blanton Johnson & Barnette, LLP, hereby certify that I have served Jan L. Warner, attorney for the Plaintiff, with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 2nd day of June, 2008.

COUNSEL SERVED:

Jan L. Warner, Esquire
Warner Payne & Black, LLP
P.O. Box 2626
Columbia, SC 29202

PLEADINGS:

Notice of Motion and Motion to Dismiss by Defendant M. M. Weinberg, Jr., with supporting Affidavits of M. M. Weinberg, Jr., Linda B. Harris, and Ida Mae Belk


Sherry W. Wise

LAW OFFICES
JOHNSON & BARNETTE, LLP
1320 MAIN STREET, SUITE 650 (20201)
POST OFFICE DRAWER 11209
COLUMBIA, SOUTH CAROLINA 29211-1209
TELEPHONE 803-799-9791
FAX 803-253-6084

Pope D. Johnson, III

E-Mail: pdjohnson@johnsonbarnette.com

September 10, 2008

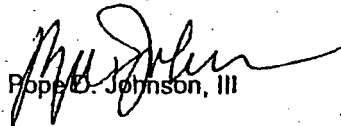
Honorable James C. Campbell
Clerk of Court
Sumter County Courthouse
141 N. Main Street, Room 308
Sumter, SC 29150

**RE: Gene C. Belk, Individually and as Co-Personal Representative of the
Estate of Robert D. Belk v. Linda B. Harris, Individually and as Trustee
of the Ida Mae K. Belk Irrevocable Trust dated 9/17/07 etal.
Civil Action No. 08-CP-43-0347
Our File No. 14-0678-6216**

Dear Mr. Campbell:

Enclosed herewith are the original and a copy of **Amended Certificate of Service** to be filed and attached to the Notice of Motion and Motion to Dismiss by Defendant M. M. Weinberg, Jr. in the above-captioned action. Please file the original and clock and return the additional copy to me in the self-addressed envelope provided.

Sincerely,


Pope D. Johnson, III

PDJIII/sww
Enclosures

cc: Jan L. Warner, Esquire
S. Jahue Moore, Esquire
D. J. Tyler, Esquire
William H. Johnson, Esquire

RECEIVED
2008 SEP 11 AM 11:37
W.P. & B. LLP
L. OERLAW SERVICES
OF SC, PA

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate of
Robert D. Belk,

Plaintiff,

Civil Action No. 08-CP-43-0347

vs.

Linda B. Harris, Individually and as Trustee
of the Ida Mae K. Belk Irrevocable Trust
dated 9/17/07 and in all alleged fiduciary
capacities, Bibco, Inc., Dewey M. Houser,
Carolina Preowned, LLP, Michael D.
"Mickey" Lyles, Jr., and M. M. Weinberg,
Jr.,

Defendants.

AMENDED
CERTIFICATE OF SERVICE

And Cheryl Ann Hanion, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Jan L. Warner, attorney for the Plaintiff, S. Jahue Moore, attorney for Defendant Linda B. Harris, Individually and as Trustee of the Ida Mae Belk Irrevocable Trust dated September 17, 2007, and D. J. Tyler, attorney for Defendants Dewey M. Houser and Michael D. "Mickey" Lyles, Jr., with the foregoing pleading(s) by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 10th day of September, 2008.

COUNSEL SERVED:

Jan L. Warner, Esquire
Warner Payne & Black, LLP
P.O. Box 2628
Columbia, SC 29202

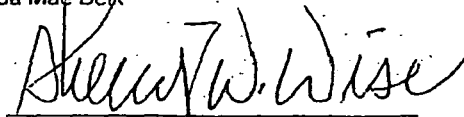
D. J. Tyler, Esquire
Tyler Cassell Jackson Peace & Silver, LLP
P.O. Box 11656
Columbia, SC 29211-1656

S. Jahue Moore, Esquire
Moore, Taylor & Thomas, PA
P.O. Box 5709
West Columbia, SC 29171

William H. Johnson, Esquire
Johnson McKenzie & Robinson, LLP
2 N. Brooks Street
Manning, SC 29108

PLEADINGS:

Notice of Motion and Motion to Dismiss by Defendant M. M. Weinberg, Jr., with supporting Affidavits of M. M. Weinberg, Jr., Linda B. Harris, and Ida Mae Belk


Sherry W. Wise

STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT FOR SUMTER COUNTY
EIGHTH JUDICIAL CIRCUIT

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk
Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.
Dewey M. Houser, Carolina Preowned, LLP, &
Michael D. "Mickey" Lyles, Jr.,

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

TO: M.M. Weinberg, Jr.
P.O. Box 1289
Sumter, South Carolina 29151

SUBPOENA IN A COMMON PLEAS CASE

Case Number: 2008-CP-43-00347

Pending in Sumter County

YOU ARE COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Young Relter Keffer & Donald, PA 23 W. Calhoun Street Sumter, SC 29150	March 26, 2008 at 9:30 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE ATTACHMENT**

PLACE	DATE AND TIME
WARNER, PAYNE, & BLACK, L.L.P. P. O. BOX 2628 COLUMBIA, SOUTH CAROLINA 29202	March 14, 2008 by 5:00 p.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

ANY ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DEPOSITION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THIS PERSON SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Jan L. Warner, Attorney for Plaintiff

DATE

February 29, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Jan L. Warner, Esquire, Post Office Box 2628 Columbia, SC 29202, (803) 799-9554

SOCA FORM 204 (7/85)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (e) & (f) on Reverse)

PROOF OF SERVICE

SERVED	DATE	February 29, 2008	FEES AND MILEAGE TENDERED TO WITNESS	
	PLACE	Sumter, South Carolina	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
			AMOUNT \$ 30.05	
SERVED ON (PRINT NAME)		MANNER OF SERVICE		
		Personal		
SERVED BY (PRINT NAME)		TITLE		
Gary Moore				

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Post Office Box 2628
Columbia, South Carolina 29202

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (3)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designating in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person.

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCCA Form 2d (7/90) Cont'd.

ATTACHMENT

Please deliver the following records to Warner, Payne & Black, L.L.P., P.O. Box 2628, Columbia, South Carolina, 29202:

1. Copies of all documents prepared by you, or at your request, since 9/17/07 for Ida Belk, Bibco Inc., Ida Mae K. Belk Trust, to include, but not be limited to, trusts, business formations, Wills or any other tangible documents.
2. Copies of all records relating to your representation of Robert Belk and Sumter Mortgage Company for ten (10) years prior to his death.
3. Copies of all time and billing records from January 1, 2001 through current date with regard to representation of Robert D. Belk in connection with, and in preparation of the Will, and all other representation of Robert D. Belk, records should include but not be limited to all time and billing to justify the bill of \$5600 to Mrs. Belk.
4. Copies of all communications to and from with David Sojourner and/or Karen Thomas regarding Robert D. Belk.
5. Copies of all conflicts letters with regard to your representation of Mr. Belk, Mrs. Belk, and Ms. Harris.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED
IN THE COURT OF COMMON PLEAS
2008 MAR 10 10:27 AM
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

Defendants,)

And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders.)

NOTICE OF MOTION AND MOTION

FILED
MAR 10 2008
CLERK OF COURT
SUMTER COUNTY, S.C.

TO: JAN L. WARNER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that M.M. Weinberg, Jr. will move before the presiding Judge for the Third Judicial Circuit in ten (10) days from the date of this Motion or as soon thereafter as can be heard at time and place to be fixed by the Court for an Order quashing the subpoena served on M.M. Weinberg, Jr., dated February 29,2008 and served that day,

The grounds for the quashing of the subpoena to take the deposition of M.M. Weinberg, Jr., is that he is actively engaged as counsel for a party that has an extremely large equitable interest in

this matter as well as Linda Belk as Personal Representative of the Estate of Robert D. Belk.

That to take this deposition now is simply an attempt to preclude him from further representation in this matter.

That the undersigned would show to the Court that this has previously been attempted when Gene C. Belk came to the office of the undersigned and without discussing any other part of the case, asked him to recommend an attorney.

It is the opinion of the undersigned that this was in Gene C. Belk's opinion sufficient to exclude him from any further representation of Gene C. Belk's mother and /or her interest in this matter.

The undersigned will further move to quash the subpoena, not only as to the attendance at the deposition, but as to the production of materials requested.

The grounds for the Motion to quash the subpoena as to the matters requested are as follows:

1. Request No.1 includes a number of matters which are protected by privilege and said privilege is not waived by Ida Mae Belk.

2. As to Request No.2, this request is generous and is impossible for this deponent to secure copies of all records representing the representation of Robert Belk in Sumter Mortgage for (10) years prior to the death of Mr. Belk. The representation having been done on numerous occasions and widely separated while Mr. Belk was using other attorneys and, it would be practically impossible to pull all of this information together.

3. As to Item 3, this is protected by privilege, no bills have been submitted to Linda Belk and the other matters are protected by privilege of Mrs. Ida Mae Belk, who has not waived said privilege.

4. As to Item 4, I have no correspondence from either Sojourner or Thomas.

5. As to Item, the only letters received are attached to the Plaintiff's Motion and are unnecessary to be produced.

WEINBERG & BROWN, L.L.P.

BY:


M. M. WEINBERG, JR.

109 North Main Street

Post Office Drawer 1289

Sumter, South Carolina 29151-1289

(803) 775-1274

Attorney for Attorneys for Defendants, Linda Harris as
Trustee of the Ida Mae K. Belk Irrevocable Trust,
Bibco, Inc., and Ida Mae K. Belk

Sumter, South Carolina
March 7, 2008.

RECORDED

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO: 2008-CP-43-00347
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Gene C. Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk,)

Plaintiff,)

vs.)

Linda B. Harris, Individually and as)
Trustee of the Ida Mae K. Belk)
Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary)
capacities, Bibco, Inc., Dewey)
Houser, Carolina Preowned, LLP)
and Michael D. "Mickey" Lyles, Jr.,)

Defendants,)

And Cheryl Ann Hanlon, Patricia B.)
Schmidt, Robert M. Belk, and Ida)
Belk,)

Stakeholders:)

CERTIFICATE OF SERVICE

I, Deborah A. Meeks, an employee of WEINBERG & BROWN, L.L.P. attorneys for the Defendants, Linda Harris as Trustee of the Ida Mae K. Belk Irrevocable Trust, Bibco, Inc., and Ida Mae K. Belk, do hereby certify that I have on or about March 7th, 2008, served written MOTION AND ORDER INFORMATION FORM AND COVER SHEET AND NOTICE OF MOTION AND MOTION on behalf of the above referenced Defendants, by depositing same, postage prepaid, addressed as indicated below:

Mr. Jan L. Warner
Warner, Payne & Black, LLP
Post Office Box 2628
Columbia, SC 29202

Deborah A. Meeks
Deborah A. Meeks

Sumter, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER) FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2008 MAR 24 AM 11:32

Case NO.: 2008-CP-43-00347

JAMES C. BIRDELL)
Gene C. Belk, Individually and as)
Co-Personal Representative of the Estate)
of Robert D. Belk)

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the)
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preworned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders)

**NOTICE OF MOTION AND
MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA**

**TO: M.M. WEINBERG, JR., ATTORNEY FOR DEFENDANT LINDA B. HARRIS IN
HER CAPACITIES AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE
OF ROBERT D. BELK AND TRUSTEE OF THE IDA MAE BELK
IRREVOCABLE TRUST:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Third Judicial Circuit for Sumter County on the tenth day after service of this Notice upon you at 10:00 a.m., or at such time and place as may be established by the Court for the issuance of an Order compelling M.M. Weinberg, Jr. to produce records pursuant to subpoena dated February 29, 2008 and personally served upon him on February 29, 2008.

The grounds for this Motion are as follows:

1. On February 29, 2008 Mr. Weinberg was personally served with a subpoena to appear at a deposition on March 26, 2008, and to produce records prior to the deposition on March 14, 2008 (Exhibit 1 – Subpoena and Affidavit of Service).

2. On March 19th, five days after the records were due, Plaintiff received Mr. Weinberg's untimely Motion to Quash Subpoena dated February 29, 2008 regarding his appearance and attendance on the ground that: (1) He is actively engaged as counsel for a party that has an extremely large equitable interest in this matter as well as Linda Belk as Personal Representative of the Estate of Robert D. Belk, (2) the deposition is an attempt to preclude him from representation in this matter, and (3) the records requested are either protected and privileged, impossible to pull together, he does not have them, and/or Plaintiff already had them.

3. Mr. Weinberg is and has been a material witness in this action, and he was made aware of this before he filed the responsive pleading because he was directly involved in transactions that violate a contract among the parties. Mr. Weinberg's deposition can't be taken without the production of the records that were subpoenaed.

4. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

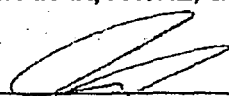
5. Subsequent thereto, Mr. Weinberg, who had represented Plaintiff's father for years, took on the representation of Plaintiff's mother and sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

6. Plaintiff requests an Order requiring Mr. Weinberg to immediately produce the records pursuant to the terms of the subpoena.

This Motion shall be based upon the attached affidavit and exhibits, together with such other affidavits and exhibits as may be submitted to the Court at a hearing on this Motion.

Pursuant to Rule 11, SCRCP, based upon the nature of this motion, consultation with opposing counsel would serve no useful purpose.

WARNER, PAYNE, & BLACK, L.L.P.



Jan L. Warner
Matthew E. Steinmetz
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
Attorneys for the Plaintiff

Columbia, South Carolina
March 21, 2008

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Case NO.: 2008-CP-43-00347

**AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO COMPEL**

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly

sworn, says:

1. I am the Plaintiff in this action and Co-Personal Representative of my father's Estate, Robert E. Belk.
2. I have previously filed and served a Motion to Disqualify M.M. Weinberg, Jr. from participating as counsel in this case due to the fact that he is a material witness, has substantial conflicts of interest and, in fact, is attempting to disrupt a plan that was put in place based upon his preparation of a faulty Will of my father.

3. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

4. Subsequent thereto, Mr. Weinberg, who had represented my father for years, took on the representation of my mother and my sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

5. A production subpoena was served on Mr. Weinberg on February 29, 2008.

6. On March 19th, five days after the records were due, Mr. Weinberg served Motion to Quash Subpoena as to his appearance and attendance at his deposition.

7. Mr. Weinberg is a material witness to the allegations contained in the Complaint. His deposition is scheduled for March 26, 2008 and cannot be taken without the production of the records that were subpoenaed.

8. I request an Order of the Court enforcing the subpoena, and further request an award of attorney's fees and costs for bringing this matter before the Court.

Gene C. Belk
Gene C. Belk

SWORN to before me this 21st
day of March 2008

Robert C. Herman
Notary Public of South Carolina
My Commission Expires: 5/20/2017

STATE OF SOUTH CAROLINA
 ISSUED BY THE COMMON PLEAS COURT FOR SUMTER COUNTY
 EIGHTH JUDICIAL CIRCUIT



Gene C. Belk, individually and as
 Co-Personal Representative of the Estate
 of Robert D. Belk
 Plaintiff,

SUBPOENA IN A COMMON PLEAS CASE

Case Number: 2008-CP-43-00347

vs.

Pending in Sumter County

Linda B. Harris, individually & as Trustee of the
 Ida Mae K Belk Irrevocable Trust dated 8/17/07
 and in all alleged fiduciary capacities, Bibco, Inc.
 Dewey M. Houser, Carolina Proowned, LLP, &
 Michael D. "Mickey" Lyles, Jr.,

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
 Robert M. Belk, and Ida Mae Belk,

Stakeholders.

TO: M.M. Weinberg, Jr.
 P.O. Box 1289
 Sumter, South Carolina 29151

YOU ARE COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Young Relter Keffer & Donald, PA 23 W. Calhoun Street Sumter, SC 29150	DATE AND TIME March 26, 2008 at 9:30 a.m.
---	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE ATTACHMENT**

PLACE WARNER, PAYNE, & BLACK, L.L.P. P. O. BOX 2628 COLUMBIA, SOUTH CAROLINA 29202	DATE AND TIME March 14, 2008 by 5:00 p.m.
---	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

ANY ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED, PURSUANT TO RULE 45(b)(1), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DECLARATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE
 Jan L. Warner, Attorney for Plaintiff February 29, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
 Jan L. Warner, Esquire, Post Office Box 2628 Columbia, SC 29202, (803) 789-9594
 SOCA FORM 204 (7/95) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

PROOF OF SERVICE

SERVED	DATE February 29, 2008	FEES AND MILEAGE TENDERED TO WITNESS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$ <u>30.05</u>
	PLACE Sumter, South Carolina	
SERVED ON (PRINT NAME)		MANNER OF SERVICE Personal
SERVED BY (PRINT NAME) Gary Moore		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Post Office Box 2628
 Columbia, South Carolina 29202

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d);

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time to the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
 - (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 60 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or
 - (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) If a subpoena:

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (3) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCCA Form 2d (7/90) Cont'd.

ATTACHMENT

Please deliver the following records to Warner, Payne & Black, L.L.P., P.O. Box 2628, Columbia, South Carolina, 29202:

1. Copies of all documents prepared by you, or at your request, since 9/17/07 for Ida Belk, Bibco Inc., Iada Mae K. Belk Trust, to include, but not be limited to, trusts, business formations, Wills or any other tangible documents.
2. Copies of all records relating to your representation of Robert Belk and Sumter Mortgage Company for ten (10) years prior to his death.
3. Copies of all time and billing records from January 1, 2001 through current date with regard to representation of Robert D. Belk in connection with, and in preparation of the Will, and all other representation of Robert D. Belk, records should include but not be limited to all time and billing to justify the bill of \$5800 to Mrs. Belk.
4. Copies of all communications to and from with David Sojourner and/or Karen Thomas regarding Robert D. Belk.
5. Copies of all conflicts letters with regard to your representation of Mr. Belk, Mrs. Belk, and Ms. Harris.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE ✓ COURT OF COMMON PLEAS
FAMILY COURT

Gene Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk)
Plaintiff (s))

THIRD JUDICIAL CIRCUIT

vs)

FILE NO. 2008-CP-43-00347

Linda B. Harris, et al.)
Defendant (s))

AFFIDAVIT OF SERVICE

RECORDED
2008 MAR -5 PH12:32
JAMES H. CATHPELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that he served the Notice of Motion and Motion to Remove Counsel of Record with Supporting Affidavits and Exhibits, Reply to Answer and Counterclaim, Notice of Deposition, Subpoena and Check for Witness Fee and Mileage

on M. M. Weinberg, Jr., Esq. by delivery to

M. M. Weinberg, Jr. personally,

() the _____ of the party served, and a person of suitable age and discretion then residing at the residence of the party served;

() the _____ off for _____

and leaving with him () her one copy of the same at 109 N. Main St in Sumter, Sumter County, South Carolina, 29151 on February 29, 2008 at 2:05 (a.m.) (p.m.).

That deponent knows the person so served, is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed Before Me,)
This 29th Day of February 2008)

[Signature])
Notary Public for South Carolina)
My Commission Expires: 11/21/15)

[Signature]
Signature of Deponent

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

)
) Case No.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Prowound. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

CERTIFICATE OF SERVICE

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

Stakeholders

I, Israel Stone, a legal assistant for the law firm of Warner, Payne & Black, L.L.P./
ElderLaw Services of South Carolina, P.A., attorneys for Gene C. Belk, do hereby
certify that on this date I caused a copy of **Motion to Compel Compliance with
Subpoena and Affidavit** to be served upon the parties listed below by depositing a
copy of same in the United States Mail, postage pre-paid, and addressed to the
following:

M.M. Weinberg, Jr., Esquire
Post Office Box 1289
Sumter, South Carolina 29151-1289

John E. Miles, Sr., Esquire
Post Office Box 2687
Sumter, South Carolina 2915

Columbia, South Carolina
March 21, 2008


Israel Stone

The July 31, 2008 statement of Sumter Mortgage general operating checking account, an estate asset, has a reconciled balance of \$10,228.36. In January 1, 2007, this account had a beginning balance of \$300,385.24. Therefore, \$290,000 plus has been spent from this account, and there have been no deposits since mid-February 2008 per the instructions of my sister and Mr. Weinberg.

From June 2008 to this date, the only monies received by me have been deposited into the estate Sumter Mortgage account.

I am a duly licensed and practicing attorney in good standing. I also am a licensed real estate agent and broker in good standing. I have a good working knowledge of real estate and accounting.

It is believed that this money has been deposited to an account known as I. M. Belk Company. Mr. MacEwen has previously prepared a spreadsheet showing that my mother has received gross distributions of \$1,138,829.00 between April 5, 2004, and June 30, 2007 ^{acc} ~~2007~~. If you add the additional monies that have been diverted from Sumter Mortgage Company indicated hereinabove, ^{acc} Ida Belk has conservatively received gross distributions in of \$1,418,392.16. I submit this affidavit in support of my application for an injunction to prevent further irreparable damage from being done to the Estate.

RELATIONSHIP WITH MY FATHER

During my father's life, he and I were involved in several business relationships. My father had a lot of confidence in me. I was his firstborn son and his only child to graduate from college and obtain a professional degree. Our most recent business relationship was a 50/50 business venture which began in June of 2002 in which I was

the managing partner of a 40 lot mobile home park. In that capacity, I handled all the cash receipts, deposits, bookkeeping and tax preparation.

After my father died on April 5, 2004, I individually and on behalf of his Estate sold the mobile home park to Jessie McLeod in June 2004 under an owner financing arrangement, and I remit the Estate's portion of the accounts receivable to the Estate each month.

HISTORICAL FACTS

In the year 2000, when my father was diagnosed with a life-threatening condition, he consulted with a noted estate planner Dave Sojourner, of Columbia, at which time he reported that he was the 100% owner of Sumter Mortgage, a sole proprietorship, and that substantially all of the assets were titled R. D. Belk, d/b/a Sumter Mortgage Company.

On March 4, 2004, M. M. Weinberg, Jr., of Weinberg and Brown prepared a Will for my father who died on April 5, 2004. His estate is being probated in the Sumter County Probate Court. *200*

According to my father's will, Carlton R. Davidson was named as Personal Representative, and I was named as sole Successor or Alternate Personal Representative.

On or about, April 12, 2004, my sister, Linda Harris, and I jointly consulted Mr. Weinberg as we had been designated as co-trustees under the Will. Mr. Weinberg had my father's original Will in his possession, and reviewed the terms with my sister and me. Among other things, the three of us discussed the fact that during my father's lifetime, he had handled all aspects of the family finances including buying and selling

real estate and other properties in his name, and in the name of Sumter Mortgage Company, an unincorporated entity.

In our presence, Mr. Weinberg called my father's longstanding certified public accountant, Wilson MacEwen, to discuss estate assets and existing business interests. Mr. Weinberg provided us legal advice about the probate of the Will; made recommendations to us about what we would do as trustees; and how the Estate should take control over the assets and business interests in accordance with his Will.

Acting on Mr. Weinberg's advice, my sister and I contacted the National Bank of South Carolina and had them freeze my father's personal checking account and three (3) Sumter Mortgage business accounts – a General Business Operating Account; a Finance Accounts; and a Money Market Account – until the Will could be submitted to probate.

On or about, April 16, 2004, I again met with Mr. Weinberg at his office and discussed with him that my mother, Ida Belk, was not pleased my father disinheriting two (2) of his grandchildren and giving his long-term employee, Linda Garrett, an immediate bequest of \$100,000.00 while his natural children were not getting any immediate benefit. AcB

On, or about, April 20, 2004, I again met with Mr. Weinberg at his office, this time to discuss my father's assets and business interests at which time Mr. Weinberg showed me four (4) different lists of assets prepared by my father and wrote me concerning the same.

On May 4, 2004, Carlton R. Davidson renounced his right to serve as Personal Representative. I alone was to act as solely as successor or alternate Personal

Representative but in an effort to preserve family unity, I allowed my sister, Linda Harris, to serve with me as Co-Personal Representative.

On May 7, 2004, my sister and I were appointed as Co-Personal Representatives of the estate and, on the same day, per Mr. Weinberg's advice, we went to NBSC and took control over the three (3) existing Sumter Mortgage business accounts.

Based upon Mr. Weinberg's advice, Sumter Mortgage been a part of the Estate administration for four (4) years from May 7, 2004 through the present date. During this four years (except as stated below and the reason for this application to the Court), my sister and I as co-personal representatives handled the daily business of our father's estate and jointly cosigned all Sumter Mortgage checks as Personal Representatives of his Estate.

To simplify bookkeeping, my sister and I closed the Sumter Mortgage Finance account and transferred the proceeds to the general operating account. Currently, we have two accounts: the general operating account and the money market account which is a savings account and is inactive except to accumulate interest.

The general operating business checking account is the account into which all accounts payable to Sumter Mortgage were to be deposited and from which were paid normal operating expenses of the ongoing Sumter Mortgage business. This was the account that was turned over the Wilson MacEwen each year so he could prepare the estate income tax returns from May 7, 2004 until February 2008 when my sister and Mr. Weinberg had these funds deposited elsewhere, which is one of the reasons for this application to the Court.

My father's personal checking account was closed, and new checking account at NBSC opened in the name of The Estate of R. D. Belk with my sister and me co-signing these checks as co-personal representatives.

Due to errors and omissions contained in the Will prepared by Mr. Weinberg that we learned about after it was probated, my mother, my sister, and I went back to Mr. Sojourner and were represented by Karen Thomas, Esquire, who prepared a comprehensive postmortem plan that was agreed to by myself and Defendant Linda Harris as Co-Representatives of the Estate and by my mother.

As part of our agreement, my sister and I would be co-trustees and joint managers of not only the Estate assets but also other assets held by our mother, including stock in Bibco, Inc. These agreements were written, signed, acted upon, and partially performed.

As part of the postmortem agreements, we signed a compromise agreement dated June 30, 2005 known as Memorandum of Understanding Regarding Future Transactions. Under the terms of this agreement, our mother agreed to create a new trust identical to the trust created by our father naming my sister and me as co-trustees. In consideration thereof, the Estate arbitrarily assigned our mother, Ida Belk, a 50% undivided interest in Sumter Mortgage so that she would correct the defects in the will prepared for our father by Mr. Weinberg.

After the above documents were signed, on the same day, a Trust Severance Agreement was signed by me and my sister as co-Personal Representatives of our father's estate to correct the faulty drafting of the Will by Mr. Weinberg.

in accordance with our oral and written agreements, my sister and I jointly handled the day-to-day management of Bibco and Sumter Mortgage for years. We both

were designated as vice-presidents of Bibco, and agreed that Bibco would not conduct future sales of used mobile homes due to unreasonable exposures for liability and risk.

Bibco, a C Corporation set up for my father by Mr. Weinberg, was a "holding company", and its only legitimate business was to manage its assets, collect outstanding notes receivables, and to wind down the business entity. Because this was an unfavorable way of currently doing business because C Corp's have double taxation – the corporation itself is taxed and then any dividends to stockholders are also taxed.

In December 2007, Bibco only had two (2) employees, me and my sister, and we were paid an annual management fee for three (3) years immediately following my father's death through June 2007.

Any assets owned by Bibco that required either yard maintenance or building maintenance were serviced by employees of Sumter Mortgage. Bibco occupied office space at 3061 Broad Street, the same office building as Sumter Mortgage Company. And Linda Garrett handled all accounts receivables for Bibco and Sumter Mortgage. p.c.b

Linda Garrett is an employee of and is paid by Sumter Mortgage. To my knowledge, Bibco has made no contributions toward Linda Garrett's salary nor has it paid anything toward office operating expenses such as utilities, telephone, water, cleaning, etc.

In December 2007, Linda Harris unilaterally instructed Linda Garrett to withhold the Bibco financial records from me, and from Mr. MacEwen. At that time, she also unilaterally instructed Linda Garrett to transfer Bibco all accounting and bookkeeping service from Wilson MacEwen to her own personal accountant, Roger Long. I have not received any compensation for services since the 2006 fiscal year.

Then, after other lawyers would not do her bidding, my sister took my mother to Mr. Weinberg on September 17, 2007, and Mr. Weinberg, the same person who had prepared my father's defective Will, prepared a Trust for my mother naming my sister as sole trustee that flies in the face and breaches the very agreements that were made necessary by Mr. Weinberg preparing my father's faulty will.

Mr. Weinberg then had my mother transfer into this trust disputed interests in the underlying assets of Sumter Mortgage and Bibco, all contrary to the very agreements made necessary by Mr. Weinberg's errors. These transactions have the potential of triggering gift taxes, not to mention that distribution of certain installment sales accounts receivable titled in Sumter Mortgage and Bibco to this trust will likely trigger acceleration of income on those notes, thereby causing substantial and dire tax consequences:

To make matters worse, in 1999, an attorney in Mr. Weinberg's firm filed an Affidavit in Circuit Court on behalf of my father stating that he (Robert D. Belk) was the sole stockholder of Bibco, Inc. Under the theory of judicial estoppels, Mr. Weinberg and his firm are barred from now taking a contrary position. But he has.

ACB

The underlying gravamen of the action I brought is based upon the breaches of the partially performed oral and written agreements referred to above. I have included an cause of action for unjust enrichment and accounting against Bibco because estate assets have been deposited into Bibco. For example, even though Sumter Mortgage is the owner of a note and mortgage from Gem Investment Company, Gem's monthly payment to Sumter Mortgage is being deposited into Bibco.

I also believe that because the Estate has an interest in Westgate Subdivision lots that have been sold on time, but monthly payments are being collected and

deposited into Bibco. In addition, the Estate has interests in unsold lots in this subdivision that are being rented, with rent being deposited into Bibco.

The underlying litigation here is based upon the breach of the partially performed oral and written agreements by my sister, and, on behalf the estate, I am seeking specific performance of these agreements and disputing my mother's legal ownership of Sumter Mortgage based upon her and my sister's breaches of contract.

By letter dated July 31, 2008, Mr. Weinberg acknowledges that my mother's disputed ownership in Sumter Mortgage is based upon the previous agreement that she and my sister reneged on with the help of Mr. Weinberg.

In addition, Mr. Houser has been allowed by my sister to intermeddle in Estate matters and sign legal documents for both Bibco and Sumter Mortgage. He also has a key to the Sumter Mortgage post office box. In late December 2007, unknown to me, Houser put in a bid for a used mobile home that was accepted. When he approached me for funds, I refused. I have just learned that Houser in concert with my sister purchased the mobile home with Bibco funds even though Bibco had no legitimate business interest and was suppose to be winding down its affairs. This is another breach of my sister's fiduciary duties. ACB

On Friday, January 18, 2008, I was informed by Linda Garrett, who is employed by Sumter Mortgage, that my sister instructed her in the late December 2007 not to make any future deposits into the Sumter Mortgage business account for the 2008 calendar year. On the same date, Linda Garret informed me that my sister had further instructed her to make the designated Sumter Mortgage deposits into another bank account known as the I. M. Belk Company and that my sister had actually given her deposit slips for this account. Ms. Garrett also informed me that, not knowing what else

to do, she had not made any deposits into Sumter Mortgage for approximately three (3) consecutive weeks and had a significant amount of cash and checks in excess of \$48,000.00 which had not yet been deposited.

During the estate administration, it has been normal and customary for Sumter Mortgage to pay quarterly estimated taxes for my mother as an accommodation to her. During the 2006 tax year, extraordinary payments were paid for both state and federal taxes, and therefore, large refund checks were issued: in excess of \$90,000.00 by the IRS and in excess of \$20,000.00 by the South Carolina Department of Revenue. My sister intercepted both of these checks from Mr. Houser who picked up the mail, and they were never deposited into the Sumter Mortgage business account.

In addition, a note receivable from Solomon Till was sold, and this check also was intercepted by my sister and never deposited into the Sumter Mortgage account. These acts were done without my knowledge and approval. Both acts resulted in unintended distributions to my mother or my sister during the Estate administration, another breach of fiduciary duty. *Doc*

On January 21, 2008, I hand delivered a letter to Linda Garrett, expressing my concern and demanding that all funds collected on behalf of Sumter Mortgage be deposited into the Sumter Mortgage business account because said account fell under the administration of the estate.

My sister caused Sumter Mortgage payroll checks to be issued to her son, Mitch Harris, and also to Mr. Houser during early January 2008 that I refused to sign because her son had never worked for Sumter Mortgage and Mr. Houser is her boyfriend.

When I filed the underlying action on February 5, 2008, I also sought removal of my sister as Co-Personal Representative. My similar motion in the probate court has been removed to this Court.

Then, on February 19, 2008, the same Mr. Weinberg who prepared my father's defective will and helped my mother and sister breach the agreements that were made necessary by his malpractice, wrote a unilateral letter to Linda Garrett instructing her to deposit incoming funds to my mother's account. I was unaware of the this letter and was not copied with the letter, nor did my attorneys receive a copy of this letter even though the underlying action had been commenced.

Thank on March 18, 2008, Mr. Weinberg sent a unilateral letter to Jessie McLeod instructing him to forward one-half (1/2) of a note receivable arising out of the sale of Cedar Hill Mobile Home Park to my mother. I again was unaware of this letter, was not copied with the letter, and my attorneys did not receive a copy of this letter. The note receivable from Jessie McLeod is owed jointly to me and to the Estate, and this note is not a Sumter Mortgage asset. It is Estate asset.

DCB

On June 21, 2008, while reviewing the Sumter Mortgage May bank statement, I discovered that no income had been deposited into the general operating account for Sumter Mortgage for that month. Therefore, on June 25, 2008, I filed a County Incident Report with the sheriff's department reporting missing deposits from Sumter Mortgage Company in an undetermined amount of money.

I made an immediately inquiry to Linda Garrett, the in-house accounts receivable clerk, and she provided me with the income detail of Sumter Mortgage covering the period from February 20, 2008, up through June 20, 2008. I determined that

\$208,563.16 in revenue which should have been deposited to Sumter Mortgage Company has been deposited elsewhere.

The only Sumter Mortgage checks I have refused to sign were those to my sister's son, Mitch Harris, and her romantic interest, Dewey Houser.

Mr. Weinberg has continued to conspire with my sister and others to disrupt the orderly administration of this estate.

As the result of a settlement that I handled on behalf of the estate, a large sum of money is currently held at Nelson Mullins Riley and Scarborough which represented the estate. My attorney prepared an Escrow Agreement to place these funds on interest in a restricted account at NBSC, but it has been ignored, thus causing the estate interest.

Even though Wilson MacEwen has been my father's and his companies' certified public accountant for more than 20 years and handled everything until my sister and Mr. Weinberg unilaterally interfered, he has been taken out of the loop.

For example, on August 8, 2008, I spoke with Linda Garrett who told me that financial information for Sumter Mortgage that would normally be provided to account Wilson MacEwen covering the period of January 2008, up through June 30, 2008 was still at her office because my sister had not authorized her to release the Sumter Mortgage financial information, she did not know what to do with it, so she has done nothing.

On August 13, 2008, I spoke with Mr. MacEwen who confirmed that he had not received the Sumter Mortgage Company financial information that he needs to complete the normal and customary bookkeeping for Sumter Mortgage Company and also the 2007 estate income tax return that was due on July 15, 2008.

Because of my sister's refusal to release the financial information, Mr. MacEwen had to request an extension of time for the estate income tax return. Also, the Sumter County Probate Court's annual accounting for the period April 1, 2007, through March 31, 2008 is due but cannot be completed by Mr. MacEwen until he receives the above financial information.

Another example is that the estate has had difficulty collecting a monthly note receivable from Land and Mortgage of South Carolina, Inc. that is due to R. D. Belk d/b/a Sumter Mortgage Company. Debtor, who has gotten behind in the past, has been sending monthly payments directly to my office, and I would send them to Linda Garrett for deposit into the Sumter Mortgage account. I collected the February through June payments and entrusted Linda Garrett to deposit them to the Sumter Mortgage account, but she did not do so. I have now collected the July and August 2008 payments totaling \$28,784.12 and based upon his lack of faith in Linda Garrett, I have deposited funds directly into the Sumter Mortgage operating account. ACB

Based on the unilateral acts of my sister who now has an absolute conflict of interest serving as trustee of the trust Mr. Weinberg prepared for my mother and as co-personal representative of the estate. The financial integrity of the estate and Sumter Mortgage have been seriously jeopardized based on these actions.

Another example: under my father's Will, the personal representatives were required to fund two (2) separate trusts, a Trust B and a Trust C before any significant distributions to my mother. Despite this, according to spreadsheet prepared by Mr. MacEwen, my mother has received gross distributions of \$1,138,829.00 between from April 5, 2004 and June 20, 2008.

Based upon the diversion of Estate/Sumter Mortgage income, and prior distributions to Ida Belk, the ability of the personal representatives to fund Trust B and Trust C are being severely jeopardized.

Importantly, my mother has waived her interest in Trust B, making the beneficiaries of Trust B her five (5) children who are to divide approximately \$1,400,000.00 in equal shares with a distribution of approximately \$280,000.00 to each.

Since filing of this action on February 5, 2008, Houser, Lyles, and Mitch Harris (my sister's sons and boyfriend) all occupy space at my father's former office at 3061 Broad Street in a double wide modular home.

After my father's death and during the administration of the Estate since May 7, 2004, I have been given office space at the above address. In order to carry out my duties and the administration of the Estate, I need to have frequent contact with the accounts receivable clerk and the other employees of Sumter Mortgage and the peaceful possession of an office to do so. Under the current estranged circumstances, I cannot carry out my duties with these individuals occupying the same office as myself. p.c.B

Based on the foregoing, I seek an the following injunctions which, if not granted, will cause irreparable damage to the estate and its assets: Removal of my sister as co-personal representative; requiring all books and records of all entities be turned over to Wilson MacEwen, CPA, immediately; An Order restraining my sister and Mr. Weinberg from continuing to interfere with the administration of the estate; requiring an audit and accounting; requiring that all funds be deposited into the appropriate estate accounts; An Order removing Mitch Harris, Lyles, and Houser from the estate office.

I make these statements based upon personal knowledge unless otherwise stated. I also rely upon the facts set forth in my Amended Verified Complaint dated April 4, 2008 which, to my knowledge, has not been answered by any Defendant.

Gene C. Belk

Gene C. Belk

SWORN to and subscribed before me

This 26th day of August, 2008.

Donald R. Jackson

Notary Public for South Carolina

My Commission Expires: 5/27/14

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
2008 APR -7 PM 1:49

Case NO.: 2008-CP-43-00347

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

PLAINTIFF'S MEMORANDUM
REGARDING MOTIONS
TO BE HEARD APRIL 7, 2008

**AS TO MOTIONS REGARDING THE REMOVAL
OF CO-PERSONAL REPRESENTATIVES
OF THE ESTATE OF ROBERT D. BELK**

1. On February 6, 2008, Plaintiff filed with the Sumter County Probate Court a Petition for Removal of Linda Harris as co-personal representative of the Estate of Robert D. Belk. ("Exhibit 1")

2. Simultaneously, Plaintiff filed a Motion to Remove Plaintiff's petition to remove the co-personal representative to the Sumter County Court of Common Pleas. ("Exhibit 2")

3. This motion was granted by way of Order of the Sumter County Probate Judge dated February 19, 2008. (See Exhibit 2 at bottom)



4. By way of motions dated February 28, 2008 and March 4, 2008, Linda Harris, as Trustee, Ida Mae Belk, and Linda Harris moved before this Court in this civil action to remove Plaintiff as co-personal representative of The Estate of Robert D. Belk.

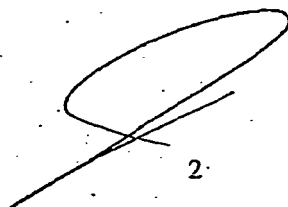
5. No order has been issued consolidating Plaintiff's civil action against the Defendants with the probate proceedings that have been removed to this court.

6. Further, no civil action number has been issued with respect to the removed estate proceedings and Plaintiff's civil action is a separate proceeding from the removed estate proceeding.

7. Plaintiff's petition to remove Linda Harris as co-personal representative does not appear on the Court's roster in this proceeding and is presumably being treated by the Court as a separate and distinct proceeding. ("Exhibit 3")

8. Defendants' motions to remove Plaintiff as co-personal representative of the Estate of Robert D. Belk has been filed in the wrong proceeding, are not properly before this Court, and this Court has no jurisdiction to entertain the same.

9. Notwithstanding the forgoing, should this Court find that this is the proper proceeding in which to petition for removal of the Plaintiff as co-personal representative of the Estate of Robert D. Belk, proceeding with a hearing is improper at this time as the parties have not had the opportunity to fully engage in discovery, and there are issues (which are addressed below) regarding Mr. Weinberg and Mr. Miles continuing to act as counsel for the Defendants and to even appear in these proceedings.



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**AS TO MOTIONS REGARDING SUBPOENA SERVED ON
M. M. WEINBERG, JR.**

10. On February 29, 2008 Plaintiff served upon M. M. Weinberg, Jr. a Subpoena to take his deposition and to produce various records. ("Exhibit 4")

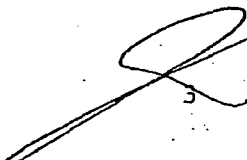
11. Specifically, Plaintiff's subpoena asks that Mr. Weinberg produce the following:

1. *Copies of all documents prepared by you, or at your request, since 9/17/07 for Ida Belk, Bibco Inc., Iada Mae K. Belk Trust, to include, but not be limited to, trusts, business formations, Wills or any other tangible documents.*
2. *Copies of all records relating to your representation of Robert Belk and Sumter Mortgage Company for ten (10) years prior to his death.*
3. *Copies of all time and billing records from January 1, 2001 through current date with regard to representation of Robert D. Belk in connection with, and in preparation of the Will, and all other representation of Robert D. Belk, records should include but not be limited to all time and billing to justify the bill of \$5600 to Mrs. Belk.*
4. *Copies of all communications to and from with David Sojourner and/or Karen Thomas regarding Robert D. Belk.*
5. *Copies of all conflicts letters with regard to your representation of Mr. Belk, Mrs. Belk, and Ms. Harris.*

12. On March 19, 2008, Plaintiff received Mr. Weinberg's Motion to Quash Plaintiff's subpoena.

13. On March 24, 2008, Plaintiff filed and served a Notice of Motion and Motion to Compel Compliance with the February 29, 2008 subpoena.

14. Mr. Weinberg has objected to Plaintiff's subpoena on the grounds that (1) he is actively engaged as counsel for a party who has an extremely large equitable interest in this matter as well as Linda Belk as Personal Representative of the Estate of Robert D. Belk; (2) the deposition is an attempt to preclude him from representation in



this matter; and (3) the records requested are either protected and privileged, impossible to pull together, he does not have them, and/or Plaintiff already had them.

15. As to Mr. Weinberg's argument that he is actively engaged as counsel for a party in this matter and that the subpoena is an attempt to preclude him from representation, despite his prior conflicts that prevent him from serving as counsel, Mr. Weinberg can no longer act as counsel for any party to these proceedings as he has been added as a party-defendant by way of Summons and Amended Complaint served upon him on April 4, 2008.

16. Notwithstanding the forgoing, because an attorney represents a party is not a recognized privilege or excuse for not producing materials in his possession.

17. Mr. Weinberg is and has been a material witness in this action, and he was made aware of this before he filed the responsive pleading because he was directly involved in transactions that violate a contract among the parties. (See Affidavit of Plaintiff attached to his March 24, 2008 Notice of Motion and Motion to Compel; January 5, 2008 correspondence from Plaintiff to Mr. Weinberg – attached hereto as "Exhibit 5"; February 18, 2008 Letter to Mr. Weinberg from counsel for the Plaintiff – attached hereto as "Exhibit 6"; Affidavit of Plaintiff in support of motion to disqualify – attached hereto as "Exhibit 7")

18. Indeed, if an attorney is a fact witness, as is the case here, he is subject to disqualification pursuant to Rule 3.7, South Carolina Rules of Professional Conduct, and the facts and evidence known to him is discoverable. ("The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively." (See *State v. Capps*, 276



S.C. 59, 65, 275 S.E.2d 872, 875 (1981); Collins Entertainment, Inc. v. White, 611 S.E.2d 262, 363 S.C. 546 (S.C. App. 2005)).

19. Additionally, pursuant to Rule 3.4 South Carolina Rule of Professional

Conduct:

"A lawyer shall not:

"(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

...
"(d) in pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;" (Emphasis Added)

20. Based upon the forgoing, Mr. Weinberg must disclose the facts related to the acts complained of by the Plaintiff which he has personal knowledge of.

21. At to Mr. Weinberg's argument that the information sought is protected or privileged, this argument is likewise untenable.

22. Mr. Weinberg admits that he had discussions with the Plaintiff regarding the creation, reformation, and funding of the Trust and the Family Settlement Agreement. (See Affidavit of M. M. Weinberg, Jr. – attached hereto as "Exhibit 8"; Affidavit of Plaintiff attached to his Motion to Compel)

23. Having willfully discussed the forgoing with the Plaintiff, Mr. Weinberg and his "clients" have waived any privilege they may have enjoyed. ("Only confidential communications are protected by the attorney-client privilege (See *Cloniger v. Cloniger*, 261 S.C. 603, 193 S.E.2d 647 (1973); "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed, but also to all communications between the same attorney and the same



client on the same subject." *Marshall v. Marshall*, 282 S.C. 534, 538, 320 S.E.2d 44, 46-47 (Ct.App.1984) (citing *Duplan Corp. v. Deering Milliken, Inc.*, 397 F. Supp. 1146 (D.S.C.1975); *U.S. v. Jones*, 696 F.2d 1069 (4th Cir.1982)).

24. Mr. Weinberg also argues that the billing related records sought are subject to the attorney-client privilege.

25. In *Strickland v. Capitol City Mills* 54 S.E. 220, 74 S.C. 16 (S.C. 1906) Our Supreme Court held

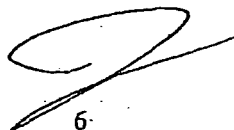
"We see no reason why the contract between the client and attorney as to the fee to be paid for professional services, and the assignment of an interest in a judgment recovered in payment of services rendered, should fall within the rule of privileged communications. . . This is knowledge which is not communicated by the client to the attorney, but is knowledge of the attorney derived from his own act in creating the fact sought to be disclosed, and not from a revelation of any secret of the client. The fee contract, whether regarded as made preliminary to the relation of attorney and client, or at the close of such relation in compensation for services rendered, or whether made during the existence of such relation, is really collateral to the professional relation, is not strictly a part of it, and has no bearing upon the merits of the matter, upon which professional aid was invoked."

26. Based upon the forgoing, all bills, payments and fee agreements and contracts between Mr. Weinberg and any of the defendants are not subject to the attorney-client privilege.

**AS TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER
REGARDING DEPOSITION
OF PLAINTIFF**

27. On April 1, 2008 Plaintiff filed and served a Notice of Motion and Motion for Protective Order with respect to the deposition of Gene C. Belk which was noticed for April 2, 2008 by John E. Miles, Sr.

28. As an initial matter the notice of deposition was improper as it did not include a witness fee or mileage.


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29. In *Murphy v. Nations Bank, N.A.* 607 S.E.2d 80, 362 S.C. 179 (S.C. 2004)

our Supreme Court provided:

"We hold a party to an action who is required to attend a deposition is entitled to a witness fee and mileage pursuant to Rule 30(A)(2)."

30. Based upon the forgoing, the Notice of Deposition was improvidently issued, and is improper.

31. Regardless, Plaintiff objected to proceeding with the deposition until the questions surrounding the disqualification of Mr. Weinberg and Mr. Miles were resolved.

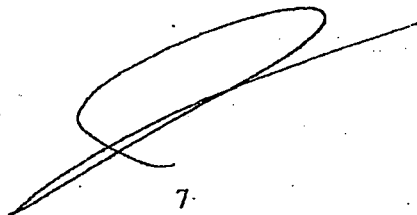
32. In that Mr. Weinberg is now a party to these proceedings and is a fact witness, it is even more improper to proceed with Plaintiff's deposition.

33. Based upon the forgoing, this Court should grant Plaintiff's Motion for Protective Order.

**AS TO PLAINTIFF'S MOTIONS TO REMOVE
MR. WEINBERG AND MR. MILES**

34. On February 29, 2008, counsel for Plaintiff filed and caused to be served Notice of Motion and Motion to Disqualify Mr. Weinberg as counsel for Linda B. Harris on the grounds that he was a fact witness with respect to the defective estate planning, the family settlement agreement which was partially performed, and discussions with the Plaintiff regarding Irrevocable Trust.

35. In that Mr. Weinberg is a fact witness, he is precluded from acting as counsel pursuant to Rule 3.7, South Carolina Rules of Professional Conduct. (See Affidavit of Desa Ballard attached hereto as "Exhibit 9")



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36. Regardless, Mr. Weinberg is now a party to these proceedings and is necessarily disqualified in that he has an obvious conflict of interests in continuing to represent Harris.

37. On March 24, 2008, Plaintiff filed and served Notice of Motion and Motion to Disqualify John E. Miles, Sr. as counsel for Linda Harris, Carolina Pre-Owned, Dewey M. Houser, and Michael D. Lyles, Jr.

AS TO PLAINTIFF'S MOTION TO DISMISS

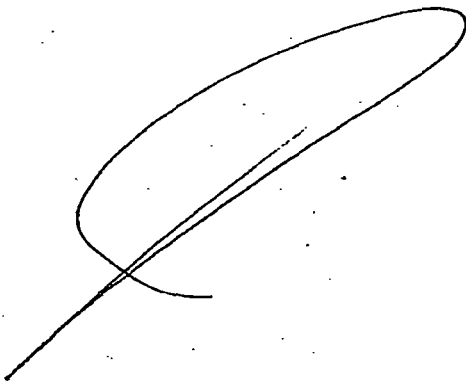
38. Defendants' counterclaims against Plaintiff in his individual capacity deal with Premier Properties, LLC and Bibco, Inc. which are either not parties hereto, or have not had counterclaims asserted against them.

39. Additionally, Defendant Houser should have made claims for lost or unpaid wages against the entity that employed him.

40. Defendants have failed to join indispensable parties necessary for a complete adjudication of their claims.

41. Pursuant to Rule 12(b)(7), a claim is subject to dismissal for failure to join an indispensable party.

42. Based upon the forgoing, this Court must dismiss Defendants' causes of action against the Plaintiff.

A large, stylized handwritten signature in black ink, consisting of a large loop and a long tail stroke.

WARNER, PAYNE & BLACK, L.L.P.

Jan L. Warner
Matthew E. Steinmetz
1122 Lady Street, Suite 1200 (29201)
Post Office Box 2628
Columbia, South Carolina 29202
Telephone: (803) 799-0554
Facsimile: (803) 799-2517
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
April 7, 2008

Addendum to Application to Remove Linda B. Harris as Co-Personal Representative

Pursuant to § 62-3-611, SCCode Ann, removal of Linda B. Harris as Co-Personal Representative would be in the best interests of the estate because

- 1) the Will of Robert D. Belk appointed Gene C. Belk as successor personal representative;
- 2) Gene C. Belk sought the joint appointment of him and his sister in an effort to maintain family unity;
- 3) However, despite a Family Settlement Agreement dated June 28, 2005 and Memorandum of Understanding Concerning Future Transactions, both signed by Linda B. Harris, Petitioner, and their mother, Ida Mae Belk, and both partially performed, Linda B. Harris has not only reneged on said Agreements after securing the benefits therefrom, but also has disrupted the administration, has done nothing of substance to move the estate toward closure, and has placed the estate at undue risk. She has watched Petitioner handle the everyday and difficult aspects of the Estate while sitting back and disrupting the administration of the estate for self-serving purposes;
- 4) Linda B. Harris has been involved in self-serving activities, has engaged in activities that have increased estate expenses, has caused losses of estate revenue; and has caused additional and unnecessary expense to the Estate as more fully described in the attached action simultaneously brought in the Court of Common Pleas.

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF SUMTER

IN THE MATTER OF THE ESTATE OF ROBERT D. BELK

DALE ATKINSON
JUDGE OF PROBATE
SUMTER COUNTY, S.C.

CASE NUMBER: 04-ES-43-0225

RECEIVED FEB 06 2008

MOTION FOR REMOVAL FROM PROBATE COURT TO CIRCUIT COURT

YOU WILL PLEASE TAKE NOTICE that Petitioner Gene C. Belk, Co-Personal Representative of the above Estate, hereby moves for an Order of the Sumter County Probate Court removing this action to Court of Common Pleas for the Third Judicial Circuit. This Motion is made pursuant to S.C. Code § 62-1-302(d), as well as any other law as may be supported by the pleadings, filings, and such other evidence or argument as the Court may allow, and any memorandum filed in support of this Motion.

WARNER, PAYNE & BLACK, L.L.P.

Jan L. Warner

Post Office Box 2628

Columbia, SC 29202

Telephone: (803) 799-0554

Facsimile: (803) 799-2517

Attorney for Petitioner Gene C. Belk

Columbia, South Carolina
February 6, 2007

RECEIVED
2008 FEB 21 PM 1:22
OFFICE OF CLERK OF PROBATE
SUMTER COUNTY, S.C.

ORDER OF REMOVAL

It appearing that removal is appropriate

IT IS SO ORDERED!

February 19, 2008

Boyd P. Brown
Probate Judge, Sumter County

CERTIFIED TRUE COPY OF ORIGINAL
FILED IN THIS OFFICE
Boyd P. Brown
ASSOC. JUDGE OF PROBATE
SUMTER COUNTY SC



Sumter County
Third Judicial Circuit
Court Docket



[New Search](#)

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Court Docket for CP Motions Docket - Monday April 07, 2008

Date/Time	Case File Date Case Type	Case Caption	Plaintiff Attorney	Defendant Attorney	Notes
Monday April 07, 2008 2:00 PM	<u>2007CP4302594</u> Tuesday December 04, 2007 Real Prop/Other 499	Hulina A Singelton - Patrick VS Leroy Smith	Killen, Patrick Mcfadden 8037738676		Pltf Motion for Judgment/Singelton - Patrick, Hulina A
Monday April 07, 2008 2:00 PM	<u>2008CP4300047</u> Tuesday January 08, 2008 Real Prop/Other 499	Lawless Group Llc VS Guardian Builders Inc	Jones, Richard C. 8037738676 x		Pltf Motion to Dismiss Helen & Daniel Lawless Def Motion to Dismiss/Coker, Wayne Coel
Monday April 07, 2008 2:00 PM	<u>2008CP4300347</u> Wednesday February 06, 2008 Debt Collections 110	Gene C Belk , plaintiff, et al VS Linda B Harris , defendant, et al	Warner, Jan L. 8037990554 x	Belk, Ida Mae Belk, Robert M Hanlon, Cheryl Ann Miles, John E Sr Schmit, Patricia B Weinberg, M M Jr	Pltf's Mtn to Remove Counsel of Record;Def Harris' Mtn for Relief;Pltf Belk Mtn to Quash; Pltf Belk Motion to Dismiss;Pltf Belk Mtn Compel Compliance w/subp;Pltf Belk Mtn Remove Miles as Counsel - also 4/3/08 Pltf's Motion for Protective Order Def's Mtn to move b/4 Probate Judge/Ord Relieving Per Rep/Belk, Robert D Estate of
Monday April 07, 2008 2:00 PM	<u>2008CP4300351</u> Wednesday February 06, 2008 Motor Veh Accid 320	Camilla A Jackson VS Hodge Distribution & Logistics Inc	Clark, John Derrick 8037751234 x	Affirmative Insurance Company, Lindemann, Andrew F: Potent, Chad Edward	Def Motion make More Definite/Certain or Strike/Hodge Distribution & Logistics Inc
Monday April 07, 2008 2:00 PM	<u>2008CP4300618</u> Friday March 07, 2008 Foreclosure 420	Wrb Holding Llc VS Chuenchai Singkhonket , defendant, et al	Weinberg, M M Jr 8037751274		Pltf Motion to Appt Receiver/Wrb Holding Llc

[Previous Page](#) [Next Page](#)

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STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT FOR SUMTER COUNTY
EIGHTH JUDICIAL CIRCUIT



Gene C. Belk, individually and as
Co-Personal Representative of the Estate
of Robert D. Belk
Plaintiff,

SUBPOENA IN A COMMON PLEAS CASE

Case Number: 2008-CP-43-00347

vs.

Pending in Sumter County

Linda B. Harris, individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Elbco, Inc.
Dewey M. Houser, Carolina Praowned, LLP, &
Michael D. "Wickey" Lyles, Jr.,

Defendants.

And Cheryl Ann Hanlon, Patricia E. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

TO: MLM. Weinberg, Jr.
P.O. Box 1289
Sumter, South Carolina 29151

YOU ARE COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Young Rellor Keffer & Donald, PA
23 W. Calhoun Street
Sumter, SC 29150

March 26, 2008 at 9:30 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **SEE ATTACHMENT**

PLACE

DATE AND TIME

WARNER, PAYNE, & BLACK, L.L.P.
P. O. BOX 2628
COLUMBIA, SOUTH CAROLINA 29202

March 14, 2008 by 5:00 p.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY COMMUNICATION WITH A PARTY TO THIS SUIT IS HEREBY RESTRICTED PURSUANT TO RULE 60(e)(3), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT IDENTIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE DESIGNATION MUST SET FORTH THE KNOWLEDGE OF REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Jan L. Warner, Attorney for Plaintiff

DATE

February 29, 2008

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Jan L. Warner, Esquire, Post Office Box 2628 Columbia, SC 29202, (803) 789-0534

SOCA FORM 254 (7-03)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS	
	February 29, 2008	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO AMOUNT \$ 30.05
	PLACE		
	Sumter, South Carolina		
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
		Personal	
SERVED BY (PRINT NAME)		TITLE	
Gary Moore			

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

ADDRESS OF SERVER

Post Office Box 2628
Columbia, South Carolina 29202

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (1)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 60 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (i)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place where the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SCCA Form 2d (7/80) Cont'd.

ATTACHMENT

Please deliver the following records to Warner, Payne & Black, L.L.P., P.O. Box 2628, Columbia, South Carolina, 29202:

1. Copies of all documents prepared by you, or at your request, since 9/17/07 for Ida Belk, Bibco Inc., Ida Mae K. Belk Trust, to include, but not be limited to, trusts, business formations, Wills or any other tangible documents.
2. Copies of all records relating to your representation of Robert Belk and Sumter Mortgage Company for ten (10) years prior to his death.
3. Copies of all time and billing records from January 1, 2001 through current date with regard to representation of Robert D. Belk in connection with, and in preparation of the Will, and all other representation of Robert D. Belk, records should include but not be limited to all time and billing to justify the bill of \$5800 to Mrs. Belk.
4. Copies of all communications to and from with David Sojourner and/or Karen Thomas regarding Robert D. Belk.
5. Copies of all conflicts letters with regard to your representation of Mr. Belk, Mrs. Belk, and Ms. Harris.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE ✓ COURT OF COMMON PLEAS
FAMILY COURT

Gene Belk, Individually and as)
Co-Personal Representative of the)
Estate of Robert D. Belk)
Plaintiff (s))

THIRD JUDICIAL CIRCUIT

vs)
Linda B. Harris, et al.)
Defendant (s))

FILE NO. 2008-CP-43-00347

AFFIDAVIT OF SERVICE

RECORDED
2008 MAR -5 PM 12:32
JANIE S. CHAPPELL
CLERK OF COURT
SUMTER COUNTY, S.C.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being duly sworn says that he served the Notice of Motion and Motion to Remove Counsel of Record with Supporting Affidavits and Exhibits, Reply to Answer and Counterclaim, Notice of Deposition, Subpoena and Check for Witness Fee and Mileage

on M. M. Weinberg, Jr., Esq. by delivery to

M. M. Weinberg, Jr. personally,

() the _____ of the party served,
and a person of suitable age and discretion then residing at the residence of the party served;

() the _____ off for _____

and leaving with him () her one copy of the same at 109 N. Main St
in Sumter, Sumter County, South Carolina, 29151
on February 29, 2008 at 2:05 (a.m.) (p.m.).

That deponent knows the person so served, is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed Before Me,)
This 29th Day of February 2008)
[Signature])
Notary Public for South Carolina)
My Commission Expires: 11/21/15)

[Signature]
Signature of Deponent

Gene Belk
POBox 1208
Sumter, SC 29151

January 5, 2008

M. M. Weinberg, Jr.

Sent by fax 803-775-0399
Sent by email mmweinbergjr@sc.rr.com

Dear Rusty,

I was shocked to receive your letter of January 3rd on Friday.

Nothing personal, but for the reasons herein, you and I should have no further oral communications:

First, when my father was ill, you encouraged him let you prepare the will rather than allow a competent estate planner well-versed in taxation to complete. As a result, the will you prepared for my father was so deficient that it cost the estate untold tens of thousands of dollars, not to mention my time in attempting to resolve what was botched by you.

Second, in order to attempt to "fix" what you had botched, the estate lawyer in Columbia created another plan that included my mother signing a disclaimer based upon a family settlement agreement among me, my sister, and my mother that you never bothered to read before you again began preparing documents for my mother that violate that agreement.

Third, you had my mother sign what you call an "irrevocable trust" on the same day she came to see you for the first time without investigating the background at all. This "trust" not only violates the family agreement, but also may well cost my mother significant taxes because you continue to practice law "from the hip" rather than leaving complicated matters like this to people who know what they are doing. You told me just weeks ago it had not been recorded and you could change it even though it is irrevocable and transfers all my mother's property into the trust. Well, for your information, my sister, the Trustee, recorded the trust on October 30th. In addition to breaching our agreement, the trust beneficiaries are not the same people you specifically put in my father's will as certain individuals were to be left out.

Fourth, I don't know who you represent. If the "trust" you had my mother sign is valid and really holds the assets, then the trustee (my sister, Linda) was given the right to conclude the estate matters, not my mother. So I guess you represent Linda as trustee. Or do you also now represent her as co-personal representative of the estate? Or do you also represent her personally? In any case, I believe you have deep conflicts of interest.

Fifth, based on the estate tax return filed and accepted by the IRS and SC Department of Revenue, my mother owns an undivided one-half interest in all Sumter Mortgage Company assets which includes Williamsburg Subdivision, LLC. Therefore, my mother owns an undivided half interest in the estate's 50% interest in this LLC. If the "trust" you prepared for my mother in September is valid, then the trust owns this undivided interest. So when you "understand" that my mother owns this asset in your letter, you are wrong again.

Sixth, my sister, as co-personal representative of the estate, was involved in discussions with Gus Dixon at Nelson Mullins before Mr. Dixon accepted the Gainsy offer regarding Williamsburg LLC of \$450,000.00 plus a deed to Phase III on December 19th. You told Russ Jeter that you represented my mother in September 2007, but never told him you had prepared a "trust" for my mother or that you purported to transfer all assets owned by my mother from the estate into that trust. My sister, as co-personal representative, also attended a part of the mediation in Sumter. You were sent a copy of Mr. Dixon's email on December 19th and no one heard a word from you that "my mother" had changed her mind. You called me twice about the emails you had received, and it was obvious to me that you never read, much less understood, the contract or negotiations that have cost the estate tens of thousands of dollars in attorney's fees with Nelson Mullins since this matter commenced in December 2006. So you waited until January 3rd to let me and Mr. Dixon know that my mother does not want the offer my sister and I as co-personal representatives agreed to accept as per Mr. Dixon's email of December 19th.

Seventh, since my sister is "trustee" under the "trust" you prepared for my mother, and since my sister as "trustee" has the right and obligation under that "trust" to conclude estate matters, I assume you also represent Linda. I also assume that you know that if this case goes to trial, the estate will be on the hook for much more attorney's fees with the potential of a poor result given the one-sided contract my father signed.

Eighth, I believe you have conflicts of interest because you are now trying to sink a deal that my sister as co-personal representative approved, but as "trustee" apparently does not like. This puts you at complete odds as my mother and the estate will suffer if this deal does not go through because of you.

If you are truly representing my mother and her alone, I don't believe you can give her competent advice because you know little, if anything about the litigation and have not prepared reasonably to even give her advice.

You are interfering with the administration of this estate and, unless you represent my sister as co-personal representative, you have no right to do so. If Mr. Dixon is not allowed to complete the settlement based upon his acceptance of the offer with the consent of my sister and I, the estate will hold you personally responsible for the resulting costs.

DeB

Again, nothing personal here, but you have overstepped your bounds.

Gene
Gene

Co: Gus M. Dixon, Esquire.

WARNER, PAYNE & BLACK, L.L.P.
ELDER LAW SERVICES OF SOUTH CAROLINA, P.A.

JAN L. WARNER
B.A., J.D., LL.M. (Taxation)
Certified Fellow, American Academy of Matrimonial Lawyers
Member, National Academy of Elder Law Attorneys
JLW@JANWARNER.COM

MITCHELL C. PAYNE
B.S., M.A. (Accounting), J.D.
Member, National Academy of Elder Law Attorneys
MCP@LDRFLAW-SC.COM

CHARLES M. BLACK, JR.
B.S. (Finance/Management), J.D.
Member, National Academy of Elder Law Attorneys
Former Asst. General Counsel, SC DEHS
CHARLESBLACK@WFB-LAW.NET

MATTHEW E. STEINMETZ
A.B., J.D.
MATTHEWSTEINMETZ@WFB-LAW.NET

CARRIE A. WARNER
B.B., J.D.
CARRIEWARNER@WFB-LAW.NET

February 18, 2008

M.M. Weinberg, Jr., Esq.
P.O. Box 1289
Sumter, SC 29151-1289

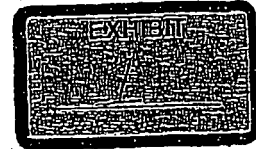
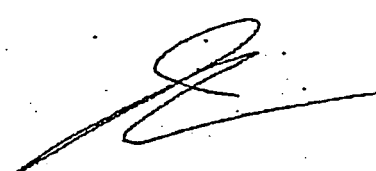
RE: Gene Belk, Individually and as Co-Personal Representative of the Estate of
Robert D. Belk vs. Linda B. Harris, et al,
Case No.: 2008-CP-43-00347

Dear Rusty,

You indicated you represented Mrs. Belk and the Trust; however, if this is an Irrevocable Trust, then the Trustee, not Mrs. Belk, is the appropriate party in interest. Therefore, I assume that you represent Linda Harris.

While I have no problem granting an extension of time in which to file responsive pleadings until March 10, 2008, I did want to put you on notice that based on my review of the file, you appear to be not only a material witness in this matter, but also to have certain conflicts of interest that will prevent you from representing any party to this litigation.

I would appreciate very much you reviewing your files thoroughly before you make an appearance as counsel of record for anyone in this action as, if you do, we will move before the Court to have you removed as counsel of record.



1122 LADY STREET, SUITE 1200 (29201)
POST OFFICE BOX 2628 (29202)
COLUMBIA, SOUTH CAROLINA
TELEPHONE (803) 799-0554
FACSIMILE (803) 799-2517

131 CALDWELL STREET
POST OFFICE BOX 10352
ROCK HILL, SOUTH CAROLINA 29730
TELEPHONE (803) 329-8656
FACSIMILE (803) 325-2973

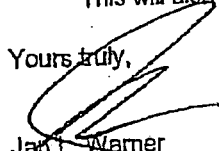
PLEASE REPLY TO:
COLUMBIA OFFICE
POST OFFICE BOX 2628
COLUMBIA, SOUTH CAROLINA 29202

M.M. Weinberg, Jr., Esq.
February 18, 2008
Page 2

Based upon the documents that I have received, I believe it is very straightforward that you do have conflicts here and should not be representing anyone. Should you or whoever you deem you represent take a contrary position, we will seek counsel fees for the time it will take to take this matter before the Court.

This will also confirm that we will begin serving discovery this week.

Yours truly,



Jan L. Warner
JLW/sf

cc: Gene Belk

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) 2008 FEB 29 PM 1:53)
RECORDED) IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

JAMES C. CAMPBELL)
CLERK OF COURT)
SUMTER COUNTY) S.C.)
Case NO.: 2008-CP-43-00347.

Gene C. Belk, Individually and as)
Co-Personal Representative of the Estate)
of Robert D. Belk)

Plaintiff,)

vs.)

Linda B. Harris, Individually & as Trustee of the)
Ida Mae Belk Irrevocable Trust dated 9/17/07.)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.)

And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders)

**AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO REMOVE
COUNSEL OF RECORD**

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly
sworn, says:

1. I am the Plaintiff in this action.
2. M.M. Weinberg, Jr. represented my father individually, and at times Robert D. Belk d/b/a Sumter Mortgage over a period of 40 years in legal matters and business transactions.
3. Mr. Weinberg prepared the Last Will and Testament of my father, Robert D. Belk, that was admitted to Probate on May 7, 2004.
4. The Will prepared by Mr. Weinberg was defective and deficient, exposing certain beneficiaries of the Estate to significant taxes and disqualification from Medicaid benefits.

5. In an effort to attempt to rectify the defects and deficiencies in said Will, my sister, Defendant Linda B. Harris, my mother, Defendant Ida Mae Belk, and I sought the counsel of attorneys David C. Sojourner and Karen Thomas in Columbia, South Carolina to represent the Estate.

6. As a result, a post-mortem plan was developed by Mr. Sojourner and Ms. Thomas in an attempt to minimize taxes. Under that plan, Mrs. Belk signed a Disclaimer and also created two Trusts for the special needs planning of Stakeholders Cheryl Hanlon and Robert M. Belk. This plan included a Family Settlement Agreement that was executed by my sister, my mother, and myself, and the signing of a Memorandum as to Future Transactions.

7. After receiving the benefits that were bargained for, my sister, Defendant Harris, individually being named as Co-Personal Representative, began to renege on the Family Settlement Agreement and Memorandum, and took our mother to two attorneys in her efforts to do so.

8. My sister then took my mother to Mr. Weinberg who, on the first visit, prepared a purported Irrevocable Trust which assisted her in violating the terms of the Family Settlement Agreement and the Memorandum with regard to Future Transactions. When I informed Mr. Weinberg of the situation, he told me that since the Trust was not recorded, he could, and would, change it. However, my sister, Defendant Harris had recorded the Trust.

9. By preparing said Irrevocable Trust and by purportedly making transfers into said Trust, Mr. Weinberg has potentially caused significant gift tax issues which otherwise would not be involved.

10. I have had numerous conversations with Mr. Weinberg prior to the preparation of my father's Will subsequent to my father's death and after his

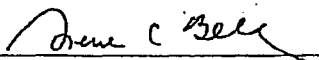
preparation of an Irrevocable Trust for my mother and Mr. Weinberg has made statements to me that would be relevant to the allegations contained in the Complaint.

11. I have previously warned Mr. Weinberg, individually and through my counsel, that he should not become involved in this case because he was a material witness (Exhibit 1). However, despite my efforts and the efforts of my attorney, Mr. Weinberg has become involved and has filed an Answer and Counterclaim.

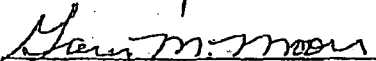
12. Mr. Weinberg also became involved in a complex property negotiation, purportedly representing Linda Harris as Co-Personal Representative of said Estate, and interfered with the amicable adjustment of that action.

13. Mr. Weinberg is a material witness to the allegations contained in the Complaint, and has significant deep conflicts of interest which require his removal as attorney for any party to this action.

14. Even though fair warning was given to Mr. Weinberg, he still filed an Answer and Counterclaim in connection with this action, and I request attorney's fees and costs for proceeding on this Motion.


Gene C. Belk

SWORN to before me this 29
day of February 2008


Notary Public of South Carolina
My Commission Expires: 6/15/11

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

RECORDED
IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2008 MAR 7 PM 4:28
CIVIL ACTION NO: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the
Estate of Robert D. Belk,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07
and in all alleged fiduciary
capacities, Bibco, Inc., Dewey
Houser, Carolina Preowned, LLP
and Michael D. "Mickey" Lyles, Jr.,

Defendants,

And Cheryl Ann Hanlon, Patricia B.
Schmidt, Robert M. Belk, and Ida
Belk,

Stakeholders.

RESPONSE TO AFFIDAVIT OF
GENE C. BELK

MAR 19 PM 12:15

TO: JAN L. WARNER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Now comes M.M. Weinberg, Jr. who first being duly sworn states:

1. That in reply to the Affidavit of Gene C. Belk dated February 29, 2008, your deponent would respectfully show that he admits Paragraph 1.
2. That he admits Paragraph 2 alleging, however, that during that period of time Mr. Belk was represented by numerous other attorneys, including, but not limited to W. E Durant of the Sumter Bar, David L McGinnis prior to his appointment as a judge and perhaps other lawyers that are unknown at this time.

3. That Item 3 is admitted.

4. That Item 4 is denied in that every item asked for by Mr. Belk was treated as requested by Mr. Belk who had specific objections to some of what Gene C. Belk has called deficiencies in the Will, which was drawn as he directed.

5. As to the paragraph your deponent is informed that Ida Mae Blek never sought the services of Attorney's Sojourner and Thomas.

6. As to Item 6, your deponent is informed and believes that the same is true as far as it goes, but that, when a Trust was prepared in conjunction with the Family Settlement Agreement nominating Gene C. Belk and Linda Harris as Co-Trustees, Gene C. Belk has refused to accept the Co-Trusteeship, thereby negating in full the efficiency of said Agreement which he now seeks to enforce.

7. As to Paragraph 7, see Paragraph 6.

8. As to Paragraph 8, I am misquoted in said Paragraph. What I told Mr. Belk who was desperately seeking appointment as Co-Trustee of this Trust that if it had not been recorded that it would be a simple matter to redo it. If, however, it had been recorded, it would be necessary simply to start another Trust since no property had been put into Irrevocable Trust-only if that was what Mrs. Ida Mae Belk's wish, which for some period of time was not her wish.

9. Paragraph 9 is denied.

10. In answering Item 10, it is true that Mr. Belk has come to this office and imposed upon my time for extended periods of time rambling on about the situation and telling me very little except that he wanted to be Co-Trustee and the balance of said Paragraph is denied.

11. As to Paragraph 11, it is admitted that Mr. Belk's letter was received. However, after finding out what his opinion was, I disagreed with it and still do. For that reason, I filed an Answer

and Counterclaim.

12. As to Item 12, the same is denied. Assuming that this complex property negotiation refers to the Williamsburg Subdivision.

13. Item 13, is denied.

14. Mrs. Ida Mae Belk is the sole owner of Bibco which owns fifty (50%) percent of the complex in question and a fifty (50%) percent owner of Sumter Mortgage which owns fifty (50%) percent of said Subdivision and she had every right to have her position noted without creating any conflict of interest.

15. In reviewing the entire matter it is my opinion, that in spite of Gene Belk's attempts to create a conflict, none exists. Linda B. Harris presently is represented by counsel and I have never done any act, orally or in writing without an express request from Mrs. Belk.

16. Upon conclusion of this matter, it is my intension to move for costs and sanctions under Rule 11 in that this Motion is completely frivolous and that the fact that it is frivolous is well know to Plaintiff and Plaintiff's attorney.

SWORN TO:

WEINBERG & BROWN, LLP

BY:

M. Weinberg, Jr.
M. M. WEINBERG, JR.

109 North Main Street

Post Office Drawer 1289

Sumter, South Carolina 29151-1289

(803) 775-1274

Sumter, South Carolina

March 7, 2008.

Attorney for Attorneys for Defendants, Linda Harris
as Trustee of the Ida Mae K. Belk Irrevocable Trust,
Bibco, Inc., and Ida Mae K. Belk

SWORN to before me this 7 day of March, 2008.

Gimbulis Skukaus

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-27-2015

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
Of Robert D. Belk,

Plaintiff,

Vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K. Belk Irrevocable Trust dated 9/17/07,
and in all alleged fiduciary capacities, Bibco Inc.
Dewey M. Houser, Carolina Preowned, LLP, &
Michael D. "Mickey" Lyles Jr.,

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmidt,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
) CASE No. 2008-CP-43-000347

) AFFIDAVIT OF DESA BALLARD

Personally appeared before me, Desa Ballard, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. To the best of my knowledge, I have no personal or professional relationship with any of the parties to this action. I have been retained as an expert witness in this action by the plaintiff.
2. I am a member of the South Carolina Bar, having been admitted in 1983. A copy of my resume is attached hereto as Exhibit A. I am also licensed to practice in the District of Columbia, the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, the Supreme Court of the United States, and numerous other United States Courts of Appeals. I lecture and teach continuing legal education seminars frequently on topics related to legal ethics and professionalism, making presentations to

legal and paralegal groups in South Carolina, and occasionally outside the state, approximately six (6) to eight (8) times per year. In connection with these presentations, I create materials for distribution to attendees or update materials I have prepared for earlier seminars. I do not maintain a catalog of these materials, nor do I maintain a log of my presentation at seminars. I attend national conferences on professional responsibility and legal malpractice at least annually, sometimes more often, sponsored by the American Bar Association Center for Professional Responsibility, the Association of Professional Responsibility Lawyers, and other groups.

3. Since 1995, I have taught, with Professor Gregory B. Adams, a seminar entitled Advanced Legal Profession to second and third year students at the University of South Carolina School of Law. In 2003, I was designated an Adjunct Professor at the USC School of Law. I am a founding member of the South Carolina Association of Ethics Counsel, a group of practitioners with a particular interest in the field of ethics, professional responsibility and legal discipline.
4. I represent or have represented numerous attorneys in South Carolina in lawyer disciplinary proceedings and/or reinstatement or admission proceedings before the Commission on Lawyer Conduct, the Supreme Court of South Carolina, and the United States Bankruptcy Court for the District of South Carolina. I defend or have defended lawyers in civil actions involving professional negligence. I represent and have represented plaintiffs in professional negligence actions against attorneys.
5. I have been retained to provide expert opinions on legal malpractice issues by lawyers and law firms on approximately fourteen (14) occasions, have been qualified as an expert in the

state courts on at least three (3) occasions, and have testified as an expert by deposition in other cases.

6. I have been asked by counsel for the plaintiff to review this matter and to offer my expert opinion as to the ethical propriety of W. W. Weinberg Jr., (hereafter referred to as "Weinberg") serving as counsel for certain parties in a civil matter pending in Sumter County identified by the caption above. In preparing this affidavit, I have reviewed the following materials¹:

- A. Complaint dated 2-5-08, with verification and Exhibits 1 through 15.
- B. Answer and Counterclaim of Ida Mae Belk, Linda B. Harris as Trustee for the Ida Mae Belk Irrevocable Trust and Bibco Inc. (Weinberg as counsel), dated 2-22-08 with cover letter² and certificate of service.
- C. Notice of Motion and Motion to Remove Counsel of Record dated 2-29-08 with Exhibit 1 and Affidavit dated 2-29-08 of Gene C. Belk In Support of Motion to Remove Counsel of Record, with motion cover sheet.
- D. Answer of Linda B. Harris, Individually, Dewey M. Houser, Carolina Preowned LLC and Michael D. "Mickey" Lyles Jr. and Counterclaim of Linda Harris and Dewey Houser dated 3-3-08 with cover letter and certificate of service.
- E. Notice of Motion and Motion dated 3-4-08 (subject matter: relieving Gene C. Bel (sic) as Co-Personal Representative of the Estate (sic) Robert D. Belk as Co-Personal Representative of the Estate (sic)), with cover letter, certificate of service and motion cover sheet.
- F. Notice of Motion and Motion dated 3-7-08 (subject matter quashing subpoena served on M. M. Weinberg Jr. dated February 29, 2008 and served that day) with certificate of service and motion cover sheet.

¹ All pleadings identified herein bear the caption of the instant case.

² The cover letter states that "initial discovery" was also enclosed, but I have not received or reviewed that discovery.

G. Response to Affidavit of Gene C. Belk dated 3-7-08 (which appears to be an affidavit of Weinberg) with certificate of service.

H. Reply to Answer and Counterclaim of Linda B. Harris, Individually, Dewey M. Houser, Carolina Preowned LLC and Michael D. "Mickey" Lyles Jr., undated and unsigned.

I. Notice of Motion and Motion dated 3-21-08 to Compel Compliance with Subpoena, with Affidavit of Gene C. Belk in Support of Motion to Compel dated 3-21-08, with Exhibit 1 (subpoena dated 3-14-08 to M. M. Weinberg Jr. and Attachment listing Items 1 through 5, affidavit of service, and certificate of service.

J. Affidavit of John E. Miles, Sr. dated April 3, 2008 in Opposition of Gene Belk's Motion to Remove John E. Miles as Counsel of Record, with cover letter.

K. Affidavit of Linda B. Harris dated April 3, 2008 in Support of Motion to Relieve Gene C. Belk as Co-Personal Representative, with cover letter.

L. Affidavit of Dewey Houser dated April 3, 2008 in Opposition of Gene Belk's Motion to Dismiss Counterclaim, with cover letter.

M. Affidavit of Linda B. Harris dated April 3, 2008 in Opposition of Gene Belk's Motion to Dismiss Counterclaim.

M. Amended Complaint dated April 4, 2008 adding additional party M. M. Weinberg Jr. (unsigned).

7. I have had several brief conversations with Plaintiff's counsel, Jan Warner, which were limited to his request of me to insure I had no conflicts and to advise me of the issues he wished me to address in my review. I have not spoken to or received information from the Plaintiff, any other party, or anyone else. My review is limited to the items set forth herein.

8. In rendering my opinions, I have assumed the following facts:

A. In the instant action, Weinberg has appeared as counsel for Defendant Linda B. Harris in her Capacity as Co-Personal Representative of the Estate of Robert D. Belk and as Trustee of the Ida Mae Belk Irrevocable Trust dated 9/17/07. He is also appearing as counsel for a

"stakeholder" Ida Mae Belk, although she is not named as a defendant and has apparently never been served with the pleadings in this action.

B. I have assumed the historical background and designations of the parties as set forth in Paragraphs 2 – 48 of the Complaint dated 2-5-08 and the same paragraphs of the Amended Complaint dated to be true.

9. In my professional opinion, Weinberg has a conflict of interest in serving as counsel for Ida Mae Belk, Linda B. Harris as Trustee for the Ida Mae Belk Irrevocable Trust and Bibco Inc. (or for any other party) in this action under Rule 1.7(a)(2). There are several bases for my opinion:

A. Weinberg prepared a will for the decedent, Robert D. Belk, dated March 5, 2004 which is alleged to have caused damages to the Estate of Robert D. Belk. While no claim has apparently been asserted by the Estate against Weinberg, and any limitations period is likely expired, Weinberg is necessarily adverse to the Estate, which is represented at least in part by one of his clients, and to the beneficiaries of the estate, which apparently include his client Ida Mae Belk. In my opinion, the expiration of the limitations period does not void the conflict, although it attenuates it.

B. The complaint alleges a violation of a Family Settlement Agreement dated June 30, 2005, the parties to which include the Plaintiff as well as Defendant Harris (presumably in her individual capacity), and Ida Mae Belk, by Defendant Harris and Ida Mae Belk, which has or will result in damage to the Plaintiff, as the result of the execution of the Ida Mae Belk Irrevocable Trust Agreement dated 9/17/07, which was allegedly prepared by Weinberg. If true, Weinberg may have civil liability to certain parties to this action, including the plaintiff and Weinberg's client Harris, in her capacity

as Trustee of the Irrevocable Trust. This places him in an adverse position to his own client and possibly to others who are parties to this action.

10. Conflicts under Rule 1.7 may be waived by the affected clients under certain circumstances. See Rule 1.7(b). In my opinion, however, the conflict presented here is not waivable. Under the facts alleged, it would be unreasonable for Weinberg to "reasonably believe[] that [he] would be able to provide competent and diligent representation to each affected client" because his testimony regarding the execution of the Ida Mae Belk Irrevocable Trust dated 9/17/07 will address the circumstances surrounding the execution of that document, which is a disputed factual matter presented here. Therefore, even with client consent, he is not able to remain as counsel for any party to this litigation.

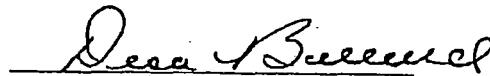
11. For the same reasons set forth in Paragraph 9, I believe that Weinberg is a witness to the issues in dispute in this action and that materials in his possession would necessarily be discoverable in this proceeding. Rule 3.7 addresses circumstances in which a lawyer who has personal knowledge of a matter can or cannot serve as counsel in a matter. My construction of Rule 3.7 prohibits a lawyer from serving as counsel in a jury trial when he is also a witness, because of the risk of confusion by the fact-finder. Therefore, there are circumstances under which a lawyer who is also a witness could remain as counsel of record during pretrial proceedings or in a non-jury proceeding. However, where, as here, the lawyer's own conduct is called into question, the provisions of Rule 1.7 would mandate Weinberg's withdrawal as counsel. It is conceivable that Weinberg may assert that the facts of which he has knowledge are undisputed, which would absolve him of disqualification under Rule 3.7. Should that be the case, however, I believe Rule 1.7 would still require his disqualification in this matter.



12. I have also been asked to offer my opinion on the ethical propriety of ethical propriety of John Miles (hereafter referred to as "Miles") serving as counsel for certain parties in the same civil matter. At this point, I do not have sufficient information from which to analyze this issue and therefore defer any opinion at this time.


12. The opinions set forth herein are preliminary opinions, based only on the information available to me at this time, and are subject to revision upon receipt of additional facts which would alter the opinions set forth.

FURTHER, deponent sayeth not.



Desa Ballard

Sworn to before me this
7 day of April, 2008.


Notary public for South Carolina
My commission expires: 11.28.17

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
2008 MAR 31 AM 11:56
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case NO.: 2008-CP-43-00347

JAMES K. CARROLL
CLERK OF COURT
SUMTER COUNTY, S.C.

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk)

Plaintiff,)

vs.)

Linda B. Harris, Individually & as Trustee of the)
Ida Mae K Belk Irrevocable Trust dated 9/17/07)
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.)

And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk,)

Stakeholders)

AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO DISQUALIFY

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly

sworn, says:

1. I am the Co-Personal Representative of the Estate of my father, Robert D. Belk.
2. An action was commenced against my sister in regard to her breaches of a Family Settlement Agreement and Memorandum with regard to future transactions.
3. I previously moved to disqualify M.M. Weinberg, Jr. as attorney in this case from representing my sister and my mother because of significant conflicts of interest and other grounds heretofore stated.

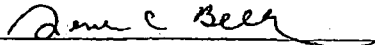
4. I am informed and believe that Mr. Weinberg caused tainted information to be provided to Mr. Miles, who now purports to represent my sister individually, Dewey M. Houser, Bibco, Inc., Carolina Preowned, LLC, and Michael Lyles, Jr., my nephew.

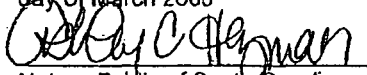
5. Mr. Miles has filed a Counterclaim against me personally alleging that Mr. Houser has not received any compensation from Premier Premier Properties, LLC, Bibco, Inc. and Sumter Mortgage (an unincorporated business) for sales commission owed on approximately ten (10) mobile homes. My sister, Linda Harris, and I are joint partners in Premier Properties, LLC. Further, my sister and I are corporate officers in Bibco, Inc. and Sumter Mortgage is an unincorporated business that currently falls under the administration of the Estate of R. D. Belk and both my sister and I are Co-Personal Representatives for the Estate in administering the day-to-day operation of Sumter Mortgage. Mr. Miles has done this on behalf of my sister and Mr. Houser in an effort to attempt to collect from me rather than the appropriate LLC or entity in which my sister either owns an interest or acts as a corporate officer or fiduciary.

6. I have moved to dismiss the Counterclaims as proper parties have not been joined, however, more importantly, I believe that Mr. Miles has received information from Mr. Weinberg which is tainted, and which requires that Mr. Miles withdraw as counsel.

7. In addition, Mr. Miles has conflicts of interest in that the claims he has made in Mr. Houser's Counterclaim are, in fact, claims against entities in which my sister has an ownership interest, is a corporate officer in, or is a fiduciary in the management of.

8. I requested a hearing be held with regard to the disqualification of Mr. Miles from representation in this matter based upon the foregoing and such Memoranda and Affidavits as may be submitted to the Court at the time of the hearing.


Gene C. Belk

SWORN to before me this 21st
day of March 2008

Notary Public of South Carolina
My Commission Expires: 5/23/2011

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Case NO.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants,

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders

**AFFIDAVIT OF GENE C.
BELK IN SUPPORT OF
MOTION TO COMPEL**

PERSONALLY APPEARED BEFORE ME GENE C. BELK who, being duly
sworn, says:

1. I am the Plaintiff in this action and Co-Personal Representative of my father's Estate, Robert E. Belk.
2. I have previously filed and served a Motion to Disqualify M.M. Weinberg, Jr. from participating as counsel in this case due to the fact that he is a material witness, has substantial conflicts of interest and, in fact, is attempting to disrupt a plan that was put in place based upon his preparation of a faulty Will of my father.

3. In order to attempt to "work around" the error made by Mr. Weinberg, the Estate gone through substantial expense and, as a result, a Family Settlement Agreement and Memorandum with regard to future transactions was entered into.

4. Subsequent thereto, Mr. Weinberg, who had represented my father for years, took on the representation of my mother and my sister, and is interfering with the performance pursuant to the terms of the Family Settlement Agreement and the Memorandum, both of which are contracts.

5. A production subpoena was served on Mr. Weinberg on February 29, 2008.

6. On March 19th, five days after the records were due, Mr. Weinberg served Motion to Quash Subpoena as to his appearance and attendance at his deposition.

7. Mr. Weinberg is a material witness to the allegations contained in the Complaint. His deposition is scheduled for March 26, 2008 and cannot be taken without the production of the records that were subpoenaed.

8. I request an Order of the Court enforcing the subpoena, and further request an award of attorney's fees and costs for bringing this matter before the Court.

SWORN to before me this 21st
day of March 2008

Gene C. Belk
Notary Public of South Carolina
My Commission Expires: 5/20/2017

Gene C. Belk
Gene C. Belk

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED
IN THE COURT OF COMMON PLEAS
2008 NOV -5 PM 4:30

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

JAMIS C. CAMPBELL
CLERK OF CIVIL ACTION No. 08-CP-43-0347
SUMTER COUNTY, S.C.

Plaintiff,

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc.; Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

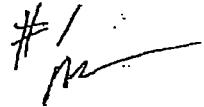
Stakeholders.

DEFENDANT M. M. WEINBERG,
JR.'S FIRST REQUEST FOR
PRODUCTION DIRECTED TO THE
PLAINTIFF

TO: THE PLAINTIFF and his attorney, JAN L. WARNER

YOU ARE HEREBY REQUESTED to produce and permit Defendant M. M.
Weinberg, Jr. to inspect and copy or photograph the following documents and/or things
pursuant to Rule 34 of the South Carolina Rules of Civil Procedure:

1. Any and all statements, whether written or recorded, taken in connection with
the above-referenced action;
2. Any and all records which would reflect or show damages, including special
damages;

#1


3. All records reviewed or utilized or referred to in your answers to interrogatories;

4. Any reports of any experts to be used by you at the trial of the case;

5. All records that relate or pertain to or in any way support your allegation against M. M. Weinberg, Jr. as set forth in paragraph 66 of your Complaint;

6. All records that relate or pertain to or in any way support your allegation against M. M. Weinberg, Jr. as set forth in paragraphs 77 and 78 of your Complaint;

7. All records that relate or pertain to or in any way support your allegation against M. M. Weinberg, Jr. as set forth in paragraphs 90 and 91 of your Complaint; and

8. All records that relate or pertain to or in any way support your allegation against M. M. Weinberg, Jr. as set forth in paragraph 95 of your Complaint.

YOU ARE REQUESTED to produce the records or copies thereof at the offices of McCutchen Blanton Johnson & Barnette, LLP, P.O. Drawer 11209, 1414 Lady Street (29201), Columbia, South Carolina 29211-1209, at a mutually convenient time, not later than thirty (30) days after the service hereof.

MCCUTCHEM BLANTON JOHNSON & BARNETTE, LLP

By: 

Pope D. Johnson, III
P.O. Drawer 11209
Columbia, SC 29211-1209
(803) 799-9791
(803) 253-6084 (fax)
pdjohnson@mbjb.com

Attorneys for Defendant M. M. Weinberg, Jr.

Columbia, South Carolina
June 2, 2008

- 2 -


STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,
Plaintiff,

Civil Action No. 08-CP-43-0347

vs.

CERTIFICATE OF SERVICE

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

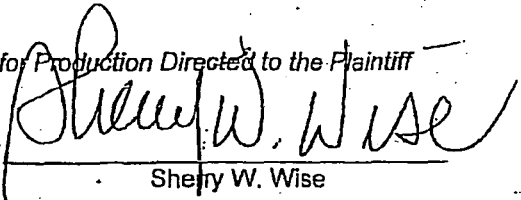
I, Sherry W. Wise, of McCutchen Blanton Johnson & Barnette, LLP, hereby certify that I
have served Jan L. Warner, attorney for the Plaintiff, with the foregoing pleading(s) by
mailing a copy of same, postage prepaid and return address clearly indicated, to him at the
following address on the 2nd day of June, 2008.

COUNSEL SERVED:

Jan L. Warner, Esquire
~~Warner-Payne & Black, LLP~~
P.O. Box 2626
Columbia, SC 29202

PLEADINGS:

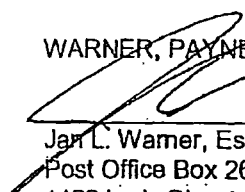
Defendant M. M. Weinberg, Jr.'s First Request for Production Directed to the Plaintiff


Sherry W. Wise

2. Additional Documents previously provided to counsel for Defendant.

- a. 06/30/07 Trust Severance Agreement
- b. 06/30/07 QTIP Trust 1, 2 & 3
- c. 02/29/08 Affidavit of Plaintiff.
- d. 04/07/08 Affidavit of Dessa Ballard.

WARNER, PAYNE & BLACK, LLP


Jan L. Warner, Esquire
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone (803) 799-0554
Facsimile: (803) 799-2517
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
August 25, 2008

Jan.Warner.2008CP430347.response.weinberg.firstrequest.production.01

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,

Civil Action No. 08-CP-43-0347

Plaintiff,

DEFENDANT M. M. WEINBERG,
JR.'S FIRST SET OF
INTERROGATORIES DIRECTED TO
THE PLAINTIFF

vs.

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 9/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

TO: THE PLAINTIFF and his attorney, JAN L. WARNER

YOU ARE HEREBY served the following written Interrogatories to be answered
~~separately and in writing pursuant to and in accordance with the provisions of Rule 33(b)~~
of the Rules of Practice for the Circuit Court of South Carolina.

1. Give the names and addresses of persons known to the parties or counsel
to be witnesses concerning the facts of the case and indicate whether or not written or
recorded statements have been taken from the witnesses and indicate who has
possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

3. Set forth an itemized statement of all damages claimed to have been sustained by the party.

4. List the names, addresses and current telephone numbers of any expert witnesses whom the plaintiff has contacted or proposes to use as a witness at the trial of the case, and with respect to each, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

6. Identify each witness who has knowledge regarding the allegations against M. M. Weinberg, Jr. as set forth in paragraph 66 of your complaint and set forth a summary sufficient to inform M. M. Weinberg, Jr. of the important facts known to or observed by such witness regarding the said allegation.

7. Identify each witness who has knowledge regarding the allegations against M. M. Weinberg, Jr. as set forth in paragraphs 77 and 78 of your complaint and set forth a summary sufficient to inform M. M. Weinberg, Jr. of the important facts known to or observed by such witness regarding the said allegation.

8. Identify each witness who has knowledge regarding the allegations against M. M. Weinberg, Jr. as set forth in paragraphs 90 and 91 of your complaint and set forth

- 2 -



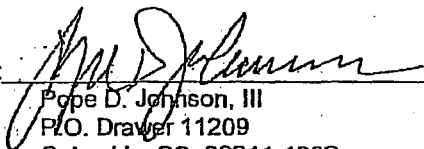
a summary sufficient to inform M. M. Weinberg, Jr. of the important facts known to or observed by such witness regarding the said allegation.

9. Identify each witness who has knowledge regarding the allegations against M. M. Weinberg, Jr. as set forth in paragraph 95 of your complaint and set forth a summary sufficient to inform M. M. Weinberg, Jr. of the important facts known to or observed by such witness regarding the said allegation.

10. Describe in detail and itemize all special damages as alleged in paragraph 79.

11. Describe with particularity any act of this defendant constituting or in furtherance of the alleged civil conspiracy.

MCCUTCHEN BLANTON JOHNSON & BARNETTE, LLP

By: 
Pope D. Johnson, III
P.O. Drawer 11209
Columbia, SC 29211-1209
(803) 799-9791
(803) 253-8084 (fax)
pdjohnson@mbjb.com

Attorneys for Defendant M. M. Weinberg, Jr.

Columbia, South Carolina
June 2, 2008

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS

Gene C. Belk, Individually and as Co-
Personal Representative of the Estate
of Robert D. Belk,
Plaintiff,

Civil Action No. 08-CP-43-0347

vs..

CERTIFICATE OF SERVICE

Linda B. Harris, Individually and as
Trustee of the Ida Mae K. Belk
Irrevocable Trust dated 8/17/07 and in
all alleged fiduciary capacities, Bibco,
Inc., Dewey M. Houser, Carolina
Preowned, LLP, Michael D. "Mickey"
Lyles, Jr., and M. M. Weinberg, Jr.,

Defendants.

And Cheryl Ann Hanion, Patricia B.
Schmit, Robert M. Belk, and Ida Mae
Belk,

Stakeholders.

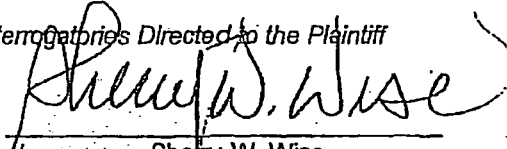
I, Sherry W. Wise, of McCutchen Blanton Johnson & Barnette, LLP, hereby certify that I
have served Jan L. Warner, attorney for the Plaintiff, with the foregoing pleading(s) by
mailing a copy of same, postage prepaid and return address clearly indicated, to him at the
following address on the 2nd day of June, 2008.

COUNSEL SERVED:

Jan L. Warner, Esquire
Warner-Payne & Black, LLP
P.O. Box 2626
Columbia, SC 29202

PLEADINGS:

Defendant M. M. Weinberg, Jr.'s First Set of Interrogatories Directed to the Plaintiff


Sherry W. Wise

- b. M. M. Weinberg, Jr.
P.O. Drawer 1289
Sumter, South Carolina 29151

The extent of his testimony is unknown however, previously Plaintiff subpoenaed Defendant Weinberg to give deposition testimony and to produce his office records that relate to his previous representation of R. D. Belk d/b/a Sumter Mortgage Company and relate to documents he prepared in his representation of Stakeholder Ida Belk. Defendant Weinberg has not yet been deposed, nor has he produced the subpoenaed records.

- c. Dave Sojourner
Post Office Box 2285
Columbia, South Carolina 29202

It is believed that Mr. Sojourner will testify that he accumulated financial information on Mr. and Mrs. Belk and that he then provided legal services and recommendations for Mr. and Mrs. Belk to avoid estate taxes based upon Mr. Belk's assets. Further that it is expected he will testify that he handled the postmortem planning for Mrs. Belk in December of 2004, prepared Trusts for Stakeholder Belk and coordinated Postmortem Estate and Future Transaction Plan which was agreed upon and acted upon as set forth in Plaintiff's Complaint.

- d. Karen Thomas
Post Office Box 2285
Columbia, South Carolina 29202

It is believed that Ms. Thomas will testify to the legal services she provided on behalf of the Estate of R. D. Belk, together with the legal documents she prepared and her involvement in the Postmortem Estate and Future Transaction Plan which was agreed upon and acted upon as set forth in Plaintiff's Complaint.

- e. William Brannon
Post Office Box 100261
Columbia, South Carolina 29202

It is believed that Mr. Brannon will testify that he met with Defendant Harris and Stakeholder Mrs. Belk and then set out to prepare legal documents for Mrs. Belk at her request consistent with the Postmortem Estate and Future Transaction Plan which was agreed upon and acted upon as set forth in Plaintiff's Complaint.

- f. John Chase
Post Office Box 6617
Florence, South Carolina

It is believed that Mr. Chase will testify that he prepared a Trust and a Family, LLC that was filed with the Secretary of State. Under the terms of the Trust, Plaintiff and Defendant Harris were to be co-trustees. Further, under the LLC, Plaintiff and Defendant Harris were to be co-managers of the Family LLC. It is further expected that he

Jan. Warner.2008CP430347.responses.weinberg.first.interogs.01

will testify as to his oral conversations with Defendant Harris and Stakeholder Mrs. Belk, together with any conversations and communications with Defendant Weinberg.

g. Ida Belk
[REDACTED]
[REDACTED]

Mrs. Belk's deposition has not yet been taken and the full extent of her testimony is currently unknown. It is believed that she will testify that Defendant Harris took her to William Brannon's office, subsequent thereto to John Chase's office and most recently to the Defendant Weinberg's office. Further, that the Defendant Weinberg has met with Defendant Houser and Defendant Harris at times when she was not present.

h. Linda Harris
[REDACTED]
[REDACTED]

Defendant Harris' deposition has not yet been taken and the extent of her testimony is currently unknown.

i. Gus Dixon
P.O. Drawer 11009
1320 Main Street, 17th Floor
Columbia, South Carolina

It is believed that he will testify that he was hired by the Estate in the latter part of 2006 involving a disputed contract between the Estate of R. D. Belk d/b/a Sumter Mortgage and Dean Gainey, et. al. It is believed that he will testify as to the legal services he performed on behalf of the Estate and his settlement of the claim in March of 2008. It is further believed that he will testify that Defendant Weinberg by his actions in contacting Defense Attorneys Russ Jeter and Charles Dibble, undermined his ability to negotiate on behalf of the Estate of R. D. Belk. It is believed he will testify as to his personal contact with Defendant Weinberg before and after settlement of the disputed contract referred to above. It is expected that he will testify that Defendant Weinberg's actions interfered with settlement negotiations and interfered with the just and proper administration of the Estate of R. D. Belk.

j. Charles Dibble
P.O. Drawer 1240
Columbia, South Carolina 29202-1240

It is believed that he will testify that he was hired by the Defendant Dean Gainey to advise Mr. Gainey in the disputed contract referred to above. Further, he will testify as to his personal contact with the Defendant Weinberg prior to and subsequent to the Williamsburg settlement agreement.

- k. Dewey Houser
Sumter, South Carolina (address unknown)

Defendant Houser's deposition has not yet been taken but It is believed that he will testify that prior to his retaining Attorney John Miles, Sr., that he had multiple conversations with Defendant Harris and Defendant Weinberg.

2. a. See exhibits/documents attached to original Complaint of 02/05/08.
b. See additional documents previously provided to you.
1. 06/30/07 Trust Severance Agreement.
2. 06/30/07 QTIP Trust 1, 2, & 3.
3. 02/29/08 Affidavit of Plaintiff.
4. 04/07/08 Affidavit of Dessa Ballard.
3. Actual and punitive damages, loss of income, award of attorneys fees, costs, prejudgment interest and other relief as the Court deems just and proper.
4. a. Dessa Ballard
226 State Street
Columbia, South Carolina 29169

Defendant has Mrs. Ballard's Affidavit of April 7, 2008. It is believed that she will testify in accordance with her April 7, 2008, Affidavit.

5. See Answers to Interrogatory #1 above. Plaintiff notes that these questions are not within the standard Interrogatories as provided by Rule 33 (b).

6. See Answers to Interrogatory #1 above. Plaintiff notes that these questions are not within the standard interrogatories as provided by Rule 33 (b).

7. See Answers to Interrogatory #1 above. Plaintiff notes that these questions are not within the standard interrogatories as provided by Rule 33 (b).

8. See Answers to Interrogatory #1 above. Plaintiff notes that these questions are not within the standard Interrogatories as provided by Rule 33 (b).

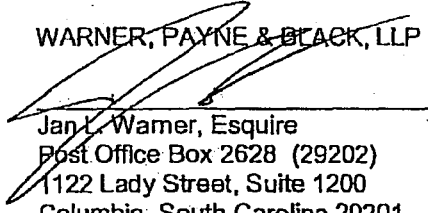
9. See Answers to Interrogatory #1 above. Plaintiff notes that these questions are not within the standard interrogatories as provided by Rule 33 (b).

10. See Answers to Interrogatory #3 above.

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11. That Defendant Weinberg's deposition has not yet been taken but he, through his numerous acts and omissions, well known to him, has met with and communicated with Defendant Houser and Defendant Harris on numerous occasions and conspired to injure the Plaintiff as set forth in the Complaint. Defendant Weinberg being well aware of his deep rooted conflicts of interest has repeatedly ignored them and has overzealously used heavy-handed and improper methods to harm Plaintiff. Further, he has prepared legal documents contrary to existing contracts and agreements. He has written unilateral letters, made telephone calls and used improper methods to injure Plaintiff. He has given legal advice for the formation of new entities such as I. M. Belk Company. That he has by his conduct and acts, attempted to divert money away from Plaintiff's control and interfered with the just administration of the Estate.

WARNER, PAYNE & BLACK, LLP


Jan L. Warner, Esquire
Post Office Box 2628 (29202)
1122 Lady Street, Suite 1200
Columbia, South Carolina 29201
Telephone (803) 799-0554
Facsimile: (803) 799-2517
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
August 25, 2008

Jan.Warner.2008CP430347.responses.weinberg.first.interogs.01

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

VERIFICATION

PERSONALLY appeared before me the Plaintiff, who, first being duly sworn, says:
that he is the Plaintiff in the foregoing action; that he has read the foregoing pleadings; that
the statements contained therein are true to the best of his knowledge save and except as
to those stated to be based upon information and belief, as to which, he believes such
matters to be true.

Gene C. Belk
Gene C. Belk

SWORN to before me this
25th day of August 2008

David P. Strodon
Notary Public For South Carolina
My Commission Expires: 02/04/2015

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

COUNTY OF SUMTER

) Case No.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

Stakeholders

CERTIFICATE OF SERVICE

I, Rachel L. Jellenik, paralegal for the law firm of Warner, Payne & Black, L.L.P./
ElderLaw Services of South Carolina, P.A., attorneys for Gene C. Belk, do hereby
certify that on this date I caused a copy of Responses To Defendant M.M. Weinberg,
Jr.'s Motion To Produce and Responses To Defendant M.M. Weinberg, Jr.'s First
Set of Interrogatories to be served upon the parties listed below by depositing a copy
~~of same in the United States Mail, postage pre-paid, and addressed to the following:~~

Pope D. Johnson, III, Esq.
McCutchen, Blanton, Johnson & Barnette, LLP
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211


Rachel L. Jellenik

Columbia, South Carolina
August 25, 2008

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

) Case No.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned, LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants.

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk

Stakeholders

CERTIFICATE OF SERVICE


I, Rachel L. Jellenik, paralegal for the law firm of Warner, Payne & Black, L.L.P./
ElderLaw Services of South Carolina, P.A., attorneys for Gene C. Belk, do hereby
certify that on this date I caused a copy of Responses To Defendant M.M. Weinberg,
Jr.'s Motion To Produce and Responses To Defendant M.M. Weinberg, Jr.'s First
Set of Interrogatories to be served upon the parties listed below by depositing a copy
of same in the United States Mail, postage pre-paid, and addressed to the following:

M.M. Weinberg, Jr.
PO Box 1289
Sumter, SC 29151-1289

William Johnson
2 N. Brooks Street
Manning, SC 29102

S. Jahue Moore
PO Box 5709
West Columbia, SC 29171

D.J. Taylor
PO Box 11656
Columbia, SC 29211-1656


Rachel L. Jellenik

Columbia, South Carolina
September 10, 2008

WARNER, PAYNE & BLACK, L.L.P.
ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.

JAN L. WARNER
B.A., J.D., LL.M. (Taxation)
Certified Fellow, American Academy of Matrimonial Lawyers
Member, National Academy of Elder Law Attorneys
jlw@janwarner.com

MITCHELL C. PAYNE
B.S., M.A. (Accounting), J.D.
Member, National Academy of Elder Law Attorneys
mcp@elderlaw-sc.com

CHARLES M. BLACK, JR.
B.S. (Finance/Management), J.D.
Member, National Academy of Elder Law Attorneys
Former Asst. General Counsel, SC DHHS
charlesblack@wpb-law.net

MATTHEW E. STEINMETZ
B.A., J.D.
MATTHEWSTEINMETZ@VPI-LAW.NET

CARRIE A. WARNER
B.S., J.D.
CARRIEWARNER@VPI-LAW.NET

August 25, 2008

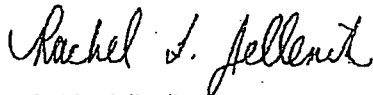
Pope D. Johnson, III, Esq.
McCutchen, Blanton, Johnson & Barnette, LLP
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211

RE: Gene Belk, et al vs. Linda B. Harris, et al.
Case No.: 2008-CP-43-00347

Dear Mr. Johnson:

Enclosed for service upon you please find Responses To Defendant M.M. Weinberg, Jr.'s Motion To Produce and Responses To Defendant M.M. Weinberg, Jr.'s First Set of Interrogatories with a Verification and Certificate of Service in connection with the above matter.

Yours truly,



Rachel L. Jellenik
Paralegal to Jan L. Warner

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Pope D. Johnson, III; Esq.
August 25, 2008
Page 2 of 2

/RLJ

cc: Gene C. Belk

Enclosures: Defendant M.M. Weinberg, Jr.'s Motion To Produce
Responses To Defendant M.M. Weinberg, Jr.'s First Set of Interrogatories
Verification
Certificate of Service

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ELDERLAW SERVICES OF SOUTH CAROLINA, P.A.

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September 10, 2008

M.M. Weinberg, Jr.
PO Box 1289
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William Johnson
2 N. Brooks Street
Manning, SC 29102

S. Jahue Moore
PO Box 5709
West Columbia, SC 29171

D.J. Taylor
PO Box 11656
Columbia, SC 29211-1656

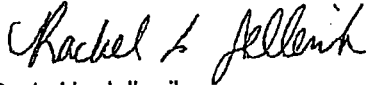
Re: Gene Belk, et al vs. Linda B. Harris, et al.
Case No.: 2008-CP-43-00347

Dear Gentlemen:

Enclosed for service upon you please find Responses To Defendant M.M. Weinberg, Jr.'s Motion To Produce and Responses To Defendant M.M. Weinberg, Jr.'s First Set of Interrogatories with a Verification and Certificate of Service in connection with the above matter.

M.M. Weinberg, Jr.
S. Jahue Moore
William Johnson
D.J. Taylor
September 10, 2008
Page 2 of 2

Yours truly,



Rachel L. Jellenik
Paralegal to Jan L. Warner

/RLJ

cc: Gene C. Belk

Enclosures: Defendant M.M. Weinberg, Jr.'s Motion To Produce
Responses To Defendant M.M. Weinberg, Jr.'s First Set of Interrogatories
Verification
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STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT

Case NO.: 2008-CP-43-00347

Gene C. Belk, Individually and as
Co-Personal Representative of the Estate
of Robert D. Belk

Plaintiff,

vs.

) AFFIDAVIT OF JAN L. WARNER

Linda B. Harris, Individually & as Trustee of the
Ida Mae K Belk Irrevocable Trust dated 9/17/07
and in all alleged fiduciary capacities, Bibco, Inc.)
Dewey M. Houser, Carolina Preowned. LLP, &)
Michael D. "Mickey" Lyles, Jr.)

Defendants,

And Cheryl Ann Hanlon, Patricia B. Schmit,
Robert M. Belk, and Ida Mae Belk,

Stakeholders.

PERSONALLY APPEARED BEFORE ME JAN L. WARNER who, being duly
sworn, says:

1. I am counsel of record for Gene C. Belk, who commenced this action
individually and as Co-Personal Representative of the Estate of Robert D. Belk.

2. The hearing that was held on October 2, 2008 was pursuant to Order
issued by The Honorable James R. Barber, III dated September 8, 2008 which initially
set the hearing for September 12, 2008 (Exhibit 1).

3. On behalf of my client, I had previously filed two motions, one to disqualify
Mr. Weinberg as counsel before the Amended Complaint was served naming him as a



party dated February 29, 2008, and the other to Compel Mr. Weinberg to produce documents and to sit for a deposition when he refused to do so dated March 21, 2008.


4. Mr. Weinberg's Motion to Dismiss was served upon my office on September 11, 2008, some sixteen (16) days after Plaintiff's motion for injunction that was filed on August 26, 2008 with the Motion to Dismiss.

5. I prepared a Memorandum in Opposition to Mr. Weinberg's Motion to Dismiss (**Exhibit 2**) dated October 2, 2008 and handed the same up to the Court on October 2, 2008 at which time the Court stated that it was converting the motion into a Motion for Summary Judgment. I also prepared and filed Plaintiff's Memorandum Regarding Motions to be Heard April 7, 2008 that was also ignored (**See Exhibit 9**).

6. This came as a complete surprise to me, especially given the facts that (1) Plaintiff had filed and served prior motions pending attached to which were affidavits that were relevant to this issue and were not considered by the Court; (2) Desa Ballard was under subpoena as Plaintiff's expert witness and whose testimony was heard after the Court ruled upon the converted Motion to Dismiss.

7. I was also surprised at the mention of a conversion of Mr. Weinberg's Motion to Dismiss into a Summary Judgment motion because Plaintiff had not been given the opportunity to secure any discovery from Mr. Weinberg and had not been given reasonable notice of the conversion, the first notice being when we walked into the courtroom that morning.

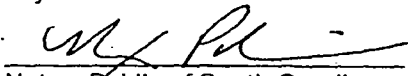
8. I believe the Court should have heard the motions in the order filed which it had placed before the Court a number of affidavits and other material that would have pointed out genuine issues of material fact.



9. This affidavit is submitted in support of Plaintiff's 60 (b) motion this day filed.


JAN L. WARNER

SWORN to before me this 10th
day of November 2008


Notary Public of South Carolina

My Commission Expires: 11/14/11

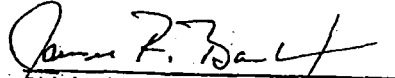
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE THIRD JUDICIAL CIRCUIT
COUNT OF SUMTER)
) CIVIL ACTION NO.: 2008-CP-43-0347
)
Gene C. Belk, Individually and as)
Co-Personal Representative of the Estate)
Of Robert D. Belk)
)
Plaintiff,)
vs.)
) ORDER FOR EXPEDITED HEARING
Linda B. Harris, Individually & as Trustee of the)
Ida Mae K Belk Irrevocable Trust dated 9/17/07))
and in all alleged fiduciary capacities, Bibco Inc))
Dewey M. Houser, Carolina Pre-Owned, LLC &))
Michael D. "Mickey" Lyles, Jr. and M. M.)
Weinberg, Jr.)
Defendants.)
)
And Cheryl Ann Hanlon, Patricia B. Schmit,)
Robert M. Belk, and Ida Mae Belk)
)
Stakeholders)

This matter is before the Court on Motion of Plaintiff, by and through his counsel, seeking an expedited hearing on his Motion for Injunction and Restraining Order pursuant to Rule 65, SCRCivP. It appearing that exigent circumstances exist with regard to the property in interest unless this Court intervenes on a timely basis, it is accordingly,

ORDERED:

1. That an expedited on Plaintiff's Motion for Injunction and Restraining Order shall be held on this matter on the 12th day of September, 2008 at 9:30 A.M., at Richland County Judicial Center , 1701 Main Street , Columbia , South Carolina, at which time Defendant shall show cause why the relief requested should not be granted.

AND IT IS SO ORDERED


Chief Administrative Judge
Court of Common Pleas
5th Judicial Circuit

At Chambers

Columbia South Carolina

8th day of September 2008

Defendant Weinberg is a necessary party as defined by Rule 19, SCRCivP. While acting in fiduciary relationships to both Linda Harris as trustee for her mother and as agent under her mother's durable power of attorney and to Mrs. Belk herself, Mr. Weinberg both prepared and caused the documents complained of to be executed and funded.

In this case, creation of what amounts to be an irrevocable trust and assisting in the transfer into that trust of installment sales contracts that cause significant adverse tax consequences, not to mention the tortious breach of the family settlement agreement and memorandum regarding future transactions, provided benefit to Linda Harris. Mr. Weinberg is so inexorably involved here in so many different capacities that he caused the genesis of the transactions and then the misdirection of funds from estate coffers into Mrs. Belk's accounts controlled by Linda Harris.

Moreover, it is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence. 36A C.J.S. Fiduciary at 388 (1983):

See, *Island Car Wash, Inc. v. Norris*, 358 S.E.2d 150, 292 S.C. 595 (S.C.App. 1987)

CIVIL CONSPIRACY

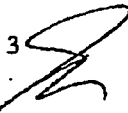
Plaintiff's seventh cause of action against Weinberg for civil conspiracy should likewise not be dismissed based on a case in which Mr. Weinberg himself was previously involved.

In *Moore v. Weinberg*, 644 S.E.2d 740, 373 S.C. 209 (S.C. App. 2007), another conspiracy case brought against Weinberg, our Court of Appeals provided:

"The elements a plaintiff must demonstrate in order to prove civil conspiracy include: (1) the combination of two or more people; (2) for the purpose of injuring the plaintiff; (3) causing special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006). "In order to establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005) (quoting *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 575, 511 S.E.2d 372, 383 (Ct.App.1998)); see also *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987). Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances. *Id.* Because civil conspiracy is "by its very nature covert and clandestine," it is usually not provable by direct evidence. *Id.*

"[A]n attorney is [generally] immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye*, 369 S.C. at 564, 633 S.E.2d at 509 (quoting *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct.App.1986)). However, the South Carolina Supreme Court cautions that "an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person...." *Id.* at 564, 633 S.E.2d at 509-10 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

"Our review of the record in *Cowburn* revealed no evidence of an agreement between the defendants or any indication they joined together for the purpose of injuring the plaintiff. Accordingly, we held no genuine issue of material fact existed to establish a claim for civil conspiracy. 366 S.C. at 49, 619 S.E.2d at 453. In this case, Moore provided no evidence that Weinberg and Wheeler colluded to deprive Moore of the funds he was entitled to under the Assignment. All the evidence contained in the record indicated Weinberg forgot about the Assignment."

3


In the present case, as alleged in the Complaint, Weinberg was aware of the Family Settlement Agreement (Amended Complaint at p. 14)

In *Stiles (Supra.)*, which was cited as authority by the Court in *Moore v. Weinberg*, our Supreme Court provided:

"A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. See generally Annotation 97 ALR 3rd 688 (attorney's liability for abuse of process); Annotation 46 ALR 4th 249 (attorney's liability for malicious prosecution). See also RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover, several courts have held that an attorney may be held liable arising out of a conspiracy with his client. See e.g., *Wolfrich Corp. v. U.S. Automobile Assn.*, 149 Cal.App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in conjunction with their representation of clients. See, e.g., *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank*, 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter*, 516 So.2d 27 (Fla.App.1987); *Guillebeau v. Jenkins*, 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold*, 520 So.2d 1327 (Miss.1987)(attorney liable for conversion for improperly paying real estate proceeds only to his client)."

This motion must be denied.

TORTIOUS INTERFERENCE WITH A CONTRACT

Plaintiff's tenth cause of action against Weinberg for tortious interference with a contract should likewise not be dismissed.

Weinberg relies upon the same argument that he is immune from suit for



his actions based upon *Gaar* (Supra.)

However, as discussed above, "...an attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person...." *Id.* at 564, 633 S.E.2d at 509-10 (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Additionally, a close reading of the *Gaar* decision shows:

"In our opinion, the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution. See *W.D.G., Inc. v. Mutual Mfg. & Supply Co.*, 5 Ohio Op.3d 397 (1976). Such a suit is properly brought against the party to the original action, not the attorney representing him. The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities. *Id.*" (Emphasis Added)

Here, Plaintiff is in privity with Weinberg's clients by way of the Family Settlement Agreement, the Memorandum Regarding Future Transactions, and Trust Severance Agreement.

Based upon the forgoing Plaintiff has set forth sufficient allegations to support a cause of action against Weinberg for Tortious Interference with these Contracts which have been partially performed.

BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

Plaintiff incorporates herein by reference the same arguments as set forth above as if set forth herein verbatim.



WARNER, PAYNE, AND BLACK, L.L.P.

~~Jan L. Warner~~

~~Matthew E. Steinmetz~~

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Attorneys for the Plaintiff

Columbia, South Carolina
October 2, 2008

ISLAND CAR WASH, INC. V. NORRIS
358 S.E.2d 150, 292 S.C. 595 (S.C.App.
1987)

Headnotes • Opinion •
Cases Citing This Case

Court of Appeals of South Carolina.

ISLAND CAR WASH, INC., Appellant,

v.

George F. NORRIS, III, and R. William
Rhodes, Respondents.

No. 0926.

Heard Nov. 18, 1986.

Decided April 6, 1987.

SYNOPSIS

Car wash corporation sued former manager and supplier, alleging that manager had conspired with supplier to breach manager's confidential relationship with corporation and to divert corporate funds. The Court of Common Pleas, Beaufort County, Luke N. Brown, Jr., J., directed verdict in favor of defendants, and corporation appealed. The Court of Appeals, Gardner, J., held that: (1) former manager stood in "fiduciary relationship" with corporation, and (2) whether manager conspired with supplier to submit inflated invoice for equipment delivered to corporation, in order to divert corporate funds into defendants' own pockets, was question for jury.

Reversed and remanded.

HEADNOTES

[1] **Fraud** ⇨ 7

184 —
184I Deception Constituting Fraud, and
Liability Therefor

184k5 Elements of Constructive Fraud
184k7 Fiduciary or Confidential
Relations.

"Confidential or fiduciary relationship" exists when one reposes special confidence in another, so that latter, in equity and good conscience, is bound to act in good faith and with due regard to interest of one reposing confidence.

[2] **Jury** ⇨ 14.5(2.1)

230 —
230II Right to Trial by Jury
230k14.5 Multiple Parties or Issues
230k14.5(2) Joinder of Legal and
Equitable Issues
230k14.5(2.1) In General.
(Formerly 230k14.5(2))

Where legal and equitable issues or rights are asserted in same complaint, legal issues are for determination by jury and equitable issues for court.

[3] **Corporations** ⇨ 314(1)

101 —
101X Officers and Agents
101X(C) Rights, Duties, and Liabilities
as to Corporation and Its Members
101k314 Individual Profits or Benefits
from Corporate Business
101k314(1) Breach of Duty and
Liability Therefor in General.

Manager of car wash company, who was married to daughter of majority shareholders and upon whom shareholders relied to start up corporate business, stood in "fiduciary relationship" to company, so as to be prohibited from using relationship to benefit himself individually.

[4] **Conspiracy** ⇨ 2

91 —
91I Civil Liability
91I(A) Acts Constituting Conspiracy
and Liability Therefor